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REPORTS

# 528

OCT. TERM 1999

In Memoriam

JUSTICE HARRY A. BLACKMUN

# UNITED STATES REPORTS

VOLUME 528

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CASES ADJUDGED

IN

# THE SUPREME COURT

AT

OCTOBER TERM, 1999

BEGINNING OF TERM

OCTOBER 4, 1999, THROUGH FEBRUARY 28, 2000

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FRANK D. WAGNER

REPORTER OF DECISIONS

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## Errata

511 U. S. 265, line 21: Insert "human" between "universal" and "appeal".
520 U. S. 681, 697, line 4: "Pharoah" should be "Pharaoh".
526 U. S. 629, 637, line 11: "(1998)" should be "(1997)".
526 U. S. 629, 638, line 1: "(1998)" should be "(1997)".

# JUSTICES

OF THE

# SUPREME COURT

DURING THE TIME OF THESE REPORTS

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

RETIRED

BYRON R. WHITE, Associate Justice.

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OFFICERS OF THE COURT

JANET RENO, Attorney General.
SETH P. WAXMAN, Solicitor General.
WILLIAM K. SUTER, Clerk.
FRANK D. WAGNER, Reporter of Decisions.
DALE E. BOSLEY, 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.

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(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 BLACKMUN*

WEDNESDAY, OCTOBER 27, 1999

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

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THE CHIEF JUSTICE said:

The Court is in special session this afternoon to receive the Resolutions of the Bar of the Supreme Court in tribute to our former colleague and friend, Justice Harry A. Blackmun.

The Court recognizes the Solicitor General.

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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 Blackmun 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.

## RESOLUTION

Justice Harry A. Blackmun often joked that he came to the Supreme Court as "Old Number Three," having been the third nominee proposed by President Richard M. Nixon for

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*Justice Blackmun, who retired from the Court effective August 3, 1994 (512 U. S. VII), died in Arlington, Virginia, on March 4, 1999 (526 U. S. V).

the fabled seat once held by Justices Joseph Story, Oliver Wendell Holmes, Jr., Benjamin Cardozo, and Felix Frankfurter. At his confirmation hearings, he was asked by Senator James O. Eastland, the chairman of the Senate Judiciary Committee, whether he thought judges ought to be required to take senior status at the age of seventy. He replied that he was concerned that "[a]n arbitrary age limit can lead to some unfortunate consequences. I think of Mr. Justice Holmes and many others who have performed great service for the country after age 70. So much depends on the individual. I think some of us are old at a younger age than others are."[1]

The Justice was prescient. When he left the seat twenty-four years later, he was "Old Number Three" in a different sense: the third oldest Justice ever to serve on the Court. And much of his legacy is the product of his years on the Court after he turned 70: his opinions for the Court in *Santosky* v. *Kramer*, 455 U. S. 745 (1982), *Garcia* v. *San Antonio Metropolitan Transit Authority*, 469 U. S. 528 (1985), *Daubert* v. *Merrell Dow Pharmaceuticals*, 509 U. S. 579 (1993), and *J. E. B.* v. *Alabama*, 511 U. S. 127 (1994); his concurrences in *Planned Parenthood* v. *Casey*, 505 U. S. 833 (1992), and *Lee* v. *Weisman*, 505 U. S. 577 (1992); and his dissents in *Bowers* v. *Hardwick*, 478 U. S. 186 (1986), *McCleskey* v. *Kemp*, 481 U. S. 279 (1987), and *Callins* v. *Collins*, 510 U. S. 1141 (1994). If some men are old at a younger age than others, Justice Blackmun remained young to an older age, retaining until he died the intellectual curiosity, passion for hard work, and openness to new ideas and people that had been the hallmarks of his life.

The future Justice was born in Nashville, Illinois, on November 12, 1908. His family soon moved to St. Paul, Minnesota, where his father owned a grocery and hardware store in a blue-collar neighborhood. The Justice's early life, during which he experienced or observed economic, social, and

[1] *Harry A. Blackmun: Hearing Before the Sen. Comm. on the Judiciary*, 91st Cong., 2d Sess., 53 (1970).

familial hardships, proved a source of empathy in recognizing that "[t]here is another world 'out there,'" *Beal* v. *Doe*, 432 U. S. 438, 463 (1977) (Blackmun, J., dissenting), a world inhabited by the poor, the powerless, and the oppressed, the "frightened and forlorn." *Ohio* v. *Akron Center for Reproductive Health*, 497 U. S. 502, 541 (1990) (Blackmun, J., dissenting).

In 1925, one of his high school teachers, who recognized an intellectual spark in her pupil, persuaded Blackmun to seek his fortunes in the wider world, and he won a scholarship from the Minnesota Harvard Club to Harvard College. But because the scholarship paid only his tuition, the future Justice worked as a janitor and a milkman, painted handball courts, ran a motor launch for the coach of the Harvard crew team, and graded math papers to make ends meet. Despite this grueling schedule, he received his A.B. *summa cum laude* in mathematics in 1929. Although he had long planned on going to medical school, he decided instead to attend Harvard Law School. At the law school, his future colleague William J. Brennan, Jr., was a class ahead of him, and he counted his predecessor Felix Frankfurter among his professors. During his final year at law school, his team won the prestigious Ames Moot Court competition.

After graduation, Blackmun returned to Minnesota to clerk for Judge John B. Sanborn of the United States Court of Appeals for the Eighth Circuit. His year and a half with Judge Sanborn gave him a model for his own career as an appellate judge, and also gave him exposure to some of the problems that occupied his judicial career.

In 1934, having finished his clerkship, Blackmun joined the prestigious firm of Dorsey, Colman, Barker, Scott & Barber in Minneapolis. Fortuitously, the new associate was assigned to the firm's tax department, where he soon found his niche and had his first brush with the institution where he would spend more than a quarter century.

On October 14, 1935, this Court convened for the first time to hear oral argument in the magnificent building where it now sits. The first case on the docket was *Douglas* v. *Will-*

*cuts*, 296 U. S. 1 (1935). The litigation involved the question whether income from a trust established by a soon-to-be ex-husband in lieu of paying alimony was taxable to the grantor rather than to the recipient. Down in the lower left-hand corner of the taxpayer's reply brief was the name of a new associate, who had apparently joined the litigation team after the opening merits brief had been filed. It was Harry Blackmun. Less than a month after the argument—and on the day before the future Justice's twenty-seventh birthday—Chief Justice Hughes delivered a unanimous opinion rejecting the position taken by Blackmun's client.

On Midsummer's Day 1941, Blackmun married "Miss Clark," his beloved wife Dottie. They had three daughters: Nancy, Sally, and Susie. Blackmun's sixteen years at the Dorsey firm ended when he was named the first resident counsel of the famed Mayo Clinic in Rochester, Minnesota. He remembered his time there as the happiest decade of his life. Not only was he able to make connections between law and medicine but he and Mrs. Blackmun also cemented friendships that were to last for a lifetime.

In 1959, when Judge Sanborn decided to take senior status, he decided that his former law clerk, Harry Blackmun, should succeed him. He then wrote to Deputy Attorney General Lawrence E. Walsh, saying "I sincerely hope, as I know you do, that political considerations will not offensively enter into the selection of a successor. If they should, there might be no vacancy to fill."[2] According to Judge Richard S. Arnold of the Eighth Circuit, "[t]he story is that Judge Sanborn really meant this: 'Appoint Harry Blackmun, or there will be no appointment to make.'"[3] The hint worked, and President Eisenhower appointed Blackmun to fill Judge

[2] Letter from the Honorable John B. Sanborn to Lawrence E. Walsh (Feb. 21, 1959) (on file in John B. Sanborn file, Department of Justice appointment files, Federal Personnel Records Center, St. Louis, Missouri), quoted in Theodore J. Fetter, *A History of the United States Court of Appeals for the Eighth Circuit* 73 (1977).

[3] Richard S. Arnold, *A Tribute to Justice Harry A. Blackmun*, 108 Harv. L. Rev. 6, 7 (1994).

Sanborn's seat. Judge Blackmun took office on November 4, 1959.

Judge Blackmun wrote over 200 signed opinions during his time on the Eighth Circuit.[4] In light of his experience in practice, it is hardly surprising that over a quarter were tax-related; his taste for, and expertise in, intricate questions involving the Internal Revenue Code were well known. But the opinion he later described as the one of which he was proudest, *Jackson* v. *Bishop*, 404 F. 2d 571 (8th Cir. 1968), reflected a very different side of the judge's temperament. The case harkened back to his time clerking for Judge Sanborn, when he brought a petition from an inmate protesting cruel prison conditions to his judge's attention. "I know, Harry," Judge Sanborn said, "but we can't do anything about it." This time, Judge Blackmun *could* do something about the problem: *Jackson* was one of the first appellate opinions to hold prison practices unconstitutional under the Eighth Amendment. *Jackson* was a pioneering decision under the Eighth Amendment. Three inmates challenged the Arkansas prison system's essentially unregulated practice of whipping prisoners. In one of the first, if not *the* first, appellate opinions applying the Eighth Amendment to state prison conditions (rather than simply to the types of punishment for crime), Judge Blackmun declared that the prisoners were entitled to an injunction barring further use of corporal punishment. His scholarly and measured opinion powerfully conveyed Judge Blackmun's commitment to the inherent dignity of all people:

> "[W]e glean a recognition of, and a reliance in part upon, attitudes of contemporary society and comparative law. And the emphasis is on man's basic dignity, on civilized precepts, and on flexibility and improvement in standards of decency as society progresses and matures. . . .

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[4] For a thorough discussion of the Justice's career on the Court of Appeals, see Chief Judge Donald Lay, *The Cases of Blackmun, J., on the United States Court of Appeals for the Eighth Circuit 1959–1970*, 8 Hamline L. Rev. 2 (1985).

> [T]he limits of the Eighth Amendment's proscription are not easily or exactly defined, and we also have clear indications that the applicable standards are flexible, that disproportion, both among punishments and between punishment and crime, is a factor to be considered, and that broad and idealistic concepts of dignity, civilized standards, humanity, and decency are useful and usable." *Jackson*, 404 F. 2d, at 579.

At the same time, although he was prepared for bold doctrinal innovation when he saw support in the existing Supreme Court precedent, Judge Blackmun understood the constrained role of court of appeals judges. At the 1968 investiture of his colleague, Judge Myron H. Bright, Judge Blackmun reflected:

> "The concern [of a judge] is with what is proper law and with what is the proper result for each case. . . . There's always some uncertainty in the law and for you, . . . there will be periods of uncertainty in your work. There will be moments of struggle in trying to ascertain the correct from the incorrect. . . . There will be the awareness of the awfulness of judicial power, and although you will be on a multiple-judge court, you will experience the loneliness of decision. And there will be the embarrassment which occasionally comes when you have to conclude that a fine District Judge just might be wrong in his decision, and there will be the greater embarrassment which inevitably comes when the Supreme Court concludes that after all the District Judge was right and we were wrong. . . . And there will be the realization that an individual Circuit Judge is not important after all, that he is lost in the library, and that it does take two, not one, to make a decision. Judge Sanborn, John B., reminded me, not once but many times, that a United States Circuit Judge is just about as unimportant as an honorary pallbearer. . . . But there also will be—and I say this genuinely and seriously—the inner satisfaction and the inner reward which one

> possesses in being permitted to work on matters of real substance, in feeling that one's decision, at least in his own conscience, is right, and in knowing that hard work and hard thought and practical and positive scholarship are about all and about the best that anyone can offer. I'm certain that no part of the legal field is capable of providing any higher sense of satisfaction in its work and in its spirit than is the federal bench."[5]

This combination of humility and insight is illustrated by *Jones* v. *Alfred H. Mayer Co.*, 379 F. 2d 33 (8th Cir. 1967), which was later reversed by this Court. 392 U. S. 409 (1968). The case concerned the question whether 42 U. S. C. § 1982 outlawed private racial discrimination in the sale of real property. The existing Supreme Court precedent, Judge Blackmun felt, barred using § 1982 to reach purely private conduct: "It is not for our court, as an inferior one, to give full expression to any personal inclination any of us might have and to take the lead in expanding constitutional precepts when we are faced with a limiting Supreme Court decision which, so far as we are told directly, remains good law." 379 F. 2d, at 43. Nonetheless, Judge Blackmun essentially invited the Supreme Court to revisit the question—"It would not be too surprising if the Supreme Court one day were to hold that a court errs when it dismisses a complaint of this kind," *id.*, at 44—and he laid out the different analyses that might support such a result. Finally, Judge Blackmun expressed a desire for political solutions to pressing social problems:

> "Relief for the plaintiffs lies, we think, in fair housing legislation which will be tempered by the policy and exemption considerations which enter into thoughtfully considered statutes. Recent cases indicate that, if properly drawn, such legislation would encounter little constitutional objection. The power exists but its exercise is absent. The matter, thus, is one of policy, to be

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[5] Judge Myron H. Bright, *Justice Harry A. Blackmun: Some Personal Recollections*, 71 N. D. L. Rev. 7, 8–9 (1995).

> implemented in the customary manner by appropriate statutes directed to the need. If we are wrong in this conclusion, the Supreme Court will tell us so and in so doing surely will categorize and limit those of its prior decisions, cited herein, which we feel are restrictive upon us." *Id.*, at 45 (citations omitted).

The meticulousness and modesty of Judge Blackmun's approach to difficult questions made him an appealing prospect for elevation to the Supreme Court when President Richard M. Nixon's first two attempts to fill the seat left vacant by Justice Abe Fortas' resignation failed in the Senate.

The most striking thing about the future Justice's confirmation hearings—which lasted only one day and at which he was the only witness—was the virtual absence of pointed consideration of any of the issues with which he would become most closely identified during his time on the Court, save for a few questions about whether he could apply the death penalty given his personal opposition.

Nonetheless, the reported comments presaged some significant characteristics of Justice Blackmun's approach to his work. The Report of the Senate Judiciary Committee, which unanimously recommended his confirmation, described him as a "man of learning and humility."[6] And the letter from the American Bar Association's Standing Committee on the Federal Judiciary, which also unanimously endorsed Blackmun's nomination, described him as "one who conscientiously and with open mind weighs every reasonable argument with careful knowledge of the record, the arguments and the law."[7] It also reported the comments of a district court judge from the Eighth Circuit that Blackmun was "a gifted, scholarly judge who has an unusual capacity for the production of opinions . . . which present learned treatises of the factual and legal questions involved. And coupled with all of his erudition, he is unassuming, kind and considerate

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[6] S. Exec. Rep. No. 18, 91st Cong., 2d Sess., 2 (1970).

[7] Hearing, *supra*, note 1, at 9.

in all of his associations with the Bar and the public."[8] The Senate unanimously confirmed the nomination on May 12, 1970, and Justice Blackmun took the oath of office on June 9, 1970.

Justice Blackmun served on this Court for twenty-four years. Perhaps more than any other Justice in modern times, he became identified in the popular mind with a single decision: his opinion for the Court in *Roe* v. *Wade*, 410 U. S. 113 (1973). In *Roe*, this Court held that the Due Process Clause of the Fourteenth Amendment protects, under certain circumstances, a woman's decision whether to carry a pregnancy to term. Throughout his service on the Court, the Justice vigorously defended the principles laid out in *Roe*. His last opinion for the Court in an abortion case, *Thornburgh* v. *American College of Obstetricians and Gynecologists*, 476 U. S. 747, 772 (1986) (citations omitted), offered a particularly eloquent expression of this commitment to individual freedom:

> "Our cases long have recognized that the Constitution embodies a promise that a certain private sphere of individual liberty will be kept largely beyond the reach of government. That promise extends to women as well as to men. Few decisions are more personal and intimate, more properly private, or more basic to individual dignity and autonomy, than a woman's decision—with the guidance of her physician and within the limits specified in *Roe*—whether to end her pregnancy. A woman's right to make that choice freely is fundamental. Any other result, in our view, would protect inadequately a central part of the sphere of liberty that our law guarantees equally to all."

Justice Blackmun and his family paid a heavy price for his commitment to a constitutionally protected zone of privacy for others: he was the subject of fierce protests, hate mail, repeated picketing, death threats, and a bullet fired through

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[8] *Id.*, at 10.

his living room window into a chair in which his wife had recently been sitting.

The Justice often referred to *Roe* as a landmark in the emancipation of women. This view was borne out by the joint opinion of three of his colleagues who joined the Court after *Roe*, JUSTICES O'CONNOR, KENNEDY, and SOUTER, in *Planned Parenthood* v. *Casey*, 505 U. S. 833, 856 (1992) (citation omitted):

> "[F]or two decades of economic and social developments, people have organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion in the event that contraception should fail. The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives. The Constitution serves human values, and while the effect of reliance on *Roe* cannot be exactly measured, neither can the certain cost of overruling *Roe* for people who have ordered their thinking and living around that case be dismissed."

Near the beginning of his opinion for the Court in *Roe*, Justice Blackmun quoted Justice Holmes' statement that the Constitution "is made for people of fundamentally differing views," 410 U. S., at 117 (quoting *Lochner* v. *New York*, 198 U. S. 45, 76 (1905) (Holmes, J., dissenting)). That imaginative empathy informed far more than the Justice's abortion jurisprudence. In his dissent in *Bowers* v. *Hardwick*, 478 U. S. 186 (1986), for example, the Justice argued that the liberty guaranteed by the Due Process Clause protected the intimate decisions of gays and lesbians:

> "The fact that individuals define themselves in a significant way through their intimate sexual relationships with others suggests, in a Nation as diverse as ours, that there may be many "right" ways of conducting those relationships, and that much of the richness of a relation-

> ship will come from the freedom an individual has to *choose* the form and nature of these intensely personal bonds. . . . [A] necessary corollary of giving individuals freedom to choose how to conduct their lives is acceptance of the fact that different individuals will make different choices." *Id.*, at 205–206 (citation omitted; emphasis in original).

He ended the dissent by maintaining that "depriving individuals of the right to choose for themselves how to conduct their intimate relationships poses a far greater threat to the values most deeply rooted in our Nation's history than tolerance of nonconformity could ever do," *id.*, at 214, echoing a point he had made once in paraphrasing Pogo: " 'We have met the enemy and he is us,' *he is us.*"[9]

This recognition that the true measure of the Constitution lies "in the way we treat those who are not exactly like us, in the way we treat those who do not behave as we do, in the way we treat each other,"[10] was a hallmark of the Justice's thinking. In the Justice's first Term on the Court, he wrote the Court's pathbreaking opinion in *Graham* v. *Richardson*, 403 U. S. 365 (1971). The case involved challenges to several state welfare programs that either excluded aliens altogether or severely restricted their eligibility for benefits. Justice Blackmun saw that aliens presented "a prime example of a 'discrete and insular' minority for whom . . . heightened judicial solicitude is appropriate." 403 U. S., at 372 (quoting *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152–153, n. 4 (1938)). The Justice's opinion for the Court was the first to invoke the now-famous and influential, but then obscure, "footnote four" from *Carolene Products* to explain the reason for heightened judicial scrutiny of discrete and insular groups. But just as significant as the Justice's

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[9] Harry A. Blackmun, *Some Goals for Legal Education*, 1 Ohio N. U. L. Rev. 403, 405 (1974) (emphasis supplied by Justice Blackmun).

[10] Harry A. Blackmun, *John Jay and the Federalist Papers*, 8 Pace L. Rev. 237, 247 (1988).

recognition of aliens' need for judicial protection was his celebration of the special contributions aliens can make to American life: they represent "some of the diverse elements that are available, competent, and contributory to the richness of our society." *Ambach* v. *Norwick*, 441 U. S. 68, 88 (1979) (Blackmun, J., dissenting).

Similarly, the Justice's many opinions regarding the rights of Native Americans illustrate his view that judgment requires both knowledge and empathy. Perhaps in no other area did the Justice's longstanding interest in American history intersect so completely with his judicial approach. The Justice's opinion for the Court in *United States* v. *Sioux Nation of Indians*, 448 U. S. 371 (1980), for example, set out in scrupulous detail how the Sioux had been stripped of the Black Hills of South Dakota and of their way of life. Strictly speaking, the detail might have been unnecessary to resolving the technical issues of congressional intent, Court of Claims jurisdiction, and principles of claim and issue preclusion that determined the outcome of the case. But it was critical nonetheless to the Justice's central mission: grounding the judgment for the Sioux in the "moral debt" arising out of the dependence to which the United States had reduced a proud and self-reliant people. *Id.*, at 397.

This sense of promises betrayed was even more pointed in the elegiac tone of the Justice's dissent in *South Carolina* v. *Catawba Indian Tribe, Inc.*, 476 U. S. 498 (1986), which rested on the premise that statutory ambiguities should be resolved in favor of Native Americans' claims because of "an altogether proper reluctance by the judiciary to assume that Congress has chosen further to disadvantage a people whom our Nation long ago reduced to a state of dependency." *Id.*, at 520 (Blackmun, J., dissenting). The Justice argued that interpretation of the statute should take into account how "*the Indians* would have understood" it. *Id.*, at 527 (emphasis added). By moving from the abstract principle to the concrete inclusion of the Catawbas' perspective, Justice Blackmun moved from a sympathetic to an empathetic viewpoint. As Judge Richard Arnold has remarked, the Justice's

writing reflects "a struggle to put oneself in other people's shoes."[11]

The Justice's concern with prison conditions continued along the path on which he first set out as a law clerk and then as a judge on the court of appeals in *Jackson* v. *Bishop.* In his last Term on the Court, the Justice summed up his approach in his concurrence in *Farmer* v. *Brennan*, 511 U. S. 825 (1994):

> "Although formally sentenced to a term of incarceration, many inmates discover that their punishment . . . degenerates into a reign of terror unmitigated by the protection supposedly afforded by prison officials.
>
> "The fact that our prisons are badly overcrowded and understaffed may well explain many of the shortcomings of our penal systems. But our Constitution sets minimal standards governing the administration of punishment in this country, and thus it is no answer to the complaints of the brutalized inmate that the resources are unavailable to protect him from what, in reality, is nothing less than torture. I stated in dissent in *United States* v. *Bailey:* "It is society's responsibility to protect the life and health of its prisoners. '[W]hen a sheriff or a marshall *[sic]* takes a man from the courthouse in a prison van and transports him to confinement for two or three or ten years, *this is our act. We* have tolled the bell for him. And whether we like it or not, we have made him our collective responsibility. We are free to do something about him; he is not." *Id.*, at 853–854 (Blackmun, J., concurring) (citations omitted; emphasis in original).

The Justice's jurisprudential sense of connection with and responsibility towards prisoners was accompanied, as was so characteristic of him, by a personal sense of connection as well. He regularly received, and read, a prison newspaper—the Stillwater (Minn.) *Prison Mirror.* Indeed, the

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[11] Richard S. Arnold, *Mr. Justice Blackmun: An Appreciation*, 8 Hamline L. Rev. 20, 24 (1985).

Justice traveled to Minnesota to present an award to Robert Morgan, the inmate-editor of the *Mirror*. And the Justice also included prison administrators and officials in the Justice and Society seminar he and Norval Morris led for nearly twenty summers at the Aspen Institute. He hoped both that these officials would educate the other participants about the concerns of the world inside the walls and that the seminar would press them to think critically about their work and its relationship to broad issues of justice and decency.

Finally, the Justice was a pioneer in thinking about the constitutional rights of the mentally ill and mentally disabled. In *Jackson* v. *Indiana*, 406 U. S. 715, 738 (1972), his opinion for the Court advanced the proposition that "[a]t the least, due process requires that the nature and duration of [an involuntary] commitment [to a mental institution] bear some reasonable relation to the purpose for which the individual is committed." He elaborated on this theme in his concurrence in *Youngberg* v. *Romeo*, 457 U. S. 307, 326 (1982):

> "If a state court orders a mentally retarded person committed for "care and treatment," however, I believe that due process might well bind the State to ensure that the conditions of his commitment bear some reasonable relation to each of those goals. In such a case, commitment without any "treatment" whatsoever would not bear a reasonable relation to the purposes of the person's confinement."

Thus, if a mentally disabled person lost his minimal self-care skills because of the State's failure to provide him with training, he might suffer "a loss of liberty quite distinct from—and as serious as—the loss of safety and freedom from unreasonable restraints. For many mentally retarded people, the difference between the capacity to do things for themselves within an institution and total dependence on the institution for all of their needs is as much liberty as they ever will know." *Id.*, at 327.

One of the Justice's most widely quoted images evoked the presence of "another world out there," that an overly comfortable Court might either "ignore or fea[r] to recognize." *Ohio* v. *Akron Center for Reproductive Health*, 497 U. S. 502, 541–542 (1990) (Blackmun, J., dissenting); *Harris* v. *McRae*, 448 U. S. 297, 346 (1980) (Blackmun, J., dissenting); *Beal* v. *Doe*, 432 U. S. 438, 463 (1977) (Blackmun, J., dissenting). While he used this precise phrase only in his dissents in abortion rights cases, it reflected a broader commitment to learning about, and facing, facts in the world. For example, in his separate opinion in *Regents of the Univ. of California* v. *Bakke*, 438 U. S. 265, 407 (1978), the Justice expressed his support for race-conscious affirmative action in higher education with these words: "The sooner we get down the road toward accepting and being a part of the real world, and not shutting it out and away from us, the sooner will these difficulties vanish from the scene." Similarly, in his dissent in *City of Richmond* v. *J. A. Croson Co.*, 488 U. S. 469 (1989), the Justice chided the Court for ignoring the historical context in which the city's affirmative action plan had been developed:

> "I never thought that I would live to see the day when the city of Richmond, Virginia, the cradle of the Old Confederacy, sought on its own, within a narrow confine, to lessen the stark impact of persistent discrimination. But Richmond, to its great credit, acted. Yet this Court, the supposed bastion of equality, strikes down Richmond's efforts as though discrimination had never existed or was not demonstrated in this particular litigation. . . . History is irrefutable . . . So the Court today regresses. I am confident, however, that, given time, it one day again will do its best to fulfill the great promises of the Constitution's Preamble and of the guarantees embodied in the Bill of Rights—a fulfillment that would make this Nation very special." 488 U. S., at 561–562 (1989) (Blackmun, J., dissenting).

This understanding of the Constitution as a living document was also powerfully expressed in the Justice's dissent in *Lassiter* v. *Department of Social Services*, 452 U. S. 18, 58–59 (1981), where the Justice argued that the Due Process Clause required the State to provide counsel to indigent parents before terminating their parental rights:

> "Ours, supposedly, is "a maturing society," *Trop* v. *Dulles*, 356 U. S. 86, 101 (1958) (plurality opinion), and our notion of due process is, "perhaps, the least frozen concept of our law." *Griffin* v. *Illinois*, 351 U. S. 12, 20 (1956) (opinion concurring in judgment). If the Court in *Boddie* v. *Connecticut*, 401 U. S. 371 (1971), was able to perceive as constitutionally necessary the access to judicial resources required to dissolve a marriage at the behest of private parties, surely it should perceive as similarly necessary the requested access to legal resources when the State itself seeks to dissolve the intimate and personal family bonds between parent and child. It will not open the "floodgates" that, I suspect, the Court fears. On the contrary, we cannot constitutionally afford the closure that the result in this sad case imposes upon us all."

The Justice had a special wisdom and sensitivity about the relationship among history, race, and gender. He knew when the law ought to take account of race or gender: consider his often-quoted statement in *Bakke*, that "[i]n order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently. We cannot—we dare not—let the Equal Protection Clause perpetuate racial supremacy," 438 U. S., at 407 (separate opinion of Blackmun, J.). But he also knew when the continued use of race or gender would serve only "to ratify and perpetuate invidious, archaic, and overbroad stereotypes about the relative abilities of men and women." *J. E. B.* v. *Alabama*, 511 U. S. 127, 131 (1994).

In a related vein, it was the Justice's exposure to the actual operation of the capital punishment system that prompted his conclusion, expressed in his dissent in *Callins* v. *Collins*, 510 U. S. 1141 (1994), that "[e]xperience has taught us that the constitutional goal of eliminating arbitrariness and discrimination from the administration of death . . . can never be achieved without compromising an equally essential component of fundamental fairness—individualized sentencing." *Id.*, at 1144:

> "From this day forward, I no longer shall tinker with the machinery of death. For more than 20 years I have endeavored—indeed, I have struggled—along with a majority of this Court, to develop procedural and substantive rules that would lend more than the mere appearance of fairness to the death penalty endeavor. Rather than continue to coddle the Court's delusion that the desired level of fairness has been achieved and the need for regulation eviscerated, I feel morally and intellectually obligated simply to concede that the death penalty experiment has failed. It is virtually self-evident to me now that no combination of procedural rules or substantive regulations ever can save the death penalty from its inherent constitutional deficiencies. The basic question—does the system accurately and consistently determine which defendants "deserve" to die?—cannot be answered in the affirmative. . . . The problem is that the inevitability of factual, legal, and moral error gives us a system that we know must wrongly kill some defendants, a system that fails to deliver the fair, consistent, and reliable sentences of death required by the Constitution." *Id.*, at 1145–1146.

On a more abstract level, the Justice's commitment to learning about and facing the facts was expressed by his widely praised and influential opinion for the Court in *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*, 509 U. S. 579 (1993). In *Daubert*, the Justice addressed one of the central

issues in contemporary litigation: the standard of admissibility for expert testimony. Federal Rule of Evidence 702 provides that "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert . . . may testify thereto . . . ." The Justice interpreted this rule to require that the content of the expert's testimony be "scientific" in the sense that it be "ground[ed] in the methods and procedures of science," 509 U. S., at 590, and that it concern "knowledge," not merely "subjective belief or unsupported speculation," *ibid.* The Justice understood that science is a method or a procedure rather than simply a body of facts. *Daubert*'s discussion of the factors that make knowledge "scientific"—falsifiability, peer review, error rates, and general acceptance within the relevant scientific community, *id.*, at 592–594—reflected the Justice's longstanding comfort with and receptivity to scientific and social scientific ways of understanding complex events. Other examples of his approach include *Barefoot* v. *Estelle*, 463 U. S. 880, 920–929 (1983) (Blackmun, J., dissenting) (discussing the validity of predictions regarding future dangerousness); *Ballew* v. *Georgia*, 435 U. S. 223, 230–239 (1978) (opinion of Blackmun, J.) (discussing studies of jury size); and *Castaneda* v. *Partida*, 430 U. S. 482, 496–497, and n. 17 (1977) (discussing models of statistical probability and standard deviations).

No account of the Justice's time on the Supreme Court would be complete without a discussion of his tax opinions. Many observers, including the Justice himself, remarked on the large number of tax cases he was assigned. The Justice sometimes joked that these opinions were the result of his being "in the doghouse with the Chief," but in fact he retained both an interest and an expertise in taxation throughout his judicial tenure.

One recent study concluded that during his time on the Court Justice Blackmun wrote majority opinions in thirty-three federal tax cases and concurring or dissenting opinions

in an additional twenty-six federal tax cases.[12] The Justice also wrote many significant opinions in cases involving state taxation schemes, the Commerce Clause, and the Due Process Clause.[13] As Robert Green, one of the Justice's former clerks and a prominent tax scholar has noted, "[m]any of Justice Blackmun's tax opinions are legendary among tax lawyers and academics. It is no coincidence that law school casebooks in federal income taxation typically include more cases written by Justice Blackmun than by any other Supreme Court Justice."[14] For example, the Justice wrote a series of influential opinions on the Internal Revenue Code's treatment of capital expenditures and its connection to the matching principle: *Commissioner* v. *Lincoln Savings and Loan Association*, 403 U. S. 345 (1971); *Commissioner* v. *Idaho Power Co.*, 418 U. S. 1 (1974); *Thor Power Tool Co.* v. *Commissioner*, 439 U. S. 522 (1979); *INDOPCO, Inc.* v. *Commissioner*, 503 U. S. 79 (1992); and *Newark Morning Ledger Co.* v. *United States*, 507 U. S. 546 (1993).

His opinions reflected a pragmatic, yet economically sophisticated, approach to the issue and drew on a broad range of sources: the text of the Code provisions involved and their legislative history, the broader legislative purpose of the Code, post-enactment developments, including the Internal Revenue Service's interpretations, and the practical effects different decisions would have. They employed a perceptive "tax logic," which interpreted the Internal Revenue Code in a sensible and coherent way. As with so many areas of the Justice's jurisprudence, his approach to tax law was beautifully summarized in the eulogy delivered at his memorial service by his former minister, the Reverend William Holmes:

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[12] Robert A. Green, *Justice Blackmun's Federal Tax Jurisprudence*, 26 Hastings Const. L. Q. 109 (1998).

[13] See Dan T. Coenen, *Justice Blackmun, Federalism and Separation of Powers*, 97 Dick. L. Rev. 541 (1993); Karen Nelson Moore, *Justice Blackmun's Contributions on the Court: The Commercial Speech and State Taxation Examples*, 8 Hamline L. Rev. 29 (1985).

[14] Green, *supra*, note 12, at 110.

> "Harry Blackmun excelled at math, and he knew the difference between mathematics and the law. What he brought to both the law and Scripture was neither an absolute subjectivism nor an absolute relativism, but creative fidelity marked by humility, with a twinkle in his eye."

That twinkle in the Justice's eye occasionally made its way into the pages of the United States Reports. For example, in his opinion for the Court in *Flood* v. *Kuhn*, 407 U. S. 258, 260–264 (1972), the Justice took his readers for a tour through his beloved game of baseball, complete with a list of notable players—he apparently forgot to include Mel Ott, for which his clerks repeatedly teased him. But the twinkle was especially familiar to the many people whose lives he touched personally: his colleagues on the Eighth Circuit, whom he delighted with his annual appearance at the Circuit Conference; his law clerks, who became members of his family and whose professional lives were changed forever by their year with the Justice; the police officers, staff in the clerk's office, and other Court personnel, whom he treated with an affection and respect they returned twofold; his secretaries and messengers, who became close professional and personal companions; and, most of all, his family—his wife Dottie, his daughters Nancy, Sally, and Susie, and his grandchildren.

Justice Blackmun had a deep and abiding passion for American history. Above his desk, he kept a copy of a statement by his hero, Abraham Lincoln:

> "If I were to try to read, much less answer, all the attacks made on me, this shop might as well be closed for any other business. I do the very best I know how—the very best I can; and I mean to keep doing so until the end. If the end brings me out all right, what is said against me won't amount to anything. If the end brings me out wrong, ten angels swearing I was right would make no difference."

Through his commitment to a living Constitution and to careful interpretation of the law, Justice Blackmun gave voice to what Lincoln called, in his First Inaugural Address, "the better angels of our nature." We will miss him.

Wherefore, it is accordingly

RESOLVED that we, the Bar of the Supreme Court of the United States, express our admiration and respect for Justice Harry A. Blackmun, our sadness at his death, and our condolences to his family; and it is further

RESOLVED that the Solicitor General be asked to present these Resolutions to the Court and that the Attorney General be asked to move that they be inscribed on the Court's permanent records.

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THE CHIEF JUSTICE said:

I recognize the Attorney General of the United States.

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Attorney General Reno 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 Harry A. Blackmun, Associate Justice of the Supreme Court from 1970 to 1994. Justice Blackmun was best known for his opinion for the Court in *Roe* v. *Wade*. Throughout his tenure, Justice Blackmun continued to write frequently, both for the Court and in dissent, reaffirming his belief in the correctness and the importance of the *Roe* decision. As the Solicitor General's description of the Bar Resolution reminds us, Justice Blackmun also made significant contributions to the law in a variety of other areas, in fields as diverse as Indian law and tax law.

Justice Blackmun's tenure on the Court reflected his strong, midwestern work ethic. It can be traced to the values he developed during his childhood in Minnesota. In-

deed, that work ethic characterized his entire academic and professional career.

During his early years of law practice, Justice Blackmun met and married his beloved wife, Dottie, with whom he spent the remainder of his life. They had three daughters, Nancy, Sally, and Susie, whose success in school, careers, and families no doubt served as early support for the Justice's commitment to equality of opportunity for women. That commitment was reflected in many of his opinions for this Court involving, for example, sex discrimination in employment, state law limitations on child support recipients, jury selection, eligibility for AFDC benefits and, of course, the regulation of abortion at issue in *Roe* v. *Wade*.

The *Roe* v. *Wade* decision also reflected Justice Blackmun's belief that the Constitution protects a range of intimate and personal choices from intrusion by the state. That belief was at the core of his dissenting opinion in *Bowers* v. *Hardwick*, in which the Justice argued that the Constitution affords protection of a right to engage in consensual homosexual activity. Justice Blackmun's jurisprudence often reflected a distrust of abstractions and absolutes. That judicial attitude took various forms. Perhaps most importantly, it was manifested in his careful attention to the facts and the records of individual cases and in a conviction that the Supreme Court was obligated to resolve fairly the claims of particular litigants rather than simply announce broad legal principles to guide future adjudication.

Justice Blackmun's pragmatic approach underlay this concurring opinion in *Regents of the University of California* v. *Bakke*, in which as the Solicitor General has noted, the Justice expressed his commitment to the ultimate goal of a race-blind society. He concluded that the achievement of that goal required the temporary use of race-conscious measures. His statement, quoted by the Solicitor General, 'in order to get beyond racism, we must first take account of race,' is reflective of his view that the just solution of constitutional problems may depend less upon abstract theorizing than on a dispassionate assessment of the world as it is, and

emphasizing that the Court must take account of facts on the ground. Justice Blackmun stressed in particular the need to appreciate the circumstances of persons who often seem invisible to judges and lawyers.

From the outset, Justice Blackmun spoke for the Court in giving meaning to the guarantee of equal protection in cases involving aliens and the mentally ill. He also discussed the gratuitous suffering sometimes visited upon prison inmates and cautioned that society as a whole bears responsibility for their humane treatment.

At the same time, however, Justice Blackmun's real world approach led him to recognize the deference due prison officials in implementing legitimate prison interests to insure prison security and order. Justice Blackmun's Fourth Amendment jurisprudence similarly recognized that intrusions on personal privacy that are not unduly onerous are a necessary cost of living in a safe and orderly society. In a related vein, it was the Justice's exposure for more than 20 years to the actual operation of the capital punishment system that prompted him to conclude, as expressed in his dissent in *Callins* v. *Collins*, that the constitutional goal of eliminating arbitrariness and discrimination from the administration of death can never be achieved without compromising an equally essential component of fundamental fairness, individualized sentencing.

Most people strongly disagree with his conclusion, but no one who watched Justice Blackmun move from dissent in *Furman* v. *Georgia* to dissent in *Callins* can doubt the sincerity or effort this dedicated jurist made to reconcile his own views about the death penalty with his responsibilities as a judge.

Many of Justice Blackmun's notable opinions for the Court in areas as diverse as federal and state taxation, expert evidence, separation of powers, due process, and the Commerce Clause are discussed in the Resolution. One area in which the Justice's opinions has had a particularly lasting impact is the sphere of commercial speech. Justice Blackmun wrote the opinions for the Court in *Bigelow* v. *Virginia*, *Virginia*

*State Board of Pharmacy* v. *Virginia State Consumers Council*, and *Bates* v. *State Bar of Arizona*. These decisions marked this Court's first recognition that speech proposing a commercial transaction is entitled to First Amendment protection and they have provided the foundation for the Court's commercial speech jurisprudence.

Characteristically, Justice Blackmun did not ground his analysis in abstract theory or in an absolutist conception of the First Amendment. Rather, his opinions for the Court emphasized the substantial practical interest of ordinary citizens in making informed choices concerning possible uses of their money.

Justice Blackmun was a human being of deep and great kindness and compassion, who remained always aware of the profound impact of the law upon the community and the consequent responsibilities of judges to the litigants who appear before them and to the community at large. In his performance of those responsibilities, he epitomized the highest ideals of public service.

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 in celebration of the memory of Justice Harry A. Blackmun 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.

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THE CHIEF JUSTICE said:

Thank you, Attorney General Reno and Solicitor General Waxman, for your presentations today in memory of our late colleague and friend, Justice Harry A. Blackmun. We also extend to Chairman Pamela S. Karlan and the members of the Committee on Resolutions, Chairman David W. Odgen, and members of the Arrangements Committee, and Harold H. Koh, Chairman of today's meeting of the Bar our appreciation for these appropriate Resolutions.

Your motion that these Resolutions be made a part of the permanent records of the Court is granted.

Harry Blackmun's service on this Court and his contribution to American law will long be remembered. He was born in Illinois in 1908 and grew up in St. Paul, Minnesota. He was known when he first came here along with Chief Justice Burger as the Minnesota twins, but Bill Douglas always said they had the wrong people as the Minnesota twins, because he was born in Minnesota so that he and Chief Justice Burger should have been the Minnesota twins.

Harry Blackmun received a scholarship to Harvard University where he majored in mathematics and graduated *summa cum laude.* He began his legal career serving as a clerk to Judge John Sanborn on the Court of Appeals for the Eighth Circuit. He practiced law for 16 years with the Dorsey firm in Minneapolis, and then he went to the Mayo Clinic, became the first resident counsel there, where he combined his love for both law and medicine.

In 1959, President Eisenhower nominated him to serve on the Court of Appeals for the Eighth Circuit filling, appropriate enough, the vacant seat of Judge Sanborn, for whom he had clerked 26 years earlier. After serving nine years on the Eighth Circuit, he was appointed by President Nixon to a seat on the Supreme Court in 1970. He was the 98th Justice to serve on the Court and served for nearly a quarter of a century. He was a worthy successor, as pointed out by the Solicitor General, to the predecessors in the seat which he occupied, Joseph Story, Oliver Wendell Holmes, Benjamin Cardozo, and Felix Frankfurter.

During his years on the bench, Justice Blackmun spoke for the Court in more than 250 opinions. The publicity which attended the *Roe* v. *Wade* opinion, overshadowed some of the other important decisions which he authored. These included *Mistretta* v. *United States*, in which the sentencing guidelines were held to be constitutional, *Daubert* v. *Merrell Dow Pharmaceuticals*, which you mentioned, Solicitor General, concerned the admissibility of scientific evidence in federal courts, and *Virginia State Board of Pharmacy* v.

*Virginia Citizens Consumer Council*—you mentioned that, Attorney General Reno—which was a very seminal opinion dealing with commercial speech. And in *Complete Auto Transit* v. *Brady*, he enunciated for the Court the modern rule that the Commerce Clause of the Constitution doesn't prevent interstate commerce from being required to bear its fair share of state taxation.

His legacy also includes *Flood* v. *Kuhn* which both held fast to baseball's antitrust exemption and demonstrated Justice Blackmun's knowledge of the game and all its accompanying lore.

Moving to Washington from Minnesota in 1970 in no way diminished his enthusiasm for the Minnesota Twins or the Minnesota Vikings, even when they were playing the Washington Redskins.

Justice Blackmun was cautious and methodical in his judicial work. He was the statistician for the conference, telling us at the close of each meeting how many cases we had granted certiorari on in the present Term compared to the number we had granted in the preceding Term. He also brought a practical eye to the Court, as his many opinions interpreting the Fourth Amendment illustrate, and in *Wyman* v. *James*, which is one of his first opinions, in fact, it was his first majority opinion on the Court, he rejected a challenge on behalf of the Court of a Fourth Amendment challenge to a New York law conditioning welfare benefits on in-home visits by caseworkers. Non-adversarial visits, he wrote, were minimally intrusive and were designed to benefit dependent children. In 1987, he authored the opinion for the Court of *New York* v. *Burger*, in which a Fourth Amendment challenge to New York's law authorizing warrantless inspections of junkyards was rejected. And in *California* v. *Acevedo*, Justice Blackmun wrote for the Court that police may search a bag found in an automobile without a warrant.

Justice Blackmun's opinions convey only a part of his legacy. He will also be remembered for the personal qualities he brought to the Court during his 24 years of service. He

was a pensive and a compassionate man. He will be remembered for this integrity, his high sense of justice, and his exemplification of decency, modesty, and civility.

His friends here and on the Court and throughout the judiciary and indeed, throughout the country, will continue to miss him.

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# CASES ADJUDGED

IN THE

# SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1999

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## BRANCATO *v.* GUNN ET AL.

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 98–9913. Decided October 12, 1999

*Held:* Abusive filer of frivolous petitions is denied leave to proceed *in forma pauperis* under this Court's Rule 39.8 and barred from filing further certiorari petitions in noncriminal matters unless he first pays the docketing fee required by Rule 38 and submits his petitions in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1.

Motion denied.

PER CURIAM.

*Pro se* petitioner Brancato seeks leave to proceed *in forma pauperis* under Rule 39 of this Court. We deny this request as frivolous pursuant to Rule 39.8. Brancato is allowed until November 2, 1999, within which to pay the docketing fees required by Rule 38 and to submit his petition in compliance with this Court's Rule 33.1. We also direct the Clerk not to accept any further petitions for certiorari from Brancato in noncriminal matters unless he first pays the docketing fee required by Rule 38 and submits his petitions in compliance with Rule 33.1.

Brancato has abused this Court's certiorari process. On June 7, 1999, we invoked Rule 39.8 to deny Brancato *in*

*forma pauperis* status with respect to a petition for certiorari. See *Brancato* v. *Connecticut Gen. Life Ins. Co.*, 526 U. S. 1157. Prior to the Rule 39.8 denial, Brancato had filed six petitions for certiorari, all of which were both frivolous and had been denied without recorded dissent. The instant petition for certiorari thus brings Brancato's total number of frivolous filings to eight.

We enter the order barring prospective filings for the reasons discussed in *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. Brancato's abuse of the writ of certiorari has been in noncriminal cases, and we limit our sanction accordingly. The order therefore will not prevent Brancato from petitioning to challenge criminal sanctions which might be imposed on him. The order will, however, allow this Court to devote its limited resources to the claims of petitioners who have not abused our processes.

*It is so ordered.*

JUSTICE STEVENS, dissenting.

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

# ANTONELLI *v.* CARIDINE ET AL.

## ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 98–9933. Decided October 12, 1999*

*Held:* Abusive filer of frivolous petitions is denied leave to proceed *in forma pauperis* under this Court's Rule 39.8 and barred from filing further petitions in noncriminal matters unless he first pays the docketing fee required by Rule 38 and submits his petitions in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1.

Motions denied.

PER CURIAM.

*Pro se* petitioner Antonelli seeks leave to proceed *in forma pauperis* under Rule 39 of this Court. We deny these requests as frivolous pursuant to Rule 39.8. Antonelli is allowed until November 2, 1999, within which to pay the docketing fees required by Rule 38 and to submit his petitions in compliance with this Court's Rule 33.1. We also direct the Clerk not to accept any further petitions for certiorari or petitions for extraordinary writs from Antonelli in noncriminal matters unless he first pays the docketing fee required by Rule 38 and submits his petitions in compliance with Rule 33.1.

Antonelli has abused this Court's certiorari and extraordinary writ processes. On June 21, 1993, and November 29, 1993, we invoked Rule 39.8 to deny Antonelli *in forma pauperis* status with respect to two petitions for certiorari. See *Antonelli* v. *Illinois*, 509 U. S. 902, *Antonelli* v. *O'Malley*, 510 U. S. 988. Prior to the two Rule 39.8 denials, Antonelli had filed 34 petitions for certiorari and 2 petitions for extraordinary writs, all of which were both frivolous and had been denied without recorded dissent. Since the two Rule

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*Together with No. 99–5445, *Antonelli* v. *United States*, also on motion for leave to proceed *in forma pauperis*.

39.8 denials, Antonelli has filed 17 petitions for certiorari, all of which were also frivolous and denied without recorded dissent. The instant 2 petitions for certiorari thus bring Antonelli's total number of frivolous filings to 57.

We enter the order barring prospective filings for the reasons discussed in *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. Antonelli's abuse of the writ of certiorari and of the extraordinary writs has been in noncriminal cases, and we limit our sanction accordingly. The order therefore will not prevent Antonelli from petitioning to challenge criminal sanctions which might be imposed on him. The order will, however, allow this Court to devote its limited resources to the claims of petitioners who have not abused our processes.

*It is so ordered.*

JUSTICE STEVENS, dissenting.

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

# JUDD *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS ET AL.

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 99–5260. Decided October 12, 1999

*Held:* Abusive filer of frivolous petitions is denied leave to proceed *in forma pauperis* under this Court's Rule 39.8 and barred from filing further petitions in noncriminal matters unless he first pays the docketing fee required by Rule 38 and submits his petitions in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1.

Motion denied.

PER CURIAM.

*Pro se* petitioner Judd seeks leave to proceed *in forma pauperis* under Rule 39 of this Court. We deny this request as frivolous pursuant to Rule 39.8. Judd is allowed until November 2, 1999, within which to pay the docketing fees required by Rule 38 and to submit his petition in compliance with this Court's Rule 33.1. We also direct the Clerk not to accept any further petitions for certiorari or petitions for extraordinary writs from Judd in noncriminal matters unless he first pays the docketing fee required by Rule 38 and submits his petitions in compliance with Rule 33.1.

Judd has abused this Court's certiorari and extraordinary writ processes. On May 30, 1995, we invoked Rule 39.8 to deny Judd *in forma pauperis* status with respect to a petition for an extraordinary writ. See *In re Judd*, 515 U. S. 1101. Prior to this Rule 39.8 denial, Judd had filed six petitions for certiorari, all of which were both frivolous and had been denied without recorded dissent. Since the Rule 39.8 denial, Judd has filed four petitions for certiorari, all of which were also frivolous and denied without recorded dissent. The instant petition for certiorari thus brings Judd's total number of frivolous filings to 12.

We enter the order barring prospective filings for the reasons discussed in *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. Judd's abuse of the writ of certiorari and of the extraordinary writs has been in noncriminal cases, and we limit our sanction accordingly. The order therefore will not prevent Judd from petitioning to challenge criminal sanctions which might be imposed on him. The order will, however, allow this Court to devote its limited resources to the claims of petitioners who have not abused our processes.

*It is so ordered.*

JUSTICE STEVENS, dissenting.

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

# DEMPSEY *v.* MARTIN, DISTRICT ATTORNEY FOR SUFFOLK COUNTY

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 99–5283. Decided October 12, 1999

*Held:* Abusive filer of frivolous petitions is denied leave to proceed *in forma pauperis* under this Court's Rule 39.8 and barred from filing further petitions in noncriminal matters unless he first pays the docketing fee required by Rule 38 and submits his petitions in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1.

Motion denied.

PER CURIAM.

*Pro se* petitioner Dempsey seeks leave to proceed *in forma pauperis* under Rule 39 of this Court. We deny this request as frivolous pursuant to Rule 39.8. Dempsey is allowed until November 2, 1999, within which to pay the docketing fees required by Rule 38 and to submit his petition in compliance with this Court's Rule 33.1. We also direct the Clerk not to accept any further petitions for certiorari or petitions for extraordinary writs from Dempsey in noncriminal matters unless he first pays the docketing fee required by Rule 38 and submits his petitions in compliance with Rule 33.1.

Dempsey has abused this Court's certiorari and extraordinary writ processes. On October 5, 1992, we invoked Rule 39.8 to deny Dempsey *in forma pauperis* status with respect to a petition for certiorari. See *Dempsey* v. *Sears, Roebuck & Co.*, 506 U. S. 810. At that time, Dempsey had filed 11 petitions for certiorari and 1 petition for an extraordinary writ, all of which were both frivolous and had been denied without recorded dissent. Since that time, Dempsey has filed five petitions for certiorari, all of which were also frivolous and denied without recorded dissent. The instant peti-

tion for certiorari thus brings Dempsey's total number of frivolous filings to 19.

We enter the order barring prospective filings for the reasons discussed in *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. Dempsey's abuse of the writ of certiorari and of the extraordinary writs has been in noncriminal cases, and we limit our sanction accordingly. The order therefore will not prevent Dempsey from petitioning to challenge criminal sanctions which might be imposed on him. The order will, however, allow this Court to devote its limited resources to the claims of petitioners who have not abused our processes.

*It is so ordered.*

JUSTICE STEVENS, dissenting.

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

# PRUNTY *v.* BROOKS ET AL.

## ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 99–5316. Decided October 12, 1999

*Held:* Abusive filer of frivolous petitions is denied leave to proceed *in forma pauperis* under this Court's Rule 39.8 and barred from filing further certiorari petitions in noncriminal matters unless he first pays the docketing fee required by Rule 38 and submits his petitions in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1.

Motion denied.

PER CURIAM.

*Pro se* petitioner Prunty seeks leave to proceed *in forma pauperis* under Rule 39 of this Court. We deny this request as frivolous pursuant to Rule 39.8. Prunty is allowed until November 2, 1999, within which to pay the docketing fees required by Rule 38 and to submit his petition in compliance with this Court's Rule 33.1. We also direct the Clerk not to accept any further petitions for certiorari from Prunty in noncriminal matters unless he first pays the docketing fee required by Rule 38 and submits his petitions in compliance with Rule 33.1.

Prunty has abused this Court's certiorari process. On April 19, 1999, we invoked Rule 39.8 to deny Prunty *in forma pauperis* status with respect to a petition for certiorari. See *Prunty* v. *Holschuh*, 526 U. S. 1063. At that time, Prunty had filed eight petitions for certiorari, all of which were both frivolous and had been denied without recorded dissent. The instant petition for certiorari thus brings Prunty's total number of frivolous filings to 10.

We enter the order barring prospective filings for the reasons discussed in *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. Prunty's abuse of the writ of certiorari has been in noncriminal cases, and we limit our sanction accordingly. The order therefore will not

prevent Prunty from petitioning to challenge criminal sanctions which might be imposed on him. The order will, however, allow this Court to devote its limited resources to the claims of petitioners who have not abused our processes.

*It is so ordered.*

JUSTICE STEVENS, dissenting.

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

Per Curiam

# FLIPPO *v.* WEST VIRGINIA

ON PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF WEST VIRGINIA, FAYETTE COUNTY*

No. 98–8770. Decided October 18, 1999

After petitioner was indicted for murdering his wife, he moved to suppress evidence that the police discovered in a closed briefcase during a warrantless search of the secured crime scene, a cabin where the couple was vacationing. A West Virginia trial court denied his motion on the ground that the police were entitled to search any crime scene and the objects found there. The State Supreme Court of Appeals denied discretionary review.

*Held:* The trial court's position squarely conflicts with this Court's holding in *Mincey* v. *Arizona*, 437 U. S. 385, that there is no "murder scene exception" to the Fourth Amendment's Warrant Clause. While the police may make warrantless entries onto premises if they reasonably believe a person needs immediate aid and may make prompt warrantless searches of a homicide scene for possible other victims or a killer, a search is not constitutionally permissible simply because a homicide has recently occurred on the premises. *Id.*, at 395. On remand, if properly raised, matters such as the State's contention that the search was consensual, the applicability of any other exception to the warrant rule, or the harmlessness *vel non* of any error in receiving this evidence may be resolved.

Certiorari granted; reversed and remanded.

PER CURIAM.

Petitioner's motion to suppress evidence seized in a warrantless search of a "homicide crime scene" was denied on the ground that the police were entitled to make a thorough search of any crime scene and the objects found

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*Petitioner sought a writ directed to the West Virginia Supreme Court of Appeals. That court, however, merely declined to exercise discretionary review. The last state court to rule on the merits of this case was the Circuit Court of West Virginia, Fayette County, to which the writ is therefore addressed.

there. Because the rule applied directly conflicts with *Mincey* v. *Arizona*, 437 U. S. 385 (1978), we reverse.

One night in 1996, petitioner and his wife were vacationing at a cabin in a state park. After petitioner called 911 to report that they had been attacked, the police arrived to find petitioner waiting outside the cabin, with injuries to his head and legs. After questioning him, an officer entered the building and found the body of petitioner's wife, with fatal head wounds. The officers closed off the area, took petitioner to the hospital, and searched the exterior and environs of the cabin for footprints or signs of forced entry. When a police photographer arrived at about 5:30 a.m., the officers reentered the building and proceeded to "process the crime scene." Brief in Opposition 5. For over 16 hours, they took photographs, collected evidence, and searched through the contents of the cabin. According to the trial court, "[a]t the crime scene, the investigating officers found on a table in Cabin 13, among other things, a briefcase, which they, in the ordinary course of investigating a homicide, opened, wherein they found and seized various photographs and negatives." Indictment No. 96–F–119 (Cir. Ct. Fayette County, W. Va., May 28, 1997), App. A to Pet. for Cert., p. 2.

Petitioner was indicted for the murder of his wife and moved to suppress the photographs and negatives discovered in an envelope in the closed briefcase during the search.[1] He argued that the police had obtained no warrant, and that no exception to the warrant requirement justified the search and seizure.

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[1] The photographs included several taken of a man who appears to be taking off his jeans. He was later identified as Joel Boggess, a friend of petitioner and a member of the congregation of which petitioner was the minister. At trial, the prosecution introduced the photographs as evidence of petitioner's relationship with Mr. Boggess and argued that the victim's displeasure with this relationship was one of the reasons that petitioner may have been motivated to kill her.

In briefs to the trial court, petitioner contended that *Mincey* v. *Arizona*, *supra*, rejects a "crime scene exception" to the warrant requirement of the Fourth Amendment. The State also cited *Mincey;* it argued that the police may conduct an immediate investigation of a crime scene to preserve evidence from intentional or accidental destruction, *id.*, at 394, and characterized the police activity in this case as "crime scene search and inventory," Brief in Opposition 12. The State also relied on the "plain view" exception, *Mincey*, *supra*, at 393 (citing *Michigan* v. *Tyler*, 436 U. S. 499, 509–510 (1978)), noting only, however, that the briefcase was unlocked.

In denying the motion, the trial court said nothing about inventory or plain view, but instead approved the search as one of a "homicide crime scene":

> "The Court also concludes that investigating officers, having secured, for investigative purposes, the homicide crime scene, were clearly within the law to conduct a thorough investigation and examination of anything and everything found within the crime scene area. The examination of [the] briefcase found on the table near the body of a homicide victim in this case is clearly something an investigating officer could lawfully examine." App. A to Pet. for Cert., at 3.

After hearing an oral presentation of petitioner's petition for appeal of this ruling, and with the full record before it, the Supreme Court of Appeals of West Virginia denied discretionary review. No. 982196 (Jan. 13, 1999), App. B to Pet. for Cert.

A warrantless search by the police is invalid unless it falls within one of the narrow and well-delineated exceptions to the warrant requirement, *Katz* v. *United States*, 389 U. S. 347, 357 (1967), none of which the trial court invoked

here.[2] It simply found that after the homicide crime scene was secured for investigation, a search of "anything and everything found within the crime scene area" was "within the law." App. A to Pet. for Cert., at 3.

This position squarely conflicts with *Mincey* v. *Arizona*, *supra*, where we rejected the contention that there is a "murder scene exception" to the Warrant Clause of the Fourth Amendment. We noted that police may make warrantless entries onto premises if they reasonably believe a person is in need of immediate aid and may make prompt warrantless searches of a homicide scene for possible other victims or a killer on the premises, *id.*, at 392, but we rejected any general "murder scene exception" as "inconsistent with the Fourth and Fourteenth Amendments— . . . the warrantless search of Mincey's apartment was not constitutionally permissible simply because a homicide had recently occurred there." *Id.*, at 395; see also *Thompson* v. *Louisiana*, 469 U. S. 17, 21 (1984) *(per curiam)*. *Mincey* controls here.

Although the trial court made no attempt to distinguish *Mincey*, the State contends that the trial court's ruling is supportable on the theory that petitioner's direction of the police to the scene of the attack implied consent to search as

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[2] The State suggests that the trial court's finding that the search was "within the law" could be read as premised on the theories of plain view, exigent circumstances, and inventory that the State advanced below. No trace of this reasoning appears in the trial court's opinion, which instead appears to undermine the State's interpretation. It seems implausible that the court found that there was a risk of intentional or accidental destruction of evidence at a "secured" crime scene or that the authorities were performing a mere inventory search when the premises had been secured for "investigative purposes" and the officers opened the briefcase "in the ordinary course of investigating a homicide." Nor does the court's validation of "investiga[ting] and examin[ing] . . . anything and everything found within the crime scene area," including photographs inside a closed briefcase, apparently rest on the plain-view exception. App. A to Pet. for Cert., at 2, 3.

they did. As in *Thompson* v. *Louisiana*, *supra*, at 23, however, we express no opinion on whether the search here might be justified as consensual, as "the issue of consent is ordinarily a factual issue unsuitable for our consideration in the first instance." Nor, of course, do we take any position on the applicability of any other exception to the warrant rule, or the harmlessness *vel non* of any error in receiving this evidence. Any such matters, properly raised, may be resolved on remand. 469 U. S., at 21; see also *United States* v. *Matlock*, 415 U. S. 164 (1974).

The motion for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted, the judgment of the Circuit Court of West Virginia, Fayette County, is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

*It is so ordered.*

Per Curiam

# IN RE BAUER

## ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 99–5440. Decided October 18, 1999

*Held:* Abusive filer of frivolous petitions is denied leave to proceed *in forma pauperis* under this Court's Rule 39.8 and barred from filing further petitions in noncriminal matters unless he first pays the docketing fee required by Rule 38 and submits his petitions in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1.

Motion denied.

PER CURIAM.

*Pro se* petitioner Bauer seeks leave to proceed *in forma pauperis* under Rule 39 of this Court. We deny this request as frivolous pursuant to Rule 39.8. Bauer is allowed until November 8, 1999, within which to pay the docketing fees required by Rule 38 and to submit his petition in compliance with this Court's Rule 33.1. We also direct the Clerk not to accept any further petitions for certiorari or petitions for extraordinary writs from Bauer in noncriminal matters unless he first pays the docketing fee required by Rule 38 and submits his petitions in compliance with Rule 33.1.

Bauer has repeatedly abused this Court's certiorari and extraordinary writ processes. On October 4, 1993, we invoked Rule 39.8 to deny Bauer *in forma pauperis* status with respect to a petition for an extraordinary writ. See *In re Bauer*, 510 U. S. 807. Prior to the Rule 39.8 denial, Bauer had filed three petitions for certiorari and five petitions for extraordinary writs, all of which were both frivolous and had been denied without recorded dissent. Since the Rule 39.8 denial, Bauer has filed two petitions for certiorari, both of which were also frivolous and denied without recorded dissent. The instant petition for mandamus thus brings Bauer's total number of frivolous filings to 12.

We enter the order barring prospective filings for the reasons discussed in *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. Bauer's abuse of the writ of certiorari and of the extraordinary writs has been in noncriminal cases, and we limit our sanction accordingly. The order therefore will not prevent Bauer from petitioning to challenge criminal sanctions which might be imposed on him. The order will, however, allow this Court to devote its limited resources to the claims of petitioners who have not abused our processes.

*It is so ordered.*

JUSTICE STEVENS, dissenting.

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

Syllabus

# TEXAS ET AL. *v.* LESAGE ET AL.

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

No. 98–1111. Decided November 29, 1999

Respondent Lesage, an African immigrant of Caucasian descent, was denied admission to a Ph.D. program at the University of Texas, which considered applicants' race during the review process. He filed suit seeking money damages and injunctive relief, alleging that, by establishing and maintaining a race-conscious admissions process, the school had violated the Fourteenth Amendment's Equal Protection Clause and 42 U. S. C. §§ 1981, 1983, and 2000d. The District Court granted summary judgment for petitioners, who offered evidence that, even if the school's admissions process had been completely colorblind, Lesage would not have been admitted. The Fifth Circuit reversed.

*Held:* The Fifth Circuit's holding that summary judgment was inappropriate on Lesage's § 1983 damages claim even if petitioners conclusively established that he would have been rejected under a race-neutral policy is inconsistent with this Court's well-established framework for analyzing such claims. Under *Mt. Healthy City Bd. of Ed.* v. *Doyle*, 429 U. S. 274, 287, when the government has considered an impermissible criterion in making a decision adverse to the plaintiff, it can nonetheless avoid liability by proving that it would have made the same decision absent the forbidden consideration. It is immaterial that the Court's previous decisions on this point have typically involved alleged retaliation for protected First Amendment activity rather than racial discrimination. Of course, a plaintiff challenging an ongoing race-conscious program and seeking forward-looking relief need only show "the inability to compete on an equal footing." *Northeastern Fla. Chapter, Associated Gen. Contractors of America* v. *Jacksonville*, 508 U. S. 656, 666. But where there is no allegation of an ongoing or imminent constitutional violation to support such a claim, the government's conclusive demonstration that it would have made the same decision absent the alleged discrimination precludes any liability finding. Whether Lesage's claims under §§ 1981 and 2000d remain, and whether he has abandoned his claim for injunctive relief, are matters open on remand.

Certiorari granted; 158 F. 3d 213, reversed and remanded.

PER CURIAM.

Respondent François Daniel Lesage, an African immigrant of Caucasian descent, applied for admission to the Ph.D. program in counseling psychology at the University of Texas' Department of Education for the 1996–1997 academic year. In the year Lesage applied, the school received 223 applications for the program and offered admission to roughly 20 candidates. App. to Pet. for Cert. A–22. It is undisputed that the school considered the race of its applicants at some stage during the review process. The school rejected Lesage's application and offered admission to at least one minority candidate. Lesage filed suit seeking money damages and injunctive relief. He alleged that, by establishing and maintaining a race-conscious admissions process, the school had violated the Equal Protection Clause of the Fourteenth Amendment and Rev. Stat. § 1977, 42 U. S. C. § 1981, Rev. Stat. § 1979, as amended, 42 U. S. C. § 1983 (1994 ed., Supp. III), and 78 Stat. 252, 42 U. S. C. § 2000d.

Petitioners sought summary judgment, offering evidence that, even if the school's admissions process had been completely colorblind, Lesage would not have been admitted. At least 80 applicants had higher undergraduate grade point averages (GPA's) than Lesage, 152 applicants had higher Graduate Record Examination (GRE) scores, and 73 applicants had both higher GPA's and higher GRE scores. App. to Pet. for Cert. A–23. In an affidavit, Professor Ricardo Ainslie, one of two members of the school's admissions committee, stated that Lesage's personal statement indicated that he had "'a rather superficial interest in the field with a limited capacity to convey his interests and ideas,'" and that his letters of recommendation were "weak." *Id.*, at A–24. Ainslie stated that Lesage's application was rejected early in the review process, when the committee was winnowing the full application pool to a list of 40. *Ibid.* The District Court concluded that "any consideration of race had no effect

on this particular individual's rejection," and that there was "uncontested evidence that the students ultimately admitted to the program ha[d] credentials that the committee considered superior to Plaintiff's." *Id.*, at A–26 to A–27. It therefore granted summary judgment for petitioners with respect to all of Lesage's claims for relief.

The Court of Appeals for the Fifth Circuit reversed. 158 F. 3d 213 (1998). The court did not review the District Court's conclusion that there was no genuine issue as to whether the school would have rejected Lesage under a colorblind admissions process. Instead, it held that such a determination was "irrelevant to the pertinent issue on summary judgment, namely, whether the state violated Lesage's constitutional rights by rejecting his application in the course of operating a racially discriminatory admissions program." *Id.*, at 222. An applicant who was rejected at a stage of the review process that was race conscious, the court reasoned, has "suffered an implied injury"—the inability to compete on an equal footing. *Ibid.* Because there remained a factual dispute as to whether the stage of review during which Lesage's application was eliminated was in some way race conscious, the court held that summary judgment was inappropriate and remanded the case for trial. *Ibid.*

Insofar as the Court of Appeals held that summary judgment was inappropriate on Lesage's § 1983 action seeking damages for the school's rejection of his application for the 1996–1997 academic year even if petitioners conclusively established that Lesage would have been rejected under a race-neutral policy, its decision is inconsistent with this Court's well-established framework for analyzing such claims. Under *Mt. Healthy City Bd. of Ed.* v. *Doyle*, 429 U. S. 274 (1977), even if the government has considered an impermissible criterion in making a decision adverse to the plaintiff, it can nonetheless defeat liability by demonstrating that it would have made the same decision ab-

sent the forbidden consideration. See *id.*, at 287. See also *Crawford-El* v. *Britton*, 523 U. S. 574, 593 (1998); *Board of Comm'rs, Wabaunsee Cty.* v. *Umbehr*, 518 U. S. 668, 675 (1996). Our previous decisions on this point have typically involved alleged retaliation for protected First Amendment activity rather than racial discrimination, but that distinction is immaterial. The underlying principle is the same: The government can avoid liability by proving that it would have made the same decision without the impermissible motive.

Simply put, where a plaintiff challenges a discrete governmental decision as being based on an impermissible criterion and it is undisputed that the government would have made the same decision regardless, there is no cognizable injury warranting relief under § 1983.

Of course, a plaintiff who challenges an ongoing race-conscious program and seeks forward-looking relief need not affirmatively establish that he would receive the benefit in question if race were not considered. The relevant injury in such cases is "the inability to compete on an equal footing." *Northeastern Fla. Chapter, Associated Gen. Contractors of America* v. *Jacksonville*, 508 U. S. 656, 666 (1993). See also *Adarand Constructors, Inc.* v. *Peña*, 515 U. S. 200, 211 (1995). But where there is no allegation of an ongoing or imminent constitutional violation to support a claim for forward-looking relief, the government's conclusive demonstration that it would have made the same decision absent the alleged discrimination precludes any finding of liability.

Lesage's second amended complaint sought injunctive relief and alleged that petitioners "have established *and are maintaining*, under color of the laws of the State of Texas, an affirmative action admissions program at the College of Education that classifies applicants on the basis of race and ethnicity." App. to Pet. for Cert. A–22 (emphasis added). But in deciding that summary judgment was improper, the Court of Appeals did not distinguish between Lesage's retrospective claim for damages and his forward-

looking claim for injunctive relief based on continuing discrimination. Further, in their petition for certiorari, petitioners assert that "[t]he case at bar differs from *Adarand* because there is no allegation that the department of counseling psychology continues to use race-based admissions subsequent to the Fifth Circuit's *Hopwood* v. *State of Texas*[, 78 F. 3d 932, cert. denied, 518 U. S. 1033 (1996),] decision." Pet. for Cert. 13. The brief in opposition does not contest this statement. It therefore appears, although we do not decide, that Lesage has abandoned any claim that the school is presently administering a discriminatory admissions process.

Insofar as the Court of Appeals held that petitioners were not entitled to summary judgment on Lesage's § 1983 claim for damages relating to the rejection of his application for the 1996–1997 academic year even if he would have been denied admission under a race-neutral policy, its decision contradicts our holding in *Mt. Healthy.* We therefore grant the petition for writ of certiorari and reverse the judgment of the Court of Appeals in this respect.

Lesage also asserted claims under 42 U. S. C. §§ 1981 and 2000d. Whether these claims remain, and whether Lesage has abandoned his claim for injunctive relief on the ground that petitioners are continuing to operate a discriminatory admissions process, are matters open on remand. The case is remanded for further proceedings consistent with this opinion.

*It is so ordered.*

Syllabus

# FIORE *v.* WHITE, WARDEN, ET AL.

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

No. 98–942. Argued October 12, 1999—Decided November 30, 1999

Petitioner Fiore and his codefendant Scarpone were convicted of "operat[ing] a hazardous waste" facility without a "permit," Pa. Stat. Ann., Tit. 35, § 6018.401(a), because their operation deviated significantly from the terms of the permit they possessed. Fiore appealed his conviction to the Pennsylvania Superior Court, which affirmed; but Scarpone appealed his conviction to the Pennsylvania Commonwealth Court, which reversed. The Pennsylvania Supreme Court denied further review of Fiore's case, and his conviction became final. However, it subsequently affirmed the Commonwealth Court's decision in Scarpone's case, finding that § 6018.401(a) does not apply to those who possess a permit but deviate radically from the permit's terms. After the Pennsylvania courts refused to reconsider Fiore's identical conviction, he sought federal habeas relief, arguing, *inter alia*, that the Federal Constitution required that his conviction be set aside because his conduct was not criminal under § 6018.401(a). The District Court granted his petition, but the Third Circuit reversed, primarily because it believed that state courts have no obligation to apply their decisions retroactively.

*Held:* To help determine the proper state-law predicate for this Court's determination of the federal constitutional questions raised here, the Court certifies to the Pennsylvania Supreme Court the question whether the interpretation of § 6018.401(a) set forth in *Commonwealth* v. *Scarpone*, 535 Pa. 273, 279, 634 A. 2d 1109, 1112, states the correct interpretation of Pennsylvania law at the date Fiore's conviction became final. *Scarpone* marked the first time that the Pennsylvania Supreme Court had interpreted the statute. Because that authoritative interpretation came only after Fiore's conviction became final, this Court must know whether the *Scarpone* construction stated the statute's correct understanding at the time Fiore's conviction became final, or whether it changed the interpretation then applicable. Judgment and further proceedings in this case are reserved pending receipt of the Pennsylvania Supreme Court's response. Pp. 28–30.

149 F. 3d 221, question certified.

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

*James Brandon Lieber* argued the cause for petitioner. With him on the briefs were *M. Jean Clickner* and *Harold Gondelman.*

*Robert A. Graci,* Assistant Executive Deputy Attorney General of Pennsylvania, argued the cause for respondents. With him on the brief were *D. Michael Fisher,* Attorney General, *pro se,* and *Andrea F. McKenna,* Senior Deputy Attorney General.*

JUSTICE BREYER delivered the opinion of the Court.

The Commonwealth of Pennsylvania convicted codefendants William Fiore and David Scarpone of violating a provision of Pennsylvania law forbidding any person to "operate a hazardous waste" facility without a "permit." Pa. Stat. Ann., Tit. 35, § 6018.401(a) (Purdon 1993) (reprinted at Appendix A, *infra*). Each codefendant appealed to a different intermediate state court, one of which affirmed Fiore's conviction, the other of which reversed Scarpone's. The Pennsylvania Supreme Court denied further review of Fiore's case, and his conviction became final. However, that court agreed to review Scarpone's case, and it subsequently held that the statutory provision did not apply to those who, like Scarpone and Fiore, possessed a permit but deviated radi-

**Saul M. Pilchen, Peter Goldberger,* and *Lisa Bondareff Kemler* filed a brief for the National Association of Criminal Defense Lawyers urging reversal.

A brief of *amici curiae* urging affirmance was filed for the State of Alabama et al. by *Bill Pryor,* Attorney General of Alabama, *Michael B. Billingsley,* Assistant Attorney General, *Dan Schweitzer,* and *Thomas R. Keller,* Acting Attorney General of Hawaii, and by the Attorneys General for their respective States as follows: *Bruce M. Botelho* of Alaska, *Janet Napolitano* of Arizona, *Mark Pryor* of Arkansas, *M. Jane Brady* of Delaware, *Robert A. Butterworth* of Florida, *James E. Ryan* of Illinois, *Thomas J. Miller* of Iowa, *Carla J. Stovall* of Kansas, *Don Stenberg* of Nebraska, *Frankie Sue Del Papa* of Nevada, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *Sheldon Whitehouse* of Rhode Island, *Charles M. Condon* of South Carolina, *Mark L. Earley* of Virginia, and *Christine O. Gregoire* of Washington.

cally from the permit's terms. Consequently, it set aside Scarpone's conviction.

In light of the Pennsylvania Supreme Court's decision in *Commonwealth* v. *Scarpone*, 535 Pa. 273, 634 A. 2d 1109 (1993), Fiore asked the Pennsylvania courts to reconsider his identical conviction. They denied his request. He then brought a federal habeas corpus petition in which he argued, among other things, that Pennsylvania's courts, either as a matter of Pennsylvania law or as a matter of federal constitutional law, must apply the *Scarpone* interpretation of the statute to his identical case. If this proposition of law is correct, he asserted, it would follow that the Commonwealth failed to produce any evidence at all with respect to one essential element of the crime (namely, the lack of a permit). On this reasoning, Fiore concluded that the Federal Constitution requires his release. See *Jackson* v. *Virginia*, 443 U. S. 307, 316 (1979); *In re Winship*, 397 U. S. 358, 364 (1970).

The Federal District Court granted the habeas petition, but the Court of Appeals reversed that decision. We agreed to review the appellate court's rejection of Fiore's claim. Before deciding whether the Federal Constitution requires that Fiore's conviction be set aside in light of *Scarpone*, we first must know whether Pennsylvania itself considers *Scarpone* to have explained what Pa. Stat. Ann., Tit. 35, § 6018.401(a) (Purdon 1993), always meant, or whether Pennsylvania considers *Scarpone* to have changed the law. We invoke the Pennsylvania Supreme Court's certification procedure in order to obtain that court's view of the matter. See Appendix B, *infra*.

## I

The relevant background circumstances include the following:

1. Fiore owned and operated a hazardous waste disposal facility in Pennsylvania. Scarpone was the facility's general manager. Pennsylvania authorities, while conceding that

Fiore and Scarpone possessed a permit to operate the facility, claimed that their deliberate alteration of a monitoring pipe to hide a leakage problem went so far beyond the terms of the permit that the operation took place without a permit at all. A jury convicted them both of having "operate[d] a hazardous waste storage, treatment or disposal facility" without a "permit." Pa. Stat. Ann., Tit. 35, § 6018.401(a) (Purdon 1993); see *Commonwealth* v. *Fiore*, CC No. 8508740 (Ct. Common Pleas, Allegheny Cty., Pa., Jan. 19, 1988), p. 2, App. 6 (marking date of conviction as Feb. 18, 1986). The trial court upheld the conviction, despite the existence of a permit, for, in its view, the "alterations of the . . . pipe represented such a significant departure from the terms of the existing permit that the operation of the hazardous waste facility was 'un-permitted' after the alterations were undertaken . . . ." *Id.*, at 48, App. 44.

2. Fiore appealed his conviction to the Pennsylvania Superior Court. See 42 Pa. Cons. Stat. § 742 (1998) (granting the Superior Court jurisdiction over all appeals from a final order of a court of common pleas). That court affirmed the conviction "on the basis of the opinion of the court below." *Commonwealth* v. *Fiore*, No. 00485 PGH 1988 (May 12, 1989), pp. 2–3, App. 99–100. The Pennsylvania Supreme Court denied Fiore leave to appeal on March 13, 1990; shortly thereafter, Fiore's conviction became final.

3. Fiore's codefendant, Scarpone, appealed his conviction to the Pennsylvania Commonwealth Court. See 42 Pa. Cons. Stat. § 762(a)(2)(ii) (1998) (granting the Commonwealth Court jurisdiction over appeals in regulatory criminal cases). That court noted the existence of a "valid permit," found the Commonwealth's interpretation of the statute "strained at best," and set Scarpone's conviction aside. *Scarpone* v. *Commonwealth*, 141 Pa. Commw. 560, 567, 596 A. 2d 892, 895 (1991). The court wrote:

> "The alteration of the monitoring pipe was clearly a violation of the conditions of the permit. But to say that

> the alteration resulted in the operation of a new facility which had not been permitted is to engage in a semantic exercise which we cannot accept. . . . [W]e will not let [the provision's] language be stretched to include activities which clearly fall in some other subsection." *Ibid.*

The Pennsylvania Supreme Court affirmed the Commonwealth Court's conclusion. It wrote:

> "[T]he Commonwealth did not make out the crime of operating a waste disposal facility without a permit . . . . Simply put, Mr. Scarpone did have a permit. . . . [T]o conclude that the alteration constituted the operation of a new facility *without a permit* is a bald fiction we cannot endorse. . . . The Commonwealth Court was right in reversing Mr. Scarpone's conviction of operating without a permit when the facility clearly had one." *Commonwealth* v. *Scarpone,* 535 Pa., at 279, 634 A. 2d, at 1112.

4. Fiore again asked the Pennsylvania Supreme Court to review his case, once after that court agreed to review Scarpone's case and twice more after it decided *Scarpone.* See Appellee's Supplemental App. in No. 97–3288 (CA3), pp. 59, 61 (including docket sheets reflecting Fiore's filings on Jan. 30, 1992, Jan. 24, 1994, and Oct. 18, 1994). The court denied those requests.

5. Fiore then sought collateral relief in the state courts. The Court of Common Pleas of Allegheny County, Pa., refused to grant Fiore's petition for collateral relief—despite *Scarpone*—because "at the time of . . . conviction and direct appeals, the interpretation of the law was otherwise," and "[t]he petitioner is not entitled to a retroactive application of the interpretation of the law set forth in *Scarpone.*" *Commonwealth* v. *Fiore,* CC No. 8508740 (Aug. 18, 1994), p. 6. On appeal, the Superior Court affirmed, both because Fiore had previously litigated the claim and because Fiore's "direct appeal was no longer pending when the Supreme

Court made the ruling which [Fiore] now seeks to have applied to his case." *Commonwealth* v. *Fiore*, 445 Pa. Super. 401, 416, 665 A. 2d 1185, 1193 (1995).

6. Fiore sought federal habeas corpus relief. As we previously pointed out, *supra*, at 25, he argued that Pennsylvania had imprisoned him "for conduct which was not criminal under the statutory section charged." App. 194. The Federal District Court, acting on a Magistrate's recommendation, granted the petition. The Court of Appeals for the Third Circuit reversed, however, primarily because it believed that "state courts are under no constitutional obligation to apply their decisions retroactively." 149 F. 3d 221, 222 (1998).

7. We subsequently granted Fiore's petition for certiorari to consider whether the Fourteenth Amendment's Due Process Clause requires that his conviction be set aside.

## II

Fiore essentially claims that Pennsylvania produced no evidence whatsoever of one element of the crime, namely, that he lacked "a permit." The validity of his federal claim may depend upon whether the interpretation of the Pennsylvania Supreme Court in *Scarpone* was always the statute's meaning, even at the time of Fiore's trial. *Scarpone* marked the first time the Pennsylvania Supreme Court had interpreted the statute; previously, Pennsylvania's lower courts had been divided in their interpretation. Fiore's and Scarpone's trial court concluded that § 6018.401(a)'s "permit" requirement prohibited the operation of a hazardous waste facility in a manner that deviates from the permit's terms, and the Superior Court, in adjudicating Fiore's direct appeal, accepted the trial court's interpretation in a summary unpublished memorandum. Then, the Commonwealth Court, in Scarpone's direct appeal, specifically rejected the interpretation adopted by the Superior Court in Fiore's case. And the Pennsylvania Supreme Court in *Scarpone* set forth

its authoritative interpretation of the statute, affirming the Commonwealth Court only after Fiore's conviction became final. For that reason, we must know whether the Pennsylvania Supreme Court's construction of the statute in *Scarpone* stated the correct understanding of the statute at the time Fiore's conviction became final, or whether it changed the interpretation then applicable. Compare, *e. g.*, *Buradus* v. *General Cement Prods. Co.*, 52 A. 2d 205, 208 (Pa. 1947) (stating that "[i]n general, the construction placed upon a statute by the courts becomes a part of the act, *from the very beginning")*, with *Commonwealth* v. *Fiore*, *supra*, at 416–417, 665 A. 2d, at 1193; *Commonwealth* v. *Fiore*, CC No. 8508740 (Aug. 18, 1994), at 6 (refusing to apply the *Scarpone* interpretation because "at the time of [Fiore's] conviction and direct appeals, the interpretation of the law was otherwise").

III

We certify the following question to the Pennsylvania Supreme Court pursuant to that court's Rules Regarding Certification of Questions of Pennsylvania law:

> Does the interpretation of Pa. Stat. Ann., Tit. 35, § 6018.401(a) (Purdon 1993), set forth in *Commonwealth* v. *Scarpone*, 535 Pa. 273, 279, 634 A. 2d 1109, 1112 (1993), state the correct interpretation of the law of Pennsylvania at the date Fiore's conviction became final?

We respectfully request that the Pennsylvania Supreme Court accept our certification petition because, in our view, the answer to this question will help determine the proper state-law predicate for our determination of the federal constitutional questions raised in this case.

We recommend that the Pennsylvania Supreme Court designate William Fiore (the petitioner here) as appellant and both Gregory White, Warden, and the Attorney General of the Commonwealth of Pennsylvania (the respondents here) as appellees.

The Clerk of this Court is directed to transmit to the Supreme Court of Pennsylvania a copy of this opinion and the briefs and records filed with this Court in this case. Judgment and further proceedings in this case are reserved pending our receipt of a response from the Supreme Court of Pennsylvania.

*It is so ordered.*

## APPENDIX A TO OPINION OF THE COURT

Pennsylvania Stat. Ann. § 6018.401(a) (Purdon 1993) provides:

> "No person or municipality shall store, transport, treat, or dispose of hazardous waste within this Commonwealth unless such storage, transportation, treatment, or disposal is authorized by the rules and regulations of the department; *no person or municipality shall own or operate a hazardous waste storage, treatment or disposal facility unless such person or municipality has first obtained a permit for the storage, treatment and disposal of hazardous waste from the department;* and, no person or municipality shall transport hazardous waste within the Commonwealth unless such person or municipality has first obtained a license for the transportation of hazardous waste from the department." (Emphasis added.)

Section 6018.606(f) establishes criminal penalties for a violation of § 6018.401 and provides:

> "Any person who stores, transports, treats, or disposes of hazardous waste within the Commonwealth in violation of [§ 6018.401] . . . shall be guilty of a felony of the second degree and, upon conviction, shall be sentenced to pay a fine of not less than $2,500 but not more than $100,000 per day for each violation or to imprisonment for not less than two years but not more than ten years, or both." (Footnote omitted.)

## APPENDIX B TO OPINION OF THE COURT

## "RULES REGARDING CERTIFICATION OF QUESTIONS OF PENNSYLVANIA LAW

"1. This Court will accept Certification Petitions, on a trial basis, from January 1, 1999 to January 1, 2000.

"2. Any of the following courts may file a Certification Petition with this Court:

"a. The United States Supreme Court; or

"b. Any United States Court of Appeals.

"3. A court may file a Certification Petition either on the motion of a party or *sua sponte.*

"4. A Certification Petition shall contain the following:

"a. A brief statement of the nature and stage of the proceedings in the petitioning court;

"b. A brief statement of the material facts of the case;

"c. A statement of the question or questions of Pennsylvania law to be determined;

"d. A statement of the particular reasons why this Court should accept certification; and

"e. A recommendation about which party should be designated Appellant and which Appellee in subsequent pleadings filed with this Court.

"f. The petitioning court shall attach to the Certification Petition copies of any papers filed by the parties regarding certification, e. g., a Motion for Certification, a Response thereto, a Stipulation of Facts, etc." Pa. Rules of Court, p. 745 (1999).

Syllabus

# LOS ANGELES POLICE DEPARTMENT *v.* UNITED REPORTING PUBLISHING CORP.

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

No. 98–678. Argued October 13, 1999—Decided December 7, 1999

Respondent publishing company provides the names and addresses of recently arrested individuals to its customers, who include attorneys, insurance companies, drug and alcohol counselors, and driving schools. It received this information from petitioner and other California state and local law enforcement agencies until the State amended Cal. Govt. Code Ann. § 6254(f)(3) to require that a person requesting an arrestee's address declare that the request is being made for one of five prescribed purposes and that the address will not be used directly or indirectly to sell a product or service. Respondent sought declaratory and injunctive relief to hold the amendment unconstitutional under the First and Fourteenth Amendments. The Federal District Court ultimately granted respondent summary judgment, having construed respondent's claim as presenting a facial challenge to amended § 6254(f). In affirming, the Ninth Circuit concluded that the statute unconstitutionally restricts commercial speech.

*Held:* Respondent was not, under this Court's cases, entitled to prevail on a "facial attack" on § 6254(f)(3). The allowance of a First Amendment overbreadth challenge to a statute is an exception to the traditional rule that "a person to whom a statute may constitutionally be applied may not challenge that statute on the ground that it may conceivably be applied unconstitutionally to others in situations not before the Court." *New York* v. *Ferber*, 458 U. S. 747, 767. The overbreadth doctrine is strong medicine that should be employed only as a last resort. At least for the purposes of facial invalidation, petitioner is correct that § 6254(f)(3) is not an abridgment of anyone's right to engage in speech, but simply a law regulating access to information in the government's hands. This is not a case in which the government is prohibiting a speaker from conveying information that the speaker already possesses. California law merely requires respondent to qualify under the statute if it wishes to obtain arrestees' addresses. California could decide not to give out arrestee information at all without violating the First Amendment. Cf. *Houchins* v. *KQED, Inc.*, 438 U. S. 1, 14. To the extent that respondent's "facial challenge" seeks to rely on the statute's effect on parties not before the court—respondent's potential customers,

for example—its claim does not fall within the case law allowing courts to entertain facial challenges. No threat of prosecution, see *Gooding* v. *Wilson*, 405 U. S. 518, 520–521, or cut off of funds, see *National Endowment for Arts* v. *Finley*, 524 U. S. 569, hangs over their heads. The alternative bases for affirmance urged by respondent will remain open on remand if properly presented and preserved in the Ninth Circuit. Pp. 37–41.

146 F. 3d 1133, reversed.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, SOUTER, THOMAS, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed a concurring opinion, in which THOMAS, J., joined, *post*, p. 41. GINSBURG, J., filed a concurring opinion, in which O'CONNOR, SOUTER, and BREYER, JJ., joined, *post*, p. 42. STEVENS, J., filed a dissenting opinion, in which KENNEDY, J., joined, *post*, p. 44.

*Thomas C. Goldstein* argued the cause for petitioner. With him on the briefs were *David Boies*, *James K. Hahn*, and *Frederick N. Merkin.*

*Edward C. DuMont* argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Waxman*, *Acting Assistant Attorney General Ogden*, *Deputy Solicitor General Kneedler*, *Leonard Schaitman*, and *John S. Koppel.*

*Bruce J. Ennis* argued the cause for respondent. On the brief were *Guylyn R. Cummins* and *Marcelle E. Mihaila.**

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*A brief of *amici curiae* urging reversal was filed for the State of New York et al. by *Eliot Spitzer*, Attorney General of New York, *Preeta D. Bansal*, Solicitor General, *Peter H. Schiff*, Deputy Solicitor General, and *Daniel Smirlock*, Assistant Attorney General, and by the Attorneys General for their respective States as follows: *Bill Lockyer* of California, *Ken Salazar* of Colorado, *M. Jane Brady* of Delaware, *Margery S. Bronster* of Hawaii, *Alan G. Lance* of Idaho, *Thomas J. Miller* of Iowa, *Richard P. Ieyoub* of Louisiana, *Frankie Sue Del Papa* of Nevada, *Betty D. Montgomery* of Ohio, *Charles M. Condon* of South Carolina, and *Christine O. Gregoire* of Washington.

Briefs of *amici curiae* urging affirmance were filed for the Direct Marketing Association by *Robert L. Sherman;* for the Individual Reference Services Group et al. by *Ronald L. Plesser*, *James J. Halpert*, and *Emilio W. Cividanes;* for Investigative Reporters and Editors, Inc., by *David*

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

California Govt. Code Ann. § 6254(f)(3) (West Supp. 1999) places two conditions on public access to arrestees' addresses—that the person requesting an address declare that the request is being made for one of five prescribed purposes, and that the requester also declare that the address will not be used directly or indirectly to sell a product or service.

The District Court permanently enjoined enforcement of the statute, and the Court of Appeals affirmed, holding that the statute was facially invalid because it unduly burdens commercial speech. We hold that the statutory section in question was not subject to a "facial" challenge.

Petitioner, the Los Angeles Police Department, maintains records relating to arrestees. Respondent, United Reporting Publishing Corporation, is a private publishing service that provides the names and addresses of recently arrested individuals to its customers, who include attorneys, insurance companies, drug and alcohol counselors, and driving schools.

Before July 1, 1996, respondent received arrestees' names and addresses under the old version of § 6254, which generally required state and local law enforcement agencies to make public the name, address, and occupation of every individual arrested by the agency. Cal. Govt. Code Ann. § 6254(f) (West 1995). Effective July 1, 1996, the state legislature amended § 6254(f) to limit the public's access to arrestees' and victims' current addresses. The amended statute provides that state and local law enforcement agencies shall make public:

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*Brian Smallman;* for the Newsletter Publishers Association by *James E. Grossberg* and *Jay Ward Brown;* for the Reporters Committee for Freedom of the Press et al. by *Jane E. Kirtley, Samuel P. Spencer, Richard M. Schmidt,* and *Xenia M. Boone;* and for the Washington Legal Foundation by *David H. Remes, Daniel J. Popeo,* and *Richard A. Samp.*

> "[T]he current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator . . . except that the address of the victim of [certain crimes] shall remain confidential. Address information obtained pursuant to this paragraph shall not be used directly or indirectly to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury." Cal. Govt. Code Ann. § 6254(f)(3) (West Supp. 1999).

Sections 6254(f)(1) and (2) require that state and local law enforcement agencies make public, *inter alia*, the name, occupation, and physical description, including date of birth, of every individual arrested by the agency, as well as the circumstances of the arrest.[1] Thus, amended § 6254(f) limits access only to the arrestees' addresses.

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[1] Section 6254(f) provides, in pertinent part:

"Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

"(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

"(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response

Before the effective date of the amendment, respondent sought declaratory and injunctive relief pursuant to Rev. Stat. § 1979, 42 U. S. C. § 1983, to hold the amendment unconstitutional under the First and Fourteenth Amendments to the United States Constitution. On the effective date of the statute, petitioner and other law enforcement agencies denied respondent access to the address information because, according to respondent, "[respondent's] employees could not sign section 6254(f)(3) declarations." Brief for Respondent 5. Respondent did not allege, and nothing in the record before this Court indicates, that it ever "declar[ed] under penalty of perjury" that it was requesting information for one of the prescribed purposes and that it would not use the address information to "directly or indirectly . . . sell a product or service," as would have been required by the statute. See § 6254(f)(3).

Respondent then amended its complaint and sought a temporary restraining order. The District Court issued a temporary restraining order, and, a few days later, issued a preliminary injunction. Respondent then filed a motion for summary judgment, which was granted. In granting the motion, the District Court construed respondent's claim as

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thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph."

presenting a facial challenge to amended § 6254(f). *United Reporting Publishing Corp.* v. *Lungren*, 946 F. Supp. 822, 823 (SD Cal. 1996). The court held that the statute was facially invalid under the First Amendment.

The Court of Appeals affirmed the District Court's facial invalidation. *United Reporting Publishing Corp.* v. *California Highway Patrol*, 146 F. 3d 1133 (CA9 1998). The court concluded that the statute restricted commercial speech, and, as such, was entitled to "'a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values.'" *Ibid.* (quoting *Ohralik* v. *Ohio State Bar Assn.*, 436 U. S. 447, 456 (1978)). The court applied the test set out in *Central Hudson Gas & Elec. Corp.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 557, 566 (1980), and found that the asserted governmental interest in protecting arrestees' privacy was substantial. But, the court held that "the numerous exceptions to § 6254(f)(3) for journalistic, scholarly, political, governmental, and investigative purposes render the statute unconstitutional under the First Amendment." 146 F. 3d, at 1140. The court noted that "[h]aving one's name, crime, and address printed in the local paper is a far greater affront to privacy than receiving a letter from an attorney, substance abuse counselor, or driving school eager to help one overcome his present difficulties (for a fee, naturally)," and thus that the exceptions "undermine and counteract" the asserted governmental interest in preserving arrestees' privacy. *Ibid.* Thus, the Court of Appeals affirmed the District Court's grant of summary judgment in favor of respondent and upheld the injunction against enforcement of § 6254(f)(3). We granted certiorari. 525 U. S. 1121 (1999).

We hold that respondent was not, under our cases, entitled to prevail on a "facial attack" on § 6254(f)(3).

Respondent's primary argument in the District Court and the Court of Appeals was that § 6254(f)(3) was invalid on its

face, and respondent maintains that position here. But we believe that our cases hold otherwise.

The traditional rule is that "a person to whom a statute may constitutionally be applied may not challenge that statute on the ground that it may conceivably be applied unconstitutionally to others in situations not before the Court." *New York* v. *Ferber*, 458 U. S. 747, 767 (1982) (citing *Broadrick* v. *Oklahoma*, 413 U. S. 601, 610 (1973)).

Prototypical exceptions to this traditional rule are First Amendment challenges to statutes based on First Amendment overbreadth. "At least when statutes regulate or proscribe speech . . . the transcendent value to all society of constitutionally protected expression is deemed to justify allowing 'attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity.'" *Gooding* v. *Wilson*, 405 U. S. 518, 520–521 (1972) (quoting *Dombrowski* v. *Pfister*, 380 U. S. 479, 486 (1965)). "This is deemed necessary because persons whose expression is constitutionally protected may well refrain from exercising their right for fear of criminal sanctions provided by a statute susceptible of application to protected expression." *Gooding* v. *Wilson*, *supra*, at 520–521. See also *Thornhill* v. *Alabama*, 310 U. S. 88 (1940).

In *Gooding*, for example, the defendant was one of a group that picketed an Army headquarters building carrying signs opposing the Vietnam war. A confrontation with the police occurred, as a result of which Gooding was charged with "'using opprobrious words and abusive language . . . tending to cause a breach of the peace.'" 405 U. S., at 518–519. In *Thornhill*, the defendant was prosecuted for violation of a statute forbidding any person to "'picket the works or place of business of such other persons, firms, corporations, or associations of persons, for the purpose of hindering, delay-

ing, or interfering with or injuring any lawful business or enterprise . . . .'" 310 U. S., at 91.

This is not to say that the threat of criminal prosecution is a necessary condition for the entertainment of a facial challenge. We have permitted such attacks on statutes in appropriate circumstances where no such threat was present. See, *e. g.*, *National Endowment for Arts* v. *Finley*, 524 U. S. 569 (1998) (entertaining a facial challenge to a public funding scheme); *Suitum* v. *Tahoe Regional Planning Agency*, 520 U. S. 725 (1997) (entertaining a landowner's facial challenge to a local redevelopment plan); *Anderson* v. *Edwards*, 514 U. S. 143 (1995) (entertaining a facial challenge to a state regulation restructuring the disbursal of welfare benefits).

But the allowance of a facial overbreadth challenge to a statute is an exception to the traditional rule that "a person to whom a statute may constitutionally be applied may not challenge that statute on the ground that it may conceivably be applied unconstitutionally to others in situations not before the Court." *Ferber*, *supra*, at 767 (citing *Broadrick*, *supra*, at 610). This general rule reflects two "cardinal principles" of our constitutional order: the personal nature of constitutional rights and the prudential limitations on constitutional adjudication. 458 U. S., at 767. "By focusing on the factual situation before us, and similar cases necessary for development of a constitutional rule, we face 'flesh and blood' legal problems with data 'relevant and adequate to an informed judgment.'" *Id.*, at 768 (footnotes omitted).

Even though the challenge be based on the First Amendment, the overbreadth doctrine is not casually employed. "Because of the wide-reaching effects of striking down a statute on its face at the request of one whose own conduct may be punished despite the First Amendment, we have recognized that the overbreadth doctrine is 'strong medicine' and have employed it with hesitation, and then 'only as a last resort.'" *Id.*, at 769 (citing *Broadrick*, *supra*, at 613). "'[F]acial overbreadth adjudication is an exception to our

traditional rules of practice and . . . its function, a limited one at the outset, attenuates as the otherwise unprotected behavior that it forbids the State to sanction moves from "pure speech" toward conduct and that conduct—even if expressive—falls within the scope of otherwise valid criminal laws . . . .'" 458 U. S., at 770 (quoting *Broadrick*, *supra*, at 615). See also *Board of Airport Comm'rs of Los Angeles* v. *Jews for Jesus, Inc.*, 482 U. S. 569 (1987).

The Court of Appeals held that § 6254(f)(3) was facially invalid under the First Amendment. Petitioner contends that the section in question is not an abridgment of anyone's right to engage in speech, be it commercial or otherwise, but simply a law regulating access to information in the hands of the police department.

We believe that, at least for purposes of facial invalidation, petitioner's view is correct. This is not a case in which the government is prohibiting a speaker from conveying information that the speaker already possesses. See *Rubin* v. *Coors Brewing Co.*, 514 U. S. 476 (1995). The California statute in question merely requires that if respondent wishes to obtain the addresses of arrestees it must qualify under the statute to do so. Respondent did not attempt to qualify and was therefore denied access to the addresses. For purposes of assessing the propriety of a facial invalidation, what we have before us is nothing more than a governmental denial of access to information in its possession. California could decide not to give out arrestee information at all without violating the First Amendment.[2] Cf. *Houchins* v. *KQED, Inc.*, 438 U. S. 1, 14 (1978).

To the extent that respondent's "facial challenge" seeks to rely on the effect of the statute on parties not before the Court—its potential customers, for example—its claim does not fit within the case law allowing courts to entertain facial

[2] Respondent challenged the statute as a violation of equal protection under the Fourteenth Amendment, but the Court of Appeals did not pass on that challenge, nor do we.

challenges. No threat of prosecution, for example, see *Gooding*, or cutoff of funds, see *NEA*, hangs over their heads. They may seek access under the statute on their own just as respondent did, without incurring any burden other than the prospect that their request will be denied. Resort to a facial challenge here is not warranted because there is "[no] possibility that protected speech will be muted." *Bates* v. *State Bar of Ariz.*, 433 U. S. 350, 380 (1977).

The Court of Appeals was therefore wrong to facially invalidate § 6254(f)(3). Respondent urges several grounds as alternative bases for affirmance, but none of them were passed on by the Court of Appeals and they will remain open on remand if properly presented and preserved there.

The judgment of the Court of Appeals is accordingly

*Reversed.*

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, concurring.

I join the Court's opinion because I agree that, insofar as this case presents a facial challenge to the statute, the fact that it is formally nothing but a restriction upon access to government information is determinative. As the Court says, that fact eliminates any "chill" upon speech that would allow a plaintiff to complain about the application of the statute to someone other than himself.

I understand the Court's opinion as not addressing the as-applied challenge to the statute, and as leaving that question open upon remand. That seems to me a permissible course, since the Court of Appeals' judgment here affirmed without qualification the judgment of the District Court, which rested exclusively upon the facial unconstitutionality of the statute and hence purported to invalidate it in all its applications. Though there are portions of the Court of Appeals' opinion that address the particular circumstances of this respondent, I do not read it as narrowing the facial invalida-

tion, nor as offering as-applied invalidation as an alternative ground for affirmance.

I do not agree with JUSTICE GINSBURG that what renders this statute immune from a facial challenge necessarily renders it immune from an as-applied challenge as well. A law that is formally merely a restriction upon access to information subjects no speaker to the risk of prosecution, and hence there is no need to protect such speakers by allowing someone else to raise their challenges to the law. But it is an entirely different question whether a restriction upon access that *allows* access to the press (which in effect makes the information part of the public domain), but at the same time *denies* access to persons who wish to use the information for certain speech purposes, is in reality a restriction upon speech rather than upon access to government information. That question—and the subsequent question whether, if it is a restriction upon speech, its application to this respondent is justified—is not addressed in the Court's opinion.

JUSTICE GINSBURG, with whom JUSTICE O'CONNOR, JUSTICE SOUTER, and JUSTICE BREYER join, concurring.

I join the Court's opinion, which recognizes that California Government Code § 6254(f)(3) is properly analyzed as a restriction on access to government information, not as a restriction on protected speech. See *ante*, at 40. That is sufficient reason to reverse the Ninth Circuit's judgment.

As the Court observes, see *ibid.*, the statute at issue does not restrict speakers from conveying information they already possess. Anyone who comes upon arrestee address information in the public domain is free to use that information as she sees fit. It is true, as JUSTICE SCALIA suggests, *ante* this page (concurring opinion), that the information could be provided to and published by journalists, and § 6254(f)(3) would indeed be a speech restriction if it then prohibited people from using that published information to speak to or about arrestees. But the statute contains no

such prohibition. Once address information is in the public domain, the statute does not restrict its use in any way.

California could, as the Court notes, constitutionally decide not to give out arrestee address information at all. See *ante*, at 40. It does not appear that the selective disclosure of address information that California has chosen instead impermissibly burdens speech. To be sure, the provision of address information is a kind of subsidy to people who wish to speak to or about arrestees, and once a State decides to make such a benefit available to the public, there are no doubt limits to its freedom to decide how that benefit will be distributed. California could not, for example, release address information only to those whose political views were in line with the party in power. Cf. *Board of Comm'rs, Wabaunsee Cty.* v. *Umbehr*, 518 U. S. 668 (1996) (local officials may not terminate an independent contractor for criticizing government policy). But if the award of the subsidy is not based on an illegitimate criterion such as viewpoint, California is free to support some speech without supporting other speech. See *Regan* v. *Taxation With Representation of Wash.*, 461 U. S. 540 (1983).

Throughout its argument, respondent assumes that § 6254(f)(3)'s regime of selective disclosure burdens speech in the sense of reducing the total flow of information. Whether that is correct is far from clear and depends on the point of comparison. If California were to publish the names and addresses of arrestees for everyone to use freely, it would indeed be easier to speak to and about arrestees than it is under the present system. But if States were required to choose between keeping proprietary information to themselves and making it available without limits, States might well choose the former option. In that event, disallowing selective disclosure would lead not to more speech overall but to more secrecy and less speech. As noted above, this consideration could not justify limited disclosures that discriminated on the basis of viewpoint or some other

proscribed criterion. But it does suggest that society's interest in the free flow of information might argue for upholding laws like the one at issue in this case rather than imposing an all-or-nothing regime under which "nothing" could be a State's easiest response.

JUSTICE STEVENS, with whom JUSTICE KENNEDY joins, dissenting.

The majority's characterization of this case as an improper facial challenge is misguided. Even a brief look at the complaint reveals that respondent unequivocally advanced both a facial and an "as applied" challenge to the constitutionality of California Government Code § 6254(f)(3) (hereinafter Amendment). In each of the six counts of its complaint, respondent explicitly challenged the Amendment on its face "and as applied." Complaint ¶¶ 29, 32, 35, 38, 41, 43. Respondent also alleged that it "will be and has already been injured in a serious way by the Amendment"; specifically, it claimed that it "has lost prospective clients and sales, and will ultimately be put out of business." *Id.*, ¶ 23. Finally, respondent has maintained before us that it continues to challenge the Amendment "on its face and as applied." Brief for Respondent 15.[1] It is, therefore, perfectly clear

[1] The majority suggests that respondent was denied the information simply because it "did not attempt to qualify" under the statute. *Ante*, at 40. This suggestion assumes that respondent's publication might qualify as "journalistic" even though it serves primarily as a mere conduit of data to prospective commercial users. The Amendment provides, however, that even a "journalistic" publication must sign, under risk of criminal prosecution for perjury, an affidavit stating that the information will "not be used directly or indirectly to sell a product or service to any individual or group of individuals." Cal. Govt. Code Ann. § 6254(f)(3) (West Supp. 1999). Not coincidentally, that is precisely how respondent uses the information. Accordingly, not only is the belief that respondent would have qualified under the statute unrealistic, but the notion that respondent must put itself at risk of 2-to-4 years' imprisonment in order to raise a constitutional challenge to a state statute is alarming, to say the least.

that respondent's allegations of direct injury justified the decision of the District Court and the Court of Appeals to pass on the validity of the Amendment.[2]

To determine whether the Amendment is valid as applied to respondent, it is similarly not necessary to invoke the overbreadth doctrine. That doctrine is only relevant if the challenger needs to rely on the possibility of invalid applications to third parties. In this case, it is the application of the Amendment to respondent itself that is at issue. Nor, in my opinion, is it necessary to do the four-step *Central Hudson* dance, because I agree with the majority that the Amendment is really a restriction on access to government information rather than a direct restriction on protected speech. For this reason, the majority is surely correct in observing that "California could decide not to give out arrestee information at all without violating the First Amendment." *Ante*, at 40. Moreover, I think it equally clear that California could release the information on a selective basis to a limited group of users who have a special, and legitimate, need for the information.

A different, and more difficult, question is presented when the State makes information generally available, but denies access to a small disfavored class. In this case, the State is making the information available to scholars, news media, politicians, and others, while denying access to a narrow category of persons solely because they intend to use the information for a constitutionally protected purpose. As

[2] The majority's characterization of both the lower court decisions as simple facial invalidations is perplexing. See *ante*, at 36–37. The District Court explicitly phrased the issue presented as whether "the amendment to Cal. Gov. Code § 6254 [is] an unconstitutional limitation on *plaintiff's* commercial speech." *United Reporting Publishing Corp.* v. *Lungren*, 946 F. Supp. 822, 824 (SD Cal. 1996) (emphasis added). Similarly, the Ninth Circuit concluded its opinion by stating that it need not reach respondent's "overbreadth arguments," *United Reporting Publishing Corp.* v. *California Highway Patrol*, 146 F. 3d 1133, 1140, n. 6 (1998), clearly indicating that it was not deciding the case as a facial challenge.

JUSTICE GINSBURG points out, if the State identified the disfavored persons based on their viewpoint, or political affiliation, for example, the discrimination would clearly be invalid. See *ante,* at 43 (concurring opinion).

What the State did here, in my opinion, is comparable to that obviously unconstitutional discrimination. In this case, the denial of access is based on the fact that respondent plans to publish the information to others who, in turn, intend to use it for a commercial speech purpose that the State finds objectionable. Respondent's proposed publication of the information is indisputably lawful—petitioner concedes that if respondent independently acquires the data, the First Amendment protects its right to communicate it to others. Brief for Petitioner 27; see also *Cox Broadcasting Corp.* v. *Cohn,* 420 U. S. 469, 496 (1975). Similarly, the First Amendment supports the third parties' use of it for commercial speech purposes. See *Shapero* v. *Kentucky Bar Assn.*, 486 U. S. 466, 472 (1988). Thus, because the State's discrimination is based on its desire to prevent the information from being used for constitutionally protected purposes, I think it must assume the burden of justifying its conduct.

The only justification advanced by the State is an asserted interest in protecting the privacy of victims and arrestees. Although that interest would explain a total ban on access, or a statute narrowly limiting access, it is insufficient when the data can be published in the news media and obtained by private investigators or others who meet the Amendment's vague criteria. This Amendment plainly suffers from the same "overall irrationality" that undermined the statutes at issue in *Rubin* v. *Coors Brewing Co.*, 514 U. S. 476, 488 (1995), and *Greater New Orleans Broadcasting Assn., Inc.* v. *United States*, 527 U. S. 173 (1999). By allowing such widespread access to the information, the State has eviscerated any rational basis for believing that the Amendment will truly protect the privacy of these persons. See *Cox Broadcasting Corp.*, 420 U. S., at 493–495.

A different, and more likely, rationale that might explain the restriction is the State's desire to prevent lawyers from soliciting law business from unrepresented defendants.[3] This interest is arguably consistent with trying to uphold the ethics of the legal profession. Also at stake here, however, are the important interests of allowing lawyers to engage in protected speech and potentially giving criminal defendants better access to needed professional assistance. See *Bates* v. *State Bar of Ariz.*, 433 U. S. 350, 376 (1977). Ultimately, this state interest must fail because at its core it relies on discrimination against disfavored speech.[4]

That the State might simply withhold the information from all persons does not insulate its actions from constitutional scrutiny. For even though government may withhold

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[3] While there is no direct evidence that the State is acting with intended animus toward respondent and others' speech, see Brief for Petitioner 13, n. 5, we have expressly rejected the argument that "discriminatory . . . treatment is suspect under the First Amendment only when the legislature intends to suppress certain ideas," *Simon & Schuster, Inc.* v. *Members of N. Y. State Crime Victims Bd.*, 502 U. S. 105, 117 (1991).

[4] Our cases have repeatedly frowned on regulations that discriminate based on the content of the speech or the identity of the speaker. See, *e. g.*, *Greater New Orleans Broadcasting Assn., Inc.* v. *United States*, 527 U. S. 173, 190 (1999) (Government cannot restrict advertising for private casinos while allowing the advertising for tribal casinos); *Simon & Schuster, Inc.*, 502 U. S., at 116 (government cannot "singl[e] out income derived from expressive activity for a burden the State places on no other income"); *Arkansas Writers' Project, Inc.* v. *Ragland*, 481 U. S. 221, 229 (1987) (a tax that applies to some magazines but not to others "is particularly repugnant to First Amendment principles: a magazine's tax status depends entirely on its content" (emphasis deleted)); *Regan* v. *Time, Inc.*, 468 U. S. 641, 648–649 (1984) ("Regulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment"); *Minneapolis Star & Tribune Co.* v. *Minnesota Comm'r of Revenue*, 460 U. S. 575, 582 (1983) (a tax that "single[s] out the press for special treatment" is unconstitutional); *Police Dept. of Chicago* v. *Mosley*, 408 U. S. 92, 96 (1972) ("[W]e have frequently condemned . . . discrimination among different users of the same medium for expression").

a particular benefit entirely, it "may not deny a benefit to a person on a basis that infringes his constitutionally protected interests—especially his interest in freedom of speech." *Perry* v. *Sindermann*, 408 U. S. 593, 597 (1972). A contrary view would impermissibly allow the government to "'produce a result which [it] could not command directly.'" *Ibid.* It is perfectly clear that California could not directly censor the use of this information or the resulting speech. It follows, I believe, that the State's discriminatory ban on access to information—in an attempt to prohibit persons from exercising their constitutional rights to publish it in a truthful and accurate manner—is equally invalid.

Accordingly, I respectfully dissent.

Syllabus

# DRYE ET AL. *v.* UNITED STATES

## CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 98–1101. Argued November 8, 1999—Decided December 7, 1999

In 1994, Irma Drye died intestate, leaving a $233,000 estate in Pulaski County, Arkansas. Petitioner Rohn Drye, her son, was sole heir to the estate under Arkansas law. Drye was insolvent at the time of his mother's death and owed the Federal Government some $325,000 on unpaid tax assessments. The Internal Revenue Service (IRS) had valid tax liens against all of Drye's "property and rights to property" pursuant to 26 U. S. C. § 6321. Drye petitioned the Pulaski County Probate Court for appointment as administrator of his mother's estate and was so appointed. Several months after his mother's death, Drye resigned as administrator after filing in the Probate Court and county land records a written disclaimer of all interests in the estate. Under Arkansas law, such a disclaimer creates the legal fiction that the disclaimant predeceased the decedent; consequently, the disclaimant's share of the estate passes to the person next in line to receive that share. The disavowing heir's creditors, Arkansas law provides, may not reach property thus disclaimed. Here, Drye's disclaimer caused the estate to pass to his daughter, Theresa Drye, who succeeded her father as administrator and promptly established the Drye Family 1995 Trust (Trust). The Probate Court declared Drye's disclaimer valid and accordingly ordered final distribution of the estate to Theresa, who then used the estate's proceeds to fund the Trust, of which she and, during their lifetimes, her parents are the beneficiaries. Under the Trust's terms, distributions are at the discretion of the trustee, Drye's counsel, and may be made only for the health, maintenance, and support of the beneficiaries. The Trust is spendthrift, and under state law, its assets are therefore shielded from creditors seeking to satisfy the debts of the Trust's beneficiaries. After Drye revealed to the IRS his beneficial interest in the Trust, the IRS filed with the county a notice of federal tax lien against the Trust as Drye's nominee, served a notice of levy on accounts held in the Trust's name by an investment bank, and notified the Trust of the levy. The Trust filed a wrongful levy action against the United States in the United States District Court for the Eastern District of Arkansas. The Government counterclaimed against the Trust, the trustee, and the trust beneficiaries, seeking to reduce to judgment the tax assessments against Drye, confirm its right to seize the Trust's assets in collection

of those debts, foreclose on its liens, and sell the Trust property. On cross-motions for summary judgment, the District Court ruled in the Government's favor. The Court of Appeals for the Eighth Circuit affirmed, reading this Court's precedents to convey that state law determines whether a given set of circumstances creates a right or interest, but federal law dictates whether that right or interest constitutes "property" or the "righ[t] to property" under § 6321.

*Held:* Drye's disclaimer did not defeat the federal tax liens. The Internal Revenue Code's prescriptions are most sensibly read to look to state law for delineation of the taxpayer's rights or interests in the property the Government seeks to reach, but to leave to federal law the determination whether those rights or interests constitute "property" or "rights to property" under § 6321. Once it has been determined that state law creates sufficient interests in the taxpayer to satisfy the requirements of the federal tax lien provision, state law is inoperative to prevent the attachment of the federal liens. *United States* v. *Bess*, 357 U. S. 51, 56–57. Pp. 55–61.

(a) To satisfy a tax deficiency, the Government may impose a lien on any "property" or "rights to property" belonging to the taxpayer. §§ 6321, 6331(a). When Congress so broadly uses the term "property," this Court recognizes that the Legislature aims to reach every species of right or interest protected by law and having an exchangeable value. *E. g.*, *Jewett* v. *Commissioner*, 455 U. S. 305, 309. Section 6334(a), which lists items exempt from levy, is corroborative. Section 6334(a)'s list is rendered exclusive by § 6334(c), which provides that no other "property or rights to property shall be exempt." Inheritances or devises disclaimed under state law are not included in § 6334(a)'s catalog of exempt property. See, *e. g.*, *Bess*, 357 U. S., at 57. The absence of any recognition of disclaimers in §§ 6321, 6322, 6331(a), and 6334(a) and (c), the relevant tax collection provisions, contrasts with § 2518(a), which renders qualifying state-law disclaimers "with respect to any interest in property" effective for federal wealth-transfer tax purposes and for those purposes only. Although this Court's decisions in point have not been phrased so meticulously as to preclude the argument that state law is the proper guide to the critical determination whether Drye's interest constituted "property" or "rights to property" under § 6321, the Court is satisfied that the Code and interpretive case law place under federal, not state, control the ultimate issue whether a taxpayer has a beneficial interest in any property subject to levy for unpaid federal taxes. Pp. 55–57.

(b) The question whether a state-law right constitutes "property" or "rights to property" under § 6321 is a matter of federal law. *United*

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*States* v. *National Bank of Commerce*, 472 U. S. 713, 727. This Court looks initially to state law to determine what rights the taxpayer has in the property the Government seeks to reach, then to federal law to determine whether the taxpayer's state-delineated rights qualify as "property" or "rights to property" within the compass of the federal tax lien legislation. Cf. *Morgan* v. *Commissioner*, 309 U. S. 78, 80. Just as exempt status under state law does not bind the federal collector, *United States* v. *Mitchell*, 403 U. S. 190, 204, so federal tax law is not struck blind by a disclaimer, *United States* v. *Irvine*, 511 U. S. 224, 240. Pp. 58–59.

(c) The Eighth Circuit, with fidelity to the relevant Code provisions and this Court's case law, determined first what rights state law accorded Drye in his mother's estate. The Court of Appeals observed that under Arkansas law Drye had, at his mother's death, a valuable, transferable, legally protected right to the property at issue, and noted, for example, that a prospective heir may effectively assign his expectancy in an estate under Arkansas law, and the assignment will be enforced when the expectancy ripens into a present estate. Drye emphasizes his undoubted right under Arkansas law to disclaim the inheritance, a right that is indeed personal and not marketable. But Arkansas law primarily gave him a right of considerable value—the right either to inherit or to channel the inheritance to a close family member (the next lineal descendant). That right simply cannot be written off as a mere personal right to accept or reject a gift. In pressing the analogy to a rejected gift, Drye overlooks this crucial distinction. A donee who declines an *inter vivos* gift restores the status quo *ante*, leaving the donor to do with the gift what she will. The disclaiming heir or devisee, in contrast, does not restore the status quo, for the decedent cannot be revived. Thus the heir inevitably exercises dominion over the property. He determines who will receive the property—himself if he does not disclaim, a known other if he does. This power to channel the estate's assets warrants the conclusion that Drye held "property" or a "righ[t] to property" subject to the Government's liens under § 6321. Pp. 59–61.

152 F. 3d 892, affirmed.

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

*Daniel M. Traylor* argued the cause and filed a brief for petitioners.

*Kent L. Jones* argued the cause for the United States. With him on the brief were *Solicitor General Waxman*, *As-*

*sistant Attorney General Argrett, Deputy Solicitor General Wallace, David I. Pincus,* and *Anthony T. Sheehan.*

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the respective provinces of state and federal law in determining what is property for purposes of federal tax lien legislation. At the time of his mother's death, petitioner Rohn F. Drye, Jr., was insolvent and owed the Federal Government some $325,000 on unpaid tax assessments for which notices of federal tax liens had been filed. His mother died intestate, leaving an estate with a total value of approximately $233,000 to which he was sole heir. After the passage of several months, Drye disclaimed his interest in his mother's estate, which then passed by operation of state law to his daughter. This case presents the question whether Drye's interest as heir to his mother's estate constituted "property" or a "righ[t] to property" to which the federal tax liens attached under 26 U. S. C. § 6321, despite Drye's exercise of the prerogative state law accorded him to disclaim the interest retroactively.

We hold that the disclaimer did not defeat the federal tax liens. The Internal Revenue Code's prescriptions are most sensibly read to look to state law for delineation of the taxpayer's rights or interests, but to leave to federal law the determination whether those rights or interests constitute "property" or "rights to property" within the meaning of § 6321. "[O]nce it has been determined that state law creates sufficient interests in the [taxpayer] to satisfy the requirements of [the federal tax lien provision], state law is inoperative to prevent the attachment of liens created by federal statutes in favor of the United States." *United States* v. *Bess,* 357 U. S. 51, 56–57 (1958).

## I

### A

The relevant facts are not in dispute. On August 3, 1994, Irma Deliah Drye died intestate, leaving an estate worth

approximately $233,000, of which $158,000 was personalty and $75,000 was realty located in Pulaski County, Arkansas. Petitioner Rohn F. Drye, Jr., her son, was sole heir to the estate under Arkansas law. See Ark. Code Ann. § 28–9–214 (1987) (intestate interest passes "[f]irst, to the children of the intestate"). On the date of his mother's death, Drye was insolvent and owed the Government approximately $325,000, representing assessments for tax deficiencies in years 1988, 1989, and 1990. The Internal Revenue Service (IRS or Service) had made assessments against Drye in November 1990 and May 1991 and had valid tax liens against all of Drye's "property and rights to property" pursuant to 26 U. S. C. § 6321.

Drye petitioned the Pulaski County Probate Court for appointment as administrator of his mother's estate and was so appointed on August 17, 1994. Almost six months later, on February 4, 1995, Drye filed in the Probate Court and land records of Pulaski County a written disclaimer of all interests in his mother's estate. Two days later, Drye resigned as administrator of the estate.

Under Arkansas law, an heir may disavow his inheritance by filing a written disclaimer no later than nine months after the death of the decedent. Ark. Code Ann. §§ 28–2–101, 28–2–107 (1987). The disclaimer creates the legal fiction that the disclaimant predeceased the decedent; consequently, the disclaimant's share of the estate passes to the person next in line to receive that share. The disavowing heir's creditors, Arkansas law provides, may not reach property thus disclaimed. § 28–2–108. In the case at hand, Drye's disclaimer caused the estate to pass to his daughter, Theresa Drye, who succeeded her father as administrator and promptly established the Drye Family 1995 Trust (Trust).

On March 10, 1995, the Probate Court declared valid Drye's disclaimer of all interest in his mother's estate and accordingly ordered final distribution of the estate to Theresa Drye. Theresa Drye then used the estate's proceeds to fund the Trust, of which she and, during their lifetimes, her

parents are the beneficiaries. Under the Trust's terms, distributions are at the discretion of the trustee, Drye's counsel Daniel M. Traylor, and may be made only for the health, maintenance, and support of the beneficiaries. The Trust is spendthrift, and under state law, its assets are therefore shielded from creditors seeking to satisfy the debts of the Trust's beneficiaries.

Also in 1995, the IRS and Drye began negotiations regarding Drye's tax liabilities. During the course of the negotiations, Drye revealed to the Service his beneficial interest in the Trust. Thereafter, on April 11, 1996, the IRS filed with the Pulaski County Circuit Clerk and Recorder a notice of federal tax lien against the Trust as Drye's nominee. The Service also served a notice of levy on accounts held in the Trust's name by an investment bank and notified the Trust of the levy.

B

On May 1, 1996, invoking 26 U. S. C. § 7426(a)(1), the Trust filed a wrongful levy action against the United States in the United States District Court for the Eastern District of Arkansas. The Government counterclaimed against the Trust, the trustee, and the trust beneficiaries, seeking to reduce to judgment the tax assessments against Drye, confirm its right to seize the Trust's assets in collection of those debts, foreclose on its liens, and sell the Trust property. On cross-motions for summary judgment, the District Court ruled in the Government's favor.

The United States Court of Appeals for the Eighth Circuit affirmed the District Court's judgment. *Drye Family 1995 Trust* v. *United States*, 152 F. 3d 892 (1998). The Court of Appeals understood our precedents to convey that "state law determines whether a given set of circumstances creates a right or interest; federal law then dictates whether that right or interest constitutes 'property' or the 'right to property' under § 6321." *Id.*, at 898.

We granted certiorari, 526 U. S. 1063 (1999), to resolve a conflict between the Eighth Circuit's holding and decisions of the Fifth and Ninth Circuits.[1] We now affirm.

## II

Under the relevant provisions of the Internal Revenue Code, to satisfy a tax deficiency, the Government may impose a lien on any "property" or "rights to property" belonging to the taxpayer. Section 6321 provides: "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount . . . shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person." 26 U. S. C. § 6321. A complementary provision, § 6331(a), states:

> "If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax . . . by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax."[2]

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[1] In the view of those courts, state law holds sway. Under their approach, in a State adhering to an acceptance-rejection theory, under which a property interest vests only when the beneficiary accepts the inheritance or devise, the disclaiming taxpayer prevails and the federal liens do not attach. If, instead, the State holds to a transfer theory, under which the property is deemed to vest in the beneficiary immediately upon the death of the testator or intestate, the taxpayer loses and the federal lien runs with the property. See *Leggett* v. *United States*, 120 F. 3d 592, 594 (CA5 1997); *Mapes* v. *United States*, 15 F. 3d 138, 140 (CA9 1994); accord, *United States* v. *Davidson*, 55 F. Supp. 2d 1152, 1155 (Colo. 1999). Drye maintains that Arkansas adheres to the acceptance-rejection theory.

[2] The Code further provides:

"Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed (or a judgment against the taxpayer arising out of such liability) is satisfied or becomes unenforceable by reason of lapse of time." 26 U. S. C. § 6322.

The language in §§ 6321 and 6331(a), this Court has observed, "is broad and reveals on its face that Congress meant to reach every interest in property that a taxpayer might have." *United States* v. *National Bank of Commerce*, 472 U. S. 713, 719–720 (1985) (citing 4 B. Bittker, Federal Taxation of Income, Estates and Gifts ¶ 111.5.4, p. 111–100 (1981)); see also *Glass City Bank* v. *United States*, 326 U. S. 265, 267 (1945) ("Stronger language could hardly have been selected to reveal a purpose to assure the collection of taxes."). When Congress so broadly uses the term "property," we recognize, as we did in the context of the gift tax, that the Legislature aims to reach " 'every species of right or interest protected by law and having an exchangeable value.' " *Jewett* v. *Commissioner*, 455 U. S. 305, 309 (1982) (quoting S. Rep. No. 665, 72d Cong., 1st Sess., 39 (1932); H. R. Rep. No. 708, 72d Cong., 1st Sess., 27 (1932)).

Section 6334(a) of the Code is corroborative. That provision lists property exempt from levy. The list includes 13 categories of items; among the enumerated exemptions are certain items necessary to clothe and care for one's family, unemployment compensation, and workers' compensation benefits. §§ 6334(a)(1), (2), (4), (7). The enumeration contained in § 6334(a), Congress directed, is exclusive: "Notwithstanding any other law of the United States . . . , no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a)." § 6334(c). Inheritances or devises disclaimed under state law are not included in § 6334(a)'s catalog of property exempt from levy. See *Bess*, 357 U. S., at 57 ("The fact that . . . Congress provided specific exemptions from distraint is evidence that Congress did not intend to recognize further exemptions which would prevent attachment of [federal tax] liens[.]"); *United States* v. *Mitchell*, 403 U. S. 190, 205 (1971) ("Th[e] language [of § 6334] is specific and it is clear and there is no room in it for automatic exemption of property that

happens to be exempt from state levy under state law."). The absence of any recognition of disclaimers in §§ 6321, 6322, 6331(a), and 6334(a) and (c), the relevant tax collection provisions, contrasts with § 2518(a) of the Code, which renders qualifying state-law disclaimers "with respect to any interest in property" effective for federal wealth-transfer tax purposes and for those purposes only.[3]

Drye nevertheless refers to cases indicating that state law is the proper guide to the critical determination whether his interest in his mother's estate constituted "property" or "rights to property" under § 6321. His position draws support from two recent appellate opinions: *Leggett* v. *United States*, 120 F. 3d 592, 597 (CA5 1997) ("Section 6321 adopts the state's definition of property interest."); and *Mapes* v. *United States*, 15 F. 3d 138, 140 (CA9 1994) ("For the answer to th[e] question [whether taxpayer had the requisite interest in property], we must look to state law, not federal law."). Although our decisions in point have not been phrased so meticulously as to preclude Drye's argument,[4] we are satisfied that the Code and interpretive case law place under federal, not state, control the ultimate issue whether a taxpayer has a beneficial interest in any property subject to levy for unpaid federal taxes.

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[3] See Pennell, Recent Wealth Transfer Tax Developments, in Sophisticated Estate Planning Techniques 69, 117–118 (ALI–ABA Continuing Legal Ed. 1997) ("The fact that a qualified disclaimer by an estate beneficiary is deemed to relate back to the decedent's death for state property law or federal gift tax purposes is not sufficient to preclude a federal tax lien for the disclaimant's delinquent taxes from attaching to the disclaimed property as of the moment of the decedent's death. . . . [T]he qualified disclaimer provision in § 2518 only applies for purposes of Subtitle B and the lien provisions are in Subtitle F.").

[4] See, *e. g.*, *United States* v. *National Bank of Commerce*, 472 U. S. 713, 722 (1985) ("[T]he federal statute 'creates no property rights but merely attaches consequences, federally defined, to rights created under state law.' ") (quoting *United States* v. *Bess*, 357 U. S. 51, 55 (1958)).

## III

As restated in *National Bank of Commerce:* "The question whether a state-law right constitutes 'property' or 'rights to property' is a matter of federal law." 472 U. S., at 727. We look initially to state law to determine what rights the taxpayer has in the property the Government seeks to reach, then to federal law to determine whether the taxpayer's state-delineated rights qualify as "property" or "rights to property" within the compass of the federal tax lien legislation. Cf. *Morgan* v. *Commissioner*, 309 U. S. 78, 80 (1940) ("State law creates legal interests and rights. The federal revenue acts designate what interests or rights, so created, shall be taxed.").

In line with this division of competence, we held that a taxpayer's right under state law to withdraw the whole of the proceeds from a joint bank account constitutes "property" or the "righ[t] to property" subject to levy for unpaid federal taxes, although state law would not allow ordinary creditors similarly to deplete the account. *National Bank of Commerce*, 472 U. S., at 723–727. And we earlier held that a taxpayer's right under a life insurance policy to compel his insurer to pay him the cash surrender value qualifies as "property" or a "righ[t] to property" subject to attachment for unpaid federal taxes, although state law shielded the cash surrender value from creditors' liens. *Bess*, 357 U. S., at 56–57.[5] By contrast, we also concluded, again as a matter of

[5] Accord, *Bank One Ohio Trust Co.* v. *United States*, 80 F. 3d 173, 176 (CA6 1996) ("Federal law did not create [the taxpayer's] equitable income interest [in a spendthrift trust], but federal law must be applied in determining whether the interest constitutes 'property' for purposes of § 6321."); *21 West Lancaster Corp.* v. *Main Line Restaurant, Inc.*, 790 F. 2d 354, 357–358 (CA3 1986) (although a liquor license did not constitute "property" and could not be reached by creditors under state law, it was nevertheless "property" subject to federal tax lien); W. Plumb, Federal Tax Liens 27 (3d ed. 1972) ("[I]t is not material that the economic benefit to which the [taxpayer's local law property] right pertains is not characterized as 'property' by local law.").

federal law, that no federal tax lien could attach to policy proceeds unavailable to the insured in his lifetime. *Id.*, at 55–56 ("It would be anomalous to view as 'property' subject to lien proceeds never within the insured's reach to enjoy.").[6]

Just as "exempt status under state law does not bind the federal collector," *Mitchell*, 403 U. S., at 204, so federal tax law "is not struck blind by a disclaimer," *United States* v. *Irvine*, 511 U. S. 224, 240 (1994). Thus, in *Mitchell*, the Court held that, although a wife's renunciation of a marital interest was treated as retroactive under state law, that state-law disclaimer did not determine the wife's liability for federal tax on her share of the community income realized before the renunciation. See 403 U. S., at 204 (right to renounce does not indicate that taxpayer never had a right to property).

## IV

The Eighth Circuit, with fidelity to the relevant Code provisions and our case law, determined first what rights state law accorded Drye in his mother's estate. It is beyond debate, the Court of Appeals observed, that under Arkansas

[6] Compatibly, in *Aquilino* v. *United States*, 363 U. S. 509 (1960), we held that courts should look first to state law to determine " 'the nature of the legal interest' " a taxpayer has in the property the Government seeks to reach under its tax lien. *Id.*, at 513 (quoting *Morgan* v. *Commissioner*, 309 U. S. 78, 82 (1940)). We then reaffirmed that federal law determines whether the taxpayer's interests are sufficient to constitute "property" or "rights to property" subject to the Government's lien. 363 U. S., at 513–514. We remanded in *Aquilino* for a determination whether the contractor-taxpayer held any beneficial interest, as opposed to "bare legal title," in the funds at issue. *Id.*, at 515–516; see also Note, Property Subject to the Federal Tax Lien, 77 Harv. L. Rev. 1485, 1491 (1964) ("*Aquilino* supports the view that the Court has chosen to apply a federal test of classification, for the contractor concededly had legal title to the funds and yet in remanding the Court indicated that this state-created incident of ownership was not a sufficient 'right to property' in the contract proceeds to allow the tax lien to attach. In this sense *Aquilino* follows *Bess* in requiring that the taxpayer must have a beneficial interest in any property subject to the lien." (footnote omitted)).

law Drye had, at his mother's death, a valuable, transferable, legally protected right to the property at issue. See 152 F. 3d, at 895 (although Code does not define "property" or "rights to property," appellate courts read those terms to encompass "state-law rights or interests that have pecuniary value and are transferable"). The court noted, for example, that a prospective heir may effectively assign his expectancy in an estate under Arkansas law, and the assignment will be enforced when the expectancy ripens into a present estate. See *id.*, at 895–896 (citing several Arkansas Supreme Court decisions, including: *Clark* v. *Rutherford*, 227 Ark. 270, 270–271, 298 S. W. 2d 327, 330 (1957); *Bradley Lumber Co. of Ark.* v. *Burbridge*, 213 Ark. 165, 172, 210 S. W. 2d 284, 288 (1948); *Leggett* v. *Martin*, 203 Ark. 88, 94, 156 S. W. 2d 71, 74–75 (1941)).[7]

Drye emphasizes his undoubted right under Arkansas law to disclaim the inheritance, see Ark. Code Ann. § 28–2–101 (1987), a right that is indeed personal and not marketable. See Brief for Petitioners 13 (right to disclaim is not transferable and has no pecuniary value). But Arkansas law primarily gave Drye a right of considerable value—the right either to inherit or to channel the inheritance to a close family member (the next lineal descendant). That right simply cannot be written off as a mere "personal right . . . to accept or reject [a] gift." *Ibid.*

In pressing the analogy to a rejected gift, Drye overlooks this crucial distinction. A donee who declines an *inter vivos*

[7] In recognizing that state-law rights that have pecuniary value and are transferable fall within § 6321, we do not mean to suggest that transferability is essential to the existence of "property" or "rights to property" under that section. For example, although we do not here decide the matter, we note that an interest in a spendthrift trust has been held to constitute "'property' for purposes of § 6321" even though the beneficiary may not transfer that interest to third parties. See *Bank One*, 80 F. 3d, at 176. Nor do we mean to suggest that an expectancy that has pecuniary value and is transferable under state law would fall within § 6321 prior to the time it ripens into a present estate.

gift generally restores the status quo *ante*, leaving the donor to do with the gift what she will. The disclaiming heir or devisee, in contrast, does not restore the status quo, for the decedent cannot be revived. Thus the heir inevitably exercises dominion over the property. He determines who will receive the property—himself if he does not disclaim, a known other if he does. See Hirsch, The Problem of the Insolvent Heir, 74 Cornell L. Rev. 587, 607–608 (1989). This power to channel the estate's assets warrants the conclusion that Drye held "property" or a "righ[t] to property" subject to the Government's liens.

* * *

In sum, in determining whether a federal taxpayer's state-law rights constitute "property" or "rights to property," "[t]he important consideration is the breadth of the control the [taxpayer] could exercise over the property." *Morgan*, 309 U. S., at 83. Drye had the unqualified right to receive the entire value of his mother's estate (less administrative expenses), see *National Bank of Commerce*, 472 U. S., at 725 (confirming that unqualified "right to receive property is itself a property right" subject to the tax collector's levy), or to channel that value to his daughter. The control rein he held under state law, we hold, rendered the inheritance "property" or "rights to property" belonging to him within the meaning of § 6321, and hence subject to the federal tax liens that sparked this controversy.

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

*Affirmed.*

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# KIMEL ET AL. *v.* FLORIDA BOARD OF REGENTS ET AL.

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

No. 98–791. Argued October 13, 1999—Decided January 11, 2000*

The Age Discrimination in Employment Act of 1967 (ADEA or Act), as amended, makes it unlawful for an employer, including a State, "to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual . . . because of such individual's age." 29 U. S. C. § 623(a)(1). Petitioners, three sets of plaintiffs, filed suit under the ADEA against respondents, their state employers. Petitioners' suits sought money damages for respondents' alleged discrimination on the basis of age. Respondents in all three cases moved to dismiss the suits on the basis of the Eleventh Amendment. The District Court in one case granted the motion to dismiss, while in each of the remaining cases the District Court denied the motion. All three decisions were appealed and consolidated before the Eleventh Circuit. Petitioner United States intervened on appeal to defend the constitutionality of the ADEA's abrogation of the States' Eleventh Amendment immunity. In a divided panel opinion, the Eleventh Circuit held that the ADEA does not abrogate the States' Eleventh Amendment immunity.

*Held:* Although the ADEA does contain a clear statement of Congress' intent to abrogate the States' immunity, that abrogation exceeded Congress' authority under § 5 of the Fourteenth Amendment. Pp. 72–92.

(a) The ADEA satisfies the simple but stringent test this Court uses to determine whether a federal statute properly subjects States to suits by individuals: Congress made its intention to abrogate the States' immunity unmistakably clear in the language of the statute. *Dellmuth* v. *Muth*, 491 U. S. 223, 228. The ADEA states that its provisions "shall be enforced in accordance with the powers, remedies, and procedures provided in sections 211(b), 216 (except for subsection (a) thereof), and 217 of this title, and subsection (c) of this section." 29 U. S. C. § 626(b). Section 216(b), in turn, authorizes employees to maintain actions for backpay "against any employer (including a public agency) in any Federal or State court of competent jurisdiction . . . ." Section 203(x) defines "public agency" to include "the government of a State or political

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*Together with No. 98–796, *United States* v. *Florida Board of Regents et al.*, also on certiorari to the same court.

subdivision thereof," and "any agency of . . . a State, or a political subdivision of a State." The text of § 626(b) forecloses respondents' claim that the existence of an enforcement provision in the ADEA itself renders Congress' intent to incorporate § 216(b)'s clear statement of abrogation ambiguous. Congress' use of the phrase "court of competent jurisdiction" in § 216(b) also does not render its intent to abrogate less than clear. Finally, because the clear statement inquiry focuses on *what* Congress did enact, not *when* it did so, the Court will not infer ambiguity from the sequence in which a clear textual statement is added to a statute. Pp. 73–78.

(b) This Court held in *EEOC* v. *Wyoming*, 460 U. S. 226, 243, that the ADEA constitutes a valid exercise of Congress' Article I Commerce Clause power. Congress' powers under Article I, however, do not include the power to subject States to suit at the hands of private individuals. *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44, 72–73. Section 5 of the Fourteenth Amendment does grant Congress the authority to abrogate the States' sovereign immunity. *Fitzpatrick* v. *Bitzer*, 427 U. S. 445, 456. Pp. 78–80.

(c) Section 5 of the Fourteenth Amendment is an affirmative grant of power to Congress. *City of Boerne* v. *Flores*, 521 U. S. 507, 517. That power includes the authority both to remedy and to deter the violation of rights guaranteed thereunder by prohibiting a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment's text. Congress cannot, however, decree the *substance* of the Fourteenth Amendment's restrictions on the States. *Id.*, at 519. The ultimate interpretation and determination of the Amendment's substantive meaning remains the province of the Judicial Branch. This Court has held that for remedial legislation to be appropriate under § 5, "[t]here must be a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." *Id.*, at 520. Pp. 80–82.

(d) The ADEA is not "appropriate legislation" under § 5 of the Fourteenth Amendment. The ADEA's purported abrogation of the States' sovereign immunity is accordingly invalid. Pp. 82–91.

(1) The substantive requirements the ADEA imposes on state and local governments are disproportionate to any unconstitutional conduct that conceivably could be targeted by the Act. Age is not a suspect classification under the Equal Protection Clause. See, *e. g.*, *Gregory* v. *Ashcroft*, 501 U. S. 452, 470. States therefore may discriminate on the basis of age without offending the Fourteenth Amendment if the age classification in question is rationally related to a legitimate state interest. The rationality commanded by the Equal Protection Clause does not require States to match age distinctions and the legitimate

interests they serve with razorlike precision. Rather, a State may rely on age as a proxy for other qualities, abilities, or characteristics that are relevant to the State's legitimate interests. That age proves to be an inaccurate proxy in any individual case is irrelevant. Judged against the backdrop of this Court's equal protection jurisprudence, it is clear that the ADEA is "so out of proportion to a supposed remedial or preventive object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior." *City of Boerne*, *supra*, at 532. The Act, through its broad restriction on the use of age as a discriminating factor, prohibits substantially more state employment decisions and practices than would likely be held unconstitutional under the applicable equal protection, rational basis standard. Petitioners' reliance on the "bona fide occupational qualification" defense of § 623(f)(1) is misplaced. This Court's decision in *Western Air Lines, Inc.* v. *Criswell*, 472 U. S. 400, conclusively demonstrates that the defense is a far cry from the rational basis standard the Court applies to age discrimination under the Equal Protection Clause. Although it is true that the existence of the defense makes the ADEA's prohibition of age discrimination less than absolute, the Act's substantive requirements nevertheless remain at a level akin to the Court's heightened scrutiny cases under the Equal Protection Clause. The exception in § 623(f)(1) that permits employers to engage in conduct otherwise prohibited by the Act "where the differentiation is based on reasonable factors other than age" confirms, rather than disproves, the conclusion that the ADEA extends beyond the requirements of the Equal Protection Clause. That exception makes clear that the employer cannot rely on age as a proxy for an employee's characteristics, *Hazen Paper Co.* v. *Biggins*, 507 U. S. 604, 611, whereas the Constitution permits such reliance, see, *e. g.*, *Gregory*, *supra*, at 473. Pp. 82–88.

(2) That the ADEA prohibits very little conduct likely to be held unconstitutional, while significant, does not alone provide the answer to the § 5 inquiry. Difficult and intractable problems often require powerful remedies, and this Court has never held that § 5 precludes Congress from enacting reasonably prophylactic legislation. One means by which the Court has determined the difference between a statute that constitutes an appropriate remedy and one that attempts to substantively redefine the States' legal obligations is by examining the legislative record containing the reasons for Congress' action. See, *e. g.*, *City of Boerne*, *supra*, at 530–531. A review of the ADEA's legislative record as a whole reveals that Congress had virtually no reason to believe that state and local governments were unconstitutionally discriminating against their employees on the basis of age. Congress never identified any pattern of age discrimination by the States, much less any discrimination whatsoever that rose to the level of constitu-

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tional violation. That failure confirms that Congress had no reason to believe that broad prophylactic legislation was necessary in this field. Pp. 88–91.

(e) Today's decision does not signal the end of the line for employees who find themselves subject to age discrimination at the hands of their state employers. Those employees are protected by state age discrimination statutes, and may recover money damages from their state employers, in almost every State of the Union. Pp. 91–92.

139 F. 3d 1426, affirmed.

O'CONNOR, J., delivered the opinion of the Court, Parts I, II, and IV of which were joined by REHNQUIST, C. J., and SCALIA, KENNEDY, and THOMAS, JJ., and Part III of which was joined by REHNQUIST, C. J., and STEVENS, SCALIA, SOUTER, GINSBURG, and BREYER, JJ. STEVENS, J., filed an opinion dissenting in part and concurring in part, in which SOUTER, GINSBURG, and BREYER, JJ., joined, *post,* p. 92. THOMAS, J., filed an opinion concurring in part and dissenting in part, in which KENNEDY, J., joined, *post,* p. 99.

*Jeremiah A. Collins* argued the cause for petitioners in No. 98–791, and respondents under this Court's Rule 12.6 in support of petitioner in No. 98–796. With him on the brief were *Robert H. Chanin*, *Laurence Gold*, *David Arendall*, *Thomas W. Brooks*, and *Gerald J. Houlihan.*

*Barbara D. Underwood* argued the cause for the United States, as petitioner in No. 98–796, and respondent under this Court's Rule 12.6 in support of petitioners in No. 98–791. With her on the briefs were *Solicitor General Waxman*, *Acting Assistant Attorney General Lee*, *Patricia A. Millett*, *Jessica Dunsay Silver*, and *Seth M. Galanter.*

*Jeffrey S. Sutton* argued the cause for state respondents in both cases. With him on the brief were *Gregory G. Katsas*, *Robert A. Butterworth*, Attorney General of Florida, *Louis F. Hubener* and *Amelia Beisner*, Assistant Attorneys General, *Bill Pryor*, Attorney General of Alabama, and *Alice Ann Byrne* and *Jack Park*, Assistant Attorneys General.†

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†*Laurie A. McCann* and *Melvin Radowitz* filed a brief for the American Association of Retired Persons et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the State of Ohio et al. by *Betty D. Montgomery*, Attorney General of Ohio, *Edward B.*

JUSTICE O'CONNOR delivered the opinion of the Court.

The Age Discrimination in Employment Act of 1967 (ADEA or Act), 81 Stat. 602, as amended, 29 U. S. C. § 621 *et seq.* (1994 ed. and Supp. III), makes it unlawful for an employer, including a State, "to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual . . . because of such individual's age." 29 U. S. C. § 623(a)(1). In these cases, three sets of plaintiffs filed suit under the Act, seeking money damages for their state employers' alleged discrimination on the basis of age. In each case, the state employer moved to dismiss the suit on the basis of its Eleventh Amendment immunity. The District Court in one case granted the motion to dismiss, while in each of the remaining cases the District Court denied the motion. Appeals in the three cases were consolidated before the Court of Appeals for the Eleventh Circuit, which held that the ADEA does not validly abrogate the States' Eleventh Amendment immunity. In these cases, we are asked to consider whether the ADEA contains a clear

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*Foley*, State Solicitor, *Stephen P. Carney*, Associate Solicitor, and *Matthew J. Lampke*, Assistant Solicitor, *Paul G. Summers*, Attorney General of Tennessee, and *Michael E. Moore*, Solicitor General, and by the Attorneys General for their respective States as follows: *Richard Blumenthal* of Connecticut, *M. Jane Brady* of Delaware, *Thurbert E. Baker* of Georgia, *Earl I. Anzai* of Hawaii, *Alan G. Lance* of Idaho, *Carla J. Stoval* of Kansas, *Richard P. Ieyoub* of Louisiana, *Andrew Ketterer* of Maine, *Jennifer M. Granholm* of Michigan, *Mike Moore* of Mississippi, *Joseph P. Mazurek* of Montana, *Don Stenberg* of Nebraska, *Frankie Sue Del Papa* of Nevada, *John J. Farmer, Jr.*, of New Jersey, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *D. Michael Fisher* of Pennsylvania, *Sheldon Whitehouse* of Rhode Island, *Jan Graham* of Utah, *William H. Sorrell* of Vermont, and *Mark L. Earley* of Virginia; for the Pennsylvania House of Representatives, Republican Caucus, by *David R. Fine* and *John P. Krill, Jr.*; and for the Pacific Legal Foundation by *Robin L. Rivett* and *Frank A. Shepherd.*

Briefs of *amici curiae* were filed for the Coalition for Local Sovereignty by *Kenneth B. Clark;* and for the English Language Advocates by *Barnaby W. Zall.*

statement of Congress' intent to abrogate the States' Eleventh Amendment immunity and, if so, whether the ADEA is a proper exercise of Congress' constitutional authority. We conclude that the ADEA does contain a clear statement of Congress' intent to abrogate the States' immunity, but that the abrogation exceeded Congress' authority under § 5 of the Fourteenth Amendment.

## I

### A

The ADEA makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age." 29 U. S. C. § 623(a)(1). The Act also provides several exceptions to this broad prohibition. For example, an employer may rely on age where it "is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business." § 623(f)(1). The Act also permits an employer to engage in conduct otherwise prohibited by § 623(a)(1) if the employer's action "is based on reasonable factors other than age," § 623(f)(1), or if the employer "discharge[s] or otherwise discipline[s] an individual for good cause," § 623(f)(3). Although the Act's prohibitions originally applied only to individuals "at least forty years of age but less than sixty-five years of age," 81 Stat. 607, 29 U. S. C. § 631 (1964 ed., Supp. III), Congress subsequently removed the upper age limit, and the Act now covers individuals age 40 and over, 29 U. S. C. § 631(a). Any person aggrieved by an employer's violation of the Act "may bring a civil action in any court of competent jurisdiction" for legal or equitable relief. § 626(c)(1). Section 626(b) also permits aggrieved employees to enforce the Act through certain provisions of the Fair Labor Standards Act of 1938 (FLSA), and the ADEA

specifically incorporates § 16(b) of the FLSA, 29 U. S. C. § 216(b).

Since its enactment, the ADEA's scope of coverage has been expanded by amendment. Of particular importance to these cases is the Act's treatment of state employers and employees. When first passed in 1967, the ADEA applied only to private employers. See 29 U. S. C. § 630(b) (1964 ed., Supp. III) (defining term "employer" to exclude "the United States, a corporation wholly owned by the Government of the United States, or a State or political subdivision thereof"). In 1974, in a statute consisting primarily of amendments to the FLSA, Congress extended application of the ADEA's substantive requirements to the States. Fair Labor Standards Amendments of 1974 (1974 Act), § 28, 88 Stat. 74. Congress accomplished that expansion in scope by a simple amendment to the definition of "employer" contained in 29 U. S. C. § 630(b): "The term [employer] also means . . . a State or political subdivision of a State and any agency or instrumentality of a State or a political subdivision of a State . . . ." Congress also amended the ADEA's definition of "employee," still defining the term to mean "an individual employed by any employer," but excluding elected officials and appointed policymakers at the state and local levels. § 630(f). In the same 1974 Act, Congress amended 29 U. S. C. § 216(b), the FLSA enforcement provision incorporated by reference into the ADEA. 88 Stat. 61. Section 216(b) now permits an individual to bring a civil action "against any employer (including a public agency) in any Federal or State court of competent jurisdiction." Section 203(x) defines "[p]ublic agency" to include "the government of a State or political subdivision thereof," and "any agency of . . . a State, or a political subdivision of a State." Finally, in the 1974 Act, Congress added a provision prohibiting age discrimination generally in employment at the Federal Government. 88 Stat. 74, 29 U. S. C. § 633a (1994 ed. and Supp. III). Under the current ADEA,

mandatory age limits for law enforcement officers and firefighters—at federal, state, and local levels—are exempted from the statute's coverage. 5 U. S. C. §§ 3307(d), (e); 29 U. S. C. § 623(j) (1994 ed., Supp. III).

B

In December 1994, Roderick MacPherson and Marvin Narz, ages 57 and 58 at the time, filed suit under the ADEA against their employer, the University of Montevallo, in the United States District Court for the Northern District of Alabama. In their complaint, they alleged that the university had discriminated against them on the basis of their age, that it had retaliated against them for filing discrimination charges with the Equal Employment Opportunity Commission (EEOC), and that its College of Business, at which they were associate professors, employed an evaluation system that had a disparate impact on older faculty members. MacPherson and Narz sought declaratory and injunctive relief, backpay, promotions to full professor, and compensatory and punitive damages. App. 21–25. The University of Montevallo moved to dismiss the suit for lack of subject matter jurisdiction, contending it was barred by the Eleventh Amendment. No party disputes the District Court's holding that the university is an instrumentality of the State of Alabama. On September 9, 1996, the District Court granted the university's motion. *MacPherson* v. *University of Montevallo*, Civ. Action No. 94–AR–2962–S (ND Ala., Sept. 9, 1996), App. to Pet. for Cert. in No. 98–796, pp. 63a–71a. The court determined that, although the ADEA contains a clear statement of Congress' intent to abrogate the States' Eleventh Amendment immunity, Congress did not enact or extend the ADEA under its Fourteenth Amendment § 5 enforcement power. *Id.*, at 67a, 69a–70a. The District Court therefore held that the ADEA did not abrogate the States' Eleventh Amendment immunity. *Id.*, at 71a.

In April 1995, a group of current and former faculty and librarians of Florida State University, including J. Daniel Kimel, Jr., the named petitioner in one of today's cases, filed suit against the Florida Board of Regents in the United States District Court for the Northern District of Florida. Complaint and Demand for Jury Trial in No. 95–CV–40194, 1 Record, Doc. No. 2. The complaint was subsequently amended to add as plaintiffs current and former faculty and librarians of Florida International University. App. 41. The plaintiffs, all over age 40, alleged that the Florida Board of Regents refused to require the two state universities to allocate funds to provide previously agreed upon market adjustments to the salaries of eligible university employees. The plaintiffs contended that the failure to allocate the funds violated both the ADEA and the Florida Civil Rights Act of 1992, Fla. Stat. § 760.01 *et seq.* (1997 and Supp. 1998), because it had a disparate impact on the base pay of employees with a longer record of service, most of whom were older employees. App. 42–45. The plaintiffs sought backpay, liquidated damages, and permanent salary adjustments as relief. *Id.*, at 46. The Florida Board of Regents moved to dismiss the suit on the grounds of Eleventh Amendment immunity. On May 17, 1996, the District Court denied the motion, holding that Congress expressed its intent to abrogate the States' Eleventh Amendment immunity in the ADEA, and that the ADEA is a proper exercise of congressional authority under the Fourteenth Amendment. No. TCA 95–40194–MMP (ND Fla.), App. to Pet. for Cert. in No. 98–796, pp. 57a–62a.

In May 1996, Wellington Dickson filed suit against his employer, the Florida Department of Corrections, in the United States District Court for the Northern District of Florida. Dickson alleged that the state employer failed to promote him because of his age and because he had filed grievances with respect to the alleged acts of age discrimination. Dickson sought injunctive relief, backpay, and com-

pensatory and punitive damages. App. 83–109. The Florida Department of Corrections moved to dismiss the suit on the grounds that it was barred by the Eleventh Amendment. The District Court denied that motion on November 5, 1996, holding that Congress unequivocally expressed its intent to abrogate the States' Eleventh Amendment immunity in the ADEA, and that Congress had authority to do so under § 5 of the Fourteenth Amendment. *Dickson* v. *Florida Dept. of Corrections*, No. 5:96cv207–RH (ND Fla.), App. to Pet. for Cert. in No. 98–796, pp. 72a–76a.

The plaintiffs in the *MacPherson* case, and the state defendants in the *Kimel* and *Dickson* cases, appealed to the Court of Appeals for the Eleventh Circuit. The United States also intervened in all three cases to defend the ADEA's abrogation of the States' Eleventh Amendment immunity. The Court of Appeals consolidated the appeals and, in a divided panel opinion, held that the ADEA does not abrogate the States' Eleventh Amendment immunity. 139 F. 3d 1426, 1433 (1998). Judge Edmondson, although stating that he believed "good reason exists to doubt that the ADEA was (or could have been properly) enacted pursuant to the Fourteenth Amendment," *id.*, at 1430, rested his opinion on the ADEA's lack of unmistakably clear language evidencing Congress' intent to abrogate the States' sovereign immunity. *Ibid.* He noted that the ADEA lacks any reference to the Eleventh Amendment or to the States' sovereign immunity and does not contain, in one place, a plain statement that States can be sued by individuals in federal court. *Id.*, at 1430–1431. Judge Cox concurred in Judge Edmondson's ultimate conclusion that the States are immune from ADEA suits brought by individuals in federal court. *Id.*, at 1444. Judge Cox, however, chose not to address "the thorny issue of Congress's intent," *id.*, at 1445, but instead found that Congress lacks the power under § 5 of the Fourteenth Amendment to abrogate the States' Eleventh Amendment immunity under the ADEA. *Ibid.*

He concluded that "the ADEA confers rights far more extensive than those the Fourteenth Amendment provides," *id.*, at 1446, and that "Congress did not enact the ADEA as a proportional response to any widespread violation of the elderly's constitutional rights." *Id.*, at 1447. Chief Judge Hatchett dissented from both grounds. *Id.*, at 1434.

We granted certiorari, 525 U. S. 1121 (1999), to resolve a conflict among the Federal Courts of Appeals on the question whether the ADEA validly abrogates the States' Eleventh Amendment immunity. Compare *Cooper* v. *New York State Office of Mental Health*, 162 F. 3d 770 (CA2 1998) (holding that the ADEA does validly abrogate the States' Eleventh Amendment immunity), cert. pending, No. 98–1524; *Migneault* v. *Peck*, 158 F. 3d 1131 (CA10 1998) (same), cert. pending, No. 98–1178; *Coger* v. *Board of Regents of State of Tenn.*, 154 F. 3d 296 (CA6 1998) (same), cert. pending, No. 98–821; *Keeton* v. *University of Nev. System*, 150 F. 3d 1055 (CA9 1998) (same); *Scott* v. *University of Miss.*, 148 F. 3d 493 (CA5 1998) (same); and *Goshtasby* v. *Board of Trustees of Univ. of Ill.*, 141 F. 3d 761 (CA7 1998) (same), with *Humenansky* v. *Regents of Univ. of Minn.*, 152 F. 3d 822 (CA8 1998) (holding that the ADEA does not validly abrogate the States' Eleventh Amendment immunity), cert. pending, No. 98–1235; and 139 F. 3d 1426 (CA11 1998) (case below).

## II

The Eleventh Amendment states:

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

Although today's cases concern suits brought by citizens against their own States, this Court has long "'understood the Eleventh Amendment to stand not so much for what it

says, but for the presupposition . . . which it confirms.'" *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44, 54 (1996) (quoting *Blatchford* v. *Native Village of Noatak*, 501 U. S. 775, 779 (1991)). Accordingly, for over a century now, we have made clear that the Constitution does not provide for federal jurisdiction over suits against nonconsenting States. *College Savings Bank* v. *Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U. S. 666, 669–670 (1999); *Seminole Tribe*, *supra*, at 54; see *Hans* v. *Louisiana*, 134 U. S. 1, 15 (1890). Petitioners nevertheless contend that the States of Alabama and Florida must defend the present suits on the merits because Congress abrogated their Eleventh Amendment immunity in the ADEA. To determine whether petitioners are correct, we must resolve two predicate questions: first, whether Congress unequivocally expressed its intent to abrogate that immunity; and second, if it did, whether Congress acted pursuant to a valid grant of constitutional authority. *Seminole Tribe*, *supra*, at 55.

## III

To determine whether a federal statute properly subjects States to suits by individuals, we apply a "simple but stringent test: 'Congress may abrogate the States' constitutionally secured immunity from suit in federal court only by making its intention unmistakably clear in the language of the statute.'" *Dellmuth* v. *Muth*, 491 U. S. 223, 228 (1989) (quoting *Atascadero State Hospital* v. *Scanlon*, 473 U. S. 234, 242 (1985)). We agree with petitioners that the ADEA satisfies that test. The ADEA states that its provisions "shall be enforced in accordance with the powers, remedies, and procedures provided in sections 211(b), 216 (except for subsection (a) thereof), and 217 of this title, and subsection (c) of this section." 29 U. S. C. § 626(b). Section 216(b), in turn, clearly provides for suits by individuals against States. That provision authorizes employees to maintain actions for backpay "against any employer (including a public agency)

in any Federal or State court of competent jurisdiction . . . ." Any doubt concerning the identity of the "public agency" defendant named in § 216(b) is dispelled by looking to § 203(x), which defines the term to include "the government of a State or political subdivision thereof," and "any agency of . . . a State, or a political subdivision of a State." Read as a whole, the plain language of these provisions clearly demonstrates Congress' intent to subject the States to suit for money damages at the hands of individual employees.

Respondents maintain that these statutory sections are less than "unmistakably clear" for two reasons. Brief for Respondents 15. First, they note that the ADEA already contains its own enforcement provision, § 626(c)(1), which provides in relevant part that "[a]ny person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter." Respondents claim that the existence of § 626(c)(1) renders Congress' intent to incorporate the clear statement of abrogation in § 216(b), the FLSA's enforcement provision, ambiguous. The text of the ADEA forecloses respondents' argument. Section 626(b) clearly states that the ADEA "shall be enforced in accordance with the powers, remedies, and procedures provided in [section 216(b)] *and* subsection (c) of this section." § 626(b) (emphasis added). In accord with that statutory language, we have explained repeatedly that § 626(b) incorporates the FLSA's enforcement provisions, and that those remedial options operate together with § 626(c)(1). See *McKennon* v. *Nashville Banner Publishing Co.*, 513 U. S. 352, 357 (1995) ("[The ADEA's] remedial provisions incorporate by reference the provisions of the Fair Labor Standards Act of 1938"); *Hoffmann-La Roche Inc.* v. *Sperling*, 493 U. S. 165, 167 (1989) ("[T]he ADEA incorporates enforcement provisions of the Fair Labor Standards Act of 1938, and provides that the ADEA shall be enforced using certain of the powers, remedies, and procedures of the FLSA" (citation omitted)); *Lorillard* v. *Pons*, 434 U. S.

575, 582 (1978) ("[B]ut for those changes Congress expressly made [in the ADEA], it intended to incorporate fully the remedies and procedures of the FLSA"). Respondents' argument attempts to create ambiguity where, according to the statute's text and this Court's repeated interpretations thereof, there is none.

Respondents next point to the phrase "court of competent jurisdiction" in § 216(b), and contend that it makes Congress' intent to abrogate less than clear. Relying on our decision in the distinct context of a state waiver of sovereign immunity, *Kennecott Copper Corp.* v. *State Tax Comm'n*, 327 U. S. 573 (1946), respondents maintain that perhaps Congress simply intended to permit an ADEA suit against a State only in those cases where the State previously has waived its Eleventh Amendment immunity to suit. We disagree. Our decision in *Kennecott Copper* must be read in context. The petitioner there contended that Utah had waived its Eleventh Amendment immunity to suit in federal court through a state statute that authorized taxpayers to pay their taxes under protest and "'thereafter bring an action in any court of competent jurisdiction for the return thereof . . . .'" *Id.*, at 575, n. 1 (quoting Utah Code Ann. § 80–5–76 (1943)). Although the statute undoubtedly provided for suit against the State of Utah in its own courts, we held that the statute fell short of the required "clear declaration by a State of its consent to be sued in the *federal* courts." 327 U. S., at 579–580 (emphasis added). Section 216(b) contains no such ambiguity. The statute authorizes employee suits against States "in any *Federal or State* court of competent jurisdiction." § 216(b) (emphasis added). That language eliminates the ambiguity identified in *Kennecott Copper*—whether Utah intended to permit suits against the sovereign in state court only, or in state and federal court. Under § 216(b), the answer to that question is clear—actions may be maintained in federal and state court. That choice of language sufficiently indicates Congress' in-

tent, in the ADEA, to abrogate the States' Eleventh Amendment immunity to suits by individuals.

Although JUSTICE THOMAS concedes in his opinion that our cases have never required that Congress make its clear statement in a single section or in statutory provisions enacted at the same time, *post*, at 104–105 (opinion concurring in part and dissenting in part), he concludes that the ADEA lacks the requisite clarity because of the "sequence of events" surrounding the enactment and amendment of §§ 216(b) and 626(b), *post*, at 102. JUSTICE THOMAS states that he is unwilling to assume that when Congress amended § 216(b) in 1974, it recognized the consequences that amendment would have for the ADEA. *Ibid.* We respectfully disagree. The fact that Congress amended the ADEA itself in the same 1974 Act makes it more than clear that Congress understood the consequences of its actions. Indeed, Congress amended § 216(b) to provide for suits against States in precisely the same Act in which it extended the ADEA's substantive requirements to the States. See 1974 Act, § 6(d)(1), 88 Stat. 61 (amending § 216(b)); § 28(a), 88 Stat. 74 (extending ADEA to the States). Those provisions confirm for us that the effect on the ADEA of the § 216(b) amendment was not mere happenstance. In any event, we have never held that Congress must speak with different gradations of clarity depending on the specific circumstances of the relevant legislation (*e. g.*, amending incorporated provisions as opposed to enacting a statute for the first time). The clear statement inquiry focuses on *what* Congress did enact, not *when* it did so. We will not infer ambiguity from the sequence in which a clear textual statement is added to a statute.

We also disagree with JUSTICE THOMAS' remaining points, see *post*, at 105–109. Although the ADEA does contain its own enforcement provision in § 626(c)(1), the text of § 626(b) acknowledges § 626(c)(1)'s existence and makes clear that the ADEA also incorporates § 216(b), save as indicated

otherwise in § 626(b)'s proviso. See § 626(b) ("The provisions of this chapter shall be enforced in accordance with the powers, remedies, and procedures provided in sectio[n] . . . 216 (except for subsection (a) thereof) . . . *and subsection (c) of this section*" (emphasis added)). We fail to see how the interpretation suggested by JUSTICE THOMAS, under which § 626(b) would carry over only those § 216(b) "embellishments" not already provided for in § 626(c)(1) *except for* the authorization of suits against States, see *post*, at 106, could be a permissible one. To accept that interpretation, for example, one would have to conclude that Congress intended to incorporate only the portion of § 216(b)'s third sentence that provides for collective actions, but not the part of the very same sentence that authorizes suits against States. See § 216(b) ("An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated").

JUSTICE THOMAS also concludes that § 216(b) itself fails the clear statement test. *Post*, at 108–109. As we have already explained, the presence of the word "competent" in § 216(b) does not render that provision less than "unmistakably clear." See *supra*, at 75–76. JUSTICE THOMAS' reliance on a single phrase from our decision in *Employees of Dept. of Public Health and Welfare of Mo.* v. *Department of Public Health and Welfare of Mo.*, 411 U. S. 279 (1973), see *post*, at 108, as support for the contrary proposition is puzzling, given his separate argument with respect to § 6(d)(2)(A) of the 1974 Act. Crucial to JUSTICE THOMAS' argument on that front is his acknowledgment that Congress *did* intend in the 1974 amendments to permit "FLSA plaintiffs who had been frustrated by state defendants' invocation of Eleventh Amendment immunity under *Employees* to avail themselves of the newly amended § 216(b)." *Post*, at 103;

see also *post*, at 108–109. We agree with the implication of that statement: In response to *Employees*, Congress clearly intended through "the newly amended § 216(b)" to abrogate the States' sovereign immunity. In light of our conclusion that Congress unequivocally expressed its intent to abrogate the States' Eleventh Amendment immunity, we now must determine whether Congress effectuated that abrogation pursuant to a valid exercise of constitutional authority.

## IV

### A

This is not the first time we have considered the constitutional validity of the 1974 extension of the ADEA to state and local governments. In *EEOC* v. *Wyoming*, 460 U. S. 226, 243 (1983), we held that the ADEA constitutes a valid exercise of Congress' power "[t]o regulate Commerce . . . among the several States," Art. I, § 8, cl. 3, and that the Act did not transgress any external restraints imposed on the commerce power by the Tenth Amendment. Because we found the ADEA valid under Congress' Commerce Clause power, we concluded that it was unnecessary to determine whether the Act also could be supported by Congress' power under § 5 of the Fourteenth Amendment. 460 U. S., at 243. But see *id.*, at 259–263 (Burger, C. J., dissenting). Resolution of today's cases requires us to decide that question.

In *Seminole Tribe*, we held that Congress lacks power under Article I to abrogate the States' sovereign immunity. 517 U. S., at 72–73. "Even when the Constitution vests in Congress complete lawmaking authority over a particular area, the Eleventh Amendment prevents congressional authorization of suits by private parties against unconsenting States." *Id.*, at 72. Last Term, in a series of three decisions, we reaffirmed that central holding of *Seminole Tribe*. See *College Savings Bank*, 527 U. S., at 672; *Florida Prepaid Postsecondary Ed. Expense Bd.* v. *College Savings Bank*,

527 U. S. 627, 636 (1999); *Alden* v. *Maine*, 527 U. S. 706, 712 (1999). Indeed, in *College Savings Bank*, we rested our decision to overrule the constructive waiver rule of *Parden* v. *Terminal R. Co. of Ala. Docks Dept.*, 377 U. S. 184 (1964), in part, on our *Seminole Tribe* holding. See *College Savings Bank*, *supra*, at 683 ("Recognizing a congressional power to exact constructive waivers of sovereign immunity through the exercise of Article I powers would also, as a practical matter, permit Congress to circumvent the antiabrogation holding of *Seminole Tribe*"). Under our firmly established precedent then, if the ADEA rests solely on Congress' Article I commerce power, the private petitioners in today's cases cannot maintain their suits against their state employers.

JUSTICE STEVENS disputes that well-established precedent again. Compare *post*, p. 92 (opinion dissenting in part and concurring in part), with *Alden*, *supra*, p. 760 (SOUTER, J., dissenting); *College Savings Bank*, 527 U. S., at 692, n. 2 (STEVENS, J., dissenting); *id.*, at 699–705 (BREYER, J., dissenting); *Florida Prepaid*, *supra*, at 664–665 (STEVENS, J., dissenting); *Seminole Tribe*, 517 U. S., at 76–100 (STEVENS, J., dissenting); *id.*, at 100–185 (SOUTER, J., dissenting). In *Alden*, we explained that, "[a]lthough the sovereign immunity of the States derives at least in part from the common-law tradition, the structure and history of the Constitution make clear that the immunity exists today by constitutional design." 527 U. S., at 733. For purposes of today's decision, it is sufficient to note that we have on more than one occasion explained the substantial reasons for adhering to that constitutional design. See *id.*, at 712–754; *College Savings Bank*, *supra*, at 669–670, 687–691; *Seminole Tribe*, *supra*, at 54–55, 59–73; *Pennsylvania* v. *Union Gas Co.*, 491 U. S. 1, 30–42 (1989) (SCALIA, J., concurring in part and dissenting in part). Indeed, the present dissenters' refusal to accept the validity and natural import of decisions like *Hans*, rendered over a full century ago by this Court, makes it dif-

ficult to engage in additional meaningful debate on the place of state sovereign immunity in the Constitution. Compare *Hans*, 134 U. S., at 10, 14–16, with *post*, at 97 (STEVENS, J., dissenting in part and concurring in part). Today we adhere to our holding in *Seminole Tribe:* Congress' powers under Article I of the Constitution do not include the power to subject States to suit at the hands of private individuals.

Section 5 of the Fourteenth Amendment, however, does grant Congress the authority to abrogate the States' sovereign immunity. In *Fitzpatrick* v. *Bitzer*, 427 U. S. 445 (1976), we recognized that "the Eleventh Amendment, and the principle of state sovereignty which it embodies, are necessarily limited by the enforcement provisions of § 5 of the Fourteenth Amendment." *Id.*, at 456 (citation omitted). Since our decision in *Fitzpatrick*, we have reaffirmed the validity of that congressional power on numerous occasions. See, *e. g.*, *College Savings Bank*, *supra*, at 670; *Florida Prepaid*, *supra*, at 636–637; *Alden*, *supra*, at 756; *Seminole Tribe*, *supra*, at 59. Accordingly, the private petitioners in these cases may maintain their ADEA suits against the States of Alabama and Florida if, and only if, the ADEA is appropriate legislation under § 5.

B

The Fourteenth Amendment provides, in relevant part:

> "Section 1. . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
>
> . . . . . .
>
> "Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

As we recognized most recently in *City of Boerne* v. *Flores*, 521 U. S. 507, 517 (1997), § 5 is an affirmative grant of power to Congress. "It is for Congress in the first instance to

'determin[e] whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment,' and its conclusions are entitled to much deference." *Id.*, at 536 (quoting *Katzenbach* v. *Morgan*, 384 U. S. 641, 651 (1966)). Congress' § 5 power is not confined to the enactment of legislation that merely parrots the precise wording of the Fourteenth Amendment. Rather, Congress' power "to enforce" the Amendment includes the authority both to remedy and to deter violation of rights guaranteed thereunder by prohibiting a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment's text. 521 U. S., at 518.

Nevertheless, we have also recognized that the same language that serves as the basis for the affirmative grant of congressional power also serves to limit that power. For example, Congress cannot "decree the *substance* of the Fourteenth Amendment's restrictions on the States. . . . It has been given the power 'to enforce,' not the power to determine *what constitutes* a constitutional violation." *Id.*, at 519 (emphases added). The ultimate interpretation and determination of the Fourteenth Amendment's substantive meaning remains the province of the Judicial Branch. *Id.*, at 536. In *City of Boerne*, we noted that the determination whether purportedly prophylactic legislation constitutes appropriate remedial legislation, or instead effects a substantive redefinition of the Fourteenth Amendment right at issue, is often difficult. *Id.*, at 519–520. The line between the two is a fine one. Accordingly, recognizing that "Congress must have wide latitude in determining where [that line] lies," we held that "[t]here must be a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." *Id.*, at 520.

In *City of Boerne*, we applied that "congruence and proportionality" test and held that the Religious Freedom Restoration Act of 1993 (RFRA) was not appropriate legislation under § 5. We first noted that the legislative record contained very little evidence of the unconstitutional conduct

purportedly targeted by RFRA's substantive provisions. Rather, Congress had uncovered only "anecdotal evidence" that, standing alone, did not reveal a "widespread pattern of religious discrimination in this country." *Id.*, at 531. Second, we found that RFRA is "so out of proportion to a supposed remedial or preventive object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior." *Id.*, at 532.

Last Term, we again had occasion to apply the "congruence and proportionality" test. In *Florida Prepaid*, we considered the validity of the Eleventh Amendment abrogation provision in the Patent and Plant Variety Protection Remedy Clarification Act (Patent Remedy Act). We held that the statute, which subjected States to patent infringement suits, was not appropriate legislation under § 5 of the Fourteenth Amendment. The Patent Remedy Act failed to meet our congruence and proportionality test first because "Congress identified no pattern of patent infringement *by the States*, let alone a pattern of constitutional violations." 527 U. S., at 640 (emphasis added). Moreover, because it was unlikely that many of the acts of patent infringement affected by the statute had any likelihood of being unconstitutional, we concluded that the scope of the Act was out of proportion to its supposed remedial or preventive objectives. *Id.*, at 647. Instead, "[t]he statute's apparent and more basic aims were to provide a uniform remedy for patent infringement and to place States on the same footing as private parties under that regime." *Id.*, at 647–648. While we acknowledged that such aims may be proper congressional concerns under Article I, we found them insufficient to support an abrogation of the States' Eleventh Amendment immunity after *Seminole Tribe*. *Florida Prepaid*, *supra*, at 648.

C

Applying the same "congruence and proportionality" test in these cases, we conclude that the ADEA is not "appro-

priate legislation" under § 5 of the Fourteenth Amendment. Initially, the substantive requirements the ADEA imposes on state and local governments are disproportionate to any unconstitutional conduct that conceivably could be targeted by the Act. We have considered claims of unconstitutional age discrimination under the Equal Protection Clause three times. See *Gregory* v. *Ashcroft*, 501 U. S. 452 (1991); *Vance* v. *Bradley*, 440 U. S. 93 (1979); *Massachusetts Bd. of Retirement* v. *Murgia*, 427 U. S. 307 (1976) *(per curiam)*. In all three cases, we held that the age classifications at issue did not violate the Equal Protection Clause. See *Gregory*, *supra*, at 473; *Bradley*, *supra*, at 102–103, n. 20, 108–112; *Murgia*, *supra*, at 317. Age classifications, unlike governmental conduct based on race or gender, cannot be characterized as "so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy." *Cleburne* v. *Cleburne Living Center, Inc.*, 473 U. S. 432, 440 (1985). Older persons, again, unlike those who suffer discrimination on the basis of race or gender, have not been subjected to a "'history of purposeful unequal treatment.'" *Murgia*, *supra*, at 313 (quoting *San Antonio Independent School Dist.* v. *Rodriguez*, 411 U. S. 1, 28 (1973)). Old age also does not define a discrete and insular minority because all persons, if they live out their normal life spans, will experience it. 427 U. S., at 313–314. Accordingly, as we recognized in *Murgia*, *Bradley*, and *Gregory*, age is not a suspect classification under the Equal Protection Clause. See, *e. g.*, *Gregory*, *supra*, at 470; *Bradley*, *supra*, at 97; *Murgia*, *supra*, at 313–314.

States may discriminate on the basis of age without offending the Fourteenth Amendment if the age classification in question is rationally related to a legitimate state interest. The rationality commanded by the Equal Protection Clause does not require States to match age distinctions and the legitimate interests they serve with razorlike precision. As

we have explained, when conducting rational basis review "we will not overturn such [government action] unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the [government's] actions were irrational." *Bradley*, *supra*, at 97. In contrast, when a State discriminates on the basis of race or gender, we require a tighter fit between the discriminatory means and the legitimate ends they serve. See, *e. g.*, *Adarand Constructors, Inc.* v. *Peña*, 515 U. S. 200, 227 (1995) ("[Racial] classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests"); *Mississippi Univ. for Women* v. *Hogan*, 458 U. S. 718, 724 (1982) (holding that gender classifications are constitutional only if they serve "'important governmental objectives and . . . the discriminatory means employed' are 'substantially related to the achievement of those objectives'" (citation omitted)). Under the Fourteenth Amendment, a State may rely on age as a proxy for other qualities, abilities, or characteristics that are relevant to the State's legitimate interests. The Constitution does not preclude reliance on such generalizations. That age proves to be an inaccurate proxy in any individual case is irrelevant. "[W]here rationality is the test, a State 'does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect.'" *Murgia*, *supra*, at 316 (quoting *Dandridge* v. *Williams*, 397 U. S. 471, 485 (1970)). Finally, because an age classification is presumptively rational, the individual challenging its constitutionality bears the burden of proving that the "facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker." *Bradley*, *supra*, at 111; see *Gregory*, *supra*, at 473.

Our decisions in *Murgia*, *Bradley*, and *Gregory* illustrate these principles. In all three cases, we held that the States' reliance on broad generalizations with respect to age did

not violate the Equal Protection Clause. In *Murgia*, we upheld against an equal protection challenge a Massachusetts statute requiring state police officers to retire at age 50. The State justified the provision on the ground that the age classification assured the State of the physical preparedness of its officers. 427 U. S., at 314–315. Although we acknowledged that Officer Murgia himself was in excellent physical health and could still perform the duties of a state police officer, we found that the statute clearly met the requirements of the Equal Protection Clause. *Id.*, at 311, 314–317. "That the State chooses not to determine fitness more precisely through individualized testing after age 50 [does not prove] that the objective of assuring physical fitness is not rationally furthered by a maximum-age limitation." *Id.*, at 316. In *Bradley*, we considered an equal protection challenge to a federal statute requiring Foreign Service officers to retire at age 60. We explained: "If increasing age brings with it increasing susceptibility to physical difficulties, . . . the fact that individual Foreign Service employees may be able to perform past age 60 does not invalidate [the statute] any more than did the similar truth undercut compulsory retirement at age 50 for uniformed state police in *Murgia*." 440 U. S., at 108. Finally, in *Gregory*, we upheld a provision of the Missouri Constitution that required judges to retire at age 70. Noting that the Missouri provision was based on a generalization about the effect of old age on the ability of individuals to serve as judges, we acknowledged that "[i]t is far from true that all judges suffer significant deterioration in performance at age 70," "[i]t is probably not true that most do," and "[i]t may not be true at all." 501 U. S., at 473. Nevertheless, because Missouri's age classification was subject only to rational basis review, we held that the State's reliance on such imperfect generalizations was entirely proper under the Equal Protection Clause. *Ibid.* These decisions thus demonstrate that the constitutionality of state classifications on the basis of age cannot be deter-

mined on a person-by-person basis. Our Constitution permits States to draw lines on the basis of age when they have a rational basis for doing so at a class-based level, even if it "is probably not true" that those reasons are valid in the majority of cases.

Judged against the backdrop of our equal protection jurisprudence, it is clear that the ADEA is "so out of proportion to a supposed remedial or preventive object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior." *City of Boerne*, 521 U. S., at 532. The Act, through its broad restriction on the use of age as a discriminating factor, prohibits substantially more state employment decisions and practices than would likely be held unconstitutional under the applicable equal protection, rational basis standard. The ADEA makes unlawful, in the employment context, all "discriminat[ion] against any individual . . . because of such individual's age." 29 U. S. C. § 623(a)(1). Petitioners, relying on the Act's exceptions, dispute the extent to which the ADEA erects protections beyond the Constitution's requirements. They contend that the Act's prohibition, considered together with its exceptions, applies only to arbitrary age discrimination, which in the majority of cases corresponds to conduct that violates the Equal Protection Clause. We disagree.

Petitioners stake their claim on § 623(f)(1). That section permits employers to rely on age when it "is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business." Petitioners' reliance on the "bona fide occupational qualification" (BFOQ) defense is misplaced. Our interpretation of § 623(f)(1) in *Western Air Lines, Inc.* v. *Criswell*, 472 U. S. 400 (1985), conclusively demonstrates that the defense is a far cry from the rational basis standard we apply to age discrimination under the Equal Protection Clause. The petitioner in that case maintained that, pursuant to the BFOQ defense, employers must be permitted to rely on age when such reliance

has a "rational basis in fact." *Id.*, at 417. We rejected that argument, explaining that "[t]he BFOQ standard adopted in the statute is one of 'reasonable necessity,' not reasonableness," *id.*, at 419, and that the ADEA standard and the rational basis test are "significantly different," *id.*, at 421.

Under the ADEA, even with its BFOQ defense, the State's use of age is prima facie unlawful. See 29 U. S. C. § 623(a)(1); *Western Air Lines*, 472 U. S., at 422 ("Under the Act, employers are to evaluate employees . . . on their merits and not their age"). Application of the Act therefore starts with a presumption in favor of requiring the employer to make an individualized determination. See *ibid.* In *Western Air Lines*, we concluded that the BFOQ defense, which shifts the focus from the merits of the individual employee to the necessity for the age classification as a whole, is " 'meant to be an extremely narrow exception to the general prohibition' of age discrimination contained in the ADEA." *Id.*, at 412 (citation omitted). We based that conclusion on both the restrictive language of the statutory BFOQ provision itself and the EEOC's regulation interpreting that exception. See 29 CFR § 1625.6(a) (1998) ("It is anticipated that this concept of a [BFOQ] will have limited scope and application. Further, as this is an exception to the Act it must be narrowly construed"). To succeed under the BFOQ defense, we held that an employer must demonstrate either "a substantial basis for believing that *all or nearly all employees* above an age lack the qualifications required for the position," or that reliance on the age classification is necessary because "it is *highly impractical* for the employer to insure by individual testing that its employees will have the necessary qualifications for the job." 472 U. S., at 422–423 (emphases added). Measured against the rational basis standard of our equal protection jurisprudence, the ADEA plainly imposes substantially higher burdens on state employers. Thus, although it is true that the existence of the BFOQ defense makes the ADEA's prohibition of age dis-

crimination less than absolute, the Act's substantive requirements nevertheless remain at a level akin to our heightened scrutiny cases under the Equal Protection Clause.

Petitioners also place some reliance on the next clause in § 623(f)(1), which permits employers to engage in conduct otherwise prohibited by the Act "where the differentiation is based on reasonable factors other than age." This exception confirms, however, rather than disproves, the conclusion that the ADEA's protection extends beyond the requirements of the Equal Protection Clause. The exception simply makes clear that "[t]he employer cannot rely on age as a proxy for an employee's remaining characteristics, such as productivity, but must instead focus on those factors directly." *Hazen Paper Co.* v. *Biggins*, 507 U. S. 604, 611 (1993). Under the Constitution, in contrast, States may rely on age as a proxy for other characteristics. See *Gregory*, 501 U. S., at 473 (generalization about ability to serve as judges at age 70); *Bradley*, 440 U. S., at 108–109, 112 (generalization about ability to serve as Foreign Service officer at age 60); *Murgia*, 427 U. S., at 314–317 (generalization about ability to serve as state police officer at age 50). Section 623(f)(1), then, merely confirms that Congress, through the ADEA, has effectively elevated the standard for analyzing age discrimination to heightened scrutiny.

That the ADEA prohibits very little conduct likely to be held unconstitutional, while significant, does not alone provide the answer to our § 5 inquiry. Difficult and intractable problems often require powerful remedies, and we have never held that § 5 precludes Congress from enacting reasonably prophylactic legislation. Our task is to determine whether the ADEA is in fact just such an appropriate remedy or, instead, merely an attempt to substantively redefine the States' legal obligations with respect to age discrimination. One means by which we have made such a determination in the past is by examining the legislative record containing the reasons for Congress' action. See, *e. g.*, *Flor-*

*ida Prepaid*, 527 U. S., at 640–647; *City of Boerne*, 521 U. S., at 530–531. "The appropriateness of remedial measures must be considered in light of the evil presented. Strong measures appropriate to address one harm may be an unwarranted response to another, lesser one." *Id.*, at 530 (citing *South Carolina* v. *Katzenbach*, 383 U. S. 301, 308 (1966)).

Our examination of the ADEA's legislative record confirms that Congress' 1974 extension of the Act to the States was an unwarranted response to a perhaps inconsequential problem. Congress never identified any pattern of age discrimination by the States, much less any discrimination whatsoever that rose to the level of constitutional violation. The evidence compiled by petitioners to demonstrate such attention by Congress to age discrimination by the States falls well short of the mark. That evidence consists almost entirely of isolated sentences clipped from floor debates and legislative reports. See, *e. g.*, S. Rep. No. 93–846, p. 112 (1974); S. Rep. No. 93–690, p. 56 (1974); H. R. Rep. No. 93–913, pp. 40–41 (1974); S. Rep. No. 93–300, p. 57 (1973); Senate Special Committee on Aging, Improving the Age Discrimination Law, 93d Cong., 1st Sess., 14 (Comm. Print 1973); 113 Cong. Rec. 34742 (1967) (remarks of Rep. Steiger); *id.*, at 34749 (remarks of Rep. Donohue); 110 Cong. Rec. 13490 (1964) (remarks of Sen. Smathers); *id.*, at 9912 (remarks of Sen. Sparkman); *id.*, at 2596 (remarks of Rep. Beckworth). The statements of Senator Bentsen on the floor of the Senate are indicative of the strength of the evidence relied on by petitioners. See, *e. g.*, 118 Cong. Rec. 24397 (1972) (stating that "there is ample evidence that age discrimination is broadly practiced in government employment," but relying on newspaper articles about federal employees); *id.*, at 7745 ("Letters from my own State have revealed that State and local governments have also been guilty of discrimination toward older employees"); *ibid.* ("[T]here are strong indications that the hiring and firing practices of governmental units discriminate against the elderly . . .").

Petitioners place additional reliance on Congress' consideration of a 1966 report prepared by the State of California on age discrimination in its public agencies. See Hearings on H. R. 3651 et al. before the Subcommittee on Labor of the House of Representatives Committee on Education and Labor, 90th Cong., 1st Sess., pp. 161–201 (1967) (Hearings) (reprinting State of California, Citizens' Advisory Committee on Aging, Age Discrimination in Public Agencies (1966)). Like the assorted sentences petitioners cobble together from a decade's worth of congressional reports and floor debates, the California study does not indicate that the State had engaged in any *unconstitutional* age discrimination. In fact, the report stated that the majority of the age limits uncovered in the state survey applied in the law enforcement and firefighting occupations. Hearings 168. Those age limits were not only permitted under California law at the time, see *ibid.*, but are also currently permitted under the ADEA. See 5 U. S. C. §§ 3307(d), (e); 29 U. S. C. § 623(j) (1994 ed., Supp. III). Even if the California report had uncovered a pattern of unconstitutional age discrimination in the State's public agencies at the time, it nevertheless would have been insufficient to support Congress' 1974 extension of the ADEA to every State of the Union. The report simply does not constitute "evidence that [unconstitutional age discrimination] had become a problem of national import." *Florida Prepaid*, *supra*, at 641.

Finally, the United States' argument that Congress found substantial age discrimination in the private sector, see Brief for United States 38, is beside the point. Congress made no such findings with respect to the States. Although we also have doubts whether the findings Congress did make with respect to the private sector could be extrapolated to support a finding of *unconstitutional* age discrimination in the public sector, it is sufficient for these cases to note that Congress failed to identify a widespread pattern of age dis-

crimination by the States. See *Florida Prepaid,* 527 U. S., at 640.

A review of the ADEA's legislative record as a whole, then, reveals that Congress had virtually no reason to believe that state and local governments were unconstitutionally discriminating against their employees on the basis of age. Although that lack of support is not determinative of the § 5 inquiry, *id.*, at 646; *City of Boerne, supra*, at 531–532, Congress' failure to uncover any significant pattern of unconstitutional discrimination here confirms that Congress had no reason to believe that broad prophylactic legislation was necessary in this field. In light of the indiscriminate scope of the Act's substantive requirements, and the lack of evidence of widespread and unconstitutional age discrimination by the States, we hold that the ADEA is not a valid exercise of Congress' power under § 5 of the Fourteenth Amendment. The ADEA's purported abrogation of the States' sovereign immunity is accordingly invalid.

D

Our decision today does not signal the end of the line for employees who find themselves subject to age discrimination at the hands of their state employers. We hold only that, in the ADEA, Congress did not validly abrogate the States' sovereign immunity to suits by private individuals. State employees are protected by state age discrimination statutes, and may recover money damages from their state employers, in almost every State of the Union.* Those ave-

*See Alaska Stat. Ann. § 18.80.010 *et seq.* (1998); Ariz. Rev. Stat. Ann. § 41–1401 *et seq.* (1999); Ark. Code Ann. §§ 21–3–201, 21–3–203 (1996); Cal. Govt. Code Ann. § 12900 *et seq.* (West 1992 and Supp. 1999); Colo. Rev. Stat. § 24–34–301 *et seq.* (1998); Conn. Gen. Stat. § 46a–51 *et seq.* (1999); Del. Code Ann., Tit. 19, § 710 *et seq.* (Supp. 1998); Fla. Stat. §§ 112.044, 760.01 *et seq.* (1997 and 1998 Supp.); Ga. Code Ann. § 45–19–21 *et seq.* (1990 and Supp. 1996); Haw. Rev. Stat. § 378–1 *et seq.* (1993 and Cum. Supp. 1998); Idaho Code § 67–5901 *et seq.* (1995 and Supp. 1999); Ill. Comp. Stat., ch. 775, § 5/1–101 *et seq.* (1998); Ind. Code § 22–9–2–1 *et seq.* (1993); Iowa

nues of relief remain available today, just as they were before this decision.

Because the ADEA does not validly abrogate the States' sovereign immunity, however, the present suits must be dismissed. Accordingly, the judgment of the Court of Appeals is affirmed.

*It is so ordered.*

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

Congress' power to regulate the American economy includes the power to regulate both the public and the private

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Code § 216.1 *et seq.* (1994 and Supp. 1999); Kan. Stat. Ann. § 44–1111 *et seq.* (1993 and Cum. Supp. 1998); Ky. Rev. Stat. Ann. § 344.010 *et seq.* (Michie 1997 and Supp. 1998); La. Rev. Stat. Ann. § 23:311 *et seq.* (West 1998); *id.*, § 51:2231 *et seq.* (West Supp. 1999); Me. Rev. Stat. Ann., Tit. 5, § 4551 *et seq.* (1998–1999 Supp.); Md. Ann. Code, Art. 49B, § 1 *et seq.* (1998 and Supp. 1999); Mass. Gen. Laws § 151:1 *et seq.* (1997 and 1997 Supp.); Mich. Comp. Laws § 37.2101 *et seq.* (West 1985 and Supp. 1999); Minn. Stat. § 363.01 *et seq.* (1991 and Supp. 1999); Miss. Code Ann. § 25–9–149 (1991); Mo. Rev. Stat. § 213.010 *et seq.* (1994 and Cum. Supp. 1998); Mont. Code Ann. § 49–1–101 *et seq.* (1997); Neb. Rev. Stat. § 48–1001 *et seq.* (1998); Nev. Rev. Stat. § 613.310 *et seq.* (1995); N. H. Rev. Stat. Ann. § 354–A:1 *et seq.* (1995 and Supp. 1998); N. J. Stat. Ann. §§ 10:3–1, 10:5–1 *et seq.* (West 1993 and Supp. 1999); N. M. Stat. Ann. § 28–1–1 *et seq.* (1996); N. Y. Exec. Law § 290 *et seq.* (McKinney 1993 and Supp. 1999); N. C. Gen. Stat. § 126–16 *et seq.* (1999); N. D. Cent. Code § 14–02.4–01 *et seq.* (1997 and Supp. 1999); Ohio Rev. Code Ann. § 4112.01 *et seq.* (1998); Okla. Stat., Tit. 25, § 1101 *et seq.* (1991 and Supp. 1999); Ore. Rev. Stat. § 659.010 *et seq.* (1997); 43 Pa. Cons. Stat. § 951 *et seq.* (1991 and Supp. 1999); R. I. Gen. Laws § 28–5–1 *et seq.* (1995 and Supp. 1997); S. C. Code Ann. § 1–13–10 *et seq.* (1986 and Cum. Supp. 1998); Tenn. Code Ann. § 4–21–101 *et seq.* (1998); Tex. Lab. Code Ann. § 21.001 *et seq.* (1996 and Supp. 1999); Utah Code Ann. § 34A–5–101 *et seq.* (Supp. 1999); Vt. Stat. Ann., Tit. 21, § 495 *et seq.* (1987 and Supp. 1999); Va. Code Ann. § 2.1–116.10 *et seq.* (1995 and Supp. 1999); Wash. Rev. Code § 49.60.010 *et seq.* (1994); W. Va. Code § 5–11–1 *et seq.* (1999); Wis. Stat. Ann. § 111.01 *et seq.* (West 1997 and Supp. 1998); Wyo. Stat. Ann. § 27–9–101 *et seq.* (1999).

sectors of the labor market. Federal rules outlawing discrimination in the workplace, like the regulation of wages and hours or health and safety standards, may be enforced against public as well as private employers. In my opinion, Congress' power to authorize federal remedies against state agencies that violate federal statutory obligations is coextensive with its power to impose those obligations on the States in the first place. Neither the Eleventh Amendment nor the doctrine of sovereign immunity places any limit on that power. See *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44, 165–168 (1996) (SOUTER, J., dissenting); *EEOC* v. *Wyoming*, 460 U. S. 226, 247–248 (1983) (STEVENS, J., concurring).

The application of the ancient judge-made doctrine of sovereign immunity in cases like these is supposedly justified as a freestanding limit on congressional authority, a limit necessary to protect States' "dignity and respect" from impairment by the National Government. The Framers did not, however, select the Judicial Branch as the constitutional guardian of those state interests. Rather, the Framers designed important structural safeguards to ensure that when the National Government enacted substantive law (and provided for its enforcement), the normal operation of the legislative process itself would adequately defend state interests from undue infringement. See generally Wechsler, The Political Safeguards of Federalism: The Role of the States in the Composition and Selection of the National Government, 54 Colum. L. Rev. 543 (1954).

It is the Framers' compromise giving each State equal representation in the Senate that provides the principal structural protection for the sovereignty of the several States. The composition of the Senate was originally determined by the legislatures of the States, which would guarantee that their interests could not be ignored by Congress.[1]

[1] The Federalist No. 45, p. 291 (C. Rossiter ed. 1961) (J. Madison) ("The State governments may be regarded as constituent and essential parts of the federal government . . . . The Senate will be elected absolutely and

The Framers also directed that the House be composed of Representatives selected by voters in the several States, the consequence of which is that "the states are the strategic yardsticks for the measurement of interest and opinion, the special centers of political activity, the separate geographical determinants of national as well as local politics." *Id.*, at 546.

Whenever Congress passes a statute, it does so against the background of state law already in place; the propriety of taking national action is thus measured by the metric of the existing state norms that Congress seeks to supplement or supplant.[2] The persuasiveness of any justification for overcoming legislative inertia and taking national action, either creating new federal obligations or providing for their enforcement, must necessarily be judged in reference to state interests, as expressed in existing state laws. The precise scope of federal laws, of course, can be shaped with nuanced attention to state interests. The Congress also has the authority to grant or withhold jurisdiction in lower federal courts. The burden of being haled into a federal forum for the enforcement of federal law, thus, can be expanded or contracted as Congress deems proper, which decision, like all other legislative acts, necessarily contemplates state interests. Thus, Congress can use its broad range of flexible legislative tools to approach the delicate issue of how to balance local and national interests in the

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exclusively by the State legislatures. . . . Thus, [it] will owe its existence more or less to the favor of the State governments, and must consequently feel a dependence, which is much more likely to beget a disposition too obsequious than too overbearing towards them").

[2] When Congress expanded the Age Discrimination in Employment Act of 1967 (ADEA) in 1974 to apply to public employers, all 50 States had some form of age discrimination law, but 24 of them did not extend their own laws to public employers. See App. to Brief for Respondents 1a–25a.

most responsive and careful manner.[3] It is quite evident, therefore, that the Framers did not view this Court as the ultimate guardian of the States' interest in protecting their own sovereignty from impairment by "burdensome" federal laws.[4]

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[3] Thus, the present majority's view does more than simply aggrandize the power of the Judicial Branch. It also limits Congress' options for responding with precise attention to state interests when it takes national action. The majority's view, therefore, does not bolster the Framers' plan of structural safeguards for state interests. Rather, it is fundamentally at odds with that plan. Indeed, as JUSTICE BREYER has explained, forbidding private remedies may necessitate the enlargement of the federal bureaucracy and make it more difficult "to decentralize governmental decisionmaking and to provide individual citizens, or local communities, with a variety of enforcement powers." *College Savings Bank* v. *Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U. S. 666, 705 (1999) (dissenting opinion); see also *Printz* v. *United States*, 521 U. S. 898, 976–978 (1997) (BREYER, J., dissenting).

[4] The President also plays a role in the enactment of federal law, and the Framers likewise provided structural safeguards to protect state interests in the selection of the President. The electors who choose the President are appointed in a manner directed by the state legislatures. Art. II, § 1, cl. 2. And if a majority of electors do not cast their vote for one person, then the President is chosen by the House of Representatives. "But in chusing the President" by this manner, the Constitution directs that "the Votes shall be taken *by States*, the Representatives from each State having one Vote." Art. II, § 1, cl. 3 (emphasis added); see also Amdt. 12.

Moreover, the Constitution certainly protects state interests in other ways as well, as in the provisions of Articles IV, V, and VII. My concern here, however, is with the respect for state interests safeguarded by the ordinary legislative process. The balance between national and local interests reflected in other constitutional provisions may vary, see, *e. g.*, *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S. 779 (1995), but insofar as Congress' legislative authority is concerned, the relevant constitutional provisions were crafted to ensure that the process itself adequately accounted for local interests.

I also recognize that the Judicial Branch sometimes plays a role in limiting the product of the legislative process. It may do so, for example, when the exercise of legislative authority runs up against some other con-

Federalism concerns do make it appropriate for Congress to speak clearly when it regulates state action. But when it does so, as it has in these cases,[5] we can safely presume that the burdens the statute imposes on the sovereignty of the several States were taken into account during the deliberative process leading to the enactment of the measure. Those burdens necessarily include the cost of defending against enforcement proceedings and paying whatever penalties might be incurred for violating the statute. In my judgment, the question whether those enforcement proceedings should be conducted exclusively by federal agencies, or may be brought by private parties as well, is a matter of policy for Congress to decide. In either event, once Congress has made its policy choice, the sovereignty concerns of the several States are satisfied, and the federal interest in evenhanded enforcement of federal law, explicitly endorsed in Article VI of the Constitution, does not countenance further limitations. There is not a word in the text of the Constitution supporting the Court's conclusion that the judge-made doctrine of sovereign immunity limits Congress' power to authorize private parties, as well as federal agencies, to enforce federal law against the States. The importance of respecting the Framers' decision to assign the business of lawmaking to the Congress dictates firm resistance to the present majority's repeated substitution of its own views of federalism for those expressed in statutes enacted by the Congress and signed by the President.

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stitutional command. See *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44, 166–167 (1996) (SOUTER, J., dissenting). But in those instances, courts are not crafting wholly judge-made doctrines unrelated to any constitutional text, nor are they doing so solely under the guise of the necessity of safeguarding state interests.

[5] Because Congress has clearly expressed its intention to subject States to suits by private parties under the ADEA, I join Part III of the opinion of the Court.

The Eleventh Amendment simply does not support the Court's view. As has been stated before, the Amendment only places a textual limitation on the diversity jurisdiction of the federal courts. See *Atascadero State Hospital* v. *Scanlon*, 473 U. S. 234, 286–289 (1985) (Brennan, J., dissenting). Because the Amendment is a part of the Constitution, I have never understood how its limitation on the diversity jurisdiction of federal courts defined in Article III could be "abrogated" by an Act of Congress. *Seminole Tribe*, 517 U. S., at 93 (STEVENS, J., dissenting). Here, however, private petitioners did not invoke the federal courts' diversity jurisdiction; they are citizens of the same State as the defendants and they are asserting claims that arise under federal law. Thus, today's decision (relying as it does on *Seminole Tribe*) rests entirely on a novel judicial interpretation of the doctrine of sovereign immunity,[6] which the Court treats as though it were a constitutional precept. It is nevertheless clear to me that if Congress has the power to create the federal rights that these petitioners are asserting, it must also have the power to give the federal courts jurisdiction to remedy violations of those rights, even if it is necessary to "abrogate" the Court's "Eleventh Amendment" version of the common-law defense of sovereign immunity to do so. That is the essence of the Court's holding in *Pennsylvania* v. *Union Gas Co.*, 491 U. S. 1, 13–23 (1989).

I remain convinced that *Union Gas* was correctly decided and that the decision of five Justices in *Seminole Tribe* to overrule that case was profoundly misguided. Despite my respect for *stare decisis*, I am unwilling to accept *Seminole Tribe* as controlling precedent. First and foremost, the reasoning of that opinion is so profoundly mistaken and so

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[6] Under the traditional view, the sovereign immunity defense was recognized only as a matter of comity when asserted in the courts of another sovereign, rather than as a limitation on the jurisdiction of that forum. See *Schooner Exchange* v. *McFaddon*, 7 Cranch 116, 136 (1812) (Marshall, C. J.); *Nevada* v. *Hall*, 440 U. S. 410, 414–418 (1979).

fundamentally inconsistent with the Framers' conception of the constitutional order that it has forsaken any claim to the usual deference or respect owed to decisions of this Court. *Stare decisis*, furthermore, has less force in the area of constitutional law. See, *e. g.*, *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393, 406–410 (1932) (Brandeis, J., dissenting). And in this instance, it is but a hollow pretense for any State to seek refuge in *stare decisis*' protection of reliance interests. It cannot be credibly maintained that a State's ordering of its affairs with respect to potential liability under federal law requires adherence to *Seminole Tribe*, as that decision leaves open a State's liability upon enforcement of federal law by federal agencies. Nor can a State find solace in the *stare decisis* interest of promoting "the evenhanded . . . and consistent development of legal principles." *Payne* v. *Tennessee*, 501 U. S. 808, 827 (1991). That principle is perverted when invoked to rely on sovereign immunity as a defense to deliberate violations of settled federal law. Further, *Seminole Tribe* is a case that will unquestionably have serious ramifications in future cases; indeed, it has already had such an effect, as in the Court's decision today and in the equally misguided opinion of *Alden* v. *Maine*, 527 U. S. 706 (1999). Further still, the *Seminole Tribe* decision unnecessarily forces the Court to resolve vexing questions of constitutional law respecting Congress' § 5 authority. Finally, by its own repeated overruling of earlier precedent, the majority has itself discounted the importance of *stare decisis* in this area of the law.[7] The kind of judicial activism manifested in cases like *Seminole Tribe*,

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[7] See, *e. g.*, *College Savings Bank* v. *Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U. S., at 675–683 (overruling *Parden* v. *Terminal R. Co. of Ala. Docks Dept.*, 377 U. S. 184 (1964)); *Seminole Tribe*, 517 U. S., at 63–73 (overruling *Pennsylvania* v. *Union Gas Co.*, 491 U. S. 1 (1989)); *Pennhurst State School and Hospital* v. *Halderman*, 465 U. S. 89, 127, 132–137 (1984) (STEVENS, J., dissenting) ("[T]he Court repudiates at least 28 cases, spanning well over a century of this Court's jurisprudence").

*Alden* v. *Maine*, *Florida Prepaid Postsecondary Ed. Expense Bd.* v. *College Savings Bank*, 527 U. S. 627 (1999), and *College Savings Bank* v. *Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U. S. 666 (1999), represents such a radical departure from the proper role of this Court that it should be opposed whenever the opportunity arises.

Accordingly, I respectfully dissent.

JUSTICE THOMAS, with whom JUSTICE KENNEDY joins, concurring in part and dissenting in part.

In *Atascadero State Hospital* v. *Scanlon*, 473 U. S. 234 (1985), this Court, cognizant of the impact of an abrogation of the States' Eleventh Amendment immunity from suit in federal court on "the usual constitutional balance between the States and the Federal Government," reaffirmed that "Congress may abrogate . . . only by making its intention unmistakably clear in the language of the statute." *Id.*, at 242. This rule "'assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision.'" *Will* v. *Michigan Dept. of State Police*, 491 U. S. 58, 65 (1989) (quoting *United States* v. *Bass*, 404 U. S. 336, 349 (1971)). And it is especially applicable when this Court deals with a statute like the Age Discrimination in Employment Act of 1967 (ADEA), whose substantive mandates extend to "elevator operators, janitors, charwomen, security guards, secretaries, and the like in every office building in a State's governmental hierarchy." *Employees of Dept. of Public Health and Welfare of Mo.* v. *Department of Public Health and Welfare of Mo.*, 411 U. S. 279, 285 (1973). Because I think that Congress has not made its intention to abrogate "unmistakably clear" in the text of the ADEA, I respectfully dissent from Part III of the Court's opinion.[1]

[1] I concur in Parts I, II, and IV of the Court's opinion because I agree that the purported abrogation of the States' Eleventh Amendment immunity in the ADEA falls outside Congress' §5 enforcement power.

## I

It is natural to begin the clear statement inquiry by examining those provisions that reside within the four corners of the Act in question. Private petitioners and the government correctly observe that the ADEA's substantive provisions extend to the States as employers, see 29 U. S. C. § 623(a) (providing that "[i]t shall be unlawful for an employer" to engage in certain age discriminatory practices); § 630(b) (defining "employer" to include "a State or a political subdivision of a State"); § 630(f) (defining "employee" as "an individual employed by any employer"), and that the ADEA establishes an individual right-of-action provision for "aggrieved" persons, see § 626(c)(1) ("Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter"). Since, in the case of a state employee, the only possible defendant is the State, it is submitted that Congress clearly expressed its intent that a state employee may qualify as a "person aggrieved" under § 626(c)(1) and bring suit against his state employer in federal court.

While the argument may have some logical appeal, it is squarely foreclosed by precedent—which explains the Court's decision to employ different reasoning in finding a clear statement, see *ante*, at 73. In *Employees*, we confronted the pre-1974 version of the Fair Labor Standards Act of 1938 (FLSA), which clearly extended as a substantive matter to state employers, and included the following private right-of-action provision: "'Action to recover such liability may be maintained in any court of competent jurisdiction.'" *Employees*, *supra*, at 283 (quoting 29 U. S. C. § 216(b) (1970 ed.)). We held that this language fell short of a clear statement of Congress' intent to abrogate. The FLSA's substantive coverage of state employers could be given meaning through enforcement by the Secretary of Labor, which would raise no Eleventh Amendment issue, 411 U. S., at 285–286, and we were "reluctant to believe that Congress in pursuit

of a harmonious federalism desired to treat the States so harshly" by abrogating their Eleventh Amendment immunity, *id.*, at 286. See also, *e. g.*, *Dellmuth* v. *Muth*, 491 U. S. 223, 228 (1989) (holding that Congress had not clearly stated its intent to abrogate in a statute that authorized "parties aggrieved . . . to 'bring a civil action . . . in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy' ") (quoting 20 U. S. C. § 1415(e)(2) (1982 ed.)).

The ADEA is no different from the version of the FLSA we examined in *Employees*. It unquestionably extends as a substantive matter to state employers, but does not mention States in its right-of-action provision: "Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter." 29 U. S. C. § 626(c)(1). This provision simply does not reveal Congress' attention to the augmented liability and diminished sovereignty concomitant to an abrogation of Eleventh Amendment immunity. "Congress, acting responsibly, would not be presumed to take such action silently." *Employees*, *supra*, at 284–285.

## II

Perhaps recognizing the obstacle posed by *Employees*, private petitioners and the Government contend that the ADEA incorporates a clear statement from the FLSA. The ADEA's incorporating reference, which has remained constant since the enactment of the ADEA in 1967, provides: "The provisions of this chapter shall be enforced in accordance with the powers, remedies, and procedures provided in sections 211(b), 216 (except for subsection (a) thereof), and 217 of this title, and subsection (c) of this section." 29 U. S. C. § 626(b). It is argued that § 216(b)—one of the incorporated provisions from the FLSA—unequivocally abrogates the States' immunity from suit in federal court. That section states in relevant part that "[a]n action

to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction." 29 U. S. C. § 216(b).

But, as noted in the above discussion of *Employees*, § 216(b) was not always so worded. At the time the ADEA was enacted in 1967, a relatively sparse version of § 216(b)—which *Employees* held insufficient to abrogate the States' immunity—provided that an "[a]ction to recover such liability may be maintained in any court of competent jurisdiction." 29 U. S. C. § 216(b) (1964 ed.). It was not until 1974 that Congress modified § 216(b) to its current formulation. Fair Labor Standards Amendments of 1974 (1974 Amendments), § 6(d)(1), 88 Stat. 61.

This sequence of events suggests, in my view, that we should approach with circumspection any theory of "clear statement by incorporation." Where Congress amends an Act whose provisions are incorporated by other Acts, the bill under consideration does not necessarily mention the incorporating references in those other Acts, and so fails to inspire confidence that Congress has deliberated on the consequences of the amendment for the other Acts. That is the case here. The legislation that amended § 216(b), § 6(d)(1) of the 1974 Amendments, did not even acknowledge § 626(b). And, given the purpose of the clear statement rule to "'assur[e] that the legislature has in fact faced'" the issue of abrogation, *Will*, 491 U. S., at 65 (quoting *Bass*, 404 U. S., at 349), I am unwilling to indulge the fiction that Congress, when it amended § 216(b), recognized the consequences for a separate Act (the ADEA) that incorporates the amended provision.

To be sure, § 28 of the 1974 Amendments, 88 Stat. 74, did modify certain provisions of the ADEA, which might suggest that Congress understood the impact of § 6(d)(1) on the ADEA. See *ante*, at 76. But § 6(d)(2)(A), another of the 1974 Amendments, suggests just the opposite. Section

6(d)(2)(A) added to the statute of limitations provision of the FLSA, 29 U. S. C. § 255, a new subsection (d), which suspended the running of the statutory periods of limitation on "any cause of action brought under section 16(b) of the [FLSA, 29 U. S. C. § 216(b)] . . . on or before April 18, 1973," the date *Employees* was decided, until "one hundred and eighty days after the effective date of [the 1974 Amendments]." The purpose of this new subsection—revealed not only by its reference to the date *Employees* was decided, but also by its exception for actions in which "judgment has been entered for the defendant on the grounds other than State immunity from Federal jurisdiction"—was to allow FLSA plaintiffs who had been frustrated by state defendants' invocation of Eleventh Amendment immunity under *Employees* to avail themselves of the newly amended § 216(b).[2] It appears, however, that Congress was oblivious to the impact of § 6(d)(2)(A) on the ADEA. The new § 255(d), by operation of § 7(e) of the ADEA, 29 U. S. C. § 626(e) (1988 ed.) ("Sectio[n] 255 . . . of this title shall apply to actions under this chapter"),[3] automatically became part of the ADEA in 1974. And yet the new § 255(d) could have no possible application to the ADEA because, as the Court observes, *ante*, at 76 (citing § 28(a) of the 1974 Amendments), the ADEA's substantive mandates did not even apply to the States until the 1974 Amendments. Thus, before 1974,

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[2] That Congress had this purpose in mind as to the FLSA does not mean that the product of Congress' efforts—the amended § 216(b)—qualifies as a clear statement. The amended § 216(b)'s description of the forum as "any Federal . . . court of *competent* jurisdiction," 29 U. S. C. § 216(b) (emphasis added), is ambiguous insofar as a federal court might not be "competent" unless the state defendant consents to suit. See *infra*, at 108–109. My present point is simply that, even assuming the amended § 216(b) qualifies as a clear statement, the 1974 Congress likely did not contemplate the impact of the new § 216(b) on the ADEA.

[3] The ADEA was amended in 1991 to remove the incorporating reference. See Civil Rights Act of 1991, § 115, 105 Stat. 1079, 29 U. S. C. § 626(e).

there were no ADEA suits against States that could be affected by § 255(d)'s tolling provision. If Congress had recognized this "overinclusiveness" problem, it likely would have amended § 626(e) to incorporate only §§ 255(a)–(c). Cf. § 626(b) (incorporating "the powers, remedies, and procedures provided in sectio[n] . . . 216 *(except for subsection (a) thereof")* (emphasis added)). But since Congress did not do so, we are left to conclude that Congress did not clearly focus on the impact of § 6(d)(2)(A) on the ADEA. And Congress' insouciance with respect to the impact of § 6(d)(2)(A) suggests that Congress was similarly inattentive to the impact of § 6(d)(1).

Insofar as § 6(d)(2)(A) is closer to § 6(d)(1) in terms of space and purpose than is § 28, the implication I would draw from § 6(d)(2)(A) almost certainly outweighs the inference the Court would draw from § 28. In any event, the notion that § 28 of the 1974 Amendments evidences Congress' awareness of every last ripple those amendments might cause in the ADEA is at best a permissible inference, not "the unequivocal declaration which . . . is necessary before we will determine that Congress intended to exercise its powers of abrogation." *Dellmuth*, 491 U. S., at 232.

The Court advances a more general critique of my approach, explaining that "we have never held that Congress must speak with different gradations of clarity depending on the specific circumstances of the relevant legislation . . . ." *Ante*, at 76. But that descriptive observation, with which I agree, is hardly probative in light of the fact that a "clear statement by incorporation" argument has not to date been presented to this Court. I acknowledge that our previous cases have not required a clear statement to appear within a single section or subsection of an Act. *Pennsylvania* v. *Union Gas Co.*, 491 U. S. 1, 7–10 (1989), overruled on other grounds, *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44 (1996); see also *id.*, at 56–57 (confirming clear statement in one statutory subsection by looking to provisions in other

subsection). Nor have our cases required that such separate sections or subsections of an Act be passed at the same time. *Union Gas, supra,* at 7–13, and n. 2 (consulting original provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and 1986 amendments to that Act). But, even accepting *Union Gas* to be correctly decided, I do not think the situation where Congress amends an incorporated provision is analogous to *Union Gas.* In the *Union Gas* setting, where the later Congress actually amends the earlier enacted Act, it is reasonable to assume that the later Congress focused on each of the various provisions, whether new or old, that combine to express an intent to abrogate.

## III

Even if a clarifying amendment to an incorporated provision might sometimes provide a clear statement to abrogate for purposes of the Act into which the provision is incorporated, this is not such a case for two reasons. First, § 626(b) does not clearly incorporate the part of § 216(b) that establishes a private right of action against employers. Second, even assuming § 626(b) incorporates § 216(b) in its entirety, § 216(b) itself falls short of an "unmistakably clear" expression of Congress' intent to abrogate the States' Eleventh Amendment immunity from suit in federal court.

### A

I do not dispute that § 626(b) incorporates into the ADEA some provisions of § 216(b). But it seems to me at least open to debate whether § 626(b) incorporates the portion of § 216(b) that creates an individual private right of action, for the ADEA already contains its own private right-of-action provision—§ 626(c)(1). See *McKennon* v. *Nashville Banner Publishing Co.*, 513 U. S. 352, 358 (1995) ("The ADEA . . . contains a vital element found in both Title VII and the Fair Labor Standards Act: It grants an injured employee a

right of action to obtain the authorized relief. 29 U. S. C. § 626(c)"); 1 B. Lindemann & P. Grossman, Employment Discrimination Law 573–574 (3d ed. 1996) ("The ADEA grants any aggrieved person the right to sue for legal or equitable relief that will effectuate the purposes of the Act" (citing § 626(c)(1)) (footnote omitted)). While the right-of-action provisions in §§ 626(c) and 216(b) are not identically phrased, compare § 626(c)(1) ("Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter"), with § 216(b) ("An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction . . ."), they are certainly similar in function.

Indeed, if § 216(b)'s private right-of-action provision were incorporated by § 626(b) and hence available to ADEA plaintiffs, the analogous right of action established by § 626(c)(1) would be wholly superfluous—an interpretive problem the Court does not even pause to acknowledge. To avoid the overlap, one might read the ADEA to create an *exclusive* private right of action in § 626(c)(1), and then to add various embellishments, whether from elsewhere in the ADEA, see § 626(c)(2) (trial by jury), or from the incorporated parts of the FLSA, see, *e. g.*, § 216(b) (collective actions); *ibid.* (attorney's fees); *ibid.* (liquidated damages).[4]

Of course the Court's interpretation—that an ADEA plaintiff may choose § 626(c)(1) or § 216(b) as the basis for his private right of action—is also plausible. "But such a permissible inference, whatever its logical force, would remain just that: a permissible inference. It would not be the unequivocal declaration which . . . is necessary before we will determine that Congress intended to exercise its powers

[4] The ADEA expressly limits this last remedy to "cases of willful violations." 29 U. S. C. § 626(b); see *Lorillard* v. *Pons*, 434 U. S. 575, 581 (1978).

of abrogation." *Dellmuth*, 491 U. S., at 232. Apparently cognizant of this rule, the Court resorts to extrinsic evidence: our prior decisions. See, *e. g.*, *ante*, at 74 ("'[T]he ADEA incorporates enforcement provisions of the Fair Labor Standards Act of 1938, and provides that the ADEA shall be enforced using certain of the powers, remedies, and procedures of the FLSA'" (alteration in original)) (quoting *Hoffmann-La Roche Inc.* v. *Sperling*, 493 U. S. 165, 167 (1989) (citations omitted)). But judicial opinions, especially those issued subsequent to the enactments in question, have no bearing on whether *Congress* has clearly stated its intent to abrogate in the text of the statute. How could they, given that legislative history—which at least antedates the enactments under review—is "irrelevant to a judicial inquiry into whether Congress intended to abrogate the Eleventh Amendment"? *Dellmuth*, *supra*, at 230. In any event, *Hoffmann-La Roche*, which did not present the question of a State's Eleventh Amendment immunity,[5] is perfectly consistent with the view that the ADEA incorporates only "extras" from the FLSA, not overlapping provisions. *Hoffmann-La Roche* involved the ADEA's incorporation of the FLSA's authorization of collective actions, which *follows* § 216(b)'s individual private right-of-action provision, see § 216(b) ("An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one

[5] That the *Hoffmann-La Roche* Court did not consider § 216(b)'s implications for the Eleventh Amendment clear statement rule is apparent from its selective quotation of § 216(b)—omitting the words "(including a public agency)." See 493 U. S., at 167–168 ("This controversy centers around one of the provisions the ADEA incorporates, which states, in pertinent part, that an action 'may be maintained against any employer . . . in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated'" (alteration in original)) (quoting 29 U. S. C. § 216(b) (1982 ed.)).

or more employees for and in behalf of himself or themselves *and other employees similarly situated*" (emphasis added)), and so may be viewed as falling outside the overlap described above.[6]

B

Even if § 626(b) incorporates § 216(b)'s individual right-of-action provision, that provision itself falls short of "unmistakable" clarity insofar as it describes the forum for suit as "any Federal or State court of *competent* jurisdiction." § 216(b) (emphasis added). For it may be that a federal court is not "competent" under the Eleventh Amendment to adjudicate a suit by a private citizen against a State unless the State consents to the suit. As we explained in *Employees*, "[t]he history and tradition of the Eleventh Amendment indicate that by reason of that barrier a federal court is not *competent* to render judgment against a *nonconsenting* State." 411 U. S., at 284 (emphasis added). The Court suggests, *ante*, at 76–77, that its ability to distinguish a single precedent, *ante*, at 75–76 (discussing *Kennecott Copper Corp.* v. *State Tax Comm'n*, 327 U. S. 573 (1946)), illuminates this aspect of § 216(b). But the Court neither acknowledges what *Employees* had to say on this point nor explains why it follows from the modern § 216(b)'s clarity *relative* to the old § 216(b) that the modern § 216(b) is clear enough as an *absolute* matter to satisfy the *Atascadero* rule, which requires "unmistakable" clarity.

That is not to say that *the FLSA as a whole* lacks a clear statement of Congress' intent to abrogate. Section 255(d)

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[6] The other two cases upon which the Court relies, see *ante*, at 74–75 (citing *McKennon* v. *Nashville Banner Publishing Co.*, 513 U. S. 352, 357 (1995), and *Lorillard* v. *Pons*, *supra*, at 582), are also consistent with the view that the ADEA incorporates only "extras" from the FLSA, not overlapping provisions. In neither case did we consider whether the ADEA incorporates the part of § 216(b) that creates a private action "against any employer (including a public agency) in any Federal or State court of competent jurisdiction."

elucidates the ambiguity within § 216(b). Section 255(d), it will be recalled, suspended the running of the statute of limitations on actions under § 216(b) brought against a State or political subdivision on or before April 18, 1973 (the date *Employees* was decided) until "one hundred and eighty days after the effective date of the [1974 Amendments], except that such suspension shall not be applicable if in such action judgment has been entered for the defendant on the grounds other than *State immunity from Federal jurisdiction.*" § 255(d) (emphasis added). As I explained in Part II,[7] however, not only does § 255(d) on its face apply only to the FLSA, but Congress' failure to amend the ADEA's general incorporation of § 255, 29 U. S. C. § 626(e) (1988 ed.), strongly suggests that Congress paid scant attention to the impact of § 255(d) upon the ADEA. Accordingly, I cannot accept the notion that § 255(d) furnishes clarifying guidance in interpreting § 216(b) for ADEA purposes, whatever assistance it might provide to a construction of § 216(b) for FLSA purposes.[8]

* * *

For these reasons, I respectfully dissent from Part III of the Court's opinion.

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[7] *Supra*, at 101–105.

[8] While § 255 once was incorporated by the ADEA, see § 7(e), 81 Stat. 605, 29 U. S. C. § 626(e) (1988 ed.), the ADEA was amended in 1991 to remove the incorporating reference, see Civil Rights Act of 1991, § 115, 105 Stat. 1079, 29 U. S. C. § 626(e). The current "unavailability" of § 255(d) for ADEA purposes perhaps explains why the Court, which purports to examine only the statute in its current form, *ante*, at 76, does not rely on § 255(d). But, as I have explained, without the light § 255(d) sheds on § 216(b), § 216(b) falls short of a clear statement of Congress' intent to abrogate.

Syllabus

# NEW YORK *v.* HILL

## CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

No. 98–1299. Argued November 2, 1999—Decided January 11, 2000

New York lodged a detainer against respondent, an Ohio prisoner, under the Interstate Agreement on Detainers (IAD). Respondent signed a request for disposition of the detainer pursuant to IAD Article III and was returned to New York to face murder and robbery charges. Article III(a) provides, *inter alia,* that, upon such a request, the prisoner must be brought to trial within 180 days, "provided that for good cause shown . . . , the prisoner or his counsel being present, the court . . . may grant any necessary or reasonable continuance." Although respondent's counsel initially agreed to a trial date set beyond the 180-day period, respondent subsequently moved to dismiss the indictment, arguing that the IAD's time limit had expired. In denying the motion, the trial court concluded that defense counsel's explicit agreement to the trial date constituted a waiver or abandonment of respondent's IAD rights. After respondent was convicted of both charges, the New York Supreme Court, Appellate Division, affirmed the trial court's refusal to dismiss for lack of a timely trial. The State Court of Appeals, however, reversed and ordered that the indictment be dismissed; counsel's agreement to a later trial date, it held, did not waive respondent's IAD speedy trial rights.

*Held:* Defense counsel's agreement to a trial date outside the IAD period bars the defendant from seeking dismissal on the ground that trial did not occur within that period. This Court has articulated a general rule that presumes the availability of waiver, *United States* v. *Mezzanatto,* 513 U. S. 196, 200–201, and has recognized that the most basic rights of criminal defendants are subject to waiver, *Peretz* v. *United States,* 501 U. S. 923, 936. For certain fundamental rights, the defendant must personally make an informed waiver, but scheduling matters are plainly among those for which agreement by counsel generally controls. Requiring the defendant's express assent for routine and often repetitive scheduling determinations would consume time to no apparent purpose. The text of the IAD, by allowing the court to grant "good-cause continuances" when either "prisoner *or his counsel*" is present, contemplates that scheduling questions may be left to counsel. Art. III(a) (emphasis added). The Court rejects respondent's arguments for affirmance: (1) that the IAD's provision for "good-cause continuances" is the sole means for extending the time period; (2) that the defendant

should not be allowed to waive the time limits given that they benefit not only the defendant but society generally; and (3) that waiver of the IAD's time limits can be effected only by an affirmative request for treatment contrary to, or inconsistent with, those limits. Pp. 114–118.

92 N. Y. 2d 406, 704 N. E. 2d 542, reversed.

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

*Robert Mastrocola* argued the cause for petitioner. With him on the briefs was *Howard R. Relin.*

*Lisa Schiavo Blatt* argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Solicitor General Waxman*, *Assistant Attorney General Robinson*, and *Deputy Solicitor General Dreeben.*

*Brian Shiffrin* argued the cause for respondent. With him on the brief were *Edward John Nowak*, by appointment of the Court, 527 U. S. 1002, and *Stephen J. Bird.*

JUSTICE SCALIA delivered the opinion of the Court.

This case presents the question whether defense counsel's agreement to a trial date outside the time period required by Article III of the Interstate Agreement on Detainers bars the defendant from seeking dismissal because trial did not occur within that period.

## I

The Interstate Agreement on Detainers (IAD) is a compact entered into by 48 States, the United States, and the District of Columbia to establish procedures for resolution of one State's outstanding charges against a prisoner of another State. See N. Y. Crim. Proc. Law § 580.20 (McKinney 1995); 18 U. S. C. App. § 2; 11A U. L. A. 48 (1995) (listing jurisdictions). As "a congressionally sanctioned interstate compact" within the Compact Clause of the United States Constitution, Art. I, § 10, cl. 3, the IAD is a federal law subject to federal construction. *Carchman* v. *Nash*, 473 U. S. 716, 719 (1985); *Cuyler* v. *Adams*, 449 U. S. 433, 442 (1981).

A State seeking to bring charges against a prisoner in another State's custody begins the process by filing a detainer, which is a request by the State's criminal justice agency that the institution in which the prisoner is housed hold the prisoner for the agency or notify the agency when release is imminent. *Fex* v. *Michigan*, 507 U. S. 43, 44 (1993). After a detainer has been lodged against him, a prisoner may file a "request for a final disposition to be made of the indictment, information, or complaint." Art. III(a). Upon such a request, the prisoner "shall be brought to trial within one hundred eighty days," "provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance." *Ibid.* Resolution of the charges can also be triggered by the charging jurisdiction, which may request temporary custody of the prisoner for that purpose. Art. IV(a). In such a case, "trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state," subject again to continuances for good cause shown in open court. Art. IV(c). If a defendant is not brought to trial within the applicable statutory period, the IAD requires that the indictment be dismissed with prejudice. Art. V(c).

In this case, New York lodged a detainer against respondent, who was a prisoner in Ohio. Respondent signed a request for disposition of the detainer pursuant to Article III of the IAD, and was returned to New York to face murder and robbery charges. Defense counsel filed several motions, which, it is uncontested, tolled the time limits during their pendency.

On January 9, 1995, the prosecutor and defense counsel appeared in court to set a trial date. The following colloquy ensued:

> "[Prosecutor]: Your Honor, [the regular attorney] from our office is engaged in a trial today. He told me that

> the Court was to set a trial date today. I believe the Court may have preliminarily discussed a May 1st date, and [the regular attorney] says that would fit in his calendar.
>
> "The Court: How is that with the defense counsel?
>
> "[Defense Counsel]: That will be fine, Your Honor." 164 Misc. 2d 1032, 1035, 627 N. Y. S. 2d 234, 236 (Cty. Ct., Monroe County 1995).

The court scheduled trial to begin on May 1.

On April 17, 1995, respondent moved to dismiss the indictment, arguing that the IAD's time limit had expired. The trial court found that as of January 9, 1995, when the trial date was set, 167 nonexcludable days had elapsed, so that if the subsequent time period was chargeable to the State, the 180-day time period had indeed expired. However, the trial court concluded that "[d]efense counsel's explicit agreement to the trial date set beyond the 180 day statutory period constituted a waiver or abandonment of defendant's rights under the IAD." *Id.*, at 1036, 627 N. Y. S. 2d, at 237. Accordingly, the court denied respondent's motion to dismiss.

Respondent was subsequently convicted, following a jury trial, of murder in the second degree and robbery in the first degree. On appeal, respondent argued that the trial court erred in declining to dismiss the indictment for lack of a timely trial under the IAD. The New York Supreme Court, Appellate Division, affirmed the decision of the trial court. 244 App. Div. 2d 927, 668 N. Y. S. 2d 126 (1997). The New York Court of Appeals, however, reversed and ordered that the indictment against respondent be dismissed; defense counsel's agreement to a later trial date, it held, did not waive respondent's speedy trial rights under the IAD. 92 N. Y. 2d 406, 704 N. E. 2d 542 (1998). We granted certiorari. 526 U. S. 1111 (1999).

## II

No provision of the IAD prescribes the effect of a defendant's assent to delay on the applicable time limits. We have, however, "in the context of a broad array of constitutional and statutory provisions," articulated a general rule that presumes the availability of waiver, *United States* v. *Mezzanatto*, 513 U. S. 196, 200–201 (1995), and we have recognized that "[t]he most basic rights of criminal defendants are . . . subject to waiver," *Peretz* v. *United States*, 501 U. S. 923, 936 (1991). In accordance with these principles, courts have agreed that a defendant may, at least under some circumstances, waive his right to object to a given delay under the IAD, although they have disagreed on what is necessary to effect a waiver. See, *e. g.*, *People* v. *Jones*, 197 Mich. App. 76, 80, 495 N. W. 2d 159, 160 (1992) (waiver if prisoner "either expressly or impliedly, agrees or requests to be treated in a manner contrary to the terms of the IAD"); *Brown* v. *Wolff*, 706 F. 2d 902, 907 (CA9 1983) (waiver if prisoner "affirmatively requests to be treated in a manner contrary to the procedures prescribed by the IAD"); *Drescher* v. *Superior Ct.*, 218 Cal. App. 3d 1140, 1148, 267 Cal. Rptr. 661, 666 (1990) (waiver if there is a "showing of record that the defendant or his attorney freely acquiesced in a trial date beyond the speedy trial period" (internal quotation marks omitted)).

What suffices for waiver depends on the nature of the right at issue. "[W]hether the defendant must participate personally in the waiver; whether certain procedures are required for waiver; and whether the defendant's choice must be particularly informed or voluntary, all depend on the right at stake." *United States* v. *Olano*, 507 U. S. 725, 733 (1993). For certain fundamental rights, the defendant must personally make an informed waiver. See, *e. g.*, *Johnson* v. *Zerbst*, 304 U. S. 458, 464–465 (1938) (right to counsel); *Brookhart* v. *Janis*, 384 U. S. 1, 7–8 (1966) (right to plead not guilty). For other rights, however, waiver may be effected by action of counsel. "Although there are basic rights that the attorney

cannot waive without the fully informed and publicly acknowledged consent of the client, the lawyer has—and must have—full authority to manage the conduct of the trial." *Taylor* v. *Illinois*, 484 U. S. 400, 417–418 (1988). As to many decisions pertaining to the conduct of the trial, the defendant is "deemed bound by the acts of his lawyer-agent and is considered to have 'notice of all facts, notice of which can be charged upon the attorney.' " *Link* v. *Wabash R. Co.*, 370 U. S. 626, 634 (1962) (quoting *Smith* v. *Ayer*, 101 U. S. 320, 326 (1880)). Thus, decisions by counsel are generally given effect as to what arguments to pursue, see *Jones* v. *Barnes*, 463 U. S. 745, 751 (1983), what evidentiary objections to raise, see *Henry* v. *Mississippi*, 379 U. S. 443, 451 (1965), and what agreements to conclude regarding the admission of evidence, see *United States* v. *McGill*, 11 F. 3d 223, 226–227 (CA1 1993). Absent a demonstration of ineffectiveness, counsel's word on such matters is the last.

Scheduling matters are plainly among those for which agreement by counsel generally controls. This case does not involve a purported prospective waiver of all protection of the IAD's time limits or of the IAD generally, but merely agreement to a specified delay in trial. When that subject is under consideration, only counsel is in a position to assess the benefit or detriment of the delay to the defendant's case. Likewise, only counsel is in a position to assess whether the defense would even be prepared to proceed any earlier. Requiring express assent from the defendant himself for such routine and often repetitive scheduling determinations would consume time to no apparent purpose. The text of the IAD, moreover, confirms what the reason of the matter suggests: In allowing the court to grant "good-cause continuances" when either "prisoner *or his counsel*" is present, it contemplates that scheduling questions may be left to counsel. Art. III(a) (emphasis added).

Respondent offers two arguments for affirmance, both of which go primarily to the propriety of allowing waiver of

any sort, not to the specifics of the waiver here. First, he argues that by explicitly providing for the grant of "good-cause continuances," the IAD seeks to limit the situations in which delay is permitted, and that permitting other extensions of the time period would override those limitations. It is of course true that waiver is not appropriate when it is inconsistent with the provision creating the right sought to be secured. *E. g., Crosby* v. *United States*, 506 U. S. 255, 258–259 (1993); *Smith* v. *United States*, 360 U. S. 1, 9 (1959). That is not, however, the situation here. To be sure, the "necessary or reasonable continuance" provision is, by clear implication, the sole means by which the prosecution can obtain an extension of the time limits over the defendant's objection. But the specification in that provision that the "prisoner or his counsel" must be present suggests that it is directed primarily, if not indeed exclusively, to prosecution requests that have not explicitly been agreed to by the defense. As applied to agreed-upon extensions, we think its negative implication is dubious—and certainly not clear enough to constitute the "affirmative indication" required to overcome the ordinary presumption that waiver is available. *Mezzanatto, supra,* at 201.[1]

Second, respondent argues that the IAD benefits not only the defendant but society generally, and that the defendant may not waive society's rights. It is true that a "right conferred on a private party, but affecting the public interest, may not be waived or released *if such waiver or release contravenes the statutory policy.*" *Brooklyn Savings Bank* v. *O'Neil*, 324 U. S. 697, 704 (1945) (emphasis added). The

[1] It was suggested at oral argument that agreement in open court to a trial date outside the allowable time period can itself be viewed as a "necessary or reasonable continuance" for "good cause shown in open court." Although an agreed-upon trial date might sometimes merit this description, it is far from clear that it always does so, or that it does so here. Because we find waiver, we do not consider under what circumstances an agreed-upon delay could fit within the good-cause provision.

conditional clause is essential, however: It is *not* true that any private right that also benefits society cannot be waived. In general, "[i]n an adversary system of criminal justice, the public interest in the administration of justice is protected by the participants in the litigation." *Gannett Co.* v. *DePasquale*, 443 U. S. 368, 383 (1979). We allow waiver of numerous constitutional protections for criminal defendants that also serve broader social interests. See, *e. g.*, *Adams* v. *United States ex rel. McCann*, 317 U. S. 269, 275 (1942) (waiver of right to jury trial); *Johnson*, 304 U. S., at 464 (waiver of right to counsel).

Society may well enjoy some benefit from the IAD's time limits: Delay can lead to a less accurate outcome as witnesses become unavailable and memories fade. See, *e. g.*, *Sibron* v. *New York*, 392 U. S. 40, 56–57 (1968). On the other hand, some social interests served by prompt trial are less relevant here than elsewhere. For example, because the would-be defendant is already incarcerated in another jurisdiction, society's interests in assuring the defendant's presence at trial and in preventing further criminal activity (or avoiding the costs of pretrial detention) are simply not at issue. Cf. *Barker* v. *Wingo*, 407 U. S. 514, 519 (1972). In any case, it cannot be argued that society's interest in the prompt resolution of outstanding charges is so central to the IAD that it is part of the unalterable "statutory policy," *Brooklyn Savings Bank*, *supra*, at 704. In fact, the time limits do not apply at all unless either the prisoner or the receiving State files a request.[2] Thus, the IAD "contemplate[s] a de-

[2] This feature, among others, makes respondent's analogy to the federal Speedy Trial Act of 1974, 18 U. S. C. § 3161 *et seq.*, inapt. The time limits of the Speedy Trial Act begin to run automatically rather than upon request, §§ 3161(a), (b); dismissal may sometimes be without prejudice, §§ 3162(a)(1), (2), *United States* v. *Taylor*, 487 U. S. 326, 332–333 (1988); and waiver is expressly allowed in certain limited circumstances, 18 U. S. C. § 3162(a)(2). In any event, the question of waiver under the Speedy Trial Act is not before us today, and we express no view on the subject.

gree of party control that is consonant with the background presumption of waivability." *Mezzanatto*, 513 U. S., at 206.[3]

Finally, respondent argues that even if waiver of the IAD's time limits is possible, it can be effected only by affirmative conduct not present here. The New York Court of Appeals adopted a similar view, stating that the speedy trial rights guaranteed by the IAD may be waived either "explicitly or by an affirmative request for treatment that is contrary to or inconsistent with those speedy trial rights." 92 N. Y. 2d, at 411, 704 N. E. 2d, at 545. The court concluded that defense counsel's agreement to the trial date here was not an "affirmative request" and therefore did not constitute a waiver. *Id.*, at 412, 704 N. E. 2d, at 546. We agree with the State that this makes dismissal of the indictment turn on a hypertechnical distinction that should play no part. As illustrated by this case, such an approach would enable defendants to escape justice by willingly accepting treatment inconsistent with the IAD's time limits, and then recanting later on. Nothing in the IAD requires or even suggests a distinction between waiver proposed and waiver agreed to. In light of its potential for abuse—and given the harsh remedy of dismissal with prejudice—we decline to adopt it.

* * *

The judgment of the New York Court of Appeals is reversed.

*It is so ordered.*

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[3] In concluding that objection to a specified delay may be waived, we are mindful that the sending State may have interests distinct from those of the prisoner and the receiving State. This case does not involve any objection from the sending State, and we do not address what recourse the sending State might have under the IAD when the receiving State and prisoner agree to, and the court allows, an inordinate delay. Cf. Article V(e) ("At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending State").

Syllabus

# ILLINOIS *v.* WARDLOW

## CERTIORARI TO THE SUPREME COURT OF ILLINOIS

No. 98–1036. Argued November 2, 1999—Decided January 12, 2000

Respondent Wardlow fled upon seeing a caravan of police vehicles converge on an area of Chicago known for heavy narcotics trafficking. When Officers Nolan and Harvey caught up with him on the street, Nolan stopped him and conducted a protective patdown search for weapons because in his experience there were usually weapons in the vicinity of narcotics transactions. Discovering a handgun, the officers arrested Wardlow. The Illinois trial court denied his motion to suppress, finding the gun was recovered during a lawful stop and frisk. He was convicted of unlawful use of a weapon by a felon. In reversing, the State Appellate Court found that Nolan did not have reasonable suspicion to make the stop under *Terry* v. *Ohio*, 392 U. S. 1. The State Supreme Court affirmed, determining that sudden flight in a high crime area does not create a reasonable suspicion justifying a *Terry* stop because flight may simply be an exercise of the right to "go on one's way," see *Florida* v. *Royer*, 460 U. S. 491.

*Held:* The officers' actions did not violate the Fourth Amendment. This case, involving a brief encounter between a citizen and a police officer on a public street, is governed by *Terry*, under which an officer who has a reasonable, articulable suspicion that criminal activity is afoot may conduct a brief, investigatory stop. While "reasonable suspicion" is a less demanding standard than probable cause, there must be at least a minimal level of objective justification for the stop. An individual's presence in a "high crime area," standing alone, is not enough to support a reasonable, particularized suspicion of criminal activity, but a location's characteristics are relevant in determining whether the circumstances are sufficiently suspicious to warrant further investigation, *Adams* v. *Williams*, 407 U. S. 143, 144, 147–148. In this case, moreover, it was also Wardlow's unprovoked flight that aroused the officers' suspicion. Nervous, evasive behavior is another pertinent factor in determining reasonable suspicion, *e. g., United States* v. *Brignoni-Ponce*, 422 U. S. 873, 885, and headlong flight is the consummate act of evasion. In reviewing the propriety of an officer's conduct, courts do not have available empirical studies dealing with inferences from suspicious behavior, and this Court cannot reasonably demand scientific certainty when none exists. Thus, the reasonable suspicion determination must be based on commonsense judgments and inferences about human behavior. See

Syllabus

*United States* v. *Cortez*, 449 U. S. 411, 418. Officer Nolan was justified in suspecting that Wardlow was involved in criminal activity, and, therefore, in investigating further. Such a holding is consistent with the decision in *Florida* v. *Royer*, *supra*, at 498, that an individual, when approached, has a right to ignore the police and go about his business. Unprovoked flight is the exact opposite of "going about one's business." While flight is not necessarily indicative of ongoing criminal activity, *Terry* recognized that officers can detain individuals to resolve ambiguities in their conduct, 392 U. S., at 30, and thus accepts the risk that officers may stop innocent people. If they do not learn facts rising to the level of probable cause, an individual must be allowed to go on his way. But in this case the officers found that Wardlow possessed a handgun and arrested him for violating a state law. The propriety of that arrest is not before the Court. Pp. 123–126.

183 Ill. 2d 306, 701 N. E. 2d 484, reversed and remanded.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. STEVENS, J., filed an opinion concurring in part and dissenting in part, in which SOUTER, GINSBURG, and BREYER, JJ., joined, *post*, p. 126.

*Richard A. Devine* argued the cause for petitioner. With him on the briefs were *James E. Ryan*, Attorney General of Illinois, *Joel D. Bertocchi*, Solicitor General, *Renee G. Goldfarb*, *Theodore Fotios Burtzos*, and *Veronica Ximena Calderon*.

*Malcolm L. Stewart* argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Waxman*, *Assistant Attorney General Robinson*, *Deputy Solicitor General Dreeben*, and *Deborah Watson*.

*James B. Koch* argued the cause for respondent. With him on the brief were *Lynn N. Weisberg* and *Thomas G. Gardiner*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Ohio et al. by *Betty D. Montgomery*, Attorney General of Ohio, *Edward B. Foley*, State Solicitor, *Robert C. Maier* and *Alejandro Almaguer*, Assistant Solicitors, and *Thomas R. Keller*, Acting Attorney General of Hawaii, and by the Attorneys General for their respective States as follows: *Bill Pryor* of Alabama, *Ken Salazar* of Colorado, *M. Jane Brady* of Delaware,

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Wardlow fled upon seeing police officers patrolling an area known for heavy narcotics trafficking. Two of the officers caught up with him, stopped him, and conducted a protective patdown search for weapons. Discovering a .38-caliber handgun, the officers arrested Wardlow. We hold that the officers' stop did not violate the Fourth Amendment to the United States Constitution.

On September 9, 1995, Officers Nolan and Harvey were working as uniformed officers in the special operations section of the Chicago Police Department. The officers were driving the last car of a four-car caravan converging on an area known for heavy narcotics trafficking in order to investigate drug transactions. The officers were traveling together because they expected to find a crowd of people in the area, including lookouts and customers.

As the caravan passed 4035 West Van Buren, Officer Nolan observed respondent Wardlow standing next to the building

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*Alan G. Lance* of Idaho, *Carla J. Stovall* of Kansas, *Richard P. Ieyoub* of Louisiana, *Mike Hatch* of Minnesota, *Michael C. Moore* of Mississippi, *Don Stenberg* of Nebraska, *Frankie Sue Del Papa* of Nevada, *Michael P. Easley* of North Carolina, *W. A. Drew Edmondson* of Oklahoma, *Charles M. Condon* of South Carolina, *Mark L. Barnett* of South Dakota, and *Mark L. Earley* of Virginia; for the Wayne County Prosecuting Attorney by *John D. O'Hair, pro se, Timothy A. Baughman,* and *Jeffrey Caminsky;* for Americans for Effective Law Enforcement, Inc., et al. by *Wayne W. Schmidt, James P. Manak,* and *Richard Weintraub;* for the Criminal Justice Legal Foundation by *Kent S. Scheidegger* and *Charles L. Hobson;* and for the National Association of Police Organizations et al. by *Stephen R. McSpadden.*

Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *Tracey Maclin, Steven R. Shapiro, Harvey Grossman,* and *Barbara E. Bergman;* for the NAACP Legal Defense & Educational Fund, Inc., by *Elaine R. Jones, Theodore M. Shaw, George H. Kendall,* and *Laura E. Hankins;* and for the Rutherford Institute by *John W. Whitehead* and *Steven H. Aden.*

holding an opaque bag. Respondent looked in the direction of the officers and fled. Nolan and Harvey turned their car southbound, watched him as he ran through the gangway and an alley, and eventually cornered him on the street. Nolan then exited his car and stopped respondent. He immediately conducted a protective patdown search for weapons because in his experience it was common for there to be weapons in the near vicinity of narcotics transactions. During the frisk, Officer Nolan squeezed the bag respondent was carrying and felt a heavy, hard object similar to the shape of a gun. The officer then opened the bag and discovered a .38-caliber handgun with five live rounds of ammunition. The officers arrested Wardlow.

The Illinois trial court denied respondent's motion to suppress, finding the gun was recovered during a lawful stop and frisk. App. 14. Following a stipulated bench trial, Wardlow was convicted of unlawful use of a weapon by a felon. The Illinois Appellate Court reversed Wardlow's conviction, concluding that the gun should have been suppressed because Officer Nolan did not have reasonable suspicion sufficient to justify an investigative stop pursuant to *Terry* v. *Ohio*, 392 U. S. 1 (1968). 287 Ill. App. 3d 367, 678 N. E. 2d 65 (1997).

The Illinois Supreme Court agreed. 183 Ill. 2d 306, 701 N. E. 2d 484 (1998). While rejecting the Appellate Court's conclusion that Wardlow was not in a high crime area, the Illinois Supreme Court determined that sudden flight in such an area does not create a reasonable suspicion justifying a *Terry* stop. 183 Ill. 2d, at 310, 701 N. E. 2d, at 486. Relying on *Florida* v. *Royer*, 460 U. S. 491 (1983), the court explained that although police have the right to approach individuals and ask questions, the individual has no obligation to respond. The person may decline to answer and simply go on his or her way, and the refusal to respond, alone, does not provide a legitimate basis for an investigative stop. 183 Ill.

2d, at 311–312, 701 N. E. 2d, at 486–487. The court then determined that flight may simply be an exercise of this right to "go on one's way," and, thus, could not constitute reasonable suspicion justifying a *Terry* stop. 183 Ill. 2d, at 312, 701 N. E. 2d, at 487.

The Illinois Supreme Court also rejected the argument that flight combined with the fact that it occurred in a high crime area supported a finding of reasonable suspicion because the "high crime area" factor was not sufficient standing alone to justify a *Terry* stop. Finding no independently suspicious circumstances to support an investigatory detention, the court held that the stop and subsequent arrest violated the Fourth Amendment. We granted certiorari, 526 U. S. 1097 (1999), and now reverse.[1]

This case, involving a brief encounter between a citizen and a police officer on a public street, is governed by the analysis we first applied in *Terry*. In *Terry*, we held that an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot. 392 U. S., at 30. While "reasonable suspicion" is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop. *United States* v. *Sokolow*, 490 U. S. 1, 7 (1989). The officer must be able

[1] The state courts have differed on whether unprovoked flight is sufficient grounds to constitute reasonable suspicion. See, *e. g.*, *State* v. *Anderson*, 155 Wis. 2d 77, 454 N. W. 2d 763 (1990) (flight alone is sufficient); *Platt* v. *State*, 589 N. E. 2d 222 (Ind. 1992) (same); *Harris* v. *State*, 205 Ga. App. 813, 423 S. E. 2d 723 (1992) (flight in high crime area sufficient); *State* v. *Hicks*, 241 Neb. 357, 488 N. W. 2d 359 (1992) (flight is not enough); *State* v. *Tucker*, 136 N. J. 158, 642 A. 2d 401 (1994) (same); *People* v. *Shabaz*, 424 Mich. 42, 378 N. W. 2d 451 (1985) (same); *People* v. *Wilson*, 784 P. 2d 325 (Colo. 1989) (same).

to articulate more than an "inchoate and unparticularized suspicion or 'hunch'" of criminal activity. *Terry*, *supra*, at 27.[2]

Nolan and Harvey were among eight officers in a four-car caravan that was converging on an area known for heavy narcotics trafficking, and the officers anticipated encountering a large number of people in the area, including drug customers and individuals serving as lookouts. App. 8. It was in this context that Officer Nolan decided to investigate Wardlow after observing him flee. An individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime. *Brown* v. *Texas*, 443 U. S. 47 (1979). But officers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation. Accordingly, we have previously noted the fact that the stop occurred in a "high crime area" among the relevant contextual considerations in a *Terry* analysis. *Adams* v. *Williams*, 407 U. S. 143, 144, 147–148 (1972).

In this case, moreover, it was not merely respondent's presence in an area of heavy narcotics trafficking that aroused the officers' suspicion, but his unprovoked flight upon noticing the police. Our cases have also recognized that nervous, evasive behavior is a pertinent factor in determining reasonable suspicion. *United States* v. *Brignoni-Ponce*, 422 U. S. 873, 885 (1975); *Florida* v. *Rodriguez*, 469 U. S. 1, 6 (1984) *(per curiam); United States* v. *Sokolow*, *supra*, at 8–9. Headlong flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such. In reviewing the propriety of an officer's conduct, courts do not have available empirical studies dealing with inferences drawn from suspicious

[2] We granted certiorari solely on the question whether the initial stop was supported by reasonable suspicion. Therefore, we express no opinion as to the lawfulness of the frisk independently of the stop.

behavior, and we cannot reasonably demand scientific certainty from judges or law enforcement officers where none exists. Thus, the determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior. See *United States* v. *Cortez*, 449 U. S. 411, 418 (1981). We conclude Officer Nolan was justified in suspecting that Wardlow was involved in criminal activity, and, therefore, in investigating further.

Such a holding is entirely consistent with our decision in *Florida* v. *Royer*, 460 U. S. 491 (1983), where we held that when an officer, without reasonable suspicion or probable cause, approaches an individual, the individual has a right to ignore the police and go about his business. *Id.*, at 498. And any "refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure." *Florida* v. *Bostick*, 501 U. S. 429, 437 (1991). But unprovoked flight is simply not a mere refusal to cooperate. Flight, by its very nature, is not "going about one's business"; in fact, it is just the opposite. Allowing officers confronted with such flight to stop the fugitive and investigate further is quite consistent with the individual's right to go about his business or to stay put and remain silent in the face of police questioning.

Respondent and *amici* also argue that there are innocent reasons for flight from police and that, therefore, flight is not necessarily indicative of ongoing criminal activity. This fact is undoubtedly true, but does not establish a violation of the Fourth Amendment. Even in *Terry*, the conduct justifying the stop was ambiguous and susceptible of an innocent explanation. The officer observed two individuals pacing back and forth in front of a store, peering into the window and periodically conferring. 392 U. S., at 5–6. All of this conduct was by itself lawful, but it also suggested that the individuals were casing the store for a planned robbery. *Terry* recognized that the officers could detain the individuals to resolve the ambiguity. *Id.*, at 30.

In allowing such detentions, *Terry* accepts the risk that officers may stop innocent people. Indeed, the Fourth Amendment accepts that risk in connection with more drastic police action; persons arrested and detained on probable cause to believe they have committed a crime may turn out to be innocent. The *Terry* stop is a far more minimal intrusion, simply allowing the officer to briefly investigate further. If the officer does not learn facts rising to the level of probable cause, the individual must be allowed to go on his way. But in this case the officers found respondent in possession of a handgun, and arrested him for violation of an Illinois firearms statute. No question of the propriety of the arrest itself is before us.

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

*It is so ordered.*

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

The State of Illinois asks this Court to announce a "bright-line rule" authorizing the temporary detention of anyone who flees at the mere sight of a police officer. Brief for Petitioner 7–36. Respondent counters by asking us to adopt the opposite *per se* rule—that the fact that a person flees upon seeing the police can never, by itself, be sufficient to justify a temporary investigative stop of the kind authorized by *Terry* v. *Ohio*, 392 U. S. 1 (1968). Brief for Respondent 6–31.

The Court today wisely endorses neither *per se* rule. Instead, it rejects the proposition that "flight is . . . necessarily indicative of ongoing criminal activity," *ante*, at 125, adhering to the view that "[t]he concept of reasonable suspicion . . . is not readily, or even usefully, reduced to a neat set of legal rules," but must be determined by looking to "the

totality of the circumstances—the whole picture," *United States* v. *Sokolow*, 490 U. S. 1, 7–8 (1989) (internal quotation marks and citation omitted). Abiding by this framework, the Court concludes that "Officer Nolan was justified in suspecting that Wardlow was involved in criminal activity." *Ante*, at 125.

Although I agree with the Court's rejection of the *per se* rules proffered by the parties, unlike the Court, I am persuaded that in this case the brief testimony of the officer who seized respondent does not justify the conclusion that he had reasonable suspicion to make the stop. Before discussing the specific facts of this case, I shall comment on the parties' requests for a *per se* rule.

I

In *Terry* v. *Ohio*, we first recognized "that a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest," 392 U. S., at 22, an authority permitting the officer to "stop and briefly detain a person for investigative purposes," *Sokolow*, 490 U. S., at 7. We approved as well "a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime." *Terry*, 392 U. S., at 27. Cognizant that such police intrusion had never before received constitutional imprimatur on less than probable cause, *id.*, at 11–12, 20, we reflected upon the magnitude of the departure we were endorsing. "Even a limited search," we said, "constitutes a severe, though brief, intrusion upon cherished personal security, and it must be an annoying, frightening, and perhaps humiliating experience." *Id.*, at 24–25.[1]

[1] We added that a *Terry* frisk "is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and is not to be undertaken lightly." 392 U. S., at 17. The resent-

Accordingly, we recognized only a "narrowly drawn authority" that is "limited to that which is necessary for the discovery of weapons." *Id.*, at 27, 26. An officer conducting an investigatory stop, we further explained, must articulate "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States* v. *Cortez*, 449 U. S. 411, 417–418 (1981). That determination, we admonished, "becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances." *Terry*, 392 U. S., at 21. In undertaking that neutral scrutiny "based on all of the circumstances," a court relies on "certain commonsense conclusions about human behavior." *Cortez*, 449 U. S., at 418; see also *ante*, at 125. "[T]he relevant inquiry" concerning the inferences and conclusions a court draws "is not whether particular conduct is 'innocent' or 'guilty,' but the degree of suspicion that attaches to particular types of noncriminal acts." *Sokolow*, 490 U. S., at 10.

The question in this case concerns "the degree of suspicion that attaches to" a person's flight—or, more precisely, what "commonsense conclusions" can be drawn respecting the motives behind that flight. A pedestrian may break into a run for a variety of reasons—to catch up with a friend a block or two away, to seek shelter from an impending storm, to arrive at a bus stop before the bus leaves, to get home in time for

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ment engendered by that intrusion is aggravated, not mitigated, if the officer's entire justification for the stop is the belief that the individual is simply trying to avoid contact with the police or move from one place to another—as he or she has a right to do (and do rapidly). See *Chicago* v. *Morales*, 527 U. S. 41, 53 (1999) (plurality opinion) ("We have expressly identified this 'right to remove from one place to another according to inclination' as 'an attribute of personal liberty' protected by the Constitution" (citation omitted)); *Florida* v. *Bostick*, 501 U. S. 429, 437 (1991); *Florida* v. *Royer*, 460 U. S. 491, 497–498 (1983) (plurality opinion); *Terry*, 392 U. S., at 32–33 (Harlan, J., concurring); see also *ante*, at 125.

dinner, to resume jogging after a pause for rest, to avoid contact with a bore or a bully, or simply to answer the call of nature—any of which might coincide with the arrival of an officer in the vicinity. A pedestrian might also run because he or she has just sighted one or more police officers. In the latter instance, the State properly points out "that the fleeing person may be, *inter alia*, (1) an escapee from jail; (2) wanted on a warrant; (3) in possession of contraband, (i. e. drugs, weapons, stolen goods, etc.); or (4) someone who has just committed another type of crime." Brief for Petitioner 9, n. 4.[2] In short, there are unquestionably circumstances in which a person's flight is suspicious, and undeniably instances in which a person runs for entirely innocent reasons.[3]

Given the diversity and frequency of possible motivations for flight, it would be profoundly unwise to endorse either *per se* rule. The inference we can reasonably draw about the motivation for a person's flight, rather, will depend on a number of different circumstances. Factors such as the time of day, the number of people in the area, the character of the neighborhood, whether the officer was in uniform, the way the runner was dressed, the direction and speed of the

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[2] If the fleeing person exercises his or her right to remain silent after being stopped, only in the third of the State's four hypothetical categories is the stop likely to lead to probable cause to make an arrest. And even in the third category, flight does not necessarily indicate that the officer is "dealing with an armed and dangerous individual." *Terry* v. *Ohio*, 392 U. S. 1, 27 (1968).

[3] Compare, *e. g.*, Proverbs 28:1 ("The wicked flee when no man pursueth: but the righteous are as bold as a lion") with Proverbs 22:3 ("A shrewd man sees trouble coming and lies low; the simple walk into it and pay the penalty").

I have rejected reliance on the former proverb in the past, because its "ivory-towered analysis of the real world" fails to account for the experiences of many citizens of this country, particularly those who are minorities. See *California* v. *Hodari D.*, 499 U. S. 621, 630, n. 4 (1991) (STEVENS, J., dissenting). That this pithy expression fails to capture the total reality of our world, however, does not mean it is inaccurate in all instances.

flight, and whether the person's behavior was otherwise unusual might be relevant in specific cases. This number of variables is surely sufficient to preclude either a bright-line rule that always justifies, or that never justifies, an investigative stop based on the sole fact that flight began after a police officer appeared nearby.[4]

Still, Illinois presses for a *per se* rule regarding "unprovoked flight upon seeing a clearly identifiable police officer." *Id.*, at 7. The phrase "upon seeing," as used by Illinois, apparently assumes that the flight is motivated by the presence of the police officer.[5] Illinois contends that unprovoked flight is "an extreme reaction," *id.*, at 8, because innocent people simply do not "flee at the mere sight of the police," *id.*, at 24. To be sure, Illinois concedes, an innocent person—even one distrustful of the police—might "avoid eye contact or even sneer at the sight of an officer," and that

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[4] Of course, *Terry* itself recognized that sometimes behavior giving rise to reasonable suspicion is entirely innocent, but it accepted the risk that officers may stop innocent people. 392 U. S., at 30. And as the Court correctly observes, it is "undoubtedly true" that innocent explanations for flight exist, but they do not "establish a violation of the Fourth Amendment." *Ante,* at 125. It is equally true, however, that the innocent explanations make the single act of flight sufficiently ambiguous to preclude the adoption of a *per se* rule.

In *Terry*, furthermore, reasonable suspicion was supported by a concatenation of acts, each innocent when viewed in isolation, that when considered collectively amounted to extremely suspicious behavior. See 392 U. S., at 5–7, 22–23. Flight alone, however, is not at all like a "series of acts, each of them perhaps innocent in itself, but which taken together warran[t] further investigation." *Id.*, at 22. Nor is flight similar to evidence which in the aggregate provides "fact on fact and clue on clue afford-[ing] a basis for the deductions and inferences," supporting reasonable suspicion. *United States* v. *Cortez,* 449 U. S. 411, 419 (1981).

[5] Nowhere in Illinois' briefs does it specify what it means by "unprovoked." At oral argument, Illinois explained that if officers precipitate a flight by threats of violence, that flight is "provoked." But if police officers in a patrol car—with lights flashing and siren sounding—descend upon an individual for the sole purpose of seeing if he or she will run, the ensuing flight is "unprovoked." Tr. of Oral Arg. 17–18, 20.

would not justify a *Terry* stop or any sort of *per se* inference. *Id.*, at 8–9. But, Illinois insists, unprovoked flight is altogether different. Such behavior is so "aberrant" and "abnormal" that a *per se* inference is justified. *Id.*, at 8–9, and n. 4.

Even assuming we know that a person runs because he sees the police, the inference to be drawn may still vary from case to case. Flight to escape police detection, we have said, may have an entirely innocent motivation:

> "[I]t is a matter of common knowledge that men who are entirely innocent do sometimes fly from the scene of a crime through fear of being apprehended as the guilty parties, or from an unwillingness to appear as witnesses. Nor is it true as an accepted axiom of criminal law that 'the wicked flee when no man pursueth, but the righteous are as bold as a lion.' Innocent men sometimes hesitate to confront a jury—not necessarily because they fear that the jury will not protect them, but because they do not wish their names to appear in connection with criminal acts, are humiliated at being obliged to incur the popular odium of an arrest and trial, or because they do not wish to be put to the annoyance or expense of defending themselves." *Alberty* v. *United States*, 162 U. S. 499, 511 (1896).

In addition to these concerns, a reasonable person may conclude that an officer's sudden appearance indicates nearby criminal activity. And where there is criminal activity there is also a substantial element of danger—either from the criminal or from a confrontation between the criminal and the police. These considerations can lead to an innocent and understandable desire to quit the vicinity with all speed.[6]

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[6] Statistical studies of bystander victimization are rare. One study attributes this to incomplete recordkeeping and a lack of officially compiled data. See Sherman, Steele, Laufersweiler, Hooper, & Julian, Stray Bul-

Among some citizens, particularly minorities and those residing in high crime areas, there is also the possibility that the fleeing person is entirely innocent, but, with or without justification, believes that contact with the police can itself be dangerous, apart from any criminal activity associated with the officer's sudden presence.[7] For such a person,

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lets and "Mushrooms": Random Shootings of Bystanders in Four Cities, 1977–1988, 5 J. of Quantitative Criminology 297, 303 (1989). Nonetheless, that study, culling data from newspaper reports in four large cities over an 11-year period, found "substantial increases in reported bystander killings and woundings in all four cities." *Id.*, at 306. From 1986 to 1988, for example, the study identified 250 people who were killed or wounded in bystander shootings in the four survey cities. *Id.*, at 306–311. Most significantly for the purposes of the present case, the study found that such incidents "rank at the top of public outrage." *Id.*, at 299. The saliency of this phenomenon, in turn, "violate[s] the routine assumptions" of day-to-day affairs, and, "[w]ith enough frequency . . . it shapes the conduct of daily life." *Ibid.*

[7] See Johnson, Americans' Views on Crime and Law Enforcement: Survey Findings, Nat. Institute of Justice J. 13 (Sept. 1997) (reporting study by the Joint Center for Political and Economic Studies in April 1996, which found that 43% of African-Americans consider "police brutality and harassment of African-Americans a serious problem" in their own community); President's Comm'n on Law Enforcement and Administration of Justice, Task Force Report: The Police 183–184 (1967) (documenting the belief, held by many minorities, that field interrogations are conducted "indiscriminately" and "in an abusive . . . manner," and labeling this phenomenon a "principal problem" causing "friction" between minorities and the police) (cited in *Terry*, 392 U. S., at 14, n. 11); see also Casimir, Minority Men: We Are Frisk Targets, N. Y. Daily News, Mar. 26, 1999, p. 34 (informal survey of 100 young black and Hispanic men living in New York City; 81 reported having been stopped and frisked by police at least once; none of the 81 stops resulted in arrests); Brief for NAACP Legal Defense & Educational Fund as *Amicus Curiae* 17–19 (reporting figures on disproportionate street stops of minority residents in Pittsburgh and Philadelphia, Pennsylvania, and St. Petersburg, Florida); U. S. Dept. of Justice, Bureau of Justice Statistics, S. Smith, Criminal Victimization and Perceptions of Community Safety in 12 Cities 25 (June 1998) (African-American residents in 12 cities are more than twice as likely to be dissatisfied with police practices than white residents in same community).

unprovoked flight is neither "aberrant" nor "abnormal."[8] Moreover, these concerns and fears are known to the police officers themselves,[9] and are validated by law enforcement investigations into their own practices.[10] Accordingly, the

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[8] See, *e. g.*, Kotlowitz, Hidden Casualties: Drug War's Emphasis on Law Enforcement Takes a Toll on Police, Wall Street Journal, Jan. 11, 1991, p. A2, col. 1 ("Black leaders complained that innocent people were picked up in the drug sweeps . . . . Some teen-agers were so scared of the task force they ran even if they weren't selling drugs").

Many stops never lead to an arrest, which further exacerbates the perceptions of discrimination felt by racial minorities and people living in high crime areas. See Goldberg, The Color of Suspicion, N. Y. Times Magazine, June 20, 1999, p. 85 (reporting that in 2-year period, New York City Police Department Street Crimes Unit made 45,000 stops, only 9,500, or 20%, of which resulted in arrest); Casimir, *supra* n. 7 (reporting that in 1997, New York City's Street Crimes Unit conducted 27,061 stop-and-frisks, only 4,647 of which, 17%, resulted in arrest). Even if these data were race neutral, they would still indicate that society as a whole is paying a significant cost in infringement on liberty by these virtually random stops. See also n. 1, *supra*.

[9] The Chief of the Washington, D. C., Metropolitan Police Department, for example, confirmed that "sizeable percentages of Americans today—especially Americans of color—still view policing in the United States to be discriminatory, if not by policy and definition, certainly in its day-to-day application." P. Verniero, Attorney General of New Jersey, Interim Report of the State Police Review Team Regarding Allegations of Racial Profiling 46 (Apr. 20, 1999) (hereinafter Interim Report). And a recent survey of 650 Los Angeles Police Department officers found that 25% felt that "'racial bias (prejudice) on the part of officers toward minority citizens currently exists and contributes to a negative interaction between police and the community.'" Report of the Independent Comm'n on the Los Angeles Police Department 69 (1991); see also 5 United States Comm'n on Civil Rights, Racial and Ethnic Tensions in American Communities: Poverty, Inequality and Discrimination, The Los Angeles Report 26 (June 1999).

[10] New Jersey's Attorney General, in a recent investigation into allegations of racial profiling on the New Jersey Turnpike, concluded that "minority motorists have been treated differently [by New Jersey State Troopers] than non-minority motorists during the course of traffic stops on the New Jersey Turnpike." "[T]he problem of disparate treatment is real—not imagined," declared the Attorney General. Not surprisingly,

evidence supporting the reasonableness of these beliefs is too pervasive to be dismissed as random or rare, and too persuasive to be disparaged as inconclusive or insufficient.[11] In

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the report concluded that this disparate treatment "engender[s] feelings of fear, resentment, hostility, and mistrust by minority citizens." See Interim Report 4, 7. Recently, the United States Department of Justice, citing this very evidence, announced that it would appoint an outside monitor to oversee the actions of the New Jersey State Police and ensure that it enacts policy changes advocated by the Interim Report, and keeps records on racial statistics and traffic stops. See Kocieniewski, U. S. Will Monitor New Jersey Police on Race Profiling, N. Y. Times, Dec. 23, 1999, p. A1, col. 6.

Likewise, the Massachusetts Attorney General investigated similar allegations of egregious police conduct toward minorities. The report stated: "We conclude that Boston police officers engaged in improper, and unconstitutional, conduct in the 1989–90 period with respect to stops and searches of minority individuals . . . . Although we cannot say with precision how widespread this illegal conduct was, we believe that it was sufficiently common to justify changes in certain Department practices.

"Perhaps the most disturbing evidence was that the *scope* of a number of *Terry* searches went far beyond anything authorized by that case and indeed, beyond anything that we believe would be acceptable under the federal and state constitutions even where probable cause existed to conduct a full search incident to an arrest. Forcing young men to lower their trousers, or otherwise searching inside their underwear, on public streets or in public hallways, is so demeaning and invasive of fundamental precepts of privacy that it can only be condemned in the strongest terms. The fact that not only the young men themselves, but independent witnesses complained of strip searches, should be deeply alarming to all members of this community." J. Shannon, Attorney General of Massachusetts, Report of the Attorney General's Civil Rights Division on Boston Police Department Practices 60–61 (Dec. 18, 1990).

[11] Taking into account these and other innocent motivations for unprovoked flight leads me to reject Illinois' requested *per se* rule in favor of adhering to a totality-of-the-circumstances test. This conclusion does not, as Illinois suggests, "establish a separate *Terry* analysis based on the individual characteristics of the person seized." Reply Brief for Petitioner 14. My rejection of a *per se* rule, of course, applies to members of all races.

It is true, as Illinois points out, that *Terry* approved of the stop and frisk procedure notwithstanding "[t]he wholesale harassment by certain

any event, just as we do not require "scientific certainty" for our commonsense conclusion that unprovoked flight can sometimes indicate suspicious motives, see *ante*, at 124–125, neither do we require scientific certainty to conclude that unprovoked flight can occur for other, innocent reasons.[12]

The probative force of the inferences to be drawn from flight is a function of the varied circumstances in which it occurs. Sometimes those inferences are entirely consistent with the presumption of innocence, sometimes they justify further investigation, and sometimes they justify an immediate stop and search for weapons. These considerations have led us to avoid categorical rules concerning a person's flight and the presumptions to be drawn therefrom:

> "Few things . . . distinguish an enlightened system of judicature from a rude and barbarous one more than the manner in which they deal with evidence. The former weighs testimony, whilst the latter, conscious perhaps of its inability to do so or careless of the consequences of error, at times rejects whole portions *en masse*, and at others converts pieces of evidence into rules of law by investing with conclusive effect some whose probative force has been found to be in general considerable. . . . Our ancestors, observing that guilty persons usually fled from justice, adopted the hasty conclusion that it was only the guilty who did so . . . so that under the old law, a man who fled to avoid being tried for felony forfeited

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elements of the police community, of which minority groups, particularly Negroes, frequently complain." 392 U. S., at 14. But in this passage, *Terry* simply held that such concerns would not preclude the use of the stop and frisk procedure altogether. See *id.*, at 17, n. 14. Nowhere did *Terry* suggest that such concerns cannot inform a court's assessment of whether reasonable suspicion sufficient to justify a particular stop existed.

[12] As a general matter, local courts often have a keener and more informed sense of local police practices and events that may heighten these concerns at particular times or locations. Thus, a reviewing court may accord substantial deference to a local court's determination that fear of the police is especially acute in a specific location or at a particular time.

> all his goods even though he were acquitted . . . . In modern times more correct views have prevailed, and the evasion of or flight from justice seems now nearly reduced to its true place in the administration of the criminal law, namely, that of a circumstance—a fact which it is always of importance to take into consideration, and combined with others may afford strong evidence of guilt, but which, like any other piece of presumptive evidence, it is equally absurd and dangerous to invest with infallibility." *Hickory* v. *United States*, 160 U. S. 408, 419–420 (1896) (internal quotation marks omitted).

"Unprovoked flight," in short, describes a category of activity too broad and varied to permit a *per se* reasonable inference regarding the motivation for the activity. While the innocent explanations surely do not establish that the Fourth Amendment is always violated whenever someone is stopped solely on the basis of an unprovoked flight, neither do the suspicious motivations establish that the Fourth Amendment is never violated when a *Terry* stop is predicated on that fact alone. For these reasons, the Court is surely correct in refusing to embrace either *per se* rule advocated by the parties. The totality of the circumstances, as always, must dictate the result.[13]

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[13] Illinois' reliance on the common law as a conclusive answer to the issue at hand is mistaken. The sources from which it gleans guidance focus either on flight *following* an accusation of criminal activity, see 4 W. Blackstone, Commentaries *387 ("For *flight* . . . *on an accusation* of treason, felony, or even petit larceny . . . is an offence carrying with it a strong presumption of guilt" (emphasis added in part)), or are less dogmatic than Illinois contends, compare Brief for Petitioner 15 ("[A] person's flight was considered . . . conclusive proof of guilt") with A. Burrill, Circumstantial Evidence 472 (1856) ("So impressed was the old common law with considerations of this kind, that it laid down the rule, which passed into a maxim,—that flight from justice was equivalent to confession of guilt . . . . But this maxim . . . was undoubtedly expressed in too general and sweeping terms").

## II

Guided by that totality-of-the-circumstances test, the Court concludes that Officer Nolan had reasonable suspicion to stop respondent. *Ante*, at 125. In this respect, my view differs from the Court's. The entire justification for the stop is articulated in the brief testimony of Officer Nolan. Some facts are perfectly clear; others are not. This factual insufficiency leads me to conclude that the Court's judgment is mistaken.

Respondent Wardlow was arrested a few minutes after noon on September 9, 1995. 183 Ill. 2d 306, 308, n. 1, 701 N. E. 2d 484, 485, n. 1 (1998).[14] Nolan was part of an eight-officer, four-car caravan patrol team. The officers were headed for "one of the areas in the 11th District [of Chicago] that's high [in] narcotics traffic." App. 8.[15] The reason why four cars were in the caravan was that "[n]ormally in these different areas there's an enormous amount of people, sometimes lookouts, customers." *Ibid.* Officer Nolan testified that he was in uniform on that day, but he did not recall whether he was driving a marked or an unmarked car. *Id.*, at 4.

Officer Nolan and his partner were in the last of the four patrol cars that "were all caravaning eastbound down Van Buren." *Id.*, at 8. Nolan first observed respondent "in front of 4035 West Van Buren." *Id.*, at 7. Wardlow "looked in our direction and began fleeing." *Id.*, at 9. Nolan then "began driving southbound down the street observing [respondent] running through the gangway and the alley southbound," and observed that Wardlow was carrying a white,

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[14] At the suppression hearing, the State failed to present testimony as to the time of respondent's arrest. The Illinois Supreme Court, however, took notice of the time recorded in Officer Nolan's arrest report. See 183 Ill. 2d, at 308, n. 1, 701 N. E. 2d, at 485, n. 1.

[15] The population of the 11th district is over 98,000 people. See Brief for the National Association of Police Organizations et al. as *Amici Curiae* App. II.

opaque bag under his arm. *Id.*, at 6, 9. After the car turned south and intercepted respondent as he "ran right towards us," Officer Nolan stopped him and conducted a "protective search," which revealed that the bag under respondent's arm contained a loaded handgun. *Id.*, at 9–11.

This terse testimony is most noticeable for what it fails to reveal. Though asked whether he was in a marked or unmarked car, Officer Nolan could not recall the answer. *Id.*, at 4. He was not asked whether any of the other three cars in the caravan were marked, or whether any of the other seven officers were in uniform. Though he explained that the size of the caravan was because "[n]ormally in these different areas there's an enormous amount of people, sometimes lookouts, customers," Officer Nolan did not testify as to whether *anyone* besides Wardlow was nearby 4035 West Van Buren. Nor is it clear that that address was the intended destination of the caravan. As the Appellate Court of Illinois interpreted the record, "it appears that the officers were simply driving by, on their way to some unidentified location, when they noticed defendant standing at 4035 West Van Buren." 287 Ill. App. 3d 367, 370–371, 678 N. E. 2d 65, 67 (1997).[16] Officer Nolan's testimony also does not reveal how fast the officers were driving. It does not indicate whether he saw respondent notice the other patrol cars. And it does not say whether the caravan, or any part of it, had already passed Wardlow by before he began to run.

Indeed, the Appellate Court thought the record was even "too vague to support the inference that . . . defendant's flight was related to his expectation of police focus on him." *Id.*, at 371, 678 N. E. 2d, at 67. Presumably, respondent did not react to the first three cars, and we cannot even be sure that he recognized the occupants of the fourth as police officers. The adverse inference is based entirely on the officer's

[16] Of course, it would be a different case if the officers had credible information respecting that specific street address which reasonably led them to believe that criminal activity was afoot in that narrowly defined area.

statement: "He looked in our direction and began fleeing." App. 9.[17]

No other factors sufficiently support a finding of reasonable suspicion. Though respondent was carrying a white, opaque bag under his arm, there is nothing at all suspicious about that. Certainly the time of day—shortly after noon—does not support Illinois' argument. Nor were the officers "responding to any call or report of suspicious activity in the area." 183 Ill. 2d, at 315, 701 N. E. 2d, at 488. Officer Nolan did testify that he expected to find "an enormous amount of people," including drug customers or lookouts, App. 8, and the Court points out that "[i]t was in this context that Officer Nolan decided to investigate Wardlow after observing him flee," *ante*, at 124. This observation, in my view, lends insufficient weight to the reasonable suspicion analysis; indeed, in light of the absence of testimony that anyone else was nearby when respondent began to run, this observation points in the opposite direction.

The State, along with the majority of the Court, relies as well on the assumption that this flight occurred in a high crime area. Even if that assumption is accurate, it is insufficient because even in a high crime neighborhood unprovoked flight does not invariably lead to reasonable suspicion. On the contrary, because many factors providing innocent motivations for unprovoked flight are concentrated in high crime areas, the character of the neighborhood arguably makes an inference of guilt less appropriate, rather than more so. Like unprovoked flight itself, presence in a high crime neighborhood is a fact too generic and susceptible to innocent explanation to satisfy the reasonable suspicion inquiry. See *Brown* v. *Texas*, 443 U. S. 47, 52 (1979); see also n. 15, *supra*.

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[17] Officer Nolan also testified that respondent "was looking *at* us," App. 5 (emphasis added), though this minor clarification hardly seems sufficient to support the adverse inference.

It is the State's burden to articulate facts sufficient to support reasonable suspicion. *Brown* v. *Texas*, 443 U. S., at 52; see also *Florida* v. *Royer*, 460 U. S. 491, 500 (1983) (plurality opinion). In my judgment, Illinois has failed to discharge that burden. I am not persuaded that the mere fact that someone standing on a sidewalk looked in the direction of a passing car before starting to run is sufficient to justify a forcible stop and frisk.

I therefore respectfully dissent from the Court's judgment to reverse the court below.

Syllabus

# RENO, ATTORNEY GENERAL, ET AL. *v.* CONDON, ATTORNEY GENERAL OF SOUTH CAROLINA, ET AL.

## CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 98–1464. Argued November 10, 1999—Decided January 12, 2000

State departments of motor vehicles (DMVs) require drivers and automobile owners to provide personal information, which may include a person's name, address, telephone number, vehicle description, Social Security number, medical information, and photograph, as a condition of obtaining a driver's license or registering an automobile. Finding that many States sell this information to individuals and businesses for significant revenues, Congress enacted the Driver's Privacy Protection Act of 1994 (DPPA), which establishes a regulatory scheme that restricts the States' ability to disclose a driver's personal information without the driver's consent. South Carolina law conflicts with the DPPA's provisions. Following the DPPA's enactment, South Carolina and its Attorney General filed this suit, alleging that the DPPA violates the Tenth and Eleventh Amendments to the United States Constitution. Concluding that the DPPA is incompatible with the principles of federalism inherent in the Constitution's division of power between the States and the Federal Government, the District Court granted summary judgment for the State and permanently enjoined the DPPA's enforcement against the State and its officers. The Fourth Circuit affirmed, concluding that the DPPA violates constitutional principles of federalism.

*Held:* In enacting the DPPA, Congress did not run afoul of the federalism principles enunciated in *New York* v. *United States*, 505 U. S. 144, and *Printz* v. *United States*, 521 U. S. 898. The Federal Government correctly asserts that the DPPA is a proper exercise of Congress' authority to regulate interstate commerce under the Commerce Clause, U. S. Const., Art. I, § 8, cl. 3. The motor vehicle information, which the States have historically sold, is used by insurers, manufacturers, direct marketers, and others engaged in interstate commerce to contact drivers with customized solicitations. The information is also used in the stream of interstate commerce by various public and private entities for matters related to interstate motoring. Because drivers' personal, identifying information is, in this context, an article of commerce, its sale or release into the interstate stream of business is sufficient to

Syllabus

support congressional regulation. See *United States* v. *Lopez*, 514 U. S. 549, 558–559. This does not conclusively resolve the DPPA's constitutionality because in *New York* and *Printz* the Court held that federal statutes were invalid, not because Congress lacked legislative authority over the subject matter, but because those statutes violated Tenth Amendment federalism principles. However, the DPPA does not violate those principles. This case is instead governed by *South Carolina* v. *Baker*, 485 U. S. 505, in which a statute prohibiting States from issuing unregistered bonds was upheld because it regulated state activities, rather than seeking to control or influence the manner in which States regulated private parties, *id.*, at 514–515. Like that statute, the DPPA does not require the States in their sovereign capacity to regulate their own citizens; rather, it regulates the States as the owners of data bases. It does not require the South Carolina Legislature to enact any laws or regulations, as did the statute at issue in *New York*, and it does not require state officials to assist in the enforcement of federal statutes regulating private individuals, as did the law considered in *Printz*. Thus, the DPPA is consistent with the principles set forth in those cases. The Court need not address South Carolina's argument that the DPPA unconstitutionally regulates the States exclusively rather than by means of a generally applicable law. The DPPA is generally applicable because it regulates the universe of entities that participate as suppliers to the market for motor vehicle information—the States as initial suppliers of the information in interstate commerce and private resellers or redisclosers of that information in commerce. Pp. 148–151.

155 F. 3d 453, reversed.

REHNQUIST, C. J., delivered the opinion for a unanimous Court.

*Solicitor General Waxman* argued the cause for petitioners. With him on the briefs were *Acting Assistant Attorney General Ogden*, *Deputy Solicitor General Kneedler*, *Paul R. Q. Wolfson*, *Mark B. Stern*, and *Alisa B. Klein*.

*Charlie Condon*, *pro se*, Attorney General of South Carolina, argued the cause for respondents. With him on the briefs were *Treva Ashworth*, Deputy Attorney General, and *Kenneth P. Woodington*, Senior Assistant Attorney General.*

*Briefs of *amici curiae* urging reversal were filed for the Electronic Privacy Information Center by *Marc Rotenberg;* for the Feminist Majority

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

The Driver's Privacy Protection Act of 1994 (DPPA or Act), 18 U. S. C. §§ 2721–2725 (1994 ed. and Supp. IV), regulates the disclosure of personal information contained in the records of state motor vehicle departments (DMVs). We hold that in enacting this statute Congress did not run afoul of the federalism principles enunciated in *New York* v. *United States*, 505 U. S. 144 (1992), and *Printz* v. *United States*, 521 U. S. 898 (1997).

The DPPA regulates the disclosure and resale of personal information contained in the records of state DMVs. State DMVs require drivers and automobile owners to provide personal information, which may include a person's name, address, telephone number, vehicle description, Social Security number, medical information, and photograph, as a condition of obtaining a driver's license or registering an automobile. Congress found that many States, in turn, sell this personal information to individuals and businesses. See, *e. g.*, 139 Cong. Rec. 29466, 29468, 29469 (1993); 140 Cong. Rec. 7929

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Foundation et al. by *Erwin Chemerinsky;* and for the Screen Actors Guild et al.

Briefs of *amici curiae* urging affirmance were filed for the State of Alabama et al. by *Bill Pryor*, Attorney General of Alabama, *John J. Park, Jr.*, Assistant Attorney General, and *Thomas H. Odom*, and by the Attorneys General for their respective States as follows: *Ken Salazar* of Colorado, *Joseph P. Mazurek* of Montana, *Don Stenberg* of Nebraska, *Philip T. McLaughlin* of New Hampshire, *Michael F. Easley* of North Carolina, *W. A. Drew Edmondson* of Oklahoma, *D. Michael Fisher* of Pennsylvania, *Sheldon Whitehouse* of Rhode Island, *Jan Graham* of Utah, *Mark L. Earley* of Virginia, and *James E. Doyle* of Wisconsin; for the Home School Legal Defense Association by *Michael P. Farris;* for the National Conference of State Legislatures et al. by *Richard Ruda* and *Charles A. Rothfeld;* for the Pacific Legal Foundation by *Anne M. Hayes* and *Deborah J. La Fetra;* for the Washington Legal Foundation by *Daniel J. Popeo* and *R. Shawn Gunnarson;* and for the Reporters Committee for Freedom of the Press et al. by *Gregg P. Leslie.*

(1994) (remarks of Rep. Goss). These sales generate significant revenues for the States. See *Travis* v. *Reno*, 163 F. 3d 1000, 1002 (CA7 1998) (noting that the Wisconsin Department of Transportation receives approximately $8 million each year from the sale of motor vehicle information).

The DPPA establishes a regulatory scheme that restricts the States' ability to disclose a driver's personal information without the driver's consent. The DPPA generally prohibits any state DMV, or officer, employee, or contractor thereof, from "knowingly disclos[ing] or otherwise mak[ing] available to any person or entity personal information about any individual obtained by the department in connection with a motor vehicle record." 18 U. S. C. § 2721(a). The DPPA defines "personal information" as any information "that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information," but not including "information on vehicular accidents, driving violations, and driver's status." § 2725(3). A "motor vehicle record" is defined as "any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles." § 2725(1).

The DPPA's ban on disclosure of personal information does not apply if drivers have consented to the release of their data. When we granted certiorari in this case, the DPPA provided that a DMV could obtain that consent either on a case-by-case basis or could imply consent if the State provided drivers with an opportunity to block disclosure of their personal information when they received or renewed their licenses and drivers did not avail themselves of that opportunity. §§ 2721(b)(11), (13), and (d). However, Public Law 106–69, 113 Stat. 986, which was signed into law on October 9, 1999, changed this "opt-out" alternative to an "opt-in" requirement. Under the amended DPPA, States may not imply consent from a driver's failure to take advantage of a

state-afforded opportunity to block disclosure, but must rather obtain a driver's affirmative consent to disclose the driver's personal information for use in surveys, marketing, solicitations, and other restricted purposes. See Pub. L. 106–69, 113 Stat. 986 §§ 350(c), (d), and (e), App. to Supp. Brief for Petitioners 1(a), 2(a).

The DPPA's prohibition of nonconsensual disclosures is also subject to a number of statutory exceptions. For example, the DPPA *requires* disclosure of personal information "for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of titles I and IV of the Anti Car Theft Act of 1992, the Automobile Information Disclosure Act, the Clean Air Act, and chapters 301, 305, and 321–331 of title 49." 18 U. S. C. § 2721(b) (1994 ed., Supp. III) (citations omitted). The DPPA *permits* DMVs to disclose personal information from motor vehicle records for a number of purposes.[1]

[1] Disclosure is permitted for use "by any government agency" or by "any private person or entity acting on behalf of a Federal, State or local agency in carrying out its functions." 18 U. S. C. § 2721(b)(1) (1994 ed. and Supp. III). The Act also allows States to divulge drivers' personal information for any state-authorized purpose relating to the operation of a motor vehicle or public safety, § 2721(b)(14); for use in connection with car safety, prevention of car theft, and promotion of driver safety, § 2721(b)(2); for use by a business to verify the accuracy of personal information submitted to that business and to prevent fraud or pursue legal remedies if the information that the individual submitted to the business is revealed to have been inaccurate, § 2721(b)(3); in connection with court, agency, or self-regulatory body proceedings, § 2721(b)(4); for research purposes so long as the information is not further disclosed or used to contact the individuals to whom the data pertain, § 2721(b)(5); for use by insurers in connection with claims investigations, antifraud activities, rating or underwriting, § 2721(b)(6); to notify vehicle owners that their vehicle has been

The DPPA's provisions do not apply solely to States. The Act also regulates the resale and redisclosure of drivers' personal information by private persons who have obtained that information from a state DMV. 18 U. S. C. § 2721(c) (1994 ed. and Supp. III). In general, the Act allows private persons who have obtained drivers' personal information for one of the aforementioned permissible purposes to further disclose that information for any one of those purposes. *Ibid.* If a State has obtained drivers' consent to disclose their personal information to private persons generally and a private person has obtained that information, the private person may redisclose the information for any purpose. *Ibid.* Additionally, a private actor who has obtained drivers' information from DMV records specifically for direct-marketing purposes may resell that information for other direct-marketing uses, but not otherwise. *Ibid.* Any person who rediscloses or resells personal information from DMV records must, for five years, maintain records identifying to whom the records were disclosed and the permitted purpose for the resale or redisclosure. *Ibid.*

The DPPA establishes several penalties to be imposed on States and private actors that fail to comply with its requirements. The Act makes it unlawful for any "person" knowingly to obtain or disclose any record for a use that is not permitted under its provisions, or to make a false representation in order to obtain personal information from a motor vehicle record. §§ 2722(a) and (b). Any person who knowingly violates the DPPA may be subject to a criminal fine, §§ 2723(a), 2725(2). Additionally, any person who knowingly obtains, discloses, or uses information from a state motor vehicle record for a use other than those specifically permitted by the DPPA may be subject to liability in a civil action

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towed or impounded, § 2721(b)(7); for use by licensed private investigative agencies or security services for any purpose permitted by the DPPA, § 2721(b)(8); and in connection with private toll transportation services, § 2721(b)(10).

brought by the driver to whom the information pertains. § 2724. While the DPPA defines "person" to exclude States and state agencies, § 2725(2), a state agency that maintains a "policy or practice of substantial noncompliance" with the Act may be subject to a civil penalty imposed by the United States Attorney General of not more than $5,000 per day of substantial noncompliance. § 2723(b).

South Carolina law conflicts with the DPPA's provisions. Under that law, the information contained in the State's DMV records is available to any person or entity that fills out a form listing the requester's name and address and stating that the information will not be used for telephone solicitation. S. C. Code Ann. §§ 56–3–510 to 56–3–540 (Supp. 1998). South Carolina's DMV retains a copy of all requests for information from the State's motor vehicle records, and it is required to release copies of all requests relating to a person upon that person's written petition. § 56–3–520. State law authorizes the South Carolina DMV to charge a fee for releasing motor vehicle information, and it requires the DMV to allow drivers to prohibit the use of their motor vehicle information for certain commercial activities. §§ 56–3–530, 56–3–540.

Following the DPPA's enactment, South Carolina and its Attorney General, respondent Condon, filed suit in the United States District Court for the District of South Carolina, alleging that the DPPA violates the Tenth and Eleventh Amendments to the United States Constitution. The District Court concluded that the Act is incompatible with the principles of federalism inherent in the Constitution's division of power between the States and the Federal Government. The court accordingly granted summary judgment for the State and permanently enjoined the Act's enforcement against the State and its officers. See 972 F. Supp. 977, 979 (1997). The Court of Appeals for the Fourth Circuit affirmed, concluding that the Act violates constitutional prin-

ciples of federalism. See 155 F. 3d 453 (1998). We granted certiorari, 526 U. S. 1111 (1999), and now reverse.

We of course begin with the time-honored presumption that the DPPA is a "constitutional exercise of legislative power." *Close* v. *Glenwood Cemetery*, 107 U. S. 466, 475 (1883); see also *INS* v. *Chadha*, 462 U. S. 919, 944 (1983).

The United States asserts that the DPPA is a proper exercise of Congress' authority to regulate interstate commerce under the Commerce Clause, U. S. Const., Art. I, § 8, cl. 3.[2] The United States bases its Commerce Clause argument on the fact that the personal, identifying information that the DPPA regulates is a "thin[g] in interstate commerce," and that the sale or release of that information in interstate commerce is therefore a proper subject of congressional regulation. *United States* v. *Lopez*, 514 U. S. 549, 558–559 (1995). We agree with the United States' contention. The motor vehicle information which the States have historically sold is used by insurers, manufacturers, direct marketers, and others engaged in interstate commerce to contact drivers with customized solicitations. The information is also used in the stream of interstate commerce by various public and private entities for matters related to interstate motoring. Because drivers' information is, in this context, an article of commerce, its sale or release into the interstate stream of business is sufficient to support congressional regulation. We therefore need not address the Government's alternative argument that the States' individual, intrastate activities in gathering, maintaining, and distributing drivers' personal

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[2] In the lower courts, the United States also asserted that the DPPA was lawfully enacted pursuant to Congress' power under § 5 of the Fourteenth Amendment. See 155 F. 3d 453, 463–465 (1998); 972 F. Supp. 977–979, 986–992 (1997). The District Court and Court of Appeals rejected that argument. See 155 F. 3d, at 465; 972 F. Supp., at 992. The United States' petition for certiorari and briefs to this Court do not address the § 5 issue and, at oral argument, the Solicitor General expressly disavowed any reliance on it.

information have a sufficiently substantial impact on interstate commerce to create a constitutional base for federal legislation.

But the fact that drivers' personal information is, in the context of this case, an article in interstate commerce does not conclusively resolve the constitutionality of the DPPA. In *New York* and *Printz*, we held federal statutes invalid, not because Congress lacked legislative authority over the subject matter, but because those statutes violated the principles of federalism contained in the Tenth Amendment. In *New York*, Congress commandeered the state legislative process by requiring a state legislature to enact a particular kind of law. We said:

> "While Congress has substantial powers to govern the Nation directly, including in areas of intimate concern to the States, the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions. See *Coyle* v. *Smith*, 221 U. S. 559, 565 (1911)." 505 U. S., at 162.

In *Printz*, we invalidated a provision of the Brady Act which commanded "state and local enforcement officers to conduct background checks on prospective handgun purchasers." 521 U. S., at 902. We said:

> "We held in *New York* that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the States' officers directly. The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program." *Id.*, at 935.

South Carolina contends that the DPPA violates the Tenth Amendment because it "thrusts upon the States all of the

day-to-day responsibility for administering its complex provisions," Brief for Respondents 10, and thereby makes "state officials the unwilling implementors of federal policy," *id.*, at 11.[3] South Carolina emphasizes that the DPPA requires the State's employees to learn and apply the Act's substantive restrictions, which are summarized above, and notes that these activities will consume the employees' time and thus the State's resources. South Carolina further notes that the DPPA's penalty provisions hang over the States as a potential punishment should they fail to comply with the Act.

We agree with South Carolina's assertion that the DPPA's provisions will require time and effort on the part of state employees, but reject the State's argument that the DPPA violates the principles laid down in either *New York* or *Printz*. We think, instead, that this case is governed by our decision in *South Carolina* v. *Baker*, 485 U. S. 505 (1988). In *Baker*, we upheld a statute that prohibited States from issuing unregistered bonds because the law "regulate[d] state activities," rather than "seek[ing] to control or influence the manner in which States regulate private parties." *Id.*, at 514–515. We further noted:

> "The [National Governor's Association] nonetheless contends that § 310 has commandeered the state legislative and administrative process because many state legislatures had to amend a substantial number of statutes in order to issue bonds in registered form and because state officials had to devote substantial effort to determine how best to implement a registered bond system. Such 'commandeering' is, however, an inevitable consequence of regulating a state activity. Any federal regulation demands compliance. That a State wishing to en-

[3] South Carolina has not asserted that it does not participate in the interstate market for personal information. Rather, South Carolina asks that the DPPA be invalidated in its entirety, even as it is applied to the States acting purely as commercial sellers.

> gage in certain activity must take administrative and sometimes legislative action to comply with federal standards regulating that activity is a commonplace that presents no constitutional defect." *Ibid.*

Like the statute at issue in *Baker*, the DPPA does not require the States in their sovereign capacity to regulate their own citizens. The DPPA regulates the States as the owners of data bases. It does not require the South Carolina Legislature to enact any laws or regulations, and it does not require state officials to assist in the enforcement of federal statutes regulating private individuals. We accordingly conclude that the DPPA is consistent with the constitutional principles enunciated in *New York* and *Printz*.

As a final matter, we turn to South Carolina's argument that the DPPA is unconstitutional because it regulates the States exclusively. The essence of South Carolina's argument is that Congress may only regulate the States by means of "generally applicable" laws, or laws that apply to individuals as well as States. But we need not address the question whether general applicability is a constitutional requirement for federal regulation of the States, because the DPPA is generally applicable. The DPPA regulates the universe of entities that participate as suppliers to the market for motor vehicle information—the States as initial suppliers of the information in interstate commerce and private resellers or redisclosers of that information in commerce.

The judgment of the Court of Appeals is therefore

*Reversed.*

Syllabus

# MARTINEZ *v.* COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT

CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

No. 98–7809. Argued November 9, 1999—Decided January 12, 2000

Accused of converting a client's money to his own use while employed as a paralegal, petitioner Martinez was charged by California with grand theft and the fraudulent appropriation of another's property. He chose to represent himself at trial before a jury, which acquitted him of theft but convicted him of embezzlement. He then filed a timely notice of appeal, a motion to represent himself, and a waiver of counsel. The California Court of Appeal denied his motion to represent himself based on its prior holding that there is no constitutional right to self-representation on direct appeal under *Faretta* v. *California*, 422 U. S. 806, in which this Court held that a criminal defendant has a constitutional right to conduct his own defense at trial when he voluntarily and intelligently elects to proceed without counsel, *id.*, at 807, 836. The state court had explained that the right to counsel on appeal stems from the Due Process and Equal Protection Clauses of the Fourteenth Amendment, not from the Sixth Amendment on which *Faretta* was based, and held that the denial of self-representation at this level does not violate due process or equal protection. The California Supreme Court denied Martinez' application for a writ of mandate.

*Held:* Neither *Faretta*'s holding nor its reasoning requires a State to recognize a constitutional right to self-representation on direct appeal from a criminal conviction. Although some of *Faretta*'s reasoning is applicable to appellate proceedings as well as to trials, there are significant distinctions. First, the historical evidence *Faretta* relied on as identifying a right of self-representation, 422 U. S., at 812–817, is not useful here because it pertained to times when lawyers were scarce, often mistrusted, and not readily available to the average person accused of crime, whereas it has since been recognized that every indigent defendant in a criminal trial has a constitutional right to the assistance of appointed counsel, see *Gideon* v. *Wainwright*, 372 U. S. 335. Moreover, unlike the right recognized in *Faretta*, the historical evidence does not provide any support for an affirmative constitutional right to appellate self-representation. Second, *Faretta*'s reliance on the Sixth Amendment's structure interpreted in light of its English and colonial background, 422 U. S., at 818–832, is not relevant here. Because the Amend-

Syllabus

ment deals strictly with trial rights and does not include any right to appeal, see *Abney* v. *United States*, 431 U. S. 651, 656, it necessarily follows that the Amendment itself does not provide any basis for finding a right to appellate self-representation. *Faretta*'s inquiries into historical English practices, 422 U. S., at 821–824, do not provide a basis for extending that case to the appellate process because there was no appeal from a criminal conviction in England until 1907. Third, although *Faretta*'s conclusion that a knowing and intelligent waiver of the right to trial counsel must be honored out of respect for individual autonomy, *id.*, at 834, is also applicable in the appellate context, this Court has recognized that the right is not absolute, see *id.*, at 835. Given the Court's conclusion that the Sixth Amendment does not apply to appellate proceedings, any individual right to self-representation on appeal based on autonomy principles must be grounded in the Due Process Clause. Under the practices prevailing in the Nation today, the Court is entirely unpersuaded that the risk of disloyalty by a court-appointed attorney, or the suspicion of such disloyalty, that underlies the constitutional right of self-representation at trial, see *id.*, at 834, is a sufficient concern to conclude that such a right is a necessary component of a fair appellate proceeding. The States are clearly within their discretion to conclude that the government's interests in ensuring the integrity and efficiency of the appellate process outweigh an invasion of the appellant's interest in self-representation, although the Court's narrow holding does not preclude the States from recognizing a constitutional right to appellate self-representation under their own constitutions. Pp. 156–164.

Affirmed.

STEVENS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, SOUTER, THOMAS, GINSBURG, and BREYER, JJ., joined. KENNEDY, J., *post*, p. 164, and BREYER, J., *post*, p. 164, filed concurring opinions. SCALIA, J., filed an opinion concurring in the judgment, *post*, p. 165.

*Ronald D. Maines*, by appointment of the Court, 526 U. S. 1110, argued the cause and filed briefs for petitioner.

*Robert M. Foster*, Supervising Deputy Attorney General of California, argued the cause for respondent. With him on the brief were *Bill Lockyer*, Attorney General, *David P. Druliner*, Chief Assistant Attorney General, *Gary W.*

*Schons*, Senior Assistant Attorney General, and *Laura Whitcomb Halgren*, Supervising Deputy Attorney General.*

JUSTICE STEVENS delivered the opinion of the Court.

The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment.[1] In *Faretta* v. *California*, 422 U. S. 806 (1975), we decided that the defendant also "has a constitutional right to proceed *without* counsel when he voluntarily and intelligently elects to do so." *Id.*, at 807. Although that statement arguably embraces the entire judicial proceeding, we also phrased the question as whether a State may "constitutionally hale a person into its criminal courts and there force a lawyer upon him, even when he insists that he wants to conduct his own defense." *Ibid.* Our conclusion in *Faretta* extended only to a defendant's "constitutional right to conduct his own defense." *Id.*, at 836. Accordingly, our specific holding was confined to the right to defend oneself at trial. We now address the different question whether the reasoning in support of that holding also applies when the defendant becomes an appellant and assumes the burden of persuading a reviewing court that the conviction should be reversed. We have concluded that it does not.

## I

Martinez describes himself as a self-taught paralegal with 25 years' experience at 12 different law firms. See App. 13.

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**Kent S. Scheidegger* and *Charles L. Hobson* filed a brief for the Criminal Justice Legal Foundation as *amicus curiae* urging affirmance.

*Barbara E. Bergman* and *Ephraim Margolin* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae.*

[1] See, *e. g.*, *Powell* v. *Alabama*, 287 U. S. 45 (1932); *Johnson* v. *Zerbst*, 304 U. S. 458 (1938); *Gideon* v. *Wainwright*, 372 U. S. 335 (1963); *Argersinger* v. *Hamlin*, 407 U. S. 25 (1972).

While employed as an office assistant at a firm in Santa Ana, California, Martinez was accused of converting $6,000 of a client's money to his own use. He was charged in a two-count information with grand theft and the fraudulent appropriation of the property of another. He chose to represent himself at trial before a jury, because he claimed "'there wasn't an attorney on earth who'd believe me once he saw my past [criminal record].'" *Id.*, at 15. The jury acquitted him on Count 1, grand theft, but convicted him on Count 2, embezzlement. The jury also found that he had three prior convictions; accordingly, under California's "three strikes" law, the court imposed a mandatory sentence of 25-years-to-life in prison. See Cal. Penal Code Ann. §§ 667(d) and (e)(2) (West 1999). Martinez filed a timely notice of appeal as well as a motion to represent himself and a waiver of counsel. The California Court of Appeal denied his motion, and the California Supreme Court denied his application for a writ of mandate. While the California Supreme Court did not issue an opinion in this case, the Court of Appeal previously had explained:

> "There is no constitutional right to self-representation on the initial appeal as of right. The right to counsel on appeal stems from the due process and equal protection clauses of the Fourteenth Amendment, not from the Sixth Amendment, which is the foundation on which *Faretta* is based. The denial of self-representation at this level does not violate due process or equal protection guarantees." *People* v. *Scott*, 64 Cal. App. 4th 550, 554, 75 Cal. Rptr. 2d 315, 318 (1998).

We granted certiorari because Martinez has raised a question on which both state and federal courts have expressed conflicting views.[2] 526 U. S. 1064 (1999). We now affirm.

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[2] Compare *Myers* v. *Collins*, 8 F. 3d 249, 252 (CA5 1993) (finding right of self-representation extends to appeals); *Campbell* v. *Blodgett*, 940 F. 2d 549 (CA9 1991) (same); *Chamberlain* v. *Ericksen*, 744 F. 2d 628, 630

## II

The *Faretta* majority based its conclusion on three interrelated arguments. First, it examined historical evidence identifying a right of self-representation that had been protected by federal and state law since the beginning of our Nation, 422 U. S., at 812–817. Second, it interpreted the structure of the Sixth Amendment, in the light of its English and colonial background, *id.*, at 818–832. Third, it concluded that even though it "is undeniable that in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts," a knowing and intelligent waiver "must be honored out of 'that respect for the individual which is the lifeblood of the law.' *Illinois* v. *Allen*, 397 U. S. 337, 350–351 [(1970)]." *Id.*, at 834. Some of the Court's reasoning is applicable to appellate proceedings as well as to trials. There are, however, significant distinctions.

The historical evidence relied upon by *Faretta* as identifying a right of self-representation is not always useful because it pertained to times when lawyers were scarce, often mistrusted, and not readily available to the average person accused of crime.[3] For one who could not obtain a lawyer,

(CA8 1984) (same); *Commonwealth* v. *Rogers*, 537 Pa. 581, 583, 645 A. 2d 223, 224 (1994) (same); *State* v. *Van Pelt*, 305 Ark. 125, 127, 810 S. W. 2d 27, 28 (1991) (same); *Webb* v. *State*, 274 Ind. 540, 542, 412 N. E. 2d 790, 792 (1980) (same); *Webb* v. *State*, 533 S. W. 2d 780, 784 (Tex. Crim. App. 1976) (same), with *United States* v. *Gillis*, 773 F. 2d 549, 560 (CA4 1985) (finding no right of self-representation on appeal); *Lumbert* v. *Finley*, 735 F. 2d 239, 246 (CA7 1984) (same); *Hill* v. *State*, 656 So. 2d 1271, 1272 (Fla. 1995) (same); *State* v. *Gillespie*, 898 S. W. 2d 738 (Tenn. Crim. App. 1994) (same).

[3] "The colonists brought with them an appreciation of the virtues of self-reliance and a traditional distrust of lawyers. When the Colonies were first settled, 'the lawyer was synonymous with the cringing Attorneys-General and Solicitors-General of the Crown and the arbitrary Justices of the King's Court, all bent on the conviction of those who opposed the King's prerogatives, and twisting the law to secure convictions.' This prejudice gained strength in the Colonies where 'distrust of lawyers became an institution.' Several Colonies prohibited pleading for hire in the

self-representation was the only feasible alternative to asserting no defense at all. Thus, a government's recognition of an indigent defendant's right to represent himself was comparable to bestowing upon the homeless beggar a "right" to take shelter in the sewers of Paris. Not surprisingly, early precedent demonstrates that this "right" was not always used to the defendant's advantage as a shield, but rather was often employed by the prosecution as a sword. The principal case cited in *Faretta* is illustrative. In *Adams* v. *United States ex rel. McCann*, 317 U. S. 269 (1942), the Court relied on the existence of the right of self-representation as the basis for finding that an unrepresented defendant had waived his right to a trial by jury.[4]

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17th century. The prejudice persisted into the 18th century as 'the lower classes came to identify lawyers with the upper class.' The years of Revolution and Confederation saw an upsurge of antilawyer sentiment, a 'sudden revival, after the War of the Revolution, of the old dislike and distrust of lawyers as a class.'" *Faretta*, 422 U. S., at 826–827 (footnotes omitted).

[4] Similarly, in the state cases cited by the Court in *Faretta*, see 422 U. S., at 813, n. 9, the defendant's right to represent himself was often the predicate for upholding the waiver of an important right. See, *e. g.*, *Mackreth* v. *Wilson*, 31 Ala. App. 191, 193, 15 So. 2d 112, 113 (1943) (failure of the defendant to request counsel equaled an "election" to proceed *pro se*); *Lockard* v. *State*, 92 Idaho 813, 822, 451 P. 2d 1014, 1023 (1969) (court relied on defendant's right of self-representation to uphold an uncounseled guilty plea, despite claims that it was coerced); *People* v. *Nelson*, 47 Ill. 2d 570, 268 N. E. 2d 2, 3 (1971) (defendant's *pro se* status is predicate for upholding waiver of indictment and jury trial and also to uphold guilty plea); *Allen* v. *Commonwealth*, 324 Mass. 558, 562–563, 87 N. E. 2d 192, 195 (1949) (life sentence upheld despite fact that indigent defendant was unable to procure counsel); *Westberry* v. *State*, 254 A. 2d 44, 46 (Me. 1969) (guilty plea upheld because defendant failed to claim indigency or to request counsel); *State* v. *Hollman*, 232 S. C. 489, 499, 102 S. E. 2d 873, 878 (1958) (right of defendant to represent himself used as basis for finding he had no right to appointed counsel). But see *State* v. *Thomlinson*, 78 S. D. 235, 237, 100 N. W. 2d 121, 122 (1960) (vacating conviction based on court's failure to allow defendant to represent himself); *State* v. *Penderville*, 2 Utah 2d 281, 287, 272 P. 2d 195, 199 (1954) (same); *Cappetta* v. *State*, 204 So. 2d 913, 918 (Fla. App. 1967) (same), rev'd, *State* v. *Cappetta*, 216 So. 2d

It has since been recognized, however, that an indigent defendant in a criminal trial has a constitutional right to the assistance of appointed counsel, see *Gideon* v. *Wainwright*, 372 U. S. 335 (1963). Thus, an individual's decision to represent himself is no longer compelled by the necessity of choosing self-representation over incompetent or nonexistent representation; rather, it more likely reflects a genuine desire to "'conduct his own cause in his own words.'" *Faretta*, 422 U. S., at 823 (footnote omitted). Therefore, while *Faretta* is correct in concluding that there is abundant support for the proposition that a right to self-representation has been recognized for centuries, the original reasons for protecting that right do not have the same force when the availability of competent counsel for every indigent defendant has displaced the need—although not always the desire—for self-representation.

The scant historical evidence pertaining to the issue of self-representation on appeal is even less helpful. The Court in *Faretta* relied upon the description of the right in § 35 of the Judiciary Act of 1789, 1 Stat. 92, which states that "the parties may plead and manage their own causes personally or by the assistance of such counsel . . . ." 422 U. S., at 812. It is arguable that this language encompasses appeals as well as trials. Assuming it does apply to appellate proceedings, however, the statutory right is expressly limited by the phrase "as by the rules of the said courts." 1 Stat. 92. Appellate courts have maintained the discretion to allow litigants to "manage their own causes"—and some such litigants have done so effectively.[5] That opportunity, however, has been consistently subject to each court's own rules.

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749, 750 (Fla. 1968) (finding voluntary and intelligent waiver of right to proceed *pro se*).

[5] See, *e. g.*, *SEC* v. *Sloan*, 436 U. S. 103 (1978) (*pro se* respondent argued, briefed, and prevailed in the Court of Appeals for the Second Circuit and this Court).

We are not aware of any historical consensus establishing a right of self-representation on appeal. We might, nonetheless, paraphrase *Faretta* and assert: No State or Colony ever forced counsel upon a convicted appellant, and no spokesman ever suggested that such a practice would be tolerable or advisable. 422 U. S., at 832. Such negative historical evidence was meaningful to the *Faretta* Court, because the fact that the "[dog] had not barked"[6] arguably demonstrated that early lawmakers intended to preserve the "long-respected right of self-representation" at trial. *Ibid.* Historical silence, however, has no probative force in the appellate context because there simply was no long-respected right of self-representation on appeal. In fact, the right of appeal itself is of relatively recent origin.

Appeals as of right in federal courts were nonexistent for the first century of our Nation, and appellate review of any sort was "rarely allowed." *Abney* v. *United States*, 431 U. S. 651, 656, n. 3 (1977). The States, also, did not generally recognize an appeal as of right until Washington became the first to constitutionalize the right explicitly in 1889.[7] There was similarly no right to appeal in criminal cases at common law, and appellate review of any sort was "limited" and "rarely used."[8] Thus, unlike the inquiry in *Faretta*, the historical evidence does not provide any support for an affirmative constitutional right to appellate self-representation.

The *Faretta* majority's reliance on the structure of the Sixth Amendment is also not relevant. The Sixth Amendment identifies the basic rights that the accused shall enjoy

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[6] A. Conan Doyle, Silver Blaze, in The Complete Sherlock Holmes 383, 400 (1938).

[7] See Lobsenz, A Constitutional Right to An Appeal: Guarding Against Unacceptable Risks of Erroneous Conviction, 8 U. Puget Sound L. Rev. 375, 376 (1985). Although Washington was the first State to constitutionalize an appeal as of right, almost all of the States historically had some form of discretionary appellate review. See generally L. Orfield, Criminal Appeals in America 215–231 (1939).

[8] 1 J. Stephen, A History of the Criminal Law of England 308–310 (1883).

in "all criminal prosecutions." They are presented strictly as rights that are available in preparation for trial and at the trial itself. The Sixth Amendment does not include any right to appeal. As we have recognized, "[t]he right of appeal, as we presently know it in criminal cases, is purely a creature of statute." *Abney*, 431 U. S., at 656. It necessarily follows that the Amendment itself does not provide any basis for finding a right to self-representation on appeal.

The *Faretta* majority's nontextual interpretation of the Sixth Amendment also included an examination of British criminal jurisprudence and a reference to the opprobrious trial practices before the Star Chamber. 422 U. S., at 821–824. These inquiries into historical English practices, however, again do not provide a basis for extending *Faretta* to the appellate process, because there was no appeal from a criminal conviction in England until 1907. See *Griffin* v. *Illinois*, 351 U. S. 12, 21 (1956) (Frankfurter, J., concurring in judgment); 7 Edw. VII, ch. 23 (1907). Indeed, none of our many cases safeguarding the rights of an indigent appellant has placed any reliance on either the Sixth Amendment or on *Faretta*. See, *e. g.*, *Douglas* v. *California*, 372 U. S. 353, 356–358 (1963); *Griffin*, 351 U. S., at 12.

Finally, the *Faretta* majority found that the right to self-representation at trial was grounded in part in a respect for individual autonomy. See 422 U. S., at 834. This consideration is, of course, also applicable to an appellant seeking to manage his own case. As we explained in *Faretta*, at the trial level "[t]o force a lawyer on a defendant can only lead him to believe that the law contrives against him." *Ibid.* On appellate review, there is surely a similar risk that the appellant will be skeptical of whether a lawyer, who is employed by the same government that is prosecuting him, will serve his cause with undivided loyalty. Equally true on appeal is the related observation that it is the appellant personally who will bear the consequences of the appeal. See *ibid.*

In light of our conclusion that the Sixth Amendment does not apply to appellate proceedings, any individual right to self-representation on appeal based on autonomy principles must be grounded in the Due Process Clause. Under the practices that prevail in the Nation today, however, we are entirely unpersuaded that the risk of either disloyalty or suspicion of disloyalty is a sufficient concern to conclude that a constitutional right of self-representation is a necessary component of a fair appellate proceeding. We have no doubt that instances of disloyal representation are rare. In both trials and appeals there are, without question, cases in which counsel's performance is ineffective. Even in those cases, however, it is reasonable to assume that counsel's performance is more effective than what the unskilled appellant could have provided for himself.

No one, including Martinez and the *Faretta* majority, attempts to argue that as a rule *pro se* representation is wise, desirable, or efficient.[9] Although we found in *Faretta* that the right to defend oneself at trial is "fundamental" in nature, *id.*, at 817, it is clear that it is representation by counsel that is the standard, not the exception. See *Patterson* v. *Illinois*, 487 U. S. 285, 307 (1988) (noting the "strong presumption against" waiver of right to counsel). Our experience has taught us that "a pro se defense is usually a bad defense, particularly when compared to a defense provided by an experienced criminal defense attorney."[10]

As the *Faretta* opinion recognized, the right to self-representation is not absolute. The defendant must "'voluntarily and intelligently'" elect to conduct his own defense,

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[9] Some critics argue that the right to proceed *pro se* at trial in certain cases is akin to allowing the defendant to waive his right to a fair trial. See, *e. g.*, *United States* v. *Farhad*, 190 F. 3d 1097, 1106–1107 (CA9 1999) (Reinhardt, J., concurring specially), cert. pending, No. 99–7127.

[10] Decker, The Sixth Amendment Right to Shoot Oneself in the Foot: An Assessment of the Guarantee of Self-Representation Twenty Years after *Faretta*, 6 Seton Hall Const. L. J. 483, 598 (1996).

422 U. S., at 835 (quoting *Johnson* v. *Zerbst*, 304 U. S. 458, 464–465 (1938)), and most courts require him to do so in a timely manner.[11] He must first be "made aware of the dangers and disadvantages of self-representation." 422 U. S., at 835. A trial judge may also terminate self-representation or appoint "standby counsel"—even over the defendant's objection—if necessary. *Id.*, at 834, n. 46. We have further held that standby counsel may participate in the trial proceedings, even without the express consent of the defendant, as long as that participation does not "seriously undermin[e]" the "appearance before the jury" that the defendant is representing himself. *McKaskle* v. *Wiggins*, 465 U. S. 168, 187 (1984). Additionally, the trial judge is under no duty to provide personal instruction on courtroom procedure or to perform any legal "chores" for the defendant that counsel would normally carry out. *Id.*, at 183–184. Even at the trial level, therefore, the government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer.

In the appellate context, the balance between the two competing interests surely tips in favor of the State. The status of the accused defendant, who retains a presumption of innocence throughout the trial process, changes dramatically when a jury returns a guilty verdict. We have recognized this shifting focus and noted:

> "[T]here are significant differences between the trial and appellate stages of a criminal proceeding. The purpose of the trial stage from the State's point of view is to convert a criminal defendant from a person presumed innocent to one found guilty beyond a reasonable doubt. . . .
>
> "By contrast, it is ordinarily the defendant, rather than the State, who initiates the appellate process, seeking not to fend off the efforts of the State's prosecutor

[11] See *id.*, at 544–550 (collecting cases).

> but rather to overturn a finding of guilt made by a judge or a jury below." *Ross* v. *Moffitt*, 417 U. S. 600, 610 (1974).

In the words of the *Faretta* majority, appellate proceedings are simply not a case of "hal[ing] a person into its criminal courts." 422 U. S., at 807.

The requirement of representation by trained counsel implies no disrespect for the individual inasmuch as it tends to benefit the appellant as well as the court. Courts, of course, may still exercise their discretion to allow a lay person to proceed *pro se*. We already leave to the appellate courts' discretion, keeping "the best interests of both the prisoner and the government in mind," the decision whether to allow a *pro se* appellant to participate in, or even to be present at, oral argument. *Price* v. *Johnston*, 334 U. S. 266, 284 (1948). Considering the change in position from defendant to appellant, the autonomy interests that survive a felony conviction are less compelling than those motivating the decision in *Faretta*. Yet the overriding state interest in the fair and efficient administration of justice remains as strong as at the trial level. Thus, the States are clearly within their discretion to conclude that the government's interests outweigh an invasion of the appellant's interest in self-representation.

## III

For the foregoing reasons, we conclude that neither the holding nor the reasoning in *Faretta* requires California to recognize a constitutional right to self-representation on direct appeal from a criminal conviction. Our holding is, of course, narrow. It does not preclude the States from recognizing such a right under their own constitutions. Its impact on the law will be minimal, because a lay appellant's rights to participate in appellate proceedings have long been limited by the well-established conclusions that he has no right to be present during appellate proceedings, *Schwab* v. *Berggren*, 143 U. S. 442 (1892), or to present oral argument,

*Price*, 334 U. S., at 285–286. Meanwhile the rules governing appeals in California, and presumably those in other States as well, seem to protect the ability of indigent litigants to make *pro se* filings. See, *e. g.*, *People* v. *Wende*, 25 Cal. 3d 436, 440, 600 P. 2d 1071, 1074 (1979); see also *Anders* v. *California*, 386 U. S. 738 (1967). In requiring Martinez, under these circumstances, to accept against his will a state-appointed attorney, the California courts have not deprived him of a constitutional right. Accordingly, the judgment of the California Supreme Court is affirmed.

*It is so ordered.*

JUSTICE KENNEDY, concurring.

To resolve this case it is unnecessary to cast doubt upon the rationale of *Faretta* v. *California*, 422 U. S. 806 (1975). *Faretta* can be accepted as quite sound, yet it does not follow that a convicted person has a similar right of self-representation on appeal. Different considerations apply in the appellate system, and the Court explains why this is so. With these observations, I join the opinion of the Court.

JUSTICE BREYER, concurring.

I agree with the Court and join its opinion. Because JUSTICE SCALIA writes separately to underscore the continuing constitutional validity of *Faretta* v. *California*, 422 U. S. 806 (1975), I note that judges closer to the firing line have sometimes expressed dismay about the practical consequences of that holding. See, *e. g.*, *United States* v. *Farhad*, 190 F. 3d 1097, 1107 (CA9 1999) (concurring opinion) (right of self-representation "frequently, though not always, conflicts squarely and inherently with the right to a fair trial"). I have found no empirical research, however, that might help determine whether, in general, the right to represent oneself furthers, or inhibits, the Constitution's basic guarantee of fairness. And without some strong factual basis for believing that *Faretta*'s holding has proved counterproductive in

practice, we are not in a position to reconsider the constitutional assumptions that underlie that case.

JUSTICE SCALIA, concurring in the judgment.

I do not share the apparent skepticism of today's opinion concerning the judgment of the Court (often curiously described as merely the judgment of "the majority") in *Faretta* v. *California*, 422 U. S. 806 (1975). I have no doubt that the Framers of our Constitution, who were suspicious enough of governmental power—including judicial power—that they insisted upon a citizen's right to be judged by an independent jury of private citizens, would not have found acceptable the compulsory assignment of counsel *by the government* to plead a criminal defendant's case. While I might have rested the decision upon the Due Process Clause rather than the Sixth Amendment, I believe it was correct.

That asserting the right of self-representation may often, or even usually, work to the defendant's disadvantage is no more remarkable—and no more a basis for withdrawing the right—than is the fact that proceeding without counsel in custodial interrogation, or confessing to the crime, usually works to the defendant's disadvantage. Our system of laws generally presumes that the criminal defendant, after being fully informed, knows his own best interests and does not need them dictated by the State. Any other approach is unworthy of a free people. As Justice Frankfurter eloquently put it for the Court in *Adams* v. *United States ex rel. McCann*, 317 U. S. 269 (1942), to require the acceptance of counsel "is to imprison a man in his privileges and call it the Constitution." *Id.*, at 280.

In any event, *Faretta* is relevant to the question before us only to the limited extent that we must decide whether its holding applies to self-representation on appeal. It seems to me that question is readily answered by the fact that there is no constitutional right to appeal. See *McKane* v. *Durston*, 153 U. S. 684, 687–688 (1894). Since a State could, as

far as the Federal Constitution is concerned, subject its trial-court determinations to no review whatever, it could *a fortiori* subject them to review which consists of a nonadversarial reexamination of convictions by a panel of government experts. Adversarial review with counsel appointed by the State is even less questionable than that.

For these reasons, I concur in the judgment of the Court.

Syllabus

# FRIENDS OF THE EARTH, INC., ET AL. *v.* LAIDLAW ENVIRONMENTAL SERVICES (TOC), INC.

## CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 98–822. Argued October 12, 1999—Decided January 12, 2000

Defendant-respondent Laidlaw Environmental Services (TOC), Inc., bought a facility in Roebuck, South Carolina, that included a wastewater treatment plant. Shortly thereafter, the South Carolina Department of Health and Environmental Control (DHEC), acting under the Clean Water Act (Act), 33 U. S. C. § 1342(a)(1), granted Laidlaw a National Pollutant Discharge Elimination System (NPDES) permit. The permit authorized Laidlaw to discharge treated water into the North Tyger River, but limited, among other things, the discharge of pollutants into the waterway. Laidlaw began to discharge various pollutants into the waterway; these discharges, particularly of mercury, an extremely toxic pollutant, repeatedly exceeded the limits set by the permit.

On April 10, 1992, plaintiff-petitioners Friends of the Earth and Citizens Local Environmental Action Network, Inc. (referred to collectively here, along with later joined plaintiff-petitioner Sierra Club, as "FOE"), notified Laidlaw of their intention to file a citizen suit against it under the Act, 33 U. S. C. § 1365(a), after the expiration of the requisite 60-day notice period. DHEC acceded to Laidlaw's request to file a lawsuit against the company. On the last day before FOE's 60-day notice period expired, DHEC and Laidlaw reached a settlement requiring Laidlaw to pay $100,000 in civil penalties and to make "every effort" to comply with its permit obligations.

On June 12, 1992, FOE filed this citizen suit against Laidlaw, alleging noncompliance with the NPDES permit and seeking declaratory and injunctive relief and an award of civil penalties. Laidlaw moved for summary judgment on the ground that FOE lacked Article III standing to bring the lawsuit. After examining affidavits and deposition testimony from members of the plaintiff organizations, the District Court denied the motion, finding that the plaintiffs had standing. The District Court also denied Laidlaw's motion to dismiss on the ground that the citizen suit was barred under § 1365(b)(1)(B) by DHEC's prior action against the company. After FOE initiated this suit, but before the District Court rendered judgment on January 22, 1997, Laidlaw violated the mercury discharge limitation in its permit 13 times and committed 13 monitoring and 10 reporting violations. In issuing its judgment, the

District Court found that Laidlaw had gained a total economic benefit of $1,092,581 as a result of its extended period of noncompliance with the permit's mercury discharge limit; nevertheless, the court concluded that a civil penalty of $405,800 was appropriate. In particular, the District Court found that the judgment's "total deterrent effect" would be adequate to forestall future violations, given that Laidlaw would have to reimburse the plaintiffs for a significant amount of legal fees and had itself incurred significant legal expenses. The court declined to order injunctive relief because Laidlaw, after the lawsuit began, had achieved substantial compliance with the terms of its permit.

FOE appealed as to the amount of the District Court's civil penalty judgment, but did not appeal the denial of declaratory or injunctive relief. The Fourth Circuit vacated the District Court's order and remanded with instructions to dismiss the action. Assuming, *arguendo*, that FOE initially had standing, the appellate court held that the case had become moot once Laidlaw complied with the terms of its permit and the plaintiffs failed to appeal the denial of equitable relief. Citing *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, the court reasoned that the only remedy currently available to FOE, civil penalties payable to the Government, would not redress any injury FOE had suffered. The court added that FOE's failure to obtain relief on the merits precluded recovery of attorneys' fees or costs because such an award is available only to a "prevailing or substantially prevailing party" under § 1365(d). According to Laidlaw, the entire Roebuck facility has since been permanently closed, dismantled, and put up for sale, and all discharges from the facility have permanently ceased.

*Held:* The Fourth Circuit erred in concluding that a citizen suitor's claim for civil penalties must be dismissed as moot when the defendant, after commencement of the litigation, has come into compliance with its NPDES permit. Pp. 180–195.

(a) The Constitution's case-or-controversy limitation on federal judicial authority, Art. III, § 2, underpins both standing and mootness doctrine, but the two inquiries differ in crucial respects. Because the Fourth Circuit was persuaded that the case had become moot, it simply assumed that FOE had initial standing. See *Arizonans for Official English* v. *Arizona*, 520 U. S. 43, 66–67. But because this Court concludes that the Court of Appeals erred as to mootness, this Court has an obligation to assure itself that FOE had Article III standing at the outset of the litigation. P. 180.

(b) FOE had Article III standing to bring this action. This Court has held that to satisfy Article III's standing requirements, a plaintiff must show "injury in fact," causation, and redressability. *Lujan* v. *De-*

*fenders of Wildlife*, 504 U. S. 555, 560–561. An association has standing to bring suit on behalf of its members when its members would have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires individual members' participation in the lawsuit. *Hunt* v. *Washington State Apple Advertising Comm'n*, 432 U. S. 333, 343. The relevant showing for Article III standing is not injury to the environment but injury to the plaintiff. To insist on the former rather than the latter is to raise the standing hurdle higher than the necessary showing for success on the merits in a citizen's NPDES permit enforcement suit. Here, injury in fact was adequately documented by the affidavits and testimony of FOE members asserting that Laidlaw's pollutant discharges, and the affiants' reasonable concerns about the effects of those discharges, directly affected those affiants' recreational, aesthetic, and economic interests. See, *e. g.*, *Sierra Club* v. *Morton*, 405 U. S. 727, 735. These submissions present dispositively more than the mere "general averments" and "conclusory allegations" found inadequate in *Lujan* v. *National Wildlife Federation*, 497 U. S. 871, 888, or the " 'some day' intentions" to visit endangered species halfway around the world held insufficient in *Defenders of Wildlife*. 504 U. S., at 564. Pp. 180–185.

(c) Laidlaw argues that FOE lacked standing to seek civil penalties payable to the Government, because such penalties offer no redress to citizen plaintiffs. For a plaintiff who is injured or threatened with injury due to illegal conduct ongoing at the time of suit, a sanction that effectively abates that conduct and prevents its recurrence provides a form of redress. Civil penalties can fit that description. Insofar as they encourage defendants to discontinue current violations and deter future ones, they afford redress to citizen plaintiffs injured or threatened with injury as a result of ongoing unlawful conduct. The Court need not explore the outer limits of the principle that civil penalties provide sufficient deterrence to support redressability, because the civil penalties sought here carried a deterrent effect that made it likely, as opposed to merely speculative, that the penalties would redress FOE's injuries—as the District Court reasonably found when it assessed a penalty of $405,800. *Steel Co.* is not to the contrary. That case held that private plaintiffs may not sue to assess penalties for wholly past violations, 523 U. S., at 106–107, but did not address standing to seek penalties for violations ongoing at the time of the complaint that could continue into the future if undeterred, see *id.*, at 108. Pp. 185–188.

(d) FOE's civil penalties claim did not automatically become moot once the company came into substantial compliance with its permit. A defendant's voluntary cessation of a challenged practice ordinarily does

not deprive a federal court of its power to determine the legality of the practice. *City of Mesquite* v. *Aladdin's Castle, Inc.*, 455 U. S. 283, 289. If it did, courts would be compelled to leave the defendant free to return to its old ways. Thus, the standard for determining whether a case has been mooted by the defendant's voluntary conduct is stringent: A case might become moot if subsequent events make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur. *United States* v. *Concentrated Phosphate Export Assn., Inc.*, 393 U. S. 199, 203. The heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to recur lies with the party asserting mootness. *Ibid.* The Court of Appeals incorrectly conflated this Court's case law on initial standing, see, *e. g., Steel Co.*, with its case law on mootness, see, *e. g., City of Mesquite.* Such confusion is understandable, given this Court's repeated description of mootness as "the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *E. g., Arizonans,* 520 U. S., at 68, n. 22. Careful reflection, however, reveals that this description of mootness is not comprehensive. For example, a defendant claiming that its voluntary compliance moots a case bears a formidable burden. By contrast, it is the plaintiff's burden, in a lawsuit brought to force compliance, to establish standing by demonstrating that, if unchecked by the litigation, the defendant's allegedly wrongful behavior will likely occur or continue and that the threatened injury is certainly impending. *Whitmore* v. *Arkansas,* 495 U. S. 149, 158. The plain lesson is that there are circumstances in which the prospect that a defendant will engage in (or resume) harmful conduct may be too speculative to support standing, but not too speculative to overcome mootness. Further, if mootness were simply "standing set in a time frame," the exception to mootness for acts that are "capable of repetition, yet evading review" could not exist. See, *e. g., Olmstead* v. *L. C.*, 527 U. S. 581, 594, n. 6. Standing admits of no similar exception; if a plaintiff lacks standing at the time the action commences, the fact that the dispute is capable of repetition yet evading review will not entitle the complainant to a federal judicial forum. See, *e. g., Steel Co.*, 523 U. S., at 109. Standing doctrine ensures, among other things, that the resources of the federal courts are devoted to disputes in which the parties have a concrete stake. Yet by the time mootness is an issue, abandonment of the case may prove more wasteful than frugal. Courts have no license to retain jurisdiction over cases in which one or both of the parties plainly lacks a continuing interest, see, *e. g., Arizonans,* 520 U. S., at 67, but the foregoing examples highlight an important differ-

fence between the two doctrines, see generally *Honig* v. *Doe*, 484 U. S. 305, 329–332 (REHNQUIST, C. J., concurring).

Laidlaw's argument that FOE doomed its own civil penalty claim to mootness by failing to appeal the denial of injunctive relief misconceives the statutory scheme. Under § 1365(a), the district court has discretion to determine which form of relief is best suited to abate current violations and deter future ones. See *Weinberger* v. *Romero-Barcelo*, 456 U. S. 305, 313. Denial of injunctive relief does not necessarily mean that the district court has concluded there is no prospect of future violations to deter. Indeed, it meant no such thing in this case; the District Court denied injunctive relief, but expressly based its award of civil penalties on the need for deterrence. A district court properly may conclude that an injunction would be too intrusive, because it could entail continuing and burdensome superintendence of the permit holder's activities by a federal court. See *City of Mesquite*, 455 U. S., at 289. Both Laidlaw's permit compliance and the facility closure might moot this case, but only if one or the other event made it absolutely clear that violations could not reasonably be expected to recur. *Concentrated Phosphate Export Assn.*, 393 U. S., at 203. These are disputed factual matters that have not been aired in the lower courts; they remain open for consideration on remand. Pp. 189–194.

(e) This Court does not resolve FOE's argument that it is entitled to attorneys' fees on the theory that a plaintiff can be a "prevailing party" under § 1365(d) if it was the "catalyst" that triggered a favorable outcome. Although the Circuits have divided as to the continuing validity of the catalyst theory following *Farrar* v. *Hobby*, 506 U. S. 103, it would be premature for this Court to address the question here. The District Court stayed the time for a petition for attorneys' fees until the time for appeal had expired or until any appeal was resolved. Thus, when the Fourth Circuit addressed the availability of counsel fees, no order was before it either denying or awarding fees. It is for the District Court, not this Court, to address in the first instance any request for reimbursement of costs, including fees. Pp. 194–195.

149 F. 3d 303, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, KENNEDY, SOUTER, and BREYER, JJ., joined. STEVENS, J., *post*, p. 195, and KENNEDY, J., *post*, p. 197, filed concurring opinions. SCALIA, J., filed a dissenting opinion, in which THOMAS, J., joined, *post*, p. 198.

*Bruce J. Terris* argued the cause for petitioners. With him on the briefs were *Carolyn Smith Pravlik* and *James S. Chandler, Jr.*

*Jeffrey P. Minear* argued the cause for the United States as *amicus curiae* in support of petitioners. With him on the brief were *Solicitor General Waxman*, *Assistant Attorney General Schiffer*, *Deputy Solicitor General Wallace*, and *David C. Shilton.*

*Donald A. Cockrill* argued the cause for respondent. With him on the briefs were *Stuart H. Newberger*, *Clifton S. Elgarten*, *Scott E. Gant*, *Henry H. Taylor*, and *Barbara J. Hamilton.**

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*Briefs of *amici curiae* urging reversal were filed for the State of California et al. by *Jeremiah W. (Jay) Nixon*, Attorney General of Missouri, *James R. Layton*, State Solicitor, *Joseph P. Bindbeutel* and *William J. Bryan*, Assistant Attorneys General, *Bill Lockyer*, Attorney General of California, *Roderick E. Walston*, Chief Assistant Attorney General, *Richard M. Frank*, Assistant Attorney General, and *Linus Masouredis*, Deputy Attorney General, and by the Attorneys General for their respective States as follows: *Mark Pryor* of Arkansas, *M. Jane Brady* of Delaware, *James E. Ryan* of Illinois, *Jennifer M. Granholm* of Michigan, *Mike Moore* of Mississippi, *Patricia A. Madrid* of New Mexico, *Eliot Spitzer* of New York, *Michael F. Easley* of North Carolina, *Sheldon Whitehouse* of Rhode Island, *Paul G. Summers* of Tennessee, and *Christine O. Gregoire* of Washington; for Americans for the Environment by *John D. Echeverria;* and for Public Citizen et al. by *Colette G. Matzzie*, *Brian Wolfman*, and *Steven R. Shapiro.*

Briefs of *amici curiae* urging affirmance were filed for the State of South Carolina by *Charles M. Condon*, Attorney General, and *Kenneth P. Woodington*, Senior Assistant Attorney General; for the Alliance of Automobile Manufacturers et al. by *Scott M. DuBoff*, *Kenneth S. Kaufman*, *Robin S. Conrad*, *David R. Case*, *J. Walker Henry*, *Jan Amundson*, and *Deborah Ann Hottel;* for the California Association of Sanitation Agencies by *Louis F. Claiborne* and *John Briscoe;* for Hercules Inc., by *Joel Schneider* and *Peter L. Frattarelli;* and for the Washington Legal Foundation et al. by *Daniel J. Popeo* and *Paul D. Kamenar.*

Briefs of *amici curiae* were filed for 40 California Cities et al. by *Rick W. Jarvis;* for the Natural Resources Defense Council, Inc., et al. by *Michael Axline* and *David A. Nicholas;* and for the Pacific Legal Foundation et al. by *Robin L. Rivett* and *M. Reed Hopper.*

JUSTICE GINSBURG delivered the opinion of the Court.

This case presents an important question concerning the operation of the citizen-suit provisions of the Clean Water Act. Congress authorized the federal district courts to entertain Clean Water Act suits initiated by "a person or persons having an interest which is or may be adversely affected." 33 U. S. C. §§ 1365(a), (g). To impel future compliance with the Act, a district court may prescribe injunctive relief in such a suit; additionally or alternatively, the court may impose civil penalties payable to the United States Treasury. § 1365(a). In the Clean Water Act citizen suit now before us, the District Court determined that injunctive relief was inappropriate because the defendant, after the institution of the litigation, achieved substantial compliance with the terms of its discharge permit. 956 F. Supp. 588, 611 (SC 1997). The court did, however, assess a civil penalty of $405,800. *Id.*, at 610. The "total deterrent effect" of the penalty would be adequate to forestall future violations, the court reasoned, taking into account that the defendant "will be required to reimburse plaintiffs for a significant amount of legal fees and has, itself, incurred significant legal expenses." *Id.*, at 610–611.

The Court of Appeals vacated the District Court's order. 149 F. 3d 303 (CA4 1998). The case became moot, the appellate court declared, once the defendant fully complied with the terms of its permit and the plaintiff failed to appeal the denial of equitable relief. "[C]ivil penalties payable to the government," the Court of Appeals stated, "would not redress any injury Plaintiffs have suffered." *Id.*, at 307. Nor were attorneys' fees in order, the Court of Appeals noted, because absent relief on the merits, plaintiffs could not qualify as prevailing parties. *Id.*, at 307, n. 5.

We reverse the judgment of the Court of Appeals. The appellate court erred in concluding that a citizen suitor's claim for civil penalties must be dismissed as moot when the

defendant, albeit after commencement of the litigation, has come into compliance. In directing dismissal of the suit on grounds of mootness, the Court of Appeals incorrectly conflated our case law on initial standing to bring suit, see, *e. g.*, *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83 (1998), with our case law on postcommencement mootness, see, *e. g.*, *City of Mesquite* v. *Aladdin's Castle, Inc.*, 455 U. S. 283 (1982). A defendant's voluntary cessation of allegedly unlawful conduct ordinarily does not suffice to moot a case. The Court of Appeals also misperceived the remedial potential of civil penalties. Such penalties may serve, as an alternative to an injunction, to deter future violations and thereby redress the injuries that prompted a citizen suitor to commence litigation.

## I

### A

In 1972, Congress enacted the Clean Water Act (Act), also known as the Federal Water Pollution Control Act, 86 Stat. 816, as amended, 33 U. S. C. § 1251 *et seq.* Section 402 of the Act, 33 U. S. C. § 1342, provides for the issuance, by the Administrator of the Environmental Protection Agency (EPA) or by authorized States, of National Pollutant Discharge Elimination System (NPDES) permits. NPDES permits impose limitations on the discharge of pollutants, and establish related monitoring and reporting requirements, in order to improve the cleanliness and safety of the Nation's waters. Noncompliance with a permit constitutes a violation of the Act. § 1342(h).

Under § 505(a) of the Act, a suit to enforce any limitation in an NPDES permit may be brought by any "citizen," defined as "a person or persons having an interest which is or may be adversely affected." 33 U. S. C. §§ 1365(a), (g). Sixty days before initiating a citizen suit, however, the would-be plaintiff must give notice of the alleged violation to the EPA, the State in which the alleged violation oc-

curred, and the alleged violator. § 1365(b)(1)(A). "[T]he purpose of notice to the alleged violator is to give it an opportunity to bring itself into complete compliance with the Act and thus . . . render unnecessary a citizen suit." *Gwaltney of Smithfield, Ltd.* v. *Chesapeake Bay Foundation, Inc.*, 484 U. S. 49, 60 (1987). Accordingly, we have held that citizens lack statutory standing under § 505(a) to sue for violations that have ceased by the time the complaint is filed. *Id.*, at 56–63. The Act also bars a citizen from suing if the EPA or the State has already commenced, and is "diligently prosecuting," an enforcement action. 33 U. S. C. § 1365(b)(1)(B).

The Act authorizes district courts in citizen-suit proceedings to enter injunctions and to assess civil penalties, which are payable to the United States Treasury. § 1365(a). In determining the amount of any civil penalty, the district court must take into account "the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require." § 1319(d). In addition, the court "may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines such award is appropriate." § 1365(d).

## B

In 1986, defendant-respondent Laidlaw Environmental Services (TOC), Inc., bought a hazardous waste incinerator facility in Roebuck, South Carolina, that included a wastewater treatment plant. (The company has since changed its name to Safety-Kleen (Roebuck), Inc., but for simplicity we will refer to it as "Laidlaw" throughout.) Shortly after Laidlaw acquired the facility, the South Carolina Department

of Health and Environmental Control (DHEC), acting under 33 U. S. C. § 1342(a)(1), granted Laidlaw an NPDES permit authorizing the company to discharge treated water into the North Tyger River. The permit, which became effective on January 1, 1987, placed limits on Laidlaw's discharge of several pollutants into the river, including—of particular relevance to this case—mercury, an extremely toxic pollutant. The permit also regulated the flow, temperature, toxicity, and pH of the effluent from the facility, and imposed monitoring and reporting obligations.

Once it received its permit, Laidlaw began to discharge various pollutants into the waterway; repeatedly, Laidlaw's discharges exceeded the limits set by the permit. In particular, despite experimenting with several technological fixes, Laidlaw consistently failed to meet the permit's stringent 1.3 ppb (parts per billion) daily average limit on mercury discharges. The District Court later found that Laidlaw had violated the mercury limits on 489 occasions between 1987 and 1995. 956 F. Supp., at 613–621.

On April 10, 1992, plaintiff-petitioners Friends of the Earth (FOE) and Citizens Local Environmental Action Network, Inc. (CLEAN) (referred to collectively in this opinion, together with later joined plaintiff-petitioner Sierra Club, as "FOE") took the preliminary step necessary to the institution of litigation. They sent a letter to Laidlaw notifying the company of their intention to file a citizen suit against it under § 505(a) of the Act after the expiration of the requisite 60-day notice period, *i. e.*, on or after June 10, 1992. Laidlaw's lawyer then contacted DHEC to ask whether DHEC would consider filing a lawsuit against Laidlaw. The District Court later found that Laidlaw's reason for requesting that DHEC file a lawsuit against it was to bar FOE's proposed citizen suit through the operation of 33 U. S. C. § 1365(b)(1)(B). 890 F. Supp. 470, 478 (SC 1995). DHEC agreed to file a lawsuit against Laidlaw; the company's law-

yer then drafted the complaint for DHEC and paid the filing fee. On June 9, 1992, the last day before FOE's 60-day notice period expired, DHEC and Laidlaw reached a settlement requiring Laidlaw to pay $100,000 in civil penalties and to make "'every effort'" to comply with its permit obligations. *Id.*, at 479–481.

On June 12, 1992, FOE filed this citizen suit against Laidlaw under § 505(a) of the Act, alleging noncompliance with the NPDES permit and seeking declaratory and injunctive relief and an award of civil penalties. Laidlaw moved for summary judgment on the ground that FOE had failed to present evidence demonstrating injury in fact, and therefore lacked Article III standing to bring the lawsuit. Record, Doc. No. 43. In opposition to this motion, FOE submitted affidavits and deposition testimony from members of the plaintiff organizations. Record, Doc. No. 71 (Exhs. 41–51). The record before the District Court also included affidavits from the organizations' members submitted by FOE in support of an earlier motion for preliminary injunctive relief. Record, Doc. No. 21 (Exhs. 5–10). After examining this evidence, the District Court denied Laidlaw's summary judgment motion, finding—albeit "by the very slimmest of margins"—that FOE had standing to bring the suit. App. in No. 97–1246 (CA4), pp. 207–208 (Tr. of Hearing 39–40 (June 30, 1993)).

Laidlaw also moved to dismiss the action on the ground that the citizen suit was barred under 33 U. S. C. § 1365(b)(1)(B) by DHEC's prior action against the company. The United States, appearing as *amicus curiae*, joined FOE in opposing the motion. After an extensive analysis of the Laidlaw-DHEC settlement and the circumstances under which it was reached, the District Court held that DHEC's action against Laidlaw had not been "diligently prosecuted"; consequently, the court allowed FOE's citizen suit to pro-

ceed. 890 F. Supp., at 499.[1] The record indicates that after FOE initiated the suit, but before the District Court rendered judgment, Laidlaw violated the mercury discharge limitation in its permit 13 times. 956 F. Supp., at 621. The District Court also found that Laidlaw had committed 13 monitoring and 10 reporting violations during this period. *Id.*, at 601. The last recorded mercury discharge violation occurred in January 1995, long after the complaint was filed but about two years before judgment was rendered. *Id.*, at 621.

On January 22, 1997, the District Court issued its judgment. 956 F. Supp. 588 (SC). It found that Laidlaw had gained a total economic benefit of $1,092,581 as a result of its extended period of noncompliance with the mercury discharge limit in its permit. *Id.*, at 603. The court concluded, however, that a civil penalty of $405,800 was adequate in light of the guiding factors listed in 33 U. S. C. § 1319(d). 956 F. Supp., at 610. In particular, the District Court stated that the lesser penalty was appropriate taking into account the judgment's "total deterrent effect." In reaching this determination, the court "considered that Laidlaw will be required to reimburse plaintiffs for a significant amount of legal fees." *Id.*, at 610–611. The court declined to grant FOE's request for injunctive relief, stating that an injunction was inappropriate because "Laidlaw has been in substantial compliance with all parameters in its NPDES permit since at least August 1992." *Id.*, at 611.

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[1] The District Court noted that "Laidlaw drafted the state-court complaint and settlement agreement, filed the lawsuit against itself, and paid the filing fee." 890 F. Supp., at 489. Further, "the settlement agreement between DHEC and Laidlaw was entered into with unusual haste, without giving the Plaintiffs the opportunity to intervene." *Ibid.* The court found "most persuasive" the fact that "in imposing the civil penalty of $100,000 against Laidlaw, DHEC failed to recover, or even to calculate, the economic benefit that Laidlaw received by not complying with its permit." *Id.*, at 491.

FOE appealed the District Court's civil penalty judgment, arguing that the penalty was inadequate, but did not appeal the denial of declaratory or injunctive relief. Laidlaw cross-appealed, arguing, among other things, that FOE lacked standing to bring the suit and that DHEC's action qualified as a diligent prosecution precluding FOE's litigation. The United States continued to participate as *amicus curiae* in support of FOE.

On July 16, 1998, the Court of Appeals for the Fourth Circuit issued its judgment. 149 F. 3d 303. The Court of Appeals assumed without deciding that FOE initially had standing to bring the action, *id.*, at 306, n. 3, but went on to hold that the case had become moot. The appellate court stated, first, that the elements of Article III standing—injury, causation, and redressability—must persist at every stage of review, or else the action becomes moot. *Id.*, at 306. Citing our decision in *Steel Co.*, the Court of Appeals reasoned that the case had become moot because "the only remedy currently available to [FOE]—civil penalties payable to the government—would not redress any injury [FOE has] suffered." 149 F. 3d, at 306–307. The court therefore vacated the District Court's order and remanded with instructions to dismiss the action. In a footnote, the Court of Appeals added that FOE's "failure to obtain relief on the merits of [its] claims precludes any recovery of attorneys' fees or other litigation costs because such an award is available only to a 'prevailing or substantially prevailing party.'" *Id.*, at 307, n. 5 (quoting 33 U. S. C. § 1365(d)).

According to Laidlaw, after the Court of Appeals issued its decision but before this Court granted certiorari, the entire incinerator facility in Roebuck was permanently closed, dismantled, and put up for sale, and all discharges from the facility permanently ceased. Respondent's Suggestion of Mootness 3.

We granted certiorari, 525 U. S. 1176 (1999), to resolve the inconsistency between the Fourth Circuit's decision in this

case and the decisions of several other Courts of Appeals, which have held that a defendant's compliance with its permit after the commencement of litigation does not moot claims for civil penalties under the Act. See, *e. g., Atlantic States Legal Foundation, Inc.* v. *Stroh Die Casting Co.*, 116 F. 3d 814, 820 (CA7), cert. denied, 522 U. S. 981 (1997); *Natural Resources Defense Council, Inc.* v. *Texaco Rfg. and Mktg., Inc.*, 2 F. 3d 493, 503–504 (CA3 1993); *Atlantic States Legal Foundation, Inc.* v. *Pan American Tanning Corp.*, 993 F. 2d 1017, 1020–1021 (CA2 1993); *Atlantic States Legal Foundation, Inc.* v. *Tyson Foods, Inc.*, 897 F. 2d 1128, 1135–1136 (CA11 1990).

## II

### A

The Constitution's case-or-controversy limitation on federal judicial authority, Art. III, § 2, underpins both our standing and our mootness jurisprudence, but the two inquiries differ in respects critical to the proper resolution of this case, so we address them separately. Because the Court of Appeals was persuaded that the case had become moot and so held, it simply assumed without deciding that FOE had initial standing. See *Arizonans for Official English* v. *Arizona*, 520 U. S. 43, 66–67 (1997) (court may assume without deciding that standing exists in order to analyze mootness). But because we hold that the Court of Appeals erred in declaring the case moot, we have an obligation to assure ourselves that FOE had Article III standing at the outset of the litigation. We therefore address the question of standing before turning to mootness.

In *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560–561 (1992), we held that, to satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and

(3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Hunt* v. *Washington State Apple Advertising Comm'n*, 432 U. S. 333, 343 (1977).

Laidlaw contends first that FOE lacked standing from the outset even to seek injunctive relief, because the plaintiff organizations failed to show that any of their members had sustained or faced the threat of any "injury in fact" from Laidlaw's activities. In support of this contention Laidlaw points to the District Court's finding, made in the course of setting the penalty amount, that there had been "no demonstrated proof of harm to the environment" from Laidlaw's mercury discharge violations. 956 F. Supp., at 602; see also *ibid.* ("[T]he NPDES permit violations at issue in this citizen suit did not result in any health risk or environmental harm.").

The relevant showing for purposes of Article III standing, however, is not injury to the environment but injury to the plaintiff. To insist upon the former rather than the latter as part of the standing inquiry (as the dissent in essence does, *post*, at 199–200) is to raise the standing hurdle higher than the necessary showing for success on the merits in an action alleging noncompliance with an NPDES permit. Focusing properly on injury to the plaintiff, the District Court found that FOE had demonstrated sufficient injury to establish standing. App. in No. 97–1246 (CA4), at 207–208 (Tr. of Hearing 39–40). For example, FOE member Kenneth Lee Curtis averred in affidavits that he lived a half-mile from Laidlaw's facility; that he occasionally drove over the North Tyger River, and that it looked and smelled polluted; and that he would like to fish, camp, swim, and picnic in and near

the river between 3 and 15 miles downstream from the facility, as he did when he was a teenager, but would not do so because he was concerned that the water was polluted by Laidlaw's discharges. Record, Doc. No. 71 (Exhs. 41, 42). Curtis reaffirmed these statements in extensive deposition testimony. For example, he testified that he would like to fish in the river at a specific spot he used as a boy, but that he would not do so now because of his concerns about Laidlaw's discharges. *Ibid.* (Exh. 43, at 52–53; Exh. 44, at 33).

Other members presented evidence to similar effect. CLEAN member Angela Patterson attested that she lived two miles from the facility; that before Laidlaw operated the facility, she picnicked, walked, birdwatched, and waded in and along the North Tyger River because of the natural beauty of the area; that she no longer engaged in these activities in or near the river because she was concerned about harmful effects from discharged pollutants; and that she and her husband would like to purchase a home near the river but did not intend to do so, in part because of Laidlaw's discharges. Record, Doc. No. 21 (Exh. 10). CLEAN member Judy Pruitt averred that she lived one-quarter mile from Laidlaw's facility and would like to fish, hike, and picnic along the North Tyger River, but has refrained from those activities because of the discharges. *Ibid.* (Exh. 7). FOE member Linda Moore attested that she lived 20 miles from Roebuck, and would use the North Tyger River south of Roebuck and the land surrounding it for recreational purposes were she not concerned that the water contained harmful pollutants. Record, Doc. No. 71 (Exhs. 45, 46). In her deposition, Moore testified at length that she would hike, picnic, camp, swim, boat, and drive near or in the river were it not for her concerns about illegal discharges. *Ibid.* (Exh. 48, at 29, 36–37, 62–63, 72). CLEAN member Gail Lee attested that her home, which is near Laidlaw's facility, had a lower value than similar homes located farther from the facility, and that she believed the pollutant discharges accounted

for some of the discrepancy. Record, Doc. No. 21 (Exh. 9). Sierra Club member Norman Sharp averred that he had canoed approximately 40 miles downstream of the Laidlaw facility and would like to canoe in the North Tyger River closer to Laidlaw's discharge point, but did not do so because he was concerned that the water contained harmful pollutants. *Ibid.* (Exh. 8).

These sworn statements, as the District Court determined, adequately documented injury in fact. We have held that environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons "for whom the aesthetic and recreational values of the area will be lessened" by the challenged activity. *Sierra Club* v. *Morton*, 405 U. S. 727, 735 (1972). See also *Defenders of Wildlife*, 504 U. S., at 562–563 ("Of course, the desire to use or observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for purposes of standing.").

Our decision in *Lujan* v. *National Wildlife Federation*, 497 U. S. 871 (1990), is not to the contrary. In that case an environmental organization assailed the Bureau of Land Management's "land withdrawal review program," a program covering millions of acres, alleging that the program illegally opened up public lands to mining activities. The defendants moved for summary judgment, challenging the plaintiff organization's standing to initiate the action under the Administrative Procedure Act, 5 U. S. C. § 702. We held that the plaintiff could not survive the summary judgment motion merely by offering "averments which state only that one of [the organization's] members uses unspecified portions of an immense tract of territory, on some portions of which mining activity has occurred or probably will occur by virtue of the governmental action." 497 U. S., at 889.

In contrast, the affidavits and testimony presented by FOE in this case assert that Laidlaw's discharges, and the affiant members' reasonable concerns about the effects of

those discharges, directly affected those affiants' recreational, aesthetic, and economic interests. These submissions present dispositively more than the mere "general averments" and "conclusory allegations" found inadequate in *National Wildlife Federation*. *Id.*, at 888. Nor can the affiants' conditional statements—that they would use the nearby North Tyger River for recreation if Laidlaw were not discharging pollutants into it—be equated with the speculative "'some day' intentions" to visit endangered species halfway around the world that we held insufficient to show injury in fact in *Defenders of Wildlife*. 504 U. S., at 564.

*Los Angeles* v. *Lyons*, 461 U. S. 95 (1983), relied on by the dissent, *post*, at 199, does not weigh against standing in this case. In *Lyons*, we held that a plaintiff lacked standing to seek an injunction against the enforcement of a police chokehold policy because he could not credibly allege that he faced a realistic threat from the policy. 461 U. S., at 107, n. 7. In the footnote from *Lyons* cited by the dissent, we noted that "[t]he reasonableness of Lyons' fear is dependent upon the likelihood of a recurrence of the allegedly unlawful conduct," and that his "subjective apprehensions" that such a recurrence would even *take place* were not enough to support standing. *Id.*, at 108, n. 8. Here, in contrast, it is undisputed that Laidlaw's unlawful conduct—discharging pollutants in excess of permit limits—was occurring at the time the complaint was filed. Under *Lyons*, then, the only "subjective" issue here is "[t]he reasonableness of [the] fear" that led the affiants to respond to that concededly ongoing conduct by refraining from use of the North Tyger River and surrounding areas. Unlike the dissent, *post*, at 200, we see nothing "improbable" about the proposition that a company's continuous and pervasive illegal discharges of pollutants into a river would cause nearby residents to curtail their recreational use of that waterway and would subject them to other economic and aesthetic harms. The proposition is en-

tirely reasonable, the District Court found it was true in this case, and that is enough for injury in fact.

Laidlaw argues next that even if FOE had standing to seek injunctive relief, it lacked standing to seek civil penalties. Here the asserted defect is not injury but redressability. Civil penalties offer no redress to private plaintiffs, Laidlaw argues, because they are paid to the Government, and therefore a citizen plaintiff can never have standing to seek them.

Laidlaw is right to insist that a plaintiff must demonstrate standing separately for each form of relief sought. See, *e. g.*, *Lyons*, 461 U. S., at 109 (notwithstanding the fact that plaintiff had standing to pursue damages, he lacked standing to pursue injunctive relief); see also *Lewis* v. *Casey*, 518 U. S. 343, 358, n. 6 (1996) ("[S]tanding is not dispensed in gross."). But it is wrong to maintain that citizen plaintiffs facing ongoing violations never have standing to seek civil penalties.

We have recognized on numerous occasions that "all civil penalties have some deterrent effect." *Hudson* v. *United States*, 522 U. S. 93, 102 (1997); see also, *e. g.*, *Department of Revenue of Mont.* v. *Kurth Ranch*, 511 U. S. 767, 778 (1994). More specifically, Congress has found that civil penalties in Clean Water Act cases do more than promote immediate compliance by limiting the defendant's economic incentive to delay its attainment of permit limits; they also deter future violations. This congressional determination warrants judicial attention and respect. "The legislative history of the Act reveals that Congress wanted the district court to consider the need for retribution and deterrence, in addition to restitution, when it imposed civil penalties. . . . [The district court may] seek to deter future violations by basing the penalty on its economic impact." *Tull* v. *United States*, 481 U. S. 412, 422–423 (1987).

It can scarcely be doubted that, for a plaintiff who is injured or faces the threat of future injury due to illegal conduct ongoing at the time of suit, a sanction that effectively

abates that conduct and prevents its recurrence provides a form of redress. Civil penalties can fit that description. To the extent that they encourage defendants to discontinue current violations and deter them from committing future ones, they afford redress to citizen plaintiffs who are injured or threatened with injury as a consequence of ongoing unlawful conduct.

The dissent argues that it is the *availability* rather than the *imposition* of civil penalties that deters any particular polluter from continuing to pollute. *Post,* at 207–208. This argument misses the mark in two ways. First, it overlooks the interdependence of the availability and the imposition; a threat has no deterrent value unless it is credible that it will be carried out. Second, it is reasonable for Congress to conclude that an actual award of civil penalties does in fact bring with it a significant quantum of deterrence over and above what is achieved by the mere prospect of such penalties. A would-be polluter may or may not be dissuaded by the existence of a remedy on the books, but a defendant once hit in its pocketbook will surely think twice before polluting again.[2]

We recognize that there may be a point at which the deterrent effect of a claim for civil penalties becomes so insubstantial or so remote that it cannot support citizen standing. The fact that this vanishing point is not easy to ascertain does not detract from the deterrent power of such penalties in the ordinary case. Justice Frankfurter's observations for

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[2] The dissent suggests that there was little deterrent work for civil penalties to do in this case because the lawsuit brought against Laidlaw by DHEC had already pushed the level of deterrence to "near the top of the graph." *Post,* at 208. This suggestion ignores the District Court's specific finding that the penalty agreed to by Laidlaw and DHEC was far too low to remove Laidlaw's economic benefit from noncompliance, and thus was inadequate to deter future violations. 890 F. Supp. 470, 491–494, 497–498 (SC 1995). And it begins to look especially farfetched when one recalls that Laidlaw itself prompted the DHEC lawsuit, paid the filing fee, and drafted the complaint. See *supra,* at 176–177, 178, n. 1.

the Court, made in a different context nearly 60 years ago, hold true here as well:

> "How to effectuate policy—the adaptation of means to legitimately sought ends—is one of the most intractable of legislative problems. Whether proscribed conduct is to be deterred by *qui tam* action or triple damages or injunction, or by criminal prosecution, or merely by defense to actions in contract, or by some, or all, of these remedies in combination, is a matter within the legislature's range of choice. Judgment on the deterrent effect of the various weapons in the armory of the law can lay little claim to scientific basis." *Tigner* v. *Texas*, 310 U. S. 141, 148 (1940).[3]

In this case we need not explore the outer limits of the principle that civil penalties provide sufficient deterrence to support redressability. Here, the civil penalties sought by FOE carried with them a deterrent effect that made it likely, as opposed to merely speculative, that the penalties would redress FOE's injuries by abating current violations and preventing future ones—as the District Court reasonably found when it assessed a penalty of $405,800. 956 F. Supp., at 610–611.

Laidlaw contends that the reasoning of our decision in *Steel Co.* directs the conclusion that citizen plaintiffs have no standing to seek civil penalties under the Act. We disagree. *Steel Co.* established that citizen suitors lack standing to seek civil penalties for violations that have abated by the time of suit. 523 U. S., at 106–107. We specifically noted in that case that there was no allegation in the complaint of any continuing or imminent violation, and that no basis for such an allegation appeared to exist. *Id.*, at 108; see also *Gwaltney*, 484 U. S., at 59 ("the harm sought to be addressed by

[3] In *Tigner* the Court rejected an equal protection challenge to a statutory provision exempting agricultural producers from the reach of the Texas antitrust laws.

the citizen suit lies in the present or the future, not in the past"). In short, *Steel Co.* held that private plaintiffs, unlike the Federal Government, may not sue to assess penalties for wholly past violations, but our decision in that case did not reach the issue of standing to seek penalties for violations that are ongoing at the time of the complaint and that could continue into the future if undeterred.[4]

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[4] In insisting that the redressability requirement is not met, the dissent relies heavily on *Linda R. S.* v. *Richard D.*, 410 U. S. 614 (1973). That reliance is sorely misplaced. In *Linda R. S.*, the mother of an out-of-wedlock child filed suit to force a district attorney to bring a criminal prosecution against the absentee father for failure to pay child support. *Id.*, at 616. In finding that the mother lacked standing to seek this extraordinary remedy, the Court drew attention to "the special status of criminal prosecutions in our system," *id.*, at 619, and carefully limited its holding to the "unique context of a challenge to [the nonenforcement of] a criminal statute," *id.*, at 617. Furthermore, as to redressability, the relief sought in *Linda R. S.*—a prosecution which, if successful, would automatically land the delinquent father in jail for a fixed term, *id.*, at 618, with predictably negative effects on his earning power—would scarcely remedy the plaintiff's lack of child support payments. In this regard, the Court contrasted "the civil contempt model whereby the defendant 'keeps the keys to the jail in his own pocket' and may be released whenever he complies with his legal obligations." *Ibid.* The dissent's contention, *post*, at 204, that "precisely the same situation exists here" as in *Linda R. S.* is, to say the least, extravagant.

Putting aside its mistaken reliance on *Linda R. S.*, the dissent's broader charge that citizen suits for civil penalties under the Act carry "grave implications for democratic governance," *post*, at 202, seems to us overdrawn. Certainly the Federal Executive Branch does not share the dissent's view that such suits dissipate its authority to enforce the law. In fact, the Department of Justice has endorsed this citizen suit from the outset, submitting *amicus* briefs in support of FOE in the District Court, the Court of Appeals, and this Court. See *supra*, at 177, 179. As we have already noted, *supra*, at 175, the Federal Government retains the power to foreclose a citizen suit by undertaking its own action. 33 U. S. C. § 1365(b)(1)(B). And if the Executive Branch opposes a particular citizen suit, the statute allows the Administrator of the EPA to "intervene as a matter of right" and bring the Government's views to the attention of the court. § 1365(c)(2).

B

Satisfied that FOE had standing under Article III to bring this action, we turn to the question of mootness.

The only conceivable basis for a finding of mootness in this case is Laidlaw's voluntary conduct—either its achievement by August 1992 of substantial compliance with its NPDES permit or its more recent shutdown of the Roebuck facility. It is well settled that "a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *City of Mesquite,* 455 U. S., at 289. "[I]f it did, the courts would be compelled to leave '[t]he defendant . . . free to return to his old ways.'" *Id.*, at 289, n. 10 (citing *United States* v. *W. T. Grant Co.*, 345 U. S. 629, 632 (1953)). In accordance with this principle, the standard we have announced for determining whether a case has been mooted by the defendant's voluntary conduct is stringent: "A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *United States* v. *Concentrated Phosphate Export Assn., Inc.*, 393 U. S. 199, 203 (1968). The "heavy burden of persua[ding]" the court that the challenged conduct cannot reasonably be expected to start up again lies with the party asserting mootness. *Ibid.*

The Court of Appeals justified its mootness disposition by reference to *Steel Co.*, which held that citizen plaintiffs lack standing to seek civil penalties for wholly past violations. In relying on *Steel Co.*, the Court of Appeals confused mootness with standing. The confusion is understandable, given this Court's repeated statements that the doctrine of mootness can be described as "the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Arizonans for Official English*, 520 U. S., at 68, n. 22 (quoting *United States Parole Comm'n* v. *Geraghty*, 445 U. S. 388, 397 (1980), in turn

quoting Monaghan, Constitutional Adjudication: The Who and When, 82 Yale L. J. 1363, 1384 (1973)) (internal quotation marks omitted).

Careful reflection on the long-recognized exceptions to mootness, however, reveals that the description of mootness as "standing set in a time frame" is not comprehensive. As just noted, a defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur. *Concentrated Phosphate Export Assn.*, 393 U. S., at 203. By contrast, in a lawsuit brought to force compliance, it is the plaintiff's burden to establish standing by demonstrating that, if unchecked by the litigation, the defendant's allegedly wrongful behavior will likely occur or continue, and that the "threatened injury [is] certainly impending." *Whitmore* v. *Arkansas*, 495 U. S. 149, 158 (1990) (citations and internal quotation marks omitted). Thus, in *Lyons*, as already noted, we held that a plaintiff lacked initial standing to seek an injunction against the enforcement of a police chokehold policy because he could not credibly allege that he faced a realistic threat arising from the policy. 461 U. S., at 105–110. Elsewhere in the opinion, however, we noted that a citywide moratorium on police chokeholds—an action that surely diminished the already slim likelihood that any particular individual would be choked by police—would not have mooted an otherwise valid claim for injunctive relief, because the moratorium by its terms was not permanent. *Id.*, at 101. The plain lesson of these cases is that there are circumstances in which the prospect that a defendant will engage in (or resume) harmful conduct may be too speculative to support standing, but not too speculative to overcome mootness.

Furthermore, if mootness were simply "standing set in a time frame," the exception to mootness that arises when the defendant's allegedly unlawful activity is "capable of repetition, yet evading review," could not exist. When, for exam-

ple, a mentally disabled patient files a lawsuit challenging her confinement in a segregated institution, her postcomplaint transfer to a community-based program will not moot the action, *Olmstead* v. *L. C.*, 527 U. S. 581, 594, n. 6 (1999), despite the fact that she would have lacked initial standing had she filed the complaint after the transfer. Standing admits of no similar exception; if a plaintiff lacks standing at the time the action commences, the fact that the dispute is capable of repetition yet evading review will not entitle the complainant to a federal judicial forum. See *Steel Co.*, 523 U. S., at 109 ("'the mootness exception for disputes capable of repetition yet evading review . . . will not revive a dispute which became moot before the action commenced'") (quoting *Renne* v. *Geary*, 501 U. S. 312, 320 (1991)).

We acknowledged the distinction between mootness and standing most recently in *Steel Co.:*

> "The United States . . . argues that the injunctive relief does constitute remediation because 'there is a presumption of [future] injury when the defendant has voluntarily ceased its illegal activity in response to litigation,' even if that occurs before a complaint is filed. . . . This makes a sword out of a shield. The 'presumption' the Government refers to has been applied to refute the assertion of mootness by a defendant who, when sued in a complaint that alleges present or threatened injury, ceases the complained-of activity. . . . It is an immense and unacceptable stretch to call the presumption into service as a substitute for the allegation of present or threatened injury upon which initial standing must be based." 523 U. S., at 109.

Standing doctrine functions to ensure, among other things, that the scarce resources of the federal courts are devoted to those disputes in which the parties have a concrete stake. In contrast, by the time mootness is an issue, the case has been brought and litigated, often (as here) for years. To

abandon the case at an advanced stage may prove more wasteful than frugal. This argument from sunk costs[5] does not license courts to retain jurisdiction over cases in which one or both of the parties plainly lack a continuing interest, as when the parties have settled or a plaintiff pursuing a nonsurviving claim has died. See, *e. g.*, *DeFunis* v. *Odegaard*, 416 U. S. 312 (1974) *(per curiam)* (non-class-action challenge to constitutionality of law school admissions process mooted when plaintiff, admitted pursuant to preliminary injunction, neared graduation and defendant law school conceded that, as a matter of ordinary school policy, plaintiff would be allowed to finish his final term); *Arizonans*, 520 U. S., at 67 (non-class-action challenge to state constitutional amendment declaring English the official language of the State became moot when plaintiff, a state employee who sought to use her bilingual skills, left state employment). But the argument surely highlights an important difference between the two doctrines. See generally *Honig* v. *Doe*, 484 U. S. 305, 329–332 (1988) (REHNQUIST, C. J., concurring).

In its brief, Laidlaw appears to argue that, regardless of the effect of Laidlaw's compliance, FOE doomed its own civil penalty claim to mootness by failing to appeal the District Court's denial of injunctive relief. Brief for Respondent 14–17. This argument misconceives the statutory scheme. Under § 1365(a), the district court has discretion to determine which form of relief is best suited, in the particular case, to abate current violations and deter future ones. "[A] federal judge sitting as chancellor is not mechanically obligated to grant an injunction for every violation of law."

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[5] Of course we mean sunk costs to the judicial system, not to the litigants. *Lewis* v. *Continental Bank Corp.*, 494 U. S. 472 (1990) (cited by the dissent, *post*, at 213), dealt with the latter, noting that courts should use caution to avoid carrying forward a moot case solely to vindicate a plaintiff's interest in recovering attorneys' fees.

*Weinberger* v. *Romero-Barcelo*, 456 U. S. 305, 313 (1982). Denial of injunctive relief does not necessarily mean that the district court has concluded there is no prospect of future violations for civil penalties to deter. Indeed, it meant no such thing in this case. The District Court denied injunctive relief, but expressly based its award of civil penalties on the need for deterrence. See 956 F. Supp., at 610–611. As the dissent notes, *post*, at 205, federal courts should aim to ensure "'the framing of relief no broader than required by the precise facts.'" *Schlesinger* v. *Reservists Comm. to Stop the War*, 418 U. S. 208, 222 (1974). In accordance with this aim, a district court in a Clean Water Act citizen suit properly may conclude that an injunction would be an excessively intrusive remedy, because it could entail continuing superintendence of the permit holder's activities by a federal court—a process burdensome to court and permit holder alike. See *City of Mesquite*, 455 U. S., at 289 (although the defendant's voluntary cessation of the challenged practice does not moot the case, "[s]uch abandonment is an important factor bearing on the question whether a court should exercise its power to enjoin the defendant from renewing the practice").

Laidlaw also asserts, in a supplemental suggestion of mootness, that the closure of its Roebuck facility, which took place after the Court of Appeals issued its decision, mooted the case. The facility closure, like Laidlaw's earlier achievement of substantial compliance with its permit requirements, might moot the case, but—we once more reiterate—only if one or the other of these events made it absolutely clear that Laidlaw's permit violations could not reasonably be expected to recur. *Concentrated Phosphate Export Assn.*, 393 U. S., at 203. The effect of both Laidlaw's compliance and the facility closure on the prospect of future violations is a disputed factual matter. FOE points out, for example—and Laidlaw does not appear to contest—that Laidlaw retains its

NPDES permit. These issues have not been aired in the lower courts; they remain open for consideration on remand.[6]

C

FOE argues that it is entitled to attorneys' fees on the theory that a plaintiff can be a "prevailing party" for purposes of 33 U. S. C. § 1365(d) if it was the "catalyst" that triggered a favorable outcome. In the decision under review, the Court of Appeals noted that its Circuit precedent construed our decision in *Farrar* v. *Hobby*, 506 U. S. 103 (1992), to require rejection of that theory. 149 F. 3d, at 307, n. 5 (citing *S–1 & S–2* v. *State Bd. of Ed. of N. C.*, 21 F. 3d 49, 51 (CA4 1994) (en banc)). Cf. *Foreman* v. *Dallas County*, 193 F. 3d 314, 320 (CA5 1999) (stating, in dicta, that "[a]fter *Farrar* . . . the continuing validity of the catalyst theory is in serious doubt").

*Farrar* acknowledged that a civil rights plaintiff awarded nominal damages may be a "prevailing party" under 42 U. S. C. § 1988. 506 U. S., at 112. The case involved no catalytic effect. Recognizing that the issue was not presented for this Court's decision in *Farrar*, several Courts of Appeals have expressly concluded that *Farrar* did not repudiate the catalyst theory. See *Marbley* v. *Bane*, 57 F. 3d 224, 234 (CA2 1995); *Baumgartner* v. *Harrisburg Housing Authority*, 21 F. 3d 541, 546–550 (CA3 1994); *Zinn* v. *Shalala*, 35 F. 3d 273, 276 (CA7 1994); *Little Rock School Dist.* v. *Pulaski County Special Sch. Dist., #1*, 17 F. 3d 260, 263, n. 2 (CA8 1994); *Kilgour* v. *Pasadena*, 53 F. 3d 1007, 1010 (CA9 1995);

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[6] We note that it is far from clear that vacatur of the District Court's judgment would be the appropriate response to a finding of mootness on appeal brought about by the voluntary conduct of the party that lost in the District Court. See *U. S. Bancorp Mortgage Co.* v. *Bonner Mall Partnership*, 513 U. S. 18 (1994) (mootness attributable to a voluntary act of a nonprevailing party ordinarily does not justify vacatur of a judgment under review); see also *Walling* v. *James V. Reuter, Inc.*, 321 U. S. 671 (1944).

*Beard* v. *Teska,* 31 F. 3d 942, 951–952 (CA10 1994); *Morris* v. *West Palm Beach,* 194 F. 3d 1203, 1207 (CA11 1999). Other Courts of Appeals have likewise continued to apply the catalyst theory notwithstanding *Farrar.* *Paris* v. *United States Dept. of Housing and Urban Development,* 988 F. 2d 236, 238 (CA1 1993); *Citizens Against Tax Waste* v. *Westerville City School,* 985 F. 2d 255, 257 (CA6 1993).

It would be premature, however, for us to address the continuing validity of the catalyst theory in the context of this case. The District Court, in an order separate from the one in which it imposed civil penalties against Laidlaw, stayed the time for a petition for attorneys' fees until the time for appeal had expired or, if either party appealed, until the appeal was resolved. See 149 F. 3d, at 305 (describing order staying time for attorneys' fees petition). In the opinion accompanying its order on penalties, the District Court stated only that "this court has considered that Laidlaw will be required to reimburse plaintiffs for a significant amount of legal fees," and referred to "potential fee awards." 956 F. Supp., at 610–611. Thus, when the Court of Appeals addressed the availability of counsel fees in this case, no order was before it either denying or awarding fees. It is for the District Court, not this Court, to address in the first instance any request for reimbursement of costs, including fees.

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For the reasons stated, the judgment of the United States Court of Appeals for the Fourth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

*It is so ordered.*

JUSTICE STEVENS, concurring.

Although the Court has identified a sufficient reason for rejecting the Court of Appeals' mootness determination, it is important also to note that the case would not be moot

even if it were absolutely clear that respondent had gone out of business and posed no threat of future permit violations. The District Court entered a valid judgment requiring respondent to pay a civil penalty of $405,800 to the United States. No postjudgment conduct of respondent could retroactively invalidate that judgment. A record of voluntary postjudgment compliance that would justify a decision that injunctive relief is unnecessary, or even a decision that any claim for injunctive relief is now moot, would not warrant vacation of the valid money judgment.

Furthermore, petitioners' claim for civil penalties would not be moot even if it were absolutely clear that respondent's violations could not reasonably be expected to recur because respondent achieved substantial compliance with its permit requirements after petitioners filed their complaint but before the District Court entered judgment. As the Courts of Appeals (other than the court below) have uniformly concluded, a polluter's voluntary postcomplaint cessation of an alleged violation will not moot a citizen-suit claim for civil penalties even if it is sufficient to moot a related claim for injunctive or declaratory relief.* This conclusion is consistent with the structure of the Clean Water Act, which attaches liability for civil penalties at the time a permit violation occurs. 33 U. S. C. § 1319(d) ("Any person who violates

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**Comfort Lake Assn.* v. *Dresel Contracting, Inc.*, 138 F. 3d 351, 356 (CA8 1998); *Atlantic States Legal Foundation, Inc.* v. *Stroh Die Casting Co.*, 116 F. 3d 814, 820 (CA7), cert. denied, 522 U. S. 981 (1997); *Natural Resources Defense Council* v. *Texaco Refining & Mktg., Inc.*, 2 F. 3d 493, 502–503 (CA3 1993); *Atlantic States Legal Foundation, Inc.* v. *Pan Am. Tanning Corp.*, 993 F. 2d 1017, 1020–1021 (CA2 1993); *Atlantic States Legal Foundation, Inc.* v. *Tyson Foods, Inc.*, 897 F. 2d 1128, 1134–1137 (CA11 1990); *Chesapeake Bay Foundation, Inc.* v. *Gwaltney of Smithfield, Ltd.*, 890 F. 2d 690, 696–697 (CA4 1989). Cf. *Powell* v. *McCormack*, 395 U. S. 486, 496, n. 8 (1969) ("Where several forms of relief are requested and one of these requests subsequently becomes moot, the Court has still considered the remaining requests").

[certain provisions of the Act or certain permit conditions and limitations] shall be subject to a civil penalty . . .''). It is also consistent with the character of civil penalties, which, for purposes of mootness analysis, should be equated with punitive damages rather than with injunctive or declaratory relief. See *Tull* v. *United States*, 481 U. S. 412, 422–423 (1987). No one contends that a defendant's postcomplaint conduct could moot a claim for punitive damages; civil penalties should be treated the same way.

The cases cited by the Court in its discussion of the mootness issue all involved requests for injunctive or declaratory relief. In only one, *Los Angeles* v. *Lyons*, 461 U. S. 95 (1983), did the plaintiff seek damages, and in that case the opinion makes it clear that the inability to obtain injunctive relief would have no impact on the damages claim. *Id.*, at 105, n. 6, 109. There is no precedent, either in our jurisprudence, or in any other of which I am aware, that provides any support for the suggestion that postcomplaint factual developments that might moot a claim for injunctive or declaratory relief could either moot a claim for monetary relief or retroactively invalidate a valid money judgment.

JUSTICE KENNEDY, concurring.

Difficult and fundamental questions are raised when we ask whether exactions of public fines by private litigants, and the delegation of Executive power which might be inferable from the authorization, are permissible in view of the responsibilities committed to the Executive by Article II of the Constitution of the United States. The questions presented in the petition for certiorari did not identify these issues with particularity; and neither the Court of Appeals in deciding the case nor the parties in their briefing before this Court devoted specific attention to the subject. In my view these matters are best reserved for a later case. With this observation, I join the opinion of the Court.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, dissenting.

The Court begins its analysis by finding injury in fact on the basis of vague affidavits that are undermined by the District Court's express finding that Laidlaw's discharges caused no demonstrable harm to the environment. It then proceeds to marry private wrong with public remedy in a union that violates traditional principles of federal standing—thereby permitting law enforcement to be placed in the hands of private individuals. Finally, the Court suggests that to avoid mootness one needs even less of a stake in the outcome than the Court's watered-down requirements for initial standing. I dissent from all of this.

## I

Plaintiffs, as the parties invoking federal jurisdiction, have the burden of proof and persuasion as to the existence of standing. *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 561 (1992) (hereinafter *Lujan*); *FW/PBS, Inc.* v. *Dallas*, 493 U. S. 215, 231 (1990). The plaintiffs in this case fell far short of carrying their burden of demonstrating injury in fact. The Court cites affiants' testimony asserting that their enjoyment of the North Tyger River has been diminished due to "concern" that the water was polluted, and that they "believed" that Laidlaw's mercury exceedances had reduced the value of their homes. *Ante*, at 181–183. These averments alone cannot carry the plaintiffs' burden of demonstrating that they have suffered a "concrete and particularized" injury, *Lujan*, 504 U. S., at 560. General allegations of injury may suffice at the pleading stage, but at summary judgment plaintiffs must set forth "specific facts" to support their claims. *Id.*, at 561. And where, as here, the case has proceeded to judgment, those specific facts must be " 'supported adequately by the evidence adduced at trial,' " *ibid.* (quoting *Gladstone, Realtors* v. *Village of Bellwood*, 441 U. S. 91, 115, n. 31 (1979)). In this case, the affidavits themselves are

woefully short on "specific facts," and the vague allegations of injury they do make are undermined by the evidence adduced at trial.

Typically, an environmental plaintiff claiming injury due to discharges in violation of the Clean Water Act argues that the discharges harm the environment, and that the harm to the environment injures him. This route to injury is barred in the present case, however, since the District Court concluded after considering all the evidence that there had been "no demonstrated proof of harm to the environment," 956 F. Supp. 588, 602 (SC 1997), that the "permit violations at issue in this citizen suit did not result in any health risk or environmental harm," *ibid.*, that "[a]ll available data . . . fail to show that Laidlaw's *actual* discharges have resulted in harm to the North Tyger River," *id.*, at 602–603, and that "the overall quality of the river exceeds levels necessary to support . . . recreation in and on the water," *id.*, at 600.

The Court finds these conclusions unproblematic for standing, because "[t]he relevant showing for purposes of Article III standing . . . is not injury to the environment but injury to the plaintiff." *Ante*, at 181. This statement is correct, as far as it goes. We have certainly held that a demonstration of harm to the environment is not *enough* to satisfy the injury-in-fact requirement unless the plaintiff can demonstrate how he personally was harmed. *E. g.*, *Lujan*, *supra*, at 563. In the normal course, however, a lack of demonstrable harm to the environment will translate, as it plainly does here, into a lack of demonstrable harm to citizen plaintiffs. While it is perhaps possible that a plaintiff could be harmed even though the environment was not, such a plaintiff would have the burden of articulating and demonstrating the nature of that injury. Ongoing "concerns" about the environment are not enough, for "[i]t is the *reality* of the threat of repeated injury that is relevant to the standing inquiry, not the plaintiff's subjective apprehensions," *Los Angeles* v. *Lyons*, 461 U. S. 95, 107, n. 8 (1983). At the very least, in

the present case, one would expect to see evidence supporting the affidavits' bald assertions regarding decreasing recreational usage and declining home values, as well as evidence for the improbable proposition that Laidlaw's violations, even though harmless to the environment, are somehow responsible for these effects. Cf. *Gladstone*, *supra*, at 115 (noting that standing could be established by "convincing evidence" that a decline in real estate values was attributable to the defendant's conduct). Plaintiffs here have made no attempt at such a showing, but rely entirely upon unsupported and unexplained affidavit allegations of "concern."

Indeed, every one of the affiants deposed by Laidlaw cast into doubt the (in any event inadequate) proposition that subjective "concerns" actually affected their conduct. Linda Moore, for example, said in her affidavit that she would use the affected waterways for recreation if it were not for her concern about pollution. Record, Doc. No. 71 (Exhs. 45, 46). Yet she testified in her deposition that she had been to the river only twice, once in 1980 (when she visited someone who lived by the river) and once after this suit was filed. Record, Doc. No. 62 (Moore Deposition 23–24). Similarly, Kenneth Lee Curtis, who claimed he was injured by being deprived of recreational activity at the river, admitted that he had not been to the river since he was "a kid," *ibid.* (Curtis Deposition, pt. 2, p. 38), and when asked whether the reason he stopped visiting the river was because of pollution, answered "no," *id.*, at 39. As to Curtis's claim that the river "looke[d] and smell[ed] polluted," this condition, if present, was surely not caused by Laidlaw's discharges, which according to the District Court "did not result in any health risk or environmental harm." 956 F. Supp., at 602. The other affiants cited by the Court were not deposed, but their affidavits state either that they *would* use the river if it were not polluted or harmful (as the court subsequently found it is not), Record, Doc. No. 21 (Exhs. 7,

8, and 9), or said that the river looks polluted (which is also incompatible with the court's findings), *ibid.* (Exh. 10). These affiants have established nothing but "subjective apprehensions."

The Court is correct that the District Court explicitly found standing—albeit "by the very slimmest of margins," and as "an awfully close call." App. in No. 97–1246 (CA4), pp. 207–208 (Tr. of Hearing 39–40 (June 30, 1993)). That cautious finding, however, was made in 1993, long before the court's 1997 conclusion that Laidlaw's discharges did not harm the environment. As we have previously recognized, an initial conclusion that plaintiffs have standing is subject to reexamination, particularly if later evidence proves inconsistent with that conclusion. *Gladstone,* 441 U. S., at 115, and n. 31; *Wyoming* v. *Oklahoma,* 502 U. S. 437, 446 (1992). Laidlaw challenged the existence of injury in fact on appeal to the Fourth Circuit, but that court did not reach the question. Thus no lower court has reviewed the injury-in-fact issue in light of the extensive studies that led the District Court to conclude that the environment was not harmed by Laidlaw's discharges.

Inexplicably, the Court is untroubled by this, but proceeds to find injury in fact in the most casual fashion, as though it is merely confirming a careful analysis made below. Although we have previously refused to find standing based on the "conclusory allegations of an affidavit," *Lujan* v. *National Wildlife Federation,* 497 U. S. 871, 888 (1990), the Court is content to do just that today. By accepting plaintiffs' vague, contradictory, and unsubstantiated allegations of "concern" about the environment as adequate to prove injury in fact, and accepting them even in the face of a finding that the environment was not demonstrably harmed, the Court makes the injury-in-fact requirement a sham. If there are permit violations, and a member of a plaintiff environmental organization lives near the offending plant, it would be difficult not to satisfy today's lenient standard.

## II

The Court's treatment of the redressability requirement—which would have been unnecessary if it resolved the injury-in-fact question correctly—is equally cavalier. As discussed above, petitioners allege ongoing injury consisting of diminished enjoyment of the affected waterways and decreased property values. They allege that these injuries are caused by Laidlaw's continuing permit violations. But the remedy petitioners seek is neither recompense for their injuries nor an injunction against future violations. Instead, the remedy is a statutorily specified "penalty" for past violations, payable entirely to the United States Treasury. Only last Term, we held that such penalties do not redress any injury a citizen plaintiff has suffered from past violations. *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 106–107 (1998). The Court nonetheless finds the redressability requirement satisfied here, distinguishing *Steel Co.* on the ground that in this case petitioners allege ongoing violations; payment of the penalties, it says, will remedy petitioners' injury by deterring future violations by Laidlaw. *Ante*, at 185–186. It holds that a penalty payable to the public "remedies" a threatened private harm, and suffices to sustain a private suit.

That holding has no precedent in our jurisprudence, and takes this Court beyond the "cases and controversies" that Article III of the Constitution has entrusted to its resolution. Even if it were appropriate, moreover, to allow Article III's remediation requirement to be satisfied by the indirect private consequences of a public penalty, those consequences are entirely too speculative in the present case. The new standing law that the Court makes—like all expansions of standing beyond the traditional constitutional limits—has grave implications for democratic governance. I shall discuss these three points in turn.

A

In *Linda R. S.* v. *Richard D.*, 410 U. S. 614 (1973), the plaintiff, mother of an illegitimate child, sought, on behalf of herself, her child, and all others similarly situated, an injunction against discriminatory application of Art. 602 of the Texas Penal Code. Although that provision made it a misdemeanor for "any parent" to refuse to support his or her minor children under 18 years of age, it was enforced only against married parents. That refusal, the plaintiff contended, deprived her and her child of the equal protection of the law by denying them the deterrent effect of the statute upon the father's failure to fulfill his support obligation. The Court held that there was no Article III standing. There was no "'direct' relationship," it said, "between the alleged injury and the claim sought to be adjudicated," since "[t]he prospect that prosecution will, at least in the future, result in payment of support can, at best, be termed only speculative." *Id.*, at 618. "[Our cases] demonstrate that, in American jurisprudence at least, a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." *Id.*, at 619.

Although the Court in *Linda R. S.* recited the "logical nexus" analysis of *Flast* v. *Cohen*, 392 U. S. 83 (1968), which has since fallen into desuetude, "it is clear that standing was denied . . . because of the unlikelihood that the relief requested would redress appellant's claimed injury." *Duke Power Co.* v. *Carolina Environmental Study Group, Inc.*, 438 U. S. 59, 79, n. 24 (1978). There was no "logical nexus" between nonenforcement of the statute and Linda R. S.'s failure to receive support payments because "[t]he prospect that prosecution will . . . result in payment of support" was "speculative," *Linda R. S.*, *supra*, at 618—that is to say, it was uncertain whether the relief would prevent the injury.[1] Of

[1] The decision in *Linda R. S.* did not turn, as today's opinion imaginatively suggests, on the father's short-term inability to pay support if imprisoned. *Ante*, at 188, n. 4. The Court's only comment upon the impris-

course precisely the same situation exists here. The principle that "in American jurisprudence . . . a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another" applies no less to prosecution for civil penalties payable to the State than to prosecution for criminal penalties owing to the State.

The Court's opinion reads as though the only purpose and effect of the redressability requirement is to assure that the plaintiff receive *some* of the benefit of the relief that a court orders. That is not so. If it were, a federal tort plaintiff fearing repetition of the injury could ask for tort damages to be paid not only to himself but to other victims as well, on the theory that those damages would have at least some deterrent effect beneficial to him. Such a suit is preposterous because the "remediation" that is the traditional business of Anglo-American courts is relief specifically tailored to the plaintiff's injury, and not *any* sort of relief that has some incidental benefit to the plaintiff. Just as a "generalized grievance" that affects the entire citizenry cannot satisfy the injury-in-fact requirement even though it aggrieves the plaintiff along with everyone else, see *Lujan*, 504 U. S., at 573–574, so also a generalized remedy that deters all future unlawful activity against all persons cannot satisfy the remediation requirement, even though it deters (among other things) repetition of this particular unlawful activity against these particular plaintiffs.

Thus, relief against prospective harm is traditionally afforded by way of an injunction, the scope of which is limited by the scope of the threatened injury. *Lewis* v. *Casey*, 518 U. S. 343, 357–360 (1996); *Lyons*, 461 U. S, at 105–107, and n. 7. In seeking to overturn that tradition by giving an indi-

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onment was that, unlike imprisonment for civil contempt, it would not condition the father's release upon payment. The Court then continued: "The prospect that prosecution will, at least in the future"—*i. e.,* upon completion of the imprisonment—"result in payment of support can, at best, be termed only speculative." *Linda R. S.*, 410 U. S., at 618.

vidual plaintiff the power to invoke a public remedy, Congress has done precisely what we have said it cannot do: convert an "undifferentiated public interest" into an "individual right" vindicable in the courts. *Lujan*, *supra*, at 577; *Steel Co.*, 523 U. S., at 106. The sort of scattershot redress approved today makes nonsense of our statement in *Schlesinger* v. *Reservists Comm. to Stop the War*, 418 U. S. 208, 222 (1974), that the requirement of injury in fact "insures the framing of relief no broader than required by the precise facts." A claim of particularized future injury has today been made the vehicle for pursuing generalized penalties for past violations, and a threshold showing of injury in fact has become a lever that will move the world.

B

As I have just discussed, it is my view that a plaintiff's desire to benefit from the deterrent effect of a public penalty for past conduct can never suffice to establish a case or controversy of the sort known to our law. Such deterrent effect is, so to speak, "speculative as a matter of law." Even if that were not so, however, the deterrent effect in the present case would surely be speculative as a matter of fact.

The Court recognizes, of course, that to satisfy Article III, it must be "likely," as opposed to "merely speculative," that a favorable decision will redress plaintiffs' injury, *Lujan*, *supra*, at 561. See *ante*, at 180–181. Further, the Court recognizes that not *all* deterrent effects of *all* civil penalties will meet this standard—though it declines to "explore the outer limits" of adequate deterrence, *ante*, at 187. It concludes, however, that in the present case "the civil penalties sought by FOE carried with them a deterrent effect" that satisfied the "likely [rather than] speculative" standard. *Ibid.* There is little in the Court's opinion to explain why it believes this is so.

The Court cites the District Court's conclusion that the penalties imposed, along with anticipated fee awards, pro-

vided "adequate deterrence." *Ante,* at 178, 187; 956 F. Supp., at 611. There is absolutely no reason to believe, however, that this meant "deterrence adequate to prevent an injury to these plaintiffs that would otherwise occur." The statute does not even *mention* deterrence in general (much less deterrence of future harm to the particular plaintiff) as one of the elements that the court should consider in fixing the amount of the penalty. (That element can come in, if at all, under the last, residual category of "such other matters as justice may require." 33 U. S. C. § 1319(d).) The statute does require the court to consider "the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, [and] the economic impact of the penalty on the violator . . . ." *Ibid.;* see 956 F. Supp., at 601. The District Court meticulously discussed, in subsections (a) through (e) of the portion of its opinion entitled "Civil Penalty," *each one* of those specified factors, and then—under subsection (f) entitled "Other Matters As Justice May Require," it discussed "1. Laidlaw's Failure to Avail Itself of the Reopener Clause," "2. Recent Compliance History," and "3. The Ever-Changing Mercury Limit." There is no mention whatever—in this portion of the opinion or anywhere else—of the degree of deterrence necessary to prevent future harm to these particular plaintiffs. Indeed, neither the District Court's final opinion (which contains the "adequate deterrence" statement) nor its earlier opinion dealing with the preliminary question whether South Carolina's previous lawsuit against Laidlaw constituted "diligent prosecution" that would bar citizen suit, see 33 U. S. C. § 1365(b)(1)(B), displayed *any awareness* that deterrence of *future injury to the plaintiffs* was necessary to support standing.

The District Court's earlier opinion did, however, quote with approval the passage from a District Court case which began: " 'Civil penalties seek to deter pollution by discourag-

ing future violations. To serve this function, the amount of the civil penalty must be high enough to insure that polluters cannot simply absorb the penalty as a cost of doing business.'" App. 122, quoting *PIRG* v. *Powell Duffryn Terminals, Inc.*, 720 F. Supp. 1158, 1166 (NJ 1989). When the District Court concluded the "Civil Penalty" section of its opinion with the statement that "[t]aken together, this court believes the above penalty, potential fee awards, and Laidlaw's own direct and indirect litigation expenses provide adequate deterrence under the circumstances of this case," 956 F. Supp., at 611, it was obviously harking back to this general statement of what the statutorily prescribed factors (and the "as justice may require" factors, which in this case did not include particularized or even generalized deterrence) were designed to achieve. It meant no more than that the court believed the civil penalty it had prescribed met the statutory standards.

The Court points out that we have previously said "'all civil penalties have some deterrent effect,'" *ante*, at 185 (quoting *Hudson* v. *United States*, 522 U. S. 93, 102 (1997)). That is unquestionably true: As a general matter, polluters as a class are deterred from violating discharge limits by the *availability* of civil penalties. However, none of the cases the Court cites focused on the deterrent effect of a single *imposition* of penalties on a particular lawbreaker. Even less did they focus on the question whether that particularized deterrent effect (if any) was enough to redress the injury of a citizen plaintiff in the sense required by Article III. They all involved penalties pursued by the government, not by citizens. See *id.*, at 96; *Department of Revenue of Mont.* v. *Kurth Ranch*, 511 U. S. 767, 773 (1994); *Tull* v. *United States*, 481 U. S. 412, 414 (1987).

If the Court had undertaken the necessary inquiry into whether significant deterrence of the plaintiffs' feared injury was "likely," it would have had to reason something like this: Strictly speaking, no polluter is deterred by a penalty for

past pollution; he is deterred by the *fear* of a penalty for *future* pollution. That fear will be virtually nonexistent if the prospective polluter knows that all emissions violators are given a free pass; it will be substantial under an emissions program such as the federal scheme here, which is regularly and notoriously enforced; it will be even higher when a prospective polluter subject to such a regularly enforced program has, as here, been the object of public charges of pollution and a suit for injunction; and it will surely be near the top of the graph when, as here, the prospective polluter has already been subjected to *state* penalties for the past pollution. The deterrence on which the plaintiffs must rely for standing in the present case is the marginal increase in Laidlaw's fear of future penalties that will be achieved by adding federal penalties for Laidlaw's past conduct.

I cannot say for certain that this marginal increase is zero; but I can say for certain that it is entirely speculative whether it will make the difference between these plaintiffs' suffering injury in the future and these plaintiffs' going unharmed. In fact, the assertion that it will "likely" do so is entirely farfetched. The speculativeness of that result is much greater than the speculativeness we found excessive in *Simon* v. *Eastern Ky. Welfare Rights Organization*, 426 U. S. 26, 43 (1976), where we held that denying § 501(c)(3) charitable-deduction tax status to hospitals that refused to treat indigents was not sufficiently likely to assure future treatment of the indigent plaintiffs to support standing. And it is much greater than the speculativeness we found excessive in *Linda R. S.* v. *Richard D.*, discussed *supra*, at 203–204, where we said that "[t]he prospect that prosecution [for nonsupport] will . . . result in payment of support can, at best, be termed only speculative," 410 U. S., at 618.

In sum, if this case is, as the Court suggests, within the central core of "deterrence" standing, it is impossible to imagine what the "outer limits" could possibly be. The Court's expressed reluctance to define those "outer limits"

serves only to disguise the fact that it has promulgated a revolutionary new doctrine of standing that will permit the entire body of public civil penalties to be handed over to enforcement by private interests.

C

Article II of the Constitution commits it to the President to "take Care that the Laws be faithfully executed," Art. II, § 3, and provides specific methods by which all persons exercising significant executive power are to be appointed, Art. II, § 2. As JUSTICE KENNEDY's concurrence correctly observes, the question of the conformity of this legislation with Article II has not been argued—and I, like the Court, do not address it. But Article III, no less than Article II, has consequences for the structure of our government, see *Schlesinger*, 418 U. S., at 222, and it is worth noting the changes in that structure which today's decision allows.

By permitting citizens to pursue civil penalties payable to the Federal Treasury, the Act does not provide a mechanism for individual relief in any traditional sense, but turns over to private citizens the function of enforcing the law. A Clean Water Act plaintiff pursuing civil penalties acts as a self-appointed mini-EPA. Where, as is often the case, the plaintiff is a national association, it has significant discretion in choosing enforcement targets. Once the association is aware of a reported violation, it need not look long for an injured member, at least under the theory of injury the Court applies today. See *supra*, at 198–201. And once the target is chosen, the suit goes forward without meaningful public control.[2] The availability of civil penalties vastly dis-

[2] The Court points out that the Government is allowed to intervene in a citizen suit, see *ante*, at 188, n. 4; 33 U. S. C. § 1365(c)(2), but this power to "bring the Government's views to the attention of the court," *ante*, at 188, n. 4, is meager substitute for the power to decide whether prosecution will occur. Indeed, according the Chief Executive of the United States the ability to intervene does no more than place him on a par with John

proportionate to the individual injury gives citizen plaintiffs massive bargaining power—which is often used to achieve settlements requiring the defendant to support environmental projects of the plaintiffs' choosing. See Greve, The Private Enforcement of Environmental Law, 65 Tulane L. Rev. 339, 355–359 (1990). Thus is a public fine diverted to a private interest.

To be sure, the EPA may foreclose the citizen suit by itself bringing suit. 33 U. S. C. § 1365(b)(1)(B). This allows public authorities to avoid private enforcement only by accepting private direction as to when enforcement should be undertaken—which is no less constitutionally bizarre. Elected officials are entirely deprived of their discretion to decide that a given violation should not be the object of suit at all, or that the enforcement decision should be postponed.[3] See § 1365(b)(1)(A) (providing that citizen plaintiff need only wait 60 days after giving notice of the violation to the government before proceeding with action). This is the predictable and inevitable consequence of the Court's allowing the use of public remedies for private wrongs.

## III

Finally, I offer a few comments regarding the Court's discussion of whether FOE's claims became moot by reason of Laidlaw's substantial compliance with the permit limits. I do not disagree with the conclusion that the Court reaches. Assuming that the plaintiffs had standing to pursue civil penalties in the first instance (which they did not), their claim

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Q. Public, who can intervene—whether the Government likes it or not—when the United States files suit. § 1365(b)(1)(B).

[3] The Court observes that "the Federal Executive Branch does not share the dissent's view that such suits dissipate its authority to enforce the law," since it has "endorsed this citizen suit from the outset." *Ante*, at 188, n. 4. Of course, in doubtful cases a long and uninterrupted history of Presidential acquiescence and approval can shed light upon the constitutional understanding. What we have here—acquiescence and approval by a single administration—does not deserve passing mention.

might well not have been mooted by Laidlaw's voluntary compliance with the permit, and leaving this fact-intensive question open for consideration on remand, as the Court does, *ante*, at 193–194, seems sensible.[4] In reaching this disposition, however, the Court engages in a troubling discussion of the purported distinctions between the doctrines of standing and mootness. I am frankly puzzled as to why this discussion appears at all. Laidlaw's claimed compliance is squarely within the bounds of our "voluntary cessation" doctrine, which is the basis for the remand. *Ante*, at 193.[5]

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[4] In addition to the compliance and plant-closure issues, there also remains open on remand the question whether the current suit was foreclosed because the earlier suit by the State was "diligently prosecuted." See 33 U. S. C. § 1365(b)(1)(B). Nothing in the Court's opinion disposes of the issue. The opinion notes the District Court's finding that Laidlaw itself played a significant role in facilitating the State's action. *Ante*, at 178, n. 1, 186, n. 2. But there is no incompatibility whatever between a defendant's facilitation of suit and the State's diligent prosecution—as prosecutions of felons who confess their crimes and turn themselves in regularly demonstrate. Laidlaw was entirely within its rights to prefer state suit to this private enforcement action; and if it had such a preference it would have been prudent—given that a State must act within 60 days of receiving notice of a citizen suit, see § 1365(b)(1)(A), and given the number of cases state agencies handle—for Laidlaw to make sure its case did not fall through the cracks. South Carolina's interest in the action was not a feigned last minute contrivance. It had worked with Laidlaw in resolving the problem for many years, and had previously undertaken an administrative enforcement action resulting in a consent order. 890 F. Supp. 470, 476 (SC 1995). South Carolina has filed an *amicus* brief arguing that allowing citizen suits to proceed despite ongoing state enforcement efforts "will provide citizens and federal judges the opportunity to relitigate and second-guess the enforcement and permitting actions of South Carolina and other States." Brief for South Carolina as *Amicus Curiae* 6.

[5] Unlike JUSTICE STEVENS' concurrence, the opinion for the Court appears to recognize that a claim for civil penalties is moot when it is clear that no future injury to the plaintiff at the hands of the defendant can occur. The concurrence suggests that civil penalties, like traditional damages remedies, cannot be mooted by absence of threatened injury. The analogy is inapt. Traditional money damages are payable to compensate

There is no reason to engage in an interesting academic excursus upon the differences between mootness and standing in order to invoke this obviously applicable rule.[6]

Because the discussion is not essential—indeed, not even relevant—to the Court's decision, it is of limited significance. Nonetheless, I am troubled by the Court's too-hasty retreat from our characterization of mootness as "the doctrine of standing set in a time frame." *Arizonans for Official English* v. *Arizona*, 520 U. S. 43, 68, n. 22 (1997). We have repeatedly recognized that what is required for litigation to continue is essentially identical to what is required for litigation to begin: There must be a justiciable case or controversy as required by Article III. "Simply stated, a case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Powell* v. *McCormack*, 395 U. S. 486, 496 (1969). A court may not

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for the harm of past conduct, which subsists whether future harm is threatened or not; civil penalties are privately assessable (according to the Court) to deter threatened future harm to the plaintiff. Where there is no threat to the plaintiff, he has no claim to deterrence. The proposition that impossibility of future violation does not moot the case holds true, of course, for civil-penalty suits by the government, which do not rest upon the theory that some particular future harm is being prevented.

[6] The Court attempts to frame its exposition as a corrective to the Fourth Circuit, which it claims "confused mootness with standing." *Ante*, at 189. The Fourth Circuit's conclusion of nonjusticiability rested upon the belief (entirely correct, in my view) that the only remedy being pursued on appeal, civil penalties, would not redress FOE's claimed injury. 149 F. 3d 303, 306 (1998). While this might be characterized as a conclusion that FOE had no standing to pursue civil penalties from the outset, it can also be characterized, as it was by the Fourth Circuit, as a conclusion that, when FOE declined to appeal denial of the declaratory judgment and injunction, and appealed only the inadequacy of the civil penalties (which it had no standing to pursue) the *case as a whole became moot.* Given the Court's erroneous conclusion that civil penalties can redress private injury, it of course rejects both formulations—but neither of them necessitates the Court's academic discourse comparing the mootness and standing doctrines.

proceed to hear an action if, subsequent to its initiation, the dispute loses "its character as a present, live controversy of the kind that must exist if [the court is] to avoid advisory opinions on abstract propositions of law." *Hall* v. *Beals*, 396 U. S. 45, 48 (1969) *(per curiam)*. See also *Preiser* v. *Newkirk*, 422 U. S. 395, 401 (1975); *Steffel* v. *Thompson*, 415 U. S. 452, 459, n. 10 (1974). Because the requirement of a continuing case or controversy derives from the Constitution, *Liner* v. *Jafco, Inc.*, 375 U. S. 301, 306, n. 3 (1964), it may not be ignored when inconvenient, *United States* v. *Alaska S. S. Co.*, 253 U. S. 113, 116 (1920) (moot question cannot be decided, "[h]owever convenient it might be"), or, as the Court suggests, to save "sunk costs," compare *ante*, at 192, with *Lewis* v. *Continental Bank Corp.*, 494 U. S. 472, 480 (1990) ("[R]easonable caution is needed to be sure that mooted litigation is not pressed forward . . . solely in order to obtain reimbursement of sunk costs").

It is true that mootness has some added wrinkles that standing lacks. One is the "voluntary cessation" doctrine to which the Court refers. *Ante*, at 189. But it is inaccurate to regard this as a reduction of the basic requirement for standing that obtained at the beginning of the suit. A genuine controversy must exist at both stages. And just as the initial suit could be brought (by way of suit for declaratory judgment) before the defendant actually violated the plaintiff's alleged rights, so also the initial suit can be continued even though the defendant has stopped violating the plaintiff's alleged rights. The "voluntary cessation" doctrine is nothing more than an evidentiary presumption that the controversy reflected by the violation of alleged rights continues to exist. *Steel Co.*, 523 U. S., at 109. Similarly, the fact that we do not find cases moot when the challenged conduct is "capable of repetition, yet evading review" does not demonstrate that the requirements for mootness and for standing differ. "Where the conduct has ceased for the time being

but there is a demonstrated probability that it will recur, a real-life controversy between parties with a personal stake in the outcome continues to exist." *Honig* v. *Doe*, 484 U. S. 305, 341 (1988) (SCALIA, J., dissenting) (emphasis deleted).

Part of the confusion in the Court's discussion is engendered by the fact that it compares standing, on the one hand, with mootness *based on voluntary cessation*, on the other hand. *Ante*, at 190. The required showing that it is "absolutely clear" that the conduct "could not reasonably be expected to recur" is *not* the threshold showing required for mootness, but the heightened showing required in a particular category of cases where we have sensibly concluded that there is reason to be skeptical that cessation of violation means cessation of live controversy. For claims of mootness based on changes in circumstances other than voluntary cessation, the showing we have required is less taxing, and the inquiry is indeed properly characterized as one of "'standing set in a time frame.'" See *Arizonans*, *supra*, at 67, 68, n. 22 (case mooted where plaintiff's change in jobs deprived case of "still vital claim for prospective relief"); *Spencer* v. *Kemna*, 523 U. S. 1, 7 (1998) (case mooted by petitioner's completion of his sentence, since "throughout the litigation, the plaintiff must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision" (internal quotation marks omitted)); *Lewis*, *supra*, at 478–480 (case against State mooted by change in federal law that eliminated parties' "personal stake" in the outcome).

In sum, while the Court may be correct that the parallel between standing and mootness is imperfect due to realistic evidentiary presumptions that are by their nature applicable only in the mootness context, this does not change the underlying principle that "'[t]he requisite personal interest that must exist at the commencement of the litigation . . . must continue throughout its existence . . . .'" *Arizonans*, *supra*,

at 68, n. 22 (quoting *United States Parole Comm'n* v. *Geraghty*, 445 U. S. 388, 397 (1980)).

* * *

By uncritically accepting vague claims of injury, the Court has turned the Article III requirement of injury in fact into a "mere pleading requirement," *Lujan*, 504 U. S., at 561; and by approving the novel theory that public penalties can redress anticipated private wrongs, it has come close to "mak[ing] the redressability requirement vanish," *Steel Co.*, *supra*, at 107. The undesirable and unconstitutional consequence of today's decision is to place the immense power of suing to enforce the public laws in private hands. I respectfully dissent.

Syllabus

# ADARAND CONSTRUCTORS, INC. *v.* SLATER, SECRETARY OF TRANSPORTATION, ET AL.

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

No. 99–295. Decided January 12, 2000

The Department of Transportation (DOT) favors contracting with companies that employ so-called "disadvantaged business enterprises" that are certified by, *inter alios*, a state highway agency as owned and controlled by socially and economically disadvantaged individuals. Federal regulations require that the certifying entity *presume* members of specified minority groups to be socially disadvantaged and allow others to be certified if they can *demonstrate* social disadvantage. Both third parties and DOT may challenge such findings. Petitioner, whose principal is a white man, submitted the low bid on a portion of a federal highway project, but the prime contractor awarded the subcontract to a company certified by the Colorado Department of Transportation (CDOT) as a disadvantaged enterprise. Petitioner sued various federal officials, alleging that a Subcontractor Compensation Clause required by the Federal Government—which clause rewards prime contractors for subcontracting with enterprises certified as disadvantaged by a State's highway or transportation department—and in particular the race-based presumption that forms its foundation, violated petitioner's Fifth Amendment equal protection right. Ultimately, under *Adarand Constructors, Inc.* v. *Peña*, 515 U. S. 200, the District Court held that the clause and the presumption failed strict scrutiny because they were not narrowly tailored. *Adarand Constructors, Inc.* v. *Peña*, 965 F. Supp. 1556 *(Adarand II)*. While respondents' appeal was pending, petitioner filed a second suit in District Court challenging (on the same grounds) the State's use of the federal certification guidelines. Shortly thereafter the State altered its certification program, substituting for the social disadvantage presumption a requirement that all applicants certify on their own account that each of the firm's minority owners has experienced social disadvantage based on the effects of racial, ethnic, or gender discrimination. Taking judicial notice of its holding in *Adarand II* that the Federal Government had discriminated against petitioner's owner by applying unconstitutional rules and regulations, the District Court reasoned that petitioner likely was eligible for disadvantaged business status under Colorado's system. Petitioner then requested and received that status from CDOT. Upon learning that CDOT had given petitioner disadvantaged business status, the Tenth Circuit held

that the cause of action was moot and vacated the District Court's *Adarand II* judgment.

*Held:* Petitioner's cause of action is not moot because, under the circumstances of this case, it is impossible to conclude that respondents have borne their burden of establishing that the challenged conduct could not reasonably be expected to recur. *Friends of Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, *ante*, at 189. If this case is moot, it is because the Federal Government has accepted CDOT's certification of petitioner as a disadvantaged business enterprise, and has thereby ceased its offending conduct. But DOT accepts only valid certifications from state agencies, and it has yet to approve—as it must—CDOT's procedure. Because there are material differences (not to say incompatibility) between that procedure and DOT's regulations, it is not at all clear that CDOT's certification is valid, and hence not at all clear that the Subcontractor Compensation Clause requires its acceptance. It is also far from clear that there will be no third-party or DOT challenge to petitioner's certification. Indeed, such challenges seem quite probable now that the Tenth Circuit, by vacating *Adarand II*, has eliminated the sole basis for petitioner's certification in the first place.

Certiorari granted; 169 F. 3d 1292, reversed and remanded.

PER CURIAM.

I

Congress has adopted a policy that favors contracting with small businesses owned and controlled by the socially and economically disadvantaged. See § 8(d)(1) of the Small Business Act, as added by § 7 of Pub. L. 87–305, 75 Stat. 667, and as amended, 15 U. S. C. § 637(d)(1) (1994 ed., Supp. IV). To effectuate that policy, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, § 1003(b), 105 Stat. 1919, which is an appropriations measure for the Department of Transportation (DOT), seeks to direct 10 percent of the contracting funds expended on projects funded in whole or in part by the appropriated funds to transportation projects employing so-called disadvantaged business enterprises.[1] ISTEA § 1003(b)(1).

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[1] Congress recently enacted the Transportation Equity Act for the 21st Century, Pub. L. 105–178, Tit. I, § 1101(b), 112 Stat. 113, the successor appropriations measure to ISTEA. Although the new Act contains simi-

To qualify for that status, the small business must be certified as owned and controlled by socially and economically disadvantaged individuals. DOT does not itself conduct certifications, but relies on certifications from two main sources: the Small Business Administration, which certifies businesses for all types of federal procurement programs, and state highway agencies, which certify them for purposes of federally assisted highway projects. The federal regulations governing these certification programs, see 13 CFR pt. 124 (1999) (Small Business Administration); 64 Fed. Reg. 5096–5148 (1999) (to be codified in 49 CFR pt. 26) (DOT for state highway agencies), require that the certifying entity *presume* to be socially disadvantaged persons who are black, Hispanic, Asian Pacific, Subcontinent Asian, Native Americans, or members of other groups designated from time to time by the Small Business Administration. See 13 CFR § 124.103(b); 64 Fed. Reg. 5136 (§ 26.67). State highway agencies must in addition presume that women are socially disadvantaged. *Ibid.* Small businesses owned and controlled by persons who are not members of the preferred groups may also be certified, but only if they can *demonstrate* social disadvantage. See 13 CFR § 124.103(c); 64 Fed. Reg. 5136–5137 (§ 26.67(d)); *id.*, at 5147–5148 (pt. 26, subpt. D, App. E). Third parties, as well as DOT, may challenge findings of social disadvantage. See 13 CFR § 124.1017(a); 64 Fed. Reg. 5142 (§ 26.87).

## II

In 1989, DOT awarded the prime contract for a federal highway project in Colorado to Mountain Gravel & Construction Company. The contract included a Subcontractor Compensation Clause—which the Small Business Act requires all

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lar provisions, it is technically the provisions of ISTEA that apply to funding obligated in prior fiscal years but not yet expended.

federal agencies to include in their prime contracts, see 15 U. S. C. § 637(d)—rewarding the prime contractor for subcontracting with disadvantaged business enterprises, see § 637(d)(4)(E). Petitioner, whose principal is a white man, submitted the low bid on a portion of the project, but Mountain Gravel awarded the subcontract to a company that had previously been certified by the Colorado Department of Transportation (CDOT) as a disadvantaged business enterprise.

Petitioner brought suit against various federal officials, alleging that the Subcontractor Compensation Clause, and in particular the race-based presumption that forms its foundation, violated petitioner's Fifth Amendment right to equal protection. The Tenth Circuit, applying the so-called intermediate scrutiny approved in some of our cases involving classifications on a basis other than race, see *Mississippi Univ. for Women* v. *Hogan*, 458 U. S. 718 (1982); *Craig* v. *Boren*, 429 U. S. 190 (1976), upheld the use of the clause and the presumption. *Adarand Constructors, Inc.* v. *Peña*, 16 F. 3d 1537 (1994). Because DOT's use of race-based measures should have been subjected to strict scrutiny, we reversed and remanded for the application of that standard. *Adarand Constructors, Inc.* v. *Peña*, 515 U. S. 200, 237–239 (1995) *(Adarand I)*.

On remand, the District Court for the District of Colorado held that the clause and the presumption failed strict scrutiny because they were not narrowly tailored. *Adarand Constructors, Inc.* v. *Peña*, 965 F. Supp. 1556 (1997) *(Adarand II)*. Specifically, the court held the presumption that members of the enumerated racial groups are socially disadvantaged to be both overinclusive and underinclusive, because it includes members of those groups who are not disadvantaged and excludes members of other groups who are. *Id.*, at 1580. The District Court enjoined DOT from

using the clause and its presumption.[2] *Id.*, at 1584. Respondents appealed to the Tenth Circuit.

Shortly thereafter, and while respondents' appeal was still pending, petitioner filed a second suit in the District Court, this time naming as defendants certain Colorado officials, and challenging (on the same grounds) the State's use of the federal guidelines in certifying disadvantaged business enterprises for federally assisted projects. *Adarand Constructors, Inc.* v. *Romer*, Civ. No. 97–K–1351 (June 26, 1997). Shortly after this suit was filed, however, Colorado altered its certification program in response to the District Court's decision in *Adarand II*. Specifically, the State did away with the presumption of social disadvantage for certain minorities and women, App. to Pet. for Cert. 109–111, and in its place substituted a requirement that all applicants certify on their own account that each of the firm's majority owners "has experienced social disadvantage based upon the effects of racial, ethnic or gender discrimination," *id.*, at 110. Colorado requires no further showing of social disadvantage by any applicant.

A few days after Colorado amended its certification procedure, the District Court held a hearing on petitioner's motion for a preliminary injunction in *Romer*. The District Court took judicial notice of its holding in *Adarand II* that the Federal Government had discriminated against petitioner's owner "by the application of unconstitutional rules and regulations." App. to Pet. for Cert. 136. As a result of that race-based discrimination, the District Court reasoned, petitioner likely was eligible for disadvantaged business status under Colorado's system for certifying businesses for federally assisted projects—the system at issue in *Romer*. App. to Pet. for Cert. 137. The District Court therefore denied

[2] Before the Tenth Circuit, the parties disagreed as to whether the scope of the District Court's remedial order was appropriate. In characterizing that order as we do here, we do not intend to take a position in that dispute.

petitioner's request for a preliminary injunction. *Id.*, at 138. Petitioner then requested and received disadvantaged business status from CDOT.

Meanwhile, respondents' appeal from the District Court's decision in *Adarand II* was pending before the Tenth Circuit. Upon learning that CDOT had given petitioner disadvantaged business status, the Tenth Circuit held that the cause of action was moot, and vacated the District Court's judgment favorable to petitioner in *Adarand II*. 169 F. 3d 1292, 1296–1297, 1299 (CA10 1999). Petitioner filed a petition for certiorari.

## III

In dismissing the case as moot, the Tenth Circuit relied on the language of the Subcontractor Compensation Clause, which provides that "[a] small business concern will be considered a [disadvantaged business enterprise] after it has been certified as such by . . . any State's Department of Highways/Transportation." *Id.*, at 1296. Because CDOT had certified petitioner as a disadvantaged business enterprise, the court reasoned, the language of the clause indicated that the Federal Government also had accepted petitioner's certification for purposes of federal projects. As a result, petitioner could no longer demonstrate "'an invasion of a legally protected interest' that is sufficiently 'concrete and particularized' and 'actual or imminent'" to establish standing. *Arizonans for Official English* v. *Arizona*, 520 U. S. 43, 64 (1997) (quoting *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560 (1992)). Because, the court continued, petitioner could not demonstrate such an invasion, its cause of action was *moot*. 169 F. 3d, at 1296–1297.

In so holding, the Tenth Circuit "confused mootness with standing," *Friends of Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, *ante*, at 189, and as a result placed the burden of proof on the wrong party. If this case is moot, it is because the Federal Government has accepted CDOT's

certification of petitioner as a disadvantaged business enterprise, and has thereby ceased its offending conduct. Voluntary cessation of challenged conduct moots a case, however, only if it is "*absolutely* clear that the allegedly wrongful behavior could not reasonably be expected to recur." *United States* v. *Concentrated Phosphate Export Assn., Inc.*, 393 U. S. 199, 203 (1968) (emphasis added). And the "'heavy burden of persua[ding]' the court that the challenged conduct cannot reasonably be expected to start up again *lies with the party asserting mootness.*" *Friends of Earth*, *ante*, at 189 (emphasis added) (quoting *Concentrated Phosphate Export Assn.*, *supra*, at 203).

Because respondents cannot satisfy this burden, the Tenth Circuit's error was a crucial one. As common sense would suggest, and as the Tenth Circuit itself recognized, DOT accepts only "valid certification[s]" from state agencies. 169 F. 3d, at 1298. As respondents concede, however, see Brief in Opposition 13–14, n. 6, DOT has yet to approve—as it must—CDOT's procedure for certifying disadvantaged business enterprises, see 64 Fed. Reg. 5129 (1999) (49 CFR §26.21(b)(1)) ("[The State] must submit a [disadvantaged business enterprise] program conforming to this part by August 31, 1999 to the concerned operating administration").

DOT has promulgated regulations outlining the procedure state highway agencies must follow in certifying firms as disadvantaged business enterprises. See 64 Fed. Reg. 5096–5148 (pt. 26). As described earlier, those regulations require the agency to presume that "women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the [Small Business Administration]" are socially disadvantaged. *Id.*, at 5136 (§26.67(a)(1)). Before individuals not members of those groups may be certified, the state agency must make individual determinations as to disadvantage. See *id.*, at 5136–5137 (§26.67(d)) ("In such a proceeding, the applicant firm

has the burden of demonstrating to [the state highway agency], by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged"); *id.*, at 5147–5148 (pt. 26, subpt. D, App. E) (providing list of "elements" that highway agencies must consider in making individualized determinations of social disadvantage). CDOT's new procedure under which petitioner was certified applies no presumption in favor of minority groups, and accepts without investigation a firm's self-certification of entitlement to disadvantaged business status. See App. to Pet. for Cert. 109–111. Given the material differences (not to say incompatibility) between that procedure and the requirements of the DOT regulations, it is not at all clear that CDOT's certification is a "valid certification," and hence not at all clear that the Subcontractor Compensation Clause requires its acceptance.

Before the Tenth Circuit, respondents took pains to "expres[s] no opinion regarding the correctness of Colorado's determination that [petitioner] is entitled to [disadvantaged business] status." Motion by the Federal Appellants to Dismiss Appeal as Moot and to Vacate the District Court Judgment in No. 97–1304, p. 3, n. 2. Instead, they stated flatly that "in the event there is a third-party challenge to [petitioner's] certification as a [disadvantaged business enterprise] and the decision on the challenge is appealed to DOT, DOT may review the decision to determine whether the certification was proper." *Id.*, at 3–4, n. 2. In addition, DOT itself has the power to require States to initiate proceedings to withdraw a firm's disadvantaged status if there is "reasonable cause to believe" that the firm "does not meet the eligibility criteria" set forth in the federal regulations. 64 Fed. Reg. 5142 (§ 26.87(c)(1)). Given the patent incompatibility of the certification with the federal regulations, it is far from clear that these possibilities will not become reality. Indeed, challenges to petitioner's disadvantaged business status seem quite probable now that the Tenth Circuit, by

vacating *Adarand II*, has eliminated the sole basis for petitioner's certification in the first place.

The Tenth Circuit dismissed these possibilities as insufficiently particular and concrete to grant standing and therefore "too conjectural and speculative to avoid a finding of mootness." 169 F. 3d, at 1298 (internal quotation marks omitted). As we recently noted in *Friends of the Earth*, however, "[t]he plain lesson of [our precedents] is that there are circumstances in which the prospect that a defendant will engage in (or resume) harmful conduct may be too speculative to support standing, but not too speculative to overcome mootness." *Ante*, at 190. Because, under the circumstances of this case, it is impossible to conclude that respondents have borne their burden of establishing that it is "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur," *ante*, at 189, petitioner's cause of action remains alive.

* * *

It is no small matter to deprive a litigant of the rewards of its efforts, particularly in a case that has been litigated up to this Court and back down again. Such action on grounds of mootness would be justified only if it were absolutely clear that the litigant no longer had any need of the judicial protection that it sought. Because that is not the case here, the petition for writ of certiorari is granted, the judgment of the United States Court of Appeals for the Tenth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

*It is so ordered.*

Syllabus

# WEEKS *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS

## CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 99–5746. Argued December 6, 1999—Decided January 19, 2000

After a Virginia jury found petitioner Weeks guilty of capital murder, the prosecution sought to prove two aggravating circumstances in the penalty phase, and the defense presented 10 witnesses in mitigation. During deliberations, the jurors sent the trial judge a note asking whether, if they believed Weeks guilty of at least one of the aggravating circumstances, it was their duty to issue the death penalty, or whether they must decide whether to issue the death penalty or a life sentence. The judge responded by directing them to a paragraph in their instructions stating: "'If you find from the evidence that the Commonwealth has proved, beyond a reasonable doubt, either of the two [aggravating circumstances], and as to that alternative, you are unanimous, then you may fix the punishment . . . at death, or if you believe from all the evidence that the death penalty is not justified, then you shall fix the punishment . . . at [life] imprisonment.'" Over two hours later, the jury returned its verdict, which read: "[H]aving unanimously found that [Weeks'] conduct in committing the offense [satisfied one of the aggravating circumstances], and having considered the evidence in mitigation . . . , [we] unanimously fix his punishment at death." The jurors were polled and all responded affirmatively that the foregoing was their verdict. In his direct appeal to the Virginia Supreme Court, Weeks' assignment of error respecting the judge's answering the jury's question about mitigating circumstances was number 44. That court affirmed Weeks' conviction and sentence on direct appeal and later dismissed his state habeas petition. The Federal District Court denied him federal habeas relief, and the Fourth Circuit denied a certificate of appealability and dismissed his petition.

*Held:*

1. The Constitution is not violated when a trial judge directs a capital jury's attention to a specific paragraph of a constitutionally sufficient instruction in response to a question regarding the proper consideration of mitigating evidence. Weeks misplaces his reliance on *Bollenbach* v. *United States*, 326 U. S. 607, 611, and *Eddings* v. *Oklahoma*, 455 U. S. 104, 114, both of which are inapposite in this case. Here, the trial judge gave precisely the same Virginia capital instruction that was upheld in

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*Buchanan* v. *Angelone*, 522 U. S. 269, 277, as being sufficient to allow the jury to consider mitigating evidence. The judge also gave a specific instruction on mitigating evidence that was not given in *Buchanan*. The Constitution does not require anything more, as a jury is presumed both to follow its instructions, *Richardson* v. *Marsh*, 481 U. S. 200, 211, and to understand a judge's answer to its question, see, *e. g.*, *Armstrong* v. *Toler*, 11 Wheat. 258, 279. To presume otherwise would require reversal every time a jury inquires about a matter of constitutional significance, regardless of the judge's answer. Here, the presumption gains additional support from empirical factors, including that each of the jurors affirmed the verdict in open court, they deliberated for more than two hours after receiving the judge's answer to their question, and defense counsel specifically explained to them during closing argument that they could find both aggravating factors proven and still not sentence petitioner to death. At best, Weeks has demonstrated only that there exists a slight *possibility* that the jury considered itself precluded from considering mitigating evidence. Such a demonstration is insufficient to prove a constitutional violation under *Boyde* v. *California*, 494 U. S. 370, 380, which requires the showing of a reasonable *likelihood* that the jury felt so restrained. It also appears that Weeks' attorney did not view the judge's answer to the jury's question as a serious flaw in the trial at that time, since he made an oral motion to set aside the death sentence and did not even mention this incident. And the low priority and space which counsel assigned to the point on direct appeal suggests that the present emphasis was an afterthought. Pp. 231–237.

2. Federal habeas relief is barred by 28 U. S. C. § 2254(d). For the foregoing reasons, it follows *a fortiori* that the adjudication of the State Supreme Court's affirmance of Weeks' sentence and conviction was neither "contrary to," nor involved an "unreasonable application of," any of this Court's decisions as the statute requires. P. 237.

176 F. 3d 249, affirmed.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. STEVENS, J., filed a dissenting opinion, in which GINSBURG and BREYER, JJ., joined, and in which SOUTER, J., joined with respect to all but Part I, *post*, p. 237.

*Mark Evan Olive* argued the cause for petitioner. With him on the briefs were *Glen A. Huff*, *Timothy M. Richardson*, and *Sterling H. Weaver*.

*Robert H. Anderson III*, Assistant Attorney General of Virginia, argued the cause for respondent. With him on the brief was *Mark L. Earley*, Attorney General.*

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

This case presents the question whether the Constitution is violated when a trial judge directs a capital jury's attention to a specific paragraph of a constitutionally sufficient instruction in response to a question regarding the proper consideration of mitigating circumstances. We hold that it is not and that habeas relief is barred by 28 U. S. C. § 2254(d) (1994 ed., Supp. III).

Petitioner Lonnie Weeks, Jr., was riding from Washington, D. C., to Richmond, Virginia, as a passenger in a car driven by his uncle, Lewis Dukes. Petitioner had stolen the vehicle in a home burglary earlier in the month. The two sped past the marked car of Virginia State Trooper Jose Cavazos, who was monitoring traffic. Trooper Cavazos activated his emergency lights and took chase. After passing other vehicles on the highway shoulder, Dukes stopped on an exit ramp. Trooper Cavazos approached the driver's side of the stolen vehicle on foot. Upon the trooper's request, Dukes alighted and stood near the rear of the car. Trooper Cavazos, still standing near the driver's side, asked petitioner to step out as well. As Weeks stepped out on the passenger's side, he carried a 9-millimeter semiautomatic pistol loaded with hollow-point bullets. Petitioner proceeded to fire six bullets at the trooper, two of which entered his body near the right and left shoulder straps of his protective vest, and four of which entered his forearms and left wrist. Trooper Cavazos died within minutes.

Petitioner was arrested the next morning. During routine questioning about his physical and mental state by clas-

**Kent S. Scheidegger* filed a brief for the Criminal Justice Legal Foundation as *amicus curiae* urging affirmance.

sification officers, petitioner confessed, indicating that he was considering suicide because he shot the trooper. Petitioner also voluntarily wrote a letter to a jail officer admitting the killing and expressing remorse.

Petitioner was tried in the Circuit Court for Prince William County, Virginia, in October 1993. After the jury had found him guilty of capital murder, a 2-day penalty phase followed. In this proceeding the prosecution sought to prove two aggravating circumstances: that Weeks "would commit criminal acts of violence that would constitute a continuing serious threat to society" and that his conduct was "outrageously or wantonly vile, horrible or inhuman, in that it involved depravity of mind or aggravated battery." App. 192. During the penalty phase, the defense presented 10 witnesses, including petitioner, in mitigation.

The jury retired at 10:40 a.m. on the second day to begin deliberations. At around noon, the judge informed counsel that the jury had asked the following question:

> "Does the sentence of life imprisonment in the State of Virginia have the possibility of parole, and if so, under what conditions must be met to receive parole?" App. to Pet. for Cert. 90.

The judge responded to the jury's question as follows:

> "You should impose such punishment as you feel is just under the evidence, and within the instructions of the Court. You are not to concern yourselves with what may happen afterwards." *Ibid.*

The prosecution agreed with the judge's response and defense counsel objected. At 12:40 p.m., court reconvened and the judge told the jurors that there would be a 1-hour luncheon recess and that they could go to lunch or continue deliberations, as a juror had apparently informed the bailiff that they might be interested in working through lunch. At 12:45 p.m., the jury retired from the courtroom. At 3:15

p.m., the judge informed counsel that he had received the following written question from the jury:

> "If we believe that Lonnie Weeks, Jr. is guilty of at least 1 of the alternatives, then is it our duty as a jury to issue the death penalty? Or must we decide (even though he is guilty of one of the alternatives) whether or not to issue the death penalty, or one of the life sentences? What is the Rule? Please clarify?" *Id.*, at 91 (emphasis in original).

The judge wrote the following response: "See second paragraph of Instruction #2 (Beginning with 'If you find from . . .')." *Ibid.* The judge explained to counsel his answer to the jury's question:

> "In instruction number 2 that was given to them, in the second paragraph, it reads, 'If you find from the evidence that the Commonwealth has proved, beyond a reasonable doubt, either of the two alternatives, and as to that alternative, you are unanimous, then you may fix the punishment of the defendant at death, or if you believe from all the evidence that the death penalty is not justified, then you shall fix the punishment of the defendant at imprisonment for life, or imprisonment for life with a fine not to exceed $100,000.'
>
> "I don't believe I can answer the question any clearer than the instruction, so what I have done is referred them to the second paragraph of instruction number 2, and I told them beginning with, 'if you find from,' et cetera, et cetera, for them to reread that paragraph."[1] App. 222–223.

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[1] Instruction No. 2, in its entirety, read:

"You have convicted the defendant of an offense which may be punished by death. You must decide whether the defendant shall be sentenced to death or to imprisonment for life or to imprisonment for life and a fine of a specific amount, but not more than $100,000.00. Before the penalty can

The prosecution stated that the judge's solution was appropriate. Defense counsel disagreed, and stated:

> "Your Honor, we would ask that Your Honor instruct the jury that even if they find one or both of the mitigating factors—I'm sorry, the factors that have been proved beyond a reasonable doubt, that they still may impose a life sentence, or a life sentence plus a fine." *Id.*, at 223.

Defense counsel asked that his objection be noted.

More than two hours later, the jury returned. The clerk read its verdict:

> "[W]e the jury, on the issue joined, having found the defendant Lonnie Weeks, Jr., guilty of capital murder, and having unanimously found that his conduct in committing the offense is outrageously or wantonly vile, horrible or inhumane, in that it involved depravity of mind and or aggravated battery, *and having considered the evidence in mitigation of the offense*, unanimously fix

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be fixed at death, the Commonwealth must prove beyond a reasonable doubt at least one of the following two alternatives:

"1. That, after consideration of his history and background, there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society; or

"2. That his conduct in committing the offense was outrageously or wantonly vile, horrible or inhuman, in that it involved depravity of mind or aggravated battery to the victim beyond the minimum necessary to accomplish the act of murder.

"If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt either of the two alternatives, and as to that alternative you are unanimous, then you may fix the punishment of the defendant at death or if you believe from all the evidence that the death penalty is not justified, then you shall fix the punishment of the defendant at life imprisonment or imprisonment for live *[sic]* and a fine of a specific amount, but not more than $100,000.00.

"If the Commonwealth has failed to prove beyond a reasonable doubt at least one of the alternatives, then you shall fix the punishment of the defendant at life imprisonment or imprisonment for live *[sic]* and a fine of a specific amount, but not more than $100,000.00." App. 192–193.

his punishment at death . . . ." *Id.*, at 225 (emphasis added).

The jurors were polled and all responded affirmatively that the foregoing was their verdict in the case.

Petitioner presented 47 assignments of error in his direct appeal to the Virginia Supreme Court, and the assignment of error respecting the judge's answering the jury's question about mitigating circumstances was number 44. The Virginia Supreme Court affirmed petitioner's conviction and sentence, holding that the claims petitioner advances here lack merit. *Weeks* v. *Virginia,* 248 Va. 460, 465–466, 476–477, 450 S. E. 2d 379, 383, 390 (1994), cert. denied, 516 U. S. 829 (1995). The Virginia Supreme Court dismissed petitioner's state habeas petition as jurisdictionally barred on timeliness grounds. The District Court denied petitioner's request for federal habeas relief, and the Court of Appeals for the Fourth Circuit denied a certificate of appealability and dismissed his petition. 176 F. 3d 249 (1999). We granted certiorari, 527 U. S. 1060 (1999), and now affirm.

Petitioner relies heavily on our decisions in *Bollenbach* v. *United States*, 326 U. S. 607 (1946), and *Eddings* v. *Oklahoma*, 455 U. S. 104 (1982). *Bollenbach* involved a supplemental instruction by the trial court following an inquiry from the jury—in that respect it is like the present case—but the instruction given by the trial court in *Bollenbach* was palpably erroneous. 326 U. S., at 611. In this respect it is quite unlike the present case. *Eddings* arose out of a bench trial in a capital case, and this Court reversed a sentence of death because the trial judge had refused to consider mitigating evidence: "[I]t was as if the trial judge had instructed a jury to disregard the mitigating evidence Eddings proffered on his behalf." 455 U. S., at 114.

Here the trial judge gave no such instruction. On the contrary, he gave the instruction that we upheld in *Buchanan* v. *Angelone,* 522 U. S. 269 (1998), as being sufficient to allow the jury to consider mitigating evidence. And in

addition, he gave a specific instruction on mitigating evidence—an instruction that was not given in *Buchanan*—in which he told the jury that "[y]ou must consider a mitigating circumstance if you find there is evidence to support it."[2] Even the dissenters in *Buchanan* said that the ambiguity that they found in the instruction there given would have been cleared up by "some mention of mitigating evidence anywhere in the instructions." *Id.*, at 283.

In *Buchanan*, we considered whether the Eighth Amendment required that a capital jury be instructed on particular mitigating factors. Buchanan's jury was given precisely the same Virginia pattern capital instruction that was given to Weeks' jury. See *id.*, at 272, and n. 1. We noted that our cases have established that the sentencer may not be precluded from considering, and may not refuse to consider, any constitutionally relevant mitigating evidence, and that the State may structure the jury's consideration of mitigation so long as it does not preclude the jury from giving effect to it. *Id.*, at 276. We further noted that the "standard for determining whether jury instructions satisfy these principles was 'whether there is a reasonable likelihood that the jury has applied the challenged instruction in a way that prevents the consideration of constitutionally relevant evi-

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[2] That instruction was titled "EVIDENCE IN MITIGATION" and stated in full:

"Mitigation evidence is not evidence offered as an excuse for the crime of which you have found defendant guilty. Rather, it is any evidence which in fairness may serve as a basis for a sentence less than death. The law requires your consideration of more than the bare facts of the crime.

"Mitigating circumstances may include, but not be limited to, any facts relating to defendant's age, character, education, environment, life and background, or any aspect of the crime itself which might be considered extenuating or tend to reduce his moral culpability or make him less deserving of the extreme punishment of death.

"You must consider a mitigating circumstance if you find there is evidence to support it. The weight which you accord a particular mitigating circumstance is a matter of your judgment." *Id.*, at 195.

dence.'" *Ibid.* (quoting *Boyde* v. *California*, 494 U. S. 370, 380 (1990)). But we stated that we have never held that the State must structure in a particular way the manner in which juries consider mitigating evidence. 522 U. S., at 276. We concluded that the Virginia pattern jury instruction at issue there, and again at issue here, did not violate those principles:

> "The instruction did not foreclose the jury's consideration of any mitigating evidence. By directing the jury to base its decision on 'all the evidence,' the instruction afforded jurors an opportunity to consider mitigating evidence. The instruction informed the jurors that if they found the aggravating factor proved beyond a reasonable doubt then they 'may fix' the penalty at death, but directed that if they believed that all the evidence justified a lesser sentence then they 'shall' impose a life sentence. The jury was thus allowed to impose a life sentence even if it found the aggravating factor proved." *Id.*, at 277.

But, as noted above, the jury in this case also received an explicit direction to consider mitigating evidence—an instruction that was not given to the jury in *Buchanan*. Thus, so far as the adequacy of the jury instructions is concerned, their sufficiency here follows *a fortiori* from *Buchanan*.[3]

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[3] JUSTICE STEVENS attempts to distinguish the instruction given here from that given in *Buchanan* v. *Angelone*, 522 U. S., at 272, n. 1, on the basis that the first paragraph of the "Weeks instructions contain[s] a longer description" of the aggravating circumstances. *Post*, at 239 (dissenting opinion). The first paragraph is longer here because the prosecution in *Buchanan* sought to prove only one aggravating circumstance. See 522 U. S., at 271. The mere addition of the description of another aggravating circumstance in the first paragraph, however, does not at all affect the second clause of the second paragraph of the instruction—the clause that JUSTICE STEVENS finds "ambiguous." *Post*, at 241.

More importantly, JUSTICE STEVENS, after stating that his "point is best made by quoting the instruction itself," *post*, at 239, fails to quote

Given that petitioner's jury was adequately instructed, and given that the trial judge responded to the jury's question by directing its attention to the precise paragraph of the constitutionally adequate instruction that answers its inquiry, the question becomes whether the Constitution requires anything more. We hold that it does not.

A jury is presumed to follow its instructions. *Richardson* v. *Marsh*, 481 U. S. 200, 211 (1987). Similarly, a jury is presumed to understand a judge's answer to its question. See, *e. g.*, *Armstrong* v. *Toler*, 11 Wheat. 258, 279 (1826) (opinion of Marshall, C. J.). Weeks' jury did not inform the court that after reading the relevant paragraph of the instruction, it still did not understand its role. See *ibid.* ("Had the jury desired further information, they might, and probably would, have signified their desire to the court. The utmost willingness was manifested to gratify them, and it may fairly be presumed that they had nothing further to ask"). To presume otherwise would require reversal every time a jury inquires about a matter of constitutional significance, regardless of the judge's answer.

Here the presumption gains additional support from several empirical factors. First and foremost, each of the jurors affirmed in open court the verdict which included a finding that they had "considered the evidence in mitiga-

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the third paragraph of the instruction, *post*, at 239–240. That paragraph expressly applies when the jury finds that the prosecution failed to prove either aggravating circumstance. Specifically, it instructs that if the jury finds no aggravating circumstances, then it must impose a life sentence. See n. 1, *supra*. The third paragraph stands in contrast to the second paragraph, which expressly applies when the jury finds that the prosecution proved one or both of the aggravating circumstances. The second paragraph offers the jury the option of imposing whichever sentence—death or life imprisonment—it feels is justified in that situation. The existence of the third paragraph makes the function of the second paragraph even clearer.

tion of the offense."[4] App. 225. It is also significant, we think, that the jurors deliberated for more than two hours after receiving the judge's answer to their question. Over 4½ hours after the jury retired to begin deliberations, the jury asked the question at issue. Again, the question was:

> "If we believe that Lonnie Weeks, Jr. is guilty of at least 1 of the alternatives, then is it our duty as a jury to issue the death penalty? Or must we decide (even though he is guilty of one of the alternatives) whether or not to issue the death penalty, or one of the life sentences? What is the Rule? Please clarify?" App. to Pet. for Cert. 91 (emphasis in original).

The question indicates that at the time it was asked, the jury had determined that the prosecution had proved one of the two aggravating factors beyond a reasonable doubt. More than two hours passed between the judge directing the jury's attention to the appropriate paragraph of the instruction that answered its question and the jury returning its verdict. We cannot, of course, know for *certain* what transpired during those two hours. But the most likely explanation is that the jury was doing exactly what it was instructed to do: that is, weighing the mitigating circumstances against the aggravating circumstance that it found to be proved beyond a reasonable doubt. If, after the judge's response to its question, the jury thought that it was required to give the death penalty upon finding of an aggravating circumstance, it is unlikely that the jury would have consumed two more hours in deliberation. This particular jury demonstrated that it was

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[4] JUSTICE STEVENS' arguments concerning the lack of a jury verdict form stating that the jury finds one or both aggravating circumstances and sentences the petitioner to life imprisonment miss the mark. The life sentence verdict forms do not suggest that a prerequisite for their use is that the jury found no aggravating circumstances. See *post*, at 246, n. 8. In any event, the claim here is that the trial judge's response to the jury's question was constitutionally insufficient, not that the jury verdict forms were unconstitutionally ambiguous.

not too shy to ask questions, suggesting that it would have asked another if it felt the judge's response unsatisfactory. Finally, defense counsel specifically explained to the jury during closing argument that it could find both aggravating factors proven and still not sentence Weeks to death. Thus, once the jury received the judge's response to its question, it had not only the text of the instruction we approved in *Buchanan*, but also the additional instruction on mitigation, see n. 2, *supra*, and its own recollection of defense counsel's closing argument for guidance. At best, petitioner has demonstrated only that there exists a slight *possibility* that the jury considered itself precluded from considering mitigating evidence. Such a demonstration is insufficient to prove a constitutional violation under *Boyde*, which requires the showing of a reasonable *likelihood* that the jury felt so restrained.[5] See 494 U. S., at 380.

It also appears that petitioner's attorneys did not view the judge's answer to the jury's question as a serious flaw in the trial at that time. Petitioner's attorney made an oral

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[5] JUSTICE STEVENS states that the record establishes a "virtual certainty" that the jury did not understand that it could find an aggravating circumstance and still impose a life sentence. *Post*, at 238. In view of the different conclusion reached not only by this Court, but by the Virginia trial judge, seven justices of the Supreme Court of Virginia, a federal habeas District Judge, and three judges of the Court of Appeals for the Fourth Circuit, this statement can only be described as extravagant hyperbole.

The dissent also interprets the evidence of the jurors being in tears at the time of the verdict as resulting from having performed what they thought to be their "duty under the law" despite their "strong desire" to impose the life sentence. *Post*, at 249. It is difficult enough to speculate with confidence about the deliberations of jurors in a case such as this, and still more difficult to speculate about their emotions at the time they render a verdict. But if we were to join in this speculation, it is every bit as plausible—if not more so—to think that the reason that jurors were in tears was because they had just been through an exhausting, soul-searching process that led to a conclusion that petitioner, despite the mitigating evidence he presented, still deserved the death sentence.

motion to set aside the sentence after the verdict of death was received, and did not even mention this incident in his motion. And the low priority and space which his counsel assigned to the point on his appeal to the Supreme Court of Virginia suggests that the present emphasis has some of the earmarks of an afterthought.

Because petitioner seeks a federal writ of habeas corpus from a state sentence, we must determine whether 28 U. S. C. § 2254(d) (1994 ed., Supp. III) precludes such relief. The Court of Appeals below held that it did. 176 F. 3d, at 261. We agree. Section 2254(d) prohibits federal habeas relief on any claim "adjudicated on the merits in State court proceedings," unless that adjudication 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." 28 U. S. C. §§ 2254(d) and (1) (1994 ed., Supp. III). For the reasons stated above, it follows *a fortiori* that the adjudication of the Supreme Court of Virginia affirming petitioner's conviction and sentence neither was "contrary to," nor involved an "unreasonable application of," any of our decisions.

The judgment of the Court of Appeals is

*Affirmed.*

JUSTICE STEVENS, with whom JUSTICE GINSBURG and JUSTICE BREYER join, and with whom JUSTICE SOUTER joins with respect to all but Part I, dissenting.

Congress has directed us to apply "clearly established Federal law" in the exercise of our habeas corpus jurisdiction.[1] The clearly established rule that should govern the disposition of this case also emphasizes the importance of

[1] The habeas statute, as amended in 1996, authorizes the issuance of the writ if a state-court decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U. S. C. § 2254(d)(1) (1994 ed., Supp. III).

clarity—clarity in the judge's instructions when there is a reasonable likelihood that the jury may misunderstand the governing rule of law. In this case, as in *Boyde* v. *California*, 494 U. S. 370, 380 (1990), we are confronted with a claim that an instruction, though not erroneous, is sufficiently ambiguous to be "subject to an erroneous interpretation." In *Boyde*, we held that "the proper inquiry in such a case is whether there is a reasonable likelihood that the jury has applied the challenged instruction in a way that prevents the consideration of constitutionally relevant evidence." *Ibid.*

The record in this case establishes, not just a "reasonable likelihood" of jury confusion, but a virtual certainty that the jury did not realize that there were two distinct legal bases for concluding that a death sentence was not "justified." The jurors understood that such a sentence would not be justified unless they found at least one of the two alleged aggravating circumstances. Despite their specific request for enlightenment, however, the judge refused to tell them that *even if* they found one of those circumstances, they did not have a "duty as a jury to issue the death penalty." App. 217.

Because the Court creatively suggests that petitioner's claim has "the earmarks of an afterthought," *ante*, at 237, it is appropriate to note that his trial counsel specifically and repeatedly argued that both the instructions and the verdict forms were inadequate because "'the jury has to be instructed that . . . even if they find the aggravating factors beyond a reasonable doubt, . . . they can still give effect to the evidence in mitigation by sentencing the defendant to life, as opposed to death.'" App. 178. See also *id.*, at 179, 180, 185–186, 223.

Four different aspects of the record cumulatively provide compelling support for the conclusion that this jury did not understand that the law authorized it "not to issue the death penalty" even though it found petitioner "guilty

of at least 1" aggravating circumstance. *Id.*, at 217. Each of these points merits separate comment: (1) the text of the instructions; (2) the judge's responses to the jury's inquiries; (3) the verdict forms given to the jury; and (4) the court reporter's transcription of the polling of the jury.

## I

Because the prosecutor in this case relied on two separate aggravating circumstances, the critical instruction given in this case differed from that given and upheld by this Court in *Buchanan* v. *Angelone*, 522 U. S. 269 (1998). The Weeks instructions contain a longer description of the ways in which the jury would be justified in imposing the death penalty; this made it especially unlikely that the jury would understand that it could lawfully impose a life sentence by either (1) refusing to find an aggravator, or (2) concluding that even if it found an aggravator, the mitigating evidence warranted a life sentence. The point is best made by quoting the instruction itself:

> "'Before the penalty can be fixed at death, the Commonwealth must prove beyond a reasonable doubt, at least one of the following two alternatives: one, that, after consideration of his history and background, there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society, or two; that his conduct in committing the offense was outrageously or wantonly vile, horrible, or inhumane, in that it involved depravity of mind and aggravated battery to the victim, beyond the minimum necessary to accomplish the act of murder.
>
> "'If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt, either of the two alternatives, and as to that alternative you are unanimous, then you may fix the punishment of the defendant at death; or, if you believe from all the evidence that the death penalty is not justified, then you shall fix

> the punishment of the defendant at life imprisonment, or imprisonment for life and a fine of a specific amount, but not more than $100,000.' " App. 199–200.

The first paragraph and the first half of the second are perfectly clear. They unambiguously tell the jury: "In order to justify the death penalty, you must find an aggravating circumstance."[2] The second clause in the second paragraph is, however, ambiguous. It could mean either:

> (1) "even if you find one of the two aggravating alternatives, if you believe from all the evidence that the death penalty is not justified because the mitigating evidence outweighs the aggravating evidence, then you shall fix the punishment [at life]"; or
>
> (2) "if you believe from all the evidence that the death penalty is not justified because neither of the aggravating circumstances has been proven beyond a reasonable doubt, then you shall fix the punishment [at life]."

It is not necessary to reiterate JUSTICE BREYER's reasons for believing that the latter message is the one a nonlawyer would be most likely to receive. See *Buchanan*, 522 U. S., at 281–284 (dissenting opinion). Nor is it necessary to disagree with the Court's view in *Buchanan* that trained lawyers and logicians could create a "simple decisional tree" that would enable them to decipher the intended meaning of the instruction, see *id.*, at 277–278, n. 4, to identify a serious risk that this jury failed to do so.

That risk was magnified by the fact that the instructions did not explain that there were two reasons why mitigating evidence was relevant to its penalty determination. The instructions did make it clear that mitigating evidence concerning the history and background of the defendant should

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[2] That message was reiterated later in the instructions, see *ante*, at 229–230, n. 1; *ante*, at 233–234, n. 3. Reiterating what has already been clearly stated does not serve to clarify an ambiguous statement.

be considered when deciding *whether* either aggravating circumstance had been proved. The instructions did not, however, explain that mitigating evidence could serve another purpose—to provide a lawful justification for a life sentence *even if* the jury found at least one aggravating circumstance. Indeed, given the fact that the first task assigned to the jury was to decide whether "*after consideration of his history and background*, there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society," App. 192–193 (emphasis added), it would have been reasonable for the jury to infer that his history and background were only relevant to the threshold question whether an aggravator had been proved. It is of critical importance in understanding the jury's confusion that the instructions failed to inform the jury that mitigating evidence serves this dual purpose.

## II

The jurors had a written copy of the judge's instructions with them in the jury room during their deliberations. The fact that the jurors submitted the following written inquiry to the trial judge after they had been deliberating for several hours demonstrates both that they were uncertain about the meaning of the ambiguous clause that I have identified, and that their uncertainty had not been dissipated by their recollection of anything said by counsel.

> "If we believe that Lonnie Weeks, Jr., is guilty of at least 1 of the alternatives, then is it our duty as a jury to issue the death penalty? Or must we decide (even though he is guilty of one of the alternatives) whether or not to issue the death penalty, or one of the life sentences? What is the Rule? Please clarify." *Id.*, at 217.

The only portion of the written instructions that could possibly have prompted this inquiry is the second half of the

second paragraph of the instruction quoted above. The fact that the jurors asked this question about that instruction demonstrates beyond peradventure that the instruction had confused them. There would have been no reason to ask the question if they had understood the instruction to authorize a life sentence even though they found that an aggravator had been proved.

Although it would have been easy to do so, the judge did not give the jurors a straightforward categorical answer to their simple question; he merely told them to reexamine the portion of the instructions that they, in effect, had already said they did not understand. The text of their question indicates that they believed that they had a duty "to issue the death penalty" if they believed that "Weeks . . . is guilty of at least 1 of the alternatives." *Ibid.* Without a simple, clear-cut statement from the judge that that belief was incorrect, there was surely a reasonable likelihood that they would act on that belief.[3]

Instead of accepting a commonsense interpretation of the colloquy between the jury and the judge, the Court first relies on a presumption that the jury understood the instruction (a presumption surely rebutted by the question itself),

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[3] The Court suggests this likelihood is impossible in part because, even if the jury were confused by the judge's response, it had not only the text of the instruction but also the benefit of defense counsel's oral argument, in which counsel averred that the jury could award a life sentence even if it found an aggravating factor. See *ante*, at 236. But this statement by counsel, coming as it did, of course, before the jury began deliberations, apparently did not prevent the jury from asking the question in the first place. Moreover, as this Court wisely noted in *Boyde* v. *California*, 494 U. S. 370, 384 (1990): "[A]rguments of counsel generally carry less weight with a jury than do instructions from the court. The former are usually billed in advance to the jury as matters of argument, not evidence, and are likely viewed as the statements of advocates; the latter, we have often recognized, are viewed as definitive and binding statements of the law." (Citing cases; citation omitted.)

*ante,* at 234–236, and then presumes that the jury must have understood the judge's answer because it did not repeat its question after re-reading the relevant paragraph, and continued to deliberate for another two hours. But if the jurors found it necessary to ask the judge what that paragraph meant in the first place, why should we presume that they would find it any less ambiguous just because the judge told them to read it again? It seems to me far more likely that the reason they did not ask the same question a second time is that the jury believed that it would be disrespectful to repeat a simple, unambiguous question that the judge had already refused to answer directly. The fact that it had previously asked the judge a different question—also related to the effect of a sentencing decision, App. 217—that he had also refused to answer would surely have tended to discourage a repetition of the question about the meaning of his instructions.[4]

By the Court's logic, a rather exceptionally assertive jury would have to question the judge at least twice and maybe more on precisely the same topic before one could find it no more than "reasonably likely" that the jury was confused.[5]

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[4] The Court relies on Chief Justice Marshall's opinion in *Armstrong* v. *Toler,* 11 Wheat. 258, 279 (1826), as support for its presumption that the jury's failure to repeat its question indicates that it understood the judge's answer. In that case, however, it was the jury's question that was arguably unclear; the Court merely assumed that "the jury could not have intended to put a question which had been already answered." In this case, in contrast, there is no mystery about what the jury wanted to know; the mystery is why the trial judge was unable or unwilling to give it a direct answer.

[5] The Court seeks to justify its reliance on the improbable presumption that the jury correctly deciphered the judge's ambiguous answer to its straightforward question by pronouncing: "To presume otherwise would require reversal every time a jury inquires about a matter of constitutional significance, regardless of the judge's answer." *Ante,* at 234. For two obvious reasons that is not so. First, a simple, direct answer to the jury's question would have avoided the error. Second, clearly established law

But given the Court's apt recognition that we cannot, of course, actually know what occupied the jury during its final deliberations, *ante*, at 235, and in light of the explanation I have just offered, it is at the very least equally likely that the two hours of deliberation following the judge's answer were devoted to continuing debate about the *same* instruction, as they were to weighing aggravating and mitigating evidence (having been magically satisfied by the repetition of the instruction that had not theretofore answered its question).

When it comes to the imposition of the death penalty, we have held repeatedly that justice and "'the fundamental respect for humanity underlying the Eighth Amendment'" require jurors to give full effect to their assessment of the defendant's character, circumstances, and individual worth. *Eddings* v. *Oklahoma*, 455 U. S. 104, 112 (1982). In this context, even if one finds the explanations of the jury's conduct here in equipoise, a 50–50 chance that the jury has not carried out this mandate seems to me overwhelming grounds for reversal.

Other than the Court's reliance on inapplicable presumptions and speculation, there is no reason to believe that the jury understood the judge's answer to its question. As we squarely held in *Boyde*, the "defendant need not establish that the jury was more likely than not to have been impermissibly inhibited by the instruction" to satisfy the clearly established "reasonable likelihood" standard. 494 U. S., at 380. The Court's application of that standard in this case effectively drains it of meaning.

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requires that the issue be resolved, not on the basis of a presumption that flows from the positing of any single question, but by deciding whether, under all of the circumstances, there was a "reasonable likelihood" that the jury was confused as to the relevance of mitigating evidence in its decision. The Court's fear of constant reversal in this regard is thus vastly overstated.

## III

The judge provided the jury with five verdict forms, three of which provided for the death penalty and two for a life sentence. Three death forms were appropriate because the death penalty might be justified by a finding that the first, the second, or both aggravating circumstances had been proved. One would expect the two life forms to cover the two alternatives, first that no aggravator had been proved, and second that despite proof of at least one aggravator, the mitigating circumstances warranted a life sentence. But that is not why there were two forms; neither referred to the possibility of a life sentence if an aggravator had been proved. Rather, the two life alternatives merely presented the jury with a choice between life plus a fine and a life sentence without a fine.

The first form read as follows:

> "We, the jury, on the issue joined, having found the defendant, LONNIE WEEKS, JR., GUILTY of CAPITAL MURDER and having unanimously found after consideration of his history and background that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society, and having considered the evidence in mitigation of the offense, unanimously fix his punishment at death." App. 196.

The jury ultimately refused to select this first form, which would have indicated a finding that there was a probability that petitioner would commit additional crimes that would constitute a serious threat to society. In doing so, it unquestionably gave weight to the unusually persuasive mitigating evidence offered by the defense—evidence that included not only petitioner's personal history but his own testimony describing the relevant events and his extreme remorse. As I explained above, the fact that the jury recognized the relevance of the mitigating "history and back-

ground" evidence to the question whether the aggravator had been proved sheds no light on the question whether it understood that such evidence would also be relevant on the separate question whether a life sentence would be appropriate even if Weeks was "guilty of at least 1 of the alternatives." *Id.*, at 217.

The jury's refusal to find that petitioner would constitute a continuing threat to society also explains why it did not use the second form, which covered the option of a death penalty supported by both aggravators.[6] The choice then, was between the third alternative, which included a finding that the second aggravator had been proved,[7] and the fourth or fifth alternatives, neither of which included any such finding.[8] Despite the fact that trial counsel had expressly

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[6] That form read as follows: "We, the jury, on the issue joined, having found the defendant, LONNIE WEEKS, JR., GUILTY of CAPITAL MURDER and having unanimously found after consideration of his history and background that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious treat *[sic]* to society, and having unanimously found that his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman in that it involved depravity of mind and/or aggravated battery and having considered the evidence in mitigation of the offense, unanimously fix his punishment at death." App. 196–197.

[7] This form, the one ultimately filed by the jury, read: "We, the jury, on the issue joined, having found the defendant, LONNIE WEEKS, JR., GUILTY of CAPITAL MURDER and having unanimously found that his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman in that it involved depravity of mind and/or aggravated battery and having considered the evidence in mitigation of the offense, unanimously fix his punishment at death." *Id.*, at 228.

[8] The fourth form read: "We, the jury, on the issue joined, having found the defendant, LONNIE WEEKS, JR., GUILTY of CAPITAL MURDER and having considered all of the evidence in aggravation and mitigation of such offense, fix his punishment at imprisonment for life." *Id.*, at 197–198. The fifth form was identical except for providing that Weeks' punishment was to be fixed "at imprisonment for life and a fine" for an amount to be filled in by the jury. *Id.*, at 198.

objected to the verdict forms because they "do not expressly provide for a sentence of life imprisonment, upon finding beyond a reasonable doubt, on one or both of the aggravating factors," *id.*, at 185–186, the judge failed to use forms that would have answered the question that the jury asked during its deliberations.

The ambiguity of the forms also helps further explain why the Court is wrong in its speculation as to the jury's final hours of deliberation following the judge's response to its question. The Court postulates that before the jury asked whether it had a duty to issue the death penalty "[i]f we believe that Lonnie Weeks, Jr. is guilty of at least 1 of the alternatives," the jury had already so decided. Thus, the remaining hours of deliberation must have been spent weighing the mitigating circumstances against the aggravating circumstance. *Ante*, at 235. Of course, the text of the question, which used the word "if" rather than the word "since," does not itself support that speculation. More important, however—inasmuch as we cannot know for certain what transpired during those deliberations—is the fact that after it eliminated the first two verdict options, the remaining forms identified a choice between a death sentence based on a guilty finding on "1 of the alternatives" and a life sentence without any such finding. In my judgment, it is thus far more likely that the conscientious jurors were struggling with the question whether the mitigating evidence not only precluded a finding that petitioner was a continuing threat to society, but also precluded a finding "that his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman in that it involved depravity of mind and/or aggravated battery." App. 228. And that question was answered neither by the instruction itself, nor by the judge's reference to the instruction again, nor, we now see, by the text of the jury forms with which the jury was finally faced.

## IV

The Court repeatedly emphasizes the facts that the jury was told to consider the mitigating evidence and that the verdict forms expressly recite that the jury had given consideration to such evidence. As its refusal to find the first aggravator indicates, the jury surely did consider that evidence and presumably credited the testimony of petitioner and the other defense witnesses. But, as I have explained, see *supra*, at 240–241, there is a vast difference between considering that evidence as relevant to the question whether either aggravator had been established, and assuming that the jurors were sufficiently sophisticated to understand that it would be lawful for them to rely on that evidence as a basis for a life sentence even if they found the defendant "guilty of at least 1 of the alternatives." For that reason, the Court's reliance, *ante*, at 234–235, on the fact that the jurors affirmed their verdict when polled in open court is misplaced.

The most significant aspect of the polling of the jury is a notation by the court reporter that is unique. (At least I do not recall seeing a comparable notation in any of the transcripts of capital sentencing proceedings that I have reviewed during the past 24-plus years.) The transcript states that, as they were polled, "a majority of the jury members [were] in tears." App. 225. Given the unusually persuasive character of the mitigating evidence including petitioner's own testimony,[9] it is at least "reasonable" to infer

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[9] The evidence showed, among other things, that before this incident Weeks had been a well-behaved student and a star high school athlete, *id.*, at 130–133, who lived in a poor community, *id.*, at 131–132, and who was raised by a well-meaning grandmother because of his mother's drug addiction, *id.*, at 143, 167; that Weeks fell in with a bad crowd, *id.*, at 150, 153, missing his chance for college when his girlfriend became pregnant and when he decided to stay and help her raise the child, *id.*, at 109; and, as the jury learned in Weeks' own words, that he was extremely remorseful, *id.*, at 127–128.

that the conscientious jury members performed what they regarded as their duty under the law, notwithstanding a strong desire to spare the life of Lonnie Weeks. Tragically, there is a "reasonable likelihood" that they acted on the basis of a misunderstanding of that duty.

I respectfully dissent.

Syllabus

# GUTIERREZ ET AL. *v.* ADA ET AL.

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

No. 99–51. Argued December 6, 1999—Decided January 19, 2000

The Organic Act of Guam, 48 U. S. C. § 1422, provides, *inter alia*, that "[i]f no [slate of] candidates [for Governor and Lieutenant Governor of Guam] receive[s] a majority of the votes cast in any election, . . . a runoff election shall be held." Petitioners, candidates running on one slate for Governor and Lieutenant Governor, received a majority of the votes cast for gubernatorial slates in the 1998 Guam general election, but did not receive a majority of the total number of ballots that voters cast. Respondents, petitioners' opponents, sought a writ of mandamus ordering a runoff election. The District Court issued the writ, and the Ninth Circuit ultimately affirmed, interpreting the statutory phrase "majority of the votes cast in any election" to require that a slate receive a majority of the total number of ballots cast in the general election.

*Held:* The Guam Organic Act does not require a runoff election when a candidate slate has received a majority of the votes cast for Governor and Lieutenant Governor of the Territory, but not a majority of the number of ballots cast in the simultaneous general election. Section 1422 contains six express references to an election for those offices, two of them preceding the phrase "in any election," and four following. So surrounded, "any election" can only refer to an election for Governor and Lieutenant Governor, for words are known by their companions. See, *e. g.*, *Gustafson* v. *Alloyd Co.*, 513 U. S. 561, 575. This reading is confirmed by the fact that, later in § 1422, Congress varied the specific modifier when it spoke of the "general election" at which the gubernatorial election would occur. Congress would hardly have used "any election" to mean "general election," only to mention "general election" a few lines further on. It would be equally odd to think that after repeatedly using "votes" or "vote" to mean an expression of choice for the gubernatorial slate, Congress suddenly used "votes cast in any election" to mean "ballots cast," as respondents suggest. Congress, indeed, has shown that it recognizes the difference between ballots and votes in the very context of Guamanian elections: From 1972 until 1998, § 1712 expressly required that the Guam Delegate be elected "by separate ballot and by a majority of the votes cast for . . . Delegate." To accept respondents' reading would also impute to Congress a strange preference for making it hard to select a Governor, because a runoff would be

required even though one slate already had a majority of all those who cared to choose among gubernatorial candidates. Requiring a majority of the total number of voters on election day would also be in some tension with § 1422a, which provides for removal of a Governor or Lieutenant Governor upon the vote of at least two-thirds of the total number of persons who actually voted for such office, not the total number who went to the polls. Respondents' two considerations pointing to a contrary reading—that because § 1712 specifically states that "a majority of the votes cast for . . . Delegate" is necessary to elect a Delegate, § 1422 would require a comparably clear modifier to refer to sufficient votes to elect gubernatorial slates; and that this Court's reading of "any election" would render that phrase a nullity and thus offend the rule against attributing redundancy to Congress—are rejected. Pp. 254–258.

179 F. 3d 672, reversed and remanded.

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

*Seth M. Hufstedler* argued the cause for petitioners. With him on the briefs were *Shirley M. Hufstedler*, *Diane E. Pritchard*, and *F. Philip Carbullido*.

*Dennis P. Riordan* argued the cause for respondents. With him on the brief were *Donald M. Horgan*, *Dylan L. Schaffer*, *Robert H. Bork*, and *Curtis Charles Van De Veld*.*

JUSTICE SOUTER delivered the opinion of the Court.

The question here is whether the statute governing elections for Governor and Lieutenant Governor of the Territory of Guam compels a runoff election when a candidate slate has received a majority of the votes cast for Governor and Lieutenant Governor, but not a majority of the number of ballots cast in the simultaneous general election. We hold that the statute requires no runoff.

## I

In the November 3, 1998, Guam general election, petitioners Carl T. C. Gutierrez and Madeleine Z. Bordallo were can-

**William J. Carter* and *M. Miller Baker* filed a brief for the Voting Integrity Project as *amicus curiae* urging reversal.

didates running on one slate for Governor and Lieutenant Governor, opposed by the slate of respondents Joseph F. Ada and Felix P. Camacho. Gutierrez received 24,250 votes, as against 21,200 for Ada. *Ada* v. *Guam*, 179 F. 3d 672, 675 (CA9 1999); App. 16. One thousand two hundred and ninety-four voted for write-in candidates; 1,313 persons who cast ballots did not vote for either slate or any write-in candidate; and 609 voted for both slates. 179 F. 3d, at 675; App. 16. The total number of ballots cast in the general election was thus 48,666, and the Gutierrez slate's votes represented 49.83 percent of that total. The Guam Election Commission certified the Gutierrez slate as the winner, finding it had received 51.21 percent of the vote, as calculated by deducting the 1,313 ballots left blank as to the gubernatorial election from the total number of ballots cast. 179 F. 3d, at 675. Respondents Ada and Camacho sued in the United States District Court for a writ of mandamus ordering a runoff election, contending that Gutierrez and Bordallo had not received a majority of the votes cast, as required by the Organic Act of Guam, 64 Stat. 384, as amended, 48 U. S. C. § 1421 *et seq.* (1994 ed. and Supp. III).

So far as relevant, the Organic Act provides that:

> "[t]he executive power of Guam shall be vested in an executive officer whose official title shall be the 'Governor of Guam'. The Governor of Guam, together with the Lieutenant Governor, shall be elected by a majority of the votes cast by the people who are qualified to vote for the members of the Legislature of Guam. The Governor and Lieutenant Governor shall be chosen jointly, by the casting by each voter of a single vote applicable to both offices. If no candidates receive a majority of the votes cast in any election, on the fourteenth day thereafter a runoff election shall be held between the candidates for Governor and Lieutenant Governor receiving the highest and second highest number of votes cast. The first election for Governor and Lieutenant

> Governor shall be held on November 3, 1970. Thereafter, beginning with the year 1974, the Governor and Lieutenant Governor shall be elected every four years at the general election. The Governor and Lieutenant Governor shall hold office for a term of four years and until their successors are elected and qualified." 48 U. S. C. § 1422.

Respondents' position boils down to the claim that the phrase "majority of the votes cast in any election" requires that a slate of candidates for Governor and Lieutenant Governor receive a majority of the total number of ballots cast in the general election, regardless of the number of votes for all gubernatorial slates by those casting ballots. If this is the correct reading of the phrase, the parties agree that a runoff was required. If, however, the phrase refers only to votes cast for gubernatorial slates, no runoff was in order, and petitioners were elected Governor and Lieutenant Governor.

The United States District Court for the District of Guam read the statute to require a majority of the total number of voters casting ballots in the general election and so ruled that the Gutierrez slate had not received "a majority of the votes cast in any election." The court accordingly issued a writ of mandamus for a runoff election to be held on December 19, 1998, *Ada* v. *Guam*, No. Civ. 98–00066 (Dec. 9, 1998), App. to Pet. for Cert. A–25, A–55.

Although the Court of Appeals for the Ninth Circuit issued an emergency stay of the District Court's order pending appeal, 179 F. 3d, at 676, it ultimately affirmed. The Court of Appeals understood the reference to "majority of the votes cast" as meaning "all votes cast at the general election, for Congress presumably would not have included the phrase 'in any election,' if it meant to refer only to the votes cast in the single election for governor and lieutenant governor." *Id.*, at 677. The court thought that any other reading would render the phrase "in any election" a "nullity." *Ibid.* The Court of Appeals also relied on a comparison of § 1422 with

48 U. S. C. § 1712, which provides that a candidate for Guam's Delegate to Congress must receive "a majority of the votes cast for the office of Delegate" in order to be elected. The Ninth Circuit reasoned that Congress could have used similar language of limitation if it had intended the election of a Governor and Lieutenant Governor to require only a majority of votes cast for gubernatorial slates. 179 F. 3d, at 678. The Ninth Circuit stayed its mandate pending disposition of petitioners' petition for a writ of certiorari.

We granted certiorari, 527 U. S. 1063 (1999), to resolve a split between the Ninth Circuit's interpretation of the Organic Act of Guam and the Third Circuit's reading of identical language in the Revised Organic Act of the Virgin Islands. See 68 Stat. 503, as amended, 48 U. S. C. § 1591 (providing for a runoff election for Governor and Lieutenant Governor of the Virgin Islands "[i]f no candidates receive a majority of the votes cast in any election"); *Todman* v. *Boschulte*, 694 F. 2d 939 (CA3 1982). We reverse.

## II

The key to understanding what the phrase "in any election" means is also the most salient feature of the provision in which it occurs. The section contains six express references to an election for Governor and Lieutenant Governor: "The Governor of Guam, together with the Lieutenant Governor, shall be elected . . ."; "[t]he Governor and Lieutenant Governor shall be chosen jointly, by the casting by each voter of a single vote . . ."; "a runoff election shall be held between the candidates for Governor and Lieutenant Governor . . ."; "[t]he first election for Governor and Lieutenant Governor shall be held . . ."; "the Governor and Lieutenant Governor shall be elected every four years . . ."; "[t]he Governor and Lieutenant Governor shall hold office . . . until their successors are elected . . . ." 48 U. S. C. § 1422. The reference to "any election" is preceded by two references to gubernatorial election and followed by four. With "any election" so

surrounded, what could it refer to except an election for Governor and Lieutenant Governor, the subject of such relentless repetition? To ask the question is merely to apply an interpretive rule as familiar outside the law as it is within, for words and people are known by their companions. See *Gustafson* v. *Alloyd Co.*, 513 U. S. 561, 575 (1995) ("[A] word is known by the company it keeps"); *Jarecki* v. *G. D. Searle & Co.*, 367 U. S. 303, 307 (1961) ("The maxim *noscitur a sociis*, . . . while not an inescapable rule, is often wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth to the Acts of Congress"). Cf. *Foster* v. *Love*, 522 U. S. 67, 71 (1997) ("When the federal statutes speak of 'the election' of a Senator or Representative, they plainly refer to the combined actions of voters and officials meant to make a final selection of an officeholder (subject only to the possibility of a later run-off . . . )").

Other clues confirm that Congress did not shift its attention when it used "any election" unadorned by a gubernatorial reference or other definite modifier. Later on in the same provision, Congress did vary the specific modifier when it spoke of the "general election" at which the gubernatorial election would occur; it is thus significant that Congress did not peg the majority-vote requirement to "votes cast in any [general] election." Congress would hardly have used "any election" to mean "general election," only to mention "general election" a few lines further on.

It would be equally odd to think that after repeatedly using "votes" or "vote" to mean an expression of choice for the gubernatorial slate, Congress suddenly used "votes cast in any election" to mean "ballots cast." And yet that is just what would be required if we were to treat the phrase respondents' way, for they read "votes cast in any election" as referring to "ballots containing a vote for any office." Surely a Congress that meant to refer to ballots, midway through a statute repeatedly referring to "votes" for guber-

natorial slates, would have said "ballots." To argue otherwise is to tag Congress with an extravagant preference for the opaque when the use of a clear adjective or noun would have worked nicely. But even aside from that, Congress has shown that it recognizes the difference between ballots and votes in the very context of Guamanian elections. From 1972 until 1998, 48 U. S. C. § 1712 expressly required that the Guam Delegate be elected "by separate ballot and by a majority of the votes cast for the office of Delegate." There is simply no reason to think that Congress meant "ballots" when it said "votes" in § 1422.

To accept respondents' reading would also impute to the Congress a strange preference for making it hard to select a Governor. On respondents' reading the statute could require a runoff (as it would in this case) even though one slate already had a majority of all those who cared to make any choice among gubernatorial candidates. Respondents try to counter the unreality of their position by emphasizing state cases holding that passing a referendum requires a majority of voters going to the polls, not a mere majority of persons voting on a particular referendum issue. Cf. *Allen* v. *Burkhart*, 377 P. 2d 821 (Okla. 1963); *Thurston County Farm Bureau* v. *Thurston County*, 136 Neb. 575, 287 N. W. 180 (1939); *Missouri* v. *Winkelmeier*, 35 Mo. 103 (1864). But there is no uniform rule, see, *e. g.*, *Wooley* v. *Sterrett*, 387 S. W. 2d 734, 739–740 (Tex. Civ. App. 1965); *Munce* v. *O'Hara*, 340 Pa. 209, 16 A. 2d 532 (1940); *State ex rel. Short* v. *Clausen*, 72 Wash. 409, 130 P. 479 (1913), and even if there were, treatment of referendums would not be a plausible model for elections of officials. Referendums are exceptions to the normal legislative process, and passage of a referendum is not itself essential to the functioning of government. If a ballot-majority requirement makes it impossible to pass a referendum measure, nothing need be done except record the failure. The same requirement to elect an official, on the other hand, would necessitate further action, the trouble and ex-

pense of which would not make any apparent sense when those who expressed any preference among candidates had already given a majority to one of them.

As a final confirmation of the obvious reading, we note that requiring a majority of the total number of voters on election day would be in some tension with § 1422a, which provides for recall elections for Governor and Lieutenant Governor. Section 1422a(b) provides that "[a]ny Governor, Lieutenant Governor, or member of the legislature of Guam may be removed from office by a referendum election in which at least two-thirds of the number of persons voting for such official in the last preceding general election at which such official was elected vote in favor of recall and in which those so voting constitute a majority of all those participating in such referendum election." The recall provision thus looks to the total number of persons who actually voted for Governor, not the total number who went to the polls. In a rational world, we would not expect the vote required to oust a Governor to be pegged to a lower number than it would take to elect one.

If all these considerations confirm the reading according to the rule of meaning by association, respondents nevertheless emphasize two considerations said to point the other way. First, as we noted before, § 1712 includes a specific statement that "a majority of the votes cast for the office of Delegate" is necessary and presumably sufficient to elect a Delegate. Without a comparably clear modifier in § 1422 referring to votes sufficient to elect gubernatorial slates, respondents argue, "a majority of the votes cast in any election" must refer to a majority of all those voting for any office. But the drafting difference supports no such inference. Congress adopted the language in § 1712 four years after enacting the phrase at issue in this case, and there is no affirmative indication in § 1712 that Congress gave any thought to differentiating the terms of Delegate and gubernatorial elections. Hence, as we have said before, later laws that "do not

seek to clarify an earlier enacted general term" and "do not depend for their effectiveness upon clarification, or a change in the meaning of an earlier statute," are "beside the point" in reading the first enactment. *Almendarez-Torres* v. *United States*, 523 U. S. 224, 237 (1998). Congress may have spoken with explicit clarity when it passed § 1712, but we can say no more than that.

The second argument supposedly undermining the meaning naturally suggested by association was stressed by the Court of Appeals, which thought that reading "any election" to mean gubernatorial election would render the phrase a nullity and thus offend the rule against attributing redundancy to Congress, see *Kungys* v. *United States*, 485 U. S. 759, 778 (1988). The fact is that this argument has some force, but not enough. There is no question that the statute would be read as we read it even if the phrase were missing. But as one rule of construction among many, albeit an important one, the rule against redundancy does not necessarily have the strength to turn a tide of good cause to come out the other way. Besides, there is even a reason for thinking the phrase in question has some clarifying value. Section 1422 provides specifically for an initial gubernatorial election in 1970, and generally for successive elections every four years thereafter. "[A]ny election," therefore, may be read to make it clear that the runoff requirement applies equally to the initial election and to those periodically scheduled in the future. That may not be very heavy work for the phrase to perform, but a job is a job, and enough to bar the rule against redundancy from disqualifying an otherwise sensible reading.

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

*It is so ordered.*

Syllabus

# SMITH, WARDEN *v.* ROBBINS

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

No. 98–1037. Argued October 5, 1999—Decided January 19, 2000

An attorney appointed to represent an indigent defendant on appeal may conclude that an appeal would be frivolous and request that the appellate court allow him to withdraw or that the court dispose of the case without the filing of merits briefs. In *Anders* v. *California*, 386 U. S. 738, this Court found that, in order to protect a defendant's constitutional right to appellate counsel, courts must safeguard against the risk of granting such requests where an appeal is not actually frivolous; found California's procedure for evaluating such requests inadequate; and set forth an acceptable procedure. California adopted a new procedure in *People* v. *Wende*, 25 Cal. 3d 436, 600 P. 2d 1071. Unlike under the *Anders* procedure, counsel under *Wende* neither explicitly states that his review has led him to conclude that an appeal would be frivolous nor requests to withdraw; instead he is silent on the merits of the case and offers to brief issues at the court's direction. A California state-court jury convicted respondent Robbins of second-degree murder and grand theft. His appointed counsel on appeal concluded that appeal would be frivolous and filed with the State Court of Appeal a brief that complied with the *Wende* procedure. Agreeing with counsel's assessment, the Court of Appeal affirmed. The California Supreme Court denied review. After exhausting his state postconviction remedies, Robbins sought federal habeas relief, arguing, *inter alia*, that he had been denied effective assistance of appellate counsel because his counsel's *Wende* brief did not comply with the *Anders* requirement that the brief refer "to anything in the record that might arguably support the appeal," 386 U. S., at 744. The District Court agreed, concluding that there were at least two issues that might arguably have supported Robbins' appeal and finding that his counsel's failure to include them in his brief deviated from the *Anders* procedure and thus amounted to deficient performance by counsel. Rather than requiring Robbins to prove prejudice from this deficiency, the court applied a presumption of prejudice. The Ninth Circuit agreed, concluding that *Anders*, together with *Douglas* v. *California*, 372 U. S. 353—which held that States must provide appointed counsel to indigent criminal defendants on appeal—set forth the exclusive procedure by which appointed counsel's performance could be constitutional, and that counsel's brief failed to comply with

that procedure. The court, however, remanded the case for the District Court to consider other trial errors raised by Robbins.

*Held:*

1. The *Anders* procedure is only one method of satisfying the Constitution's requirements for indigent criminal appeals; the States are free to adopt different procedures, so long as those procedures adequately safeguard a defendant's right to appellate counsel. Pp. 269–276.

(a) In finding that the California procedure at issue in *Anders*—which permitted appellate counsel to withdraw upon filing a conclusory letter stating that the appeal had "no merit" and permitted the appellate court to affirm the conviction upon reaching the same conclusion following a review of the record—did not comport with fair procedure and lacked the equality that the Fourteenth Amendment requires, this Court placed the case within a line of precedent beginning with *Griffin* v. *Illinois,* 351 U. S. 12, and continuing with *Douglas* v. *California,* 372 U. S. 353, that imposed constitutional constraints on those States choosing to create appellate review. Comparing the California procedure to other procedures that this Court had found invalid and to statutory requirements in the federal courts governing appeals by indigents with appointed counsel, the Court concluded that the finding that the appeal had "no merit" was inadequate because it did not mean that the appeal was so lacking in prospects as to be frivolous. The Court, in a final, separate section, set out what would be an acceptable procedure for treating frivolous appeals. Pp. 269–272.

(b) The Ninth Circuit erred in finding that *Anders*' final section, though unnecessary to the holding in that case, was obligatory upon the States. This Court has never so held; its precedents suggest otherwise; and the Ninth Circuit's view runs contrary to this Court's established practice. In *McCoy* v. *Court of Appeals of Wis., Dist. 1,* 486 U. S. 429, this Court rejected a challenge to Wisconsin's variation on the *Anders* procedure, even though that variation, in at least one respect, provided less effective advocacy for an indigent. In *Pennsylvania* v. *Finley,* 481 U. S. 551, the Court explained that the *Anders* procedure is not an independent constitutional command, but rather a prophylactic framework; it did not say that this was the only framework that could adequately vindicate the right to appellate counsel announced in *Douglas.* Similarly, in *Penson* v. *Ohio,* 488 U. S. 75, the Court described *Anders* as simply erecting safeguards. Finally, any view of the procedure described in *Anders'* last section that converted it from a suggestion into a straitjacket would contravene this Court's established practice of allowing the States wide discretion, subject to the minimum require-

ments of the Fourteenth Amendment, to experiment with solutions to difficult policy problems. See, *e. g.*, *Griffin*, *supra.* The Court, because of its status as a court—particularly a court in a federal system—avoids imposing a single solution on the States from the top down and instead evaluates state procedures one at a time, while leaving "the more challenging task of crafting appropriate procedures . . . to the laboratory of the States . . . in the first instance," *Cruzan* v. *Director, Mo. Dept. of Health*, 497 U. S. 261 (O'Connor, J., concurring). Pp. 272–276.

2. California's *Wende* procedure does not violate the Fourteenth Amendment. Pp. 276–284.

(a) The precise rationale for the *Griffin* and *Douglas* line of cases has never been explicitly stated, but this Court's case law reveals that the Equal Protection and Due Process Clauses of the Fourteenth Amendment largely converge to require that a State's procedure "afford adequate and effective appellate review to indigent defendants," *Griffin*, *supra*, at 20 (plurality opinion). A State's procedure provides such review so long as it reasonably ensures that an indigent's appeal will be resolved in a way that is related to the merit of that appeal. In determining whether a particular procedure satisfies this standard, it is important to focus on the underlying goals that the procedure should serve—to ensure that those indigents whose appeals are not frivolous receive the counsel and merits brief required by *Douglas*, and also to enable the State to "protect itself so that frivolous appeals are not subsidized and public moneys not needlessly spent," *Griffin*, *supra*, at 24 (Frankfurter, J., concurring in judgment). For an indigent's right to counsel on direct appeal does not include the right to bring a frivolous appeal and, concomitantly, does not include the right to counsel for bringing a frivolous appeal. *Anders'* obvious goal was to prevent this limitation on the right to appellate counsel from swallowing the right itself, and the Court does not retreat from that goal here. Pp. 276–278.

(b) The *Wende* procedure reasonably ensures that an indigent's appeal will be resolved in a way that is related to the appeal's merit. A comparison of that procedure to those evaluated in this Court's chief cases demonstrates that it affords indigents the adequate and effective appellate review required by the Fourteenth Amendment. The *Wende* procedure is undoubtedly far better than those procedures the Court has found inadequate. A significant fact in finding the old California procedure inadequate in *Anders*, and also in finding inadequate the procedures that the Court reviewed in *Eskridge* v. *Washington Bd. of Prison Terms and Paroles*, 357 U. S. 214, and *Lane* v. *Brown*, 372 U. S.

477, two of the precedents on which the *Anders* Court relied, was that those procedures required only a determination that the defendant was unlikely to prevail on appeal, not that the appeal was frivolous. *Wende*, by contrast, requires both counsel and the court to find the appeal to be lacking in arguable issues, *i. e.*, frivolous. An additional problem with the old California procedure was that it apparently permitted an appellate court to allow counsel to withdraw and then decide the appeal without appointing new counsel. Such a procedure was struck down in *Penson* v. *Ohio*, *supra*, because it permitted a basic violation of the *Douglas* right to have counsel until a case is determined to be frivolous and to receive a merits brief for a nonfrivolous appeal. Under *Wende*, by contrast, *Douglas* violations do not occur, both because counsel does not move to withdraw and because the court orders briefing if it finds arguable issues. The procedure disapproved in *Anders* also only required counsel to file a one-paragraph "bare conclusion" that the appeal had no merit, while *Wende* requires that counsel provide a summary of the case's procedural and factual history, with citations of the record, in order to ensure that a trained legal eye has searched the record for arguable issues and to assist the reviewing court in its own evaluation. Finally, by providing at least two tiers of review, the *Wende* procedure avoids the additional flaw, found in the *Eskridge*, *Lane*, and *Douglas* procedures, of having only one such tier. Pp. 278–281.

(c) The *Wende* procedure is also at least comparable to those procedures the Court has approved. By neither requiring the *Wende* brief to raise legal issues nor requiring counsel to explicitly describe the case as frivolous, California has made a good-faith effort to mitigate one of the problems that critics have found with *Anders*, namely, the requirement that counsel violate his ethical duty as an officer of the court (by presenting frivolous arguments) as well as his duty to further his client's interests (by characterizing the client's claims as frivolous). *Wende* also attempts to resolve another *Anders* problem—that it apparently adopts gradations of frivolity and uses two different meanings for the phrase "arguable issue"—by drawing the line at frivolity and by defining arguable issues as those that are not frivolous. Finally, the *Wende* procedure appears to be, in some ways, better than the one approved in *McCoy*, and in other ways, worse. On balance, the Court cannot say that the latter, assuming, *arguendo*, that they outweigh the former, do so sufficiently to make the *Wende* procedure unconstitutional, and the Court's purpose under the Constitution is not to resolve such arguments. The Court addresses not what is prudent or appropriate, but what is constitutionally compelled. *United States* v. *Cronic*, 466 U. S. 648, 665, n. 38. It is enough to say that the *Wende* procedure, like the

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*Anders* and *McCoy* procedures, and unlike the ones in, *e. g.*, *Douglas* and *Penson*, affords adequate and effective appellate review for criminal indigents. Pp. 281–284.

3. This case is remanded for the Ninth Circuit to evaluate Robbins' ineffective-assistance claim. It may be that his appeal was not frivolous and that he was thus entitled to a merits brief. Both the District Court and the Ninth Circuit found that there were two arguable issues on direct appeal, but it is unclear how they used the phrase "arguable issues." It is therefore necessary to clarify how strong those issues are. The proper standard for evaluating Robbins' claim on remand is that enunciated in *Strickland* v. *Washington*, 466 U. S. 668: He must first show that his counsel was objectively unreasonable, *id.*, at 687–691, in failing to find arguable issues to appeal, and, if Robbins succeeds in such a showing, he then has the burden of demonstrating prejudice, *id.*, at 694. He must satisfy both prongs of the *Strickland* test to prevail, for his claim does not warrant a presumption of prejudice. He has received appellate counsel who has complied with a valid state procedure for determining whether his appeal is frivolous, and the State has not left him without counsel on appeal. Thus, it is presumed that the result of the proceedings is reliable, and Robbins must prove the presumption incorrect. Further, his claim does not fall within any of the three categories of cases in which prejudice is presumed, for it does not involve the complete denial of counsel on appeal, state interference with counsel's assistance, or an actual conflict of interest on his counsel's part. *Id.*, at 692, 694. Pp. 284–289.

152 F. 3d 1062, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, and KENNEDY, JJ., joined. STEVENS, J., filed a dissenting opinion, in which GINSBURG, J., joined, *post*, p. 289. SOUTER, J., filed a dissenting opinion, in which STEVENS, GINSBURG, and BREYER, JJ., joined, *post*, p. 292.

*Carol Frederick Jorstad*, Deputy Attorney General of California, argued the cause for petitioner. With her on the briefs were *Bill Lockyer*, Attorney General, *David P. Druliner*, Chief Assistant Attorney General, *Carol Wendelin Pollack*, Senior Assistant Attorney General, and *Donald E. De Nicola*, Deputy Attorney General.

*Ronald J. Nessim,* by appointment of the Court, 526 U. S. 1109, argued the cause for respondent. With him on the brief were *Thomas R. Freeman* and *Elizabeth A. Newman.**

JUSTICE THOMAS delivered the opinion of the Court.

Not infrequently, an attorney appointed to represent an indigent defendant on appeal concludes that an appeal would be frivolous and requests that the appellate court allow him to withdraw or that the court dispose of the case without the filing of merits briefs. In *Anders* v. *California*, 386 U. S. 738 (1967), we held that, in order to protect indigent defendants' constitutional right to appellate counsel, courts must safeguard against the risk of granting such requests in cases where the appeal is not actually frivolous. We found inadequate California's procedure—which permitted appellate counsel to withdraw upon filing a conclusory letter stating that the appeal had "no merit" and permitted the appellate court to affirm the conviction upon reaching the same conclusion following a review of the record. We went on to set

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*Briefs of *amici curiae* urging reversal were filed for the State of Arizona et al. by *Janet Napolitano,* Attorney General of Arizona, *Colleen L. French,* Assistant Attorney General, and *Paul J. McMurde;* and by the Attorneys General for their respective States as follows: *Bill Pryor* of Alabama, *M. Jane Brady* of Delaware, *Thurbert E. Baker* of Georgia, *Mike Moore* of Mississippi, *Frankie Sue Del Papa* of Nevada, *D. Michael Fisher* of Pennsylvania, *Paul G. Summers* of Tennessee, *Ken Salazar* of Colorado, *Robert A. Butterworth* of Florida, *Richard P. Ieyoub* of Louisiana, *Don Stenberg* of Nebraska, *Patricia A. Madrid* of New Mexico, *Charles M. Condon* of South Carolina, and *Mark L. Earley* of Virginia; for the California Academy of Appellate Lawyers by *Robert S. Gerstein, Jay-Allen Eisen, Michael M. Berger, Peter W. Davis, Rex S. Heinke, Wendy C. Lascher, Gerald Z. Marer,* and *Jonathan B. Steiner;* and for the Criminal Justice Legal Foundation by *Kent S. Scheidegger* and *Charles L. Hobson.*

Briefs of *amici curiae* urging affirmance were filed for the National Association of Criminal Defense Lawyers by *Leon Friedman;* and for Jesus Garcia Delgado by *Michael B. Dashjian.*

*Gregory R. Smith* filed a brief for retired Justice Armand Arabian et al. as *amici curiae.*

forth an acceptable procedure. California has since adopted a new procedure, which departs in some respects from the one that we delineated in *Anders*. The question is whether that departure is fatal. We hold that it is not. The procedure we sketched in *Anders* is a prophylactic one; the States are free to adopt different procedures, so long as those procedures adequately safeguard a defendant's right to appellate counsel.

## I

### A

Under California's new procedure, established in *People* v. *Wende*, 25 Cal. 3d 436, 441–442, 600 P. 2d 1071, 1074–1075 (1979), and followed in numerous cases since then, see, *e. g.*, *People* v. *Rowland*, 75 Cal. App. 4th 61, 63, 88 Cal. Rptr. 2d 900, 901 (1999), counsel, upon concluding that an appeal would be frivolous, files a brief with the appellate court that summarizes the procedural and factual history of the case, with citations of the record. He also attests that he has reviewed the record, explained his evaluation of the case to his client, provided the client with a copy of the brief, and informed the client of his right to file a *pro se* supplemental brief. He further requests that the court independently examine the record for arguable issues. Unlike under the *Anders* procedure, counsel following *Wende* neither explicitly states that his review has led him to conclude that an appeal would be frivolous (although that is considered implicit, see *Wende*, 25 Cal. 3d, at 441–442, 600 P. 2d, at 1075) nor requests leave to withdraw. Instead, he is silent on the merits of the case and expresses his availability to brief any issues on which the court might desire briefing. See generally *id.*, at 438, 441–442, 600 P. 2d, at 1072, 1074–1075.

The appellate court, upon receiving a "*Wende* brief," must "conduct a review of the entire record," regardless of whether the defendant has filed a *pro se* brief. *Id.*, at 441–442, 600 P. 2d, at 1074–1075. The California Supreme Court

in *Wende* required such a thorough review notwithstanding a dissenting Justice's argument that it was unnecessary and exceeded the review that a court performs under *Anders*. See 25 Cal. 3d, at 444–445, 600 P. 2d, at 1077 (Clark, J., concurring in judgment and dissenting in part); see also *id.*, at 444, 600 P. 2d, at 1076 ("The precise holding in *Anders* was that a 'no merit' letter . . . 'was not enough.' . . . Just what is 'enough' is not clear, but the majority of the court in that case did not require an appellate court to function as co-counsel"). If the appellate court, after its review of the record pursuant to *Wende*, also finds the appeal to be frivolous, it may affirm. See *id.*, at 443, 600 P. 2d, at 1076 (majority opinion). If, however, it finds an arguable (*i. e.*, nonfrivolous) issue, it orders briefing on that issue. *Id.*, at 442, n. 3, 600 P. 2d, at 1075, n. 3.[1]

B

In 1990, a California state-court jury convicted respondent Lee Robbins of second-degree murder (for fatally shooting his former roommate) and of grand theft of an automobile (for stealing a truck that he used to flee the State after committing the murder). Robbins was sentenced to 17 years to life. He elected to represent himself at trial, but on appeal

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[1] In addition to this double review and double determination of frivolity, California affords a third layer of review, through the California Appellate Projects, described in a recent opinion by the California Court of Appeal for the First District:

"[The appellate projects] are under contract to the court; their contractual duties include review of the records to assist court-appointed counsel in identifying issues to brief. If the court-appointed counsel can find no meritorious issues to raise and decides to file a *Wende* brief, an appellate project staff attorney reviews the record again to determine whether a *Wende* brief is appropriate. Thus, by the time the *Wende* brief is filed in the Court of Appeal, the record in the case has been reviewed *both* by the court-appointed counsel (who is presumably well qualified to handle the case) *and* by an experienced attorney on the staff of [the appellate project]." *People* v. *Hackett*, 36 Cal. App. 4th 1297, 1311, 43 Cal. Rptr. 2d 219, 228 (1995).

he received appointed counsel. His appointed counsel, concluding that an appeal would be frivolous, filed with the California Court of Appeal a brief that complied with the *Wende* procedure.[2] Robbins also availed himself of his right under *Wende* to file a *pro se* supplemental brief, filing a brief in which he contended that there was insufficient evidence to support his conviction and that the prosecutor violated *Brady* v. *Maryland*, 373 U. S. 83 (1963), by failing to disclose exculpatory evidence.

The California Court of Appeal, agreeing with counsel's assessment of the case, affirmed. The court explained that it had "examined the entire record" and had, as a result, concluded both that counsel had fully complied with his responsibilities under *Wende* and that "no arguable issues exist." App. 39. The court added that the two issues that Robbins raised in his supplemental brief had no support in the record. *Ibid.* The California Supreme Court denied Robbins' petition for review.

After exhausting state postconviction remedies, Robbins filed in the United States District Court for the Central District of California the instant petition for a writ of habeas corpus pursuant to 28 U. S. C. § 2254.[3] Robbins renewed his *Brady* claim, argued that the state trial court had erred by not allowing him to withdraw his waiver of his right to trial counsel, and added nine other claims of trial error. In addition, and most importantly for present purposes, he claimed that he had been denied effective assistance of appellate counsel because his appellate counsel's *Wende* brief failed to comply with *Anders* v. *California*, 386 U. S., at 744. *Anders*

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[2] Before filing his *Wende* brief, counsel consulted with the California Appellate Project for the Second District Court of Appeal and received its permission to file such a brief. App. 43.

[3] The Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, which amended § 2254 and related provisions, does not apply to respondent's habeas petition, since he filed his petition before that Act's effective date of April 24, 1996. See *Lindh* v. *Murphy*, 521 U. S. 320 (1997).

set forth a procedure for an appellate counsel to follow in seeking permission to withdraw from the representation when he concludes that an appeal would be frivolous; that procedure includes the requirement that counsel file a brief "referring to anything in the record that might arguably support the appeal," *ibid.*

The District Court agreed with Robbins' last claim, concluding that there were at least two issues that, pursuant to *Anders*, counsel should have raised in his brief (in a *Wende* brief, as noted above, counsel is not required to raise issues): first, whether the prison law library was adequate for Robbins' needs in preparing his defense after he elected to dismiss his appointed counsel and proceed *pro se* at trial, and, second, whether the trial court erred in refusing to allow him to withdraw his waiver of counsel. The District Court did not attempt to determine the likelihood that either of these two issues would have prevailed in an appeal. Rather, it simply concluded that, in the language of the *Anders* procedure, these issues "might arguably" have "support[ed] the appeal," App. 51, n. 6 (citing *Anders*), and thus that Robbins' appellate counsel, by not including them in his brief, deviated from the procedure set forth in *Anders*. The court concluded that such a deviation amounted to deficient performance by counsel. In addition, rather than requiring Robbins to show that he suffered prejudice from this deficient performance, the District Court applied a presumption of prejudice. App. 49. Thus, based simply on a finding that appellate counsel's brief was inadequate under *Anders*, the District Court ordered California to grant respondent a new appeal within 30 days or else release him from custody.

The United States Court of Appeals for the Ninth Circuit agreed with the District Court on the *Anders* issue. In the Ninth Circuit's view, *Anders*, together with *Douglas* v. *California*, 372 U. S. 353 (1963), which held that States must provide appointed counsel to indigent criminal defendants on appeal, "set forth the exclusive procedure through which ap-

pointed counsel's performance can pass constitutional muster." 152 F. 3d 1062, 1066 (1998). Rejecting petitioner's argument that counsel's brief was sufficient because it complied with *Wende*, the Ninth Circuit concluded that the brief was deficient because it did not, as the *Anders* procedure requires, identify any legal issues that arguably could have supported the appeal. 152 F. 3d, at 1066–1067.[4] The court did not decide whether a counsel's deviation from *Anders*, standing alone, would warrant a new appeal, see 152 F. 3d, at 1066–1067, but rather concluded that the District Court's award of relief was proper because counsel had failed to brief the two arguable issues that the District Court identified. The Ninth Circuit remanded, however, for the District Court to consider respondent's 11 claims of trial error. *Id.*, at 1069. The court reasoned that if Robbins prevailed on any of these claims, it would be unnecessary to order the California Court of Appeal to grant a new direct appeal. We granted certiorari. 526 U. S. 1003 (1999).

## II

### A

In *Anders*, we reviewed an earlier California procedure for handling appeals by convicted indigents. Pursuant to that procedure, Anders' appointed appellate counsel had filed a letter stating that he had concluded that there was "no merit to the appeal," 386 U. S., at 739–740. Anders, in response, sought new counsel; the State Court of Appeal denied the request, and Anders filed a *pro se* appellate brief. That court then issued an opinion that reviewed the four claims in his *pro se* brief and affirmed, finding no error (or no prejudicial error). *People* v. *Anders*, 167 Cal. App. 2d 65, 333 P. 2d

[4] In subsequent cases, the Ninth Circuit has reiterated its view that the *Wende* procedure is unconstitutional because it differs from the *Anders* procedure. See *Delgado* v. *Lewis*, 181 F. 3d 1087, 1090, 1093, stay granted pending disposition of pet. for cert., 527 U. S. 1066 (1999); *Davis* v. *Kramer*, 167 F. 3d 494, 496, 497–498 (1999), cert. pending, No. 98–1427.

854 (1959). Anders thereafter sought a writ of habeas corpus from the State Court of Appeal, which denied relief, explaining that it had again reviewed the record and had found the appeal to be "'without merit.'" *Anders*, 386 U. S., at 740 (quoting unreported memorandum opinion).

We held that "California's action does not comport with fair procedure and lacks that equality that is required by the Fourteenth Amendment." *Id.*, at 741. We placed the case within a line of precedent beginning with *Griffin* v. *Illinois*, 351 U. S. 12 (1956), and continuing with *Douglas*, *supra*, that imposed constitutional constraints on States when they choose to create appellate review.[5] In finding the California procedure to have breached these constraints, we compared it to other procedures we had found invalid and to statutory requirements in the federal courts governing appeals by indigents with appointed counsel. *Anders*, *supra*, at 741–743. We relied in particular on *Ellis* v. *United States*, 356 U. S. 674 (1958) *(per curiam)*, a case involving federal statutory requirements, and quoted the following passage from it:

> "'If counsel is convinced, after conscientious investigation, that the appeal is frivolous, of course, he may ask to withdraw on that account. If the court is satisfied that counsel has diligently investigated the possible grounds of appeal, and agrees with counsel's evaluation of the case, then leave to withdraw may be allowed and leave to appeal may be denied.'" *Anders*, *supra*, at 741–742 (quoting *Ellis*, *supra*, at 675).

In *Anders*, neither counsel, the state appellate court on direct appeal, nor the state habeas courts had made any finding of frivolity.[6] We concluded that a finding that the appeal

[5] The Constitution does not, however, require States to create appellate review in the first place. See, *e. g.*, *Ross* v. *Moffitt*, 417 U. S. 600, 606 (1974) (citing *McKane* v. *Durston*, 153 U. S. 684, 687 (1894)).

[6] The same was true in *Ellis* itself. See *Ellis* v. *United States*, 249 F. 2d 478, 480–481 (CADC 1957) (Washington, J., dissenting) ("Counsel . . . concluded that the rulings of the District Court were not 'so clearly erro-

had "no merit" was not adequate, because it did not mean that the appeal was so lacking in prospects as to be "frivolous": "We cannot say that there was a finding of frivolity by either of the California courts or that counsel acted in any greater capacity than merely as *amicus curiae* which was condemned in *Ellis*." 386 U. S., at 743.

Having rejected the California procedure, we proceeded, in a final, separate section, to set out what would be an acceptable procedure for treating frivolous appeals:

> "[I]f counsel finds his case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw. That request must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of counsel's brief should be furnished the indigent and time allowed him to raise any points that he chooses; the court—not counsel—then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous. If it so finds it may grant counsel's request to withdraw and dismiss the appeal insofar as federal requirements are concerned, or proceed to a decision on the merits, if state law so requires. On the other hand, if it finds any of the legal points arguable on their merits (and therefore not frivolous) it must, prior to decision, afford the indigent the assistance of counsel to argue the appeal." *Id.*, at 744.

We then concluded by explaining how this procedure would be better than the California one that we had found deficient. Among other things, we thought that it would "induce the court to pursue all the more vigorously its own review because of the ready references not only to the record but also

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neous as to constitute probable error.' . . . Where, as here, there was a fairly arguable question, counsel should have proceeded to present argument"), vacated and remanded, 356 U. S. 674 (1958) *(per curiam)*.

to the legal authorities as furnished it by counsel." *Id.*, at 745.

B

The Ninth Circuit ruled that this final section of *Anders*, even though unnecessary to our holding in that case, was obligatory upon the States. We disagree. We have never so held; we read our precedents to suggest otherwise; and the Ninth Circuit's view runs contrary to our established practice of permitting the States, within the broad bounds of the Constitution, to experiment with solutions to difficult questions of policy.

In *McCoy* v. *Court of Appeals of Wis., Dist. 1*, 486 U. S. 429 (1988), we rejected a challenge to Wisconsin's variation on the *Anders* procedure. Wisconsin had departed from *Anders* by requiring *Anders* briefs to discuss *why* each issue raised lacked merit. The defendant argued that this rule was contrary to *Anders* and forced counsel to violate his ethical obligations to his client. We, however, emphasized that the right to appellate representation does not include a right to present frivolous arguments to the court, 486 U. S., at 436, and, similarly, that an attorney is "under an ethical obligation to refuse to prosecute a frivolous appeal," *ibid.* (footnote omitted). *Anders*, we explained, merely aims to "assure the court that the indigent defendant's constitutional rights have not been violated." 486 U. S., at 442. Because the Wisconsin procedure adequately provided such assurance, we found no constitutional violation, notwithstanding its variance from *Anders*. See 486 U. S., at 442–444. We did, in *McCoy*, describe the procedure at issue as going "one step further" than *Anders*, *McCoy*, *supra*, at 442, thus suggesting that *Anders* might set a mandatory minimum, but we think this description of the Wisconsin procedure questionable, since it provided less effective advocacy for an indigent—in at least one respect—than does the *Anders* procedure. The Wisconsin procedure, by providing for one-sided briefing by counsel against his own client's best claims, probably made a court

more likely to rule against the indigent than if the court had simply received an *Anders* brief.

In *Pennsylvania* v. *Finley*, 481 U. S. 551 (1987), we explained that the *Anders* procedure is not "an independent constitutional command," but rather is just "a prophylactic framework" that we established to vindicate the constitutional right to appellate counsel announced in *Douglas*. 481 U. S., at 555. We did not say that our *Anders* procedure was the *only* prophylactic framework that could adequately vindicate this right; instead, by making clear that the Constitution itself does not compel the *Anders* procedure, we suggested otherwise. Similarly, in *Penson* v. *Ohio*, 488 U. S. 75 (1988), we described *Anders* as simply erecting "safeguards." 488 U. S., at 80.

It is true that in *Penson* we used some language suggesting that *Anders* is mandatory upon the States, see 488 U. S., at 80–82, but that language was not necessary to the decision we reached. We had no reason in *Penson* to determine whether the *Anders* procedure was mandatory, because the procedure at issue clearly failed under *Douglas*, see *infra*, at 280. Further, counsel's action in *Penson* was closely analogous to the action of counsel that we found invalid in *Anders*, see *Penson*, *supra*, at 77–78, so there was no need to rely on the *Anders* procedure, as opposed to just the *Anders* holding, to find counsel's action improper. See 488 U. S., at 77 ("The question presented by this case is remarkably similar [to the one presented in *Anders*] and therefore requires a similar answer").

Finally, any view of the procedure we described in the last section of *Anders* that converted it from a suggestion into a straitjacket would contravene our established practice, rooted in federalism, of allowing the States wide discretion, subject to the minimum requirements of the Fourteenth Amendment, to experiment with solutions to difficult problems of policy. In *Griffin* v. *Illinois*, 351 U. S. 12 (1956), which we invoked as the foundational case for our holding

in *Anders*, see *Anders*, 386 U. S., at 741, we expressly disclaimed any pretensions to rulemaking authority for the States in the area of indigent criminal appeals. We imposed no broad rule or procedure but merely held unconstitutional Illinois' requirement that indigents pay a fee to receive a trial transcript that was essential for bringing an appeal. Justice Frankfurter, who provided the necessary fifth vote for the holding in *Griffin*, emphasized that it was not for this Court "to tell Illinois what means are open to the indigent and must be chosen. Illinois may prescribe any means that are within the wide area of its constitutional discretion" and "may protect itself so that frivolous appeals are not subsidized and public moneys not needlessly spent." 351 U. S., at 24 (opinion concurring in judgment). He added that while a State could not "bolt the door to equal justice," it also was not obliged to "support a wasteful abuse of the appellate process." *Ibid.* The *Griffin* plurality shared this view, explaining that the Court was not holding "that Illinois must purchase a stenographer's transcript in every case where a defendant cannot buy it. The Supreme Court [of Illinois] may find other means of affording adequate and effective appellate review to indigent defendants." *Id.*, at 20.

In a related context, we stated this basic principle of federalism in the very Term in which we decided *Anders.* We emphatically reaffirmed that the Constitution "has never been thought [to] establish this Court as a rule-making organ for the promulgation of state rules of criminal procedure." *Spencer* v. *Texas*, 385 U. S. 554, 564 (1967) (citing, *inter alia*, *Griffin*, *supra*). Accord, *Medina* v. *California*, 505 U. S. 437, 443–444, 447–448 (1992). Justice Stewart, concurring in *Spencer*, explained further:

> "If the Constitution gave me a roving commission to impose upon the criminal courts of Texas my own notions of enlightened policy, I would not join the Court's opinion. . . . [But] [t]he question is whether those procedures fall below the minimum level the Fourteenth

> Amendment will tolerate. Upon that question, I am constrained to join the opinion and judgment of the Court." 385 U. S., at 569.

We have continued to reiterate this principle in recent years. See *Finley*, 481 U. S., at 559 (refusing to accept the premise that "when a State chooses to offer help to those seeking relief from convictions, the Federal Constitution dictates the exact form such assistance must assume"); *ibid.* (explaining that States have "substantial discretion to develop and implement programs to aid prisoners seeking to secure postconviction review"); *Murray* v. *Giarratano*, 492 U. S. 1, 13 (1989) (O'Connor, J., concurring) ("[N]or does it seem to me that the Constitution requires the States to follow any particular federal model in [postconviction] proceedings. . . . States [have] considerable discretion"); *id.*, at 14 (Kennedy, J., concurring in judgment) ("[J]udicial imposition of a categorical remedy . . . might pretermit other responsible solutions being considered in Congress and state legislatures"). Although *Finley* and *Murray* involved postconviction proceedings (in which there is no constitutional right to counsel) rather than direct appeal, we think, as the language of *Griffin* suggests, that the principle is the same in both contexts. For in *Griffin*, as here, there was an underlying constitutional right at issue.

In short, it is more in keeping with our status as a court, and particularly with our status as a court in a federal system, to avoid imposing a single solution on the States from the top down. We should, and do, evaluate state procedures one at a time, as they come before us, see *Murray*, *supra*, at 14, while leaving "the more challenging task of crafting appropriate procedures . . . to the laboratory of the States in the first instance," *Cruzan* v. *Director, Mo. Dept. of Health*, 497 U. S. 261, 292 (1990) (O'Connor, J., concurring) (citation and internal quotation marks omitted). We will not cavalierly "imped[e] the States' ability to serve as laboratories for testing solutions to novel legal problems." *Arizona* v.

*Evans*, 514 U. S. 1, 24 (1995) (GINSBURG, J., dissenting). Accordingly, we hold that the *Anders* procedure is merely one method of satisfying the requirements of the Constitution for indigent criminal appeals. States may—and, we are confident, will—craft procedures that, in terms of policy, are superior to, or at least as good as, that in *Anders*. The Constitution erects no barrier to their doing so.[7]

## III

Having determined that California's *Wende* procedure is not unconstitutional merely because it diverges from the *Anders* procedure, we turn to consider the *Wende* procedure on its own merits. We think it clear that California's system does not violate the Fourteenth Amendment, for it provides "a criminal appellant pursuing a first appeal as of right [the] minimum safeguards necessary to make that appeal 'adequate and effective,'" *Evitts* v. *Lucey*, 469 U. S. 387, 392 (1985) (quoting *Griffin*, 351 U. S., at 20 (plurality opinion)).

### A

As we have admitted on numerous occasions, "'[t]he precise rationale for the *Griffin* and *Douglas* lines of cases has never been explicitly stated, some support being derived from the Equal Protection Clause of the Fourteenth Amendment and some from the Due Process Clause of that Amendment.'" *Evitts*, *supra*, at 403 (quoting *Ross* v. *Moffitt*, 417 U. S. 600, 608–609 (1974) (footnote omitted)). But our case law reveals that, as a practical matter, the two Clauses largely converge to require that a State's procedure "affor[d] adequate and effective appellate review to indigent defendants," *Griffin*, 351 U. S., at 20 (plurality opinion). A State's procedure provides such review so long as it reasonably en-

[7] States have, in fact, already been doing this to some degree. See Warner, *Anders* in the Fifty States: Some Appellants' Equal Protection is More Equal Than Others', 23 Fla. St. U. L. Rev. 625, 642–662 (1996); *Arizona* v. *Clark*, 196 Ariz. 530, 536–539, 2 P. 3d 89, 95–98 (App. 1999).

sures that an indigent's appeal will be resolved in a way that is related to the merit of that appeal.[8] See *id.*, at 17–18 (plurality opinion) (state law regulating indigents' appeals bore "no rational relationship to a defendant's guilt or innocence"); *id.*, at 22 (Frankfurter, J., concurring in judgment) (law imposed "differentiations . . . that have no relation to a rational policy of criminal appeal"); *Douglas*, 372 U. S., at 357 (decision of first appeal "without benefit of counsel, . . . no matter how meritorious [an indigent's] case may turn out to be," discriminates between rich and poor rather than between "possibly good and obviously bad cases" (internal quotation marks omitted)); *Rinaldi* v. *Yeager*, 384 U. S. 305, 310 (1966) (state appellate system must be "free of unreasoned distinctions"); *Evitts*, *supra*, at 404 (law in *Griffin* "decided the appeal in a way that was arbitrary with respect to the issues involved"). Compare *Finley*, *supra*, at 556 ("The equal protection guarantee . . . only . . . assure[s] the indigent defendant an adequate opportunity to present his claims fairly in the context of the State's appellate process" (quoting *Ross*, *supra*, at 616)), with *Evitts*, *supra*, at 405 ("[D]ue process . . . [requires] States . . . to offer each defendant a fair opportunity to obtain an adjudication on the merits of his appeal" (discussing *Griffin* and *Douglas*)).[9]

In determining whether a particular state procedure satisfies this standard, it is important to focus on the underlying goals that the procedure should serve—to ensure that those indigents whose appeals are not frivolous receive the counsel and merits brief required by *Douglas*, and also to enable the

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[8] Of course, no procedure can eliminate all risk of error. *E. g.*, *Walters* v. *National Assn. of Radiation Survivors*, 473 U. S. 305, 320–321 (1985).

[9] Although we have said that an indigent must receive "substantial equality" compared to the legal assistance that a defendant with paid counsel would receive, *McCoy* v. *Court of Appeals of Wis., Dist. 1*, 486 U. S. 429, 438 (1988), we have also emphasized that "[a]bsolute equality is not required; lines can be and are drawn and we often sustain them," *Douglas* v. *California*, 372 U. S. 353, 357 (1963).

State to "protect itself so that frivolous appeals are not subsidized and public moneys not needlessly spent," *Griffin*, *supra*, at 24 (Frankfurter, J., concurring in judgment). For although, under *Douglas*, indigents generally have a right to counsel on a first appeal as of right, it is equally true that this right does not include the right to bring a frivolous appeal and, concomitantly, does not include the right to counsel for bringing a frivolous appeal.[10] See *McCoy*, 486 U. S., at 436–438; *Douglas*, *supra*, at 357; see also *United States* v. *Cronic*, 466 U. S. 648, 656, n. 19 (1984) ("Of course, the Sixth Amendment does not require that [trial] counsel do what is impossible or unethical"); cf. *Nix* v. *Whiteside*, 475 U. S. 157, 175 (1986) (no violation of Sixth Amendment right to the effective assistance of counsel when trial counsel refuses to violate ethical duty not to assist his client in presenting perjured testimony). To put the point differently, an indigent defendant who has his appeal dismissed because it is frivolous has not been deprived of "a fair opportunity" to bring his appeal, *Evitts*, *supra*, at 405; see *Finley*, 481 U. S., at 556, for fairness does not require either counsel or a full appeal once it is properly determined that an appeal is frivolous. The obvious goal of *Anders* was to prevent this limitation on the right to appellate counsel from swallowing the right itself, see *Penson*, 488 U. S., at 83–84; *McCoy*, *supra*, at 444, and we do not retreat from that goal today.

## B

We think the *Wende* procedure reasonably ensures that an indigent's appeal will be resolved in a way that is related to

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[10] This distinction gives meaning to our previous emphasis on an indigent appellant's right to "advocacy." Although an indigent whose appeal is frivolous has no right to have an advocate make his case to the appellate court, such an indigent does, in all cases, have the right to have an attorney, zealous for the indigent's interests, evaluate his case and attempt to discern nonfrivolous arguments. See *Ellis*, 356 U. S., at 675; *Anders* v. *California*, 386 U. S. 738, 741–743 (1967).

the merit of that appeal. Whatever its strengths or weaknesses as a matter of policy, we cannot say that it fails to afford indigents the adequate and effective appellate review that the Fourteenth Amendment requires. A comparison of the *Wende* procedure to the procedures evaluated in our chief cases in this area makes this evident.

The *Wende* procedure is undoubtedly far better than those procedures we have found inadequate. *Anders* itself, in disapproving the former California procedure, chiefly relied on three precedents: *Ellis* v. *United States*, 356 U. S. 674 (1958) *(per curiam)*, *Eskridge* v. *Washington Bd. of Prison Terms and Paroles*, 357 U. S. 214 (1958) *(per curiam)*, and *Lane* v. *Brown*, 372 U. S. 477 (1963). See *Anders*, 386 U. S., at 741–743. Although we did not, in *Anders*, explain in detail why the California procedure was inadequate under each of these precedents, our particularly heavy reliance on *Ellis* makes clear that a significant factor was that the old California procedure did not require either counsel or the court to determine that the appeal was frivolous; instead, the procedure required only that they determine that the defendant was unlikely to prevail on appeal. Compare *Anders*, *supra*, at 741–742 ("'If counsel is convinced, after conscientious investigation, that the appeal is frivolous, of course, he may ask to withdraw . . . . If the court . . . agrees with counsel's evaluation of the case, then leave to withdraw may be allowed and leave to appeal may be denied'" (quoting *Ellis*, *supra*, at 675)), with *Anders*, *supra*, at 743 ("We cannot say that there was a finding of frivolity"). See also *McCoy*, *supra*, at 437 (quoting same passage from *Ellis* that we quoted in *Anders*). This problem also appears to have been one of the flaws in the procedures at issue in *Eskridge* and *Lane*. The former involved a finding only that there had been "'no grave or prejudicial errors'" at trial, *Anders*, *supra*, at 742 (quoting *Eskridge*, *supra*, at 215), and the latter, a finding only that the appeal "'would be unsuccessful,'" *Anders*, *supra*, at 743 (quoting *Lane*, *supra*, at 482). *Wende*,

by contrast, requires both counsel and the court to find the appeal to be lacking in arguable issues, which is to say, frivolous. See 25 Cal. 3d, at 439, 441–442, 600 P. 2d, at 1073, 1075; see *id.*, at 441, 600 P. 2d, at 1074 (reading *Anders* as finding old California procedure deficient largely "because the court itself did not make an express finding that the appeal was frivolous").

An additional problem with the old California procedure was that it apparently permitted an appellate court to allow counsel to withdraw and thereafter to decide the appeal without appointing new counsel. See *Anders*, *supra*, at 740, n. 2. We resolved any doubt on this point in *Penson*, where we struck down a procedure that allowed counsel to withdraw before the court had determined whether counsel's evaluation of the case was accurate, 488 U. S., at 82–83, and, in addition, allowed a court to decide the appeal without counsel even if the court found arguable issues, *id.*, at 83 (stating that this latter flaw was the "[m]ost significan[t]" one). Thus, the *Penson* procedure permitted a basic violation of the *Douglas* right to have counsel until a case is determined to be frivolous and to receive a merits brief for a nonfrivolous appeal. See 488 U. S., at 88 ("[I]t is important to emphasize that the denial of counsel in this case left petitioner completely without representation during the appellate court's actual decisional process"); *ibid.* (defendant was "entirely without the assistance of counsel on appeal"). Cf. *McCoy*, *supra*, at 430–431, n. 1 (approving procedure under which appellate court first finds appeal to be frivolous and affirms, then relieves counsel). Under *Wende*, by contrast, *Douglas* violations do not occur, both because counsel does not move to withdraw and because the court orders briefing if it finds arguable issues. See *Wende*, *supra*, at 442, n. 3, 600 P. 2d, at 1075, n. 3; see also, *e. g.*, *Rowland*, 75 Cal. App. 3d, at 61–62, 88 Cal. Rptr. 2d, at 900–901.

In *Anders*, we also disapproved the old California procedure because we thought that a one-paragraph letter from

counsel stating only his "bare conclusion" that the appeal had no merit was insufficient. 386 U. S., at 742. It is unclear from our opinion in *Anders* how much our objection on this point was severable from our objection to the lack of a finding of frivolity, because we immediately followed our description of counsel's "no merit" letter with a discussion of *Ellis*, *Eskridge*, and *Lane*, and the lack of such a finding. See 386 U. S., at 742–743. In any event, the *Wende* brief provides more than a one-paragraph "bare conclusion." Counsel's summary of the case's procedural and factual history, with citations of the record, both ensures that a trained legal eye has searched the record for arguable issues and assists the reviewing court in its own evaluation of the case.

Finally, an additional flaw with the procedures in *Eskridge* and *Lane* was that there was only one tier of review—by the trial judge in *Eskridge* (who understandably had little incentive to find any error warranting an appeal) and by the public defender in *Lane*. See *Anders*, *supra*, at 742–743. The procedure in *Douglas* itself was, in part, flawed for the same reason. See 372 U. S., at 354–355. The *Wende* procedure, of course, does not suffer from this flaw, for it provides at least two tiers of review.

Not only does the *Wende* procedure far exceed those procedures that we have found invalid, but it is also at least comparable to those procedures that we have approved. Turning first to the procedure we set out in the final section of *Anders*, we note that it has, from the beginning, faced "'consistent and severe criticism.'" *In re Sade C.*, 13 Cal. 4th 952, 979, n. 7, 920 P. 2d 716, 731, n. 7 (1996) (quoting Note, 67 Texas L. Rev. 181, 212 (1988)). One of the most consistent criticisms, one with which we wrestled in *McCoy*, is that *Anders* is in some tension both with counsel's ethical duty as an officer of the court (which requires him not to present frivolous arguments) and also with his duty to further his client's interests (which might not permit counsel to characterize his

client's claims as frivolous).[11] California, through the *Wende* procedure, has made a good-faith effort to mitigate this problem by not requiring the *Wende* brief to raise legal issues and by not requiring counsel to explicitly describe the case as frivolous. See *Wende*, 25 Cal. 3d, at 441–442, 600 P. 2d, at 1074–1075.

Another criticism of the *Anders* procedure has been that it is incoherent and thus impossible to follow. Those making this criticism point to our language in *Anders* suggesting that an appeal could be both "wholly frivolous" and at the same time contain arguable issues, even though we also said that an issue that was arguable was "therefore not frivolous." *Anders*, *supra*, at 744.[12] In other words, the *Anders* procedure appears to adopt gradations of frivolity and to use two different meanings for the phrase "arguable issue." The *Wende* procedure attempts to resolve this problem as well, by drawing the line at frivolity and by defining arguable issues as those that are not frivolous.[13]

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[11] As one former public defender has explained, "an attorney confronted with the *Anders* situation has to do something that the Code of Professional Responsibility describes as unethical; the only choice is as to which canon he or she prefers to violate." Pengilly, Never Cry *Anders:* The Ethical Dilemma of Counsel Appointed to Pursue a Frivolous Criminal Appeal, 9 Crim. Justice J. 45, 64 (1986). See also, *e. g.*, *Commonwealth* v. *Moffett*, 383 Mass. 201, 206, 418 N. E. 2d 585, 590 (1981) (*Anders* requires a "Janus-faced approach" by counsel); Hermann, Frivolous Criminal Appeals, 47 N. Y. U. L. Rev. 701, 711 (1972).

[12] Justice Stewart, in his dissent in *Anders*, was the first to make this criticism of the procedure set out by the *Anders* majority: "[I]f the record did present any such 'arguable' issues, the appeal would not be frivolous." 386 U. S., at 746; see *id.*, at 746, n. See also, *e. g.*, C. Wolfram, Modern Legal Ethics 817 (1986) ("The *Anders* directives are confusing, if not contradictory").

[13] See *supra*, at 279–280. A further criticism of *Anders* has been that it is unjust. More particularly, critics have claimed that, in setting out the *Anders* procedure, we were oblivious to the problem of scarce resources (with regard to both counsel and courts) and, as a result, crafted a rule that diverts attention from meritorious appeals of indigents and ensures poor representation for all indigents. See, *e. g.*, Pritchard, Auc-

Finally, the *Wende* procedure appears to be, in some ways, better than the one we approved in *McCoy* and, in other ways, worse. On balance, we cannot say that the latter, assuming, *arguendo*, that they outweigh the former, do so sufficiently to make the *Wende* procedure unconstitutional. The Wisconsin procedure we evaluated in *McCoy*, which required counsel filing an *Anders* brief to explain why the issues he raised in his brief lacked merit, arguably exacerbated the ethical problem already present in the *Anders* procedure. The *Wende* procedure, as we have explained, attempts to mitigate that problem. Further, it appears that in the *McCoy* scheme counsel discussed—and the appellate court reviewed—only the parts of the record cited by counsel in support of the "arguable" issues he raised. See 486 U. S., at 440, 442. The *Wende* procedure, by contrast, requires a more thorough treatment of the record by both counsel and court. See 25 Cal. 3d, at 440–441, 600 P. 2d, at 1074–1075; *id.*, at 445, 600 P. 2d, at 1077 (Clark, J., concurring in judg-

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tioning Justice: Legal and Market Mechanisms for Allocating Criminal Appellate Counsel, 34 Am. Crim. L. Rev. 1161, 1167–1168 (1997) (*Anders* has created a "tragedy of the commons" that, "far from guaranteeing adequate appellate representation for all criminal defendants, instead ensures that indigent criminal defendants will receive mediocre appellate representation, whether their claims are good or bad" (footnote omitted)); Pritchard, *supra*, at 1169 (noting *Anders*' similar effect on appellate courts); Pritchard, *supra*, at 1162 ("[J]udicial fiat cannot cure scarcity; it merely disguises the symptoms of the disease"); Doherty, Wolf! Wolf!—The Ramifications of Frivolous Appeals, 59 J. Crim. L., C. & P. S. 1, 2 (1968) ("[T]he people who will suffer the most are the indigent prisoners who have been *unjustly* convicted; they will languish in prison while lawyers devote time and energy to hopeless causes on a first come-first served basis" (footnote omitted)). We cannot say whether the *Wende* procedure is better or worse than the *Anders* procedure in this regard (although we are aware of policy-based arguments that it is worse as to appellate courts, see *People* v. *Williams*, 59 Cal. App. 4th 1202, 1205–1206, 69 Cal. Rptr. 2d 690, 692 (1997); Brief for Retired Justice Armand Arabian et al. as *Amici Curiae*), but it is clear that, to the extent this criticism has merit, our holding today that the *Anders* procedure is not exclusive will enable States to continue to experiment with solutions to this problem.

ment and dissenting in part). On the other hand, the *McCoy* procedure, unlike the *Wende* procedure, does assist the reviewing court by directing it to particular legal issues; as to those issues, this is presumably a good thing. But it is also possible that bad judgment by the attorney in selecting the issues to raise might divert the court's attention from more meritorious, unmentioned, issues. This criticism is, of course, equally applicable to the *Anders* procedure. Moreover, as to the issues that counsel does raise in a *McCoy* brief, the one-sided briefing on why those issues are frivolous may predispose the court to reach the same conclusion. The *Wende* procedure reduces these risks, by omitting from the brief signals that may subtly undermine the independence and thoroughness of the second review of an indigent's case.

Our purpose is not to resolve any of these arguments. The Constitution does not resolve them, nor does it require us to do so. "We address not what is prudent or appropriate, but only what is constitutionally compelled." *Cronic*, 466 U. S., at 665, n. 38. It is enough to say that the *Wende* procedure, like the *Anders* and *McCoy* procedures, and unlike the ones in *Ellis*, *Eskridge*, *Lane*, *Douglas*, and *Penson*, affords adequate and effective appellate review for criminal indigents. Thus, there was no constitutional violation in this case simply because the *Wende* procedure was used.

## IV

Since Robbins' counsel complied with a valid procedure for determining when an indigent's direct appeal is frivolous, we reverse the Ninth Circuit's judgment that the *Wende* procedure fails adequately to serve the constitutional principles we identified in *Anders*. But our reversal does not necessarily mean that Robbins' claim that his appellate counsel rendered constitutionally ineffective assistance fails. For it may be, as Robbins argues, that his appeal was not frivolous and that he was thus entitled to a merits brief rather than to a *Wende* brief. Indeed, both the District Court and the

Ninth Circuit found that there were two arguable issues on direct appeal. The meaning of "arguable issue" as used in the opinions below, however, is far from clear. The courts below most likely used the phrase in the unusual way that we used it in *Anders*—an issue arguably supporting the appeal even though the appeal was wholly frivolous. See 152 F. 3d, at 1067 (discussing arguable issues in context of requirements of *Anders*); App. 48 (District Court opinion) (same). Such an issue does not warrant a merits brief. But the courts below may have used the term to signify issues that were "arguable" in the more normal sense of being nonfrivolous and thus warranting a merits brief. See *id.*, at 49, and n. 3 (District Court, considering arguable issues to determine "whether *Anders* was violated," but also defining arguable issue as one that counsel could argue "in good faith with some potential for prevailing"). Further, the courts below, in determining whether there were arguable issues, did not address petitioner's argument that, at least with regard to the adequacy of the prison law library, Robbins waived the issue for appeal by failing to object at trial. Thus, it will be necessary on remand to clarify just how strong these two issues are.

On remand, the proper standard for evaluating Robbins' claim that appellate counsel was ineffective in neglecting to file a merits brief is that enunciated in *Strickland* v. *Washington*, 466 U. S. 668 (1984). See *Smith* v. *Murray*, 477 U. S. 527, 535–536 (1986) (applying *Strickland* to claim of attorney error on appeal). Respondent must first show that his counsel was objectively unreasonable, see *Strickland*, 466 U. S., at 687–691, in failing to find arguable issues to appeal—that is, that counsel unreasonably failed to discover nonfrivolous issues and to file a merits brief raising them. If Robbins succeeds in such a showing, he then has the burden of demonstrating prejudice. That is, he must show a reasonable probability that, but for his counsel's unreasonable failure to file a merits brief, he would have prevailed on his appeal.

See *id.*, at 694 (defendant must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different").[14]

The applicability of *Strickland*'s actual-prejudice prong to Robbins' claim of ineffective assistance follows from *Penson*, where we distinguished denial of counsel altogether on appeal, which warrants a presumption of prejudice, from mere ineffective assistance of counsel on appeal, which does not. See 488 U. S., at 88–89. The defendant in *Penson* faced a denial of counsel because, as we have discussed, *supra*, at 280, not only was an invalid state procedure followed, but that procedure was clearly invalid insofar as it denied the defendant his right to appellate counsel under *Douglas*, see 488 U. S., at 83, 88. Our holding in *Penson* was consistent with *Strickland* itself, where we said that we would presume prejudice when a defendant had suffered an "[a]ctual or constructive denial of the assistance of counsel altogether." 466 U. S., at 692; see also *Cronic*, *supra*, at 659, and n. 25. In other words, while we normally apply a "strong presumption of reliability" to judicial proceedings and require a defendant to overcome that presumption, *Strickland*, *supra*, at 696, when, as in *Penson*, there has been a complete denial of counsel, we understandably presume the opposite, see *Strickland*, *supra*, at 692.

But where, as here, the defendant has received appellate counsel who has complied with a valid state procedure for determining whether the defendant's appeal is frivolous, and the State has not at any time left the defendant without counsel on appeal, there is no reason to presume that the defendant has been prejudiced. In *Penson*, we worried that requiring the defendant to establish prejudice would leave him "without any of the protections afforded by *Anders*."

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[14] The performance component need not be addressed first. "If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed." *Strickland* v. *Washington*, 466 U. S., at 697.

488 U. S., at 86. Here, by contrast, counsel followed a procedure that is constitutional under *Anders* and our other precedents in this area, and Robbins therefore received all the procedural protection that the Constitution requires. We thus presume that the result of the proceedings on appeal is reliable, and we require Robbins to prove the presumption incorrect in his particular case. See *Strickland*, 466 U. S., at 694.

Further, the ineffective-assistance claim that Robbins presses does not fall within any of the three categories of cases, described in *Strickland*, in which we presume prejudice rather than require a defendant to demonstrate it. First, as noted, we presume prejudice in a case of denial of counsel. Second, "various kinds of state interference with counsel's assistance" can warrant a presumption of prejudice. *Id.*, at 692; see *Cronic*, 466 U. S., at 659, and n. 25. Third, "prejudice is presumed when counsel is burdened by an actual conflict of interest," *Strickland*, 466 U. S., at 692, although in such a case we do require the defendant to show that the conflict adversely affected his counsel's performance, *ibid.* None of these three categories applies to a case such as Robbins'. Nor does the policy reason that we offered in *Strickland* for the first two categories apply here, for it is not the case that, if an attorney unreasonably chooses to follow a procedure such as *Anders* or *Wende* instead of filing a merits brief, prejudice "is so likely that case-by-case inquiry into prejudice is not worth the cost." 466 U. S., at 692; see *Cronic*, *supra*, at 658.[15] On the contrary, in most cases in which a defendant's appeal has been found, pursuant to a valid state procedure, to be frivolous, it will in fact be frivolous.

It is no harder for a court to apply *Strickland* in this area than it is when a defendant claims that he received ineffec-

[15] Moreover, such an error by counsel is neither "easy to identify" (since it is necessary to evaluate a defendant's case in order to find the error) nor attributable to the prosecution. See *Strickland*, *supra*, at 692.

tive assistance of appellate counsel because his counsel, although filing a merits brief, failed to raise a particular claim. It will likely be easier to do so. In *Jones* v. *Barnes*, 463 U. S. 745 (1983), we held that appellate counsel who files a merits brief need not (and should not) raise every nonfrivolous claim, but rather may select from among them in order to maximize the likelihood of success on appeal. Notwithstanding *Barnes*, it is still possible to bring a *Strickland* claim based on counsel's failure to raise a particular claim, but it is difficult to demonstrate that counsel was incompetent. See, *e. g.*, *Gray* v. *Greer*, 800 F. 2d 644, 646 (CA7 1986) ("Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome"). With a claim that counsel erroneously failed to file a merits brief, it will be easier for a defendant-appellant to satisfy the first part of the *Strickland* test, for it is only necessary for him to show that a reasonably competent attorney would have found one nonfrivolous issue warranting a merits brief, rather than showing that a particular nonfrivolous issue was clearly stronger than issues that counsel did present. In both cases, however, the prejudice analysis will be the same.[16]

[16] Federal judges are, of course, fully capable of assessing prejudice in this area, including for the very sorts of claims that Robbins has raised. See, *e. g.*, *Duhamel* v. *Collins*, 955 F. 2d 962, 967 (CA5 1992) (defendant not prejudiced by appellate counsel's failure to challenge sufficiency of the evidence); *Banks* v. *Reynolds*, 54 F. 3d 1508, 1515–1516 (CA10 1995) (finding both parts of *Strickland* test satisfied where appellate counsel failed to raise claim of violation of *Brady* v. *Maryland*, 373 U. S. 83 (1963)); *Cross* v. *United States*, 893 F. 2d 1287, 1290–1291, 1292 (CA11) (rejecting challenge to appellate counsel's failure to raise claim of violation of *Faretta* v. *California*, 422 U. S. 806 (1975), by determining that there was no prejudice), cert. denied, 498 U. S. 849 (1990). Since Robbins was convicted in state court, we have no occasion to consider whether a *per se* prejudice approach, in lieu of *Strickland*'s actual-prejudice requirement, might be appropriate in the context of challenges to federal convictions where counsel was deficient in failing to file a merits brief on direct appeal. See *Goeke* v. *Branch*, 514 U. S. 115, 119 (1995) *(per curiam)* (distinguishing

In sum, Robbins must satisfy both prongs of the *Strickland* test in order to prevail on his claim of ineffective assistance of appellate counsel. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

*It is so ordered.*

JUSTICE STEVENS, with whom JUSTICE GINSBURG joins, dissenting.

While I join JUSTICE SOUTER's cogent dissent without qualification, I write separately to emphasize two points that are obscured by the Court's somewhat meandering explanation of its sharp departure from settled law.

First, despite its failure to say so directly, the Court has effectively overruled both *Anders* v. *California*, 386 U. S. 738 (1967), and *Penson* v. *Ohio*, 488 U. S. 75 (1988). Second, its unexplained rejection of the reasoning underlying our decision in *McCoy* v. *Court of Appeals of Wis., Dist. 1*, 486 U. S. 429 (1988), see *ante*, at 272–273, illustrates the extent of today's majority's disregard for accepted precedent.

To make my first point it is only necessary to quote the Court's new standard for determining whether a State's appellate procedure affords adequate review for indigent defendants:

> "A State's procedure provides such review so long as it reasonably ensures that an indigent's appeal will be resolved in a way that is related to the merit of that appeal." *Ante*, at 276–277.

The California procedure reviewed in *Anders* and the Ohio procedure reviewed in *Penson*—both found inadequate by this Court—would easily have satisfied that standard. Yet the Court today accepts California's current procedure be-

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rules established pursuant to this Court's supervisory power to administer federal court system from constitutional rules applicable to States); *United States* v. *Cronic*, 466 U. S. 648, 665, n. 38 (1984) (same).

cause it "requires both counsel and the court to find the appeal to be lacking in arguable issues." *Ante*, at 280. But in defense of its position in *Anders*, California relied heavily on those very same requirements, *i. e.*, "the additional feature of the [State's] system where the court also reads the full record." Brief for Respondent in *Anders* v. *California*, O. T. 1966, No. 98, pp. 30–31; see also *id.*, at 12–13, 19, 23, 28–29. Our *Anders* decision held, however, that this "additional feature" was insufficient to safeguard the indigent appellant's rights.

To make my second point I shall draw on my own experience as a practicing lawyer and as a judge. On a good many occasions I have found that the task of writing out the reasons that support an initial opinion on a question of law—whether for the purpose of giving advice to my client or for the purpose of explaining my vote as an appellate judge—leads to a conclusion that was not previously apparent. Colleagues who shared that view of the importance of giving reasons, as opposed to merely announcing conclusions, joined the opinions that I authored in *McCoy*, *Penson*, and *Nickols* v. *Gagnon*, 454 F. 2d 467 (CA7 1971).[1] In its casual rejection of the reasoning in *McCoy*, the Court simply ignores this portion of the opinion:

> "Wisconsin's Rule merely requires that the attorney go one step further. Instead of relying on an unexplained assumption that the attorney has discovered law or facts that completely refute the arguments identified in the

[1] "The danger that a busy or inexperienced lawyer might opt in favor of a one sentence letter instead of an effective brief in an individual marginal case is real, notwithstanding the dedication that typifies the profession. If, however, counsel's ultimate evaluation of the case must be supported by a written opinion 'referring to anything in the record that might arguably support the appeal,' the temptation to discharge an obligation in summary fashion is avoided, and the reviewing court is provided with meaningful assistance." *Nickols*, 454 F. 2d, at 470 (citation and footnotes omitted) (quoting *Anders* v. *California*, 386 U. S. 738, 744 (1967)).

> brief, the Wisconsin court requires additional evidence of counsel's diligence. This requirement furthers the same interests that are served by the minimum requirements of *Anders*. Because counsel may discover previously unrecognized aspects of the law in the process of preparing a written explanation for his or her conclusion, the discussion requirement provides an additional safeguard against mistaken conclusions by counsel that the strongest arguments he or she can find are frivolous. Just like the references to favorable aspects of the record required by *Anders*, the discussion requirement may forestall some motions to withdraw and will assist the court in passing on the soundness of the lawyer's conclusion that the appeal is frivolous." *McCoy*, 486 U. S., at 442; see also *Penson*, 488 U. S., at 81–82.

In short, "simply putting pen to paper can often shed new light on what may at first appear to be an open-and-shut issue." *Id.*, at 82, n. 4. For this reason, the Court is quite wrong to say that requiring counsel to articulate reasons for its conclusion results in "less effective advocacy." *Ante*, at 272.[2]

An appellate court that employed a law clerk to review the trial transcripts in all indigent appeals in search of arguable error could be reasonably sure that it had resolved all of those appeals "in a way that is related" to their merits. It would not, however, provide the indigent appellant with anything approaching representation by a paid attorney. Like

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[2] The *Wende* procedure at issue in this case requires a "summary of the proceedings and facts," but does not require counsel to raise any legal issues. *People* v. *Wende*, 25 Cal. 3d 436, 438, 600 P. 2d 1071, 1072 (1979); see also *ante*, at 265. This procedure plainly does not serve the above purpose, since it does not force counsel to "put pen to paper" regarding those things most relevant to an appeal—legal issues. Accordingly, and contrary to the Court's assertion, *ante*, at 280–281, this summary does not improve upon the procedure rejected in *Anders*—a "bare conclusion" by the attorney that an appeal is without merit. 386 U. S., at 742.

California's so-called *Wende* procedure, it would violate the "principle of substantial equality" that was described in *Anders* and *McCoy* and has been a part of our law for decades. *McCoy*, 486 U. S., at 438; *Anders*, 386 U. S., at 744.

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

A defendant's right to representation on appeal is limited by the prohibition against frivolous litigation, and I realize that when a lawyer's corresponding obligations are at odds with each other, there is no perfect place to draw the line between them. But because I believe the procedure adopted in *People* v. *Wende*, 25 Cal. 3d 436, 600 P. 2d 1071 (1979), fails to assure representation by counsel with the adversarial character demanded by the Constitution, I respectfully dissent.

I

Although the Sixth Amendment guarantees trial counsel to a felony defendant, see *Gideon* v. *Wainwright*, 372 U. S. 335 (1963), the Constitution contains no similarly freestanding, unconditional right to counsel on appeal, there being no obligation to provide appellate review at all, see *Ross* v. *Moffitt*, 417 U. S. 600, 606 (1974). When a State elects to provide appellate review, however, the terms on which it does so are subject to constitutional notice. See, *e. g.*, *Griffin* v. *Illinois*, 351 U. S. 12, 18 (1956); *Rinaldi* v. *Yeager*, 384 U. S. 305, 310 (1966); *Evitts* v. *Lucey*, 469 U. S. 387, 393 (1985).

In a line of cases beginning with *Griffin*, this Court examined appellate procedural schemes under the principle that justice may not be conditioned on ability to pay, see generally *Ross*, *supra*, at 605–609. Even though "[a]bsolute equality is not required," *Douglas* v. *California*, 372 U. S. 353, 357 (1963), we held in *Douglas* that when state criminal defendants are free to retain counsel for a first appeal as of right,

the Fourteenth Amendment[1] requires that indigent appellants be placed on a substantially equal footing through the appointment of counsel at the State's expense. See *McCoy* v. *Court of Appeals of Wis., Dist. 1*, 486 U. S. 429, 438 (1988) (referring to "principle of substantial equality").

Two services of appellate counsel are on point here. Appellate counsel examines the trial record with an advocate's eye, identifying and weighing potential issues for appeal. This is review not by a dispassionate legal mind but by a committed representative, pledged to his client's interests, primed to attack the conviction on any ground the record may reveal. If counsel's review reveals arguable trial error, he prepares and submits a brief on the merits and argues the appeal.

The right to the first of these services, a partisan scrutiny of the record and assessment of potential issues, goes to the irreducible core of the lawyer's obligation to a litigant in an adversary system, and we have consistently held it essential to substantial equality of representation by assigned counsel. "The paramount importance of vigorous representation follows from the nature of our adversarial system of justice." *Penson* v. *Ohio*, 488 U. S. 75, 84 (1988). See, *e. g.*, *Ellis* v. *United States*, 356 U. S. 674, 675 (1958) *(per curiam); Douglas*, *supra*, at 357–358; *McCoy*, *supra*, at 438. The right is unqualified when a defendant has retained counsel, and I can imagine no reason that it should not be so when counsel has been appointed.

Because the right to the second service, merits briefing, is not similarly unqualified, however, the issue we address

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[1] The *Griffin* line of cases has roots in both due process and equal protection, see *M. L. B.* v. *S. L. J.*, 519 U. S. 102, 120 (1996), but we have noted that "[m]ost decisions in this area have rested on an equal protection framework . . . ," *Bearden* v. *Georgia*, 461 U. S. 660, 665 (1983). See also *Ross* v. *Moffitt*, 417 U. S. 600, 611 (1974) (noting that right to appellate counsel "is more profitably considered under an equal protection analysis").

today arises. The limitation on the right to a merits brief is that no one has a right to a wholly frivolous appeal, see *Anders* v. *California*, 386 U. S. 738, 742 (1967), against which the judicial system's first line of defense is its lawyers. Being officers of the court, members of the bar are bound "not to clog the courts with frivolous motions or appeals," *Polk County* v. *Dodson*, 454 U. S. 312, 323 (1981); see also *McCoy*, *supra*, at 436, and this is of course true regardless of a lawyer's retained or appointed status in a given case. The problem to which *Anders* responds arises when counsel views his client's appeal as frivolous, leaving him duty barred from pressing it upon a court.[2]

The rub is that although counsel may properly refuse to brief a frivolous issue and a court may just as properly deny leave to take a frivolous appeal, there needs to be some reasonable assurance that the lawyer has not relaxed his partisan instinct prior to refusing,[3] in which case the court's review could never compensate for the lawyer's failure of advocacy. A simple statement by counsel that an appeal has no merit, coupled with an appellate court's endorsement of counsel's conclusion, gives no affirmative indication that anyone has sought out the appellant's best arguments or championed his cause to the degree contemplated by the adversary system. Nor do such conclusions acquire any implicit per-

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[2] *Anders* addressed the problem as confronted by assigned counsel, though in theory it can be equally acute when counsel is retained. It is unlikely to show up in practice, however. Paying clients generally can fire a lawyer expressing unsatisfying conclusions and will often find a replacement with a keener eye for arguable issues or a duller nose for frivolous ones. As a practical matter, the States may find it too difficult or costly to prevent moneyed appellants from wasting their own resources, and those of the judicial system, by bringing frivolous appeals. This does not mean, however, that the States are obligated to subsidize such efforts by indigents.

[3] An assurance, that is, that he has not become what is known around the Los Angeles County Jail as a "'dumptruck.'" Reply Brief for Petitioner 1.

suasiveness through exposure to an interested opponent's readiness to mount a challenge. The government is unlikely to dispute or even test counsel's evaluation; one does not berate an opponent for giving up. To guard against the possibility, then, that counsel has not done the advocate's work of looking hard for potential issues, there must be some prod to find any reclusive merit in an ostensibly unpromising case and some process to assess the lawyer's efforts after the fact. A judicial process that renders constitutional error invisible is, after all, itself an affront to the Constitution. See *Penson*, *supra*, at 81–82.

In *Anders*, we devised such a mechanism to ensure respect for an appellant's rights. See *Penson*, *supra*, at 80. A lawyer's request to withdraw on the ground that an appeal is frivolous "must . . . be accompanied by a brief referring to anything in the record that might arguably support the appeal." *Anders*, 386 U. S., at 744. This simply means that counsel must do his partisan best, short of calling black white, to flag the points that come closest to being appealable; the lawyer's job is to state the issues that give the defendant his best chances to prevail, even if the best comes up short under the rule against trifling with the court. "[T]he court—not counsel—," we continued, "then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous." *Ibid.*

*Anders* thus contemplates two reviews of the record, each of a markedly different character. First comes review by the advocate, the defendant's interested representative. His job is to identify the best issues the partisan eye can spot. Then comes judicial review from a disinterested judge, who asks two questions: whether the lawyer really did function as a committed advocate, and whether he misjudged the legitimate appealability of any issue. In reviewing the advocate's work, the court is responsible for assuring that counsel has gone as far as advocacy will take him with the best issues undiscounted. We have repeatedly de-

scribed the task of an appellate court in terms of this dual responsibility. "'First, [the court] must satisfy itself that the attorney has provided the client with a diligent and thorough search of the record for any arguable claim that might support the client's appeal. Second, it must determine whether counsel has correctly concluded that the appeal is frivolous.'" *Penson*, 488 U. S., at 83 (quoting *McCoy*, 486 U. S., at 442).

*Griffin* and *Anders* thus require significantly more than the abstract evaluation of the merits of conceivably appealable points. Without the assurance that assigned counsel has done his best as a partisan, his substantial equality to a lawyer retained at a defendant's expense cannot be assumed. And without the benefit of the lawyer's statement of strongest claims, the appellate panel cannot act as a reviewing court, but is relegated to an inquisitorial role.

It is owing to the importance of assuring that an adversarial, not an inquisitorial, system is at work that I disagree with the Court's statement today that our cases approve of any state procedure that "reasonably ensures that an indigent's appeal will be resolved in a way that is related to the merit of that appeal." *Ante*, at 276–277. A purely inquisitorial system could satisfy that criterion, and so could one that appoints counsel only if the appellate court deems it useful. But we have rejected the former and have explicitly held the latter unconstitutional, see *Douglas*, 372 U. S., at 355, the reason in each case being that the Constitution looks to the means as well as to the ends.[4] See *Singer* v. *United States*, 380 U. S. 24, 36 (1965) ("The Constitution recognizes an adversary system as the proper method of determining guilt . . ."). See also, *e. g.*, *Penson*, *supra*, at 87 ("A criminal appellant is entitled to a single-minded advocacy . . ."); 

[4] Of course, if appellate review is not constitutionally required, States may well be able to impose nonadversarial review on all appellants. They may not, however, reserve the adversary system for those able to afford counsel.

*Strickland* v. *Washington*, 466 U. S. 668, 685 (1984) ("The Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel's playing a role that is critical to the ability of the adversarial system to reach just results"); *United States* v. *Cronic*, 466 U. S. 648, 656 (1984) ("Thus, the adversarial process protected by the Sixth Amendment requires that the accused have 'counsel acting in the role of an advocate' ") (quoting *Anders*, *supra*, at 743).

## II

We have not held the details of *Anders* to be exclusive, but it does make sense to read the case as exemplifying what substantial equality requires on behalf of indigent appellants entitled to an advocate's review and to reasonable certainty that arguable issues will be briefed on their merits. With *Anders* thus as a benchmark, California's *Wende* procedure fails to measure up. Its primary failing is in permitting counsel to refrain as a matter of course from mentioning possibly arguable issues in a no-merit brief; its second deficiency is a correlative of the first, in obliging an appellate court to search the record for arguable issues without benefit of an issue-spotting, no-merit brief to review. See 25 Cal. 3d, at 440–442, 600 P. 2d, at 1074–1075.

Although *Wende* assumes that counsel will act as an advocate, see *id.*, at 441–442, 600 P. 2d, at 1075, it fails to assure, or even promote, the partisan attention that the Constitution requires. While the lawyer must summarize the procedural and factual history of the case with citations to the record, nothing in the *Wende* scheme requires counsel to show affirmatively, subject to evaluation, that he has made the committed search for issues and the advocate's assessment of their merits that go to the heart of appellate representation in our adversary system. It begs the question to say that "[c]ounsel's inability to find any arguable issues may readily be inferred from his failure to raise any," *id.*, at 442, 600 P. 2d, at 1075, and it misses the point to argue that the

indigent appellant is adequately protected because the lawyer assigned to a case under California's assigned counsel scheme may not file a *Wende* brief without the approval of a supervisor. The point is the need for some affirmative and express indicator that an advocate has been at work, in the form of a product that an appellate court can specifically review.[5] Thus *Anders* requires counsel to flag the best issues for the sake of keeping counsel on his toes and giving focus to judicial review of his judgment. *Wende* on the other hand requires no indication of conceivable issues and hence nothing specifically reviewable by a court bound to preserve the system's adversary character. *Wende* does no more to protect the indigent's right to advocacy than the no-merit letter condemned in *Anders*, or the conclusory statement disapproved in *Penson*.

On like reasoning, *Wende* is deficient in relying on a judge's nonpartisan review to assure that a defendant suffers no prejudice at the hands of a lawyer who has failed to document his best effort at partisan review. Exactly because our system assumes that a lawyer committed to a client is the most dependable guardian of the client's interest, see *supra*, at 296–297, we have consistently rejected procedures leaving the determination of frivolousness to the court in the first instance, see *Douglas*, *supra*, at 355–356, or to the court following a conclusory declaration by counsel, see *Penson*, *supra*, at 81–82, or to the court assisted by counsel in the role of *amicus curiae*, see *Ellis*, 356 U. S., at 675. The defect in these procedures is their entire reliance on review by a detached magistrate who does not apply the partisan scrutiny in the first instance that defendants with paid lawyers get as a matter of course.

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[5] Since the state petitioner's claims that the lawyer's unrevealing and conclusory certification has been approved by a superior are neither here nor there on my analysis, I need not evaluate assertions by *amicus* Delgado that there is no scheme of assigned representation uniform throughout the State, see Brief for Jesus Garcia Delgado as *Amicus Curiae* 8.

It goes without saying, too, that *Wende*'s reliance on judges to start from scratch in seeking arguable issues adds substantially to the burden on the judicial shoulders. While I have no need to decide whether this drawback of the *Wende* scheme is of constitutional significance, it raises questions that certainly underscore the constitutional failing of relying on judicial scrutiny uninformed by counsel's partisan analysis. In an *amicus* brief filed in this case, 13 retired justices of the Supreme Court or Courts of Appeal of California have pointed out the "risk that the review of the cold record [under the *Wende* scheme] will be more perfunctory without the issue-spotting guidance, and associated record citations, of counsel." Brief for Retired Justice Armand Arabian et al. as *Amici Curiae* 5. The *amici* have candidly represented that "[w]hen a California appellate court receives a *Wende* brief, it assigns the case to a staff attorney who prepares a memorandum analyzing all possible legal issues in the case. Typically, the staff attorney then makes an oral presentation to the appellate panel . . . ." *Id.*, at 6. When the responsibility of counsel is thrown onto the court, the court gives way to a staff attorney; it could not be clearer that *Wende* is seriously at odds with the respective obligations of counsel and the courts as contemplated by the Constitution.

## III

Unlike the Court, I reach the question of appropriate relief. With respect to respondent's *Anders* claim, the Court of Appeals premised its disposition on finding that two potentially meritorious issues showed that Robbins had been prejudiced by the failure of the *Wende* scheme to result in their litigation. I think it unnecessary to invoke such findings, however, and would hold for Robbins simply because of the failure to provide an advocate's analysis of issues as a predicate of court review. Without more, I would, in effect, require the state courts to reinstate the appeal for treatment consistent with the *Anders* application of *Griffin.*

It is true, of course, that before relief is normally granted for want of adequate assistance of trial counsel, a defendant must show not only his lawyer's failure to represent him with reasonable competence (demonstrated here by the failure to file an advocate's issue-spotting brief), but also a "reasonable probability" that competent representation would have produced a different result in his case, see *Strickland*, 466 U. S., at 694. But the assumption behind *Strickland*'s prejudice requirement is that the defendant had a lawyer who was representing him as his advocate at least at some level, whereas that premise cannot be assumed when a defendant receives the benefit of nothing more than a *Wende* brief. In a *Wende* situation, nominal counsel is functioning merely as a friend of the court, helping the judge to grasp the structure of the record but not even purporting to highlight the record's nearest approach to supporting his client's hope to appeal. Counsel under *Wende* is doing less than the judge's law clerk (or a staff attorney) might do, and he is doing nothing at all in the way of advocacy. When a lawyer abandons the role of advocate and adopts that of *amicus curiae*, he is no longer functioning as counsel or rendering assistance within the meaning of the Sixth Amendment. See *Cronic*, 466 U. S., at 654–655. Since the apparently missing ingredient of the advocate's analysis goes to the very essence of the right to counsel, a lawyer who does nothing more than file a *Wende* brief is closer to being no counsel at all than to being subpar counsel under *Strickland.*

This, I think, is the answer to any suggestion that a specific assessment of prejudice need be shown in order to get relief from *Wende.* A complete absence of counsel is a reversible violation of the constitutional right to representation, even when there is no question that at the end of the day the smartest lawyer in the world would have watched his client being led off to prison. See *Cronic*, *supra*, at 658–659; cf. *Rodriquez* v. *United States*, 395 U. S. 327 (1969). We do not ask how the defendant would have fared if he had

been given counsel, and we should not look to what sort of appeal might have ensued if an appellant's lawyer had flagged the points that came closest to appealable issues. Such a result is equally consistent with our cases holding a violation of due process to be complete when a defendant is denied a right to the appeal he is otherwise entitled to pursue. See *Peguero* v. *United States*, 526 U. S. 23, 30–31 (1999) (O'CONNOR, J., concurring); *Rodriquez*, *supra*, at 330.[6]

This conclusion was anticipated in *Penson*, in which we dealt with the violation of *Anders* standards when counsel was allowed to withdraw without supplying the court with his best effort to identify appealable weaknesses, and prior to any judicial determination that counsel had missed nothing in finding no arguable appellate issues in the record. The appellate court in *Penson* subsequently identified arguable issues but thought the appointment of new counsel unnecessary after finding that any legitimately appealable issues would be losers. This Court recognized a presumption of prejudice without more, for purposes of both *Strickland* and *Chapman* v. *California*, 386 U. S. 18 (1967). See *Penson*, 488 U. S., at 85–86. Although the state court's failure to appoint counsel after identifying issues made *Penson* an egregious case, *id.*, at 83, the failure of advocacy and consequent constructive absence of counsel was clear even at the point at which the lawyer withdrew, *id.*, at 82, and the presumption of prejudice applicable then is applicable in this case now.

There is practical sense as well as good theory behind this presumption of prejudice, for any requirement to demonstrate prejudice specifically would often place federal judges on habeas in highly precarious positions calling for judgments that state judges are generally better qualified to

[6] Although this habeas proceeding began on February 24, 1994, and is therefore not governed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), see *Lindh* v. *Murphy*, 521 U. S. 320 (1997), the result should be no different in a post-AEDPA case. See *infra*, at 303.

make. Since there will have been no advocate's help in analyzing the record on the direct state appeal, and since counsel may well have been absent formally as well as constructively in any state postconviction proceedings, the federal judge would be looking for (among other things) previously unidentified state-law issues not previously waived. One could not ask for a more certain guarantee of inefficient and time consuming judicial effort.[7]

What remains is only to say a word about the State's argument that relief in this case is barred under *Teague* v. *Lane*, 489 U. S. 288 (1989), as requiring application of a new rule of law not clearly entailed by our prior holdings. The argument seems to be that California has relied on *Wende* for so long that any disapproval from a federal court at this juncture is some sort of novelty (resulting from the failure of other state defendants to reach the federal courts earlier with *Wende* objections). The obvious answer is that the application of *Douglas* and *Griffin* standards to meritless appeals has been subject to repeated explanation starting with *Anders* and echoed in *McCoy* and *Penson*. Once general rules are announced they do not become "new" again with every particular violation that may subsequently occur. See *Saffle* v. *Parks*, 494 U. S. 484, 491–492 (1990) (discussing application of the rule of *Jurek* v. *Texas*, 428 U. S. 262 (1976),

[7] Since a *Wende* case is like a denial of counsel, it would make no more sense to give the State an option to demonstrate no prejudice under *Chapman* v. *California*, 386 U. S. 18 (1967), or *Brecht* v. *Abrahamson*, 507 U. S. 619 (1993), than it would to require a defendant to show it under *Strickland* v. *Washington*, 466 U. S. 668 (1984). The presumption of prejudice does not, however, promise relief to every California defendant whose appeal was dismissed as frivolous and against whom the statute of limitations has not run, see 28 U. S. C. § 2244(d)(1) (1994 ed., Supp. III). One submission before us claims that the *Wende* scheme has not supplanted *Anders* v. *California*, 386 U. S. 738 (1967), throughout California. See Brief for Jesus Garcia Delgado as *Amicus Curiae* 9–10. Briefs that measure up according to the standards adumbrated in *Anders* would of course receive standard *Strickland* analysis.

in *Penry* v. *Lynaugh*, 492 U. S. 302 (1989)). The same point, of course, would answer any objection under the AEDPA that an *Anders* petitioner was seeking to go beyond "clearly established Federal law, as determined by the Supreme Court of the United States," 28 U. S. C. § 2254(d)(1) (1994 ed., Supp. III).

* * *

The *Wende* procedure does not assure even the most minimal assistance of counsel in an adversarial role. The Constitution demands such assurances, and I would hold Robbins entitled to an appeal that provides them.

Syllabus

# UNITED STATES *v.* MARTINEZ-SALAZAR

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

No. 98–1255. Argued November 29, 1999—Decided January 19, 2000

Respondent Martinez-Salazar and a codefendant were charged with a variety of federal offenses. As the Federal Rules of Criminal Procedure instruct, the District Court allotted them 10 peremptory challenges exercisable jointly in the selection of 12 jurors, Rule 24(b), and another such challenge exercisable in the selection of an alternate juror, Rule 24(c). Because prospective juror Don Gilbert indicated several times that he would favor the prosecution, the codefendants challenged him for cause, but the District Court declined to excuse him. After twice objecting, unsuccessfully, to the for-cause ruling, Martinez-Salazar used a peremptory challenge to remove Gilbert. The codefendants subsequently exhausted all of their peremptory challenges. At the close of jury selection, the District Court read the names of the jurors to be seated and asked if the prosecutor or defense counsel had any objections to any of those jurors. Martinez-Salazar's counsel responded: "None from us." At the conclusion of the trial, Martinez-Salazar was convicted on all counts. On appeal, the Ninth Circuit agreed with him (and the Government here does not contest) that the District Court's refusal to strike Gilbert for cause was an abuse of discretion. This error, the Ninth Circuit held, did not violate the Sixth Amendment, because Gilbert was removed and the impartiality of the jury eventually seated was not challenged. But the Court of Appeals further concluded that the District Court's mistake resulted in a violation of Martinez-Salazar's Fifth Amendment due process rights because it forced him to use a peremptory challenge curatively, thereby impairing his right to the full complement of peremptory challenges to which federal law entitled him. Such an error, the Court of Appeals held, requires automatic reversal.

*Held:* A defendant's exercise of peremptory challenges pursuant to Rule 24 is not denied or impaired when the defendant chooses to use such a challenge to remove a juror who should have been excused for cause. Pp. 311–317.

(a) Although the peremptory challenge plays an important role in reinforcing a defendant's constitutional right to trial by an impartial jury, see, *e. g., Swain* v. *Alabama*, 380 U. S. 202, 212–213, 218–219, this Court has long recognized that such challenges are auxiliary; unlike the right to an impartial jury guaranteed by the Sixth Amendment, peremptory

challenges are not of federal constitutional dimension, see, *e. g.*, *Ross* v. *Oklahoma*, 487 U. S. 81, 88. Peremptory challenges in federal criminal trials are governed by Rule 24 of the Federal Rules of Criminal Procedure. Rule 24(b) prescribes, *inter alia*, that for offenses "punishable by imprisonment for more than one year, . . . the defendant or defendants [are] jointly [entitled] to 10 peremptory challenges." Rule 24(c) further provides that when, as in this case, an alternate juror is to be selected, each side is entitled to one peremptory challenge in selecting that juror. The question to which the Court turns is whether Martinez-Salazar was denied any right for which Rule 24 provides. Pp. 311–313.

(b) *Ross* dealt with a state-law question resembling the one presented here. This Court first rejected the *Ross* defendant's position that, without more, the loss of a peremptory challenge constitutes a violation of the constitutional right to an impartial jury. 487 U. S., at 88. So long as the jury that sits is impartial, the Court held, the fact that the defendant had to use a peremptory challenge to achieve that result does not mean the Sixth Amendment was violated. *Ibid.* The Court then rejected the defendant's due process objection that forced use of a peremptory challenge to cure a trial court's error in denying a challenge for cause arbitrarily deprived him of the full complement of peremptory challenges allowed under Oklahoma law. *Id.*, at 89. An Oklahoma statute accorded the defendant nine such challenges. Oklahoma courts had read into that grant a requirement that a defendant who disagreed with the trial court's ruling on a for-cause challenge must, in order to preserve the claim that the ruling deprived him of a fair trial, exercise a peremptory challenge to remove the juror. *Ibid.* Even then, under state law, the error was grounds for reversal only if the defendant exhausted all peremptory challenges, and an incompetent juror therefore was forced upon him. *Ibid.* The defendant in *Ross*, the Court concluded, did not lose any state-law right when he used one of his nine challenges to remove a juror who should have been excused for cause; rather, he received all that state law allowed him, and the fair trial that the Federal Constitution guaranteed. *Id.*, at 90–91. Pp. 313–314.

(c) This Court rejects the Government's contention that federal law, like the Oklahoma statute considered in *Ross*, should be read to require a defendant to use a peremptory challenge to strike a juror who should have been removed for cause, in order to preserve the claim that the for-cause ruling impaired the defendant's right to a fair trial. Although this Court has sanctioned various limitations on the exercise of peremptory challenges that could be viewed as effectively reducing the number of challenges available to a defendant, see, *e. g.*, *Stilson* v. *United States*, 250 U. S. 583, 586, these cases address procedures under which such

challenges are exercised. None of them demands that a defendant use or refrain from using a challenge on a particular basis or when a particular set of facts is present. To date this Court has recognized only one substantive control over a federal criminal defendant's choice of whom to challenge peremptorily. Under the Equal Protection Clause, a defendant may not exercise a challenge to remove a potential juror solely on the basis of the juror's gender, ethnic origin, or race. See, *e. g.*, *Batson* v. *Kentucky*, 476 U. S. 79. The Court declines to read into Rule 24, or otherwise impose, the further control advanced by the Government. Pp. 314–315.

(d) However, the Court agrees with the Government's narrower contention that Rule 24(b) was not violated in this case. The Ninth Circuit erred in concluding that the District Court's mistake compelled Martinez-Salazar to challenge Gilbert peremptorily, thereby reducing his allotment of peremptory challenges by one. A hard choice is not the same as no choice. Martinez-Salazar received and exercised 11 peremptory challenges. That is all he is entitled to under the Rule. After objecting to the District Court's denial of his for-cause challenge, he had the option of letting Gilbert sit on the petit jury and, upon conviction, pursuing a Sixth Amendment challenge on appeal. Instead, he elected to use a challenge to remove Gilbert. In choosing to remove Gilbert rather than taking his chances on appeal, Martinez-Salazar did not lose a peremptory challenge. Rather, he used the challenge in line with a principal reason for peremptories: to help secure the constitutional guarantee of trial by an impartial jury. See, *e. g.*, *J. E. B.* v. *Alabama ex rel. T. B.*, 511 U. S. 127, 137, n. 8. Moreover, the immediate choice he confronted comports with the reality of the jury selection process. Challenges for cause and rulings upon them are fast paced, made on the spot and under pressure. Counsel as well as court in that process must be prepared promptly to decide, often between shades of gray. Pp. 315–317.

(e) Martinez-Salazar and his codefendant were accorded the exact number of peremptory challenges that federal law allowed; he cannot tenably assert any violation of his Fifth Amendment due process right. See *Ross*, 487 U. S., at 91. P. 317.

146 F. 3d 653, reversed.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, SOUTER, THOMAS, and BREYER, JJ., joined. SOUTER, J., filed a concurring opinion, *post*, p. 317. SCALIA, J., filed an opinion concurring in the judgment, in which KENNEDY, J., joined, *post*, p. 318.

*Deputy Solicitor General Dreeben* argued the cause for the United States. With him on the briefs were *Solicitor General Waxman*, *Assistant Attorney General Robinson*, *David C. Frederick*, and *Richard A. Friedman*.

*Michael D. Gordon*, by appointment of the Court, 527 U. S. 1054, argued the cause and filed a brief for respondent.*

JUSTICE GINSBURG delivered the opinion of the Court.

In *Ross* v. *Oklahoma*, 487 U. S. 81 (1988), this Court reaffirmed that "peremptory challenges [to prospective jurors] are not of constitutional dimension," *id.*, at 88; rather, they are one means to achieve the constitutionally required end of an impartial jury. We address in this case a problem in federal jury selection left open in *Ross*. See *id.*, at 91, n. 4. We focus on this sequence of events: the erroneous refusal of a trial judge to dismiss a potential juror for cause, followed by the defendant's exercise of a peremptory challenge to remove that juror. Confronting that order of events, the United States Court of Appeals for the Ninth Circuit ruled that the Due Process Clause of the Fifth Amendment requires automatic reversal of a conviction whenever the defendant goes on to exhaust his peremptory challenges during jury selection. 146 F. 3d 653 (1998).

We reverse the Ninth Circuit's judgment. We reject the Government's contention that under federal law, a defendant is obliged to use a peremptory challenge to cure the judge's error. We hold, however, that if the defendant elects to cure such an error by exercising a peremptory challenge, and is subsequently convicted by a jury on which no biased juror sat, he has not been deprived of any rule-based or constitutional right.

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**David A. Reiser* and *Barbara Bergman* filed a brief for the National Association of Criminal Defense Lawyers et al. as *amici curiae* urging affirmance.

## I

Respondent Abel Martinez-Salazar and a codefendant were tried by a jury in the United States District Court for the District of Arizona for a variety of narcotics and weapons offenses. As Rule 24(b) of the Federal Rules of Criminal Procedure instructs, the District Court allotted the codefendants 10 peremptory challenges exercisable jointly in the selection of 12 jurors. Martinez-Salazar and his codefendant also received an additional peremptory challenge exercisable in the selection of an alternate juror. See Fed. Rule Crim. Proc. 24(c).

Prior to jury selection, the District Court gave the prospective jurors a written questionnaire to complete. See 146 F. 3d, at 654–655. A potential juror, Don Gilbert, indicated on his questionnaire that he would favor the prosecution. *Id.*, at 655. In a discussion with the trial judge, Gilbert restated: "[A]ll things being equal, I would probably tend to favor the prosecution." *Ibid.* The judge explained that the burden of proving a person guilty rests with the Government. Gilbert said he would not disagree with that proposition. The judge next asked Gilbert whether, if he were a defendant facing jurors with backgrounds and opinions similar to his own, he thought he would get a fair trial. Gilbert answered: "I think that's a difficult question. I don't think I know the answer to that." *Ibid.* Martinez-Salazar's counsel then inquired whether Gilbert would feel more comfortable erring on the side of the prosecution or the defense. Gilbert responded: "I would probably be more favorable to the prosecution. I suppose most people are. I mean, they're predisposed. You assume that people are on trial because they did something wrong." *Ibid.* The judge then told Gilbert that his response was "contrary to our whole system of justice. When people are accused of a crime, there's no presumption . . . of guil[t]. The presumption is the other way." *Ibid.* Gilbert replied, "I understand that in theory." *Ibid.*

At the completion of this colloquy, Martinez-Salazar and his codefendant challenged Gilbert for cause. The Government opposed the challenge. The District Court declined to excuse Gilbert for cause, stating: "You know about him and know his opinions. He said . . . he could follow the instructions, and he said . . . 'I don't think I know what I would do,' et cetera. So I think you have reasons to challenge him[,] . . . strike him if you choose to do that." *Ibid.*

After twice objecting, unsuccessfully, to the for-cause ruling, Martinez-Salazar used a peremptory challenge to remove Gilbert. Martinez-Salazar and his codefendant subsequently exhausted all of their peremptory challenges. The codefendants did not request an additional peremptory challenge for selection of the petit jury (a request Rule 24(b) expressly permits a district court to grant when there are multiple defendants). See Tr. of Oral Arg. 34–35. At the close of jury selection, the District Court read out the names of the jurors to be seated and asked if the prosecutor or defense counsel had any objections to any of those jurors. Martinez-Salazar's counsel responded: "None from us." App. 182. At the conclusion of the trial, Martinez-Salazar was convicted on all counts.

On appeal, Martinez-Salazar contended that the District Court abused its discretion in refusing to strike Gilbert for cause and that this error forced Martinez-Salazar to use a peremptory challenge on Gilbert. The Ninth Circuit agreed (and the Government here does not contest) that the District Court's refusal to strike Gilbert for cause was an abuse of discretion. 146 F. 3d, at 656. This error, the Court of Appeals held, did not violate the Sixth Amendment, because Gilbert was removed and the impartiality of the jury eventually seated was not challenged. *Id.*, at 657. But the Court of Appeals further concluded that the District Court's mistake resulted in a violation of Martinez-Salazar's Fifth Amendment due process rights. According to the Ninth Circuit, the District Court's error in denying the for-cause

challenge forced Martinez-Salazar to use a peremptory challenge curatively, thereby impairing his right to the full complement of peremptory challenges to which federal law entitled him. Such an error, the Court of Appeals held, requires automatic reversal. *Id.*, at 659.

Judge Rymer dissented in part. She observed that nothing in the text of Rule 24(b) suggests that the exercise of peremptory challenges is impaired if the defendant uses a challenge to remove a juror who should have been excused for cause. *Id.*, at 659–660. Martinez-Salazar, she emphasized, never asserted in the District Court that he wished to strike some other juror with the peremptory challenge he used to remove Gilbert, nor did he question the impartiality of the jury as finally composed. *Id.*, at 660. Assuming, *arguendo*, that there was a violation of Rule 24(b), Judge Rymer "would not engraft [onto the Due Process Clause] a common law remedy of per se reversal for a Rule violation." *Id.*, at 661. The court's decision "*[c]onstitutionalizing* the impairment of peremptory challenges," she underscored, ran counter to this Court's decision in *Ross* and was hardly "inconsequential" in view of the reality that "[t]rial courts, state and federal, rule on cause challenges by the minute." *Id.*, at 659, 661.

The Courts of Appeals have divided on the question whether a defendant's peremptory challenge right is impaired when he peremptorily challenges a potential juror whom the district court erroneously refused to excuse for cause, and the defendant thereafter exhausts his peremptory challenges. The First and Fifth Circuits have indicated agreement with the Ninth Circuit that this circumstance constitutes an abridgment of the right to exercise peremptory challenges. See *United States* v. *Cambara*, 902 F. 2d 144, 147–148 (CA1 1990); *United States* v. *Hall*, 152 F. 3d 381, 408 (CA5 1998). The Tenth and Eleventh Circuits, on the other hand, have found in this situation no impairment of the right to peremptory challenges. See *United States* v. *Brooks*, 161

F. 3d 1240, 1245–1246 (CA10 1998); *United States* v. *Farmer*, 923 F. 2d 1557, 1566 (CA11 1991).[1] We granted certiorari, 527 U. S. 1021 (1999), and now reverse the Ninth Circuit's judgment.

## II

The peremptory challenge is part of our common-law heritage. Its use in felony trials was already venerable in Blackstone's time. See 4 W. Blackstone, Commentaries 346–348 (1769). We have long recognized the role of the peremptory challenge in reinforcing a defendant's right to trial by an impartial jury. See, *e. g.*, *Swain* v. *Alabama*, 380 U. S. 202, 212–213, 218–219 (1965); *Pointer* v. *United States*, 151 U. S. 396, 408 (1894). But we have long recognized, as well, that such challenges are auxiliary; unlike the right to an impartial jury guaranteed by the Sixth Amendment, peremptory challenges are not of federal constitutional dimension. *Ross*, 487 U. S., at 88; see *Stilson* v. *United States*, 250 U. S. 583, 586 (1919) ("There is nothing in the Constitution of the United States which requires the Congress to grant peremptory challenges.").

Legislative provision for peremptory challenges in federal criminal trials dates from 1790. See Act of Apr. 30, 1790, ch. 9, § 30, 1 Stat. 119. Since 1946, Rule 24 of the Federal Rules of Criminal Procedure has provided the governing instructions. That Rule, reproduced in its entirety below,[2]

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[1] There is a corresponding conflict among the Circuits in civil cases. Compare *Kirk* v. *Raymark Industries, Inc.*, 61 F. 3d 147, 157 (CA3 1995) (right to peremptory challenge is impaired when a party exercises such a challenge to strike a prospective juror who should have been removed for cause), with *Getter* v. *Wal-Mart Stores, Inc.*, 66 F. 3d 1119, 1122–1123 (CA10 1995) (no impairment).

[2] Rule 24. Trial Jurors.

"(a) EXAMINATION. The court may permit the defendant or the defendant's attorney and the attorney for the government to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event the court shall permit the defendant or the defendant's attorney and the attorney for the government to supplement the examina-

prescribes that for offenses "punishable by imprisonment for more than one year, the government is entitled to 6 peremptory challenges and the defendant or defendants jointly to 10 peremptory challenges." Fed. Rule Crim. Proc. 24(b). In a multiple-defendant case, the district court "may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly." *Ibid.* The Rule also provides for further peremptory challenges when alternate jurors are to be impanelled; when, as in Martinez-Salazar's case, an alternate is to be selected, each side is entitled to one peremptory challenge in selecting that juror.

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tion by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions by the parties or their attorneys as it deems proper.

"(b) PEREMPTORY CHALLENGES. If the offense charged is punishable by death, each side is entitled to 20 peremptory challenges. If the offense charged is punishable by imprisonment for more than one year, the government is entitled to 6 peremptory challenges and the defendant or defendants jointly to 10 peremptory challenges. If the offense charged is punishable by imprisonment for not more than one year or by fine or both, each side is entitled to 3 peremptory challenges. If there is more than one defendant, the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly.

"(c) ALTERNATE JURORS. The court may direct that not more than 6 jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to 1 peremptory challenge in addition to those otherwise allowed by law if 1 or 2 alternate jurors are to be impanelled, 2 peremptory challenges if 3 or 4 alternate jurors are to be impanelled, and 3 peremptory challenges if 5 or 6 alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate jury only, and the other peremptory challenges allowed by these rules may not be used against an alternate juror."

Fed. Rule Crim. Proc. 24(c). The question to which we now turn is whether Martinez-Salazar was denied any right for which Rule 24 provides.

## III

Our most recent decision in point is *Ross* v. *Oklahoma*. That 1988 decision dealt with a question resembling the one presented here, although the issue in *Ross* arose in a state-law setting. The defendant in *Ross* exercised a peremptory challenge to cure the trial court's error in denying a challenge for cause. We first rejected, as the Ninth Circuit rightly did in the decision under review, the position that, without more, "the loss of a peremptory challenge constitutes a violation of the constitutional right to an impartial jury." 487 U. S., at 88. "So long as the jury that sits is impartial," we held, "the fact that the defendant had to use a peremptory challenge to achieve that result does not mean the Sixth Amendment was violated." *Ibid.* We then took up the defendant's due process objection. He argued that forced use of a peremptory challenge to cure a trial court's error in denying a challenge for cause "arbitrarily depriv[ed] him of the full complement of . . . peremptory challenges allowed under Oklahoma law." *Id.*, at 89. An Oklahoma statute accorded the defendant nine peremptory challenges. Oklahoma courts had read into that grant a requirement that "a defendant who disagrees with the trial court's ruling on a for-cause challenge must, in order to preserve the claim that the ruling deprived him of a fair trial, exercise a peremptory challenge to remove the juror." *Ibid.* Even then, under Oklahoma law, "the error [was] grounds for reversal only if the defendant exhaust[ed] all peremptory challenges and an incompetent juror [was] forced upon him." *Ibid.* The defendant in *Ross*, we therefore concluded, did not lose any right conferred by state law when he used one of his nine challenges to remove a juror who should have been excused for cause. Because the defendant received all that state law allowed him, and the fair trial that the Federal Constitution

guaranteed, we rejected his due process challenge. *Id.*, at 90–91.

Underlying the Court of Appeals holding in this case was the notion that the District Court's error in denying the challenge for cause "forced" Martinez-Salazar to use a peremptory challenge to remove the objectionable venire member. 146 F. 3d, at 659. Starting from this premise, the Court of Appeals reasoned that Rule 24(b) was violated because Martinez-Salazar could effectively exercise only nine of the ten initial peremptory challenges for which the Rule provided. The Court of Appeals further concluded that "due process is violated when a defendant is forced to exercise a peremptory challenge to cure an erroneous for-cause refusal." *Id.*, at 658.

The Government urges us to reverse the Court of Appeals judgment on the ground that federal law, like the Oklahoma statute considered in *Ross*, should be read to require a defendant to use a peremptory challenge to strike a juror who should have been removed for cause, in order to preserve the claim that the for-cause ruling impaired the defendant's right to a fair trial. Brief for United States 19–22. In support of its position, the Government points to various limitations on the exercise of peremptory challenges that this Court has sanctioned—limitations that could be viewed as effectively reducing the number of challenges available to a defendant. See Reply Brief 3 (citing *Stilson*, 250 U. S., at 586 (sharing of peremptories among codefendants); *St. Clair* v. *United States*, 154 U. S. 134, 147–148 (1894) (requirement that parties exercise or waive peremptory strike as each potential juror is selected at random and qualified); *Pointer*, 151 U. S., at 409, 412 (simultaneous defense and prosecution strikes)). The cases on which the Government relies address procedures under which peremptory challenges are exercised. None of them demands that a defendant use or refrain from using a peremptory challenge on a particular basis or when a particular set of facts is present. To date

this Court has recognized only one substantive control over a federal criminal defendant's choice of whom to challenge peremptorily. Under the Equal Protection Clause, a defendant may not exercise a peremptory challenge to remove a potential juror solely on the basis of the juror's gender, ethnic origin, or race. See, *e. g.*, *J. E. B.* v. *Alabama ex rel. T. B.*, 511 U. S. 127 (1994) (gender); *Hernandez* v. *New York*, 500 U. S. 352 (1991) (ethnic origin); *Batson* v. *Kentucky*, 476 U. S. 79 (1986) (race). We decline to read into Rule 24, or otherwise impose, the further control advanced by the Government.

We agree, however, with the Government's narrower contention that Rule 24(b) was not violated in this case. Reply Brief 2–3. The Court of Appeals erred in concluding that the District Court's for-cause mistake compelled Martinez-Salazar to challenge Gilbert peremptorily, thereby reducing his allotment of peremptory challenges by one. 146 F. 3d, at 659. A hard choice is not the same as no choice. Martinez-Salazar, together with his codefendant, received and exercised 11 peremptory challenges (10 for the petit jury, 1 in selecting an alternate juror). That is all he is entitled to under the Rule.

After objecting to the District Court's denial of his for-cause challenge, Martinez-Salazar had the option of letting Gilbert sit on the petit jury and, upon conviction, pursuing a Sixth Amendment challenge on appeal. Instead, Martinez-Salazar elected to use a challenge to remove Gilbert because he did not want Gilbert to sit on his jury. This was Martinez-Salazar's choice.[3] The District Court did not demand—and Rule 24(b) did not require—that Martinez-Salazar use a peremptory challenge curatively.

In choosing to remove Gilbert rather than taking his chances on appeal, Martinez-Salazar did not lose a peremp-

[3] The choice would be less hard, of course, if, as JUSTICE SCALIA hypothesizes, the "defendant had plenty of peremptories left." See *post*, at 319 (opinion concurring in judgment).

tory challenge. Rather, he used the challenge in line with a principal reason for peremptories: to help secure the constitutional guarantee of trial by an impartial jury. See, *e. g.*, *J. E. B.*, 511 U. S., at 137, n. 8 (purpose of peremptory challenges "'is to permit litigants to assist the government in the selection of an impartial trier of fact'") (quoting *Edmonson* v. *Leesville Concrete Co.*, 500 U. S. 614, 620 (1991)); *Georgia* v. *McCollum*, 505 U. S. 42, 57 (1992) (peremptory challenges are "one state-created means to the constitutional end of an impartial jury and a fair trial"); *Frazier* v. *United States*, 335 U. S. 497, 505 (1948) ("the right [to peremptory challenges] is given in aid of the party's interest to secure a fair and impartial jury"). Moreover, the immediate choice Martinez-Salazar confronted—to stand on his objection to the erroneous denial of the challenge for cause or to use a peremptory challenge to effect an instantaneous cure of the error—comports with the reality of the jury selection process. Challenges for cause and rulings upon them, as Judge Rymer observed, see *supra*, at 310, are fast paced, made on the spot and under pressure. Counsel as well as court, in that setting, must be prepared to decide, often between shades of gray, "by the minute." 146 F. 3d, at 661.

In conclusion, we note what this case does not involve. It is not asserted that the trial court deliberately misapplied the law in order to force the defendants to use a peremptory challenge to correct the court's error. See *Ross*, 487 U. S., at 91, n. 5. Accordingly, no question is presented here whether such an error would warrant reversal. Nor did the District Court's ruling result in the seating of any juror who should have been dismissed for cause. As we have recognized, that circumstance would require reversal. See *id.*, at 85 ("Had [the biased juror] sat on the jury that ultimately sentenced petitioner to death, and had petitioner properly preserved his right to challenge the trial court's failure to remove [the juror] for cause, the sentence would have to be overturned."); see also *Parker* v. *Gladden*, 385 U. S. 363, 366

(1966) *(per curiam)* (a defendant is "entitled to be tried by 12, not 9 or even 10, impartial and unprejudiced jurors").[4]

* * *

We answer today the question left open in *Ross* and hold that a defendant's exercise of peremptory challenges pursuant to Rule 24(b) is not denied or impaired when the defendant chooses to use a peremptory challenge to remove a juror who should have been excused for cause. Martinez-Salazar and his codefendant were accorded 11 peremptory challenges, the exact number Rule 24(b) and (c) allowed in this case. Martinez-Salazar received precisely what federal law provided; he cannot tenably assert any violation of his Fifth Amendment right to due process. See *Ross*, 487 U. S., at 91. For the reasons stated, the judgment of the Court of Appeals for the Ninth Circuit is

*Reversed.*

JUSTICE SOUTER, concurring.

I concur in the opinion of the Court. I write only to suggest that this case does not present the issue whether it is reversible error to refuse to afford a defendant a peremptory challenge beyond the maximum otherwise allowed, when he has used a peremptory challenge to cure an erroneous denial of a challenge for cause and when he shows that he would

[4] Relying on language in *Swain* v. *Alabama*, 380 U. S. 202 (1965), as did the Court of Appeals in the decision below, Martinez-Salazar urges the Court to adopt a remedy of automatic reversal whenever a defendant's right to a certain number of peremptory challenges is substantially impaired. Brief for Respondent 29 (a "'denial or impairment of the right [to exercise peremptory challenges] is reversible error without a showing of prejudice'") (quoting *Swain*, 380 U. S., at 219). Because we find no impairment, we do not decide in this case what the appropriate remedy for a substantial impairment would be. We note, however, that the oft-quoted language in *Swain* was not only unnecessary to the decision in that case—because *Swain* did not address any claim that a defendant had been denied a peremptory challenge—but was founded on a series of our early cases decided long before the adoption of harmless-error review.

otherwise use his full complement of peremptory challenges for the noncurative purposes that are the focus of the peremptory right. Martinez-Salazar did not show that, if he had not used his peremptory challenge curatively, he would have used it peremptorily against another juror. He did not ask for a makeup peremptory or object to any juror who sat. Martinez-Salazar simply made a choice to use his peremptory challenge curatively.

JUSTICE SCALIA, with whom JUSTICE KENNEDY joins, concurring in the judgment.

I agree with the Court's analysis of the issue before us: Respondent has been accorded the full number of peremptory challenges to which he was entitled. The fact that he voluntarily chose to expend one of them upon a venireman who should have been stricken for cause makes no difference.

I do not join the opinion of the Court because it unnecessarily pronounces upon the question whether, had respondent *not* expended his peremptory challenge, he would have been able to complain about the seating of the biased juror. See *ante*, at 315 ("Martinez-Salazar had the option of letting Gilbert sit on the petit jury and, upon conviction, pursuing a Sixth Amendment challenge on appeal"). Since he *did* expend the challenge, that issue is simply not before us.

I am far from certain, moreover, that the Court's suggested resolution of the issue is correct. It is easy enough to agree that we have no warrant "to read into Rule 24," *ibid.*, a requirement that peremptories be used to remove veniremen properly challenged for cause. The difficult question, however, is not whether Federal Rule of Criminal Procedure 24(b) requires exercise of the peremptory, but whether normal principles of waiver (not to say the even more fundamental principle of *volenti non fit injuria*) disable a defendant from objecting on appeal to the seating of a juror he was entirely able to prevent. I would not find it easy to overturn a conviction where, to take an extreme ex-

ample, a defendant had plenty of peremptories left but chose instead to allow to be placed upon the jury a person to whom he had registered an objection for cause, and whose presence he believed would nullify any conviction.

The resolution of juror-bias questions is never clear cut, and it may well be regarded as one of the very purposes of peremptory challenges to enable the defendant to correct judicial error on the point. Indeed, that *must* have been one of their purposes in earlier years, when there was *no appeal* from a criminal conviction, see *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324, 335–336 (1904)—so that if the defendant did not correct the error by using one of his peremptories, the error would not be corrected at all. It is certainly not clear to me that the institution of appeals exempted defendants from using peremptories for this original purpose, thereby giving them (in effect) additional challenges.

Because the question is not presented (and hence cannot be authoritatively resolved), I would leave it unaddressed.

Syllabus

# RENO, ATTORNEY GENERAL *v.* BOSSIER PARISH SCHOOL BOARD

## APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 98–405. Argued April 26, 1999—Reargued October 6, 1999—Decided January 24, 2000*

Bossier Parish, Louisiana, a jurisdiction covered by § 5 of the Voting Rights Act of 1965, is thereby prohibited from enacting any change in a "voting qualification[,] prerequisite[,] standard, practice, or procedure" without first obtaining preclearance from either the Attorney General or the District Court. When, following the 1990 census, the Bossier Parish School Board (Board) submitted a proposed redistricting plan to the Attorney General, she denied preclearance. The Board then filed this preclearance action in the District Court. Section 5 authorizes preclearance of a proposed voting change that "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." Appellants conceded that the Board's plan did not have a prohibited "effect" under § 5, since it was not "retrogressive," *i. e.*, did not worsen the position of minority voters, see *Beer* v. *United States*, 425 U. S. 130, but claimed that it violated § 5 because it was enacted for a discriminatory "purpose." The District Court granted preclearance. On appeal, this Court disagreed with the District Court's proposition that *all* evidence of a dilutive (but nonretrogressive) effect forbidden by § 2 was irrelevant to whether the Board enacted the plan with a retrogressive purpose forbidden by § 5. *Reno* v. *Bossier Parish School Bd.*, 520 U. S. 471, 486–487 *(Bossier Parish I)*. This Court vacated and remanded for further proceedings as to the Board's purpose in adopting its plan, *id.*, at 486, leaving for the District Court the question whether the § 5 purpose inquiry ever extends beyond the search for retrogressive intent, *ibid.* On remand, the District Court again granted preclearance. Concluding, *inter alia*, that there was no evidence of discriminatory but nonretrogressive purpose, the court left open the question whether § 5 prohibits preclearance of a plan enacted with such a purpose.

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*Together with No. 98–406, *Price et al.* v. *Bossier Parish School Bd.*, also on appeal from the same court.

Syllabus

*Held:*

1. The Court rejects the Board's contention that these cases are mooted by the fact that the 1992 plan will never again be used because the next scheduled election will occur in 2002, when the Board will have a new plan in place based upon data from the 2000 census. In at least one respect, the 1992 plan will have probable continuing effect: It will serve as the baseline against which appellee's next voting plan will be evaluated for preclearance purposes. Pp. 327–328.

2. In light of § 5's language and *Beer*'s holding, § 5 does not prohibit preclearance of a redistricting plan enacted with a discriminatory but nonretrogressive purpose. Pp. 328–341.

(a) In order to obtain preclearance, a covered jurisdiction must establish that the proposed change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." The covered jurisdiction bears the burden of persuasion on both points. See, *e. g.*, *Bossier Parish I*, *supra*, at 478. In *Beer*, the Court concluded that, in the context of a § 5 vote-dilution claim, the phrase "abridging the right to vote on account of race or color" limited the term "effect" to retrogressive effects. 425 U. S., at 141. Appellants' contention that in qualifying the term "purpose," the very same phrase does *not* impose a limitation to retrogression, but means discrimination more generally, is untenable. See *BankAmerica Corp.* v. *United States*, 462 U. S. 122, 129. *Richmond* v. *United States*, 422 U. S. 358, 378–379, distinguished. Appellants argue that subjecting both prongs to the same limitation produces a purpose prong with a trivial reach, covering only "incompetent retrogressors." If this were true—and if it were adequate to justify giving the very same words different meanings when qualifying "purpose" and "effect"—there would be instances in which this Court applied such a construction to the innumerable statutes barring conduct with a particular "purpose or effect," yet appellants are unable to cite a single case. Moreover, the purpose prong has *value and effect* even when it does not cover conduct additional to that of a so-called incompetent retrogressor: The Government need only refute a jurisdiction's prima facie showing that a proposed voting change does not have a retrogressive purpose, and need not counter the jurisdiction's evidence regarding actual retrogressive effect. Although virtually identical language in § 2(a) and the Fifteenth Amendment has been read to refer not only to retrogression, but to discrimination more generally, giving the language different meaning in § 5 is faithful to the different context in which the term "abridging" is used. Appellants' reading would exacerbate the "substantial" federalism costs that the preclearance procedure already exacts, *Lopez* v. *Monterey County*, 525 U. S. 266, 282, perhaps to the extent

of raising concerns about § 5's constitutionality, see *Miller* v. *Johnson*, 515 U. S. 900, 926–927. The Court's resolution of this issue renders it unnecessary to address appellants' challenge to the District Court's factual conclusion that there was no evidence of discriminatory but nonretrogressive intent. Pp. 328–336.

(b) The Court rejects appellants' contention that, notwithstanding that *Bossier Parish I* explicitly "le[ft] open for another day" the question whether § 5 extends to discriminatory but nonretrogressive intent, 520 U. S., at 486, two of this Court's prior decisions have already reached the conclusion that it does. Dictum in *Beer*, *supra*, at 141, and holding of *Pleasant Grove* v. *United States*, 479 U. S. 462, distinguished. Pp. 337–341.

7 F. Supp. 2d 29, affirmed.

SCALIA, J., delivered the opinion of the Court, Part II of which was unanimous, and Parts I, III, and IV of which were joined by REHNQUIST, C. J., and O'CONNOR, KENNEDY, and THOMAS, JJ. THOMAS, J., filed a concurring opinion, *post*, p. 341. SOUTER, J., filed an opinion concurring in part and dissenting in part, in which STEVENS, GINSBURG, and BREYER, JJ., joined, *post*, p. 341. STEVENS, J., filed a dissenting opinion, in which GINSBURG, J., joined, *post*, p. 373. BREYER, J., filed a dissenting opinion, *post*, p. 374.

*Paul R. Q. Wolfson* reargued the cause for appellant in No. 98–405. On the briefs on reargument was *Solicitor General Waxman*. With *Mr. Wolfson* on the briefs on the original argument were *Mr. Waxman*, *Acting Assistant Attorney General Lee*, *Deputy Solicitor General Underwood*, *Mark L. Gross*, and *Louis E. Peraertz*.

*Patricia A. Brannan* reargued the cause for appellants in No. 98–406. With her on the briefs were *John W. Borkowski*, *Barbara R. Arnwine*, *Thomas J. Henderson*, and *Edward Still*.

*Michael A. Carvin* reargued the cause for appellee in both cases. With him on the brief were *David H. Thompson*, *Craig S. Lerner*, and *Michael E. Rosman*.

JUSTICE SCALIA delivered the opinion of the Court.

These cases present the question whether § 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U. S. C.

§ 1973c, prohibits preclearance of a redistricting plan enacted with a discriminatory but nonretrogressive purpose.

## I

This is the second time the present cases are before us, and we thus recite the facts and procedural history only in brief. Like every other political subdivision of the State of Louisiana, Bossier Parish, because of its history of discriminatory voting practices, is a jurisdiction covered by § 5 of the Voting Rights Act. See 42 U. S. C. §§ 1973c, 1973b(a), (b); 30 Fed. Reg. 9897 (1965). It is therefore prohibited from enacting any change in a "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting," without first obtaining either administrative preclearance from the Attorney General or judicial preclearance from the United States District Court for the District of Columbia. 42 U. S. C. § 1973c.

Bossier Parish is governed by a 12-member Police Jury elected from single-member districts for 4-year terms. In the early 1990's, the Police Jury set out to redraw its electoral districts in order to account for demographic changes reflected in the decennial census. In 1991, it adopted a redistricting plan which, like the plan then in effect, contained no majority-black districts, although blacks made up approximately 20% of the parish's population. On May 28, 1991, the Police Jury submitted its new districting plan to the Attorney General; two months later, the Attorney General granted preclearance.

The Bossier Parish School Board (Board) is constituted in the same fashion as the Police Jury, and it too undertook to redraw its districts after the 1990 census. During the course of that redistricting, appellant-intervenor George Price, president of the local chapter of the National Association for the Advancement of Colored People (NAACP), proposed that the Board adopt a plan with majority-black districts. In the fall of 1992, amid some controversy, the

Board rejected Price's suggestion and adopted the Police Jury's 1991 redistricting plan as its own.

On January 4, 1993, the Board submitted its redistricting plan to the Attorney General for preclearance. Although the Attorney General had precleared the identical plan when submitted by the Police Jury, she interposed a formal objection to the Board's plan, asserting that "new information"—specifically, the NAACP plan proposed by appellant-intervenor Price—demonstrated that "black residents are sufficiently numerous and geographically compact so as to constitute a majority in two single-member districts." App. to Juris. Statement in No. 98–405, p. 235a. The Attorney General disclaimed any attempt to compel the Board to "adopt any particular plan," but maintained that the Board was "not free to adopt a plan that unnecessarily limits the opportunity for minority voters to elect their candidates of choice." *Ibid.*

After the Attorney General denied the Board's request for reconsideration, the Board filed the present action for judicial preclearance of the 1992 plan in the United States District Court for the District of Columbia. Section 5 of the Voting Rights Act authorizes preclearance of a proposed voting change that "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U. S. C. § 1973c. Before the District Court, appellants conceded that the Board's plan did not have a prohibited "effect" under § 5, since it did not worsen the position of minority voters. (In *Beer* v. *United States*, 425 U. S. 130 (1976), we held that a plan has a prohibited "effect" only if it is retrogressive.) Instead, appellants made two distinct claims. First, they argued that preclearance should be denied because the Board's plan, by not creating as many majority-black districts as it should create, violated § 2 of the Voting Rights Act, which bars discriminatory voting practices. Second, they contended that,

although the Board's plan would have no retrogressive effect, it nonetheless violated § 5 because it was enacted for a discriminatory "purpose."

The District Court granted preclearance. *Bossier Parish School Bd.* v. *Reno*, 907 F. Supp. 434 (DC 1995). As to the first of appellants' two claims, the District Court held that it could not deny preclearance of a proposed voting change under § 5 simply because the change violated § 2. Moreover, in order to prevent the Government "[from doing] indirectly what it cannot do directly," the District Court stated that it would "not permit section 2 evidence to prove discriminatory purpose under section 5." *Id.*, at 445. As to the second of appellants' claims, the District Court concluded that the Board had borne its burden of proving that the 1992 plan was adopted for two legitimate, nondiscriminatory purposes: to assure prompt preclearance (since the identical plan had been precleared for the Police Jury), and to enable easy implementation (since the adopted plan, unlike the NAACP's proposed plan, required no redrawing of precinct lines). *Id.*, at 447. Appellants filed jurisdictional statements in this Court, and we noted probable jurisdiction. *Reno* v. *Bossier Parish School Bd.*, 517 U. S. 1232 (1996).

On appeal, we agreed with the District Court that a proposed voting change cannot be denied preclearance simply because it violates § 2, but disagreed with the proposition that *all* evidence of a dilutive (but nonretrogressive) effect forbidden by § 2 was irrelevant to whether the Board enacted the plan with a retrogressive purpose forbidden by § 5. *Reno* v. *Bossier Parish School Bd.*, 520 U. S. 471, 486–487 (1997) *(Bossier Parish I)*. Since some language in the District Court's opinion left us uncertain whether the court had in fact applied that proposition in its decision, we vacated and remanded for further proceedings as to the Board's purpose in adopting the 1992 plan. *Id.*, at 486. In light of our disposition, we left open the additional question "whether

the § 5 purpose inquiry ever extends beyond the search for retrogressive intent." *Ibid.* "The existence of such a purpose," we said, "and its relevance to § 5, are issues to be decided on remand." *Ibid.*

On remand, the District Court, in a comparatively brief opinion relying on, but clarifying, its extensive earlier opinion, again granted preclearance. 7 F. Supp. 2d 29 (DC 1998). First, in response to our invitation to address the existence of a discriminatory but nonretrogressive purpose, the District Court summarily concluded that "the record will not support a conclusion that extends beyond the presence or absence of retrogressive intent." *Id.*, at 31. It noted that one could "imagine a set of facts that would establish a 'nonretrogressive, but nevertheless discriminatory, purpose,' but those imagined facts are not present here." *Ibid.* The District Court therefore left open the question that we had ourselves left open on remand: namely, whether the § 5 purpose inquiry extends beyond the search for retrogressive intent.

Second, the District Court considered, at greater length, how any dilutive impact of the Board's plan bore on the question whether the Board enacted the plan with a retrogressive intent. It concluded, applying the multifactor test we articulated in *Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U. S. 252 (1977), that allegations of dilutive effect and of discriminatory animus were insufficient to establish retrogressive intent. 7 F. Supp. 2d, at 31–32.

In their jurisdictional statements in this Court, appellants contended, first, that the District Court's conclusion that there was no evidence of discriminatory but nonretrogressive purpose was clearly erroneous, and second, that § 5 of the Voting Rights Act prohibits preclearance of a redistricting plan enacted with a discriminatory but nonretrogressive purpose. Appellants did not challenge the District Court's determination that there was no evidence of retrogressive intent. We again noted probable jurisdiction. 525 U. S. 1118 (1999).

## II

Before proceeding to the merits, we must dispose of a challenge to our jurisdiction. The Board contends that these cases are now moot, since its 1992 plan "will never again be used for any purpose." Motion to Dismiss or Affirm 9. Under Louisiana law, school board members are elected to serve 4-year terms. La. Rev. Stat. Ann. § 17:52(A) (West 1995). One month after appellants filed the jurisdictional statements for this appeal, the scheduled 1998 election for the Board took place. The next scheduled election will not occur until 2002, by which time, as appellants concede, the data from the upcoming decennial census will be available and the Board will be required by our "one-man-one-vote" precedents to have a new apportionment plan in place. Accordingly, appellee argues, the District Court's declaratory judgment with respect to the 1992 plan is no longer of any moment and the dispute no longer presents a live "case or controversy" for purposes of Article III of the Constitution. *Preiser* v. *Newkirk*, 422 U. S. 395, 401 (1975); *Mills* v. *Green*, 159 U. S. 651, 653 (1895).

Appellants posit several contingencies in which the Board's 1992 plan would be put to use—including resignation or death of one of the 12 Board members before 2002, and failure to agree upon a replacement plan for the 2002 election. They also assert that, if we were to hold preclearance improper, they "could seek" an injunction voiding the elections held under the 1992 plan and ordering a special election, Brief for Appellants Price et al. Opposing Motion to Dismiss or Affirm 3, and "might be entitled" to such an injunction, Brief for Appellant Reno in Opposition to Motion to Dismiss or Affirm 2. We need not pause to consider whether the possibility of these somewhat speculative and uncertain events suffices to keep these cases alive, since in at least one respect the 1992 plan will have probable continuing effect: Absent a successful subsequent challenge under § 2, it, rather than the 1980 predecessor plan—which contains quite

different voting districts—will serve as the baseline against which appellee's next voting plan will be evaluated for the purposes of preclearance. Whether (and precisely how) that future plan represents a change from the baseline, and, if so, whether it is retrogressive in effect, will depend on whether preclearance of the 1992 plan was proper.

We turn, then, to the merits.

## III

Appellants press the two claims initially raised in their jurisdictional statements: first, that the District Court's factual conclusion that there was no evidence of discriminatory but nonretrogressive intent was clearly erroneous, and second, that § 5 of the Voting Rights Act prohibits preclearance of a redistricting plan enacted with a discriminatory but nonretrogressive purpose. Our resolution of the second claim renders it unnecessary to address the first. When considered in light of our longstanding interpretation of the "effect" prong of § 5 in its application to vote-dilution claims, the language of § 5 leads to the conclusion that the "purpose" prong of § 5 covers only retrogressive dilution.

As noted earlier, in order to obtain preclearance under § 5, a covered jurisdiction must demonstrate that the proposed change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U. S. C. § 1973c. A covered jurisdiction, therefore, must make two distinct showings: first, that the proposed change "does not have the purpose . . . of denying or abridging the right to vote on account of race or color," and second, that the proposed change "will not have the effect of denying or abridging the right to vote on account of race or color." The covered jurisdiction bears the burden of persuasion on both points. See *Bossier Parish I*, 520 U. S., at 478 (judicial preclearance); 28 CFR § 51.52(a) (1999) (administrative preclearance).

In *Beer* v. *United States*, 425 U. S. 130 (1976), this Court addressed the meaning of the no-effect requirement in the context of an allegation of vote dilution. The case presented the question whether a reapportionment plan that would have a discriminatory but nonretrogressive effect on the rights of black voters should be denied preclearance. Reasoning that § 5 must be read in light of its purpose of "insur[ing] that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise," we held that "a legislative reapportionment that enhances the position of racial minorities with respect to their effective exercise of the electoral franchise can hardly have the 'effect' of diluting or abridging the right to vote on account of race within the meaning of § 5." *Id.*, at 141. In other words, we concluded that, in the context of a § 5 challenge, the phrase "denying or abridging the right to vote on account of race or color"—or more specifically, in the context of a vote-dilution claim, the phrase "abridging the right to vote on account of race or color"—limited the term it qualified, "effect," to retrogressive effects.

Appellants contend that in qualifying the term "purpose," the very same phrase does *not* impose a limitation to retrogression—*i. e.*, that the phrase "abridging the right to vote on account of race or color" means retrogression when it modifies "effect," but means discrimination more generally when it modifies "purpose." We think this is simply an untenable construction of the text, in effect recasting the phrase "does not have the purpose and will not have the effect of $x$" to read "does not have the purpose of $y$ and will not have the effect of $x$." As we have in the past, we refuse to adopt a construction that would attribute different meanings to the same phrase in the same sentence, depending on which object it is modifying. See *BankAmerica Corp.* v. *United States*, 462 U. S. 122, 129 (1983) (declining to give

different meanings to the phrase "other than" when it modified "banks" and "common carriers" in the same clause).

Appellants point out that we did give the purpose prong of § 5 a broader meaning than the effect prong in *Richmond* v. *United States*, 422 U. S. 358 (1975). That case involved requested preclearance for a proposed annexation that would have reduced the black population of the city of Richmond, Virginia, from 52% to 42%. We concluded that, although the annexation may have had the effect of creating a political unit with a lower percentage of blacks, so long as it "fairly reflect[ed] the strength of the Negro community as it exist[ed] after the annexation" it did not violate § 5. *Id.*, at 371. We reasoned that this interpretation of the effect prong of § 5 was justified by the peculiar circumstances presented in annexation cases:

> "To hold otherwise would be either to forbid all such annexations or to require, as the price for approval of the annexation, that the black community be assigned the same proportion of council seats as before, hence perhaps permanently overrepresenting them and underrepresenting other elements in the community, including the nonblack citizens in the annexed area. We are unwilling to hold that Congress intended either consequence in enacting § 5." *Ibid.*

We refused, however, to impose a similar limitation on § 5's purpose prong, stating that preclearance could be denied when the jurisdiction was acting with the purpose of effecting a percentage reduction in the black population, even though it could not be denied when the jurisdiction's action merely had that effect. *Id.*, at 378–379.

It must be acknowledged that *Richmond* created a discontinuity between the effect and purpose prongs of § 5. We regard that, however, as nothing more than an *ex necessitate* limitation upon the effect prong in the particular context of annexation—to avoid the invalidation of all annexations of

areas with a lower proportion of minority voters than the annexing unit. The case certainly does not stand for the proposition that the purpose and effect prongs have fundamentally different meanings—the latter requiring retrogression, and the former not—which is what is urged here. The approved *effect* of the redistricting in *Richmond*, and the hypothetically disapproved *purpose*, *were both retrogressive.* We found it necessary to make an exception to normal retrogressive-*effect* principles, but not to normal retrogressive-*purpose* principles, in order to permit routine annexation. That sheds little light upon the issue before us here.

Appellants' only textual justification for giving the purpose and effect prongs different meanings is that to do otherwise "would reduce the purpose prong of Section 5 to a trivial matter," Brief for Federal Appellant on Reargument 13; would "effectively delet[e] the 'purpose' prong," Reply Brief for Appellants Price et al. on Reargument 3; and would give the purpose prong "a trivial reach, limited to the case of the incompetent retrogressor," Reply Brief for Federal Appellant 9. If this were true—and if it were adequate to justify giving the very same words a different meaning when qualifying "purpose" than when qualifying "effect"—one would expect appellants to cite at least some instances in which this Court applied such muscular construction to the innumerable statutes barring conduct with a particular "purpose or effect." See, *e. g.*, 7 U. S. C. § 192(d) (prohibiting sale of any article "for the purpose or with the effect of manipulating or controlling prices" in the meatpacking industry); 12 U. S. C. § 1467a(c)(1)(A) (barring savings and loan holding companies from engaging in any activity on behalf of a savings association subsidiary "for the purpose or with the effect of evading any law or regulation applicable to such savings association"); 47 U. S. C. § 541(b)(3)(B) (1994 ed., Supp. III) (prohibiting cable franchising authorities from imposing any requirement that "has

the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of a telecommunications service by a cable operator or an affiliate thereof"). They cite not a single one, and we are aware of none.

It is true enough that, whenever Congress enacts a statute that bars conduct having "the purpose or effect of *x*," the purpose prong has application entirely separate from that of the effect prong only with regard to unlikely conduct that has "the purpose of *x*" but fails to have "the effect of *x*"—in the present context, the conduct of a so-called "incompetent retrogressor." The purpose prong has *value and effect*, however, even when it does not cover additional conduct. With regard to conduct that has both "the purpose of *x*" and "the effect of *x*," the Government need only prove that the conduct at issue has "the purpose of *x*" in order to prevail. In the specific context of § 5, where the covered jurisdiction has the burden of persuasion, the Government need only refute the covered jurisdiction's prima facie showing that a proposed voting change does not have a retrogressive purpose in order for preclearance to be denied. When it can do so, it is spared the necessity of countering the jurisdiction's evidence regarding actual retrogressive effect—which, in vote-dilution cases, is often a complex undertaking. This advantage, plus the ability to reach malevolent incompetence, may not represent a massive addition to the effect prong, but it is enough to justify the separate existence of the purpose prong in this statute, and is no less than what justifies the separate existence of such a provision in many other laws.[1]

[1] JUSTICE SOUTER criticizes us for "assum[ing] that purpose is easier to prove than effect . . . in voting rights cases." *Post*, at 358, n. 10 (opinion concurring in part and dissenting in part). As is obvious from our discussion in text, we do not suggest that purpose is *always* easier to prove, but simply that it may *sometimes* be (which suffices to give force to the "purpose" prong without the necessity of doing violence to the English language). Indeed, JUSTICE SOUTER acknowledges that "intent to dilute is conceptually simple, whereas a dilutive abridgment-in-fact is not readily defined and identified independently of dilutive intent." *Post*, at 367.

At bottom, appellants' disagreement with our reading of § 5 rests not upon textual analysis, but upon their opposition to our holding in *Beer*. Although they do not explicitly contend that *Beer* should be overruled, they all but do so by arguing that it would be "untenable" to conclude (as we did in *Beer*) that the phrase "abridging the right to vote on account of race or color" refers only to retrogression in § 5, Reply Brief for Federal Appellant on Reargument 1, in light of the fact that virtually identical language elsewhere in the Voting Rights Act—and indeed, in the Fifteenth Amendment—has never been read to refer only to retrogression. See § 2(a) of the Voting Rights Act, 42 U. S. C. § 1973(a) ("No voting [practice] shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color . . ."); U. S. Const., Amdt. 15, § 1 ("The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude").[2] The term "abridge," however—whose

[2] Appellants also cite § 3(c) of the Voting Rights Act, which provides, with regard to a court that has found a violation of the right to vote guaranteed by the Fourteenth or Fifteenth Amendment, that "the court . . . shall retain jurisdiction for such period as it may deem appropriate and during such period no voting [practice] different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such [practice] does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color . . . ." 42 U. S. C. § 1973a(c). This provision does not assist appellants' case because it is not at all clear that it confers the power to deny approval to nonretrogressive redistricting. That is to say, it may well contemplate that, once a court has struck down an unconstitutional practice and granted relief with regard to that practice, it may assume for that jurisdiction a function identical to that of the District Court for the District of Columbia in § 5 preclearance proceedings. This is suggested by the fact that the State may avoid the court's jurisdiction in this regard by obtaining preclearance from the Attorney General; and that § 3(c), like § 5, explicitly leaves open the possibility that a proposed change approved by the court can be challenged as unconstitutional

core meaning is "shorten," see Webster's New International Dictionary 7 (2d ed. 1950); American Heritage Dictionary 6 (3d ed. 1992)—necessarily entails a comparison. It makes no sense to suggest that a voting practice "abridges" the right to vote without some baseline with which to compare the practice. In § 5 preclearance proceedings—which uniquely deal only and specifically with *changes* in voting procedures—the baseline is the status quo that is proposed to be changed: If the change "abridges the right to vote" relative to the status quo, preclearance is denied, and the status quo (however discriminatory *it* may be) remains in effect. In § 2 or Fifteenth Amendment proceedings, by contrast, which involve not only changes but (much more commonly) the status quo itself, the comparison must be made with a hypothetical alternative: If the *status quo* "results in [an] abridgement of the right to vote" or "abridge[s] [the right to vote]" relative to what the right to vote *ought to be*, the status quo itself must be changed. Our reading of "abridging" as referring only to retrogression in § 5, but to discrimination more generally in § 2 and the Fifteenth Amendment, is faithful to the differing contexts in which the term is used.[3]

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in a "subsequent action." *Ibid.* We of course intimate no holding on this point, but limit our conclusion to the nonprobative character of § 3(c) with regard to the issue in the present cases.

[3] Even if § 5 did not have a different baseline than the Fifteenth Amendment, appellants' argument that § 5 should be read in parallel with the Fifteenth Amendment would fail for the simple reason that we have never held that vote dilution violates the Fifteenth Amendment. See *Voinovich* v. *Quilter*, 507 U. S. 146, 159 (1993) (citing *Beer* v. *United States*, 425 U. S. 130, 142–143, n. 14 (1976)). Indeed, contrary to JUSTICE SOUTER's assertion, *post*, at 360, n. 11 (opinion concurring in part and dissenting in part), we have never even "suggested" as much. *Gomillion* v. *Lightfoot*, 364 U. S. 339 (1960), involved a proposal to redraw the boundaries of Tuskegee, Alabama, so as to exclude all but 4 or 5 of its 400 black voters without excluding a single white voter. See *id.*, at 341. Our conclusion that the proposal would deny black voters the right to vote in municipal elections, and therefore violated the Fifteenth Amendment, had nothing to do with racial vote dilution, a concept that does not appear in

In another argument that applies equally to our holding in *Beer*, appellants object that our reading of § 5 would require the District Court or Attorney General to preclear proposed voting changes with a discriminatory effect or purpose, or even with both. That strikes appellants as an inconceivable prospect only because they refuse to accept the limited meaning that we have said preclearance has in the vote-dilution context. It does *not* represent approval of the voting change; it is nothing more than a determination that the voting change is no more dilutive than what it replaces, and therefore cannot be stopped in advance under the extraordinary burden-shifting procedures of § 5, but must be attacked through the normal means of a § 2 action. As we have repeatedly noted, in vote-dilution cases § 5 prevents nothing but backsliding, and preclearance under § 5 affirms nothing but the absence of backsliding. *Bossier Parish I*, 520 U. S., at 478; *Miller* v. *Johnson*, 515 U. S. 900, 926 (1995); *Beer*, 425 U. S., at 141.[4] This explains why the

our voting-rights opinions until nine years later. See *Allen* v. *State Bd. of Elections*, 393 U. S. 544, 569 (1969). As for the other case relied upon by JUSTICE SOUTER, the plurality opinion in *Mobile* v. *Bolden*, 446 U. S. 55 (1980), not only does that not suggest that the Fifteenth Amendment covers vote dilution, it suggests the opposite, rejecting the appellees' vote-dilution claim in the following terms: "The answer to the appellees' argument is that . . . their freedom to vote has not been denied or abridged by anyone. The Fifteenth Amendment does not entail the right to have Negro candidates elected . . . . Having found that Negroes in Mobile 'register and vote without hindrance,' the District Court and Court of Appeals were in error in believing that the appellants invaded the protection of that Amendment in the present case." *Id.*, at 65; see also *id.*, at 84, n. 3 (STEVENS, J., concurring in judgment) (characterizing plurality opinion as concluding that "the Fifteenth Amendment applies only to practices that directly affect access to the ballot").

[4] In search of support for the argument that § 5 prevents not just backsliding on vote dilution but all forms of vote dilution, JUSTICE SOUTER embarks upon a lengthy expedition into legislative history. *Post*, at 362–367 (opinion concurring in part and dissenting in part). He returns emptyhanded, since he can point to nothing suggesting that the Congress thought § 5 covered both retrogressive and nonretrogressive *dilution*. Indeed, it is doubtful whether the Congress that passed the 1965 Voting

sole consequence of failing to obtain preclearance is continuation of the status quo. To deny preclearance to a plan that is *not* retrogressive—*no matter how unconstitutional it may be*—would risk leaving in effect a status quo that is even worse. For example, in the case of a voting change with a discriminatory but nonretrogressive purpose and a discriminatory but ameliorative effect, the result of denying preclearance would be to preserve a status quo with more discriminatory effect than the proposed change.

In sum, by suggesting that § 5 extends to discriminatory but nonretrogressive vote-dilutive purposes, appellants ask us to do what we declined to do in *Bossier Parish I:* to blur the distinction between § 2 and § 5 by "shift[ing] the focus of § 5 from nonretrogression to vote dilution, and . . . chang[ing] the § 5 benchmark from a jurisdiction's existing plan to a hypothetical, undiluted plan." 520 U. S., at 480. Such a reading would also exacerbate the "substantial" federalism costs that the preclearance procedure already exacts, *Lopez* v. *Monterey County*, 525 U. S. 266, 282 (1999), perhaps to the extent of raising concerns about § 5's constitutionality, see *Miller*, *supra*, at 926–927. Most importantly, however, in light of our holding in *Beer*, appellants' reading finds no support in the language of § 5.[5]

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Rights Act even had the practice of racial vote dilution in mind. As JUSTICE SOUTER acknowledges, this Court did not address the concept until 1969, see *post*, at 364, n. 13, and the legislative history of the 1969 extension of the Act, quoted by JUSTICE SOUTER, see *post*, at 364–365, refers to at-large elections and consolidation of counties as "new, unlawful ways to diminish the Negroes' franchise" developed since passage of the Act. H. R. Rep. No. 91–397, pp. 6–7 (1969).

[5] JUSTICE SOUTER asserts that "[t]he Justice Department's longstanding practice of refusing to preclear changes that it determined to have an unconstitutionally discriminatory purpose, both before and after *Beer*," is entitled to deference. *Post*, at 368 (opinion concurring in part and dissenting in part); accord, *post*, at 373 (STEVENS, J., dissenting). But of course before *Beer* the Justice Department took the position that even the *effects* prong was not limited, in redistricting cases, to retrogression. Indeed, that position had been the basis for its denial of preclearance in

## IV

Notwithstanding the fact that *Bossier Parish I* explicitly "le[ft] open for another day" the question whether § 5 extends to discriminatory but nonretrogressive intent, see 520 U. S., at 486, appellants contend that two of this Court's prior decisions have already reached the conclusion that it does. First, appellants note that, in *Beer*, this Court stated that "an ameliorative new legislative apportionment cannot violate § 5 unless the new apportionment itself so discriminates on the basis of race or color as to violate the Constitution." 425 U. S., at 141. Appellants contend that this suggests that, at least in some cases in which the covered jurisdiction acts with a discriminatory but nonretrogressive dilutive purpose, the covered jurisdiction should be denied preclearance because it is acting unconstitutionally.

We think that a most implausible interpretation. At the time *Beer* was decided, it had not been established that discriminatory purpose as well as discriminatory effect was necessary for a constitutional violation, compare *White* v. *Regester*, 412 U. S. 755, 765–766 (1973), with *Washington* v. *Davis*, 426 U. S. 229, 238–245 (1976). If the statement in *Beer* had meant what appellants suggest, it would either have been anticipating (without argument) that later holding, or else would have been gutting *Beer*'s holding (since a showing of discriminatory but nonretrogressive effect *would* have been a constitutional violation and *would*, despite the holding of *Beer*, have sufficed to deny preclearance). A much more plausible explanation of the statement is that it referred to a constitutional violation *other than* vote dilu-

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*Beer*, see 425 U. S., at 136, and was argued in its brief before us as the basis for sustaining the District Court's denial, see Brief for United States in *Beer* v. *United States*, O. T. 1975, No. 73–1869, pp. 17–18. We rejected that position as to the effects prong, and there is even more reason to reject it in the present cases, whose outcomes depend as much upon the implication of one of our prior cases (as to which we owe the Department no deference) as upon a raw interpretation of the statute.

tion—and, more specifically, a violation consisting of a "denial" of the right to vote, rather than an "abridgement." Although in the context of denial claims, no less than in the context of abridgment claims, the antibacksliding rationale for § 5 (and its effect of avoiding preservation of an even worse status quo) suggests that retrogression should again be the criterion, arguably in that context the word "deny" (unlike the word "abridge") does not import a comparison with the status quo.[6]

In any event, it is entirely clear that the statement in *Beer* was pure dictum: The Government had made no contention that the proposed reapportionment at issue was unconstitutional. 425 U. S., at 142, n. 14. And though we have quoted the dictum in subsequent cases, we have never actually applied it to deny preclearance. See *Bossier Parish I*, *supra*, at 481; *Shaw* v. *Hunt*, 517 U. S. 899, 912 (1996) *(Shaw II); Miller*, 515 U. S., at 924. We have made clear, on the other hand, what we reaffirm today: that proceedings to preclear apportionment schemes and proceedings to consider the constitutionality of apportionment schemes are entirely distinct.

> "Although the Court concluded that the redistricting scheme at issue in *Beer* was nonretrogressive, it

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[6] JUSTICE BREYER suggests that "[i]t seems obvious . . . that if Mississippi had enacted its 'moral character' requirement in 1966 (after enactment of the Voting Rights Act), a court applying § 5 would have found 'the purpose . . . of denying or abridging the right to vote on account of race,' even if Mississippi had intended to permit, say, 0.4%, rather than 0.3%, of the black voting age population of Forrest County to register." *Post*, at 376 (dissenting opinion). As we note above, however, our holding today does not extend to violations consisting of an outright "denial" of an individual's right to vote, as opposed to an "abridgement" as in dilution cases. In any event, if Mississippi had attempted to enact a "moral character" requirement in 1966, it would have been precluded from doing so under § 4, which bars certain types of voting tests and devices altogether, and the issue of § 5 preclearance would therefore never have arisen. See 42 U. S. C. §§ 1973b(a)(1), (c).

> did not hold that the plan, for that reason, was immune from constitutional challenge. . . . Indeed, the Voting Rights Act and our case law make clear that a reapportionment plan *that satisfies § 5* still may be enjoined as unconstitutional." *Shaw* v. *Reno*, 509 U. S. 630, 654 (1993) *(Shaw I)* (emphasis added).

See also *City of Lockhart* v. *United States*, 460 U. S. 125, 134 (1983) (describing the holding of *Beer* as follows: "Although the new plan may have remained discriminatory, it nevertheless was not a regressive change. . . . Since the new plan did not increase the degree of discrimination against blacks, it was entitled to § 5 preclearance"); *Allen* v. *State Bd. of Elections*, 393 U. S. 544, 549–550 (1969) ("Once the State has successfully complied with the § 5 approval requirements, private parties may enjoin the enforcement of the new enactment only in traditional suits attacking its constitutionality . . ."). As we noted in *Shaw I*, § 5 explicitly states that neither administrative nor judicial preclearance "'shall bar a subsequent action to enjoin enforcement' of [a change in voting practice]." 509 U. S., at 654 (quoting 42 U. S. C. § 1973c). That fully available remedy leaves us untroubled by the possibility that § 5 could produce preclearance of an unconstitutionally dilutive redistricting plan.

Second, appellants contend that we denied preclearance on the basis of a discriminatory but nonretrogressive purpose in *Pleasant Grove* v. *United States*, 479 U. S. 462 (1987). That case involved an unusual fact pattern. The city of Pleasant Grove, Alabama—which, at the time of the District Court's decision, had 32 black inhabitants, none of whom was registered to vote and of whose existence city officials appear to have been unaware, *id.*, at 465, n. 2—sought to annex two parcels of land, one inhabited by a few whites, and the other vacant but likely to be inhabited by whites in the near future. We upheld the District Court's conclusion that the city acted with a discriminatory purpose in annexing the land, rejecting the city's contention

that it could not have done so because it was unaware of the existence of any black voters against whom it could have intended to discriminate:

> "[The city's] argument is based on the incorrect assumption that an impermissible purpose under § 5 can relate only to present circumstances. Section 5 looks not only to the present effects of changes, but to their future effects as well . . . . Likewise, an impermissible purpose under § 5 may relate to anticipated as well as present circumstances.
>
> "It is quite plausible to see [the annexation] as motivated, in part, by the impermissible purpose of minimizing future black voting strength. . . . This is just as impermissible a purpose as the dilution of present black voting strength." *Id.*, at 471–472 (citations and footnotes omitted).

Appellants assert that we must have viewed the city's purpose as discriminatory but nonretrogressive because, as the city noted in contending that it lacked even a discriminatory purpose, the city could not have been acting to worsen the voting strength of any present black residents, since there were no black voters at the time. However, as the above quoted passage suggests, we did not hold that the purpose prong of § 5 extends beyond retrogression, but rather held that a jurisdiction with no minority voters can have a retrogressive purpose, at the present time, by intending to worsen the voting strength of *future* minority voters. Put another way, our holding in *Pleasant Grove* had nothing to do with the question whether, to justify the denial of preclearance on the basis of the purpose prong, the purpose must be retrogressive; instead, it involved the question whether the purpose must be to achieve retrogression at once or could include, in the case of a jurisdiction with no present minority voters, retrogression with regard to operation of the proposed plan (as compared with

operation of the status quo) against new minority voters in the future. Like the dictum from *Beer*, therefore, *Pleasant Grove* is simply inapposite here.

* * *

In light of the language of § 5 and our prior holding in *Beer*, we hold that § 5 does not prohibit preclearance of a redistricting plan enacted with a discriminatory but nonretrogressive purpose. Accordingly, the judgment of the District Court is affirmed.

*It is so ordered.*

JUSTICE THOMAS, concurring.

The Bossier Parish School Board first sought preclearance of the redistricting plan at issue in this litigation almost seven years ago. The Justice Department and private appellants opposed that effort, arguing throughout this litigation that a "safe" majority-minority district is necessary to ensure the election of a black school board member. Ironically, while this litigation was pending, three blacks were elected from majority-white districts to serve on the Bossier Parish School Board. Although these election results are not part of the record, they vividly illustrate the fact that the federal intervention that spawned this litigation was unnecessary.

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

Under § 5 of the Voting Rights Act of 1965, 42 U. S. C. § 1973c, a jurisdiction required to obtain preclearance of changes to its voting laws must show that a proposed amendment will not have the effect, and does not reflect a purpose, to deny or abridge the vote on account of race. I respectfully dissent[1] from the Court's holding that § 5 is indifferent

[1] I agree with the Court's conclusion on the matter of mootness.

to a racially discriminatory purpose so long as a change in voting law is not meant to diminish minority voting strength below its existing level. It is true that today's decision has a precursor of sorts in *Beer* v. *United States*, 425 U. S. 130 (1976), which holds that the only anticipated redistricting effect sufficient to bar preclearance is retrogression in minority voting strength, however dilutive of minority voting power a redistricting plan may otherwise be. But if today's decision achieves a symmetry with *Beer*, the achievement is merely one of well-matched error. The Court was mistaken in *Beer* when it restricted the effect prong of § 5 to retrogression, and the Court is even more wrong today when it limits the clear text of § 5 to the corresponding retrogressive purpose. Although I adhere to the strong policy of respecting precedent in statutory interpretation and so would not reexamine *Beer*, that policy does not demand that recognized error be compounded indefinitely, and the Court's prior mistake about the meaning of the effects requirement of § 5 should not be expanded by an even more erroneous interpretation of the scope of the section's purpose prong.

The Court's determination that Congress intended preclearance of a plan not shown to be free of dilutive intent (let alone a plan shown to be intentionally discriminatory) is not, however, merely erroneous. It is also highly unconvincing. The evidence in these very cases shows that the Bossier Parish School Board (School Board or Board) acted with intent to dilute the black vote, just as it acted with that same intent through decades of resistance to a judicial desegregation order. The record illustrates exactly the sort of relentless bad faith on the part of majority-white voters in covered jurisdictions that led to the enactment of § 5. The evidence all but poses the question why Congress would ever have meant to permit preclearance of such a plan, and it all but invites the answer that Congress could hardly have intended any such thing. While the evidence goes substantially unnoticed on the Court's narrow reading of the purpose

prong of § 5, it is not only crucial to my resolution of these cases, but insistent in the way it points up the implausibility of the Court's reading of purpose under § 5.

## I

In *Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U. S. 252 (1977), this Court set out a checklist of considerations for assessing evidence going to discriminatory intent: the historical background of a challenged decision, its relative impact on minorities, specific antecedent events, departures from normal procedures, and contemporary statements of decisionmakers. *Id.*, at 266–268. We directed the District Court to follow that checklist in enquiring into discriminatory intent following remand in these cases, *Reno* v. *Bossier Parish School Bd.*, 520 U. S. 471, 488 (1997) *(Bossier Parish I)*. The *Arlington Heights* enquiry reveals the following account of the School Board's redistricting activity and of the character of the parish in which it occurred.

The parish's institution of general governance is known as the Police Jury, a board of representatives chosen from districts within the parish. After the 1990 census showed a numerical malapportionment among those districts, the Police Jurors prepared a revised districting plan, which they submitted to the Attorney General of the United States with a request for the preclearance necessary under § 5 of the Voting Rights Act before the parish, a covered jurisdiction, could modify its voting district lines. Based on information then available to the Department of Justice, the Attorney General understood the parish to have shown that the new plan would not have the effect and did not have the purpose of abridging the voting rights of the parish's 20% black population, and the revised Police Jury plan received preclearance in the summer of 1991. In fact, as the parish's School Board has now admitted, the Police Jury plan thus approved dilutes the voting strength of the minority popula-

tion, Plaintiff's Brief on Remand 12; that is, the plan discriminates by abridging the rights of minority voters to participate in the political process and elect candidates of their choice. *Thornburg* v. *Gingles*, 478 U. S. 30, 46–47 (1986).

The same population shifts that required the Police Jury to reapportion required the elected School Board to do the same. Although the Board had approached the Police Jury about the possibility of devising a joint plan of districts common to both Board and jury, the jury rebuffed the Board, see App. to Juris. Statement 172a (Stipulations 83–84), and the Board was forced to go it alone. History provides a good indication of what might have been expected from this endeavor.

As the parties have stipulated, the School Board had applied its energies for decades in an effort to "limit or evade" its obligation to desegregate the parish schools. *Id.*, at 216a (Stipulation 237). When the Board first received a court order to desegregate the parish's schools in the mid-1960's, it responded with the flagrantly defiant tactics of that era, see *id.*, at 216a–217a (Stipulations 236–237), and the record discloses the Board's continuing obstructiveness down to the time covered by these cases. During the 1980's, the degree of racial polarization in the makeup of the parish's schools rose, *id.*, at 218a (Stipulations 241–243), and the disproportionate assignment of black faculty to predominantly black schools increased, *id.*, at 217a–218a (Stipulation 240). While the parish's superintendent testified that the assignment of black faculty to predominantly black schools came in response to black parents' requests for positive black examples for their children, see App. 289, the black leaders who testified in these cases uniformly rejected that claim and insisted that, in accord with the parish's desegregation decree, black faculty were to be distributed throughout the parish's schools, to serve as models for white, as well as black, students, see *id.*, at 326–327; 2 Tr. 126–128.

Other evidence of the Board's intransigence on race centers on the particular terms of the integration decree that since 1970 has required the Board to maintain a "Bi-Racial Advisory Review Committee" made up of an equal number of black and white members in order to "'recommend to the . . . Board ways to attain and maintain a unitary system and to improve education in the parish.'" App. to Juris. Statement in No. 98–405, p. 182a (Stipulation 111) (hereinafter App. to Juris. Statement). Although the Board represented to the District Court overseeing desegregation that the committee was in place, see 2 Tr. 16 (testimony of Superintendent William T. Lewis), the committee actually met only two or three times in the mid-1970's and then with only its black members in attendance, see App. to Juris. Statement 183a (Stipulation 112). In 1993, the Board set up a short-lived "Community Affairs Committee" to replace the "Bi-Racial Committee." Despite the Board's resolution charging the committee "'with the responsibility of investigating, consulting and advising the court and school board periodically with respect to all matters pertinent to the retention *[sic]* of a unitary school system,'" *ibid.* (Stipulation 114), the Board disbanded the committee after only three months because, as a leading Board member put it, "'the tone of the committee made up of the minority members of the committee quickly turned toward becoming involved in policy,'" *id.*, at 184a (Stipulation 116). "Policy," however, was inevitably implicated by the committee's purpose, and the subjects of its recommendations (such as methods for more effective recruitment of black teachers and their placement throughout the school system in accord with the terms of the desegregation decree, see *id.*, at 183a–184a (Stipulation 115)) fell squarely within its mandate. It is thus unsurprising that the Board has not achieved a unitary school system and remains under court order to this day. See *id.*, at 217a (Stipulation 239); App. 139 (testimony of S. P. Davis).

About the time the Board appointed its "Community Affairs Committee," it sought preclearance under § 5 from the Attorney General for the redistricting plan before us now. The course of the Board's redistricting efforts tell us much about what it had in mind when it proposed its plan. Following the rebuff from the Police Jury, the Board was able to follow a relaxed redistricting timetable, there being no Board elections scheduled before 1994. While the Board could simply have adopted the Police Jury plan once the Attorney General had precleared it, the Board did not do so, App. to Juris. Statement 147a (Stipulation 11), despite just such a proposal from one Board member at the Board's September 5, 1991, meeting. No action was then taken on the proposal, *id.*, at 174a (Stipulations 89–90), and although the Board issued no explanation for its inaction, it is noteworthy that the jury plan ignored some of the Board's customary districting concerns. Whereas one of those concerns was incumbency protection, see App. 251; cf. App. to Juris. Statement 152a (Stipulation 26), the jury plan would have pitted two pairs of incumbents against each other and created two districts in which no incumbent resided, *id.*, at 181a–182a (Stipulation 109).[2] The jury plan disregarded school attendance zones, and even included two districts containing no schools. *Id.*, at 174a, 151a, 191a (Stipulations 88, 24, 141). The jury plan, moreover, called for a total variation in district populations exceeding the standard normally used to gauge satisfaction of the "one person, one vote" principle, see *id.*, at 162a–163a (Stipulation 58); App. 231–232; 1 Tr. 147, four of its districts failed the standard measure of compactness used by the Board's own cartographer, *id.*, at 174–176,

[2] While two of the incumbents were considering stepping down by the time the Board subsequently adopted the plan, at least one of those decisions was anything but firm. See App. 103; 4 Record, Doc. No. 72, in Civ. Action No. 94–1495 (D. D. C.), pp. 60–61 (joint designations of portions of deposition of David Harvey); 1 Tr. 85.

and one of its districts contained noncontiguous elements, App. 234–235.

In addressing the need to devise a plan of its own, the Board hired the same redistricting consultant who had advised the Police Jury, Gary Joiner. Joiner and the Board members (according to Joiner's testimony) were perfectly aware of their responsibility to avoid vote dilution in accordance with the Voting Rights Act, see Record, Doc. No. 38 (direct testimony of Joiner 5), and he estimated that it would take him between 200 to 250 hours to devise a plan for the Board. The Board then spent nearly a year doing little in public about redistricting, while its members met in private with Joiner to consider alternatives. In March 1992, George Price, president of the parish's branch of the National Association for the Advancement of Colored People (NAACP), wrote to the superintendent of parish schools asking for a chance to play some role in the redistricting process. App. 184. Although the superintendent passed the letter on to the Board, the Board took no action, and neither the superintendent nor the Board even responded to Price's request. App. to Juris. Statement 175a (Stipulation 93). In August, Price wrote again, this time in concert with a number of leaders of black community organizations, again seeking an opportunity to express views about the redistricting process, as well as about a number of Board policies bearing on school desegregation. App. 187–189; see also App. to Juris. Statement 175a (Stipulation 94). Once again the Board made no response.

Being frustrated by the Board's lack of responsiveness, Price then asked for help from the national NAACP's Redistricting Project, which sent him a map showing how two compact majority-black districts might be drawn in the parish. *Id.*, at 177a (Stipulation 98). When Price showed the map to a school district official, he was told it was unacceptable because it failed to show all 12 districts. At Price's request, the Redistricting Project then provided a

plan showing all 12 districts, which Price presented to the Board at its September 3, 1992, meeting, explaining that it showed the possibility of drawing majority-black districts. *Id.*, at 177a–178a (Stipulations 99–100). Several Board members said they could not consider the NAACP plan unless it was presented on a larger map, *id.*, at 178a (Stipulation 100), and both the Board's cartographer and its legal advisor, the parish district attorney, dismissed the plan out of hand because it required precinct splits, *id.*, at 179a (Stipulation 102).

There is evidence that other implications of the NAACP proposal were objectionable to the Board. According to one black leader, Board member Henry Burns told him that while he personally favored black representation on the Board, a number of other Board members opposed the idea.[3] App. 142. According to George Price, Board member Barry Musgrove told him that the Board was hostile to the creation of a majority-black district. *Id.*, at 182.[4]

Although the NAACP plan received no further public consideration, the pace of public redistricting activity suddenly speeded up. At the Board's September 17, 1992, meeting, without asking Joiner to address the possibility of creating any majority-black district, the Board abruptly passed a statement of intent to adopt the Police Jury plan. App. to Juris. Statement 179a–180a (Stipulation 106). At a public

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[3] One other Board member, Marguerite Hudson, when asked to explain why two of the schools in Plain Dealing, one of the parish's towns, were predominantly black, stated: "[T]hose people love to live in Plain Dealing. . . . And most of them don't want to get a big job, they would just rather stay out there in the country, and stay on Welfare, and stay in Plain Dealing." App. 118.

[4] Musgrove denied making the statement. See 1 Tr. 56. If, as the District Court majority suggested, the significance of the latter statement is uncertain, see *Bossier Parish School Bd.* v. *Reno*, 907 F. Supp. 434, 448 (DC 1995) *(Bossier Parish I)*, it was tantamount to opposition to the most obvious cure for the admitted dilution; there was in any event nothing ambiguous about the Burns statement.

hearing on the plan one week later, attended by an overflow crowd, a number of black voters spoke against the plan, and Price presented the Board with a petition bearing over 500 signatures urging consideration of minority concerns. No one spoke in favor of the plan, *Bossier Parish I*, 907 F. Supp. 434, 439 (DC 1995), and Price explained to the Board that preclearance of the jury plan for use by the Police Jury was no guarantee of preclearance of the same plan for the Board. App. to Juris. Statement 180a–181a (Stipulation 108). Nonetheless, at its October 1 meeting, the voting members of the Board unanimously adopted the Police Jury plan, with one member absent and the Board's only black member (who had been appointed just two weeks earlier to fill a vacancy) abstaining. *Id.*, at 181a–182a (Stipulation 109). The Board did not submit the plan for preclearance by the Attorney General until January 4, 1993. *Id.*, at 182a (Stipulation 110).

## II

The significance of the record under §5 is enhanced by examining in more detail several matters already mentioned as free from dispute, by testing some of the Board's stated reasons for refusing to consider any NAACP plan, and by looking critically at the District Court's reasons for resolving disputed issues in the School Board's favor.

### A

The parties stipulate that for decades before this redistricting the Board had sought to "limit or evade" its obligation to end segregation in its schools, an obligation specifically imposed by Court order nearly 35 years ago and not yet fulfilled. The Board has also conceded the discriminatory impact of the Police Jury plan in falling "more heavily on blacks than on whites," Plaintiff's Brief on Remand in Civ. Action No. 94–1495 (D. D. C.), p. 12, and in diluting "black voting strength," *id.*, at 21. Even without the stipulated history, the conceded dilution would be evidence of a corre-

spondingly discriminatory intent. With the history, the implication of intent speaks louder, and it grows more forceful still after a closer look at two aspects of the dilutive impact of the Police Jury plan.

First, the plan includes no majority-black districts even though residential and voting patterns in Bossier Parish meet the three conditions we identified in *Thornburg* v. *Gingles*, 478 U. S., at 50–51, as opening the door to drawing majority-minority districts to put minority voters on an equal footing with others. The first *Gingles* condition is that "the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district." *Id.*, at 50. The Board does not dispute that black voters in Bossier Parish satisfy this criterion. The Board joined in a stipulation of the parties that in 1991, "it was obvious that a reasonably compact black-majority district could be drawn within Bossier City," App. to Juris. Statement 154a–155a (Stipulation 36); see also 1 Tr. 60 (statement of Board member Barry Musgrove), and that the NAACP plan demonstrated that two such districts could have been drawn in the parish, see App. to Juris. Statement 192a (Stipulation 143).[5] As to the second and third *Gingles* conditions, that the minority population be politically cohesive and that the majority-white block voting be enough to defeat the minority's preferred candidate, see *Gingles*, *supra*, at 51, the Government introduced expert testimony showing such polarization in Bossier Parish's voting patterns. See App. to Juris. Statement 201a–

[5] While the cartographer hired by the Board stated during the redistricting process that the parish's black population was too dispersed to draw a majority-black district, he later acknowledged that in fact two such districts could be drawn, see App. to Juris. Statement 160a–161a (Stipulations 52, 53), and not only the original NAACP plans but also the Cooper Plans, two alternative plans developed by an expert for the defendant-intervenors, demonstrated as much, see App. 238 (Cooper Plans); App. to Juris. Statement 193a (Stipulation 147).

207a (Stipulations 181–196); App. 163–173 (declaration of Dr. Richard Engstrom). While acknowledging the somewhat limited data available for analysis, the expert concluded that "African American voters are likely to have a realistic opportunity to elect candidates of their choice to the . . . Board only in districts in which they constitute a majority of the voting age population." *Id.*, at 174.[6]

Second, the Police Jury plan diluted black votes by dividing neighboring black communities with common interests in and around at least two of the Parish's municipalities, thereby avoiding the creation of a majority-black district.[7] See *id.*, at 154–156 (declaration of George J. Castille III); *id.*, at 141 (testimony of S. P. Davis). Even the Board's own cartographer conceded that one of these instances "'appear[ed]'" to constitute "'fracturing,'" App. to Juris. Statement 191a (Stipulation 138), which he defined as "divid[ing] a 'population that has a traditional cohesiveness, lives in the same general area, [and] has a lot of commonalties' . . . with '[the] intent to . . . fracture that population into adjoining white districts,'" *id.*, at 189a–190a (Stipulation 133).

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[6] The parties agreed that black candidates for other offices have been able to win from majority-white districts in the parish, see *id.*, at 201a (Stipulation 180), but those instances all involved districts in which the presence of an Air Force base, see *id.*, at 206a–207a (Stipulation 196), meant both that the effective percentage of black voters was considerably higher than the raw figures suggested and, in the view of all the successful black candidates, that the degree of hostility to black candidates among white voters was lower than in the rest of the parish, see App. 131–132 (statement of Jeff Darby), 133–134 (statement of Jerome Darby), 143–144 (statement of Johnny Gipson).

[7] Counsel for the Board suggested in cross-examining one of the Government's experts that one of the instances of dividing black communities arose from a state-law prohibition on the Board's "split[ting] existing corporate lines." 2 Tr. 189. He offered no authority for that proposition. But in any case, the example the expert gave did not involve dividing a municipality, but including in a single district areas both within the municipality and outside it.

B

The Board's cartographer and lawyer objected that the NAACP plan was unacceptable because it split precincts in violation of state law. And yet the Board concedes that school boards were free to seek precinct changes from the police juries of their parishes, as they often successfully did. See *id.*, at 150a–151a (Stipulations 22–23). One of the Government's experts, see App. 214, 217, 354, and the Board's own cartographic consultant, see App. to Juris. Statement 151a (Stipulation 23), acknowledged this practice. Indeed, the parties agree that Joiner advised the Board about the option of going to the Police Jury for precinct changes, see *id.*, at 174a (Stipulation 89); see also *id.*, at 179a (Stipulation 102), but that the Board never asked him to pursue that possibility, see *id.*, at 188a (Stipulation 128).[8] Judge Kessler in the District Court was therefore surely correct that the Board's claimed inability to divide precincts was no genuine obstacle to a plan with a majority-black district. See *Bossier Parish I*, 907 F. Supp., at 460–461 (opinion concurring in part and dissenting in part).

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[8] The District Court majority stated that it was not merely the fact that the NAACP plan required precinct splits, but that it required a large number of splits that made it unappealing. This claim is untenable for several reasons. First, again it assumes that the act to be explained is the rejection of the NAACP plan rather than the adoption of the Police Jury plan. While the NAACP plan required 46 precinct splits, see App. to Juris. Statement 194a–195a (Stipulation 151), the Cooper II plan, which also included two majority-black districts meeting traditional districting criteria, required only 27, *ibid.*, and the establishment of a single majority-black district would have required just 14, see App. 269–270, 277. Second, and more importantly, the Board's cartographer and lawyer stated that they told the Board the NAACP plan was unacceptable because it split any precincts at all, not because it split lots of them, see App. to Juris. Statement 179a (Stipulation 102), and a leading supporter of the Police Jury plan on the Board, see 1 Tr. 129, and the Board's interim black member at the time of redistricting, see App. 130, agree on that score.

It becomes all the clearer that the prospect of splitting precincts was no genuine reason to reject the NAACP plan (or otherwise to refuse to consider creating any majority-black districts) when one realizes that from early on in the Board's redistricting process it gave serious thought to adopting a plan that would have required just such precinct splits. When the Board hired Joiner as its cartographer in May 1991, his estimate of 200 to 250 hours to prepare a plan for the Board, see App. to Juris. Statement 173a (Stipulation 86), indicated that there was no intent simply to borrow the recently devised Police Jury plan or to build on the precincts established by the Police Jury, a possibility that Joiner thought could be explored in "[s]everal hours at least," App. 271. It seems obvious that from the start the Board expected its plan to require precinct splitting, and Joiner acknowledged in his testimony that any plan "as strong as" the Police Jury plan in terms of traditional districting criteria would require precinct splits. *Ibid.* Splitting precincts only became an insuperable obstacle once the NAACP made its proposal to create majority-black districts.

C

1

Despite its stated view that the record would not support a conclusion of nonretrogressive discriminatory intent, the District Court majority listed a series of "allegedly dilutive impacts" said to point to discriminatory intent: "[t]hat some of the new districts have no schools, that the plan ignores attendance boundaries, that it does not respect communities of interest, that there is one outlandishly large district, that several of them are not compact, that there is a lack of contiguity, and that the population deviations resulting from the jury plan are greater than the limits (±5%) imposed by Louisiana law." 7 F. Supp. 2d 29, 32 (DC 1998) *(Bossier Parish II)*. The District Court found this evidence

"too theoretical, and too attenuated," to be probative of retrogressive intent in the absence of corroborating evidence of a "deliberate attempt." *Ibid.* But whatever the force of such evidence may be on the issue of intent to cause retrogression, there is nothing "theoretical" or "attenuated" in its significance as showing intent to dilute generally.

2

If we take the District Court opinions in *Bossier Parish I* and *Bossier Parish II* together and treat the court's § 5 discussions as covering nonretrogressive discriminatory intent, it is clear that the court rested on two reasons for finding that the plan's dilutive effect could not support an inference of nonretrogressive discriminatory intent. First, the court thought any such inference inconsistent with the view expressed in *Miller* v. *Johnson*, 515 U. S. 900, 924 (1995), that a refusal to adopt a plan to maximize the number of majority-minority districts is insufficient alone to support an inference of intentional discrimination. *Miller* is not on point, however. In *Miller*, Georgia had already adopted a plan that clearly improved the position of minority voters by establishing two majority-black districts. The question was simply whether the State's refusal to create a third betrayed discriminatory intent. *Id.*, at 906–908, 923–924. In these cases, the issue of inferred intent did not arise upon rejection of a plan maximizing the number of majority-black districts after a concededly ameliorative plan had already been adopted; the issue arose on the Board's refusal to consider a plan with any majority-black districts when more than one such district was possible under *Gingles*. The issue here is not whether Bossier Parish betrayed a discriminatory purpose in refusing to create the maximum number of majority-black districts, see *Bossier Parish II*, *supra*, at 33 (Silberman, J., concurring), but simply whether it was significant that the parish refused to consider creating a majority-black district at all. The refusal points to a dis-

criminatory intent that the refusal to maximize in *Miller* v. *Johnson* did not show.

The District Court's second ground for discounting the evidence of intent inherent in the Police Jury plan's dilutive effect was its finding that the Board had legitimate, nondiscriminatory reasons for approving the plan. The evidence, however, is powerful in showing that the Board had no such reasons. As I have already noted, the Board's respect for existing precinct lines was apparently pretextual. The other supposedly legitimate reason for the Board's choice, that the Police Jury was a safe harbor under § 5, is equally unlikely. If the Police Jury plan was a safe harbor, it had been safe from the day the Attorney General precleared it for the Police Jury, whereas the Board ignored it for more than a year after that preclearance. Interest in the Police Jury plan developed only after pressure from Price and the NAACP had intensified to the point that the redistricting process would have to be concluded promptly if the minority proposals were not to be considered. The Police Jury, therefore, became an attractive harbor only when it seemed to offer safety from demands for a fair reflection of minority voting strength. It was chosen by a Board, described by the District Court majority as possessing a "tenacious determination to maintain the status quo," *Bossier Parish II*, *supra*, at 32, and the only fair inference is that when the Board suddenly embraced the Police Jury plan it was running true to form.[9]

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[9] My conclusion indicates my disagreement with JUSTICE THOMAS's concurring opinion. The factual predicate for raising and resolving the issue of the scope of discriminatory intent relevant under § 5 is a subject of the Board's obligation to produce evidence and the District Court's obligation to make findings, and nothing in the conduct of the Justice Department has impeded either the Board or the court from addressing this evidentiary issue. The fact that black members have been elected to the Board is outside the record and is no more before us than evidence showing the extent to which the particular members were the choices of the minority voters who have suffered the conceded dilution.

D

In sum, for decades the School Board manifested sedulous resistance to the constitutional obligation to desegregate parish schools, which have never attained unitary status and are still subject to court order. When faced with the need to act alone in redrawing its voting districts, the Board showed no interest in the Police Jury plan, which made no sense for school purposes and was at odds with normal districting principles applied by the Board. The Board hired a cartographer in anticipation of drawing district lines significantly different from the Police Jury lines, and the Attorney General's preclearance of the Police Jury plan for the jury's use produced no apparent Board interest in adopting that same plan. When minority leaders sought a role in proposing a plan, the Board ignored them and when they produced concrete proposals prepared by the NAACP, the Board sidestepped with successive technical reasons culminating in a patently pretextual objection. It was only then, as its pretexts for resisting the NAACP were wearing thin, that the Board evidently scrapped its intention to obtain an original plan tailored to school district concerns and acted with unwonted haste on the year-old proposal to adopt the manifestly unsuitable Police Jury plan. The proposal received no public hearing support and nothing but objection from minority voters, who pointed out what the Board now agrees, that the Police Jury plan dilutes minority voting strength. The objections were unavailing and the Board adopted the dilutive plan.

There is no reasonable doubt on this record that the Board chose the Police Jury plan for no other reason than to squelch requests to adopt the NAACP plan or any other plan reflecting minority voting strength, and it would be incredible to suggest that the resulting submergence of the minority voters was unintended by the Board whose own expert testified that it understood the illegality of dilution. If, as I conclude below, see Part III, *infra*, dilutive but nonretrogressive in-

tent behind a redistricting plan disqualifies it from § 5 preclearance, then preclearance is impossible on this record. Since the burden to negate such intent (like the burden to negate retrogressive intent and effect) rests on the voting district asking for preclearance, nothing more is required to show the impossibility of preclearance. See, *e. g.*, *Pleasant Grove* v. *United States*, 479 U. S. 462, 469 (1987). It is worth noting, however, that the parish should likewise lose even if we assume, as the District Court majority seems to have done at one point, that the burden to show disqualifying intent is on the Government and the intervenors. *Bossier Parish II*, 7 F. Supp. 2d, at 31 ("We can imagine a set of facts that would establish a 'non-retrogressive, but nevertheless discriminatory purpose,' but those imagined facts are not present here"). It is not only that Judge Kessler was correct in her conclusion that dilutive but nonretrogressive intent was shown; the contrary view of the District Court majority raises " 'the definite and firm conviction that a mistake [has] been committed,' " *Concrete Pipe & Products of Cal., Inc.* v. *Construction Laborers Pension Trust for Southern Cal.*, 508 U. S. 602, 622 (1993) (quoting *United States* v. *United States Gypsum Co.*, 333 U. S. 364, 395 (1948)). Regardless of the burden of persuasion, therefore, the parish should lose under the intent prong of § 5, if the purpose that disqualifies under § 5 includes an intent to dilute minority voting strength regardless of retrogression.

## III

### A

The legal issue here is the meaning of "abridging" in the provision of § 5 that preclearance of a districting change in a covered jurisdiction requires a showing that the new plan does not "have the purpose . . . of denying or abridging the right to vote on account of race or color . . . ." The language tracks that of the Fifteenth Amendment's guarantee that "[t]he right of citizens . . . to vote shall not be

denied or abridged . . . on account of race [or] color . . . ." Since the Act is an exercise of congressional power under § 2 of that Amendment, *South Carolina* v. *Katzenbach*, 383 U. S. 301, 325–327 (1966), the choice to follow the Amendment's terminology is most naturally read as carrying the meaning of the constitutional terms into the statute. *United States* v. *Kozminski*, 487 U. S. 931, 945 (1988) ("By employing the constitutional language, Congress apparently was focusing on the prohibition of comparable conditions"); cf. *Morissette* v. *United States*, 342 U. S. 246, 263 (1952) ("[W]here Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed"). Any construction of the statute, therefore, carries an implication about the meaning of the Amendment, absent some good reason to treat the parallel texts differently on some particular point, and a reading of the statute that would not fit the Constitution is presumptively wrong.[10]

[10] The majority argues that we should construe purpose and effect uniformly, as we would in laws regulating price discrimination, savings and loans, and cable franchises. See *ante*, at 331–332. I find the Fifteenth Amendment more relevant in interpreting § 5; the constitutional language provides a reason to give purpose its full breadth. The majority also claims that its reading leaves the purpose prong with some meaning because the Government need only refute a jurisdiction's claim that a change lacks retrogressive purpose in order to deny preclearance, without countering the jurisdiction's evidence regarding actual retrogressive effect. *Ante*, at 332. This assumes that purpose is easier to prove than effect. While that may be true in price-fixing cases, it is not true in voting rights cases (even though purpose is conceptually simpler than effect under § 5, see *infra*, at 367–368). Here, as in many other race discrimination cases, the parties agreed about the effects of the proposed changes while hotly disputing the reasons for them. The majority limits the purpose prong to the few cases in which attempted retrogression fails of its goal, a rather

In each context, it is clear that abridgment necessarily means something more subtle and less drastic than the complete denial of the right to cast a ballot, denial being separately forbidden. Abridgment therefore must be a condition in between complete denial, on the one hand, and complete enjoyment of voting power, on the other. The principal concept of diminished voting strength recognized as actionable under our cases is vote dilution, defined as a regime that denies to minority voters the same opportunity to participate in the political process and to elect representatives of their choice that majority voters enjoy. See, *e. g.*, *Thornburg* v. *Gingles*, 478 U. S., at 46–47; 42 U. S. C. § 1973. The benchmark of dilution pure and simple is thus a system in which every minority voter has as good a chance at political participation and voting effectiveness as any other voter. Our cases have also recognized retrogression as a subspecies of dilution, the consequence of a scheme that not only gives a minority voter a lesser practical chance to participate and elect than a majority voter enjoys, but even reduces the minority voter's practical power from what a preceding scheme of electoral law provided. See *Beer* v. *United States*, 425 U. S., at 141. Although our cases have dealt with vote dilution only under the Fourteenth Amendment, see, *e. g.*, *Shaw* v. *Reno*, 509 U. S. 630, 645 (1993), I know of no reason in text or history that dilution is not equally violative of the Fifteenth Amendment guarantee against abridgment. And while there has been serious dispute in the past over the Fourteenth Amendment's coverage of voting rights, see, *e. g.*, *Oregon* v. *Mitchell*, 400 U. S. 112, 154 (1970) (Harlan, J., concurring in part and dissenting in part), I know of no reason to doubt that "abridg[e]" in the Fifteenth Amendment includes dilutive discrimination. See *Bossier Parish I*, 520

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paltry coverage given that it is discriminatory purpose, not discriminatory effect, that is at the heart of the Fifteenth Amendment.

U. S., at 494–495 (BREYER, J., concurring in part and concurring in judgment).[11]

The Court has never held (save in *Beer*) that the concept of voting abridgment covers only retrogressive dilution, and any such reading of the Fifteenth Amendment would be outlandish. The Amendment contains no textual limitation on abridgment, and when it was adopted, the newly emancipated citizens would have obtained practically nothing from a mere guarantee that their electoral power would not be further reduced. Since § 5 of the Act is likewise free of any

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[11] We have suggested, but have never explicitly decided, that the Fifteenth Amendment applies to dilution claims. See *Mobile* v. *Bolden*, 446 U. S. 55, 62–63 (1980) (plurality opinion); *Gomillion* v. *Lightfoot*, 364 U. S. 339, 346 (1960) (singling out racial minority for discriminatory treatment in voting violates Fifteenth Amendment, which prohibits municipal boundaries drawn to exclude blacks). But see *Mobile*, *supra*, at 84, n. 3 (STEVENS, J., concurring in judgment) (suggesting that *Mobile* plurality said that Fifteenth Amendment does not reach vote dilution); *Voinovich* v. *Quilter*, 507 U. S. 146, 159 (1993) (reserving the question); *Shaw* v. *Reno*, 509 U. S. 630, 645 (1993) (endorsing the practice of considering dilution claims under the Fourteenth Amendment); *Beer* v. *United States*, 425 U. S. 130, 142, n. 14 (1976).

The majority claims that *Gomillion* was not about dilution because it involved the exclusion of black voters from municipal elections. *Ante*, at 334–335, n. 3. The voters excluded from the gerrymandered Tuskegee were left in unincorporated areas, where they could, at most, vote for county and state officials. Changing political boundaries to affect minority voting power would be called dilution today. *Gomillion* shows that the physical image evoked by the term "dilution" does not encompass all the ways in which participation in the political process can be made unequal. That the Court did not use the word "dilution" in its modern sense in *Gomillion* does not diminish the force of its Fifteenth Amendment analysis.

The majority also suggests, *ante*, at 334–335, n. 3, that the *Mobile* plurality explicitly rejected reliance on the Fifteenth Amendment. But the same plurality recognized that "'deny or abridge'" in § 2 of the Voting Rights Act mirrored the cognate language of the Fifteenth Amendment, *Mobile*, *supra*, at 60–61, and we have since held that the language of § 2 includes nonretrogressive dilution claims. See, *e. g.*, *Voinovich* v. *Quilter*, *supra*, at 157.

language qualifying or limiting the terms of abridgment which it shares with the Amendment, abridgment under § 5 presumably covers any vote dilution, not retrogression alone, and no redistricting scheme should receive preclearance without a showing that it is nondilutive. See *Bossier Parish I*, *supra*, at 493 (BREYER, J., concurring in part and concurring in judgment) (use in § 5 of Fifteenth Amendment language indicates that § 5 prohibits new plans with dilutive purposes). Such, in fact, was apparently just what Congress had in mind when it addressed § 5 to the agility of covered jurisdictions in keeping one step ahead of dilution challenges under the Constitution (and previous versions of the Voting Rights Act) by adopting successive voting schemes, each with a distinctive feature that perpetuated the abridgment of the minority vote:

> "Congress had found that case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits. After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims." *South Carolina* v. *Katzenbach*, 383 U. S., at 328 (footnote omitted).

This evil in Congress's sights was discrimination, abridgment of the right to vote, not merely discrimination that happens to cause retrogression, and Congress's intent to frustrate the unconstitutional evil by barring a replacement scheme of discrimination from being put into effect was not confined to any one subset of discriminatory schemes. The School Board's purpose thus seems to lie at the very center of what Congress meant to counter by requiring preclearance, and the Court's holding that any nonretrogressive purpose survives § 5 is an exceedingly odd conclusion.

B

The majority purports to shoulder its burden to justify a limited reading of "abridging" by offering an argument from the "context" of § 5. Since § 5 covers only changes in voting practices, this fact is said to be a reason to think that "abridging" as used in the statute is narrower than its cognate in the Fifteenth Amendment, which covers both changes and continuing systems. *Ante*, at 329–330, 333–334. In other words, on the majority's reading, the baseline in a § 5 challenge is the status quo that is to be changed, while the baseline in a Fifteenth Amendment challenge (or one under § 2 of the Voting Rights Act) is a nondiscriminatory regime, whether extant or not. From the fact that § 5 applies only when a voting change is proposed, however, it does not follow that the baseline of abridgment is the status quo; Congress could perfectly well have decided that when a jurisdiction is forced to change its voting scheme (because of malapportionment shown by a new census, say), it ought to show that the replacement is constitutional. This, of course, is just what the unqualified language and its Fifteenth Amendment parallel would suggest.

In fact, the majority's principal reason for reading intent to abridge as covering only intent to cause retrogression is not the peculiar context of changes in the law, but *Beer* v. *United States*, 425 U. S. 130 (1976), which limited the sort of "effect" that would be an abridgment to retrogressive effect. The strength of the majority's position, then, depends on the need for parallel limitations on the purpose and effect prongs of § 5. The need, however, is very much to the contrary.

1

Insofar as *Beer* is authority for defining the "effect" of a redistricting plan that would bar preclearance under § 5, I will of course respect it as precedent. The policy of *stare decisis* is at its most powerful in statutory interpretation

(which Congress is always free to supersede with new legislation), see *Hilton* v. *South Carolina Public Railways Comm'n*, 502 U. S. 197, 202 (1991), and § 5 presents no exception to the rule that when statutory language is construed it should stay construed. But it is another thing entirely to ignore error in extending discredited reasoning to previously unspoiled statutory provisions. That, however, is just what the Court does in extending *Beer* from § 5 effects to § 5 purpose.

*Beer* was wrongly decided, and its error should not be compounded in derogation of clear text and equally clear congressional purpose. The provision in § 5 barring preclearance of a districting plan portending an abridging effect is unconditional (and just as uncompromising as the bar to plans resting on a purpose to abridge). The *Beer* Court nonetheless sought to justify the imposition of a nontextual limitation on the forbidden abridging effect to retrogression by relying on a single fragment of legislative history, a statement from a House Report that § 5 would prevent covered jurisdictions from "'undo[ing] or defeat[ing] the rights recently won'" by blacks. *Beer*, *supra*, at 140 (quoting H. R. Rep. No. 91–397, p. 8 (1969)).[12] Relying on this one statement, however, was an act of distorting selectivity, for the legislative history is replete with references to the need to block changes in voting practices that would perpetuate existing discrimination and stand in the way of truly nondiscriminatory alternatives. In the House of Representatives, the Judiciary Committee noted that "even after apparent defeat[s] resisters seek new ways and means of discriminating.

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[12] Section 5 was promulgated by the 89th Congress, but Congress's attention has repeatedly returned to it as the duration of the Voting Rights Act has been extended and the Act has been amended. See, *e. g.*, *Bossier Parish I*, 520 U. S. 471, 505–506 (1997) (STEVENS, J., dissenting in part and concurring in part) (discussing 1982 amendments); Voting Rights Act of 1965, Amendments of 1975, 89 Stat. 400; Voting Rights Act Amendments of 1970, 84 Stat. 315.

Barring one contrivance too often has caused no change in result, only in methods," H. R. Rep. No. 439, 89th Cong., 1st Sess., 10 (1965), and the House Report described how jurisdictions had used changes in voting practices to stave off reform. By making trifling changes in registration requirements, for example, Dallas County, Alabama, was able to terminate litigation against it without registering more than a handful of minority voters, see *id.*, at 10–11, and new practices were similarly effective devices for perpetuating discrimination in other jurisdictions as well, see S. Rep. No. 162, pt. 3, pp. 8–9 (1965) (Joint Statement of Individual Views by Sens. Dodd, Hart, Long, Kennedy, Bayh, Burdick, Tydings, Dirksen, Hruska, Fong, Scott, and Javits). After losing voting rights cases, jurisdictions would adopt new voting requirements " 'as a means for continuing the rejection of qualified Negro applicants.' " *Id.*, at 12 (quoting *United States* v. *Parker*, 236 F. Supp. 511, 517 (MD Ala. 1964)). Thanks to the discriminatory traditions of the jurisdictions covered by § 5, these new practices often avoided retrogression[13] even as they stymied improvements. In the days before § 5, the ongoing litigation would become moot and minority litigants would be back at square one, shouldering the burden of new challenges with the prospect of further dodges to come. *Beer*, *supra*, at 152, n. 9 (Marshall, J., dissenting).

The intent of Congress to address the frustration of running to stay in place was manifest when it extended the Voting Rights Act in 1969:

> "Prior to the enactment of the 1965 act, new voting rules of various kinds were resorted to in several States in order to perpetuate discrimination in the face of

[13] The legislative history did not use the terms "retrogression" and "dilution" to describe discriminatory regimes. In the Voting Rights Act context, the former appears for the first time in a federal case in *Beer*, 425 U. S., at 141; the latter made its first appearance in *Allen* v. *State Bd. of Elections*, 393 U. S. 544 (1969).

> adverse Federal court decrees and enactments by the Congress. . . . In order to preclude such future State or local circumvention of the remedies and policies of the 1965 act, [§ 5 was enacted]. . . .
>
> "The record before the committee indicates that as Negro voter registration has increased under the Voting Rights Act, several jurisdictions have undertaken new, unlawful ways to diminish the Negroes' franchise and to defeat Negro and Negro-supported candidates. The U. S. Commission on Civil Rights has reported that these measures have taken the form of switching to at-large elections where Negro voting strength is concentrated in particular election districts and facilitating the consolidation of predominently *[sic]* Negro and predominently *[sic]* white counties. Other changes in rules or practices affecting voting have included increasing filing fees in elections where Negro candidates were running; abolishing or making appointive offices sought by Negro candidates; extending the term of office of incumbent white officials, and withholding information about qualifying for office from Negro candidates." H. R. Rep. No. 91–397, at 6–7.

See also 115 Cong. Rec. 38486 (1969) (remarks of Rep. McCulloch) (listing "new methods by which the South achieves an old goal" of maintaining white control of the political process).

Congress again expressed its views in 1975:

> "In recent years the importance of [§ 5] has become widely recognized as a means of promoting and preserving minority political gains in covered jurisdictions. . . .
>
> . . . . . .
>
> ". . . As registration and voting of minority citizens increases, other measures may be resorted to which would dilute increasing minority voting strength. Such other measures may include switching to at-large elec-

> tions, annexations of predominantly white areas, or the adoption of discriminatory redistricting plans." S. Rep. No. 94–295, pp. 15–17 (citation omitted).

Congress thus referred to § 5 as a way to make the situation better ("promoting"), not merely as a stopgap to keep it from getting worse ("preserving").

It is all the more difficult to understand how the majority in *Beer* could have been so oblivious to this clear congressional objective, when a decade before *Beer* the Court had realized that modifying legal requirements was the way discriminatory jurisdictions stayed one jump ahead of the Constitution. In *United States* v. *Mississippi*, 380 U. S. 128 (1965), the Court described a series of ingenious devices preventing minority registration, and in *South Carolina* v. *Katzenbach*, 383 U. S. 301 (1966), the Court said that

> "Congress knew that some of the States . . . had resorted to the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees. Congress had reason to suppose that these States might try similar maneuvers in the future in order to evade the remedies for voting discrimination contained in the Act itself." *Id.*, at 335 (footnote omitted); see also *id.*, at 314–315.

Likewise, well before *Beer*, our nascent dilution jurisprudence addressed practices mentioned in the congressional lists of tactics targeted by § 5. See, *e. g.*, *White* v. *Regester*, 412 U. S. 755, 765–766, 768–769 (1973).

In fine, the full legislative history shows beyond any doubt just what the unqualified text of § 5 provides. The statute contains no reservation in favor of customary abridgment grown familiar after years of relentless discrimination, and the preclearance requirement was not enacted to authorize covered jurisdictions to pour old poison into new bottles. See *post*, at 374–376 (BREYER, J., dissenting). *Beer* was

wrong, and while it is entitled to stand under our traditional *stare decisis* in statutory interpretation, *stare decisis* does not excuse today's decision to compound *Beer*'s error.[14]

2

Giving purpose-to-abridge the broader, intended reading while preserving the erroneously truncated interpretation of effect would not even result in a facially irrational scheme. This is so because intent to dilute is conceptually simple, whereas a dilutive abridgment-in-fact is not readily defined and identified independently of dilutive intent. A purpose to dilute simply means to subordinate minority voting power; exact calibration is unnecessary to identify what is intended. Any purpose to give less weight to minority participation in the electoral process than to majority participation is a purpose to discriminate and thus to "abridge" the right to vote. No further baseline is needed because the enquiry goes to the direction of the majority's aim, without reference to details of the existing system.

Dilutive effect, for the reason the majority points out, is different. Dilutive effect requires a baseline against which to compare a proposed change. While the baseline is in theory the electoral effectiveness of majority voters, dilution is not merely a lack of proportional representation, see *Davis* v. *Bandemer*, 478 U. S. 109, 131 (1986) (opinion of White, J.), and we have held that the maximum number of possible majority-minority districts cannot be the standard, see, *e. g.*, *Miller* v. *Johnson*, 515 U. S., at 925–926. Thus we have held that an enquiry into dilutive effect must rest on some

[14] The Court says this "lengthy expedition into legislative history" leaves me "emptyhanded" for the reason that nothing shows that today's notions of vote dilution were particularly in the congressional mind. *Ante*, at 335, n. 4. But the whole point of the legislative history is that Congress meant to guard against just those discriminatory devices that were as yet untried. Congress did not know what the covered jurisdictions would think up next.

idea of a reasonable allocation of power between minority and majority voters; this requires a court to compare a challenged voting practice with a reasonable alternative practice. See *Holder* v. *Hall*, 512 U. S. 874, 880 (1994) (opinion of KENNEDY, J.); *id.*, at 887–888 (O'CONNOR, J., concurring in part and concurring in judgment); see also *Johnson* v. *De Grandy*, 512 U. S. 997, 1018 (1994). Looking only to retrogression in effect, while looking to any dilutive or other abridgment in purpose, avoids the difficulty of baseline derivation. The distinction was not intended by Congress, but such a distinction is not irrational.

Indeed, the Justice Department has always taken the position that *Beer* is limited to the effect prong and puts no limitation on discriminatory purpose in § 5. See Brief for Federal Appellant 32–33. The Justice Department's longstanding practice of refusing to preclear changes that it determined to have an unconstitutionally discriminatory purpose, both before and after *Beer*, is entitled to "particular deference" in light of the Department's "central role" in administering § 5. *Dougherty County Bd. of Ed.* v. *White*, 439 U. S. 32, 39 (1978); see also *United States* v. *Sheffield Bd. of Comm'rs*, 435 U. S. 110, 131–132 (1978); *Perkins* v. *Matthews*, 400 U. S. 379, 390–391 (1971). Most significant here, the fact that the Justice Department has for decades understood *Beer* to be limited to effect demonstrates that such a position is entirely consistent and coherent with the law as declared in *Beer*, even though it may not have been what Congress intended.

3

Giving wider scope to purpose than to effect under § 5 would not only preserve the capacity of § 5 to bar preclearance to all intended violations of the Fifteenth Amendment,[15] it would also enjoy the virtue of consistency with

[15] JUSTICE BREYER developed this justification for giving full effect to the "purpose" prong in his opinion in *Bossier Parish I*, 520 U. S., at 493–497 (opinion concurring in part and concurring in judgment). Section 2,

prior decisions apart from *Beer*. In *Richmond* v. *United States*, 422 U. S. 358 (1975), the Court held that a city's territorial annexation reducing the percentage of black voters could not be recognized as a legal wrong under the effect prong of § 5, but remanded for further consideration of discriminatory purpose. The majority distinguishes *Richmond* as "nothing more than an *ex necessitate* limitation upon the effect prong in the particular context of annexation." *Ante*, at 330. But in fact, *Richmond* laid down no eccentric effect rule and is squarely at odds with the majority's position that only an act taken with intent to produce a forbidden effect is forbidden under the intent prong.

As to forbidden effect, the *Richmond* Court said this:

> "As long as the ward system fairly reflects the strength of the Negro community as it exists after the annexation, we cannot hold, without more specific legislative direction, that such an annexation is nevertheless barred by § 5. It is true that the black community, if there is racial bloc voting, will command fewer seats on the city council; and the annexation will have effected a decline

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as amended, now invalidates facially neutral practices with discriminatory effects even in the absence of purposeful discrimination, and is thus no longer coextensive with our understanding of the Constitution. The effects-only standard was added after the Court made clear, after years of uncertainty, that the Constitution prohibited only purposeful discrimination, not neutral action with a disparate impact on minorities.

The Court has divided on the effect of this change on § 5. Compare *id.*, at 484, with *id.*, at 505–506 (STEVENS, J., dissenting in part and concurring in part). As JUSTICE BREYER explained, that the effects prong now goes beyond the Constitution has no bearing on whether we should limit the meaning of the purpose prong, which does no more than repeat what the Constitution requires. *Id.*, at 493–494. Both retrogressive and nonretrogressive discriminatory purposes violate the Constitution. As I have said already, I agree with JUSTICE BREYER that there is no evidence that Congress intended to include in § 5 only part of what the Constitution prohibits. See *id.*, at 494. The tides of constitutional interpretation have buffeted both § 2 and § 5, but have never ebbed so low as to approve of discriminatory, dilutive purpose.

> in the Negroes' relative influence in the city. But a different city council and an enlarged city are involved after the annexation. Furthermore, Negro power in the new city is not undervalued, and Negroes will not be underrepresented on the council.
>
> "As long as this is true, we cannot hold that the effect of the annexation is to deny or abridge the right to vote." 422 U. S., at 371.

As *Richmond*'s references to "undervaluation" and "underrepresentation" make clear, the case involves application of standard Fifteenth Amendment principles to the annexation context, not an annexation exception. As long as the postannexation city allowed black voters to participate on equal terms with white voters, the annexation did not "abridge" their voting rights even if they thereafter made up a smaller proportion of the voting population. The Court also held, however, that in adopting the very plan whose effect had been held to be outside the scope of legal wrong, the city could have acted with an unlawful, discriminatory intent that would have rendered the annexation unlawful and barred approval under § 5:

> "[I]t may be asked how it could be forbidden by § 5 to have the purpose and intent of achieving only what is a perfectly legal result under that section and why we need remand for further proceedings with respect to purpose alone. The answer is plain, and we need not labor it. An official action, whether an annexation or otherwise, taken for the purpose of discriminating against Negroes on account of their race has no legitimacy at all under our Constitution or under the statute. Section 5 forbids voting changes taken with the purpose of denying the vote on the grounds of race or color." *Id.*, at 378.

It follows from *Richmond* that a plan lacking any underlying purpose to cause disqualifying retrogression may be barred by a discriminatory intent.

The majority's attempt to distinguish *Pleasant Grove* v. *United States*, 479 U. S. 462 (1987), is equally vain. Whereas *Richmond* dealt with the argument that law and logic barred finding a disqualifying intent when effect was lawful, *Pleasant Grove* dealt with the argument that finding a disqualifying intent was impossible in fact. The Court in *Pleasant Grove* denied preclearance to an annexation that added white voters to the city's electorate, despite the fact that at the time of the annexation minority voting strength was nonexistent and officials of the city seeking the annexation were unaware of any black voters whose votes could be diluted. One thing is clear beyond peradventure: the annexation in that case could not have been intended to cause retrogression. No one could have intended to cause retrogression because no one knew of any minority voting strength from which retrogression was possible. 479 U. S., at 465, n. 2. The fact that the annexation was nonetheless barred under the purpose prong of § 5, 11 years after *Beer*, means that today's majority cannot hold as they do without overruling *Pleasant Grove*.

The majority seeks to avoid *Pleasant Grove* by describing it as barring "future retrogression" by nipping any such future contingency even before the bud had formed. This gymnastic, however, not only overlooks the contradiction between *Pleasant Grove*'s holding that a voting change without possible retrogressive intent could fail under the purpose prong and the majority's reasoning today that the baseline for the purpose prong is the status quo; it even ignores what the Court actually said. While the *Pleasant Grove* Court said that impermissible purpose could relate to anticipated circumstances, 479 U. S., at 471–472, it said nothing about anticipated retrogression (a concept familiar to the Court

since the time of *Beer*). The Court found it "plausible" that the city had simply acted with "the impermissible purpose of minimizing future black voting strength." 479 U. S., at 471–472 (footnote omitted). The Court spoke of "minimizing," not "causing retrogression to." But there is more:

> "One means of thwarting [integration] is to provide for the growth of a monolithic white voting block, thereby effectively diluting the black vote in advance. This is just as impermissible a purpose as the dilution of present black voting strength. Cf. *City of Richmond*, [422 U. S.,] at 378." *Id.*, at 472.

That is, a nonretrogressive dilutive purpose is just as impermissible under § 5 as a retrogressive one. Today's holding contradicts that. The majority is overruling *Pleasant Grove*.

The majority proffers no justification for denying the precedential value of *Pleasant Grove*. Instead it observes that reading the purpose prong of § 5 as covering more than retrogression (as *Richmond* and *Pleasant Grove* read it) would "exacerbate the 'substantial' federalism costs that the preclearance procedure already exacts." *Ante*, at 336. But my reading, like the Court's own prior reading, would not raise the cost of federalism one penny above what the Congress meant it to be. The behavior of Bossier Parish is a plain effort to deny the voting equality that the Constitution just as plainly guarantees. The point of § 5 is to thwart the ingenuity of the School Board's effort to stay ahead of challenges under § 2. Its object is to bring the country closer to transcending a history of intransigence to enforcement of the Fifteenth Amendment. Now, however, the promise of § 5 is substantially diminished. Now executive and judicial officers of the United States will be forced to preclear illegal and unconstitutional voting schemes patently intended to perpetuate discrimination. The appeal to federalism is no excuse. I respectfully dissent.

JUSTICE STEVENS, with whom JUSTICE GINSBURG joins, dissenting.

In its administration of the voting rights statute for the past quarter century, the Department of Justice has consistently employed a construction of the Voting Rights Act of 1965 contrary to that imposed upon the Act by the Court today. Apart from the deference such constructions are always afforded, the Department's reading points us directly to the necessary starting point of any exercise in statutory interpretation—the plain language of the statute.

It is not impossible that language alone would lead one to think that the phrase "will not have the effect" includes some temporal measure; the noun "effect" and the verb tense "will have" could imaginably give rise to a reading that requires a comparison between what is and what will be. But there is simply nothing in the word "purpose" or the entire phrase "does not have the purpose" that would lead anyone to think that Congress had anything in mind but a present-tense, intentional effort to "den[y] or abridg[e] the right to vote on account of race." See, *e. g.*, Webster's Third New International Dictionary 1847 (1966). Ergo, if a municipality intends to deny or abridge voting rights because of race, it may not obtain preclearance.

Like JUSTICE SOUTER, I am persuaded that the dissenting opinions of Justices White and Marshall were more faithful to the intent of the Congress that enacted the Voting Rights Act of 1965 than that of the majority in *Beer* v. *United States*, 425 U. S. 130 (1976). One need not, however, disavow that precedent in order to explain my profound disagreement with the Court's holding today. The reading above makes clear that there is no necessary tension between the *Beer* majority's interpretation of the word "effect" in § 5 and the Department's consistent interpretation of the word "purpose." For even if retrogression is an acceptable standard for identifying prohibited effects, that assumption does not justify an interpretation of the word

"purpose" that is at war with both controlling precedent and the plain meaning of the statutory text.

Accordingly, for these reasons and for those stated at greater length by JUSTICE SOUTER, I respectfully dissent.

JUSTICE BREYER, dissenting.

I agree with JUSTICE SOUTER, with one qualification. I would not reconsider the correctness of the Court's decision in *Beer* v. *United States*, 425 U. S. 130 (1976)—an "effects" case—because, regardless, § 5 of the Voting Rights Act of 1965 prohibits preclearance of a voting change that has the purpose of unconstitutionally depriving minorities of the right to vote.

As JUSTICE SOUTER points out, *ante*, at 360–361 (opinion concurring in part and dissenting in part), Congress enacted § 5 in 1965 in part to prevent certain jurisdictions from limiting the number of black voters through "the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees." *South Carolina* v. *Katzenbach*, 383 U. S. 301, 335 (1966). This "stratagem" created a moving target with a consequent risk of judicial runaround. See, *e. g.*, *Perkins* v. *Matthews*, 400 U. S. 379, 395–396 (1971). And this "stratagem" could prove similarly effective where the State's "new rules" were intended to retrogress and where they were not. Indeed, since at the time, in certain places, historical discrimination had left the number of black voters at close to zero, retrogression would have proved virtually impossible where § 5 was needed most.

An example drawn from history makes the point clear. In Forrest County, Mississippi, as of 1962, precisely three-tenths of 1% of the voting age black population was registered to vote. *United States* v. *Mississippi*, 229 F. Supp. 925, 994, n. 86 (SD Miss. 1964) (dissenting opinion), rev'd, 380 U. S. 128 (1965). This number was due in large part to the county registrar's discriminatory application of the State's

voter registration requirements. Prior to 1961, the registrar had simply refused to accept voter registration forms from black citizens. See *United States* v. *Lynd*, 301 F. 2d 818, 821 (CA5 1962). After 1961, those blacks who were allowed to apply to register had been subjected to a more difficult test than whites, while whites had been offered assistance with their less taxing applications. And the registrar, upon denying the applications of black citizens, had refused to supply them with an explanation. *Id.*, at 822. The Government attacked these practices, and the Fifth Circuit enjoined the registrar from "[f]ailing to process applications for registrations submitted by Negro applicants on the same basis as applications submitted by white applicants." *Id.*, at 823.

Mississippi's "immediate response" to this injunction was to impose a "good moral character requirement," *Mississippi*, *supra*, at 997, a standard this Court has characterized as "an open invitation to abuse at the hands of voting officials," *Katzenbach*, *supra*, at 313. One federal judge believed that this change was designed to avoid the Fifth Circuit's injunction by "defy[ing] a Federal Appellate Court determination that particular applicants were qualified [to vote]." *Mississippi*, *supra*, at 997. Such defiance would result in *maintaining*—though *not*, in light of the absence of blacks from the Forrest County voting rolls, in *increasing*—white political supremacy.

This is precisely the kind of activity for which § 5 was designed, and the purpose of § 5 would have demanded its application in such a case. See, *e. g.*, *Perkins*, *supra*, at 395–396 (Congress knew that the "Department of Justice d[id] not have the resources to police effectively all the States . . . covered by the Act," and § 5 was intended to ensure that States not institute "new laws with respect to voting that might have a racially discriminatory purpose"); *Katzenbach*, *supra*, at 314 (Prior to 1965, "[e]ven when favorable decisions ha[d] finally been obtained, some of the States affected ha[d]

merely switched to discriminatory devices not covered by the federal decrees").

And nothing in the Act's language or its history suggests the contrary. See, *e. g.*, H. R. Rep. No. 439, 89th Cong., 1st Sess., 10 (1965) ("Barring one contrivance too often has caused no change in result, only in methods"); S. Rep. No. 162, 89th Cong., 1st Sess., pt. 3, p. 12 (1965) (joint views of 12 members of Senate Judiciary Committee, describing *United States* v. *Parker*, 236 F. Supp. 511, 517 (MD Ala. 1964), in which a jurisdiction responded to an injunction by instituting various means for "the rejection of qualified Negro applicants"); Hearings on H. R. 6400 before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess., 5 (1965) (testimony of Attorney General Katzenbach) (discussing those jurisdictions that are "able, even after apparent defeat in the courts, to devise whole new methods of discrimination"); Hearings on S. 1564 before the Senate Committee on the Judiciary, 89th Cong., 1st Sess., pt. 1, p. 11 (1965) (testimony of Attorney General Katzenbach) (similar).

It seems obvious, then, that if Mississippi had enacted its "moral character" requirement in 1966 (after enactment of the Voting Rights Act), a court applying § 5 would have found "the purpose . . . of denying or abridging the right to vote on account of race," even if Mississippi had intended to permit, say, 0.4%, rather than 0.3%, of the black voting age population of Forrest County to register. And if so, then irrespective of the complexity surrounding the administration of an "effects" test, the answer to today's *purpose* question is "yes."

Syllabus

# NIXON, ATTORNEY GENERAL OF MISSOURI, ET AL. *v.* SHRINK MISSOURI GOVERNMENT PAC ET AL.

## CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 98–963. Argued October 5, 1999—Decided January 24, 2000

Respondents Shrink Missouri Government PAC, a political action committee, and Zev David Fredman, a candidate for the 1998 Republican nomination for Missouri state auditor, filed suit, alleging that a Missouri statute imposing limits ranging from $275 to $1,075 on contributions to candidates for state office violated their First and Fourteenth Amendment rights. Shrink Missouri gave Fredman $1,025 in 1997, and $50 in 1998, and represented that, without the statutory limitation, it would contribute more. Fredman alleged he could campaign effectively only with more generous contributions than the statute allowed. On cross-motions for summary judgment, the District Court sustained the statute. Applying *Buckley* v. *Valeo*, 424 U. S. 1 *(per curiam)*, the court found adequate support for the law in the proposition that large contributions raise suspicions of influence peddling tending to undermine citizens' confidence in government integrity. The court rejected respondents' contention that inflation since *Buckley*'s approval of a federal $1,000 restriction meant that the state limit of $1,075 for a statewide office could not be constitutional today. In reversing, the Eighth Circuit found that *Buckley* had articulated and applied a strict scrutiny standard of review, and held that Missouri had to demonstrate that it had a compelling interest and that the contribution limits at issue were narrowly drawn to serve that interest. Treating Missouri's claim of a compelling interest in avoiding the corruption or the perception of corruption caused by candidates' acceptance of large campaign contributions as insufficient by itself to satisfy strict scrutiny, the court required demonstrable evidence that genuine problems resulted from contributions in amounts greater than the statutory limits. It ruled that the State's evidence was inadequate for this purpose.

*Held:* *Buckley* is authority for comparable state limits on contributions to state political candidates, and those limits need not be pegged to the precise dollar amounts approved in *Buckley*. Pp. 385–398.

(a) The *Buckley* Court held, *inter alia*, that a Federal Election Campaign Act provision placing a $1,000 annual ceiling on independent expenditures linked to specific candidates for federal office infringed speech and association guarantees of the First Amendment and the

Equal Protection Clause of the Fourteenth, but upheld other provisions limiting contributions by individuals to any single candidate to $1,000 per election. P. 385.

(b) In addressing the speech claim, the *Buckley* Court explicitly rejected both intermediate scrutiny for communicative action, see *United States* v. *O'Brien*, 391 U. S. 367, and the similar standard applicable to merely time, place, and manner restrictions, see, *e. g.*, *Adderley* v. *Florida*, 385 U. S. 39, and instead referred generally to "the exacting scrutiny required by the First Amendment," 424 U. S., at 16. The Court then drew a line between expenditures and contributions, treating expenditure restrictions as direct restraints on speech, *id.*, at 19, but saying, in effect, that limiting contributions left communication significantly unimpaired, *id.*, at 20–21. The Court flagged a similar difference between the impacts of expenditure and contribution limits on association rights, *id.*, at 22; see also *id.*, at 28, and later made that distinction explicit, *e. g.*, *Federal Election Comm'n* v. *Massachusetts Citizens for Life, Inc.*, 479 U. S. 238, 259–260. Thus, under *Buckley*'s standard of scrutiny, a contribution limit involving significant interference with associational rights could survive if the Government demonstrated that regulating contributions was a means "closely drawn" to match a "sufficiently important interest," 424 U. S., at 25, though the dollar amount of the limit need not be "fine tun[ed]," *id.*, at 30. While *Buckley* did not attempt to parse distinctions between the speech and associational standards of scrutiny for contribution limits, the Court made clear that such restrictions bore more heavily on associational rights than on speech rights, and thus proceeded on the understanding that a contribution limitation surviving a claim of associational abridgment would survive a speech challenge as well. The Court found the prevention of corruption and the appearance of corruption to be a constitutionally sufficient justification for the contribution limits at issue. *Id.*, at 25–28. Pp. 386–389.

(c) In defending its statute, Missouri espouses those same interests of preventing corruption and the appearance of it. Even without *Buckley*, there would be no serious question about the legitimacy of these interests, which underlie bribery and antigratuity statutes. Rather, respondents take the State to task for failing to justify the invocation of those interests with empirical evidence of actually corrupt practices or of a perception among Missouri voters that unrestricted contributions must have been exerting a covertly corrosive influence. The state statute is not void, however, for want of evidence. The quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised. *Buckley* demonstrates that the dangers of large,

corrupt contributions and the suspicion that large contributions are corrupt are neither novel nor implausible. See 424 U. S., at 27, and n. 28. Respondents are wrong in arguing that this Court has "supplemented" its *Buckley* holding with a new requirement that governments enacting contribution limits must demonstrate that the recited harms are real, not merely conjectural, a contention for which respondents rely principally on *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n*, 518 U. S. 604. This Court has never accepted mere conjecture as adequate to carry a First Amendment burden, and *Colorado Republican* deals not with a government's burden to justify contribution limits, but with limits on independent expenditures by political parties, which the principal opinion expressly distinguished from contribution limits. *Id.*, at 615–618. In any event, this case does not present a close call requiring further definition of whatever the State's evidentiary obligation may be. Although the record does not show that the Missouri Legislature relied on the evidence and findings accepted in *Buckley*, the evidence introduced by petitioners or cited by the lower courts in this action and a prior case involving a related ballot initiative is enough to show that the substantiation of the congressional concerns reflected in *Buckley* has its counterpart in support of the Missouri law. Moreover, although majority votes do not, as such, defeat First Amendment protections, the statewide vote adopting the initiative attested to the public perception that contribution limits are necessary to combat corruption and the appearance thereof. A more extensive evidentiary documentation might be necessary if respondents had made any showing of their own to cast doubt on the apparent implications of *Buckley*'s evidence and the record here. However, the nearest they come to challenging these conclusions is their invocation of academic studies that are contradicted by other studies. Pp. 390–395.

(d) There is no support for respondents' various arguments that the Missouri limitations are so different in kind from those sustained in *Buckley* as to raise essentially a new issue about the adequacy of the Missouri statute's tailoring to serve its purposes. Here, as in *Buckley*, *supra*, at 21, there is no indication that those limits have had any dramatic adverse effect on the funding of campaigns and political associations, and thus there is no showing that the limitations prevented candidates from amassing the resources necessary for effective advocacy. Indeed, the District Court found that since the Missouri limits became effective, candidates for state office have been able to raise funds sufficient to run effective campaigns, and that candidates are still able to amass impressive campaign war chests. The plausibility of these conclusions is buttressed by petitioners' evidence that in the last election before the contributions became effective, 97.62 percent of all contribu-

tors to candidates for state auditor made contributions of $2,000 or less. Even assuming that the contribution limits affected respondent Fredman's ability to wage a competitive campaign, a showing of one affected individual does not point up a system of suppressed political advocacy that would be unconstitutional under *Buckley.* The District Court's conclusions and the supporting evidence also suffice to answer respondents' variant claim that the Missouri limits today differ in kind from *Buckley*'s owing to inflation since that case was decided. Respondents' assumption that *Buckley* set a minimum constitutional threshold for contribution limits, which in dollars adjusted for loss of purchasing power are now well above the lines drawn by Missouri, is a fundamental misunderstanding of that case. The Court there specifically rejected the contention that $1,000, or any other amount, was a constitutional minimum, and instead asked whether the contribution limitation was so low as to impede the ability of candidates to amass the resources necessary for effective advocacy. 424 U. S., at 21. Such being the test, the issue in subsequent cases cannot be truncated to a narrow question about the power of the dollar. Pp. 395–397.

161 F. 3d 519, reversed and remanded.

SOUTER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, GINSBURG, and BREYER, JJ., joined. STEVENS, J., filed a concurring opinion, *post,* p. 398. BREYER, J., filed a concurring opinion, in which GINSBURG, J., joined, *post,* p. 399. KENNEDY, J., filed a dissenting opinion, *post,* p. 405. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined, *post,* p. 410.

*Jeremiah W. Nixon*, Attorney General of Missouri, *pro se*, argued the cause for petitioners. With him on the briefs were *James R. Layton*, State Solicitor, *Paul R. Maguffee*, Assistant Attorney General, *Carter G. Phillips*, *Virginia A. Seitz*, and *Joseph R. Guerra.*

*Solicitor General Waxman* argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Acting Assistant Attorney General Ogden*, *Deputy Solicitor General Underwood*, *Malcolm L. Stewart*, *Douglas N. Letter*, and *Michael Jay Singer.*

*D. Bruce La Pierre* argued the cause for respondents. With him on the briefs for respondents Shrink Missouri Government PAC et al. was *Patric Lester. Deborah Goldberg*,

*Burt Neuborne*, and *Gerald P. Greiman* filed briefs for Joan Bray as respondent under this Court's Rule 12.6.*

JUSTICE SOUTER delivered the opinion of the Court.

The principal issues in this case are whether *Buckley* v. *Valeo*, 424 U. S. 1 (1976) *(per curiam)*, is authority for state limits on contributions to state political candidates and

*Briefs of *amici curiae* urging reversal were filed for the State of Ohio et al. by *Betty D. Montgomery*, Attorney General of Ohio, *Edward B. Foley*, State Solicitor, *David M. Gormley*, *Iver A. Stridiron*, Acting Attorney General of the U. S. Virgin Islands, and by the Attorneys General for their respective States as follows: *Barbara Ritchie* of Alaska, *Janet Napolitano* of Arizona, *Mark Pryor* of Arkansas, *Ken Salazar* of Colorado, *Richard Blumenthal* of Connecticut, *M. Jane Brady* of Delaware, *Robert A. Butterworth* of Florida, *Margery S. Bronster* of Hawaii, *Alan G. Lance* of Idaho, *Jeffrey A. Modisett* of Indiana, *Thomas J. Miller* of Iowa, *Carla J. Stovall* of Kansas, *Albert B. Chandler III* of Kentucky, *Richard P. Ieyoub* of Louisiana, *Andrew Ketterer* of Maine, *J. Joseph Curran, Jr.*, of Maryland, *Thomas F. Reilly* of Massachusetts, *Mike Hatch* of Minnesota, *Joseph P. Mazurek* of Montana, *Patricia A. Madrid* of New Mexico, *Eliot Spitzer* of New York, *Michael F. Easley* of North Carolina, *W. A. Drew Edmondson* of Oklahoma, *Sheldon Whitehouse* of Rhode Island, *Paul G. Summers* of Tennessee, *Jan Graham* of Utah, *William H. Sorrell* of Vermont, and *Christine O. Gregoire* of Washington; for Common Cause et al. by *Roger M. Witten*, *Daniel H. Squire*, *Donald J. Simon*, and *Fred Wertheimer;* for Public Citizen by *Alan B. Morrison* and *David C. Vladeck;* for the Secretary of State of Arkansas et al. by *Gregory Luke*, *John C. Bonifaz*, and *Brenda Wright;* for Senator John F. Reed et al. by *Donald B. Verrilli, Jr.*, *Deanne E. Maynard*, and *Gregory P. Magarian;* for Paul Allen Beck et al. by *Evan A. Davis;* and for Norman Dorsen et al. by *Charles S. Sims.*

Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *Joel M. Gora* and *Steven R. Shapiro;* for the First Amendment Project of the Americans Back in Charge Foundation et al. by *Cleta D. Mitchell* and *Paul E. Sullivan;* for Gun Owners of America et al. by *William J. Olson* and *John S. Miles;* for the James Madison Center for Free Speech by *James Bopp, Jr.;* for the National Right to Life PAC State Fund et al. by *Mr. Bopp;* for the Pacific Legal Foundation et al. by *Sharon L. Browne;* for Senator Mitch McConnell et al. by *Bobby R. Burchfield;* and for U. S. Term Limits, Inc., by *Stephen J. Safranek*.

whether the federal limits approved in *Buckley,* with or without adjustment for inflation, define the scope of permissible state limitations today. We hold *Buckley* to be authority for comparable state regulation, which need not be pegged to *Buckley*'s dollars.

## I

In 1994, the Legislature of Missouri enacted Senate Bill 650 to restrict the permissible amounts of contributions to candidates for state office. Mo. Rev. Stat. § 130.032 (1994). Before the statute became effective, however, Missouri voters approved a ballot initiative with even stricter contribution limits, effective immediately. The United States Court of Appeals for the Eighth Circuit then held the initiative's contribution limits unconstitutional under the First Amendment, *Carver* v. *Nixon,* 72 F. 3d 633, 645 (CA8 1995), cert. denied, 518 U. S. 1033 (1996), with the upshot that the previously dormant 1994 statute took effect. *Shrink Missouri Government PAC* v. *Adams,* 161 F. 3d 519, 520 (CA8 1998).

As amended in 1997, that statute imposes contribution limits ranging from $250 to $1,000, depending on specified state office or size of constituency. See Mo. Rev. Stat. § 130.032.1 (1998 Cum. Supp.); 161 F. 3d, at 520. The particular provision challenged here reads that

> "[t]o elect an individual to the office of governor, lieutenant governor, secretary of state, state treasurer, state auditor or attorney general, [[t]he amount of contributions made by or accepted from any person other than the candidate in any one election shall not exceed] one thousand dollars." Mo. Rev. Stat. § 130.032.1(1) (1998 Cum. Supp.).

The statutory dollar amounts are baselines for an adjustment each even-numbered year, to be made "by multiplying the base year amount by the cumulative consumer price

index . . . and rounded to the nearest twenty-five-dollar amount, for all years since January 1, 1995." § 130.032.2. When this suit was filed, the limits ranged from a high of $1,075 for contributions to candidates for statewide office (including state auditor) and for any office where the population exceeded 250,000, down to $275 for contributions to candidates for state representative or for any office for which there were fewer than 100,000 people represented. 161 F. 3d, at 520; App. 37.

Respondents Shrink Missouri Government PAC, a political action committee, and Zev David Fredman, a candidate for the 1998 Republican nomination for state auditor, sought to enjoin enforcement of the contribution statute[1] as violating their First and Fourteenth Amendment rights (presumably those of free speech, association, and equal protection, although the complaint did not so state). Shrink Missouri gave $1,025 to Fredman's candidate committee in 1997, and another $50 in 1998. Shrink Missouri represented that, without the limitation, it would contribute more to the Fredman campaign. Fredman alleged he could campaign effectively only with more generous contributions than § 130.032.1 allowed. *Shrink Missouri Government PAC* v. *Adams*, 5 F. Supp. 2d 734, 737 (ED Mo. 1998).

On cross-motions for summary judgment, the District Court sustained the statute. *Id.*, at 742. Applying *Buckley* v. *Valeo*, *supra*, the court found adequate support for the law in the proposition that large contributions raise suspicions of influence peddling tending to undermine citizens' confidence "in the integrity of . . . government." 5 F. Supp. 2d, at 738. The District Court rejected respondents' con-

[1] Respondents sued members of the Missouri Ethics Commission, the Missouri attorney general, and the St. Louis County prosecuting attorney. *Shrink Missouri Government PAC* v. *Adams*, 5 F. Supp. 2d 734, 737 (ED Mo. 1998).

tention that inflation since *Buckley*'s approval of a federal $1,000 restriction meant that the state limit of $1,075 for a statewide office could not be constitutional today. 5 F. Supp. 2d, at 740.

The Court of Appeals for the Eighth Circuit nonetheless enjoined enforcement of the law pending appeal, 151 F. 3d 763, 765 (1998), and ultimately reversed the District Court, 161 F. 3d, at 520. Finding that *Buckley* had "'articulated and applied a strict scrutiny standard of review,'" the Court of Appeals held that Missouri was bound to demonstrate "that it has a compelling interest and that the contribution limits at issue are narrowly drawn to serve that interest." 161 F. 3d, at 521 (quoting *Carver* v. *Nixon*, *supra*, at 637). The appeals court treated Missouri's claim of a compelling interest "in avoiding the corruption or the perception of corruption brought about when candidates for elective office accept large campaign contributions" as insufficient by itself to satisfy strict scrutiny. 161 F. 3d, at 521–522. Relying on Circuit precedent, see *Russell* v. *Burris*, 146 F. 3d 563, 568 (CA8), cert. denied, 525 U. S. 1001 (1998); *Carver* v. *Nixon*, *supra*, at 638, the Court of Appeals required

> "some demonstrable evidence that there were genuine problems that resulted from contributions in amounts greater than the limits in place. . . .
>
> "[T]he *Buckley* Court noted the perfidy that had been uncovered in federal campaign financing in 1972. . . . But we are unwilling to extrapolate from those examples that in Missouri at this time there is corruption or a perception of corruption from 'large' campaign contributions, without some evidence that such problems really exist." 161 F. 3d, at 521–522 (citations omitted).

The court thought that the only evidence presented by the State, an affidavit from the cochairman of the state legislature's Interim Joint Committee on Campaign Finance Reform when the statute was passed, was inadequate to raise

a genuine issue of material fact about the State's alleged interest in limiting campaign contributions. *Ibid.*[2]

Given the large number of States that limit political contributions, see generally Federal Election Commission, E. Feigenbaum & J. Palmer, Campaign Finance Law 98 (1998), we granted certiorari to review the congruence of the Eighth Circuit's decision with *Buckley.* 525 U. S. 1121 (1999). We reverse.

## II

The matters raised in *Buckley* v. *Valeo*, 424 U. S. 1 (1976) *(per curiam)*, included claims that federal campaign finance legislation infringed speech and association protections of the First Amendment and the equal protection guarantee of the Fifth. The Federal Election Campaign Act of 1971, 86 Stat. 3, as amended by the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, limited (and still limits) contributions by individuals to any single candidate for federal office to $1,000 per election. 18 U. S. C. §§ 608(b)(1), (3) (1970 ed., Supp. IV); *Buckley* v. *Valeo*, *supra*, at 13. Until *Buckley* struck it down, the law also placed a $1,000 annual ceiling on independent expenditures linked to specific candidates. 18 U. S. C. § 608(e) (1970 ed., Supp. IV); 424 U. S., at 13. We found violations of the First Amendment in the expenditure regulations, but held the contribution restrictions constitutional. *Buckley* v. *Valeo*, *supra.*

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[2] Chief Judge Bowman also would have found the law invalid because the contribution limits were severely tailored beyond any need to serve the State's interest. Comparing the Missouri limits with those considered in *Buckley,* the Chief Judge said that "[a]fter inflation, limits of $1,075, $525, and $275 cannot compare with the $1,000 limit approved in *Buckley* twenty-two years ago," and "can only be regarded as 'too low to allow meaningful participation in protected political speech and association.'" 161 F. 3d, at 522–523 (quoting *Day* v. *Holahan*, 34 F. 3d 1356, 1366 (CA8 1994), cert. denied, 513 U. S. 1127 (1995)). Judge Ross, concurring in the judgment, did not join this portion of Chief Judge Bowman's opinion. 161 F. 3d, at 523.

Judge Gibson dissented from the panel's decision. *Ibid.*

A

Precision about the relative rigor of the standard to review contribution limits was not a pretense of the *Buckley per curiam* opinion. To be sure, in addressing the speech claim, we explicitly rejected both *O'Brien* intermediate scrutiny for communicative action, see *United States* v. *O'Brien*, 391 U. S. 367 (1968), and the similar standard applicable to merely time, place, and manner restrictions, see *Adderley* v. *Florida*, 385 U. S. 39 (1966); *Cox* v. *Louisiana*, 379 U. S. 536 (1965); *Kovacs* v. *Cooper*, 336 U. S. 77 (1949). In distinguishing these tests, the discussion referred generally to "the exacting scrutiny required by the First Amendment," *Buckley* v. *Valeo*, 424 U. S., at 16, and added that "'the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office,'" *id.*, at 15 (quoting *Monitor Patriot Co.* v. *Roy*, 401 U. S. 265, 272 (1971)).

We then, however, drew a line between expenditures and contributions, treating expenditure restrictions as direct restraints on speech, 424 U. S., at 19, which nonetheless suffered little direct effect from contribution limits:

> "[A] limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication. A contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support. The quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the undifferentiated symbolic act of contributing. At most, the size of the contribution provides a very rough index of the intensity of the contributor's support for the candidate. A limitation on the amount of money a person may give to a candidate or

> campaign organization thus involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues." *Id.*, at 20–21 (footnote omitted).

We thus said, in effect, that limiting contributions left communication significantly unimpaired.

We flagged a similar difference between expenditure and contribution limitations in their impacts on the association right. While an expenditure limit "precludes most associations from effectively amplifying the voice of their adherents," *id.*, at 22 (thus interfering with the freedom of the adherents as well as the association, *ibid.*), the contribution limits "leave the contributor free to become a member of any political association and to assist personally in the association's efforts on behalf of candidates," *ibid.;* see also *id.*, at 28. While we did not then say in so many words that different standards might govern expenditure and contribution limits affecting associational rights, we have since then said so explicitly in *Federal Election Comm'n* v. *Massachusetts Citizens for Life, Inc.*, 479 U. S. 238, 259–260 (1986): "We have consistently held that restrictions on contributions require less compelling justification than restrictions on independent spending." It has, in any event, been plain ever since *Buckley* that contribution limits would more readily clear the hurdles before them. Cf. *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n*, 518 U. S. 604, 610 (1996) (opinion of BREYER, J.) (noting that in campaign finance case law, "[t]he provisions that the Court found constitutional mostly imposed *contribution* limits" (emphasis in original)). Thus, under *Buckley*'s standard of scrutiny, a contribution limit involving "significant interference" with associational rights, 424 U. S., at 25 (internal quotation marks omitted), could survive if the Government demonstrated that contribution regulation was "closely drawn"

to match a "sufficiently important interest," *ibid.*, though the dollar amount of the limit need not be "fine tun[ed]," *id.*, at 30.[3]

While we did not attempt to parse distinctions between the speech and association standards of scrutiny for contribution limits, we did make it clear that those restrictions bore more heavily on the associational right than on freedom to speak. *Id.*, at 24–25. We consequently proceeded on the understanding that a contribution limitation surviving a claim of associational abridgment would survive a speech challenge as well, and we held the standard satisfied by the contribution limits under review.

"[T]he prevention of corruption and the appearance of corruption" was found to be a "constitutionally sufficient justification," *id.*, at 25–26:

> "To the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the integrity of our system of representative democracy is undermined. . . .
>
> "Of almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions. . . . Congress could legiti-

[3] The quoted language addressed the correlative overbreadth challenge. On the point of classifying the standard of scrutiny, compare *Roberts* v. *United States Jaycees*, 468 U. S. 609, 623 (1984) ("Infringements on [the right to associate for expressive purposes] may be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms"); *NAACP* v. *Button*, 371 U. S. 415, 438 (1963) ("The decisions of this Court have consistently held that only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms"); *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449, 460–461 (1958) ("[S]tate action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny").

> mately conclude that the avoidance of the appearance of improper influence 'is also critical . . . if confidence in the system of representative Government is not to be eroded to a disastrous extent.'" *Id.*, at 26–27 (quoting *Civil Service Comm'n* v. *Letter Carriers*, 413 U. S. 548, 565 (1973)).

See also *Federal Election Comm'n* v. *National Conservative Political Action Comm.*, 470 U. S. 480, 497 (1985) ("Corruption is a subversion of the political process. Elected officials are influenced to act contrary to their obligations of office by the prospect of financial gain to themselves or infusions of money into their campaigns"); *Federal Election Comm'n* v. *National Right to Work Comm.*, 459 U. S. 197, 208 (1982) (noting that Government interests in preventing corruption or the appearance of corruption "directly implicate 'the integrity of our electoral process, and, not less, the responsibility of the individual citizen for the successful functioning of that process'" (quoting *United States* v. *Automobile Workers*, 352 U. S. 567, 570 (1957))); *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 788, n. 26 (1978) ("The importance of the governmental interest in preventing [corruption] has never been doubted").

In speaking of "improper influence" and "opportunities for abuse" in addition to "*quid pro quo* arrangements," we recognized a concern not confined to bribery of public officials, but extending to the broader threat from politicians too compliant with the wishes of large contributors. These were the obvious points behind our recognition that the Congress could constitutionally address the power of money "to influence governmental action" in ways less "blatant and specific" than bribery. *Buckley* v. *Valeo*, 424 U. S., at 28.[4]

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[4] In arguing that the *Buckley* standard should not be relaxed, respondents Shrink Missouri and Fredman suggest that a candidate like Fredman suffers because contribution limits favor incumbents over challengers. Brief for Respondents Shrink Missouri Government PAC et al. 23–24. This is essentially an equal protection claim, which *Buckley* squarely

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In defending its own statute, Missouri espouses those same interests of preventing corruption and the appearance of it that flows from munificent campaign contributions. Even without the authority of *Buckley*, there would be no serious question about the legitimacy of the interests claimed, which, after all, underlie bribery and antigratuity statutes. While neither law nor morals equate all political contributions, without more, with bribes, we spoke in *Buckley* of the perception of corruption "inherent in a regime of large individual financial contributions" to candidates for public office, *id.*, at 27, as a source of concern "almost equal" to *quid pro quo* improbity, *ibid.* The public interest in countering that perception was, indeed, the entire answer to the overbreadth claim raised in the *Buckley* case. *Id.*, at 30. This made perfect sense. Leave the perception of impropriety unanswered, and the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance. Democracy works "only if the people have faith in those who govern, and that faith is bound to be shattered when high officials and their appointees engage in activities which arouse suspicions of malfeasance and corruption." *United States* v. *Mississippi Valley Generating Co.*, 364 U. S. 520, 562 (1961).

Although respondents neither challenge the legitimacy of these objectives nor call for any reconsideration of *Buckley*, they take the State to task, as the Court of Appeals did, for failing to justify the invocation of those interests with empirical evidence of actually corrupt practices or of a per-

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faced. We found no support for the proposition that an incumbent's advantages were leveraged into something significantly more powerful by contribution limitations applicable to all candidates, whether veterans or upstarts, 424 U. S., at 31–35. Since we do not relax *Buckley*'s standard, no more need be said about respondents' argument, though we note that nothing in the record here gives respondents a stronger argument than the *Buckley* petitioners made.

ception among Missouri voters that unrestricted contributions must have been exerting a covertly corrosive influence. The state statute is not void, however, for want of evidence.

The quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised. *Buckley* demonstrates that the dangers of large, corrupt contributions and the suspicion that large contributions are corrupt are neither novel nor implausible. The opinion noted that "the deeply disturbing examples surfacing after the 1972 election demonstrate that the problem [of corruption] is not an illusory one." 424 U. S., at 27, and n. 28. Although we did not ourselves marshal the evidence in support of the congressional concern, we referred to "a number of the abuses" detailed in the Court of Appeals's decision, *ibid.*, which described how corporations, well-financed interest groups, and rich individuals had made large contributions, some of which were illegal under existing law, others of which reached at least the verge of bribery. See *Buckley* v. *Valeo*, 519 F. 2d 821, 839–840, and nn. 36–38 (CADC 1975). The evidence before the Court of Appeals described public revelations by the parties in question more than sufficient to show why voters would tend to identify a big donation with a corrupt purpose.

While *Buckley*'s evidentiary showing exemplifies a sufficient justification for contribution limits, it does not speak to what may be necessary as a minimum.[5] As to that, respond-

[5] Cf. *Federal Election Comm'n* v. *National Right to Work Comm.*, 459 U. S. 197, 210 (1982) ("Nor will we second-guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared"); *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 788, n. 26 (1978); *California Medical Assn.* v. *Federal Election Comm'n*, 453 U. S. 182, 194–195 (1981) (noting that *Buckley* held that contribution limits "served the important governmental interests in preventing the corruption or appearance of corruption of the political process that might result if such contributions were not restrained"); *Citizens Against Rent Control/Coalition for Fair Housing* v. *Berkeley*, 454 U. S. 290, 296–297 (1981)

ents are wrong in arguing that in the years since *Buckley* came down we have "supplemented" its holding with a new requirement that governments enacting contribution limits must "'demonstrate that the recited harms are real, not merely conjectural,'" Brief for Respondents Shrink Missouri Government PAC et al. 26 (quoting *United States* v. *Treasury Employees*, 513 U. S. 454, 475 (1995) (in turn quoting *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622, 664 (1994))), a contention for which respondents rely principally on *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n*, 518 U. S. 604 (1996). We have never accepted mere conjecture as adequate to carry a First Amendment burden, and *Colorado Republican* did not deal with a government's burden to justify limits on contributions. Although the principal opinion in that case charged the Government with failure to show a real risk of corruption, *id.*, at 616 (opinion of BREYER, J.), the issue in question was limits on independent expenditures by political parties, which the principal opinion expressly distinguished from contribution limits: "limitations on independent expenditures are less directly related to preventing corruption" than contributions are, *id.*, at 615. In that case, the "constitutionally significant fact" that there was no "coordination between the candidate and the source of the expenditure" kept the principal opinion "from assuming, absent convincing evidence to the contrary, that [a limitation on expenditures] is necessary to combat a substantial danger of corruption of the

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("*Buckley* identified a single narrow exception to the rule that limits on political activity were contrary to the First Amendment. The exception relates to the perception of undue influence of large contributors to a *candidate*"); see also *Federal Election Comm'n* v. *National Conservative Political Action Comm.*, 470 U. S. 480, 500 (1985) (observing that *Buckley* upheld contribution limits as constitutional, and noting the Court's "deference to a congressional determination of the need for a prophylactic rule where the evil of potential corruption had long been recognized").

electoral system." *Id.*, at 617–618. *Colorado Republican* thus goes hand in hand with *Buckley,* not toe to toe.

In any event, this case does not present a close call requiring further definition of whatever the State's evidentiary obligation may be. While the record does not show that the Missouri Legislature relied on the evidence and findings accepted in *Buckley*,[6] the evidence introduced into the record by petitioners or cited by the lower courts in this action and the action regarding Proposition A is enough to show that the substantiation of the congressional concerns reflected in *Buckley* has its counterpart supporting the Missouri law. Although Missouri does not preserve legislative history, 5 F. Supp. 2d, at 738, the State presented an affidavit from State Senator Wayne Goode, the co-chair of the state legislature's Interim Joint Committee on Campaign Finance Reform at the time the State enacted the contribution limits, who stated that large contributions have " 'the real potential to buy votes,' " *ibid.;* App. 47. The District Court cited newspaper accounts of large contributions supporting inferences of impropriety. 5 F. Supp. 2d, at 738, n. 6. One report questioned the state treasurer's decision to use a certain bank for most of Missouri's banking business after that institution contributed $20,000 to the treasurer's campaign. Editorial, The Central Issue is Trust, St. Louis Post-Dispatch, Dec. 31, 1993, p. 6C. Another made much of the receipt by a candidate for state auditor of a $40,000 contribution from a brewery and one for $20,000 from a bank. J. Mannies, Auditor Race May Get Too Noisy to be Ignored, St. Louis Post-Dispatch, Sept. 11, 1994, at 4B. In *Carver* v. *Nixon,* 72 F. 3d 633 (1995), the Eighth Circuit itself, while

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[6] Cf. *Renton* v. *Playtime Theatres, Inc.*, 475 U. S. 41, 51–52 (1986) ("The First Amendment does not require a city, before enacting . . . an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses").

invalidating the limits Proposition A imposed, identified a $420,000 contribution to candidates in northern Missouri from a political action committee linked to an investment bank, and three scandals, including one in which a state representative was "accused of sponsoring legislation in exchange for kickbacks," and another in which Missouri's former attorney general pleaded guilty to charges of conspiracy to misuse state property, *id.*, at 642, and n. 10, after being indicted for using a state workers' compensation fund to benefit campaign contributors. And although majority votes do not, as such, defeat First Amendment protections, the statewide vote on Proposition A certainly attested to the perception relied upon here: "[A]n overwhelming 74 percent of the voters of Missouri determined that contribution limits are necessary to combat corruption and the appearance thereof." *Carver* v. *Nixon*, 882 F. Supp. 901, 905 (WD Mo.), rev'd, 72 F. 3d 633 (CA8 1995); see also 5 F. Supp. 2d, at 738, n. 7.

There might, of course, be need for a more extensive evidentiary documentation if respondents had made any showing of their own to cast doubt on the apparent implications of *Buckley*'s evidence and the record here, but the closest respondents come to challenging these conclusions is their invocation of academic studies said to indicate that large contributions to public officials or candidates do not actually result in changes in candidates' positions. Brief for Respondents Shrink Missouri Government PAC et al. 41; Smith, Money Talks: Speech, Corruption, Equality, and Campaign Finance, 86 Geo. L. J. 45, 58 (1997); Smith, Faulty Assumptions and Undemocratic Consequences of Campaign Finance Reform, 105 Yale L. J. 1049, 1067–1068 (1995). Other studies, however, point the other way. Reply Brief for Respondent Bray 4–5; F. Sorauf, Inside Campaign Finance 169 (1992); Hall & Wayman, Buying Time: Moneyed Interests and the Mobilization of Bias in Congressional Committees, 84 Am. Pol. Sci. Rev. 797 (1990); D. Magleby & C. Nelson, The Money Chase 78 (1990). Given the conflict among these publica-

tions, and the absence of any reason to think that public perception has been influenced by the studies cited by respondents, there is little reason to doubt that sometimes large contributions will work actual corruption of our political system, and no reason to question the existence of a corresponding suspicion among voters.

C

Nor do we see any support for respondents' various arguments that in spite of their striking resemblance to the limitations sustained in *Buckley*, those in Missouri are so different in kind as to raise essentially a new issue about the adequacy of the Missouri statute's tailoring to serve its purposes.[7] Here, as in *Buckley*, "[t]here is no indication . . . that the contribution limitations imposed by the [law] would have any dramatic[ally] adverse effect on the funding of campaigns and political associations," and thus no showing that

[7] Two of respondents' *amici* raise the different argument, that contribution limits are insufficiently narrow, in the light of disclosure requirements and bribery laws as less restrictive mechanisms for dealing with *quid pro quo* threats and apprehensions. Brief for Pacific Legal Foundation et al. as *Amici Curiae* 23–29. We specifically rejected this notion in *Buckley* v. *Valeo*, 424 U. S. 1 (1976) *(per curiam)*, where we said that antibribery laws "deal with only the most blatant and specific attempts of those with money to influence government action," and that "Congress was surely entitled to conclude that disclosure was only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions, even when the identities of the contributors and the amounts of their contributions are fully disclosed." *Id.*, at 28. We understood contribution limits, on the other hand, to "focu[s] precisely on the problem of large campaign contributions—the narrow aspect of political association where the actuality and potential for corruption have been identified—while leaving persons free to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources." *Ibid.* There is no reason to view contribution limits any differently today.

"the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy." 424 U. S., at 21. The District Court found here that in the period since the Missouri limits became effective, "candidates for state elected office [have been] quite able to raise funds sufficient to run effective campaigns," 5 F. Supp. 2d, at 740, and that "candidates for political office in the state are still able to amass impressive campaign war chests," *id.*, at 741.[8] The plausibility of these conclusions is buttressed by petitioners' evidence that in the 1994 Missouri elections (before any relevant state limitations went into effect), 97.62 percent of all contributors to candidates for state auditor made contributions of $2,000 or less. *Ibid.;* App. 34–36.[9] Even if we were to assume that the contribution limits affected respondent Fredman's ability to wage a competitive campaign (no small assumption given that Fredman only identified one contributor, Shrink Missouri, that would have given him more than $1,075 per election), a showing of one affected individual does not point up a system of suppressed political advocacy that would be unconstitutional under *Buckley.*

These conclusions of the District Court and the supporting evidence also suffice to answer respondents' variant claim that the Missouri limits today differ in kind from *Buckley*'s owing to inflation since 1976. Respondents seem to assume that *Buckley* set a minimum constitutional threshold for contribution limits, which in dollars adjusted for loss of purchasing power are now well above the lines drawn by Missouri. But this assumption is a fundamental misunderstanding of what we held.

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[8] This case does not, however, involve any claim that the Missouri law has restricted access to the ballot in any election other than that for state auditor.

[9] Similarly, data showed that less than 1.5 percent of the contributors to candidates in the 1992 election for Missouri secretary of state made aggregate contributions in excess of $2,000. 5 F. Supp. 2d, at 741; App. 35.

In *Buckley*, we specifically rejected the contention that $1,000, or any other amount, was a constitutional minimum below which legislatures could not regulate. As indicated above, we referred instead to the outer limits of contribution regulation by asking whether there was any showing that the limits were so low as to impede the ability of candidates to "amas[s] the resources necessary for effective advocacy," 424 U. S., at 21. We asked, in other words, whether the contribution limitation was so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless. Such being the test, the issue in later cases cannot be truncated to a narrow question about the power of the dollar, but must go to the power to mount a campaign with all the dollars likely to be forthcoming. As Judge Gibson put it, the dictates of the First Amendment are not mere functions of the Consumer Price Index. 161 F. 3d, at 525 (dissenting opinion).

D

The dissenters in this case think our reasoning evades the real issue. JUSTICE THOMAS chides us for "hiding behind" *Buckley*, *post*, at 422, and JUSTICE KENNEDY faults us for seeing this case as "a routine application of our analysis" in *Buckley* instead of facing up to what he describes as the consequences of *Buckley*, *post*, at 405. Each dissenter would overrule *Buckley* and thinks we should do the same.

The answer is that we are supposed to decide this case. Shrink and Fredman did not request that *Buckley* be overruled; the furthest reach of their arguments about the law was that subsequent decisions already on the books had enhanced the State's burden of justification beyond what *Buckley* required, a proposition we have rejected as mistaken.

III

There is no reason in logic or evidence to doubt the sufficiency of *Buckley* to govern this case in support of the Mis-

souri statute. The judgment of the Court of Appeals is, accordingly, reversed, and the case is remanded for proceedings consistent with this opinion.

*It is so ordered.*

JUSTICE STEVENS, concurring.

JUSTICE KENNEDY suggests that the misuse of soft money tolerated by this Court's misguided decision in *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n*, 518 U. S. 604 (1996), demonstrates the need for a fresh examination of the constitutional issues raised by Congress' enactment of the Federal Election Campaign Acts of 1971 and 1974 and this Court's resolution of those issues in *Buckley* v. *Valeo*, 424 U. S. 1 (1976) *(per curiam)*. In response to his call for a new beginning, therefore, I make one simple point. Money is property; it is not speech.

Speech has the power to inspire volunteers to perform a multitude of tasks on a campaign trail, on a battleground, or even on a football field. Money, meanwhile, has the power to pay hired laborers to perform the same tasks. It does not follow, however, that the First Amendment provides the same measure of protection to the use of money to accomplish such goals as it provides to the use of ideas to achieve the same results.*

Our Constitution and our heritage properly protect the individual's interest in making decisions about the use of his or her own property. Governmental regulation of such decisions can sometimes be viewed either as "deprivations of lib-

*Unless, of course, the prohibition entirely forecloses a channel of communication, such as the use of paid petition circulators. See, *e. g.*, *Meyer* v. *Grant*, 486 U. S. 414, 424 (1988) ("Colorado's prohibition of paid petition circulators restricts access to the most effective, fundamental, and perhaps economical avenue of political discourse, direct one-on-one communication. . . . The First Amendment protects appellees' right not only to advocate their cause but also to select what they believe to be the most effective means for so doing").

erty" or as "deprivations of property," see, *e. g.*, *Moore* v. *East Cleveland*, 431 U. S. 494, 513 (1977) (STEVENS, J., concurring in judgment). Telling a grandmother that she may not use her own property to provide shelter to a grandchild—or to hire mercenaries to work in that grandchild's campaign for public office—raises important constitutional concerns that are unrelated to the First Amendment. Because I did not participate in the Court's decision in *Buckley*, I did not have the opportunity to suggest then that those property and liberty concerns adequately explain the Court's decision to invalidate the expenditure limitations in the 1974 Act.

Reliance on the First Amendment to justify the invalidation of campaign finance regulations is the functional equivalent of the Court's candid reliance on the doctrine of substantive due process as articulated in the two prevailing opinions in *Moore* v. *East Cleveland.* The right to use one's own money to hire gladiators, or to fund "speech by proxy," certainly merits significant constitutional protection. These property rights, however, are not entitled to the same protection as the right to say what one pleases.

JUSTICE BREYER, with whom JUSTICE GINSBURG joins, concurring.

The dissenters accuse the Court of weakening the First Amendment. They believe that failing to adopt a "strict scrutiny" standard "balance[s] away First Amendment freedoms." *Post*, at 410 (opinion of THOMAS, J.). But the principal dissent oversimplifies the problem faced in the campaign finance context. It takes a difficult constitutional problem and turns it into a lopsided dispute between political expression and government censorship. Under the cover of this fiction and its accompanying formula, the dissent would make the Court absolute arbiter of a difficult question best left, in the main, to the political branches. I write sepa-

rately to address the critical question of how the Court ought to review this kind of problem, and to explain why I believe the Court's choice here is correct.

If the dissent believes that the Court diminishes the importance of the First Amendment interests before us, it is wrong. The Court's opinion does not question the constitutional importance of political speech or that its protection lies at the heart of the First Amendment. Nor does it question the need for particularly careful, precise, and independent judicial review where, as here, that protection is at issue. But this is a case where constitutionally protected interests lie on both sides of the legal equation. For that reason there is no place for a strong presumption against constitutionality, of the sort often thought to accompany the words "strict scrutiny." Nor can we expect that mechanical application of the tests associated with "strict scrutiny"—the tests of "compelling interests" and "least restrictive means"—will properly resolve the difficult constitutional problem that campaign finance statutes pose. Cf. *Kovacs* v. *Cooper*, 336 U. S. 77, 96 (1949) (Frankfurter, J., concurring) (objecting, in the First Amendment context, to "oversimplified formulas"); see also *Eu* v. *San Francisco County Democratic Central Comm.*, 489 U. S. 214, 233–234 (1989) (STEVENS, J., concurring); *Illinois Bd. of Elections* v. *Socialist Workers Party*, 440 U. S. 173, 188–189 (1979) (Blackmun, J., concurring) (same).

On the one hand, a decision to contribute money to a campaign is a matter of First Amendment concern—not because money *is* speech (it is not); but because it *enables* speech. Through contributions the contributor associates himself with the candidate's cause, helps the candidate communicate a political message with which the contributor agrees, and helps the candidate win by attracting the votes of similarly minded voters. *Buckley* v. *Valeo*, 424 U. S. 1, 24–25 (1976) *(per curiam)*. Both political association and political communication are at stake.

On the other hand, restrictions upon the amount any one individual can contribute to a particular candidate seek to protect the integrity of the electoral process—the means through which a free society democratically translates political speech into concrete governmental action. See *id.*, at 26–27; *Burroughs* v. *United States*, 290 U. S. 534, 545 (1934) (upholding 1925 Federal Corrupt Practices Act by emphasizing constitutional importance of safeguarding the electoral process); see also *Burson* v. *Freeman*, 504 U. S. 191, 199 (1992) (plurality opinion) (recognizing compelling interest in preserving integrity of electoral process). Moreover, by limiting the size of the largest contributions, such restrictions aim to democratize the influence that money itself may bring to bear upon the electoral process. Cf. *Reynolds* v. *Sims*, 377 U. S. 533, 565 (1964) (in the context of apportionment, the Constitution "demands" that each citizen have "an equally effective voice"). In doing so, they seek to build public confidence in that process and broaden the base of a candidate's meaningful financial support, encouraging the public participation and open discussion that the First Amendment itself presupposes. See *Mills* v. *Alabama*, 384 U. S. 214, 218–219 (1966); *Whitney* v. *California*, 274 U. S. 357, 375–376 (1927) (Brandeis, J., concurring); A. Meiklejohn, Free Speech and Its Relation to Self-Government 24–27 (1948).

In service of these objectives, the statute imposes restrictions of degree. It does not deny the contributor the opportunity to associate with the candidate through a contribution, though it limits a contribution's size. Nor does it prevent the contributor from using money (alone or with others) to pay for the expression of the same views in other ways. Instead, it permits all supporters to contribute the same amount of money, in an attempt to make the process fairer and more democratic.

Under these circumstances, a presumption against constitutionality is out of place. I recognize that *Buckley* used

language that could be interpreted to the contrary. It said, for example, that it rejected "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others." 424 U. S., at 48–49. But those words cannot be taken literally. The Constitution often permits restrictions on the speech of some in order to prevent a few from drowning out the many—in Congress, for example, where constitutionally protected debate, Art. I, § 6, is limited to provide every Member an equal opportunity to express his or her views. Or in elections, where the Constitution tolerates numerous restrictions on ballot access, limiting the political rights of some so as to make effective the political rights of the entire electorate. See, *e. g.*, *Storer* v. *Brown*, 415 U. S. 724, 736 (1974). Regardless, as the result in *Buckley* made clear, the statement does not automatically invalidate a statute that seeks a fairer electoral debate through contribution limits, nor should it forbid the Court to take account of the competing constitutional interests just mentioned.

In such circumstances—where a law significantly implicates competing constitutionally protected interests in complex ways—the Court has closely scrutinized the statute's impact on those interests, but refrained from employing a simple test that effectively presumes unconstitutionality. Rather, it has balanced interests. And in practice that has meant asking whether the statute burdens any one such interest in a manner out of proportion to the statute's salutary effects upon the others (perhaps, but not necessarily, because of the existence of a clearly superior, less restrictive alternative). Where a legislature has significantly greater institutional expertise, as, for example, in the field of election regulation, the Court in practice defers to empirical legislative judgments—at least where that deference does not risk such constitutional evils as, say, permitting incumbents to insulate themselves from effective electoral challenge. This approach is that taken in fact by *Buckley* for contributions, and

is found generally where competing constitutional interests are implicated, such as privacy, see, *e. g.*, *Frisby* v. *Schultz*, 487 U. S. 474, 485–488 (1988) (balancing rights of privacy and expression); *Rowan* v. *Post Office Dept.*, 397 U. S. 728, 736 (1970) (same), First Amendment interests of listeners or viewers, see, *e. g.*, *Turner Broadcasting System, Inc.* v. *FCC*, 520 U. S. 180, 192–194 (1997) (recognizing the speech interests of both viewers and cable operators); *Columbia Broadcasting System, Inc.* v. *Democratic National Committee*, 412 U. S. 94, 102–103 (1973) ("Balancing the various First Amendment interests involved in the broadcast media . . . is a task of a great delicacy and difficulty"); *Red Lion Broadcasting Co.* v. *FCC*, 395 U. S. 367, 389–390 (1969) (First Amendment permits the Federal Communications Commission to restrict the speech of some to enable the speech of others), and the integrity of the electoral process, see, *e. g.*, *Burson*, *supra*, at 198–211 (weighing First Amendment rights against electoral integrity necessary for right to vote); *Anderson* v. *Celebrezze*, 460 U. S. 780, 788–790 (1983) (same); *Storer* v. *Brown*, *supra*, at 730 ("[T]here must be a substantial regulation of elections if they are to be fair and honest"). The approach taken by these cases is consistent with that of other constitutional courts facing similarly complex constitutional problems. See, *e. g.*, *Bowman* v. *United Kingdom*, 26 Eur. Ct. H. R. 1 (European Comm'n of Human Rights 1998) (demanding proportionality in the campaign finance context); *Libman* v. *Quebec (Attorney General)*, 151 D. L. R. (4th) 385 (Canada 1997) (same). For the dissenters to call the approach "*sui generis*," *post*, at 410 (opinion of THOMAS, J.), overstates their case.

Applying this approach to the present case, I would uphold the statute essentially for the reasons stated by the Court. I agree that the legislature understands the problem—the threat to electoral integrity, the need for democratization—better than do we. We should defer to its political judgment that unlimited spending threatens the integrity of the

electoral process. But we should not defer in respect to whether its solution, by imposing too low a contribution limit, significantly increases the reputation-related or media-related advantages of incumbency and thereby insulates legislators from effective electoral challenge. The statutory limit here, $1,075 (or 378, 1976 dollars), is low enough to raise such a question. But given the empirical information presented—the type of election at issue; the record of adequate candidate financing postreform; and the fact that the statute indexes the amount for inflation—I agree with the Court that the statute does not work disproportionate harm. The limit may have prevented the plaintiff, Zev David Fredman, from financing his own campaign for office, for Fredman's support among potential contributors was not sufficiently widespread. But any contribution statute (like any statute setting ballot eligibility requirements, see, *e. g.*, *Jenness* v. *Fortson*, 403 U. S. 431, 442 (1971)) will narrow the field of conceivable challengers to some degree. Undue insulation is a practical matter, and it cannot be inferred automatically from the fact that the limit makes ballot access more difficult for one previously unsuccessful candidate.

The approach I have outlined here is consistent with the approach this Court has taken in many complex First Amendment cases. See *supra*, at 402–403. The *Buckley* decision, as well, might be interpreted as embodying sufficient flexibility for the problem at hand. After all, *Buckley*'s holding seems to leave the political branches broad authority to enact laws regulating contributions that take the form of "soft money." It held public financing laws constitutional, 424 U. S., at 57, n. 65, 85–109. It says nothing one way or the other about such important proposed reforms as reduced-price media time. And later cases presuppose that the Federal Election Commission has the delegated authority to interpret broad statutory provisions in light of the campaign finance law's basic purposes, despite disagreements over whether the Commission has exercised that au-

thority in a particular case. See *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n*, 518 U. S. 604, 619–621 (1996) (whether claimed "independent expenditure" is a "coordinated expenditure"); accord, *id.*, at 648–650 (STEVENS, J., dissenting). Alternatively, it might prove possible to reinterpret aspects of *Buckley* in light of the post-*Buckley* experience stressed by JUSTICE KENNEDY, *post*, at 406–409 (dissenting opinion), making less absolute the contribution/expenditure line, particularly in respect to independently wealthy candidates, whose expenditures might be considered contributions to their own campaigns.

But what if I am wrong about *Buckley?* Suppose *Buckley* denies the political branches sufficient leeway to enact comprehensive solutions to the problems posed by campaign finance. If so, like JUSTICE KENNEDY, I believe the Constitution would require us to reconsider *Buckley.* With that understanding I join the Court's opinion.

JUSTICE KENNEDY, dissenting.

The Court's decision has lasting consequences for political speech in the course of elections, the speech upon which democracy depends. Yet in defining the controlling standard of review and applying it to the urgent claim presented, the Court seems almost indifferent. Its analysis would not be acceptable for the routine case of a single protester with a hand-scrawled sign, see *City of Ladue* v. *Gilleo,* 512 U. S. 43 (1994), a few demonstrators on a public sidewalk, see *United States* v. *Grace*, 461 U. S. 171 (1983), or a driver who taped over the motto on his license plate because he disagreed with its message, see *Wooley* v. *Maynard,* 430 U. S. 705 (1977). Surely the Court's approach is unacceptable for a case announcing a rule that suppresses one of our most essential and prevalent forms of political speech.

It would be no answer to say that this is a routine application of our analysis in *Buckley* v. *Valeo,* 424 U. S. 1 (1976) *(per curiam)*, to a similar set of facts, so that a cavalier dis-

missal of respondents' claim is appropriate. The justifications for the case system and *stare decisis* must rest upon the Court's capacity, and responsibility, to acknowledge its missteps. It is our duty to face up to adverse, unintended consequences flowing from our own prior decisions. With all respect, I submit the Court does not accept this obligation in the case before us. Instead, it perpetuates and compounds a serious distortion of the First Amendment resulting from our own intervention in *Buckley.* The Court is concerned about voter suspicion of the role of money in politics. Amidst an atmosphere of skepticism, however, it hardly inspires confidence for the Court to abandon the rigors of our traditional First Amendment structure.

## I

Zev David Fredman asks us to evaluate his speech claim in the context of a system which favors candidates and officeholders whose campaigns are supported by soft money, usually funneled through political parties. The Court pays him no heed. The plain fact is that the compromise the Court invented in *Buckley* set the stage for a new kind of speech to enter the political system. It is covert speech. The Court has forced a substantial amount of political speech underground, as contributors and candidates devise ever more elaborate methods of avoiding contribution limits, limits which take no account of rising campaign costs. The preferred method has been to conceal the real purpose of the speech. Soft money may be contributed to political parties in unlimited amounts, see *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n*, 518 U. S. 604, 616 (1996), and is used often to fund so-called issue advocacy, advertisements that promote or attack a candidate's positions without specifically urging his or her election or defeat. Briffault, Issue Advocacy: Redrawing the Elections/Politics Line, 77 Texas L. Rev. 1751, 1752–1753 (1999). Issue advocacy, like soft money, is unrestricted, see *Buckley*,

*supra*, at 42–44, while straightforward speech in the form of financial contributions paid to a candidate, speech subject to full disclosure and prompt evaluation by the public, is not. Thus has the Court's decision given us covert speech. This mocks the First Amendment. The current system would be unfortunate, and suspect under the First Amendment, had it evolved from a deliberate legislative choice; but its unhappy origins are in our earlier decree in *Buckley*, which by accepting half of what Congress did (limiting contributions) but rejecting the other (limiting expenditures) created a misshapen system, one which distorts the meaning of speech.

The irony that we would impose this regime in the name of free speech ought to be sufficient ground to reject *Buckley*'s wooden formula in the present case. The wrong goes deeper, however. By operation of the *Buckley* rule, a candidate cannot oppose this system in an effective way without selling out to it first. Soft money must be raised to attack the problem of soft money. In effect, the Court immunizes its own erroneous ruling from change. Rulings of this Court must never be viewed with more caution than when they provide immunity from their own correction in the political process and in the forum of unrestrained speech. The melancholy history of campaign finance in *Buckley*'s wake shows what can happen when we intervene in the dynamics of speech and expression by inventing an artificial scheme of our own.

The case in one sense might seem unimportant. It appears that Mr. Fredman was an outsider candidate who may not have had much of a chance. Yet, by binding him to the outdated limit of $1,075 per contribution in a system where parties can raise soft money without limitation and a powerful press faces no restrictions on use of its own resources to back its preferred candidates, the Court tells Mr. Fredman he cannot challenge the status quo unless he first gives into it. This is not the First Amendment with which I am familiar.

To defend its extension of *Buckley* to present times, the Court, of course, recites the dangers of corruption, or the appearance of corruption, when an interested person contributes money to a candidate. What the Court does not do is examine and defend the substitute it has encouraged, covert speech funded by unlimited soft money. In my view that system creates dangers greater than the one it has replaced. The first danger is the one already mentioned: that we require contributors of soft money and its beneficiaries to mask their real purpose. Second, we have an indirect system of accountability that is confusing, if not dispiriting, to the voter. The very disaffection or distrust that the Court cites as the justification for limits on direct contributions has now spread to the entire political discourse. *Buckley* has not worked.

My colleagues in the majority, in my respectful submission, do much disservice to our First Amendment jurisprudence by failing to acknowledge or evaluate the whole operation of the system that we ourselves created in *Buckley*. Our First Amendment principles surely tell us that an interest thought to be the compelling reason for enacting a law is cast into grave doubt when a worse evil surfaces in the law's actual operation. And our obligation to examine the operation of the law is all the more urgent when the new evil is itself a distortion of speech. By these measures the law before us cannot pass any serious standard of First Amendment review.

Among the facts the Court declines to take into account is the emergence of cyberspace communication by which political contributions can be reported almost simultaneously with payment. The public can then judge for itself whether the candidate or the officeholder has so overstepped that we no longer trust him or her to make a detached and neutral judgment. This is a far more immediate way to assess the integrity and the performance of our leaders than through the hidden world of soft money and covert speech.

Officeholders face a dilemma inherent in the democratic process and one that has never been easy to resolve: how to exercise their best judgment while soliciting the continued support and loyalty of constituents whose interests may not always coincide with that judgment. Edmund Burke captured the tension in his Speeches at Bristol. "Your representative owes you, not his industry only, but his judgment; and he betrays instead of serving you, if he sacrifices it to your opinion." E. Burke, Speeches of the Right Hon. Edmund Burke 130 (J. Burke ed. 1867). Whether our officeholders can discharge their duties in a proper way when they are beholden to certain interests both for reelection and for campaign support is, I should think, of constant concern not alone to citizens but to conscientious officeholders themselves. There are no easy answers, but the Constitution relies on one: open, robust, honest, unfettered speech that the voters can examine and assess in an ever-changing and more complex environment.

II

To this point my view may seem to be but a reflection of what JUSTICE THOMAS has written, and to a large extent I agree with his insightful and careful discussion of our precedents. If an ensuing chapter must be written, I may well come out as he does, for his reasoning and my own seem to point to the conclusion that the legislature can do little by way of imposing limits on political speech of this sort. For now, however, I would leave open the possibility that Congress, or a state legislature, might devise a system in which there are some limits on both expenditures and contributions, thus permitting officeholders to concentrate their time and efforts on official duties rather than on fundraising. For the reasons I have sought to express, there are serious constitutional questions to be confronted in enacting any such scheme, but I would not foreclose it at the outset. I would overrule *Buckley* and then free Congress or state legislatures to attempt some new reform, if, based upon their own

considered view of the First Amendment, it is possible to do so. Until any reexamination takes place, however, the existing distortion of speech caused by the halfway house we created in *Buckley* ought to be eliminated. The First Amendment ought to be allowed to take its own course without further obstruction from the artificial system we have imposed. It suffices here to say that the law in question does not come even close to passing any serious scrutiny.

For these reasons, though I am in substantial agreement with what JUSTICE THOMAS says in his opinion, I have thought it necessary to file a separate dissent.

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, dissenting.

In the process of ratifying Missouri's sweeping repression of political speech, the Court today adopts the analytic fallacies of our flawed decision in *Buckley* v. *Valeo*, 424 U. S. 1 (1976) *(per curiam)*. Unfortunately, the Court is not content to merely adhere to erroneous precedent. Under the guise of applying *Buckley*, the Court proceeds to weaken the already enfeebled constitutional protection that *Buckley* afforded campaign contributions. In the end, the Court employs a *sui generis* test to balance away First Amendment freedoms.

Because the Court errs with each step it takes, I dissent. As I indicated in *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n*, 518 U. S. 604, 635–644 (1996) (opinion concurring in judgment and dissenting in part), our decision in *Buckley* was in error, and I would overrule it. I would subject campaign contribution limitations to strict scrutiny, under which Missouri's contribution limits are patently unconstitutional.

## I

I begin with a proposition that ought to be unassailable: Political speech is the primary object of First Amendment

protection. See, *e. g.*, *Mills* v. *Alabama*, 384 U. S. 214, 218 (1966); *Whitney* v. *California*, 274 U. S. 357, 375 (1927) (Brandeis, J., concurring); T. Cooley, Constitutional Limitations *422; Z. Chafee, Free Speech in the United States 28 (1954); Bork, Neutral Principles and Some First Amendment Problems, 47 Ind. L. J. 1, 20 (1971); Sunstein, Free Speech Now, in The Bill of Rights in the Modern State 304–307 (G. Stone, R. Epstein, & C. Sunstein eds. 1992). The Founders sought to protect the rights of individuals to engage in political speech because a self-governing people depends upon the free exchange of political information. And that free exchange should receive the most protection when it matters the most—during campaigns for elective office. "The value and efficacy of [the right to elect the members of government] depends on the knowledge of the comparative merits and demerits of the candidates for public trust, and on the equal freedom, consequently, of examining and discussing these merits and demerits of the candidates respectively." Madison, Report on the Resolutions (1799), in 6 Writings of James Madison 397 (G. Hunt ed. 1906).

I do not start with these foundational principles because the Court openly disagrees with them—it could not, for they are solidly embedded in our precedents. See, *e. g.*, *Eu* v. *San Francisco County Democratic Central Comm.*, 489 U. S. 214, 223 (1989) ("[T]he First Amendment 'has its fullest and most urgent application' to speech uttered during a campaign for political office" (quoting *Monitor Patriot Co.* v. *Roy*, 401 U. S. 265, 272 (1971))); *Brown* v. *Hartlage*, 456 U. S. 45, 53 (1982) ("The free exchange of ideas provides special vitality to the process traditionally at the heart of American constitutional democracy—the political campaign"); *Garrison* v. *Louisiana*, 379 U. S. 64, 74–75 (1964) ("[S]peech concerning public affairs is . . . the essence of self-government"). Instead, I start with them because the Court today abandons them. For nearly half a century, this Court has extended First Amendment protection to a multitude of forms of

"speech," such as making false defamatory statements, filing lawsuits, dancing nude, exhibiting drive-in movies with nudity, burning flags, and wearing military uniforms.[1] Not surprisingly, the Courts of Appeals have followed our lead and concluded that the First Amendment protects, for example, begging, shouting obscenities, erecting tables on a sidewalk, and refusing to wear a necktie.[2] In light of the many cases of this sort, today's decision is a most curious anomaly. Whatever the proper status of such activities under the First Amendment, I am confident that they are less integral to the functioning of our Republic than campaign contributions. Yet the majority today, rather than going out of its way to *protect* political speech, goes out of its way to *avoid* protecting it. As I explain below, contributions to political campaigns generate essential political speech. And contribution caps, which place a direct and substantial limit on core speech, should be met with the utmost skepticism and should receive the strictest scrutiny.

## II

At bottom, the majority's refusal to apply strict scrutiny to contribution limits rests upon *Buckley*'s discounting of the First Amendment interests at stake. The analytic foundation of *Buckley*, however, was tenuous from the very beginning and has only continued to erode in the intervening years. What remains of *Buckley* fails to provide an adequate justification for limiting individual contributions to political candidates.

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[1] *New York Times Co.* v. *Sullivan*, 376 U. S. 254 (1964); *NAACP* v. *Button*, 371 U. S. 415 (1963); *Barnes* v. *Glen Theatre, Inc.*, 501 U. S. 560 (1991) (plurality opinion); *Erznoznik* v. *Jacksonville*, 422 U. S. 205 (1975); *United States* v. *Eichman*, 496 U. S. 310 (1990); *Schacht* v. *United States*, 398 U. S. 58 (1970).

[2] *Loper* v. *New York City Police Dept.*, 999 F. 2d 699 (CA2 1993); *Sandul* v. *Larion*, 119 F. 3d 1250 (CA6 1997); *One World One Family Now* v. *Miami Beach*, 175 F. 3d 1282 (CA11 1999); *East Hartford Education Assoc.* v. *Board of Ed. of East Hartford*, 562 F. 2d 838 (CA2 1977).

A

To justify its decision upholding contribution limitations while striking down expenditure limitations, the Court in *Buckley* explained that expenditure limits "represent substantial rather than merely theoretical restraints on the quantity and diversity of political speech," 424 U. S., at 19, while contribution limits "entai[l] only a marginal restriction upon the contributor's ability to engage in free communication," *id.*, at 20–21 (quoted *ante*, at 386). In drawing this distinction, the Court in *Buckley* relied on the premise that contributing to a candidate differs qualitatively from directly spending money. It noted that "[w]hile contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor." 424 U. S., at 21. See also *California Medical Assn.* v. *Federal Election Comm'n*, 453 U. S. 182, 196 (1981) (plurality opinion) ("[T]he 'speech by proxy' that [a contributor] seeks to achieve through its contributions . . . is not the sort of political advocacy that this Court in *Buckley* found entitled to full First Amendment protection").

But this was a faulty distinction *ab initio* because it ignored the reality of how speech of all kinds is disseminated:

> "Even in the case of a direct expenditure, there is usually some go-between that facilitates the dissemination of the spender's message—for instance, an advertising agency or a television station. To call a contribution 'speech by proxy' thus does little to differentiate it from an expenditure. The only possible difference is that contributions involve an extra step in the proxy chain. But again, that is a difference in form, not substance." *Colorado Republican*, 518 U. S., at 638–639 (THOMAS, J., concurring in judgment and dissenting in part) (citations omitted).

And, inasmuch as the speech-by-proxy argument was disconnected from the realities of political speech to begin with, it is not surprising that we have firmly rejected it since *Buckley*. In *Federal Election Comm'n* v. *National Conservative Political Action Comm.*, 470 U. S. 480 (1985), we cast aside the argument that a contribution does not represent the constitutionally protected speech of a contributor, recognizing "that the contributors obviously like the message they are hearing from these organizations and want to add their voices to that message; otherwise they would not part with their money." *Id.*, at 495. Though in that case we considered limitations on expenditures made by associations, our holding that the speech-by-proxy argument fails to diminish contributors' First Amendment rights is directly applicable to this case. In both cases, donors seek to disseminate information by giving to an organization controlled by others. Through contributing, citizens see to it that their views on policy and politics are articulated. In short, "they are aware that however great the confidence they may justly feel in their own good sense, their interests can be more effectually promoted by [another] than by themselves." The Federalist No. 35, p. 214 (C. Rossiter ed. 1961) (A. Hamilton).

Without the assistance of the speech-by-proxy argument, the remainder of *Buckley*'s rationales founder. Those rationales—that the "quantity of communication by the contributor does not increase perceptibly with the size of his contribution," *Buckley* v. *Valeo*, *supra*, at 21 (quoted *ante*, at 386), that "the size of the contribution provides a very rough index of the intensity of the contributor's support for the candidate," 424 U. S., at 21 (quoted *ante*, at 386), and that "[a] contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support," 424 U. S., at 21 (quoted *ante*, at 386)—still rest on the proposition that speech by proxy is not fully protected. These contentions simply ig-

nore that a contribution, by amplifying the voice of the candidate, helps to ensure the dissemination of the messages that the contributor wishes to convey. Absent the ability to rest on the denigration of contributions as mere "proxy speech," the arguments fall apart.[3]

The decision of individuals to speak through contributions rather than through independent expenditures is entirely reasonable.[4] Political campaigns are largely candidate fo-

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[3] If one were to accept the speech-by-proxy point and consider a contribution a mere symbolic gesture, *Buckley*'s auxiliary arguments still falter. The claim that a large contribution receives less protection because it only expresses the "intensity of the contributor's support for the candidate," *Buckley* v. *Valeo*, 424 U. S. 1, 21 (1976) *(per curiam)* (quoted *ante*, at 386), fails under our jurisprudence because we have accorded full First Amendment protection to expressions of intensity. See *Cohen* v. *California*, 403 U. S. 15, 25–26 (1971) (protecting the use of an obscenity to stress a point). Equally unavailing is the claim that a contribution warrants less protection because it "does not communicate the underlying basis for the support." *Buckley* v. *Valeo*, *supra*, at 21 (quoted *ante*, at 386). We regularly hold that speech is protected when the underlying basis for a position is not given. See, *e. g.*, *City of Ladue* v. *Gilleo*, 512 U. S. 43, 46 (1994) (sign reading "For Peace in the Gulf"); *Tinker* v. *Des Moines Independent Community School Dist.*, 393 U. S. 503, 510–511 (1969) (black armband signifying opposition to Vietnam war). See also *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n*, 518 U. S. 604, 640 (1996) (THOMAS, J., concurring in judgment and dissenting in part) ("Even a pure message of support, unadorned with reasons, is valuable to the democratic process"). Cf. *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U. S. 557, 569 (1995) (opinion of the Court by SOUTER, J.) ("[A] narrow, succinctly articulable message is not a condition of constitutional protection").

[4] JUSTICE STEVENS asserts that "[m]oney is property; it is not speech," *ante*, at 398 (concurring opinion), and contends that there is no First Amendment right "to hire mercenaries" and "to hire gladiators," *ante*, at 399. These propositions are directly contradicted by many of our precedents. For example, in *Meyer* v. *Grant*, 486 U. S. 414 (1988) (opinion of the Court by STEVENS, J.), this Court confronted a state ban on payments to petition circulators. The District Court upheld the law, finding that the ban on monetary payments did not restrain expression and that the

cused and candidate driven. Citizens recognize that the best advocate for a candidate (and the policy positions he supports) tends to be the candidate himself. And candidate organizations also offer other advantages to citizens wishing to partake in political expression. Campaign organizations offer a ready-built, convenient means of communicating for donors wishing to support and amplify political messages. Furthermore, the leader of the organization—the candidate—has a strong self-interest in efficiently expending funds in a manner that maximizes the power of the messages the contributor seeks to disseminate. Individual citizens understandably realize that they "may add more to political

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would-be payors remained free to use their money in other ways. *Id.*, at 418. We disagreed and held that "[t]he refusal to permit appellees to pay petition circulators restricts political expression" by "limit[ing] the number of voices who will convey appellees' message and the hours they can speak and, therefore, limits the size of the audience they can reach." *Id.*, at 422–423. In short, the Court held that the First Amendment protects the right to pay others to help get a message out. In other cases, this Court extended such protection, holding that the First Amendment prohibits laws that do not ban, but instead only regulate, the terms upon which so-called mercenaries and gladiators are retained. See *Riley* v. *National Federation of Blind of N. C., Inc.*, 487 U. S. 781 (1988) (holding that the First Amendment prohibits state restriction on the amount a charity may pay a professional fundraiser); *Secretary of State of Md.* v. *Joseph H. Munson Co.*, 467 U. S. 947 (1984) (same). Cf. also, *e. g.*, *Teachers* v. *Hudson*, 475 U. S. 292 (1986) (opinion of the Court by STEVENS, J.) (holding that the First Amendment restrains government-compelled exactions of money); *Abood* v. *Detroit Bd. of Ed.*, 431 U. S. 209 (1977) (same). In these cases, the Court did not resort to JUSTICE STEVENS' assertion that money "is not speech" to dismiss challenges to monetary regulations. Instead, the Court properly examined the impact of the regulations on free expression. See also, *e. g.*, *Federal Election Comm'n* v. *National Conservative Political Action Comm.*, 470 U. S. 480 (1985) (First Amendment protects political committee's expenditures of money); *Citizens Against Rent Control/Coalition for Fair Housing* v. *Berkeley*, 454 U. S. 290 (1981) (First Amendment protects monetary contributions to political committee); *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 769 (1978) (First Amendment protects "spend[ing] money to publicize [political] views").

discourse by giving rather than spending, if the donee is able to put the funds to more productive use than can the individual." *Colorado Republican*, 518 U. S., at 636 (THOMAS, J., concurring in judgment and dissenting in part). See also *Federal Election Comm'n* v. *Massachusetts Citizens for Life, Inc.*, 479 U. S. 238, 261 (1986) ("[I]ndividuals contribute to a political organization in part because they regard such a contribution as a more effective means of advocacy than spending the money under their own personal direction").[5]

In the end, *Buckley*'s claim that contribution limits "d[o] not in any way infringe the contributor's freedom to discuss candidates and issues," 424 U. S., at 21 (quoted *ante*, at 387), ignores the distinct role of candidate organizations as a means of individual participation in the Nation's civic dialogue.[6] The result is simply the suppression of political

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[5] Even if contributions to a candidate were not the most effective means of speaking—and contribution caps left political speech "significantly unimpaired," *ante*, at 387—an individual's choice of that mode of expression would still be protected. "The First Amendment protects [individuals'] right not only to advocate their cause but also to select what they believe to be the most effective means for so doing." *Meyer*, *supra*, at 424 (opinion of the Court by STEVENS, J.). See also *Glickman* v. *Wileman Brothers & Elliott, Inc.*, 521 U. S. 457, 488 (1997) (SOUTER, J., dissenting) (noting a "First Amendment interest in touting [one's] wares as he sees fit").

[6] *Buckley*'s approach to associational freedom is also unsound. In defense of its decision, the Court in *Buckley* explained that contribution limits "leave the contributor free to become a member of any political association and to assist personally in the association's efforts on behalf of candidates." 424 U. S., at 22 (quoted *ante*, at 387). In essence, the Court accepted contribution limits because alternative channels of association remained open. This justification, however, is peculiar because we have rejected the notion that a law will pass First Amendment muster simply because it leaves open other opportunities. *Spence* v. *Washington*, 418 U. S. 405, 411, n. 4 (1974) *(per curiam)* (Although a prohibition's effect may be "'minuscule and trifling,'" a person "'is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place'" (quoting *Schneider* v. *State (Town of Irvington)*, 308 U. S. 147, 163 (1939))). See also, *e. g.*, *Texas* v. *Johnson*, 491 U. S. 397, 416, n. 11 (1989); *Kusper* v. *Pontikes*, 414 U. S. 51,

speech. By depriving donors of their right to speak through the candidate, contribution limits relegate donors' points of view to less effective modes of communication. Additionally, limiting contributions curtails individual participation. "Even for the affluent, the added costs in money or time of taking out a newspaper advertisement, handing out leaflets on the street, or standing in front of one's house with a hand-held sign may make the difference between participating and not participating in some public debate." *City of Ladue* v. *Gilleo*, 512 U. S. 43, 57 (1994) (opinion of the Court by STEVENS, J.). *Buckley* completely failed in its attempt to provide a basis for permitting government to second-guess the individual choices of citizens partaking in quintessentially democratic activities. "The First Amendment mandates that we presume that speakers, not the government, know best both what they want to say and how to say it." *Riley* v. *National Federation of Blind of N. C., Inc.*, 487 U. S. 781, 790–791 (1988).

B

The Court in *Buckley* denigrated the speech interests not only of contributors, but also of candidates. Although the Court purported to be concerned about the plight of candidates, it nevertheless proceeded to disregard their interests without justification. The Court did not even attempt to claim that contribution limits do not suppress the speech of political candidates. See 424 U. S., at 18 ("[C]ontribution . . . limitations impose direct quantity restrictions on political communication and association by . . . candidates"); *id.*, at 33 ("[T]he [contribution] limitations may have a significant effect on particular challengers or incumbents"). It could not have, given the reality that donations "mak[e] a significant contribution to freedom of expression by enhancing the

58 (1973). "For even when pursuing a legitimate interest, a State may not choose means that unnecessarily restrict constitutionally protected liberty." *Id.*, at 58–59.

ability of candidates to present, and the public to receive, information necessary for the effective operation of the democratic process." *CBS, Inc.* v. *FCC*, 453 U. S. 367, 396 (1981). See also *Citizens Against Rent Control/Coalition for Fair Housing* v. *Berkeley*, 454 U. S. 290, 299 (1981) ("Placing limits on contributions which in turn limit expenditures plainly impairs freedom of expression"). Instead, the Court abstracted from a candidate's individual right to speak and focused exclusively on aggregate campaign funding. See *Buckley* v. *Valeo*, *supra*, at 21 ("There is no indication . . . that the contribution limitations imposed by the Act would have any dramatic adverse effect on the funding of campaigns") (quoted *ante*, at 395); *ante*, at 395–396 (There is "no showing that 'the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy' " (quoting *Buckley* v. *Valeo*, *supra*, at 21)).

The Court's flawed and unsupported aggregate approach ignores both the rights and value of individual candidates. The First Amendment "is designed and intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of *each of us*, in the hope that use of such freedom will ultimately produce a more capable citizenry and more perfect polity and in the belief that no other approach would comport with the premise of *individual* dignity and choice upon which our political system rests." *Cohen* v. *California*, 403 U. S. 15, 24 (1971) (emphases added). See also *Sweezy* v. *New Hampshire*, 354 U. S. 234, 250 (1957) (plurality opinion) ("Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association"); *Richmond* v. *J. A. Croson Co.*, 488 U. S. 469, 493 (1989) (plurality opinion) ("As this Court has noted in the past, the 'rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual. The rights established are personal

rights'" (quoting *Shelley* v. *Kraemer*, 334 U. S. 1, 22 (1948))). In short, the right to free speech is a right held by each American, not by Americans en masse. The Court in *Buckley* provided no basis for suppressing the speech of an individual candidate simply because other candidates (or candidates in the aggregate) may succeed in reaching the voting public. And any such reasoning would fly in the face of the premise of our political system—liberty vested in individual hands safeguards the functioning of our democracy. In the case at hand, the Missouri scheme has a clear and detrimental effect on a candidate such as respondent Fredman, who lacks the advantages of incumbency, name recognition, or substantial personal wealth, but who has managed to attract the support of a relatively small number of dedicated supporters: It forbids his message from reaching the voters. And the silencing of a candidate has consequences for political debate and competition overall. See *Arkansas Ed. Television Comm'n* v. *Forbes*, 523 U. S. 666, 692, n. 14 (1998) (STEVENS, J., dissenting) (noting that the suppression of a minor candidate's speech may directly affect the outcome of an election); cf. *NAACP* v. *Button*, 371 U. S. 415, 431 (1963) ("'All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups . . .'" (quoting *Sweezy* v. *New Hampshire*, *supra*, at 250–251 (plurality opinion))).

In my view, the Constitution leaves it entirely up to citizens and candidates to determine who shall speak, the means they will use, and the amount of speech sufficient to inform and persuade. *Buckley*'s ratification of the government's attempt to wrest this fundamental right from citizens was error.

## III

Today, the majority blindly adopts *Buckley*'s flawed reasoning without so much as pausing to consider the collapse of

the speech-by-proxy argument or the reality that *Buckley*'s remaining premises fall when deprived of that support.[7]

After ignoring these shortcomings, the Court proceeds to apply something less—much less—than strict scrutiny. Just how much less the majority never says. The Court in *Buckley* at least purported to employ a test of "'closest scrutiny.'" 424 U. S., at 25 (quoting *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449, 461 (1958)). (The Court's words were belied by its actions, however, and it never deployed the test in the fashion that the superlative instructs. See *Colorado Republican*, 518 U. S., at 640–641, n. 7 (THOMAS, J., concurring in judgment and dissenting in part) (noting that *Buckley* purported to apply strict scrutiny but failed to do so in fact).) The Court today abandons even that pretense and reviews contributions under the *sui generis* "*Buckley*'s standard of scrutiny," *ante*, at 387, which fails to obscure the Court's ad hoc balancing away of First Amendment rights. Apart from its endorsement of *Buckley*'s rejection of the intermediate standards of review used to evaluate expressive conduct and time, place, and manner restrictions, *ante*, at 386, the Court makes no effort to justify its deviation from the tests we traditionally employ in free speech cases. See *Denver Area Ed. Telecommunications Consortium, Inc.* v. *FCC*, 518 U. S. 727, 774 (1996) (SOUTER, J., concurring) ("Reviewing speech regulations under fairly strict categorical rules keeps the starch in the standards for those moments

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[7] Implicitly, however, the majority downplays its reliance upon the speech-by-proxy argument. In fact, the majority reprints nearly all of *Buckley*'s analysis of contributors' speech interests, block quoting almost an entire paragraph from that decision. See *ante*, at 386–387 (quoting *Buckley* v. *Valeo*, 424 U. S., at 20–21). Tellingly, the only complete sentence from that paragraph that the majority fails to quote is the final sentence—which happens to be the one directly setting forth the speech-by-proxy rationale. See *id.*, at 21 ("While contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor").

when the daily politics cries loudest for limiting what may be said").

Unfortunately, the majority does not stop with a revision of *Buckley*'s labels. After hiding behind *Buckley*'s discredited reasoning and invoking "*Buckley*'s standard of scrutiny," *ante*, at 387, the Court proceeds to significantly extend the holding in that case. The Court's substantive departure from *Buckley* begins with a revision of our compelling-interest jurisprudence. In *Buckley*, the Court indicated that the only interest that could qualify as "compelling" in this area was the government's interest in reducing actual and apparent corruption.[8] 424 U. S., at 25–26. And the Court repeatedly used the word "corruption" in the narrow *quid pro quo* sense, meaning "[p]erversion or destruction of integrity in the discharge of public duties by bribery or favour." 3 Oxford English Dictionary 974 (2d ed. 1989). See also Webster's Third New International Dictionary 512 (1976) ("inducement (as of a political official) by means of improper considerations (as bribery) to commit a violation of duty"). When the Court set forth the interest in preventing actual corruption, it spoke about "large contributions . . . given to secure a political *quid pro quo* from current and potential office holders." *Buckley* v. *Valeo*, 424 U. S., at 26. The Court used similar language when it set forth the interest in protecting against the appearance of corruption: "Of almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial con-

[8] The Court in *Buckley* explicitly rejected two other proffered rationales for campaign finance regulation as out of tune with the First Amendment: equalization of the ability of citizens to affect the outcome of elections and controlling the costs of campaigns. See 424 U. S., at 48–49 (governmentally imposed equalization measures are "wholly foreign to the First Amendment"); *id.*, at 57 (mounting costs of elections "provid[e] no basis for governmental restrictions on the quantity of campaign spending").

tributions." *Id.*, at 27. Later, in discussing limits on independent expenditures, the Court yet again referred to the interest in protecting against the "dangers of actual or apparent *quid pro quo* arrangements." *Id.*, at 45. See also *id.*, at 47 (referring to "the danger that expenditures will be given as a *quid pro quo* for improper commitments"); *id.*, at 67 (corruption relates to "post-election special favors that may be given in return" for contributions). To be sure, after mentioning *quid pro quo* transactions, the Court went on to use more general terms such as "opportunities for abuse," *id.*, at 27, "potential for abuse," *id.*, at 47, "improper influence," *id.*, at 27, 29, 45, "attempts . . . to influence," *id.*, at 28, and "buy[ing] influence," *id.*, at 45. But this general language acquires concrete meaning only in light of the preceding specific references to *quid pro quo* arrangements.

Almost a decade after *Buckley*, we reiterated that "corruption" has a narrow meaning with respect to contribution limitations on individuals:

> "Corruption is a subversion of the political process. Elected officials are influenced to act contrary to their obligations of office by the prospect of financial gain to themselves or infusions of money into their campaigns. The hallmark of corruption is the financial *quid pro quo:* dollars for political favors." *National Conservative Political Action Comm.*, 470 U. S., at 497.

In that same opinion, we also used "giving official favors" as a synonym for corruption. *Id.*, at 498.

The majority today, by contrast, separates "corruption" from its *quid pro quo* roots and gives it a new, far-reaching (and speech-suppressing) definition, something like "[t]he perversion of anything from an original state of purity." 3 Oxford English Dictionary, *supra*, at 974. See also Webster's Third New International Dictionary, *supra*, at 512 ("a departure from what is pure or correct"). And the Court proceeds to define that state of purity, casting aspersions on

"politicians too compliant with the wishes of large contributors." *Ante*, at 389. "But precisely what the 'corruption' may consist of we are never told with assurance." *National Conservative Political Action Comm.*, *supra*, at 498. Presumably, the majority does not mean that politicians should be free of attachments to constituent groups.[9] And the majority does not explicitly rely upon the "harm" that the Court in *Buckley* rejected out of hand, namely, that speech could be regulated to equalize the voices of citizens. *Buckley* v. *Valeo*, *supra*, at 48–49. Instead, without bothering to offer any elaboration, much less justification, the majority permits vague and unenumerated harms to suffice as a compelling reason for the government to smother political speech.

In refashioning *Buckley*, the Court then goes on to weaken the requisite precision in tailoring, while at the same time representing that its fiat "do[es] not relax *Buckley*'s standard." *Ante*, at 390, n. 4. The fact is that the majority rati-

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[9] The Framers, of course, thought such attachments inevitable in a free society and that faction would infest the political process. As to controlling faction, James Madison explained, "There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests." The Federalist No. 10, p. 78 (C. Rossiter ed. 1961). Contribution caps are an example of the first method, which Madison contemptuously dismissed:

"It could never be more truly said than of the first remedy that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be a less folly to abolish liberty, which is essential to political life, because it nourishes faction than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency." *Ibid.*

The Framers preferred a political system that harnessed such faction for good, preserving liberty while also ensuring good government. Rather than adopting the repressive "cure" for faction that the majority today endorses, the Framers armed individual citizens with a remedy. "If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote." *Id.*, at 80.

fies a law with a much broader sweep than that approved in *Buckley*. In *Buckley*, the Court upheld contribution limits of $1,000 on individuals and $5,000 on political committees (in 1976 dollars). 424 U. S., at 28–29, 35–36. Here, by contrast, the Court approves much more restrictive contribution limitations, ranging from $250 to $1,000 (in 1995 dollars) for both individuals and political committees. Mo. Rev. Stat. § 130.032.1 (Supp. 1999). The disparity between Missouri's caps and those upheld in *Buckley* is more pronounced when one takes into account some measure of inflation. See *Shrink Missouri Government PAC* v. *Adams*, 161 F. 3d 519, 523, and n. 4 (CA8 1998) (noting that, according to the Consumer Price Index, a dollar today purchases about a third of what it did in 1976 when *Buckley* was decided). Yet the Court's opinion gives not a single indication that the two laws may differ in their tailoring. See *ante*, at 395 (Missouri's caps are "striking [in their] resemblance to the limitations sustained in *Buckley*"). The Court fails to pay any regard to the drastically lower level of the limits here, fails to explain why political committees should be subjected to the same limits as individuals, and fails to explain why caps that vary with the size of political districts are tailored to corruption. I cannot fathom how a $251 contribution could pose a substantial risk of "secur[ing] a political *quid pro quo*." *Buckley* v. *Valeo*, *supra*, at 26. Thus, contribution caps set at such levels could never be "closely drawn," *ante*, at 387 (quoting *Buckley* v. *Valeo*, *supra*, at 25), to preventing *quid pro quo* corruption. The majority itself undertakes no such defense.

The Court also reworks *Buckley*'s aggregate approach to the free speech rights of candidates. It begins on the same track as *Buckley*, noting that "a showing of one affected individual does not point up a system of suppressed political advocacy that would be unconstitutional under *Buckley*." *Ante*, at 396. See also, *e. g.*, *ibid.* (claiming that candidates "'are still able to amass impressive campaign war chests'"

(quoting *Shrink Missouri Government PAC* v. *Adams*, 5 F. Supp. 2d 734, 741 (ED Mo. 1998))). But the Court quickly deviates from *Buckley*, persuading itself that Missouri's limits do not suppress political speech because, prior to the enactment of contribution limits, "97.62 percent of all contributors to candidates for state auditor made contributions of $2,000 or less." *Ante*, at 396. But this statistical anecdote offers the Court no refuge and the citizenry no comfort. As an initial matter, the statistic provides no assurance that Missouri's law has not reduced the resources supporting political speech, since the largest contributors provide a disproportionate amount of funds. The majority conspicuously offers no data revealing the percentage of funds provided by large contributors. (At least the Court in *Buckley* relied on the *percentage of funds* raised by contributions in excess of the limits. 424 U. S., at 21–22, n. 23, 26, n. 27.) But whatever the data would reveal, the Court's position would remain indefensible. If the majority's assumption is incorrect—*i. e.*, if Missouri's contribution limits actually do significantly reduce campaign speech—then the majority's calm assurance that political speech remains unaffected collapses. If the majority's assumption is correct—*i. e.*, if large contributions provide very little assistance to a candidate seeking to get out his message (and thus will not be missed when capped)—then the majority's reasoning still falters. For if large contributions offer as little help to a candidate as the Court maintains, then the Court fails to explain why a candidate would engage in "corruption" for such a meager benefit. The majority's statistical claim directly undercuts its constitutional defense that large contributions pose a substantial risk of corruption.[10]

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[10] The majority's statistical analysis also overlooks the quantitative data in the record that directly undercut its position that Missouri's law does not create "a system of suppressed political advocacy." *Ante*, at 396. For example, the Court does not bother to note that following the imposition of contribution limits, total combined spending during primary and

Given the majority's ill-advised and illiberal aggregate rights approach, it is unsurprising that the Court's *pro forma* hunt for suppressed speech proves futile. See *ante*, at 395–397. Such will always be the case, for courts have no yardstick by which to judge the proper amount and effectiveness of campaign speech. See, *e. g.*, Smith, Faulty Assumptions and Undemocratic Consequences of Campaign Finance Reform, 105 Yale L. J. 1049, 1061 (1996). I, however, would not fret about such matters. The First Amendment vests choices about the proper amount and effectiveness of political advocacy not in the government—whether in the legislatures or the courts—but in the people.

## IV

In light of the importance of political speech to republican government, Missouri's substantial restriction of speech warrants strict scrutiny, which requires that contribution limits be narrowly tailored to a compelling governmental interest. See *Buckley* v. *American Constitutional Law Foundation, Inc.*, 525 U. S. 182, 207 (1999) (THOMAS, J., concurring in judgment); *Colorado Republican*, 518 U. S., at 640–641 (THOMAS, J., concurring in judgment and dissenting in part).

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general elections for five statewide offices was cut by over half, falling from $21,599,000 to $9,337,000. See App. 24–28. Significantly, total primary election expenditures in each of the races decreased. *Ibid.* In fact, after contribution limits were imposed, overall spending in statewide primary elections plummeted 89 percent, falling from $14,249,000 to $1,625,000. *Ibid.* Most importantly, the majority does not bother to mention that before spending caps were enacted each of the 10 statewide primary elections was contested, with two to four candidates vying for every nomination in 1992. After caps were enacted, however, only 1 of the 10 primary elections was contested. Overall, the total number of candidates participating in statewide primaries fell from 32 to 11. See *ibid.* Even if these data do not conclusively show that Missouri's contribution limits diminish political speech (although it is undeniable that the data strongly suggest such a result), they at least cast great doubt on the majority's assumption that the picture is rosy.

Missouri does assert that its contribution caps are aimed at preventing actual and apparent corruption. Brief for Petitioners 26–28. As we have noted, "preventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances." *National Conservative Political Action Comm.*, 470 U. S., at 496–497. But the State's contribution limits are not narrowly tailored to that harm. The limits directly suppress the political speech of both contributors and candidates, and only clumsily further the governmental interests that they allegedly serve. They are crudely tailored because they are massively overinclusive, prohibiting all donors who wish to contribute in excess of the cap from doing so and restricting donations without regard to whether the donors pose any real corruption risk. See *Colorado Republican*, *supra*, at 642 (THOMAS, J., concurring in judgment and dissenting in part) ("'Where First Amendment rights are involved, a blunderbuss approach which prohibits mostly innocent speech cannot be held a means narrowly and precisely directed to the governmental interest in the small minority of contributions that are not innocent'" (quoting Brief for Appellants in *Buckley* v. *Valeo*, O. T. 1975, Nos. 75–436 and 75–437, pp. 117–118)). See also *Martin* v. *City of Struthers*, 319 U. S. 141, 145 (1943) (Though a method of speaking may be "a blind for criminal activities, [it] may also be useful [to] members of society engaged in the dissemination of ideas in accordance with the best tradition of free discussion"). Moreover, the government has less restrictive means of addressing its interest in curtailing corruption. Bribery laws bar precisely the *quid pro quo* arrangements that are targeted here. And disclosure laws "'deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity.'" *American Constitutional Law Foundation*, *supra*, at 202 (quoting *Buckley* v. *Valeo*, 424 U. S., at 67). In fact, Missouri has enacted strict disclo-

sure laws. See Mo. Rev. Stat. §§ 130.041, 130.046, 130.057 (Supp. 1999).

In the end, contribution limitations find support only in the proposition that other means will not be as effective at rooting out corruption. But when it comes to a significant infringement on our fundamental liberties, that some undesirable conduct may not be deterred is an insufficient justification to sweep in vast amounts of protected political speech. Our First Amendment precedents have repeatedly stressed this point. For example, in *Martin* v. *City of Struthers*, *supra*, we struck down an ordinance prohibiting door-to-door distribution of handbills. Although we recognized that "burglars frequently pose as canvassers," *id.*, at 144, we also noted that door-to-door distribution was "useful [to] members of society engaged in the dissemination of ideas in accordance with the best tradition of free discussion," *id.*, at 145. We then struck down the ordinance, observing that the "dangers of distribution can so easily be controlled by traditional legal methods." *Id.*, at 147. Similarly, in *Riley* v. *National Federation of Blind of N. C., Inc.*, 487 U. S. 781 (1988), we struck down a law regulating the fees charged by professional fundraisers. In response to the assertion that citizens would be defrauded in the absence of such a law, we explained that the State had an antifraud law which "we presume[d] that law enforcement officers [we]re ready and able to enforce," *id.*, at 795, and that the State could constitutionally require fundraisers to disclose certain financial information, *ibid.* We concluded by acknowledging the obvious consequences of the narrow tailoring requirement: "If this is not the most efficient means of preventing fraud, we reaffirm simply and emphatically that the First Amendment does not permit the State to sacrifice speech for efficiency." *Ibid.* See also, *e. g.*, *Schneider* v. *State (Town of Irvington)*, 308 U. S. 147, 162 (1939) ("There are obvious methods of preventing littering. Amongst these is the punishment of those who actually throw papers on the streets").

The same principles apply here, and dictate a result contrary to the one the majority reaches. States are free to enact laws that directly punish those engaged in corruption and require the disclosure of large contributions, but they are not free to enact generalized laws that suppress a tremendous amount of protected speech along with the targeted corruption.

V

Because the Court unjustifiably discounts the First Amendment interests of citizens and candidates, and consequently fails to strictly scrutinize the inhibition of political speech and competition, I respectfully dissent.

Syllabus

# BARAL *v.* UNITED STATES

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

No. 98–1667. Argued January 18, 2000—Decided February 22, 2000

Two remittances were made to the Internal Revenue Service toward petitioner Baral's income tax liability for the 1988 tax year: a withholding of $4,104 from Baral's wages throughout 1988 by his employer, and an estimated income tax of $1,100 remitted in January 1989 by Baral. Baral's income tax return for 1988 was due on April 15, 1989. Though he received an extension until August 15, he missed this deadline and did not file the return until June 1, 1993. On the return, he claimed a $1,175 overpayment and asked the Service to apply this excess as a credit toward his outstanding tax obligations for the 1989 tax year. The Service denied the requested credit, concluding that the claim exceeded the ceiling imposed by 26 U. S. C. § 6511(b)(2)(A), which states that "the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return." Since Baral filed his return on June 1, 1993, and received a 4-month extension from the initial due date, the relevant look-back period under § 6511(b)(2)(A) extended from June 1, 1993, back to February 1, 1990 (*i. e.*, three years plus four months). According to the Service, Baral had paid no portion of the overpaid tax during that period, and so faced a ceiling of zero on any allowable refund or credit. Baral commenced this suit for refund in the Federal District Court, which granted the Service summary judgment. The Court of Appeals affirmed, concluding that both remittances were "paid" on April 15, 1989.

*Held:* Remittances of estimated income tax and withholding tax are "paid" on the due date of a calendar year taxpayer's income tax return. Sections 6513(b)(1) and (2) unequivocally provide that the two remittances were "paid" on April 15, 1989, for purposes of § 6511(b)(2)(A), so that they precede the look-back period, which began on February 1, 1990. Subsection (1) resolves when the remittance of Baral's employer's withholding tax was "paid," and subsection (2) determines when his remittance of estimated income tax was "paid." Because neither these remittances nor any others were "paid" within the look-back period, the ceiling on Baral's requested $1,175 credit is zero, and the Service was correct to deny that credit. Contrary to Baral's claim, the withholding tax and estimated tax are not taxes in their own right (separate from

the income tax), that are converted into income tax only on the income tax return. Rather, they are methods for collecting income taxes. And the Tax Code directly contradicts Baral's notion that income tax is "paid" under § 6511(b)(2)(A) only when the income tax is assessed. See § 6151(a). His position also finds no support in *Rosenman* v. *United States*, 323 U. S. 658, and would work to the detriment of timely taxpayers, who would be denied interest for the time between filing a return claiming a refund or credit and the Service's assessment. Pp. 434–439.

172 F. 3d 918, affirmed.

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

*Walter J. Rockler* argued the cause for petitioner. With him on the briefs were *Julius Greisman* and *Thomas Klein.*

*Kent L. Jones* argued the cause for the United States. With him on the brief were *Solicitor General Waxman*, *Assistant Attorney General Argrett*, *Deputy Solicitor General Wallace*, *Gilbert S. Rothenberg*, and *Charles Bricken.*

JUSTICE THOMAS delivered the opinion of the Court.

Internal Revenue Code § 6511(b)(2)(A) imposes a ceiling on the amount of credit or refund to which a taxpayer is entitled as compensation for an overpayment of tax: "[T]he amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return." 26 U. S. C. § 6511(b)(2)(A). We are called upon in this case to decide when two types of remittance are "paid" for purposes of this section: a remittance by a taxpayer of estimated income tax, and a remittance by a taxpayer's employer of withholding tax. The plain language of a nearby Code section, § 6513(b), provides the answer: These remittances are "paid" on the due date of the taxpayer's income tax return.

## I

The relevant facts are not disputed. Two remittances were made to the Internal Revenue Service toward peti-

tioner David H. Baral's income tax liability for the 1988 tax year. The first, a withholding of $4,104 from Baral's wages throughout 1988, was a garden-variety collection of income tax by the employer, see § 3402. The second, an estimated income tax of $1,100 remitted in January 1989, was sent by Baral himself out of concern that his employer's withholding might be inadequate to meet his tax obligation for the year, see § 6654. In the ordinary course, Baral's income tax return for 1988 was due to be filed on April 15, 1989. Though he applied for and received an extension of time until August 15, Baral missed this deadline; he did not file the return until nearly four years later, on June 1, 1993. The Service, on July 19, 1993, assessed the tax liability reported on this belated return.

On the return, Baral claimed that he (and his employer on his behalf) had remitted $1,175 more with respect to the 1988 taxable year than he actually owed. Baral requested that the Service apply this excess as a credit toward his outstanding tax obligations for the 1989 taxable year. The Service denied the requested credit. It did not dispute that Baral had timely filed the request under the relevant filing deadline—"within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later." § 6511(a); see § 6511(b)(1). But the Service concluded that the claim exceeded the ceiling imposed by § 6511(b)(2)(A). That provision states that "the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return." *Ibid.;* see generally *Commissioner* v. *Lundy,* 516 U. S. 235, 240 (1996) (explaining that § 6511 contains two separate timeliness provisions: (1) § 6511(b)(1)'s filing deadline and (2) § 6511(b)(2)'s ceilings, which are defined by reference to that provision's "look-back period[s]"). Since Baral had filed his return on June 1, 1993, and had earlier received a 4-month extension from the initial

due date, the relevant look-back period under § 6511(b)(2)(A) extended from June 1, 1993, back to February 1, 1990 (*i. e.*, three years plus four months). According to the Service, Baral had paid no portion of the overpaid tax during that period, and so faced a ceiling of zero on any allowable refund or credit.

Baral then commenced the instant suit for refund in Federal District Court. That court sustained the Service's position and granted summary judgment in its favor. The Court of Appeals affirmed. App. to Pet. for Cert. A–1, judgt. order reported at 172 F. 3d 918 (CADC 1999). The Court of Appeals looked to § 6513(b)(1), which states that amounts of tax withheld from wages "shall . . . be deemed to have been paid by [the taxpayer] on the 15th day of the fourth month following the close of his taxable year," and to § 6513(b)(2), which makes similar provision for amounts submitted as estimated income tax, and concluded that, under these subsections, both of the remittances at issue were "paid" on April 15, 1989. Accord, *e. g.*, *Dantzler* v. *United States*, 183 F. 3d 1247, 1250–1251 (CA11 1999) (estimated income tax); *Ertman* v. *United States*, 165 F. 3d 204, 207 (CA2 1999) (same); *Ehle* v. *United States*, 720 F. 2d 1096, 1096–1097 (CA9 1983) (withholding from wages). In view of apparent tension between this approach and a decision of the Court of Appeals for the Fifth Circuit, *Ford* v. *United States*, 618 F. 2d 357, 360–361, and n. 4 (1980) (suggesting that a remittance respecting any sort of tax is "paid" under § 6511 only when the Service assesses the tax liability), we granted certiorari, 527 U. S. 1067 (1999).

## II

The parties renew before us the contentions advanced below. The Government submits that §§ 6513(b)(1) and (2) unequivocally provide that the two remittances at issue were "paid" on April 15, 1989, for purposes of § 6511(b)(2)(A), so that they precede the look-back period, which, as noted, commenced on February 1, 1990. Baral, on the other hand, urges that a tax cannot be "paid" within the meaning of

§ 6511(b)(2)(A) until the tax liability is assessed (*i. e.*, the value of the liability is definitively fixed). According to Baral, the requisite assessment might be made either when the taxpayer files his return (here June 1, 1993) or when the Service, under § 6201, formally assesses the liability (here July 19, 1993), though he seems to prefer the latter date. See Brief for Petitioner 9 ("Payment of the income tax . . . occurred at the earliest on June 1, 1993, when the amount of that tax first became known, and more precisely on July 19, 1993, when the income tax was assessed").

We agree with the Government that §§ 6513(b)(1) and (2) settle the matter. We set out these provisions in full:

> "(b) Prepaid income tax
>
> "For purposes of section 6511 or 6512—
>
> "(1) Any tax actually deducted and withheld at the source during any calendar year under chapter 24 shall, in respect of the recipient of the income, be deemed to have been paid by him on the 15th day of the fourth month following the close of his taxable year with respect to which such tax is allowable as a credit under section 31.
>
> "(2) Any amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under section 6012 for such taxable year (determined without regard to any extension of time for filing such return)."

Subsection (1) resolves when the remittance of withholding tax by Baral's employer was "paid": Since Baral is a calendar year taxpayer, the $4,104 withheld from his wages during the 1988 calendar year was "paid" on April 15, 1989. Subsection (2) determines when Baral's remittance of estimated income tax was "paid": Since the referenced § 6012 together with § 6072(a) requires that a calendar year taxpayer like Baral file his income tax return on the April 15th following the close of the calendar year, the $1,100 remitted as an estimated income tax in respect of Baral's 1988 tax liability was

likewise "paid" on April 15, 1989. And both of these statutorily defined payment dates apply "[f]or purposes of section 6511," the provision directly at issue in this case. This means that, under § 6511(b)(2)(A), both remittances at issue (the withholding and the estimated income tax) fall before, and hence outside, the look-back period, which commenced on February 1, 1990. Because neither these remittances nor any others were "paid" within the look-back period (February 1, 1990, to June 1, 1993), the ceiling on Baral's requested credit of $1,175 is zero, and the Service was correct to deny the requested credit.

Baral disputes this reading of § 6513(b). He claims that §§ 6513(b)(1) and (2) establish a "deemed paid" date for payment of *estimated* tax and *withholding* tax, but in no sense prescribe when the *income* tax is "paid," which is the crucial inquiry under § 6511(b)(2)(A). According to Baral, withholding tax and estimated tax are taxes in their own right (separate from the income tax), and are converted into income tax only on the income tax return. (On this view, payment of the *income* tax occurred no earlier than June 1, 1993, when Baral filed the return.) This reading is evident, he says, from the significance that the Treasury Regulations place on the filing of the return, see 26 CFR § 301.6315–1 (1999) ("The aggregate amount of the payments of estimated tax should be entered upon the income tax return for such taxable year as payments to be applied against the tax shown on such return"); § 301.6402–3(a)(1) (providing that "in the case of an overpayment of income taxes, a claim for credit or refund of such overpayment shall be made on the appropriate income tax return"), and from the fact that the Code's provisions regarding withholding and estimated tax are found in different subtitles (C and F, respectively) from the provisions governing income tax (A).

We disagree. Withholding and estimated tax remittances are not taxes in their own right, but methods for collecting the income tax. Thus, § 31(a)(1) of the Code provides that

amounts withheld from wages "shall be allowed to the recipient of the income as a credit against the [income] tax," and § 6315 states that "[p]ayment of the estimated income tax, or any installment thereof, shall be considered payment on account of the income taxes imposed by subtitle A for the taxable year." Similarly, one of the regulations cited by Baral explains that a remittance of estimated income tax "shall be considered payment *on account of the income tax* for the taxable year for which the estimate is made." 26 CFR § 301.6315–1 (1999) (emphasis added). Baral's reading fails, moreover, to give any meaning to 26 U. S. C. § 6513. That section exists "[f]or purposes of section 6511," and § 6511 concerns credits and refunds, which result only when the aggregate of remittances (such as withholding tax and estimated income tax) *exceed* the tax liability, see § 6401. Thus, the concepts of credit or refund have no meaning as applied to Baral's notion of withholding taxes and estimated taxes as freestanding taxes. Not surprisingly, the caption to § 6513(b) describes withholding and estimated income tax remittances as "[p]repaid income tax."

Taking a more metaphysical tack, Baral contends that income tax is "paid" under § 6511(b)(2)(A) only when the income tax is assessed—here, June 1 or July 19, 1993, see *supra*, at 434–435—because the concept of payment makes sense only when the liability is "defined, known, and fixed by assessment," Brief for Petitioner 9. But the Code directly contradicts the notion that payment may not occur before assessment. See § 6151(a) ("[T]he person required to make [a return of tax] shall, *without assessment* or notice and demand from the Secretary, *pay* such tax . . . at the time and place fixed for filing the return" (emphasis added)); § 6213(b)(4) ("Any amount *paid* as a tax or in respect of a tax *may be assessed upon the receipt of such payment*" (emphasis added)). Nor does Baral's argument find support in our decision in *Rosenman* v. *United States*, 323 U. S. 658 (1945), where we applied § 6511's predecessor to a remittance of esti-

mated estate tax. To be sure, a part of our opinion seems to endorse petitioner's view that payment only occurs at assessment:

> "It is [the] erroneous assessment that gave rise to a claim for refund. Not until then was there such a claim as could start the time running for presenting the claim. In any responsible sense payment was then made by the application of the balance credited to the petitioners in the suspense account . . . ." *Id.*, at 661.

But the remittance in *Rosenman*, unlike the ones here, was not governed by a "deemed paid" provision akin to § 6513, and we therefore had no occasion to consider the implications of such a provision for determining when a tax is "paid" under the predecessor to § 6511. See *ibid.* (noting that "no extraneous relevant aids to construction have been called to our attention"). Moreover, if the quoted passage had represented our holding, we would have broadly rejected the Government's argument that payment occurred when the remittance of estimated estate tax was made, instead of rejecting the argument, as we did, only because it was not in accord with the "tenor" of the "business transaction," *id.*, at 663.[1]

We observe, finally, that Baral's position—to the extent he submits that payment occurs only at the Service's assessment—would work to the detriment of taxpayers who timely file their returns and claim a refund or credit as compensa-

[1] Central to our analysis in this regard was a concern that the Service should not be able to treat the same remittance as a *payment* for statute of limitations purposes—disadvantaging the taxpayer by decreasing the time in which a refund claim could be filed—and as a *deposit* for purposes of accrual of interest on overpayments—disadvantaging the taxpayer by starting the accrual of interest only at assessment. *Rosenman*, 323 U. S., at 662–663. Indeed, we suggested that an amendment to the Code disapproving of the Service's treatment of remittances as deposits for interest purposes might change the analysis. *Id.*, at 663 (citing Current Tax Payment Act of 1943, § 4(d), 57 Stat. 140) (presently codified at 26 U. S. C. § 6401(c)).

tion for an overpayment. The Service will not always assess the taxpayer's liability immediately upon receiving the return; the Service generally has three years in which to do so, see 26 U. S. C. § 6501(a) (1994 ed., Supp. III). The Code does allow for payment of interest to the taxpayer on overpayments once the return has been filed and the tax paid, 26 U. S. C. § 6611 (1994 ed. and Supp. III), but under Baral's view no interest could accrue during the time between the filing of the return and the Service's assessment. Fortunately for the timely taxpayer, the Code definitively rejects Baral's position in this setting. Section 6611(d) of 26 U. S. C. explains that the date of payment is determined according to the provisions of § 6513, which, as noted, *supra*, at 435–436, plainly set a deemed date of payment for remittances of withholding and estimated income tax on the April 15 following the relevant taxable year.[2]

* * *

For the foregoing reasons, we affirm the judgment below.

*It is so ordered.*

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[2] We need not address the proper treatment under § 6511 of remittances that, unlike withholding and estimated income tax, are not governed by a "deemed paid" provision akin to § 6513(b). Such remittances might include remittances of estimated estate tax, as in *Rosenman*, or remittances of any sort of tax by a taxpayer under audit in order to stop the running of interest and penalties, see, *e. g.*, *Moran* v. *United States*, 63 F. 3d 663 (CA7 1995). In the latter situation, the taxpayer will often desire treatment of the remittance as a deposit—even if this means forfeiting the right to interest on an overpayment—in order to preserve jurisdiction in the Tax Court, which depends on the existence of a deficiency, 26 U. S. C. § 6213 (1994 ed. and Supp. III), a deficiency that would be wiped out by treatment of the remittance as a payment. We note that the Service has promulgated procedures to govern classification of a remittance as a deposit or payment in this context. See Rev. Proc. 84–58, 1984–2 Cum. Bull. 501.

Syllabus

# WEISGRAM ET AL. *v.* MARLEY CO. ET AL.

## CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 99–161. Argued January 18, 2000—Decided February 22, 2000

Bonnie Weisgram died of carbon monoxide poisoning during a fire in her home. Her son, petitioner Chad Weisgram, individually and on behalf of her heirs (hereinafter Weisgram), brought this diversity action in the District Court seeking wrongful death damages. Weisgram alleged that a defect in a heater, manufactured by defendant (now respondent) Marley Company and located in Bonnie Weisgram's home, caused both the fire and her death. At trial, Weisgram introduced the testimony of three witnesses, proffered as experts, in an endeavor to prove the alleged heater defect and its causal connection to the fire. The District Court overruled Marley's objections that this testimony was unreliable and therefore inadmissible under Federal Rule of Evidence 702 as elucidated by *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*, 509 U. S. 579. At the close of Weisgram's evidence, and again at the close of all the evidence, Marley unsuccessfully moved under Federal Rule of Civil Procedure 50(a) for judgment as a matter of law on the ground that plaintiffs had failed to meet their burden of proof on the issues of defect and causation. The jury returned a verdict for Weisgram. Marley again requested judgment as a matter of law, and additionally requested, in the alternative, a new trial, pursuant to Rules 50 and 59; among arguments in support of its post-trial motions, Marley reasserted that the expert testimony essential to prove Weisgram's case was unreliable and therefore inadmissible. The District Court denied the motions and entered judgment for Weisgram. The Eighth Circuit panel held that Marley's motion for judgment as a matter of law should have been granted because the testimony of Weisgram's expert witnesses, the sole evidence supporting the product defect charge, was speculative and not shown to be scientifically sound, and was therefore incompetent to prove plaintiffs' case. The court then considered the remaining evidence in the light most favorable to Weisgram, found it insufficient to support the jury verdict, and directed judgment as a matter of law for Marley. Although recognizing its discretion to remand for a new trial under Rule 50(d), the court rejected any contention that it was required to do so, stating that this was not a close case, plaintiffs had had a fair opportunity to prove their strict liability claim, they failed to do so, and there was no reason to give them a second chance.

Syllabus

*Held:* Rule 50 permits an appellate court to direct the entry of judgment as a matter of law when it determines that evidence was erroneously admitted at trial and that the remaining, properly admitted, evidence is insufficient to constitute a submissible case. Pp. 447–457.

(a) Rule 50(d), which controls when, as here, the verdict loser appeals from the trial court's denial of a motion for judgment as a matter of law, provides: "[T]he party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion . . . . If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted." Rule 50 does not expressly address Weisgram's contention that, under subdivision (d), when a court of appeals determines that a jury verdict cannot be sustained due to an error in the admission of evidence, the appellate court may not order the entry of judgment for the verdict loser, but must instead remand the case to the trial court for a new trial determination. *Neely* v. *Martin K. Eby Constr. Co.*, 386 U. S. 317, ruled definitively that if a court of appeals determines that the district court erroneously denied a defendant's motion for judgment as a matter of law, the appellate court may (1) order a new trial at the verdict winner's request or on its own motion, (2) remand the case for the trial court to decide whether a new trial or entry of judgment for the defendant is warranted, or (3) direct the entry of judgment as a matter of law for the defendant. *Id.*, at 327–330. Pp. 447–452.

(b) The authority of courts of appeals to direct the entry of judgment as a matter of law extends to cases such as the present one in which, on the appellate court's excision of erroneously admitted testimony, there remains insufficient evidence to support the jury's verdict. Contrary to Weisgram's contention, that authority is not limited to cases exemplified by *Neely* in which judgment as a matter of law is requested based on plaintiff's failure to produce enough evidence to warrant a jury verdict. Weisgram asserts that insufficiency caused by deletion of evidence on appeal requires an "automatic remand" to the district court for consideration whether a new trial is warranted. His assertion draws support from Court of Appeals decisions holding that, in fairness to a verdict winner who may have relied on erroneously admitted evidence, courts confronting questions of judgment as a matter of law should rule on the record as it went to the jury, without excising evidence inadmissible under Federal Rule of Evidence 702. The decisions on which Weisgram relies are of questionable consistency with Rule 50(a)(1), which states that in ruling on a motion for judgment as a matter of law, the court is to inquire whether there is any "legally sufficient evidentiary

basis for a reasonable jury to find for [the opponent of the motion]." Inadmissible evidence contributes nothing to a "legally sufficient evidentiary basis." See *Brooke Group Ltd.* v. *Brown & Williamson Tobacco Corp.*, 509 U. S. 209, 242. As *Neely* recognized, appellate rulings on post-trial pleas for judgment as a matter of law call for the exercise of "informed discretion," 386 U. S., at 329, and fairness to the parties is surely key to the exercise of that discretion. But fairness concerns should loom as large when the verdict winner, in the appellate court's judgment, failed to present sufficient evidence as when the appellate court declares inadmissible record evidence essential to the verdict winner's case. In both situations, the party whose verdict is set aside on appeal will have had notice, before the close of evidence, of the alleged evidentiary deficiency. See Rule 50(a)(2). On appeal, both will have the opportunity to argue in support of the jury's verdict or, alternatively, for a new trial. And if judgment is instructed for the verdict loser, both will have a further chance to urge a new trial in a rehearing petition. Since *Daubert*, moreover, parties relying on expert evidence have had notice of the exacting standards of reliability such evidence must meet. It is implausible to suggest, post-*Daubert*, that parties will initially present less than their best expert evidence in the expectation of a second chance should their first try fail. The Court therefore rejects Weisgram's argument that allowing courts of appeals to direct the entry of judgment for defendants will punish plaintiffs who could have shored up their cases by other means had they known their expert testimony would be found inadmissible. In this case, for example, although Weisgram was on notice every step of the way that Marley was challenging plaintiffs' experts, he made no attempt to add or substitute other evidence. Facing the Eighth Circuit's determination that the properly admitted evidence was insufficient to support the verdict, Weisgram offered that court no specific grounds for a new trial. The Eighth Circuit therefore did not abuse its discretion by directing entry of judgment for Marley, instead of returning the case to the District Court for further proceedings. This Court's holding adheres to *Neely*'s holding and rationale. Pp. 452–457.

169 F. 3d 514, affirmed.

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

*Paul A. Strandness* argued the cause for petitioners. With him on the briefs were *Stephen S. Eckman* and *Daniel J. Dunn.*

*Christine A. Hogan* argued the cause for respondents. With her on the brief was *James S. Hill.**

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the respective authority of federal trial and appellate courts to decide whether, as a matter of law, judgment should be entered in favor of a verdict loser. The pattern we confront is this. Plaintiff in a product liability action gains a jury verdict. Defendant urges, unsuccessfully before the federal district court but successfully on appeal, that expert testimony plaintiff introduced was unreliable, and therefore inadmissible, under the analysis required by *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*, 509 U. S. 579 (1993). Shorn of the erroneously admitted expert testimony, the record evidence is insufficient to justify a plaintiff's verdict. May the court of appeals then instruct the entry of judgment as a matter of law for defendant, or must that tribunal remand the case, leaving to the district court's discretion the choice between final judgment for defendant or a new trial of plaintiff's case?

Our decision is guided by Federal Rule of Civil Procedure 50, which governs the entry of judgment as a matter of law, and by the Court's pathmarking opinion in *Neely* v. *Martin K. Eby Constr. Co.*, 386 U. S. 317 (1967). As *Neely* teaches, courts of appeals should "be constantly alert" to "the trial judge's first-hand knowledge of witnesses, testimony, and issues"; in other words, appellate courts should give due consideration to the first-instance decisionmaker's " 'feel' for the overall case." *Id.*, at 325. But the court of appeals has authority to render the final decision. If, in the particular

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**Jeffrey Robert White* filed a brief for the Association of Trial Lawyers of America as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for Brunswick Corp. by *Stephen M. Shapiro*, *Timothy S. Bishop*, and *Jeffrey W. Sarles;* and for the Product Liability Advisory Council, Inc., by *Michael T. Wharton.*

case, the appellate tribunal determines that the district court is better positioned to decide whether a new trial, rather than judgment for defendant, should be ordered, the court of appeals should return the case to the trial court for such an assessment. But if, as in the instant case, the court of appeals concludes that further proceedings are unwarranted because the loser on appeal has had a full and fair opportunity to present the case, including arguments for a new trial, the appellate court may appropriately instruct the district court to enter judgment against the jury-verdict winner. Appellate authority to make this determination is no less when the evidence is rendered insufficient by the removal of erroneously admitted testimony than it is when the evidence, without any deletion, is insufficient.

## I

Firefighters arrived at the home of Bonnie Weisgram on December 30, 1993, to discover flames around the front entrance. Upon entering the home, they found Weisgram in an upstairs bathroom, dead of carbon monoxide poisoning. Her son, petitioner Chad Weisgram, individually and on behalf of Bonnie Weisgram's heirs, brought a diversity action in the United States District Court for the District of North Dakota seeking wrongful death damages. He alleged that a defect in an electric baseboard heater, manufactured by defendant (now respondent) Marley Company and located inside the door to Bonnie Weisgram's home, caused both the fire and his mother's death.[1]

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[1] At trial and on appeal, the suit of the Weisgram heirs was consolidated with an action brought against Marley Company by State Farm Fire and Casualty Company, insurer of the Weisgram home, to recover benefits State Farm paid for the damage to the Weisgram townhouse and an adjoining townhouse. State Farm was dismissed from the appeal after certiorari was granted. For purposes of this opinion, we generally refer to the plaintiffs below, and to the petitioners before us, simply as "Weisgram."

At trial, Weisgram introduced the testimony of three witnesses, proffered as experts, in an endeavor to prove the alleged defect in the heater and its causal connection to the fire. The District Court overruled defendant Marley's objections, lodged both before and during the trial, that this testimony was unreliable and therefore inadmissible under Federal Rule of Evidence 702 as elucidated by *Daubert*. At the close of Weisgram's evidence, and again at the close of all the evidence, Marley unsuccessfully moved under Federal Rule of Civil Procedure 50(a) for judgment as a matter of law on the ground that plaintiffs had failed to meet their burden of proof on the issues of defect and causation. The jury returned a verdict for Weisgram. Marley again requested judgment as a matter of law, and additionally requested, in the alternative, a new trial, pursuant to Rules 50 and 59; among arguments in support of its post-trial motions, Marley reasserted that the expert testimony essential to prove Weisgram's case was unreliable and therefore inadmissible. App. 123–125. The District Court denied the motions and entered judgment for Weisgram. App. to Pet. for Cert. A28–A40. Marley appealed.

The Court of Appeals for the Eighth Circuit held that Marley's motion for judgment as a matter of law should have been granted. 169 F. 3d 514, 517 (1999). Writing for the panel majority, Chief Judge Bowman first examined the testimony of Weisgram's expert witnesses, the sole evidence supporting plaintiffs' product defect charge. *Id.*, at 518–522. Concluding that the testimony was speculative and not shown to be scientifically sound, the majority held the expert evidence incompetent to prove Weisgram's case. *Ibid.* The court then considered the remaining evidence in the light most favorable to Weisgram, found it insufficient to support the jury verdict, and directed judgment as a matter of law for Marley. *Id.*, at 516–517, 521–522. In a footnote, the majority "reject[ed] any contention that [it was] required to remand for a new trial." *Id.*, at 517, n. 2. It recognized its

discretion to do so under Rule 50(d), but stated: "[W]e can discern no reason to give the plaintiffs a second chance to make out a case of strict liability . . . . This is not a close case. The plaintiffs had a fair opportunity to prove their claim and they failed to do so." *Ibid.* (citations omitted). The dissenting judge disagreed on both points, concluding that the expert evidence was properly admitted and that the appropriate remedy for improper admission of expert testimony is the award of a new trial, not judgment as a matter of law. *Id.*, at 522, 525 (citing *Midcontinent Broadcasting Co.* v. *North Central Airlines, Inc.*, 471 F. 2d 357 (CA8 1973)).

Courts of Appeals have divided on the question whether Federal Rule of Civil Procedure 50 permits an appellate court to direct the entry of judgment as a matter of law when it determines that evidence was erroneously admitted at trial and that the remaining, properly admitted evidence is insufficient to constitute a submissible case.[2] We granted certiorari to resolve the conflict, 527 U. S. 1069 (1999),[3] and we now affirm the Eighth Circuit's judgment.

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[2] The Tenth Circuit has held it inappropriate for an appellate court to direct the entry of judgment as a matter of law based on the trial court's erroneous admission of evidence, because to do so would be unfair to a party who relied on the trial court's evidentiary rulings. See *Kinser* v. *Gehl Co.*, 184 F. 3d 1259, 1267, 1269 (1999). The Fourth, Sixth, and Eighth Circuits recently have issued decisions, in accord with the position earlier advanced by the Third Circuit, directing the entry of judgment as a matter of law based on proof rendered insufficient by the deletion of improperly admitted evidence. See *Redman* v. *John D. Brush & Co.*, 111 F. 3d 1174, 1178–1179 (CA4 1997); *Smelser* v. *Norfolk Southern R. Co.*, 105 F. 3d 299, 301, 306 (CA6 1997); *Wright* v. *Willamette Industries, Inc.*, 91 F. 3d 1105, 1108 (CA8 1996); accord, *Aloe Coal Co.* v. *Clark Equipment Co.*, 816 F. 2d 110, 115–116 (CA3 1987).

[3] We agreed to decide only the issue of the authority of a court of appeals to direct the entry of judgment as a matter of law, and accordingly accept as final the decision of the Eighth Circuit holding the testimony of Weisgram's experts unreliable, and therefore inadmissible under Federal Rule of Evidence 702, as explicated in *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*, 509 U. S. 579 (1993). We also accept as final the Eighth Circuit's

## II

Federal Rule of Civil Procedure 50, reproduced below, governs motions for judgment as a matter of law in jury trials.[4]

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determination that the remaining, properly admitted, evidence was insufficient to make a submissible case under state law.

[4] "Rule 50. Judgment as a Matter of Law in Jury Trials; Alternative Motion for New Trial; Conditional Rulings.

"(a) JUDGMENT AS A MATTER OF LAW.

"(1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

"(2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

"(b) RENEWING MOTION FOR JUDGMENT AFTER TRIAL; ALTERNATIVE MOTION FOR NEW TRIAL. If, for any reason, the court does not grant a motion for judgment as a matter of law made at the close of all the evidence, the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after entry of judgment—and may alternatively request a new trial or join a motion for a new trial under Rule 59. In ruling on a renewed motion, the court may:

"(1) if a verdict was returned:

"(A) allow the judgment to stand,

"(B) order a new trial, or

"(C) direct entry of judgment as a matter of law; or

"(2) if no verdict was returned:

"(A) order a new trial, or

"(B) direct entry of judgment as a matter of law.

"(c) GRANTING RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW; CONDITIONAL RULINGS; NEW TRIAL MOTION.

"(1) If the renewed motion for judgment as a matter of law is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or

It allows the trial court to remove cases or issues from the jury's consideration "when the facts are sufficiently clear that the law requires a particular result." 9A C. Wright & A. Miller, Federal Practice and Procedure § 2521, p. 240 (2d ed. 1995) (hereinafter Wright & Miller). Subdivision (d) controls when, as here, the verdict loser appeals from the trial court's denial of a motion for judgment as a matter of law:

> "[T]he party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted."

Under this Rule, Weisgram urges, when a court of appeals determines that a jury verdict cannot be sustained due to

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reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

"(2) Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered shall be filed no later than 10 days after entry of the judgment.

"(d) SAME: DENIAL OF MOTION FOR JUDGMENT AS A MATTER OF LAW. If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted."

an error in the admission of evidence, the appellate court may not order the entry of judgment for the verdict loser, but must instead remand the case to the trial court for a new trial determination. Brief for Petitioner 20, 22; Reply Brief 1, 17. Nothing in Rule 50 expressly addresses this question.[5]

In a series of pre-1967 decisions, this Court refrained from deciding the question, while emphasizing the importance of giving the party deprived of a verdict the opportunity to invoke the discretion of the trial judge to grant a new trial. See *Cone* v. *West Virginia Pulp & Paper Co.*, 330 U. S. 212, 216–218 (1947); *Globe Liquor Co.* v. *San Roman*, 332 U. S. 571, 573–574 (1948); *Johnson* v. *New York, N. H. & H. R. Co.*, 344 U. S. 48, 54, n. 3 (1952); see also 9A Wright & Miller § 2540, at 370. Then, in *Neely*, the Court reviewed its prior jurisprudence and ruled definitively that if a motion for judgment as a matter of law is erroneously denied by the district court, the appellate court does have the power to order the entry of judgment for the moving party. 386 U. S., at 326; see also Louis, Post-Verdict Rulings on the Sufficiency of the Evidence: Neely v. Martin K. Eby Construction Co. Revisited, 1975 Wis. L. Rev. 503 (surveying chronologically Court's decisions bearing on appellate direction of judgment as a matter of law).

*Neely* first addressed the compatibility of appellate direction of judgment as a matter of law (then styled "judgment *n.o.v.*") with the Seventh Amendment's jury trial guarantee. It was settled, the Court pointed out, that a trial court, pur-

[5] According to the Advisory Committee Notes to the 1963 Rule 50 amendments, this "omission" was not inadvertent:

"Subdivision (d) does not attempt a regulation of all aspects of the procedure where the motion for judgment n.o.v. and any accompanying motion for a new trial are denied, since the problems have not been fully canvassed in the decisions and the procedure is in some respects still in a formative stage. It is, however, designed to give guidance on certain important features of the practice." Advisory Committee's Notes on Fed. Rule Civ. Proc. 50(d), 28 U. S. C. App., p. 769.

suant to Rule 50(b), could enter judgment for the verdict loser without offense to the Seventh Amendment. 386 U. S., at 321 (citing *Montgomery Ward & Co.* v. *Duncan*, 311 U. S. 243 (1940)). "As far as the Seventh Amendment's right to jury trial is concerned," the Court reasoned, "there is no greater restriction on the province of the jury when an appellate court enters judgment *n.o.v.* than when a trial court does"; accordingly, the Court concluded, "there is no constitutional bar to an appellate court granting judgment *n.o.v.*" 386 U. S., at 322 (citing *Baltimore & Carolina Line, Inc.* v. *Redman*, 295 U. S. 654 (1935)). The Court next turned to "the statutory grant of appellate jurisdiction to the courts of appeals [in 28 U. S. C. § 2106]," [6] which it found "certainly broad enough to include the power to direct entry of judgment *n.o.v.* on appeal." 386 U. S., at 322. The remainder of the *Neely* opinion effectively complements Rules 50(c) and 50(d), providing guidance on the appropriate exercise of the appellate court's discretion when it reverses the trial court's denial of a defendant's Rule 50(b) motion for judgment as a matter of law. *Id.*, at 322–330; cf. *supra*, at 449, n. 5 (1963 observation of Advisory Committee that, as of that year, "problems [concerning motions for judgment coupled with new trial motions] ha[d] not been fully canvassed").

*Neely* represents no volte-face in the Court's understanding of the respective competences of trial and appellate forums. Immediately after declaring that appellate courts have the power to order the entry of judgment for a verdict loser, the Court cautioned:

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[6] Section 2106 reads:

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

> "Part of the Court's concern has been to protect the rights of the party whose jury verdict has been set aside on appeal and who may have valid grounds for a new trial, some or all of which should be passed upon by the district court, rather than the court of appeals, because of the trial judge's first-hand knowledge of witnesses, testimony, and issues—because of his 'feel' for the overall case. These are very valid concerns to which the court of appeals should be constantly alert." 386 U. S., at 325.[7]

Nevertheless, the Court in *Neely* continued, due consideration of the rights of the verdict winner and the closeness of the trial court to the case "do[es] not justify an ironclad rule that the court of appeals should never order dismissal or judgment for the defendant when the plaintiff's verdict has been set aside on appeal." *Id.*, at 326. "Such a rule," the Court concluded, "would not serve the purpose of Rule 50 to speed litigation and to avoid unnecessary retrials." *Ibid.* *Neely* ultimately clarified that if a court of appeals determines that the district court erroneously denied a motion for judgment as a matter of law, the appellate court may (1) order a new trial at the verdict winner's request or on its own motion, (2) remand the case for the trial court to decide whether a new trial or entry of judgment for the defendant is warranted, or (3) direct the entry of judgment as a matter

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[7] *Iacurci* v. *Lummus Co.*, 387 U. S. 86 (1967) *(per curiam)*, decided shortly after *Neely*, is illustrative. There, the Court reversed the appellate court's direction of the entry of judgment as a matter of law for the defendant and instructed the appeals court to remand the case to the trial court for a new trial determination; the Court pointed to the jury's failure to respond to four out of five special interrogatories, which left issues of negligence unresolved, and concluded that in the particular circumstances, the trial judge "was in the best position to pass upon the question of a new trial in light of the evidence, his charge to the jury, and the jury's verdict and interrogatory answers." 387 U. S., at 88.

of law for the defendant. *Id.*, at 327–330; see also 9A Wright & Miller § 2540, at 371–372.

## III

The parties before us—and Court of Appeals opinions—diverge regarding *Neely*'s scope. Weisgram, in line with some appellate decisions, posits a distinction between cases in which judgment as a matter of law is requested based on plaintiff's failure to produce enough evidence to warrant a jury verdict, as in *Neely*, and cases in which the proof introduced becomes insufficient because the court of appeals determines that certain evidence should not have been admitted, as in the instant case.[8] Insufficiency caused by deletion of evidence, Weisgram contends, requires an "automatic remand" to the district court for consideration whether a new trial is warranted. Brief for Petitioner 20, 22; Reply Brief 1, 3–6; Tr. of Oral Arg. 6, 18, 23.[9]

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[8] See Tr. of Oral Arg. 6, 8, 17–18, 23, 26–28, 31; Reply Brief 3–6; Brief for Respondents 24–29. Compare, *e. g.*, *Redman*, 111 F. 3d, at 1178–1179 (treating judgment as a matter of law based on insufficiency caused by admission error identically to initial insufficiency); *Smelser*, 105 F. 3d, at 301, 306 (same); *Wright*, 91 F. 3d, at 1108 (same); *Lightning Lube, Inc.* v. *Witco Corp.*, 4 F. 3d 1153, 1198–1200 (CA3 1993) (rejecting distinction), with *Kinser*, 184 F. 3d, at 1267, 1269 (insufficiency caused by admission error inappropriate basis for judgment as a matter of law); *Jackson* v. *Pleasant Grove Health Care Center*, 980 F. 2d 692, 695–696 (CA11 1993) (same); *Douglass* v. *Eaton Corp.*, 956 F. 2d 1339, 1343–1344 (CA6 1992) (same); *Midcontinent Broadcasting Co.* v. *North Central Airlines, Inc.*, 471 F. 2d 357, 358–359 (CA8 1973) (same).

[9] Weisgram misreads the Court's decision in *Montgomery Ward & Co.* v. *Duncan*, 311 U. S. 243 (1940), to support his position. Reply Brief 3–4; Tr. of Oral Arg. 19. The Court in *Montgomery Ward* directed that a trial judge who grants the verdict loser's motion for judgment *n.o.v.* should also rule conditionally on that party's alternative motion for a new trial. 311 U. S., at 253–254. The conditional ruling would be reviewed by the court of appeals only if it reversed the entry of judgment *n.o.v.* Proceeding in this manner would avoid protracting the proceedings by obviating the

Weisgram relies on cases holding that, in fairness to a verdict winner who may have relied on erroneously admitted evidence, courts confronting questions of judgment as a matter of law should rule on the record as it went to the jury, without excising evidence inadmissible under Federal Rule of Evidence 702. See, *e. g.*, *Kinser* v. *Gehl Co.*, 184 F. 3d 1259, 1267, 1269 (CA10 1999); *Schudel* v. *General Electric Co.*, 120 F. 3d 991, 995–996 (CA9 1997); *Jackson* v. *Pleasant Grove Health Care Center*, 980 F. 2d 692, 695–696 (CA11 1993); *Midcontinent Broadcasting*, 471 F. 2d, at 358. But see *Lightning Lube, Inc.* v. *Witco Corp.*, 4 F. 3d 1153, 1198–1200 (CA3 1993). These decisions are of questionable consistency with Rule 50(a)(1), which states that in ruling on a motion for judgment as a matter of law, the court is to inquire

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need for multiple appeals. See *id.*, at 253. Rule 50 was amended in 1963 to codify *Montgomery Ward*'s instruction. See Fed. Rule Civ. Proc. 50(c)(1).

In the course of its elaboration, the *Montgomery Ward* Court observed that a "motion for judgment cannot be granted unless, as a matter of law, the opponent of the movant failed to make a case." 311 U. S., at 251. In contrast, the Court stated, a new trial motion may invoke the court's discretion, bottomed on such standard new trial grounds as "the verdict is against the weight of the evidence," or "the damages are excessive," or substantial errors were made "in admission or rejection of evidence." *Ibid.;* see also *id.*, at 249.

Many rulings on evidence, of course, do not bear dispositively on the adequacy of the proof to support a verdict. For example, the evidence erroneously admitted or excluded may strengthen or weaken one side's case without being conclusive as to the litigation's outcome. Or, the evidence may abundantly support a jury's verdict, but one or another item may have been unduly prejudicial to the verdict loser and excludable on that account. See Fed. Rule Evid. 403 (relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice"). Such run-of-the-mine, ordinarily nondispositive, evidentiary rulings, we take it, were the sort contemplated in *Montgomery Ward.* Cf. 311 U. S., at 245–246 (indicating that sufficiency-of-the-evidence challenges are properly raised by motion for judgment, while other rulings on evidence may be assigned as grounds for a new trial).

whether there is any "legally sufficient evidentiary basis for a reasonable jury to find for [the opponent of the motion]." Inadmissible evidence contributes nothing to a "legally sufficient evidentiary basis." See *Brooke Group Ltd.* v. *Brown & Williamson Tobacco Corp.*, 509 U. S. 209, 242 (1993) ("When an expert opinion is not supported by sufficient facts to validate it in the eyes of the law, or when indisputable record facts contradict or otherwise render the opinion unreasonable, it cannot support a jury's verdict.").[10]

As *Neely* recognized, appellate rulings on post-trial pleas for judgment as a matter of law call for the exercise of "informed discretion," 386 U. S., at 329, and fairness to the parties is surely key to the exercise of that discretion. But fairness concerns should loom as large when the verdict winner, in the appellate court's judgment, failed to present sufficient evidence as when the appellate court declares inadmissible record evidence essential to the verdict winner's case. In both situations, the party whose verdict is set aside on appeal will have had notice, before the close of evidence, of the alleged evidentiary deficiency. See Fed. Rule Civ. Proc. 50(a)(2) (motion for judgment as a matter of law "shall specify . . . the law and facts on which the moving party is entitled to the judgment"). On appeal, both will have the opportunity to argue in support of the jury's verdict or, alternatively, for a new trial. And if judgment is instructed for

[10] Weisgram additionally urges that the Seventh Amendment prohibits a court of appeals from directing judgment as a matter of law on a record different from the one considered by the jury. Brief for Petitioner 20–22; Reply Brief 6–8. *Neely* made clear that a court of appeals may order entry of judgment as a matter of law on sufficiency-of-the-evidence grounds without violating the Seventh Amendment. 386 U. S., at 321–322. Entering judgment for the verdict loser when all of the evidence was properly before the jury is scarcely less destructive of the jury's verdict than is entry of such a judgment based on a record made insufficient by the removal of evidence the jury should not have had before it.

the verdict loser, both will have a further chance to urge a new trial in a rehearing petition.[11]

Since *Daubert*, moreover, parties relying on expert evidence have had notice of the exacting standards of reliability such evidence must meet. 509 U. S. 579; see also *Kumho Tire Co.* v. *Carmichael*, 526 U. S. 137 (1999) (rendered shortly after the Eighth Circuit's decision in Weisgram's case);[12] *General Electric Co.* v. *Joiner*, 522 U. S. 136 (1997). It is implausible to suggest, post-*Daubert*, that parties will initially present less than their best expert evidence in the expectation of a second chance should their first try fail. We therefore find unconvincing Weisgram's fears that allowing courts of appeals to direct the entry of judgment for defend-

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[11] We recognize that it is awkward for an appellee, who is wholeheartedly urging the correctness of the verdict, to point out, in the alternative, grounds for a new trial. See Kaplan, Amendments of the Federal Rules of Civil Procedure, 1961–1963 (II), 77 Harv. L. Rev. 801, 819 (1964) ("A verdict winner may suffer forensic embarrassment in arguing for a new trial on his own behalf, *faute de mieux*, while seeking to defend his verdict against all attacks by his opponent."). A petition for rehearing in the court of appeals, however, involves no conflicting tugs. We are not persuaded by Weisgram's objection that the 14 days allowed for the filing of a petition for rehearing is insufficient time to formulate compelling grounds for a new trial. Reply Brief 15–16. This time period is longer than the ten days allowed a verdict winner to move for a new trial after a trial court grants judgment as a matter of law. See Fed. Rule Civ. Proc. 50(c)(2). Nor do we foreclose the possibility that a court of appeals might properly deny a petition for rehearing because it pressed an argument that plainly could have been formulated in a party's brief. See Louis, Post-Verdict Rulings on the Sufficiency of the Evidence: Neely v. Martin K. Eby Construction Co. Revisited, 1975 Wis. L. Rev. 503, 519–520, n. 90 ("[I]t is often difficult to argue that a gap in one's proof can be filled before a court has held that the gap exists . . . ." On the other hand, "the brief or oral argument will suffice . . . when the area of the alleged evidentiary insufficiency has previously been clearly identified." (citation omitted)).

[12] We note that the decision in *Kumho* is consistent with Eighth Circuit precedent existing at the time of trial in Weisgram's case. See, *e. g.*, *Peitzmeier* v. *Hennessy Industries, Inc.*, 97 F. 3d 293, 297 (CA8 1996).

ants will punish plaintiffs who could have shored up their cases by other means had they known their expert testimony would be found inadmissible. See Brief for Petitioner 18, 25. In this case, for example, although Weisgram was on notice every step of the way that Marley was challenging his experts, he made no attempt to add or substitute other evidence. See *Lujan* v. *National Wildlife Federation*, 497 U. S. 871, 897 (1990) ("[A] litigant's failure to buttress its position because of confidence in the strength of that position is always indulged in at the litigant's own risk.").

After holding Weisgram's expert testimony inadmissible, the Court of Appeals evaluated the evidence presented at trial, viewing it in the light most favorable to Weisgram, and found the properly admitted evidence insufficient to support the verdict. 169 F. 3d, at 516–517. Weisgram offered no specific grounds for a new trial to the Eighth Circuit.[13] Even in the petition for rehearing, Weisgram argued only that the appellate court had misapplied state law, did not have the authority to direct judgment, and had failed to give adequate deference to the trial court's evidentiary rulings. App. 131–151. The Eighth Circuit concluded that this was "not a close case." 169 F. 3d, at 517, n. 2. In these circumstances, the Eighth Circuit did not abuse its discretion by directing entry of judgment for Marley, instead of returning the case to the District Court for further proceedings.

* * *

*Neely* recognized that there are myriad situations in which the determination whether a new trial is in order is best made by the trial judge. 386 U. S., at 325–326. *Neely* held,

[13] Cf. *Neely* v. *Martin K. Eby Constr. Co.*, 386 U. S. 317, 327 (1967) (observing that it would not be clear that litigation should be terminated for evidentiary insufficiency when, for example, the trial court excluded evidence that would have strengthened the verdict winner's case or "itself caused the insufficiency . . . by erroneously [imposing] too high a burden of proof").

however, that there are also cases in which a court of appeals may appropriately instruct the district court to enter judgment as a matter of law against the jury-verdict winner. *Id.*, at 326. We adhere to *Neely*'s holding and rationale, and today hold that the authority of courts of appeals to direct the entry of judgment as a matter of law extends to cases in which, on excision of testimony erroneously admitted, there remains insufficient evidence to support the jury's verdict.

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

*Affirmed.*

Syllabus

# HUNT-WESSON, INC. *v.* FRANCHISE TAX BOARD OF CALIFORNIA

## CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT

No. 98–2043. Argued January 12, 2000—Decided February 22, 2000

A State may tax a proportionate share of the "unitary" income of a nondomiciliary corporation that carries out a particular business both inside and outside that State, *Allied-Signal, Inc.* v. *Director, Div. of Taxation*, 504 U. S. 768, 772, but may not tax "nonunitary" income received by a nondomiciliary corporation from an "unrelated business activity" which constitutes a "discrete business enterprise," *e. g., id.*, at 773. California's "unitary business" income-calculation system for determining that State's taxable share of a multistate corporation's business income authorizes a deduction for interest expense, but permits (with one adjustment) use of that deduction *only to the extent* that the amount exceeds certain out-of-state income arising from the unrelated business activity of a discrete business enterprise, *i. e.*, nonunitary income that the State could not otherwise tax under this Court's decisions. Petitioner Hunt-Wesson, Inc., is a successor in interest to a nondomiciliary of California that incurred interest expense during the years at issue. California disallowed the deduction for that expense insofar as the nondomiciliary corporation had received relevant nonunitary dividend and interest income. Hunt-Wesson challenged the disallowance's constitutional validity. The State Court of Appeal found it constitutional, and the State Supreme Court denied review.

*Held:* Because California's interest deduction offset provision is not a reasonable allocation of expense deductions to the income that the expense generates, it constitutes impermissible taxation of income outside the State's jurisdictional reach in violation of the Federal Constitution's Due Process and Commerce Clauses. States may not tax income arising out of interstate activities—even on a proportional basis—unless there is a "minimal connection" or "nexus" between such activities and the taxing State, and a "rational relationship between the income attributed to the State and the intrastate values of the enterprise." *Container Corp. of America* v. *Franchise Tax Bd.*, 463 U. S. 159, 165–166. Although California's statute does not directly impose a tax on nonunitary income, it measures the amount of additional unitary income that becomes subject to its taxation (through reducing the deduction) by precisely the amount of nonunitary income that the taxpayer has received. Thus, that which California calls a deduction limitation would seem, in fact, to

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be an impermissible tax. *National Life Ins. Co.* v. *United States*, 277 U. S. 508. If California could show that its deduction limit actually reflected the portion of the expense properly related to nonunitary income, however, the limit would not, in fact, be a tax on that income, but merely a proper allocation of the deduction. See *Denman* v. *Slayton*, 282 U. S. 514. The state statute, however, pushes this proportional allocation concept past reasonable bounds. In effect, it assumes that a corporation that borrows any money at all has really borrowed that money to "purchase or carry," cf. 26 U. S. C. § 265(a)(2), its nonunitary investments (as long as the corporation has such investments), even if the corporation has put no money at all into nonunitary business that year. No other taxing jurisdiction has taken so absolute an approach. Rules used by the Federal Government and many States that utilize a ratio of assets and gross income to allocate a corporation's total interest expense between domestic and foreign source income recognize that borrowing, even if supposedly undertaken for the unitary business, may also support nonunitary income generation. However, unlike the California rule, ratio-based rules do not assume that *all* borrowing first supports nonunitary investment. Rather, they allocate each borrowing between the two types of income. Over time, it is reasonable to expect that the ratios used will reflect approximately the amount of borrowing that firms have actually devoted to generating each type of income. Conversely, it is simply not reasonable to expect that a rule that attributes all borrowing first to nonunitary investment will accurately reflect the amount of borrowing that has actually been devoted to generating each type of income. Pp. 463–468.

Reversed and remanded.

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

*Walter Hellerstein* argued the cause for petitioner. With him on the briefs were *Charles J. Moll III*, *Edwin P. Antolin*, *Fred O. Marcus*, and *Drew S. Days III*.

*David Lew*, Deputy Attorney General of California, argued the cause for respondent. With him on the brief were *Bill Lockyer*, Attorney General, and *Timothy G. Laddish*, Senior Assistant Attorney General.*

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*Briefs of *amici curiae* urging reversal were filed for General Electric Co. by *Carter G. Phillips*, *Scott J. Heyman*, *Nathan C. Sheers*, *John Amato*, *Amy Eisenstadt*, and *Frank A. Yanover;* and for Tax Executives Institute, Inc., by *Timothy J. McCormally* and *Mary L. Fahey*.

Briefs of *amici curiae* urging affirmance were filed for the State of Idaho et al. by *Alan G. Lance*, Attorney General of Idaho, and *Geoffrey L.*

JUSTICE BREYER delivered the opinion of the Court.

A State may tax a proportionate share of the income of a nondomiciliary corporation that carries out a particular business both inside and outside that State. *Allied-Signal, Inc.* v. *Director, Div. of Taxation*, 504 U. S. 768, 772 (1992). The State, however, may not tax income received by a corporation from an "'"unrelated business activity"' which constitutes a '"discrete business enterprise."'" *Id.*, at 773 (quoting *Exxon Corp.* v. *Department of Revenue of Wis.*, 447 U. S. 207, 224 (1980), in turn quoting *Mobil Oil Corp.* v. *Commissioner of Taxes of Vt.*, 445 U. S. 425, 442, 439 (1980)). California's rules for taxing its share of a multistate corporation's income authorize a deduction for interest expense. But they permit (with one adjustment) use of that deduction *only to the extent* that the amount exceeds certain out-of-state income arising from the unrelated business activity of a discrete business enterprise, *i. e.*, income that the State could not otherwise tax. We must decide whether those rules violate the Constitution's Due Process and Commerce Clauses. We conclude that they do.

I

The legal issue is less complicated than may first appear, as examples will help to show. California, like many other States, uses what is called a "unitary business" income-calculation system for determining its taxable share of a multistate corporation's business income. In effect, that system first determines the corporation's total income from its nationwide business. During the years at issue, it then averaged three ratios—those of the firm's California property, payroll, and sales to total property, payroll, and sales—to make a combined ratio. Cal. Rev. & Tax Code Ann.

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*Thorpe*, Deputy Attorney General, *Bruce M. Botelho*, Attorney General of Alaska, *Joseph P. Mazurek*, Attorney General of Montana, and *Heidi Heitkamp*, Attorney General of North Dakota; and for the Multistate Tax Commission by *Paull Mines*.

§§ 25128, 25129, 25132, 25134 (West 1979). Finally, it multiplies total income by the combined ratio. The result is "California's share," to which California then applies its corporate income tax. If, for example, an Illinois tin can manufacturer, doing business in California and elsewhere, earns $10 million from its total nationwide tin can sales, and if California's formula determines that the manufacturer does 10% of its business in California, then California will impose its income tax upon 10% of the corporation's tin can income, $1 million.

The income of which California taxes a percentage is constitutionally limited to a corporation's "unitary" income. Unitary income normally includes all income from a corporation's business activities, but excludes income that "derive[s] from unrelated business activity which constitutes a discrete business enterprise," *Allied-Signal*, 504 U. S., at 773 (internal quotation marks omitted). As we have said, this latter "nonunitary" income normally is not taxable by any State except the corporation's State of domicile (and the States in which the "discrete enterprise" carries out its business). *Ibid.*

Any income tax system must have rules for determining the amount of net income to be taxed. California's system, like others, basically does so by asking the corporation to add up its gross income and then deduct costs. One of the costs that California permits the corporation to deduct is interest expense. The statutory language that authorizes that deduction—the language here at issue—contains an important limitation. It says that the amount of "interest deductible" shall be the amount by which "interest expense *exceeds* interest and dividend income . . . not subject to allocation by formula," *i. e.*, the amount by which the interest expense exceeds the interest and dividends that the nondomiciliary corporation has received from *nonunitary* businessor investment. Cal. Rev. & Tax Code Ann. § 24344 (West 1979) (emphasis added); Appendix, *infra*. Suppose the Illi-

nois tin can manufacturer has interest expense of $150,000; and suppose it receives $100,000 in dividend income from a nonunitary New Zealand sheep-farming subsidiary. California's rule authorizes an interest deduction, not of $150,000, but of $50,000, for the deduction is allowed only insofar as the interest expense "exceeds" this other unrelated income.

Other language in the statute makes the matter a little more complex. One part makes clear that, irrespective of nonunitary income, the corporation may use the deduction against unitary interest income that it earns. § 24344. This means that if the Illinois tin can manufacturer has earned $100,000 from tin can related interest, say, interest paid on its tin can receipt bank accounts, the manufacturer can use $100,000 of its interest expense deduction to offset that interest income (though it would still lose the remaining $50,000 of deduction because of income from the New Zealand sheep farm). Another part provides an exception to the extent that the subsidiary paying the dividend has paid taxes to California. §§ 24344, 24402. If the sheep farm were in California, not New Zealand (or at least to the extent it were taxable in California), the tin can manufacturer would not lose the deduction. We need not consider either of these complications here.

One final complication involves a dispute between the parties over the amount of interest expense that the California statute at issue covers. Hunt-Wesson, Inc., claims that California (at least during the years at issue here) required interstate corporations first to determine what part of their interest expense was for interest related to the unitary business and what part was for interest related to other, nonunitary matters. It says that the statute then required it to put the latter to the side, so that only interest related to the unitary business was at issue. California agrees that the form it provided to corporations during the years at issue did work this way, but states that the form did not interpret the statute correctly. In its view, the statute takes all interest ex-

pense into account. Apparently California now believes that, if the tin can manufacturer had $100,000 interest expense related to its tin can business, and another $50,000 interest expense related to the New Zealand sheep farm (say, money borrowed to buy shares in the farm), then California's statute would count a total interest expense of $150,000, *all* of which California would permit it to deduct from its unitary tin can business income if, for example, it had no nonunitary New Zealand sheep farm income in that particular year. This matter, arguably irrelevant to the tax years here in question (Hunt-Wesson reported no nonunitary interest expense), is also irrelevant to our legal result. Therefore, we need not consider this particular dispute further.

The question before us then is reasonably straightforward: Does the Constitution permit California to carve out an exception to its interest expense deduction, which it measures by the amount of nonunitary dividend and interest income that the nondomiciliary corporation has received? Petitioner, Hunt-Wesson, Inc., is successor in interest to a nondomiciliary corporation. That corporation incurred interest expense during the years at issue. California disallowed the deduction for that expense insofar as the corporation had received relevant nonunitary dividend and interest income. Hunt-Wesson challenged the constitutional validity of the disallowance. The California Court of Appeal found it constitutional, No. A079969 (Dec. 11, 1998), App. 54; see also *Pacific Tel. & Tel. Co.* v. *Franchise Tax Bd.*, 7 Cal. 3d 544, 498 P. 2d 1030 (1972) (upholding statute), and the California Supreme Court denied review, App. 67. We granted certiorari to consider the question.

## II

Relevant precedent makes clear that California's rule violates the Due Process and Commerce Clauses of the Federal Constitution. In *Container Corp. of America* v. *Franchise Tax Bd.*, 463 U. S. 159 (1983), this Court wrote that the "Due

Process and Commerce Clauses . . . do not allow a State to tax income arising out of interstate activities—even on a proportional basis—unless there is a '"minimal connection" or "nexus" between the interstate activities and the taxing State, and "a rational relationship between the income attributed to the State and the intrastate values of the enterprise."'" *Id.*, at 165–166 (quoting *Exxon Corp.*, 447 U. S., at 219–220, in turn quoting *Mobil Oil Corp.*, 445 U. S., at 436, 437). Cf. *International Harvester Co.* v. *Department of Treasury*, 322 U. S. 340, 353 (1944) (Rutledge, J., concurring in part and dissenting in part) ("If there is a want of due process to sustain" a tax, "by that fact alone any burden the tax imposes on the commerce among the states becomes 'undue'"). The parties concede that the relevant income here—that which falls within the scope of the statutory phrase "not allocable by formula"—is income that, like the New Zealand sheep farm in our example, by itself bears no "rational relationship" or "nexus" to California. Under our precedent, this "nonunitary" income may not constitutionally be taxed by a State other than the corporation's domicile, unless there is some other connection between the taxing State and the income. *Allied-Signal*, 504 U. S., at 772–773.

California's statute does not directly impose a tax on nonunitary income. Rather, it simply denies the taxpayer use of a portion of a deduction from unitary income (income like that from tin can manufacture in our example), income which does bear a "rational relationship" or "nexus" to California. But, as this Court once put the matter, a "'tax on sleeping measured by the number of pairs of shoes you have in your closet is a tax on shoes.'" *Trinova Corp.* v. *Michigan Dept. of Treasury*, 498 U. S. 358, 374 (1991) (quoting Jenkins, State Taxation of Interstate Commerce, 27 Tenn. L. Rev. 239, 242 (1960)). California's rule measures the amount of additional unitary income that becomes subject to its taxation (through reducing the deduction) by precisely the amount of nonunitary income that the taxpayer has received. And for that

reason, that which California calls a deduction limitation would seem, in fact, to amount to an impermissible tax. *National Life Ins. Co.* v. *United States*, 277 U. S. 508 (1928) (finding that a federal statute that reduced an insurance company's tax deduction for reserves by the amount of tax-exempt interest the company received from a holding of "tax-free" municipal bonds constituted unlawful taxation of tax-exempt income).

However, this principle does not end the matter. California offers a justification for its rule that seeks to relate the deduction limit to collection of California's tax on unitary income. If California could show that its deduction limit actually reflected the portion of the expense properly related to nonunitary income, the limit would not, in fact, be a tax on nonunitary income. Rather, it would merely be a proper allocation of the deduction. See *Denman* v. *Slayton*, 282 U. S. 514 (1931) (upholding Federal Tax Code's denial of interest expense deduction where borrowing is incurred to "purchase or carry" tax-exempt obligations).

California points out that money is fungible, and that consequently it is often difficult to say whether a particular borrowing is "really" for the purpose of generating unitary income or for the purpose of generating nonunitary income. California's rule prevents a firm from claiming that it paid interest on borrowing for the first purpose (say, to build a tin can plant) when the borrowing is "really" for the second (say, to buy shares in the New Zealand sheep farm). Without some such rule, firms might borrow up to the hilt to support their (more highly taxed) unitary business needs, and use the freed unitary business resources to purchase (less highly taxed) nonunitary business assets. This "tax arbitrage" problem, California argues, is why this Court upheld the precursor of 26 U. S. C. § 265(a)(2), which denies the taxpayer an interest deduction insofar as the interest expense was "incurred or continued to purchase or carry" tax-exempt obligations or securities. *Denman* v. *Slayton*,

*supra*, at 519. This Court has consistently upheld deduction denials that represent reasonable efforts properly to allocate a deduction between taxable and tax-exempt income, even though such denials mean that the taxpayer owes more than he would without the denial. *E. g.*, *First Nat. Bank of Atlanta* v. *Bartow County Bd. of Tax Assessors*, 470 U. S. 583 (1985).

The California statute, however, pushes this concept past reasonable bounds. In effect, it assumes that a corporation that borrows any money at all has really borrowed that money to "purchase or carry," cf. 26 U. S. C. § 265(a)(2), its nonunitary investments (as long as the corporation has such investments), even if the corporation has put no money at all into nonunitary business that year. Presumably California believes that, in such a case, the unitary borrowing supports the nonunitary business to the extent that the corporation has any nonunitary investment because the corporation might have, for example, sold the sheep farm and used the proceeds to help its tin can operation instead of borrowing.

At the very least, this last assumption is unrealistic. And that lack of practical realism helps explain why California's rule goes too far. A state tax code that unrealistically assumes that *every* tin can borrowing first helps the sheep farm (or the contrary view that *every* sheep farm borrowing first helps the tin can business) simply because of the theoretical possibility of a hypothetical sale of either business is a code that fails to "actually reflect a reasonable sense of how income is generated," *Container Corp.*, 463 U. S., at 169, and in doing so assesses a tax upon constitutionally protected nonunitary income. That is so even if, as California claims, its rule attributes *all* interest expense both to unitary and to nonunitary income. And it is even more obviously so if, as Hunt-Wesson claims, California attributes all sheep-farm-related borrowing to the sheep farm while attributing all tin-can-related borrowing first to the sheep farm as well.

No other taxing jurisdiction, whether federal or state, has taken so absolute an approach to the tax arbitrage problem that California presents. Federal law in comparable circumstances (allocating interest expense between domestic and foreign source income) uses a ratio of assets and gross income to allocate a corporation's total interest expense. See 26 CFR §§ 1.861–9T(f), (g) (1999). In a similar, but much more limited, set of circumstances, the federal rules use a kind of modified tracing approach—requiring that a certain amount of interest expense be allocated to foreign income in situations where a United States business group's loans to foreign subsidiaries and the group's total borrowing have increased relative to recent years (subject to a number of adjustments), and both loans and borrowing exceed certain amounts relative to total assets. See § 1.861–10. Some States other than California follow a tracing approach. See, *e. g.*, D. C. Mun. Regs., Tit. 9, § 123.4 (1998); Ga. Rules and Regs. § 560–7–7.03(3) (1999). Some use a set of ratio-based formulas to allocate borrowing between the generation of unitary and nonunitary income. See, *e. g.*, Ala. Code § 40–18–35(a)(2) (1998); La. Reg. § 1130(B)(1) (1988). And some use a combination of the two approaches. See, *e. g.*, N. M. Admin. Code, Tit. 3, § 5.5.8 (1999); Utah Code Ann. § 59–7–101 (19) (1999). No other jurisdiction uses a rule like California's.

Ratio-based rules like the one used by the Federal Government and those used by many States recognize that borrowing, even if supposedly undertaken for the unitary business, may also (as California argues) support the generation of nonunitary income. However, unlike the California rule, ratio-based rules do not assume that *all* borrowing first supports nonunitary investment. Rather, they allocate each borrowing between the two types of income. Although they may not reflect every firm's specific actions in any given year, it is reasonable to expect that, over some period of

time, the ratios used will reflect approximately the amount of borrowing that firms have actually devoted to generating each type of income. Conversely, it is simply not reasonable to expect that a rule that attributes all borrowing first to nonunitary investment will accurately reflect the amount of borrowing that has actually been devoted to generating each type of income.

Because California's offset provision is not a reasonable allocation of expense deductions to the income that the expense generates, it constitutes impermissible taxation of income outside its jurisdictional reach. The provision therefore violates the Due Process and Commerce Clauses of the Constitution.

The judgment of the California Court of Appeal is reversed, and the case is remanded for proceedings not inconsistent with this opinion.

*It is so ordered.*

## APPENDIX TO OPINION OF THE COURT

Cal. Rev. & Tax Code Ann. § 24344 (West 1979).

"Interest; restrictions

"(a) Except as limited by subsection (b), there shall be allowed as a deduction all interest paid or accrued during the income year on indebtedness of the taxpayer.

"(b) [T]he interest deductible shall be an amount equal to interest income subject to allocation by formula, plus the amount, if any, by which the balance of interest expense exceeds interest and dividend income (except dividends deductible under the provisions of Section 24402) not subject to allocation by formula. Interest expense not included in the preceding sentence shall be directly offset against interest and dividend income (except dividends deductible under the provisions of Section 24402) not subject to allocation by formula."

"§ 24402. Dividends

"Dividends received during the income year declared from income which has been included in the measure of the taxes imposed under Chapter 2 or Chapter 3 of this part upon the taxpayer declaring the dividends."

Syllabus

# ROE, WARDEN *v.* FLORES-ORTEGA

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

No. 98–1441. Argued November 1, 1999—Decided February 23, 2000

Respondent pleaded guilty to second-degree murder. At his sentencing, the trial judge advised him that he had 60 days to file an appeal. His counsel, Ms. Kops, wrote "bring appeal papers" in her file, but no notice of appeal was filed within that time. Respondent's subsequent attempt to file such notice was rejected as untimely, and his efforts to secure state habeas relief were unsuccessful. He then filed a federal habeas petition, alleging constitutionally ineffective assistance of counsel based on Ms. Kops' failure to file the notice after promising to do so. The District Court denied relief. The Ninth Circuit reversed, however, finding that respondent was entitled to relief because, under its precedent, a habeas petitioner need only show that his counsel's failure to file a notice of appeal was without the petitioner's consent.

*Held:*

1. *Strickland* v. *Washington*, 466 U. S. 668, provides the proper framework for evaluating a claim that counsel was constitutionally ineffective for failing to file a notice of appeal. Under *Strickland*, a defendant must show (1) that counsel's representation "fell below an objective standard of reasonableness," *id.*, at 688, and (2) that counsel's deficient performance prejudiced the defendant, *id.*, at 694. Pp. 476–486.

(a) Courts must "judge the reasonableness of counsel's conduct on the facts of the particular case, viewed as of the time of counsel's conduct," 466 U. S., at 690, and "[j]udicial scrutiny of counsel's performance must be highly deferential," *id.*, at 689. A lawyer who disregards a defendant's specific instructions to file a notice of appeal acts in a professionally unreasonable manner, see *Rodriquez* v. *United States*, 395 U. S. 327, while a defendant who explicitly tells his attorney not to file an appeal plainly cannot later complain that, by following those instructions, his counsel performed deficiently, see *Jones* v. *Barnes*, 463 U. S. 745, 751. The Ninth Circuit adopted a bright-line rule for cases where the defendant has not clearly conveyed his wishes one way or the other; in its view, failing to file a notice of appeal without the defendant's consent is *per se* deficient. The Court rejects that *per se* rule as inconsistent with *Strickland*'s circumstance-specific reasonableness requirement. The question whether counsel has performed deficiently in such cases is best answered by first asking whether counsel in fact consulted with

the defendant about an appeal. By "consult," the Court means advising the defendant about the advantages and disadvantages of taking an appeal and making a reasonable effort to discover the defendant's wishes. Counsel who consults with the defendant performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions about an appeal. If counsel has not consulted, the court must ask whether that failure itself constitutes deficient performance. The better practice is for counsel routinely to consult with the defendant about an appeal. Counsel has a constitutionally imposed duty to consult, however, only when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. In making this determination, courts must take into account all the information counsel knew or should have known. One highly relevant factor will be whether the conviction follows a trial or a guilty plea, because a plea both reduces the scope of potentially appealable issues and may indicate that the defendant seeks an end to judicial proceedings. Even then, a court must consider such factors as whether the defendant received the sentence bargained for and whether the plea expressly reserved or waived some or all appeal rights. Pp. 477–481.

(b) The second part of the *Strickland* test requires the defendant to show prejudice from counsel's deficient performance. Where an ineffective assistance of counsel claim involves counsel's performance during the course of a legal proceeding, the Court normally applies a strong presumption of reliability to the proceeding, requiring a defendant to overcome that presumption by demonstrating that attorney errors actually had an adverse effect on the defense. The complete denial of counsel during a critical stage of a judicial proceeding, however, mandates a presumption of prejudice because "the adversary process itself" has been rendered "presumptively unreliable." *United States* v. *Cronic*, 466 U. S. 648, 659. The even more serious denial of the entire judicial proceeding also demands a presumption of prejudice because no presumption of reliability can be accorded to judicial proceedings that never took place. Respondent claims that his counsel's deficient performance led to the forfeiture of his appeal. If that is so, prejudice must be presumed. Because the defendant in such cases must show that counsel's deficient performance actually deprived him of an appeal, however, he must demonstrate that there is a reasonable probability that, but for counsel's deficient failure to consult with him about an appeal, he would have timely appealed. This standard follows the pattern established in *Strickland* and *Cronic*, and mirrors the prejudice inquiry applied in *Hill* v. *Lockhart*, 474 U. S. 52, and *Rodriquez* v. *United States*, *supra*.

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The question whether a defendant has made the requisite showing will turn on the facts of the particular case. Nonetheless, evidence that there were nonfrivolous grounds for appeal or that the defendant promptly expressed a desire to appeal will often be highly relevant in making this determination. The performance and prejudice inquiries may overlap because both may be satisfied if the defendant shows nonfrivolous grounds for appeal. However, they are not in all cases coextensive. Evidence that a defendant sufficiently demonstrated to counsel his interest in an appeal may prove deficient performance, but it alone is insufficient to establish that he would have filed the appeal had he received counsel's advice. And, although showing nonfrivolous grounds for appeal may give weight to the defendant's contention that he would have appealed, a defendant's inability to demonstrate the merit of his hypothetical appeal will not foreclose the possibility that he can meet the prejudice requirement where there are other substantial reasons to believe that he would have appealed. Pp. 481–486.

2. The court below undertook neither part of the *Strickland* inquiry and the record does not provide the Court with sufficient information to determine whether Ms. Kops rendered constitutionally inadequate assistance. The case is accordingly remanded for a determination whether Ms. Kops had a duty to consult with respondent (either because there were potential grounds for appeal or because respondent expressed interest in appealing), whether she satisfied her obligations, and, if she did not, whether respondent was prejudiced thereby. P. 487.

160 F. 3d 534, vacated and remanded.

O'Connor, J., delivered the opinion of the Court, in which Rehnquist, C. J., and Scalia, Kennedy, Thomas, and Breyer, JJ., joined, and in which Stevens, Souter, and Ginsburg, JJ., joined as to Part II–B. Breyer, J., filed a concurring opinion, *post,* p. 488. Souter, J., filed an opinion concurring in part and dissenting in part, in which Stevens and Ginsburg, JJ., joined, *post,* p. 488. Ginsburg, J., filed an opinion concurring in part and dissenting in part, *post,* p. 493.

*Paul E. O'Connor,* Deputy Attorney General of California, argued the cause for petitioner. With him on the briefs were *Bill Lockyer,* Attorney General, *David P. Druliner,* Chief Assistant Attorney General, *Robert R. Anderson* and *Arnold O. Overoye,* Senior Assistant Attorneys General,

*Margaret Venturi*, Supervising Deputy Attorney General, and *Ward A. Campbell*, Assistant Supervising Deputy Attorney General.

*Edward C. DuMont* argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Waxman*, *Assistant Attorney General Robinson*, *Deputy Solicitor General Dreeben*, and *Nina Goodman*.

*Quin Denvir* argued the cause for respondent. With him on the brief were *Ann H. Voris* and *Mary French*.*

JUSTICE O'CONNOR delivered the opinion of the Court.

In this case we must decide the proper framework for evaluating an ineffective assistance of counsel claim, based on counsel's failure to file a notice of appeal without respondent's consent.

I

The State of California charged respondent, Lucio Flores-Ortega, with one count of murder, two counts of assault, and a personal use of a deadly weapon enhancement allegation. In October 1993, respondent appeared in Superior Court with his court-appointed public defender, Nancy Kops, and a Spanish language interpreter, and pleaded guilty to second-degree murder. The plea was entered pursuant to a California rule permitting a defendant both to deny committing a crime and to admit that there is sufficient evidence to convict him. See *People* v. *West*, 3 Cal. 3d 595, 477 P. 2d 409 (1970). In exchange for the guilty plea, the state prosecutor moved to strike the allegation of personal use of a deadly weapon and to dismiss both assault charges. On November 10, 1993,

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**Kent S. Scheidegger* and *Christine M. Murphy* filed a brief for the Criminal Justice Legal Foundation as *amicus curiae* urging reversal.

*Lawrence S. Lustberg*, *Kevin McNulty*, and *Lisa B. Kemler* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging affirmance.

respondent was sentenced to 15 years to life in state prison. After pronouncing sentence, the trial judge informed respondent, "You may file an appeal within 60 days from today's date with this Court. If you do not have money for Counsel, Counsel will be appointed for you to represent you on your appeal." App. 40.

Although Ms. Kops wrote "bring appeal papers" in her file, no notice of appeal was filed within the 60 days allowed by state law. See Cal. Penal Code Ann. § 1239(a) (West Supp. 2000); Cal. App. Rule 31(d). (A notice of appeal is generally a one-sentence document stating that the defendant wishes to appeal from the judgment. See Rule 31(b); Judicial Council of California, Approved Form CR–120 (Notice of Appeal-Felony) (Jan. 5, 2000), http://www.courtinfo.ca.gov/forms/documents/cr120.pdf.) Filing such a notice is a purely ministerial task that imposes no great burden on counsel. During the first 90 days after sentencing, respondent was apparently in lockup, undergoing evaluation, and unable to communicate with counsel. About four months after sentencing, on March 24, 1994, respondent tried to file a notice of appeal, which the Superior Court Clerk rejected as untimely. Respondent sought habeas relief from California's appellate courts, challenging the validity of both his plea and conviction, and (before the California Supreme Court) alleging that Ms. Kops had not filed a notice of appeal as she had promised. These efforts were uniformly unsuccessful.

Respondent then filed a federal habeas petition pursuant to 28 U. S. C. § 2254, alleging constitutionally ineffective assistance of counsel based on Ms. Kops' failure to file a notice of appeal on his behalf after promising to do so. The United States District Court for the Eastern District of California referred the matter to a Magistrate Judge, who in turn ordered an evidentiary hearing on the limited issue of whether Ms. Kops promised to file a notice of appeal on respondent's behalf. At the conclusion of the hearing, the Magistrate Judge found:

"The evidence in this case is, I think, quite clear that there was no consent to a failure to file [a notice of appeal].

. . . . .

"It's clear to me that Mr. Ortega had little or no understanding of what the process was, what the appeal process was, or what appeal meant at that stage of the game.

"I think there was a conversation [between Ortega and Kops] in the jail. Mr. Ortega testified, and I'm sure he's testifying as to the best of his belief, that there was a conversation after the pronouncement of judgment at the sentencing hearing where it's his understanding that Ms. Kops was going to file a notice of appeal.

"She has no specific recollection of that. However, she is obviously an extremely experienced defense counsel. She's obviously a very meticulous person. And I think had Mr. Ortega requested that she file a notice of appeal, she would have done so.

"But, I cannot find that he has carried his burden of showing by a preponderance of the evidence that she made that promise." App. 132–133.

The Magistrate Judge acknowledged that under precedent from the Court of Appeals for the Ninth Circuit, *United States* v. *Stearns*, 68 F. 3d 328 (1995), a defendant need only show that he did not consent to counsel's failure to file a notice of appeal to be entitled to relief. The judge concluded, however, that *Stearns* announced a new rule that could not be applied retroactively on collateral review to respondent's case. See *Teague* v. *Lane*, 489 U. S. 288 (1989). Thus, the Magistrate Judge recommended that the habeas petition be denied. App. 161. The District Court adopted the Magistrate's findings and recommendation, and denied relief. *Id.*, at 162–163.

The Court of Appeals for the Ninth Circuit reversed, reasoning that the rule it applied in *Stearns*—that a habeas petitioner need only show that his counsel's failure to file a

notice of appeal was without the petitioner's consent—tracked its earlier opinion in *Lozada* v. *Deeds*, 964 F. 2d 956 (1992), which predated respondent's conviction. 160 F. 3d 534 (1998). Because respondent did not consent to the failure to file a notice of appeal—and thus qualified for relief under *Stearns*—the court remanded the case to the District Court with instructions to issue a conditional habeas writ unless the state court allowed respondent a new appeal. We granted certiorari, 526 U. S. 1097 (1999), to resolve a conflict in the lower courts regarding counsel's obligations to file a notice of appeal. Compare *United States* v. *Tajeddini*, 945 F. 2d 458, 468 (CA1 1991) *(per curiam)* (counsel's failure to file a notice of appeal, allegedly without the defendant's knowledge or consent, constitutes deficient performance); *Morales* v. *United States*, 143 F. 3d 94, 97 (CA2 1998) (counsel has no duty to file a notice of appeal unless requested by the defendant); *Ludwig* v. *United States*, 162 F. 3d 456, 459 (CA6 1998) (Constitution implicated only when defendant actually requests an appeal and counsel disregards the request); *Castellanos* v. *United States*, 26 F. 3d 717, 719–720 (CA7 1994) (same); *Romero* v. *Tansy*, 46 F. 3d 1024, 1030–1031 (CA10 1995) (defendant does not need to express to counsel his intent to appeal for counsel to be constitutionally obligated to perfect defendant's appeal; unless defendant waived right, counsel was deficient for failing to advise defendant about appeal right); *United States* v. *Stearns*, *supra*, (counsel's failure to file a notice of appeal is deficient unless the defendant consents to the abandonment of his appeal).

## II

In *Strickland* v. *Washington*, 466 U. S. 668 (1984), we held that criminal defendants have a Sixth Amendment right to "reasonably effective" legal assistance, *id.*, at 687, and announced a now-familiar test: A defendant claiming ineffective assistance of counsel must show (1) that counsel's representation "fell below an objective standard of reasonableness,"

*id.*, at 688, and (2) that counsel's deficient performance prejudiced the defendant, *id.*, at 694. Today we hold that this test applies to claims, like respondent's, that counsel was constitutionally ineffective for failing to file a notice of appeal.

## A

As we have previously noted, "[n]o particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel." *Id.*, at 688–689. Rather, courts must "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct," *id.*, at 690, and "[j]udicial scrutiny of counsel's performance must be highly deferential," *id.*, at 689.

We have long held that a lawyer who disregards specific instructions from the defendant to file a notice of appeal acts in a manner that is professionally unreasonable. See *Rodriquez* v. *United States*, 395 U. S. 327 (1969); cf. *Peguero* v. *United States*, 526 U. S. 23, 28 (1999) ("[W]hen counsel fails to file a requested appeal, a defendant is entitled to [a new] appeal without showing that his appeal would likely have had merit"). This is so because a defendant who instructs counsel to initiate an appeal reasonably relies upon counsel to file the necessary notice. Counsel's failure to do so cannot be considered a strategic decision; filing a notice of appeal is a purely ministerial task, and the failure to file reflects inattention to the defendant's wishes. At the other end of the spectrum, a defendant who explicitly tells his attorney *not* to file an appeal plainly cannot later complain that, by following his instructions, his counsel performed deficiently. See *Jones* v. *Barnes*, 463 U. S. 745, 751 (1983) (accused has ultimate authority to make fundamental decision whether to take an appeal). The question presented in this case lies between those poles: Is counsel deficient for not filing a notice of appeal when the defendant has not clearly conveyed his wishes one way or the other?

The Courts of Appeals for the First and Ninth Circuits have answered that question with a bright-line rule: Counsel must file a notice of appeal unless the defendant specifically instructs otherwise; failing to do so is *per se* deficient. See, *e. g.*, *Stearns*, 68 F. 3d, at 330; *Lozada*, *supra*, at 958; *Tajeddini*, *supra*, at 468. Such a rule effectively imposes an obligation on counsel in all cases either (1) to file a notice of appeal, or (2) to discuss the possibility of an appeal with the defendant, ascertain his wishes, and act accordingly. We reject this *per se* rule as inconsistent with *Strickland*'s holding that "the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances." 466 U. S., at 688. The Court of Appeals failed to engage in the circumstance-specific reasonableness inquiry required by *Strickland*, and that alone mandates vacatur and remand.

In those cases where the defendant neither instructs counsel to file an appeal nor asks that an appeal not be taken, we believe the question whether counsel has performed deficiently by not filing a notice of appeal is best answered by first asking a separate, but antecedent, question: whether counsel in fact consulted with the defendant about an appeal. We employ the term "consult" to convey a specific meaning—advising the defendant about the advantages and disadvantages of taking an appeal, and making a reasonable effort to discover the defendant's wishes. If counsel has consulted with the defendant, the question of deficient performance is easily answered: Counsel performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with respect to an appeal. See *supra*, at 477. If counsel has not consulted with the defendant, the court must in turn ask a second, and subsidiary, question: whether counsel's failure to consult with the defendant itself constitutes deficient performance. That question lies at the heart of this case: Under what circumstances does counsel have an obligation to consult with the defendant about an appeal?

Because the decision to appeal rests with the defendant, we agree with JUSTICE SOUTER that the better practice is for counsel routinely to consult with the defendant regarding the possibility of an appeal. See ABA Standards for Criminal Justice, Defense Function 4–8.2(a) (3d ed. 1993); *post*, at 490–491 (opinion concurring in part and dissenting in part). In fact, California imposes on trial counsel a *per se* duty to consult with defendants about the possibility of an appeal. See Cal. Penal Code Ann. § 1240.1(a) (West Supp. 2000). Nonetheless, "[p]revailing norms of practice as reflected in American Bar Association standards and the like . . . are only guides," and imposing "specific guidelines" on counsel is "not appropriate." *Strickland*, 466 U. S., at 688. And, while States are free to impose whatever specific rules they see fit to ensure that criminal defendants are well represented, we have held that the Federal Constitution imposes one general requirement: that counsel make objectively reasonable choices. See *ibid.* We cannot say, as a *constitutional* matter, that in every case counsel's failure to consult with the defendant about an appeal is necessarily unreasonable, and therefore deficient. Such a holding would be inconsistent with both our decision in *Strickland* and common sense. See *id.*, at 689 (rejecting mechanistic rules governing what counsel must do). For example, suppose that a defendant consults with counsel; counsel advises the defendant that a guilty plea probably will lead to a 2 year sentence; the defendant expresses satisfaction and pleads guilty; the court sentences the defendant to 2 years' imprisonment as expected and informs the defendant of his appeal rights; the defendant does not express any interest in appealing, and counsel concludes that there are no nonfrivolous grounds for appeal. Under these circumstances, it would be difficult to say that counsel is "professionally unreasonable," *id.*, at 691, as a constitutional matter, in not consulting with such a defendant regarding an appeal. Or, for example, suppose a sentencing court's instructions to a defendant about

his appeal rights in a particular case are so clear and informative as to substitute for counsel's duty to consult. In some cases, counsel might then reasonably decide that he need not repeat that information. We therefore reject a bright-line rule that counsel must always consult with the defendant regarding an appeal.

We instead hold that counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. In making this determination, courts must take into account all the information counsel knew or should have known. See *id.*, at 690 (focusing on the totality of the circumstances). Although not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings. Even in cases when the defendant pleads guilty, the court must consider such factors as whether the defendant received the sentence bargained for as part of the plea and whether the plea expressly reserved or waived some or all appeal rights. Only by considering all relevant factors in a given case can a court properly determine whether a rational defendant would have desired an appeal or that the particular defendant sufficiently demonstrated to counsel an interest in an appeal.

Rather than the standard we announce today, JUSTICE SOUTER would have us impose an "almost" bright-line rule and hold that counsel "almost always" has a duty to consult with a defendant about an appeal. *Post*, at 488. Although he recognizes that "detailed rules for counsel's conduct" have no place in a *Strickland* inquiry, he argues that this "qualifi-

cation" has no application here. *Post*, at 491. According to JUSTICE SOUTER, in *Strickland* we only rejected *per se* rules in order to respect the reasonable strategic choices made by lawyers, and that failing to consult about an appeal cannot be a strategic choice. *Post*, at 491–492. But we have consistently declined to impose mechanical rules on counsel—even when those rules might lead to better representation—not simply out of deference to counsel's strategic choices, but because "the purpose of the effective assistance guarantee of the Sixth Amendment is not to improve the quality of legal representation, . . . [but rather] simply to ensure that criminal defendants receive a fair trial." 466 U. S., at 689. The relevant question is not whether counsel's choices were strategic, but whether they were reasonable. See *id.*, at 688 (defendant must show that counsel's representation fell below an objective standard of reasonableness). We expect that courts evaluating the reasonableness of counsel's performance using the inquiry we have described will find, in the vast majority of cases, that counsel had a duty to consult with the defendant about an appeal. We differ from JUSTICE SOUTER only in that we refuse to make this determination as a *per se* (or "almost" *per se*) matter.

B

The second part of the *Strickland* test requires the defendant to show prejudice from counsel's deficient performance.

1

In most cases, a defendant's claim of ineffective assistance of counsel involves counsel's performance during the course of a legal proceeding, either at trial or on appeal. See, *e. g.*, *id.*, at 699 (claim that counsel made poor strategic choices regarding what to argue at a sentencing hearing); *United States* v. *Cronic*, 466 U. S. 648, 649–650 (1984) (claim that young lawyer was incompetent to defend complex criminal

case); *Penson* v. *Ohio*, 488 U. S. 75, 88–89 (1988) (claim that counsel in effect did not represent defendant on appeal); *Smith* v. *Robbins*, *ante*, p. 259 (claim that counsel neglected to file a merits brief on appeal); *Smith* v. *Murray*, 477 U. S. 527, 535–536 (1986) (claim that counsel failed to make a particular argument on appeal). In such circumstances, whether we require the defendant to show actual prejudice—"a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," *Strickland*, 466 U. S., at 694—or whether we instead presume prejudice turns on the magnitude of the deprivation of the right to effective assistance of counsel. That is because "the right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial," *Cronic*, *supra*, at 658, or a fair appeal, see *Penson*, *supra*, at 88–89. "Absent some effect of challenged conduct on the reliability of the . . . process, the [effective counsel] guarantee is generally not implicated." *Cronic*, *supra*, at 658.

We "normally apply a 'strong presumption of reliability' to judicial proceedings and require a defendant to overcome that presumption," *Robbins*, *ante*, at 286 (citing *Strickland*, *supra*, at 696), by "show[ing] how specific errors of counsel undermined the reliability of the finding of guilt," *Cronic*, *supra*, at 659, n. 26. Thus, in cases involving mere "attorney error," we require the defendant to demonstrate that the errors "actually had an adverse effect on the defense." *Strickland*, *supra*, at 693. See, *e. g.*, *Robbins*, *ante*, at 287 (applying actual prejudice requirement where counsel followed all required procedures and was alleged to have missed a particular nonfrivolous argument); *Strickland*, *supra*, at 699–700 (rejecting claim in part because the evidence counsel failed to introduce probably would not have altered defendant's sentence).

In some cases, however, the defendant alleges not that counsel made specific errors in the course of representation, but rather that during the judicial proceeding he was—either actually or constructively—denied the assistance of counsel altogether. "The presumption that counsel's assistance is essential requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage." *Cronic*, *supra*, at 659. The same is true on appeal. See *Penson*, *supra*, at 88. Under such circumstances, "[n]o specific showing of prejudice [is] required," because "the adversary process itself [is] presumptively unreliable." *Cronic*, *supra*, at 659; see also *Robbins*, *ante*, at 286 ("denial of counsel altogether . . . warrants a presumption of prejudice"); *Penson*, *supra*, at 88–89 (complete denial of counsel on appeal requires a presumption of prejudice).

Today's case is unusual in that counsel's alleged deficient performance arguably led not to a judicial proceeding of disputed reliability, but rather to the forfeiture of a proceeding itself. According to respondent, counsel's deficient performance deprived him of a notice of appeal and, hence, an appeal altogether. Assuming those allegations are true, counsel's deficient performance has deprived respondent of more than a *fair* judicial proceeding; that deficiency deprived respondent of the appellate proceeding altogether. In *Cronic*, *Penson*, and *Robbins*, we held that the complete denial of counsel during a critical stage of a judicial proceeding mandates a presumption of prejudice because "the adversary process itself" has been rendered "presumptively unreliable." *Cronic*, *supra*, at 659. The even more serious denial of the entire judicial proceeding itself, which a defendant wanted at the time and to which he had a right, similarly demands a presumption of prejudice. Put simply, we cannot accord any "'presumption of reliability,'" *Robbins*, *ante*, at 286, to judicial proceedings that never took place.

3

The Court of Appeals below applied a *per se* prejudice rule, and granted habeas relief based solely upon a showing that counsel had performed deficiently under its standard. 160 F. 3d, at 536. Unfortunately, this *per se* prejudice rule ignores the critical requirement that counsel's deficient performance must actually cause the forfeiture of the defendant's appeal. If the defendant cannot demonstrate that, but for counsel's deficient performance, he would have appealed, counsel's deficient performance has not deprived him of anything, and he is not entitled to relief. Cf. *Peguero* v. *United States*, 526 U. S. 23 (1999) (defendant not prejudiced by court's failure to advise him of his appeal rights, where he had full knowledge of his right to appeal and chose not to do so). Accordingly, we hold that, to show prejudice in these circumstances, a defendant must demonstrate that there is a reasonable probability that, but for counsel's deficient failure to consult with him about an appeal, he would have timely appealed.

In adopting this standard, we follow the pattern established in *Strickland* and *Cronic*, and reaffirmed in *Robbins*, requiring a showing of actual prejudice (*i. e.*, that, but for counsel's errors, the defendant might have prevailed) when the proceeding in question was presumptively reliable, but presuming prejudice with no further showing from the defendant of the merits of his underlying claims when the violation of the right to counsel rendered the proceeding presumptively unreliable or entirely nonexistent. See *Strickland*, *supra*, at 493–496; *Cronic*, 466 U. S., at 658–659; *Robbins*, *ante*, at 286–287. Today, drawing on that line of cases and following the suggestion of the Solicitor General, we hold that when counsel's constitutionally deficient performance deprives a defendant of an appeal that he otherwise would have taken, the defendant has made out a successful ineffective assistance of counsel claim entitling him to an appeal.

We believe this prejudice standard breaks no new ground, for it mirrors the prejudice inquiry applied in *Hill* v. *Lockhart*, 474 U. S. 52 (1985), and *Rodriquez* v. *United States*, 395 U. S. 327 (1969). In *Hill*, we considered an ineffective assistance of counsel claim based on counsel's allegedly deficient advice regarding the consequences of entering a guilty plea. Like the decision whether to appeal, the decision whether to plead guilty (*i. e.*, waive trial) rested with the defendant and, like this case, counsel's advice in *Hill* might have caused the defendant to forfeit a judicial proceeding to which he was otherwise entitled. We held that "to satisfy the 'prejudice' requirement [of *Strickland*], the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill*, *supra*, at 59. Similarly, in *Rodriquez*, counsel failed to file a notice of appeal, despite being instructed by the defendant to do so. See 395 U. S., at 328. We held that the defendant, by instructing counsel to perfect an appeal, objectively indicated his intent to appeal and was entitled to a new appeal without any further showing. Because "[t]hose whose right to an appeal has been frustrated should be treated exactly like any other appellan[t]," we rejected any requirement that the would-be appellant "specify the points he would raise were his right to appeal reinstated." *Id.*, at 330. See also *Evitts* v. *Lucey*, 469 U. S. 387 (1985) (defendant entitled to new appeal when counsel's deficient failure to comply with mechanistic local court rules led to dismissal of first appeal).

As with all applications of the *Strickland* test, the question whether a given defendant has made the requisite showing will turn on the facts of a particular case. See 466 U. S., at 695–696. Nonetheless, evidence that there were nonfrivolous grounds for appeal or that the defendant in question promptly expressed a desire to appeal will often be highly relevant in making this determination. We recognize that

the prejudice inquiry we have described is not wholly dissimilar from the inquiry used to determine whether counsel performed deficiently in the first place; specifically, both may be satisfied if the defendant shows nonfrivolous grounds for appeal. See *Hill*, *supra*, at 59 (when, in connection with a guilty plea, counsel gives deficient advice regarding a potentially valid affirmative defense, the prejudice inquiry depends largely on whether that affirmative defense might have succeeded, leading a rational defendant to insist on going to trial). But, while the performance and prejudice prongs may overlap, they are not in all cases coextensive. To prove deficient performance, a defendant can rely on evidence that he sufficiently demonstrated to counsel his interest in an appeal. But such evidence alone is insufficient to establish that, had the defendant received reasonable advice from counsel about the appeal, he would have instructed his counsel to file an appeal.

By the same token, although showing nonfrivolous grounds for appeal may give weight to the contention that the defendant would have appealed, a defendant's inability to "specify the points he would raise were his right to appeal reinstated," *Rodriquez*, 395 U. S., at 330, will not foreclose the possibility that he can satisfy the prejudice requirement where there are other substantial reasons to believe that he would have appealed. See *ibid.;* see also *Peguero*, *supra*, at 30 (O'CONNOR, J., concurring) ("To require defendants to specify the grounds for their appeal and show that they have some merit would impose a heavy burden on defendants who are often proceeding *pro se* in an initial [habeas] motion"). We similarly conclude here that it is unfair to *require* an indigent, perhaps *pro se*, defendant to demonstrate that his hypothetical appeal might have had merit before any advocate has ever reviewed the record in his case in search of potentially meritorious grounds for appeal. Rather, we require the defendant to demonstrate that, but for counsel's deficient conduct, he would have appealed.

## III

The court below undertook neither part of the *Strickland* inquiry we have described, but instead presumed both that Ms. Kops was deficient for failing to file a notice of appeal without respondent's consent and that her deficient performance prejudiced respondent. See 160 F. 3d, at 536. JUSTICE SOUTER finds Ms. Kops' performance in this case to have been "derelict," presumably because he believes that she did not consult with respondent about an appeal. *Post*, at 489. But the Magistrate Judge's findings do not provide us with sufficient information to determine whether Ms. Kops rendered constitutionally inadequate assistance. Specifically, the findings below suggest that there may have been some conversation between Ms. Kops and respondent about an appeal, see App. 133; see also 160 F. 3d, at 535 (Ms. Kops wrote " 'bring appeal papers' " in her file), but do not indicate what was actually said. Assuming, *arguendo*, that there was a duty to consult in this case, it is impossible to determine whether that duty was satisfied without knowing whether Ms. Kops advised respondent about the advantages and disadvantages of taking an appeal and made a reasonable effort to discover his wishes. Cf. *Strickland*, *supra*, at 691 ("inquiry into counsel's conversations with the defendant may be critical to a proper assessment of counsel's . . . decisions"). Based on the record before us, we are unable to determine whether Ms. Kops had a duty to consult with respondent (either because there were potential grounds for appeal or because respondent expressed interest in appealing), whether she satisfied her obligations, and, if she did not, whether respondent was prejudiced thereby. Accordingly, the judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

*It is so ordered.*

JUSTICE BREYER, concurring.

I write to emphasize that the question presented concerned the filing of a "notice of appeal *following a guilty plea.*" Pet. for Cert. i (emphasis added). In that context I agree with the Court. I also join its opinion, which, in my view, makes clear that counsel does "almost always" have a constitutional duty to consult with a defendant about an appeal after a trial. *Post* this page (SOUTER, J., concurring in part and dissenting in part); cf. *ante*, at 479–481.

JUSTICE SOUTER, with whom JUSTICE STEVENS and JUSTICE GINSBURG join, concurring in part and dissenting in part.

I join Part II–B of the Court's opinion, but I respectfully dissent from Part II–A. As the opinion says, the crucial question in this case is whether, after a criminal conviction, a lawyer has a duty to consult with her client about the choice to appeal. The majority's conclusion is sometimes; mine is, almost always in those cases in which a plea of guilty has not obviously waived any claims of error.[1] It is unreasonable for a lawyer with a client like respondent Flores-Ortega to walk away from her representation after trial or after sentencing without at the very least acting affir-

[1] I say "almost" always, recognizing that there can be cases beyond the margin: if a legally trained defendant were convicted in an error-free trial of an open-and-shut case, his counsel presumably would not be deficient in failing to explain the options. This is not what we have here. Nor is this a case in which the judge during the plea colloquy so fully explains appeal rights and possible issues as to obviate counsel's need to do the same; such a possibility is never very likely and exists only at the furthest reach of theory, given a defendant's right to adversarial representation, see *Smith* v. *Robbins*, *ante*, at 296–297 (SOUTER, J., dissenting). Finally, of course, there is no claim here that Flores-Ortega waived his right to appeal as part of his plea agreement; although he pleaded guilty, the record shows that he and the State argued before the trial court for different sentences, and he had little understanding of the legal system. The fact of the plea is thus irrelevant to the disposition of the case.

matively to ensure that the client understands the right to appeal.

Where appeal is available as a matter of right, a decision to seek or forgo review is for the convict himself, not his lawyer, *Jones* v. *Barnes*, 463 U. S. 745, 751 (1983), who owes a duty of effective assistance at the appellate stage, *Evitts* v. *Lucey*, 469 U. S. 387, 396 (1985); *Penson* v. *Ohio*, 488 U. S. 75, 85 (1988). It follows, as the majority notes, that if a defendant requests counsel to file an appeal, a lawyer who fails to do so is, without more, ineffective for constitutional purposes. But, as the Court says, a lesser infidelity than that may fail the test of lawyer competence under *Strickland* v. *Washington*, 466 U. S. 668 (1984), which governs this case. I think that the derelict character of counsel's performance in this case is clearer than the majority realizes.

In *Strickland*, we explicitly noted that a lawyer has a duty "to consult with the defendant on important decisions . . . in the course of the prosecution." *Id.*, at 688. The decision whether to appeal is one such decision. Since it cannot be made intelligently without appreciating the merits of possible grounds for seeking review, see *Peguero* v. *United States*, 526 U. S. 23, 30–31 (1999) (O'CONNOR, J., concurring); *Rodriquez* v. *United States*, 395 U. S. 327, 330 (1969), and the potential risks to the appealing defendant, a lay defendant needs help before deciding. If the crime is minor, the issues simple, and the defendant sophisticated, a 5-minute conversation with his lawyer may well suffice; if the charge is serious, the potential claims subtle, and a defendant uneducated, hours of counseling may be in order. But only in the extraordinary case will a defendant need no advice or counsel whatever.

To the extent that our attention has been directed to statements of "prevailing professional norms," *Strickland* v. *Washington*, 466 U. S., at 688 (*Strickland*'s touchstone of reasonable representation, see *ibid.*), they are consistent with common sense in requiring a lawyer to consult with a

client before the client makes his decision about appeal. Thus, ABA Standards for Criminal Justice 21–2.2(b) (2d ed. 1980):

> "Defense counsel should advise a defendant on the meaning of the court's judgment, of defendant's right to appeal, on the possible grounds for appeal, and of the probable outcome of appealing. Counsel should also advise of any posttrial proceedings that might be pursued before or concurrent with an appeal. While counsel should do what is needed to inform and advise defendant, the decision whether to appeal, like the decision whether to plead guilty, must be the defendant's own choice."

See also ABA Standards for Criminal Justice, Defense Function 4–8.2(a) (3d ed. 1993) (stating that trial counsel "should explain to the defendant the meaning and consequences of the court's judgment and defendant's right of appeal" and "should give the defendant his or her professional judgment as to whether there are meritorious grounds for appeal and as to the probable results of an appeal"); *id.*, 4–8.2, Commentary ("[C]ounsel [has the duty] to discuss frankly and objectively with the defendant the matters to be considered in deciding whether to appeal. . . . To make the defendant's ultimate choice a meaningful one, counsel's evaluation of the case must be communicated in a comprehensible manner. . . . [T]rial counsel should always consult promptly with the defendant after making a careful appraisal of the prospects of an appeal"); ABA Standards for Criminal Justice 21–3.2(b)(i).

So also the ABA Model Code of Professional Responsibility, EC 2–31 (1991), provides that: "Trial counsel for a convicted defendant should continue to represent his client by advising whether to take an appeal . . . ." Likewise ABA Model Rule of Professional Conduct 1.3, Comment (1996): "[I]f a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client but has not been spe-

cifically instructed concerning pursuit of an appeal, the lawyer should advise the client of the possibility of appeal before relinquishing responsibility for the matter." Restatement (Third) of the Law Governing Lawyers § 31(3) (Proposed Final Draft No. 1, Mar. 29, 1996) embodies the same standards: "A lawyer must notify a client of decisions to be made by the client . . . and must explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Indeed, California has apparently eliminated any option on a lawyer's part to fail to give advice on the appeal decision (whether the failure be negligent or intentional). California Penal Code Ann. § 1240.1(a) (West Supp. 2000) provides that trial counsel has a duty to "provide counsel and advice as to whether arguably meritorious grounds exist for reversal or modification of the judgment on appeal." California thus appears to have adopted as an unconditional affirmative obligation binding all criminal trial counsel the very standard of reasonable practice expressed through the Restatement and the ABA standards.

I understand that under *Strickland*, "[p]revailing norms of practice as reflected in American Bar Association standards and the like . . . are guides to determining what is reasonable, but they are only guides," and that "[n]o particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant." 466 U. S., at 688–689. But that qualification has no application here.

While *Strickland*'s disclaimer that no particular set of rules should be treated as dispositive respects the need to defer to reasonable "strategic choices" by lawyers, *id.*, at 690, no such strategic concerns arise in this case. Strategic choices are made about the extent of investigation, the risks of a defense requiring defendant's testimony and exposure to cross-examination, the possibility that placing personal

background information before a jury will backfire, and so on. It is not, however, an issue of "strategy" to decide whether or not to give a defendant any advice before he loses the chance to appeal a conviction or sentence. The concern about too much judicial second-guessing after the fact is simply not raised by a claim that a lawyer should have counseled her client to make an intelligent decision to invoke or forgo the right of appeal or the opportunity to seek an appeal.

The Court's position is even less explicable when one considers the condition of the particular defendant claiming *Strickland* relief here. Flores-Ortega spoke no English and had no sophistication in the ways of the legal system. The Magistrate Judge found that "[i]t's clear . . . that Mr. Ortega had little or no understanding of what the process was, what the appeal process was, or what appeal meant." App. 133. To condition the duty of a lawyer to such a client on whether, *inter alia*, "a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal)," *ante*, at 480, is not only to substitute a harmless-error rule for a showing of reasonable professional conduct, but to employ a rule that simply ignores the reality that the constitutional norm must address.[2] Most criminal defendants, and certainly this one, will be utterly incapable of making rational judgments about appeal without guidance. They cannot possibly know what a rational decisionmaker must know unless they are given the benefit of a professional assessment of chances of success and risks of trying. And they will often (indeed, usually) be just as bad off if they seek relief on habeas after failing to take a direct appeal,

[2] The Court holds that a duty to consult will also be present if "this particular defendant reasonably demonstrated to counsel that he was interested in appealing." *Ante*, at 480. Because for most defendants, and certainly for unsophisticated ones like Flores-Ortega who are unaware even of what an appeal means, such a demonstration will be a practical impossibility, I view the Court as virtually requiring the defendant to show the existence of some nonfrivolous appellate issue.

having no right to counsel in state postconviction proceedings. See *Pennsylvania* v. *Finley*, 481 U. S. 551, 557 (1987); *Murray* v. *Giarratano*, 492 U. S. 1, 12 (1989); cf. *Peguero* v. *United States*, 526 U. S., at 30 (O'CONNOR, J., concurring) ("To require defendants to specify the grounds for their appeal and show that they have some merit would impose a heavy burden on defendants who are often proceeding *pro se* in an initial 28 U. S. C. § 2255 motion").

In effect, today's decision erodes the principle that a decision about appeal is validly made only by a defendant with a fair sense of what he is doing. Now the decision may be made inadvertently by a lawyer who never utters the word "appeal" in his client's hearing, so long as that client cannot later demonstrate (probably without counsel) that he unwittingly had "nonfrivolous grounds" for seeking review. This state of the law amounts to just such a breakdown of the adversary system that *Strickland* warned against. "In every case the court should be concerned with whether . . . the result of the particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results." 466 U. S., at 696; see also *Rodriquez* v. *United States*, 395 U. S., at 330; *Penson* v. *Ohio*, 488 U. S., at 85.

I would hold that in the aftermath of the hearing at which Flores-Ortega was sentenced, his lawyer was obliged to consult with her client about the availability and prudence of an appeal, and that failure to do that violated *Strickland*'s standard of objective reasonableness. I therefore respectfully dissent from Part II–A of the majority's opinion.

JUSTICE GINSBURG, concurring in part and dissenting in part.

This case presents the question whether, after a defendant pleads guilty or is convicted, the Sixth Amendment permits defense counsel simply to walk away, leaving the defendant uncounseled about his appeal rights. The Court is not

deeply divided on this question. Both the Court and JUSTICE SOUTER effectively respond: hardly ever. Because the test articulated by JUSTICE SOUTER provides clearer guidance to lower courts and to counsel, and because I think it plain that the duty to consult was not satisfied in this case, I join JUSTICE SOUTER's opinion.

Syllabus

# RICE *v.* CAYETANO, GOVERNOR OF HAWAII

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

No. 98–818. Argued October 6, 1999—Decided February 23, 2000

The Hawaiian Constitution limits the right to vote for nine trustees chosen in a statewide election. The trustees compose the governing authority of a state agency known as the Office of Hawaiian Affairs, or OHA. The agency administers programs designed for the benefit of two subclasses of Hawaiian citizenry, "Hawaiians" and "native Hawaiians." State law defines "native Hawaiians" as descendants of not less than one-half part of the races inhabiting the islands before 1778, and "Hawaiians"—a larger class that includes "native Hawaiians"—as descendants of the peoples inhabiting the Hawaiian Islands in 1778. The trustees are chosen in a statewide election in which only "Hawaiians" may vote. Petitioner Rice, a Hawaiian citizen without the requisite ancestry to be a "Hawaiian" under state law, applied to vote in OHA trustee elections. When his application was denied, he sued respondent Governor (hereinafter State), claiming, *inter alia*, that the voting exclusion was invalid under the Fourteenth and Fifteenth Amendments. The Federal District Court granted the State summary judgment. Surveying the history of the islands and their people, it determined that Congress and Hawaii have recognized a guardian-ward relationship with the native Hawaiians, which is analogous to the relationship between the United States and Indian tribes. It examined the voting qualifications with the latitude applied to legislation passed pursuant to Congress' power over Indian affairs, see *Morton* v. *Mancari*, 417 U. S. 535, and found that the electoral scheme was rationally related to the State's responsibility under its Admission Act to utilize a part of the proceeds from certain public lands for the native Hawaiians' benefit. The Ninth Circuit affirmed, finding that Hawaii "may rationally conclude that Hawaiians, being the group to whom trust obligations run and to whom OHA trustees owe a duty of loyalty, should be the group to decide who the trustees ought to be." 146 F. 3d 1075, 1079.

*Held:* Hawaii's denial of Rice's right to vote in OHA trustee elections violates the Fifteenth Amendment. Pp. 511–524.

(a) The Amendment's purpose and command are set forth in explicit and comprehensive language. The National Government and the States may not deny or abridge the right to vote on account of race. The Amendment reaffirms the equality of races at the most basic level

of the democratic process, the exercise of the voting franchise. It protects all persons, not just members of a particular race. Important precedents give instruction in the instant case. The Amendment was quite sufficient to invalidate a grandfather clause that did not mention race but instead used ancestry in an attempt to confine and restrict the voting franchise, *Guinn* v. *United States,* 238 U. S. 347, 364–365; and it sufficed to strike down the white primary systems designed to exclude one racial class (at least) from voting, see, *e. g., Terry* v. *Adams,* 345 U. S. 461, 469–470. The voting structure in this case is neither subtle nor indirect; it specifically grants the vote to persons of the defined ancestry and to no others. Ancestry can be a proxy for race. It is that proxy here. For centuries Hawaii was isolated from migration. The inhabitants shared common physical characteristics, and by 1778 they had a common culture. The provisions at issue reflect the State's effort to preserve that commonality to the present day. In interpreting the Reconstruction Era civil rights laws this Court has observed that racial discrimination is that which singles out "identifiable classes of persons . . . solely because of their ancestry or ethnic characteristics." *Saint Francis College* v. *Al-Khazraji,* 481 U. S. 604, 613. The very object of the statutory definition here is to treat the early Hawaiians as a distinct people, commanding their own recognition and respect. The history of the State's definition also demonstrates that the State has used ancestry as a racial definition and for a racial purpose. The drafters of the definitions of "Hawaiian" and "native Hawaiian" emphasized the explicit tie to race. The State's additional argument that the restriction is race neutral because it differentiates even among Polynesian people based on the date of an ancestor's residence in Hawaii is undermined by the classification's express racial purpose and its actual effects. The ancestral inquiry in this case implicates the same grave concerns as a classification specifying a particular race by name, for it demeans a person's dignity and worth to be judged by ancestry instead of by his or her own merit and essential qualities. The State's ancestral inquiry is forbidden by the Fifteenth Amendment for the further reason that using racial classifications is corruptive of the whole legal order democratic elections seek to preserve. The law itself may not become the instrument for generating the prejudice and hostility all too often directed against persons whose particular ancestry is disclosed by their ethnic characteristics and cultural traditions. The State's electoral restriction enacts a race-based voting qualification. Pp. 511–517.

(b) The State's three principal defenses of its voting law are rejected. It argues first that the exclusion of non-Hawaiians from voting is permitted under this Court's cases allowing the differential treatment of Indian tribes. However, even if Congress had the authority, delegated

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to the State, to treat Hawaiians or native Hawaiians as tribes, Congress may not authorize a State to create a voting scheme of the sort created here. Congress may not authorize a State to establish a voting scheme that limits the electorate for its public officials to a class of tribal Indians to the exclusion of all non-Indian citizens. The elections for OHA trustee are elections of the State, not of a separate quasi sovereign, and they are elections to which the Fifteenth Amendment applies. *Morton* v. *Mancari*, *supra*, distinguished. The State's further contention that the limited voting franchise is sustainable under this Court's cases holding that the one-person, one-vote rule does not pertain to certain special purpose districts such as water or irrigation districts also fails, for compliance with the one-person, one-vote rule of the Fourteenth Amendment does not excuse compliance with the Fifteenth Amendment. Hawaii's final argument that the voting restriction does no more than ensure an alignment of interests between the fiduciaries and the beneficiaries of a trust founders on its own terms, for it is not clear that the voting classification is symmetric with the beneficiaries of the programs OHA administers. While the bulk of the funds appears to be earmarked for the benefit of "native Hawaiians," the State permits both "native Hawaiians" and "Hawaiians" to vote for trustees. The argument fails on more essential grounds; it rests on the demeaning premise that citizens of a particular race are somehow more qualified than others to vote on certain matters. There is no room under the Amendment for the concept that the right to vote in a particular election can be allocated based on race. Pp. 517–524.

146 F. 3d 1075, reversed.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, and THOMAS, JJ., joined. BREYER, J., filed an opinion concurring in the result, in which SOUTER, J., joined, *post*, p. 524. STEVENS, J., filed a dissenting opinion, in which GINSBURG, J., joined as to Part II, *post*, p. 527. GINSBURG, J., filed a dissenting opinion, *post*, p. 547.

*Theodore B. Olson* argued the cause for petitioner. With him on the briefs were *Douglas R. Cox* and *Thomas G. Hungar*.

*John G. Roberts, Jr.*, argued the cause for respondent. With him on the brief were *Earl I. Anzai*, Attorney General of Hawaii, *Girard D. Lau*, *Dorothy Sellers*, and *Charleen M. Aina*, Deputy Attorneys General, and *Gregory G. Garre*.

*Deputy Solicitor General Kneedler* argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Waxman*, *Assistant Attorney General Schiffer*, *Deputy Solicitor General Underwood*, *Irving L. Gornstein*, and *Elizabeth Ann Peterson.**

JUSTICE KENNEDY delivered the opinion of the Court.

A citizen of Hawaii comes before us claiming that an explicit, race-based voting qualification has barred him from voting in a statewide election. The Fifteenth Amendment to the Constitution of the United States, binding on the National Government, the States, and their political subdivisions, controls the case.

The Hawaiian Constitution limits the right to vote for nine trustees chosen in a statewide election. The trustees com-

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*Briefs of *amici curiae* urging reversal were filed for the Campaign for a Color-Blind America et al. by *Richard K. Willard* and *Shannen W. Coffin;* and for the Center for Equal Opportunity et al. by *Brett M. Kavanaugh*, *Robert H. Bork*, and *Roger Clegg.*

Briefs of *amici curiae* urging affirmance were filed for the State of California et al. by *Bill Lockyer*, Attorney General of California, and *Thomas F. Gede*, Special Assistant Attorney General, and by the Attorneys General for their respective jurisdictions as follows: *Bill Pryor* of Alabama, *John F. Tarantino* of Guam, *Frankie Sue Del Papa* of Nevada, *Patricia A. Madrid* of New Mexico, *Maya B. Kara* of the Northern Mariana Islands, *W. A. Drew Edmondson* of Oklahoma, and *Hardy Myers* of Oregon; for the Alaska Federation of Natives et al. by *Jeffrey L. Bleich;* for the Kamehameha Schools Bishop Estate Trust by *Carter G. Phillips*, *Virginia A. Seitz*, and *C. Michael Hare;* for the National Congress of American Indians by *Kim Jerome Gottschalk* and *Steven C. Moore;* for the State Council of Hawaiian Homestead Associations et al. by *Paul Alston*, *William M. Tam*, *Lea Hong*, and *David M. Forman;* and for the Office of Hawaiian Affairs et al. by *Harry R. Sachse*, *Reid Peyton Chambers*, *Arthur Lazarus, Jr.*, *Sherry P. Broder*, and *Jon M. Van Dyke.*

Briefs of *amici curiae* were filed for the Hawai'i Congressional Delegations by *Patricia M. Zell*, *Jennifer M. L. Chock*, and *Janet Erickson;* for the Hou Hawaiians et al. by *Walter R. Schoettle;* and for the Pacific Legal Foundation by *John H. Findley* and *Sharon L. Browne.*

pose the governing authority of a state agency known as the Office of Hawaiian Affairs, or OHA. Haw. Const., Art. XII, § 5. The agency administers programs designed for the benefit of two subclasses of the Hawaiian citizenry. The smaller class comprises those designated as "native Hawaiians," defined by statute, with certain supplementary language later set out in full, as descendants of not less than one-half part of the races inhabiting the Hawaiian Islands prior to 1778. Haw. Rev. Stat. § 10–2 (1993). The second, larger class of persons benefited by OHA programs is "Hawaiians," defined to be, with refinements contained in the statute we later quote, those persons who are descendants of people inhabiting the Hawaiian Islands in 1778. *Ibid.* The right to vote for trustees is limited to "Hawaiians," the second, larger class of persons, which of course includes the smaller class of "native Hawaiians." Haw. Const., Art. XII, § 5.

Petitioner Rice, a citizen of Hawaii and thus himself a Hawaiian in a well-accepted sense of the term, does not have the requisite ancestry even for the larger class. He is not, then, a "Hawaiian" in terms of the statute; so he may not vote in the trustee election. The issue presented by this case is whether Rice may be so barred. Rejecting the State's arguments that the classification in question is not racial or that, if it is, it is nevertheless valid for other reasons, we hold Hawaii's denial of petitioner's right to vote to be a clear violation of the Fifteenth Amendment.

## I

When Congress and the State of Hawaii enacted the laws we are about to discuss and review, they made their own assessments of the events which intertwine Hawaii's history with the history of America itself. We will begin with a very brief account of that historical background. Historians and other scholars who write of Hawaii will have a different purpose and more latitude than do we. They may draw judgments either more laudatory or more harsh than the

ones to which we refer. Our more limited role, in the posture of this particular case, is to recount events as understood by the lawmakers, thus ensuring that we accord proper appreciation to their purposes in adopting the policies and laws at issue. The litigants seem to agree that two works in particular are appropriate for our consideration, and we rely in part on those sources. See L. Fuchs, Hawaii Pono: An Ethnic and Political History (1961) (hereinafter Fuchs); 1–3 R. Kuykendall, The Hawaiian Kingdom (1938); (1953); (1967) (hereinafter Kuykendall).

The origins of the first Hawaiian people and the date they reached the islands are not established with certainty, but the usual assumption is that they were Polynesians who voyaged from Tahiti and began to settle the islands around A. D. 750. Fuchs 4; 1 Kuykendall 3; see also G. Daws, Shoal of Time: A History of the Hawaiian Islands xii–xiii (1968) (Marquesas Islands and Tahiti). When England's Captain Cook made landfall in Hawaii on his expedition in 1778, the Hawaiian people had developed, over the preceding 1,000 years or so, a cultural and political structure of their own. They had well-established traditions and customs and practiced a polytheistic religion. Agriculture and fishing sustained the people, and, though population estimates vary, some modern historians conclude that the population in 1778 was about 200,000–300,000. See Fuchs 4; R. Schmitt, Historical Statistics of Hawaii 7 (1977) (hereinafter Schmitt). The accounts of Hawaiian life often remark upon the people's capacity to find beauty and pleasure in their island existence, but life was not altogether idyllic. In Cook's time the islands were ruled by four different kings, and intra-Hawaiian wars could inflict great loss and suffering. Kings or principal chieftains, as well as high priests, could order the death or sacrifice of any subject. The society was one, however, with its own identity, its own cohesive forces, its own history.

In the years after Cook's voyage many expeditions would follow. A few members of the ships' companies remained on

the islands, some as authorized advisers, others as deserters. Their intermarriage with the inhabitants of Hawaii was not infrequent.

In 1810, the islands were united as one kingdom under the leadership of an admired figure in Hawaiian history, Kamehameha I. It is difficult to say how many settlers from Europe and America were in Hawaii when the King consolidated his power. One historian estimates there were no more than 60 or so settlers at that time. 1 Kuykendall 27. An influx was soon to follow. Beginning about 1820, missionaries arrived, of whom Congregationalists from New England were dominant in the early years. They sought to teach Hawaiians to abandon religious beliefs and customs that were contrary to Christian teachings and practices.

The 1800's are a story of increasing involvement of westerners in the economic and political affairs of the Kingdom. Rights to land became a principal concern, and there was unremitting pressure to allow non-Hawaiians to use and to own land and to be secure in their title. Westerners were not the only ones with pressing concerns, however, for the disposition and ownership of land came to be an unsettled matter among the Hawaiians themselves.

The status of Hawaiian lands has presented issues of complexity and controversy from at least the rule of Kamehameha I to the present day. We do not attempt to interpret that history, lest our comments be thought to bear upon issues not before us. It suffices to refer to various of the historical conclusions that appear to have been persuasive to Congress and to the State when they enacted the laws soon to be discussed.

When Kamehameha I came to power, he reasserted suzerainty over all lands and provided for control of parts of them by a system described in our own cases as "feudal." *Hawaii Housing Authority* v. *Midkiff,* 467 U. S. 229, 232 (1984); *Kaiser Aetna* v. *United States,* 444 U. S. 164, 166 (1979). A well-known description of the King's early decrees is con-

tained in an 1864 opinion of the Supreme Court of the Kingdom of Hawaii. The court, in turn, drew extensively upon an earlier report which recited, in part, as follows:

> "'When the islands were conquered by Kamehameha I., he followed the example of his predecessors, and divided out the lands among his principal warrior chiefs, retaining, however, a portion in his own hands to be cultivated or managed by his own immediate servants or attendants. Each principal chief divided his lands anew and gave them out to an inferior order of chiefs or persons of rank, by whom they were subdivided again and again after (often) passing through the hands of four, five or six persons from the King down to the lowest class of tenants. All these persons were considered to have rights in the lands, or the productions of them, the proportions of which rights were not clearly defined, although universally acknowledged. . . . The same rights which the King possessed over the superior landlords and all under them, the several grades of landlords possessed over their inferiors, so that there was a joint ownership of the land, the King really owning the allodium, and the person in whose hands he placed the land, holding it in trust.'" *In re Estate of His Majesty Kamehameha IV*, 2 Haw. 715, 718–719 (quoting Principles Adopted by the Board of Commissioners to Quiet Land Titles, 2 Stat. Laws 81–82 (Haw. Kingdom 1847)).

Beginning in 1839 and through the next decade, a successive ruler, Kamehameha III, approved a series of decrees and laws designed to accommodate demands for ownership and security of title. In the words of the Hawaiian Supreme Court, "[t]he subject of rights in land was one of daily increasing importance to the newly formed Government, for it was obvious that the internal resources of the country could not be developed until the system of undivided and undefined ownership in land should be abolished." 2 Haw., at 721.

Arrangements were made to confer freehold title in some lands to certain chiefs and other individuals. The King retained vast lands for himself, and directed that other extensive lands be held by the government, which by 1840 had adopted the first Constitution of the islands. Thus was effected a fundamental and historic division, known as the Great Mahele. In 1850, foreigners, in turn, were given the right of land ownership.

The new policies did not result in wide dispersal of ownership. Though some provisions had been attempted by which tenants could claim lands, these proved ineffective in many instances, and ownership became concentrated. In 1920, the Congress of the United States, in a Report on the bill establishing the Hawaiian Homes Commission, made an assessment of Hawaiian land policy in the following terms:

> "Your committee thus finds that since the institution of private ownership of lands in Hawaii the native Hawaiians, outside of the King and the chiefs, were granted and have held but a very small portion of the lands of the Islands. Under the homestead laws somewhat more than a majority of the lands were homesteaded to Hawaiians, but a great many of these lands have been lost through improvidence and inability to finance farming operations. Most frequently, however, the native Hawaiian, with no thought of the future, has obtained the land for a nominal sum, only to turn about and sell it to wealthy interests for a sum more nearly approaching its real value. The Hawaiians are not business men and have shown themselves unable to meet competitive conditions unaided. In the end the speculators are the real beneficiaries of the homestead laws. Thus the tax returns for 1919 show that only 6.23 per centum of the property of the Islands is held by native Hawaiians and this for the most part is lands in the possession of approximately a thousand wealthy Hawaiians, the

descendents of the chiefs." H. R. Rep. No. 839, 66th Cong., 2d Sess., 6 (1920).

While these developments were unfolding, the United States and European powers made constant efforts to protect their interests and to influence Hawaiian political and economic affairs in general. The first "articles of arrangement" between the United States and the Kingdom of Hawaii were signed in 1826, 8 Department of State, Treaties and Other International Agreements of the United States of America 1776–1949, p. 861 (C. Bevans comp. 1968), and additional treaties and conventions between the two countries were signed in 1849, 1875, and 1887, see Treaty with the Hawaiian Islands, 9 Stat. 977 (1849) (friendship, commerce, and navigation); Convention between the United States of America and His Majesty the King of the Hawaiian Islands, 19 Stat. 625 (1875) (commercial reciprocity); Supplementary Convention between the United States of America and His Majesty the King of the Hawaiian Islands, 25 Stat. 1399 (1887) (same). The United States was not the only country interested in Hawaii and its affairs, but by the later part of the century the reality of American dominance in trade, settlement, economic expansion, and political influence became apparent.

Tensions intensified between an anti-Western, pro-native bloc in the government on the one hand and western business interests and property owners on the other. The conflicts came to the fore in 1887. Westerners forced the resignation of the Prime Minister of the Kingdom of Hawaii and the adoption of a new Constitution, which, among other things, reduced the power of the monarchy and extended the right to vote to non-Hawaiians. 3 Kuykendall 344–372.

Tensions continued through 1893, when they again peaked, this time in response to an attempt by the then-Hawaiian monarch, Queen Liliuokalani, to promulgate a new constitution restoring monarchical control over the House of Nobles and limiting the franchise to Hawaiian subjects. A so-called

Committee of Safety, a group of professionals and businessmen, with the active assistance of John Stevens, the United States Minister to Hawaii, acting with United States Armed Forces, replaced the monarchy with a provisional government. That government sought annexation by the United States. On December 18 of the same year, President Cleveland, unimpressed and indeed offended by the actions of the American Minister, denounced the role of the American forces and called for restoration of the Hawaiian monarchy. Message of the President to the Senate and House of Representatives, reprinted in H. R. Rep. No. 243, 53d Cong., 2d Sess., 3–15 (1893). The Queen could not resume her former place, however, and, in 1894, the provisional government established the Republic of Hawaii. The Queen abdicated her throne a year later.

In 1898, President McKinley signed a Joint Resolution, sometimes called the Newlands Resolution, to annex the Hawaiian Islands as territory of the United States. 30 Stat. 750. According to the Joint Resolution, the Republic of Hawaii ceded all former Crown, government, and public lands to the United States. *Ibid.* The resolution further provided that revenues from the public lands were to be "used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes." *Ibid.* Two years later the Hawaiian Organic Act established the Territory of Hawaii, asserted United States control over the ceded lands, and put those lands "in the possession, use, and control of the government of the Territory of Hawaii . . . until otherwise provided for by Congress." Act of Apr. 30, 1900, ch. 339, § 91, 31 Stat. 159.

In 1993, a century after the intervention by the Committee of Safety, the Congress of the United States reviewed this history, and in particular the role of Minister Stevens. Congress passed a Joint Resolution recounting the events in some detail and offering an apology to the native Hawaiian people. 107 Stat. 1510.

Before we turn to the relevant provisions two other important matters, which affected the demographics of Hawaii, must be recounted. The first is the tragedy inflicted on the early Hawaiian people by the introduction of western diseases and infectious agents. As early as the establishment of the rule of Kamehameha I, it was becoming apparent that the native population had serious vulnerability to diseases borne to the islands by settlers. High mortality figures were experienced in infancy and adulthood, even from common illnesses such as diarrhea, colds, and measles. Fuchs 13; see Schmitt 58. More serious diseases took even greater tolls. In the smallpox epidemic of 1853, thousands of lives were lost. *Ibid.* By 1878, 100 years after Cook's arrival, the native population had been reduced to about 47,500 people. *Id.*, at 25. These mortal illnesses no doubt were an initial cause of the despair, disenchantment, and despondency some commentators later noted in descendents of the early Hawaiian people. See Fuchs 13.

The other important feature of Hawaiian demographics to be noted is the immigration to the islands by people of many different races and cultures. Mostly in response to the demand of the sugar industry for arduous labor in the cane fields, successive immigration waves brought Chinese, Portuguese, Japanese, and Filipinos to Hawaii. Beginning with the immigration of 293 Chinese in 1852, the plantations alone drew to Hawaii, in one estimate, something over 400,000 men, women, and children over the next century. *Id.*, at 24; A. Lind, Hawaii's People 6–7 (4th ed. 1980). Each of these ethnic and national groups has had its own history in Hawaii, its own struggles with societal and official discrimination, its own successes, and its own role in creating the present society of the islands. See E. Nordyke, The Peopling of Hawai'i 28–98 (2d ed. 1989). The 1990 census figures show the resulting ethnic diversity of the Hawaiian population. U. S. Dept. of Commerce, Bureau of Census, 1990 Census of Popu-

lation, Supplementary Reports, Detailed Ancestry Groups for States (Oct. 1992).

With this background we turn to the legislative enactments of direct relevance to the case before us.

## II

Not long after the creation of the new Territory, Congress became concerned with the condition of the native Hawaiian people. See H. R. Rep. No. 839, at 2–6; Hearings on the Rehabilitation and Colonization of Hawaiians and Other Proposed Amendments to the Organic Act of the Territory of Hawaii before the House Committee on the Territories, 66th Cong., 2d Sess. (1920). Reciting its purpose to rehabilitate the native Hawaiian population, see H. R. Rep. No. 839, at 1–2, Congress enacted the Hawaiian Homes Commission Act, which set aside about 200,000 acres of the ceded public lands and created a program of loans and long-term leases for the benefit of native Hawaiians. Act of July 9, 1921, ch. 42, 42 Stat. 108. The Act defined "native Hawaiian[s]" to include "any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778." *Ibid.*

Hawaii was admitted as the 50th State of the Union in 1959. With admission, the new State agreed to adopt the Hawaiian Homes Commission Act as part of its own Constitution. Pub. L. 86–3, §§ 4, 7, 73 Stat. 5, 7 (Admission Act); see Haw. Const., Art. XII, §§ 1–3. In addition, the United States granted Hawaii title to all public lands and public property within the boundaries of the State, save those which the Federal Government retained for its own use. Admission Act §§ 5(b)–(d), 73 Stat. 5. This grant included the 200,000 acres set aside under the Hawaiian Homes Commission Act and almost 1.2 million additional acres of land. Brief for United States as *Amicus Curiae* 4.

The legislation authorizing the grant recited that these lands, and the proceeds and income they generated, were to

be held "as a public trust" to be "managed and disposed of for one or more of" five purposes:

> "[1] for the support of the public schools and other public educational institutions, [2] for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended, [3] for the development of farm and home ownership on as widespread a basis as possible[,] [4] for the making of public improvements, and [5] for the provision of lands for public use." Admission Act § 5(f), 73 Stat. 6.

In the first decades following admission, the State apparently continued to administer the lands that had been set aside under the Hawaiian Homes Commission Act for the benefit of native Hawaiians. The income from the balance of the public lands is said to have "by and large flowed to the department of education." Hawaii Senate Journal, Standing Committee Rep. No. 784, pp. 1350, 1351 (1979).

In 1978 Hawaii amended its Constitution to establish the Office of Hawaiian Affairs, Haw. Const., Art. XII, § 5, which has as its mission "[t]he betterment of conditions of native Hawaiians . . . [and] Hawaiians," Haw. Rev. Stat. § 10–3 (1993). Members of the 1978 constitutional convention, at which the new amendments were drafted and proposed, set forth the purpose of the proposed agency:

> "Members [of the Committee of the Whole] were impressed by the concept of the Office of Hawaiian Affairs which establishes a public trust entity for the benefit of the people of Hawaiian ancestry. Members foresaw that it will provide Hawaiians the right to determine the priorities which will effectuate the betterment of their condition and welfare and promote the protection and preservation of the Hawaiian race, and that it will unite Hawaiians as a people." 1 Proceedings of the Constitutional Convention of Hawaii of 1978, Committee of the Whole Rep. No. 13, p. 1018 (1980).

Implementing statutes and their later amendments vested OHA with broad authority to administer two categories of funds: a 20 percent share of the revenue from the 1.2 million acres of lands granted to the State pursuant to § 5(b) of the Admission Act, which OHA is to administer "for the betterment of the conditions of native Hawaiians," Haw. Rev. Stat. § 10–13.5 (1993), and any state or federal appropriations or private donations that may be made for the benefit of "native Hawaiians" and/or "Hawaiians," Haw. Const., Art. XII, § 6. See generally Haw. Rev. Stat. §§ 10–1 to 10–16. (The 200,000 acres set aside under the Hawaiian Homes Commission Act are administered by a separate agency. See Haw. Rev. Stat. § 26–17 (1993).) The Hawaiian Legislature has charged OHA with the mission of "[s]erving as the principal public agency . . . responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians," "[a]ssessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians," "conducting advocacy efforts for native Hawaiians and Hawaiians," "[a]pplying for, receiving, and disbursing, grants and donations from all sources for native Hawaiian and Hawaiian programs and services," and "[s]erving as a receptacle for reparations." § 10–3.

OHA is overseen by a nine-member board of trustees, the members of which "shall be Hawaiians" and—presenting the precise issue in this case—shall be "elected by qualified voters who are Hawaiians, as provided by law." Haw. Const., Art. XII, § 5; see Haw. Rev. Stat. §§ 13D–1, 13D–3(b)(1) (1993). The term "Hawaiian" is defined by statute:

> "'Hawaiian' means any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii." § 10–2.

The statute defines "native Hawaiian" as follows:

> "'Native Hawaiian' means any descendant of not less than one-half part of the races inhabiting the Hawaiian Islands previous to 1778, as defined by the Hawaiian Homes Commission Act, 1920, as amended; provided that the term identically refers to the descendants of such blood quantum of such aboriginal peoples which exercised sovereignty and subsisted in the Hawaiian Islands in 1778 and which peoples thereafter continued to reside in Hawaii." *Ibid.*

Petitioner Harold Rice is a citizen of Hawaii and a descendant of preannexation residents of the islands. He is not, as we have noted, a descendant of pre-1778 natives, and so he is neither "native Hawaiian" nor "Hawaiian" as defined by the statute. Rice applied in March 1996 to vote in the elections for OHA trustees. To register to vote for the office of trustee he was required to attest: "I am also Hawaiian and desire to register to vote in OHA elections." Affidavit on Application for Voter Registration, Lodging by Petitioner, Tab 2. Rice marked through the words "am also Hawaiian and," then checked the form "yes." The State denied his application.

Rice sued Benjamin Cayetano, the Governor of Hawaii, in the United States District Court for the District of Hawaii. (The Governor was sued in his official capacity, and the Attorney General of Hawaii defends the challenged enactments. We refer to the respondent as "the State.") Rice contested his exclusion from voting in elections for OHA trustees and from voting in a special election relating to native Hawaiian sovereignty which was held in August 1996. After the District Court rejected the latter challenge, see *Rice* v. *Cayetano*, 941 F. Supp. 1529 (1996) (a decision not before us), the parties moved for summary judgment on the claim that the Fourteenth and Fifteenth Amendments to the United States Constitution invalidate the law excluding Rice from the OHA trustee elections.

The District Court granted summary judgment to the State. 963 F. Supp. 1547 (Haw. 1997). Surveying the history of the islands and their people, the District Court determined that Congress and the State of Hawaii have recognized a guardian-ward relationship with the native Hawaiians, which the court found analogous to the relationship between the United States and the Indian tribes. *Id.*, at 1551–1554. On this premise, the court examined the voting qualification with the latitude that we have applied to legislation passed pursuant to Congress' power over Indian affairs. *Id.*, at 1554–1555 (citing *Morton* v. *Mancari*, 417 U. S. 535 (1974)). Finding that the electoral scheme was "rationally related to the State's responsibility under the Admission Act to utilize a portion of the proceeds from the § 5(b) lands for the betterment of Native Hawaiians," the District Court held that the voting restriction did not violate the Constitution's ban on racial classifications. 963 F. Supp., at 1554–1555.

The Court of Appeals affirmed. 146 F. 3d 1075 (CA9 1998). The court noted that Rice had not challenged the constitutionality of the underlying programs or of OHA itself. *Id.*, at 1079. Considering itself bound to "accept the trusts and their administrative structure as [it found] them, and assume that both are lawful," the court held that Hawaii "may rationally conclude that Hawaiians, being the group to whom trust obligations run and to whom OHA trustees owe a duty of loyalty, should be the group to decide who the trustees ought to be." *Ibid.* The court so held notwithstanding its clear holding that the Hawaii Constitution and implementing statutes "contain a racial classification on their face." *Ibid.*

We granted certiorari, 526 U. S. 1016 (1999), and now reverse.

## III

The purpose and command of the Fifteenth Amendment are set forth in language both explicit and comprehensive.

The National Government and the States may not violate a fundamental principle: They may not deny or abridge the right to vote on account of race. Color and previous condition of servitude, too, are forbidden criteria or classifications, though it is unnecessary to consider them in the present case.

Enacted in the wake of the Civil War, the immediate concern of the Amendment was to guarantee to the emancipated slaves the right to vote, lest they be denied the civil and political capacity to protect their new freedom. Vital as its objective remains, the Amendment goes beyond it. Consistent with the design of the Constitution, the Amendment is cast in fundamental terms, terms transcending the particular controversy which was the immediate impetus for its enactment. The Amendment grants protection to all persons, not just members of a particular race.

The design of the Amendment is to reaffirm the equality of races at the most basic level of the democratic process, the exercise of the voting franchise. A resolve so absolute required language as simple in command as it was comprehensive in reach. Fundamental in purpose and effect and self-executing in operation, the Amendment prohibits all provisions denying or abridging the voting franchise of any citizen or class of citizens on the basis of race. "[B]y the inherent power of the Amendment the word white disappeared" from our voting laws, bringing those who had been excluded by reason of race within "the generic grant of suffrage made by the State." *Guinn* v. *United States*, 238 U. S. 347, 363 (1915); see also *Neal* v. *Delaware*, 103 U. S. 370, 389 (1881). The Court has acknowledged the Amendment's mandate of neutrality in straightforward terms: "If citizens of one race having certain qualifications are permitted by law to vote, those of another having the same qualifications must be. Previous to this amendment, there was no constitutional guaranty against this discrimination: now there is." *United States* v. *Reese*, 92 U. S. 214, 218 (1876).

Though the commitment was clear, the reality remained far from the promise. Manipulative devices and practices were soon employed to deny the vote to blacks. We have cataloged before the "variety and persistence" of these techniques. *South Carolina* v. *Katzenbach*, 383 U. S. 301, 311–312 (1966) (citing, *e. g.*, *Guinn*, *supra* (grandfather clause); *Myers* v. *Anderson*, 238 U. S. 368 (1915) (same); *Lane* v. *Wilson*, 307 U. S. 268 (1939) ("procedural hurdles"); *Terry* v. *Adams*, 345 U. S. 461 (1953) (white primary); *Smith* v. *Allwright*, 321 U. S. 649 (1944) (same); *United States* v. *Thomas*, 362 U. S. 58 (1960) *(per curiam)* (registration challenges); *Gomillion* v. *Lightfoot*, 364 U. S. 339 (1960) (racial gerrymandering); *Louisiana* v. *United States*, 380 U. S. 145 (1965) ("interpretation tests")). Progress was slow, particularly when litigation had to proceed case by case, district by district, sometimes voter by voter. See 383 U. S., at 313–315.

Important precedents did emerge, however, which give instruction in the case now before us. The Fifteenth Amendment was quite sufficient to invalidate a scheme which did not mention race but instead used ancestry in an attempt to confine and restrict the voting franchise. In 1910, the State of Oklahoma enacted a literacy requirement for voting eligibility, but exempted from that requirement the "'lineal descendant[s]'" of persons who were "'on January 1, 1866, or at any time prior thereto, entitled to vote under any form of government, or who at that time resided in some foreign nation.'" *Guinn*, *supra*, at 357. Those persons whose ancestors were entitled to vote under the State's previous, discriminatory voting laws were thus exempted from the eligibility test. Recognizing that the test served only to perpetuate those old laws and to effect a transparent racial exclusion, the Court invalidated it. 238 U. S., at 364–365.

More subtle, perhaps, than the grandfather device in *Guinn* were the evasions attempted in the white primary cases; but the Fifteenth Amendment, again by its own terms, sufficed to strike down these voting systems, systems de-

signed to exclude one racial class (at least) from voting. See *Terry*, *supra*, at 469–470; *Allwright*, *supra*, at 663–666 (overruling *Grovey* v. *Townsend*, 295 U. S. 45 (1935)). The Fifteenth Amendment, the Court held, could not be so circumvented: "The Amendment bans racial discrimination in voting by both state and nation. It thus establishes a national policy . . . not to be discriminated against as voters in elections to determine public governmental policies or to select public officials, national, state, or local." *Terry*, *supra*, at 467.

Unlike the cited cases, the voting structure now before us is neither subtle nor indirect. It is specific in granting the vote to persons of defined ancestry and to no others. The State maintains this is not a racial category at all but instead a classification limited to those whose ancestors were in Hawaii at a particular time, regardless of their race. Brief for Respondent 38–40. The State points to theories of certain scholars concluding that some inhabitants of Hawaii as of 1778 may have migrated from the Marquesas Islands and the Pacific Northwest, as well as from Tahiti. *Id.*, at 38–39, and n. 15. Furthermore, the State argues, the restriction in its operation excludes a person whose traceable ancestors were exclusively Polynesian if none of those ancestors resided in Hawaii in 1778; and, on the other hand, the vote would be granted to a person who could trace, say, one sixty-fourth of his or her ancestry to a Hawaiian inhabitant on the pivotal date. *Ibid.* These factors, it is said, mean the restriction is not a racial classification. We reject this line of argument.

Ancestry can be a proxy for race. It is that proxy here. Even if the residents of Hawaii in 1778 had been of more diverse ethnic backgrounds and cultures, it is far from clear that a voting test favoring their descendants would not be a race-based qualification. But that is not this case. For centuries Hawaii was isolated from migration. 1 Kuykendall 3. The inhabitants shared common physical character-

istics, and by 1778 they had a common culture. Indeed, the drafters of the statutory definition in question emphasized the "unique culture of the ancient Hawaiians" in explaining their work. Hawaii Senate Journal, Standing Committee Rep. No. 784, at 1354; see *ibid.* ("Modern scholarship also identified such race of people as culturally distinguishable from other Polynesian peoples"). The provisions before us reflect the State's effort to preserve that commonality of people to the present day. In the interpretation of the Reconstruction era civil rights laws we have observed that "racial discrimination" is that which singles out "identifiable classes of persons . . . solely because of their ancestry or ethnic characteristics." *Saint Francis College* v. *Al-Khazraji*, 481 U. S. 604, 613 (1987). The very object of the statutory definition in question and of its earlier congressional counterpart in the Hawaiian Homes Commission Act is to treat the early Hawaiians as a distinct people, commanding their own recognition and respect. The State, in enacting the legislation before us, has used ancestry as a racial definition and for a racial purpose.

The history of the State's definition demonstrates the point. As we have noted, the statute defines "Hawaiian" as

> "any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii." Haw. Rev. Stat. § 10–2 (1993).

A different definition of "Hawaiian" was first promulgated in 1978 as one of the proposed amendments to the State Constitution. As proposed, "Hawaiian" was defined as "any descendant of the races inhabiting the Hawaiian Islands, previous to 1778." 1 Proceedings of the Constitutional Convention of Hawaii of 1978, Committee of the Whole Rep. No. 13, at 1018. Rejected as not ratified in a valid manner, see *Kahalekai* v. *Doi*, 60 Haw. 324, 342, 590 P. 2d 543, 555 (1979),

the definition was modified and in the end promulgated in statutory form as quoted above. See Hawaii Senate Journal, Standing Committee Rep. No. 784, at 1350, 1353–1354; *id.*, Conf. Comm. Rep. No. 77, at 998. By the drafters' own admission, however, any changes to the language were at most cosmetic. Noting that "[t]he definitions of 'native Hawaiian' and 'Hawaiian' are changed to substitute 'peoples' for 'races,'" the drafters of the revised definition "stress[ed] that this change is non-substantive, and that 'peoples' does mean 'races.'" *Ibid.;* see also *id.*, at 999 ("[T]he word 'peoples' has been substituted for 'races' in the definition of 'Hawaiian'. Again, your Committee wishes to emphasize that this substitution is merely technical, and that 'peoples' does mean 'races'").

The next definition in Hawaii's compilation of statutes incorporates the new definition of "Hawaiian" and preserves the explicit tie to race:

> "'Native Hawaiian' means any descendant of not less than one-half part of the races inhabiting the Hawaiian Islands previous to 1778, as defined by the Hawaiian Homes Commission Act, 1920, as amended; provided that the term identically refers to the descendants of such blood quantum of such aboriginal peoples which exercised sovereignty and subsisted in the Hawaiian Islands in 1778 and which peoples thereafter continued to reside in Hawaii." Haw. Rev. Stat. § 10–2 (1993).

This provision makes it clear: "[T]he descendants . . . of [the] aboriginal peoples" means "the descendants . . . of the races." *Ibid.*

As for the further argument that the restriction differentiates even among Polynesian people and is based simply on the date of an ancestor's residence in Hawaii, this too is insufficient to prove the classification is nonracial in purpose and operation. Simply because a class defined by ancestry does not include all members of the race does not suffice to

make the classification race neutral. Here, the State's argument is undermined by its express racial purpose and by its actual effects.

The ancestral inquiry mandated by the State implicates the same grave concerns as a classification specifying a particular race by name. One of the principal reasons race is treated as a forbidden classification is that it demeans the dignity and worth of a person to be judged by ancestry instead of by his or her own merit and essential qualities. An inquiry into ancestral lines is not consistent with respect based on the unique personality each of us possesses, a respect the Constitution itself secures in its concern for persons and citizens.

The ancestral inquiry mandated by the State is forbidden by the Fifteenth Amendment for the further reason that the use of racial classifications is corruptive of the whole legal order democratic elections seek to preserve. The law itself may not become the instrument for generating the prejudice and hostility all too often directed against persons whose particular ancestry is disclosed by their ethnic characteristics and cultural traditions. "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." *Hirabayashi* v. *United States*, 320 U. S. 81, 100 (1943). Ancestral tracing of this sort achieves its purpose by creating a legal category which employs the same mechanisms, and causes the same injuries, as laws or statutes that use race by name. The State's electoral restriction enacts a race-based voting qualification.

## IV

The State offers three principal defenses of its voting law, any of which, it contends, allows it to prevail even if the classification is a racial one under the Fifteenth Amendment. We examine, and reject, each of these arguments.

A

The most far reaching of the State's arguments is that exclusion of non-Hawaiians from voting is permitted under our cases allowing the differential treatment of certain members of Indian tribes. The decisions of this Court, interpreting the effect of treaties and congressional enactments on the subject, have held that various tribes retained some elements of quasi-sovereign authority, even after cession of their lands to the United States. See *Brendale* v. *Confederated Tribes and Bands of Yakima Nation*, 492 U. S. 408, 425 (1989) (plurality opinion); *Oliphant* v. *Suquamish Tribe*, 435 U. S. 191, 208 (1978). The retained tribal authority relates to self-governance. *Brendale*, *supra*, at 425 (plurality opinion). In reliance on that theory the Court has sustained a federal provision giving employment preferences to persons of tribal ancestry. *Mancari*, 417 U. S., at 553–555. The *Mancari* case, and the theory upon which it rests, are invoked by the State to defend its decision to restrict voting for the OHA trustees, who are charged so directly with protecting the interests of native Hawaiians.

If Hawaii's restriction were to be sustained under *Mancari* we would be required to accept some beginning premises not yet established in our case law. Among other postulates, it would be necessary to conclude that Congress, in reciting the purposes for the transfer of lands to the State—and in other enactments such as the Hawaiian Homes Commission Act and the Joint Resolution of 1993—has determined that native Hawaiians have a status like that of Indians in organized tribes, and that it may, and has, delegated to the State a broad authority to preserve that status. These propositions would raise questions of considerable moment and difficulty. It is a matter of some dispute, for instance, whether Congress may treat the native Hawaiians as it does the Indian tribes. Compare Van Dyke, The Political Status of the Native Hawaiian People, 17 Yale L. & Pol'y Rev. 95 (1998), with Benjamin, Equal Protection and the Special Re-

lationship: The Case of Native Hawaiians, 106 Yale L. J. 537 (1996). We can stay far off that difficult terrain, however.

The State's argument fails for a more basic reason. Even were we to take the substantial step of finding authority in Congress, delegated to the State, to treat Hawaiians or native Hawaiians as tribes, Congress may not authorize a State to create a voting scheme of this sort.

Of course, as we have established in a series of cases, Congress may fulfill its treaty obligations and its responsibilities to the Indian tribes by enacting legislation dedicated to their circumstances and needs. See *Washington* v. *Washington State Commercial Passenger Fishing Vessel Assn.*, 443 U. S. 658, 673, n. 20 (1979) (treaties securing preferential fishing rights); *United States* v. *Antelope*, 430 U. S. 641, 645–647 (1977) (exclusive federal jurisdiction over crimes committed by Indians in Indian country); *Delaware Tribal Business Comm.* v. *Weeks*, 430 U. S. 73, 84–85 (1977) (distribution of tribal property); *Moe* v. *Confederated Salish and Kootenai Tribes of Flathead Reservation*, 425 U. S. 463, 479–480 (1976) (Indian immunity from state taxes); *Fisher* v. *District Court of Sixteenth Judicial Dist. of Mont.*, 424 U. S. 382, 390–391 (1976) *(per curiam)* (exclusive tribal court jurisdiction over tribal adoptions). As we have observed, "every piece of legislation dealing with Indian tribes and reservations . . . single[s] out for special treatment a constituency of tribal Indians." *Mancari, supra*, at 552.

*Mancari*, upon which many of the above cases rely, presented the somewhat different issue of a preference in hiring and promoting at the federal Bureau of Indian Affairs (BIA), a preference which favored individuals who were "'one-fourth or more degree Indian blood and . . . member[s] of a Federally-recognized tribe.'" 417 U. S., at 553, n. 24 (quoting 44 BIAM 335, 3.1 (1972)). Although the classification had a racial component, the Court found it important that the preference was "not directed towards a 'racial' group consisting of 'Indians,'" but rather "only to members of 'fed-

erally recognized' tribes." 417 U. S., at 553, n. 24. "In this sense," the Court held, "the preference [was] political rather than racial in nature." *Ibid.;* see also *id.*, at 554 ("The preference, as applied, is granted to Indians not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities whose lives and activities are governed by the BIA in a unique fashion"). Because the BIA preference could be "tied rationally to the fulfillment of Congress' unique obligation toward the Indians," and was "reasonable and rationally designed to further Indian self-government," the Court held that it did not offend the Constitution. *Id.*, at 555. The opinion was careful to note, however, that the case was confined to the authority of the BIA, an agency described as "*sui generis.*" *Id.*, at 554.

Hawaii would extend the limited exception of *Mancari* to a new and larger dimension. The State contends that "one of the very purposes of OHA—and the challenged voting provision—is to afford Hawaiians a measure of self-governance," and so it fits the model of *Mancari.* Brief for Respondent 34. It does not follow from *Mancari,* however, that Congress may authorize a State to establish a voting scheme that limits the electorate for its public officials to a class of tribal Indians, to the exclusion of all non-Indian citizens.

The tribal elections established by the federal statutes the State cites illuminate its error. See Brief for Respondent 22 (citing, *e. g.*, the Menominee Restoration Act, 25 U. S. C. § 903b, and the Indian Reorganization Act, 25 U. S. C. § 476). If a non-Indian lacks a right to vote in tribal elections, it is for the reason that such elections are the internal affair of a quasi sovereign. The OHA elections, by contrast, are the affair of the State of Hawaii. OHA is a state agency, established by the State Constitution, responsible for the administration of state laws and obligations. See Haw. Const., Art. XII, §§ 5–6. The Hawaiian Legislature has declared that OHA exists to serve "as the principal public agency in th[e]

State responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians." Haw. Rev. Stat. § 10–3(3) (1993); see also Lodging by Petitioner, Tab 6, OHA Annual Report 1993–1994, p. 5 (May 27, 1994) (admitting that "OHA is technically a part of the Hawai'i state government," while asserting that "it operates as a semi-autonomous entity"). Foremost among the obligations entrusted to this agency is the administration of a share of the revenues and proceeds from public lands, granted to Hawaii to "be held by said State as a public trust." Admission Act §§ 5(b), (f), 73 Stat. 5, 6; see Haw. Const., Art. XII, § 4.

The delegates to the 1978 constitutional convention explained the position of OHA in the state structure:

> "The committee intends that the Office of Hawaiian Affairs will be independent from the executive branch and all other branches of government although it will assume the status of a state agency. The chairman may be an ex officio member of the governor's cabinet. The status of the Office of Hawaiian Affairs is to be unique and special. . . . The committee developed this office based on the model of the University of Hawaii. In particular, the committee desired to use this model so that the office could have maximum control over its budget, assets and personnel. The committee felt that it was important to arrange a method whereby the assets of Hawaiians could be kept separate from the rest of the state treasury." 1 Proceedings of the Constitutional Convention of Hawaii of 1978, Standing Committee Rep. No. 59, at 645.

Although it is apparent that OHA has a unique position under state law, it is just as apparent that it remains an arm of the State.

The validity of the voting restriction is the only question before us. As the Court of Appeals did, we assume the va-

lidity of the underlying administrative structure and trusts, without intimating any opinion on that point. Nonetheless, the elections for OHA trustee are elections of the State, not of a separate quasi sovereign, and they are elections to which the Fifteenth Amendment applies. To extend *Mancari* to this context would be to permit a State, by racial classification, to fence out whole classes of its citizens from decisionmaking in critical state affairs. The Fifteenth Amendment forbids this result.

B

Hawaii further contends that the limited voting franchise is sustainable under a series of cases holding that the rule of one person, one vote does not pertain to certain special purpose districts such as water or irrigation districts. See *Ball* v. *James*, 451 U. S. 355 (1981); *Salyer Land Co.* v. *Tulare Lake Basin Water Storage Dist.*, 410 U. S. 719 (1973). Just as the *Mancari* argument would have involved a significant extension or new application of that case, so too it is far from clear that the *Salyer* line of cases would be at all applicable to statewide elections for an agency with the powers and responsibilities of OHA.

We would not find those cases dispositive in any event, however. The question before us is not the one-person, one-vote requirement of the Fourteenth Amendment, but the race neutrality command of the Fifteenth Amendment. Our special purpose district cases have not suggested that compliance with the one-person, one-vote rule of the Fourteenth Amendment somehow excuses compliance with the Fifteenth Amendment. We reject that argument here. We held four decades ago that state authority over the boundaries of political subdivisions, "extensive though it is, is met and overcome by the Fifteenth Amendment to the Constitution." *Gomillion*, 364 U. S., at 345. The Fifteenth Amendment has independent meaning and force. A State may not deny or abridge the right to vote on account of race, and this law does so.

C

Hawaii's final argument is that the voting restriction does no more than ensure an alignment of interests between the fiduciaries and the beneficiaries of a trust. Thus, the contention goes, the restriction is based on beneficiary status rather than race.

As an initial matter, the contention founders on its own terms, for it is not clear that the voting classification is symmetric with the beneficiaries of the programs OHA administers. Although the bulk of the funds for which OHA is responsible appears to be earmarked for the benefit of "native Hawaiians," the State permits both "native Hawaiians" and "Hawaiians" to vote for the office of trustee. The classification thus appears to create, not eliminate, a differential alignment between the identity of OHA trustees and what the State calls beneficiaries.

Hawaii's argument fails on more essential grounds. The State's position rests, in the end, on the demeaning premise that citizens of a particular race are somehow more qualified than others to vote on certain matters. That reasoning attacks the central meaning of the Fifteenth Amendment. The Amendment applies to "any election in which public issues are decided or public officials selected." *Terry,* 345 U. S., at 468. There is no room under the Amendment for the concept that the right to vote in a particular election can be allocated based on race. Race cannot qualify some and disqualify others from full participation in our democracy. All citizens, regardless of race, have an interest in selecting officials who make policies on their behalf, even if those policies will affect some groups more than others. Under the Fifteenth Amendment voters are treated not as members of a distinct race but as members of the whole citizenry. Hawaii may not assume, based on race, that petitioner or any other of its citizens will not cast a principled vote. To accept the position advanced by the State would give rise to the same indignities, and the same resulting tensions and ani-

mosities, the Amendment was designed to eliminate. The voting restriction under review is prohibited by the Fifteenth Amendment.

* * *

When the culture and way of life of a people are all but engulfed by a history beyond their control, their sense of loss may extend down through generations; and their dismay may be shared by many members of the larger community. As the State of Hawaii attempts to address these realities, it must, as always, seek the political consensus that begins with a sense of shared purpose. One of the necessary beginning points is this principle: The Constitution of the United States, too, has become the heritage of all the citizens of Hawaii.

In this case the Fifteenth Amendment invalidates the electoral qualification based on ancestry. The judgment of the Court of Appeals for the Ninth Circuit is reversed.

*It is so ordered.*

JUSTICE BREYER, with whom JUSTICE SOUTER joins, concurring in the result.

I agree with much of what the Court says and with its result, but I do not agree with the critical rationale that underlies that result. Hawaii seeks to justify its voting scheme by drawing an analogy between its Office of Hawaiian Affairs (OHA) and a trust for the benefit of an Indian tribe. The majority does not directly deny the analogy. It instead at one point assumes, at least for argument's sake, that the "revenues and proceeds" at issue are from a "'public trust.'" *Ante*, at 521. It also assumes without deciding that the State could "treat Hawaiians or native Hawaiians as tribes." *Ante*, at 519. Leaving these issues undecided, it holds that the Fifteenth Amendment forbids Hawaii's voting scheme, because the "OHA is a state agency," and thus

election to the OHA board is not "the internal affair of a quasi sovereign," such as an Indian tribe. *Ante*, at 520.

I see no need, however, to decide this case on the basis of so vague a concept as "quasi sovereign," and I do not subscribe to the Court's consequently sweeping prohibition. Rather, in my view, we should reject Hawaii's effort to justify its rules through analogy to a trust for an Indian tribe because the record makes clear that (1) there is no "trust" for native Hawaiians here, and (2) OHA's electorate, as defined in the statute, does not sufficiently resemble an Indian tribe.

The majority seems to agree, though it does not decide, that the OHA bears little resemblance to a trust for native Hawaiians. It notes that the Hawaii Constitution uses the word "trust" when referring to the 1.2 million acres of land granted in the Admission Act. *Ante*, at 508, 521. But the Admission Act itself makes clear that the 1.2 million acres is to benefit *all* the people of Hawaii. The Act specifies that the land is to be used for the education of, the developments of homes and farms for, the making of public improvements for, and public use by, *all* of Hawaii's citizens, as well as for the betterment of those who are "native." Admission Act § 5(f).

Moreover, OHA funding comes from several different sources. See, *e. g.*, OHA Fiscal 1998 Annual Report 38 (hereinafter Annual Report) ($15 million from the 1.2 million acres of public lands; $11 million from "[d]ividend and interest income"; $3 million from legislative appropriations; $400,000 from federal and other grants). All of OHA's funding is authorized by ordinary state statutes. See, *e. g.*, Haw. Rev. Stat. §§ 10–4, 10–6, 10–13.5 (1993); see also Annual Report 11 ("OHA's fiscal 1998–99 legislative budget was passed as Acts 240 and 115 by the 1997 legislature"). The amounts of funding and funding sources are thus subject to change by ordinary legislation. OHA spends most, but not all, of its money to benefit native Hawaiians in many different ways. See Annual Report (OHA projects support education, hous-

ing, health, culture, economic development, and nonprofit organizations). As the majority makes clear, OHA is simply a special purpose department of Hawaii's state government. *Ante*, at 520–521.

As importantly, the statute defines the electorate in a way that is not analogous to membership in an Indian tribe. Native Hawaiians, considered as a group, may be analogous to tribes of other Native Americans. But the statute does not limit the electorate to native Hawaiians. Rather it adds to approximately 80,000 native Hawaiians about 130,000 additional "Hawaiians," defined as including anyone with one ancestor who lived in Hawaii prior to 1778, thereby including individuals who are less than one five-hundredth original Hawaiian (assuming nine generations between 1778 and the present). See Native Hawaiian Data Book 39 (1998). Approximately 10% to 15% of OHA's funds are spent specifically to benefit this latter group, see Annual Report 38, which now constitutes about 60% of the OHA electorate.

I have been unable to find any Native American tribal definition that is so broad. The Alaska Native Claims Settlement Act, for example, defines a "Native" as "a person of one-fourth degree or more Alaska Indian" or one "who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is . . . regarded as Native by any village or group" (a classification perhaps more likely to reflect real group membership than any blood quantum requirement). 43 U. S. C. § 1602(b). Many tribal constitutions define membership in terms of having had an ancestor whose name appeared on a tribal roll—but in the far less distant past. See, *e. g.*, Constitution of the Choctaw Nation of Oklahoma, Art. II (membership consists of persons on final rolls approved in 1906 and their lineal descendants); Constitution of the Sac and Fox Tribe of Indians of Oklahoma, Art. II (membership consists of persons on official roll of 1937, children since born to two members of the Tribe, and children born to one mem-

ber and a nonmember if admitted by the council); Revised Constitution of the Jicarilla Apache Tribe, Art. III (membership consists of persons on official roll of 1968 and children of one member of the Tribe who are at least three-eighths Jicarilla Apache Indian blood); Revised Constitution Mescalero Apache Tribe, Art. IV (membership consists of persons on the official roll of 1936 and children born to at least one enrolled member who are at least one-fourth degree Mescalero Apache blood).

Of course, a Native American tribe has broad authority to define its membership. See *Santa Clara Pueblo* v. *Martinez*, 436 U. S. 49, 72, n. 32 (1978). There must, however, be some limit on what is reasonable, at the least when a State (which is not itself a tribe) creates the definition. And to define that membership in terms of 1 possible ancestor out of 500, thereby creating a vast and unknowable body of potential members—leaving some combination of luck and interest to determine which potential members become actual voters—goes well beyond any reasonable limit. It was not a tribe, but rather the State of Hawaii, that created this definition; and, as I have pointed out, it is not like any actual membership classification created by any actual tribe.

These circumstances are sufficient, in my view, to destroy the analogy on which Hawaii's justification must depend. This is not to say that Hawaii's definitions themselves independently violate the Constitution, cf. *post*, at 535–536, n. 11 (JUSTICE STEVENS, dissenting); it is only to say that the analogies they here offer are too distant to save a race-based voting definition that in their absence would clearly violate the Fifteenth Amendment. For that reason I agree with the majority's ultimate conclusion.

JUSTICE STEVENS, with whom JUSTICE GINSBURG joins as to Part II, dissenting.

The Court's holding today rests largely on the repetition of glittering generalities that have little, if any, application

to the compelling history of the State of Hawaii. When that history is held up against the manifest purpose of the Fourteenth and Fifteenth Amendments, and against two centuries of this Court's federal Indian law, it is clear to me that Hawaii's election scheme should be upheld.

## I

According to the terms of the federal Act by which Hawaii was admitted to the Union, and to the terms of that State's Constitution and laws, the Office of Hawaiian Affairs (OHA) is charged with managing vast acres of land held in trust for the descendants of the Polynesians who occupied the Hawaiian Islands before the 1778 arrival of Captain Cook. In addition to administering the proceeds from these assets, OHA is responsible for programs providing special benefits for native Hawaiians. Established in 1978 by an amendment to the State Constitution, OHA was intended to advance multiple goals: to carry out the duties of the trust relationship between the islands' indigenous peoples and the Government of the United States; to compensate for past wrongs to the ancestors of these peoples; and to help preserve the distinct, indigenous culture that existed for centuries before Cook's arrival. As explained by the senior Senator from Hawaii, Senator Inouye, who is not himself a native Hawaiian but rather (like petitioner) is a member of the majority of Hawaiian voters who supported the 1978 amendments, the amendments reflect "an honest and sincere attempt on the part of the people of Hawai'i to rectify the wrongs of the past, and to put into being the mandate [of] our Federal government—the betterment of the conditions of Native Hawaiians."[1]

[1] App. E to Brief for Hawai'i Congressional Delegation as *Amicus Curiae* E–3. In a statement explaining the cultural motivation for the amendments, Senator Akaka pointed out that the "fact that the entire State of Hawai'i voted to amend the State Constitution in 1978 to establish the Office of Hawaiian Affairs is significant because it illustrates the recognition of the importance of Hawaiian culture and traditions as the foundation for the *Aloha* spirit." *Id.*, at E–5.

Today the Court concludes that Hawaii's method of electing the trustees of OHA violates the Fifteenth Amendment. In reaching that conclusion, the Court has assumed that the programs administered by OHA are valid. That assumption is surely correct. In my judgment, however, the reasons supporting the legitimacy of OHA and its programs in general undermine the basis for the Court's decision holding its trustee election provision invalid. The OHA election provision violates neither the Fourteenth Amendment nor the Fifteenth.

That conclusion is in keeping with three overlapping principles. First, the Federal Government must be, and has been, afforded wide latitude in carrying out its obligations arising from the special relationship it has with the aboriginal peoples, a category that includes the native Hawaiians, whose lands are now a part of the territory of the United States. In addition, there exists in this case the State's own fiduciary responsibility—arising from its establishment of a public trust—for administering assets granted it by the Federal Government in part for the benefit of native Hawaiians. Finally, even if one were to ignore the more than two centuries of Indian law precedent and practice on which this case follows, there is simply no invidious discrimination present in this effort to see that indigenous peoples are compensated for past wrongs, and to preserve a distinct and vibrant culture that is as much a part of this Nation's heritage as any.

## II

Throughout our Nation's history, this Court has recognized both the plenary power of Congress over the affairs of Native Americans [2] and the fiduciary character of the special

[2] See, *e. g.*, *Alaska* v. *Native Village of Venetie Tribal Government*, 522 U. S. 520, 531, n. 6 (1998); *United States* v. *Wheeler*, 435 U. S. 313, 319 (1978); *United States* v. *Antelope*, 430 U. S. 641, 645 (1977); *Morton* v. *Mancari*, 417 U. S. 535, 551 (1974); *Lone Wolf* v. *Hitchcock*, 187 U. S. 553, 564–565 (1903); *United States* v. *Kagama*, 118 U. S. 375 (1886).

federal relationship with descendants of those once sovereign peoples.[3] The source of the Federal Government's responsibility toward the Nation's native inhabitants, who were subject to European and then American military conquest, has been explained by this Court in the crudest terms, but they remain instructive nonetheless.

> "These Indian tribes *are* the wards of the nation. They are communities *dependent* on the United States. Dependent largely for their daily food. Dependent for their political rights. . . . From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and by this court, whenever the question has arisen." *United States* v. *Kagama*, 118 U. S. 375, 383–384 (1886) (emphasis in original).

As our cases have consistently recognized, Congress' plenary power over these peoples has been exercised time and again to implement a federal duty to provide native peoples with special "'care and protection.'"[4] With respect to the Pueblos in New Mexico, for example, "public moneys have been expended in presenting them with farming implements and utensils, and in their civilization and instruction." *United States* v. *Sandoval*, 231 U. S. 28, 39–40 (1913). Today, the Federal Bureau of Indian Affairs (BIA) administers countless modern programs responding to comparably pragmatic concerns, including health, education, housing, and impoverishment. See Office of the Federal Register, United States Government Manual 1999/2000, pp. 311–312. Federal regulation in this area is not limited to the strictly practical

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[3] See, *e. g.*, *United States* v. *Sandoval*, 231 U. S. 28 (1913); *Kagama*, 118 U. S., at 384–385; *Cherokee Nation* v. *Georgia*, 5 Pet. 1 (1831).

[4] *Sandoval*, 231 U. S., at 45; *Kagama*, 118 U. S., at 384–385.

but has encompassed as well the protection of cultural values; for example, the desecration of Native American graves and other sacred sites led to the passage of the Native American Graves Protection and Repatriation Act, 25 U. S. C. § 3001 *et seq.*

Critically, neither the extent of Congress' sweeping power nor the character of the trust relationship with indigenous peoples has depended on the ancient racial origins of the people, the allotment of tribal lands,[5] the coherence or existence of tribal self-government,[6] or the varying definitions of "Indian" Congress has chosen to adopt.[7] Rather, when it comes to the exercise of Congress' plenary power in Indian affairs, this Court has taken account of the "numerous occasions" on which "legislation that singles out Indians for particular and special treatment" has been upheld, and has concluded that as "long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation

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[5] See, *e. g.*, *United States* v. *Celestine*, 215 U. S. 278, 286–287 (1909).

[6] See *United States* v. *John*, 437 U. S. 634, 653 (1978) ("Neither the fact that the Choctaws in Mississippi are merely a remnant of a larger group of Indians, long ago removed from Mississippi, nor the fact that federal supervision over them has not been continuous, destroys the federal power to deal with them"); *Delaware Tribal Business Comm.* v. *Weeks*, 430 U. S. 73, 82, n. 14, 84–85 (1977) (whether or not federal statute providing financial benefits to descendants of Delaware Tribe included nontribal Indian beneficiaries, Congress' choice need only be "'tied rationally to the fulfillment of Congress' unique obligation toward the Indians'" (quoting *Morton* v. *Mancari*, 417 U. S., at 555)).

[7] See generally F. Cohen, Handbook of Federal Indian Law 19–20 (1982). Compare 25 U. S. C. § 479 ("The term 'Indian' as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians") with § 1603(c)(3) (Indian is any person "considered by the Secretary of the Interior to be an Indian for any purpose").

towards the Indians, such legislative judgments will not be disturbed." *Morton* v. *Mancari*, 417 U. S. 535, 554–555 (1974).

As the history recited by the majority reveals, the grounds for recognizing the existence of federal trust power here are overwhelming. Shortly before its annexation in 1898, the Republic of Hawaii (installed by United States merchants in a revolution facilitated by the United States Government) expropriated some 1.8 million acres of land that it then ceded to the United States. In the Organic Act establishing the Territory of Hawaii, Congress provided that those lands should remain under the control of the territorial government "until otherwise provided for by Congress," Act of Apr. 30, 1900, ch. 339, § 91, 31 Stat. 159. By 1921, Congress recognized that the influx of foreign infectious diseases, mass immigration coupled with poor housing and sanitation, hunger, and malnutrition had taken their toll. See *ante*, at 506. Confronted with the reality that the Hawaiian people had been "frozen out of their lands and driven into the cities," H. R. Rep. No. 839, 66th Cong., 2d Sess., 4 (1920), Congress decided that 27 specific tracts of the lands ceded in 1898, comprising about 203,500 acres, should be used to provide farms and residences for native Hawaiians. Act of July 9, 1921, ch. 42, 42 Stat. 108. Relying on the precedent of previous federal laws granting Indians special rights in public lands, Congress created the Hawaiian Homes Commission to implement its goal of rehabilitating the native people and culture.[8] Hawaii was required to adopt this Act as a condi-

[8] See H. R. Rep. No. 839, 66th Cong., 2d Sess., 4, 11 (1920). Reflecting a compromise between the sponsor of the legislation, who supported special benefits for "all who have Hawaiian blood in their veins," and plantation owners who thought that only "Hawaiians of the pure blood" should qualify, Hawaiian Homes Commission Act: Hearings before the Senate Committee on the Territories, H. R. Rep. No. 13500, 66th Cong., 3d Sess., 14–17 (1920), the statute defined a "native Hawaiian" as "any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778," 42 Stat. 108.

tion of statehood in the Hawaii Statehood Admissions Act (Admissions Act), § 4, 73 Stat. 5. And in an effort to secure the Government's duty to the indigenous peoples, § 5 of the Admissions Act conveyed 1.2 million acres of land to the State to be held in trust "for the betterment of the conditions of native Hawaiians" and certain other public purposes. § 5(f), *id.*, at 6.

The nature of and motivation for the special relationship between the indigenous peoples and the United States Government was articulated in explicit detail in 1993, when Congress adopted a Joint Resolution containing a formal "apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii." 107 Stat. 1510. Among other acknowledgments, the resolution stated that the 1.8 million acres of ceded lands had been obtained "without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government." *Id.*, at 1512.

In the end, however, one need not even rely on this official apology to discern a well-established federal trust relationship with the native Hawaiians. Among the many and varied laws passed by Congress in carrying out its duty to indigenous peoples, more than 150 today expressly include native Hawaiians as part of the class of Native Americans benefited.[9] By classifying native Hawaiians as "Native Americans" for purposes of these statutes, Congress has made clear that native Hawaiians enjoy many of "the same rights and privileges accorded to American Indian, Alaska

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[9] See Brief for Hawai'i Congressional Delegation as *Amicus Curiae* 7, and App. A; see also, *e. g.*, American Indian Religious Freedom Act, 42 U. S. C. § 1996 *et seq.;* Native American Programs Act of 1974, 42 U. S. C. §§ 2991–2992; Comprehensive Employment and Training Act, 29 U. S. C. § 872; Drug Abuse Prevention, Treatment, and Rehabilitation Act, 21 U. S. C. § 1177; Cranston-Gonzalez National Affordable Housing Act, § 958, 104 Stat. 4422; Indian Health Care Amendments of 1988, 25 U. S. C. § 1601 *et seq.*

Native, Eskimo, and Aleut communities." 42 U. S. C. § 11701(19). See also § 11701(17) ("The authority of the Congress under the United States Constitution to legislate in matters affecting the aboriginal or indigenous peoples of the United States includes the authority to legislate in matters affecting the native peoples of . . . Hawaii").

While splendidly acknowledging this history—specifically including the series of agreements and enactments the history reveals—the majority fails to recognize its import. The descendants of the native Hawaiians share with the descendants of the Native Americans on the mainland or in the Aleutian Islands not only a history of subjugation at the hands of colonial forces, but also a purposefully created and specialized "guardian-ward" relationship with the Government of the United States. It follows that legislation targeting the native Hawaiians must be evaluated according to the same understanding of equal protection that this Court has long applied to the Indians on the continental United States: that "special treatment . . . be tied rationally to the fulfillment of Congress' unique obligation" toward the native peoples. 417 U. S., at 555.

Declining to confront the rather simple logic of the foregoing, the majority would seemingly reject the OHA voting scheme for a pair of different reasons. First, Congress' trust-based power is confined to dealings with tribes, not with individuals, and no tribe or indigenous sovereign entity is found among the native Hawaiians. *Ante*, at 518–520. Second, the elections are "elections of the State," not of a tribe, and upholding this law would be "to permit a State, by racial classification, to fence out whole classes of citizens from decisionmaking in critical state affairs." *Ante*, at 522. In my view, neither of these reasons overcomes the otherwise compelling similarity, fully supported by our precedent, between the once subjugated, indigenous peoples of the continental United States and the peoples of the Hawaiian

Islands whose historical sufferings and status parallel those of the continental Native Americans.

Membership in a tribe, the majority suggests, rather than membership in a race or class of descendants, has been the *sine qua non* of governmental power in the realm of Indian law; *Mancari* itself, the majority contends, makes this proposition clear. *Ante*, at 519–520. But as scholars have often pointed out, tribal membership cannot be seen as the decisive factor in this Court's opinion upholding the BIA preferences in *Mancari;* the hiring preference at issue in that case not only extended to nontribal member Indians, it also required for eligibility that ethnic Native Americans possess a certain quantum of Indian blood.[10] Indeed, the Federal Government simply has not been limited in its special dealings with the native peoples to laws affecting tribes or tribal Indians alone. See nn. 6, 7, *supra.* In light of this precedent, it is a painful irony indeed to conclude that native Hawaiians are not entitled to special benefits designed to restore a measure of native self-governance because they currently lack any vestigial native government—a possibility of which history and the actions of this Nation have deprived them.[11]

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[10] See, *e. g.,* Frickey, Adjudication and its Discontents: Coherence and Conciliation in Federal Indian Law, 110 Harv. L. Rev. 1754, 1761–1762 (1997). As is aptly explained, the BIA preference in that case was based on a statute that extended the preference to ethnic Indians—identified by blood quantum—who were not members of federally recognized tribes. 25 U. S. C. § 479. Only the implementing regulation included a mention of tribal membership, but even that regulation required that the tribal member also "'be one-fourth or more degree Indian blood.'" *Mancari,* 417 U. S., at 553, n. 24.

[11] JUSTICE BREYER suggests that the OHA definition of native Hawaiians (*i. e.,* Hawaiians who may vote under the OHA scheme) is too broad to be "reasonable." *Ante,* at 527 (opinion concurring in result). This suggestion does not identify a constitutional defect. The issue in this case is *Congress'* power to define who counts as an indigenous person, and *Congress'* power to delegate to States its special duty to persons so defined. (JUSTICE BREYER's interest in *tribal* definitions of membership—and in

Of greater concern to the majority is the fact that we are confronted here with a state constitution and legislative enactment—passed by a majority of the entire population of Hawaii—rather than a law passed by Congress or a tribe itself. See, *e. g.*, *ante*, at 519–522. But as our own precedent makes clear, this reality does not alter our analysis. As I have explained, OHA and its trustee elections can hardly be characterized simply as an "affair of the State" alone; they are the instruments for implementing the Fed-

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this Court's holding that tribes' power to define membership is at the core of tribal sovereignty and thus "unconstrained by those constitutional provisions framed specifically as limitations on federal or state authority," *Santa Clara Pueblo* v. *Martinez*, 436 U. S. 49, 56 (1978)—is thus inapposite.) Nothing in federal law or in our Indian law jurisprudence suggests that the OHA definition of native is anything but perfectly within that power as delegated. See *supra*, at 531–534, and nn. 6–7. Indeed, the OHA voters match precisely the set of people to whom the congressional apology was targeted.

Federal definitions of "Indian" often rely on the ability to trace one's ancestry to a particular group at a particular time. See, *e. g.*, 25 CFR, ch. 1, § 5.1 (1999) (extending BIA hiring preference to "persons of Indian descent who are . . . (b) [d]escendants of such [tribal] members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation"); see also n. 7, *supra*. It can hardly be correct that once 1934 is two centuries past, rather than merely 66 years past, this classification will cease to be "reasonable." The singular federal statute defining "native" to which JUSTICE BREYER points, 43 U. S. C. § 1602(b) (including those defined by blood quantum without regard to membership in any group), serves to underscore the point that membership in a "tribal" structure *per se*, see *ante*, at 525, is not the acid test for the exercise of federal power in this arena. See R. Clinton, N. Newton, & M. Price, American Indian Law 1054–1058 (3d ed. 1991) (describing provisions of the Alaska Native Claims Settlement Act creating geographic regions of natives with common heritage and interest, 43 U. S. C. § 1606, requiring those regions to organize a native corporation in order to qualify for settlement benefits, § 1607, and establishing the Alaska Native Fund of federal moneys to be distributed to "enrolled natives," §§ 1604–1605); see also *supra*, at 535, and n. 10. In the end, what matters is that the determination of indigenous status or "real group membership," *ante*, at 526 (BREYER, J., concurring in result), is one to be made by Congress—not by this Court.

eral Government's trust relationship with a once sovereign indigenous people. This Court has held more than once that the federal power to pass laws fulfilling the federal trust relationship with the Indians may be delegated to the States. Most significant is our opinion in *Washington* v. *Confederated Bands and Tribes of Yakima Nation*, 439 U. S. 463, 500–501 (1979), in which we upheld against a Fourteenth Amendment challenge a state law assuming jurisdiction over Indian tribes within a State. While we recognized that States generally do not have the same special relationship with Indians that the Federal Government has, we concluded that because the state law was enacted "in response to a federal measure" intended to achieve the result accomplished by the challenged state law, the state law itself need only "'rationally further the purpose identified by the State.'" *Id.*, at 500 (quoting *Massachusetts Bd. of Retirement* v. *Murgia*, 427 U. S. 307, 314 (1976) *(per curiam)*).

The state statutory and constitutional scheme here was without question intended to implement the express desires of the Federal Government. The Admissions Act in § 4 mandated that the provisions of the Hawaiian Homes Commission Act "shall be adopted," with its multiple provisions expressly benefiting native Hawaiians and not others. 73 Stat. 5. More, the Admissions Act required that the proceeds from the lands granted to the State "shall be held by said State as a public trust for . . . the betterment of the conditions of native Hawaiians," and that those proceeds "shall be managed and disposed of . . . in such manner as the constitution and laws of said State may provide, and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States." § 5, *id.*, at 6. The terms of the trust were clear, as was the discretion granted to the State to administer the trust as the State's laws "may provide." And Congress continues to fund OHA on the understanding that it is thereby furthering the federal trust obligation.

The sole remaining question under *Mancari* and *Yakima* is thus whether the State's scheme "rationally further[s] the purpose identified by the State." Under this standard, as with the BIA preferences in *Mancari*, the OHA voting requirement is certainly reasonably designed to promote "self-government" by the descendants of the indigenous Hawaiians, and to make OHA "more responsive to the needs of its constituent groups." *Mancari*, 417 U. S., at 554. The OHA statute provides that the agency is to be held "separate" and "independent of the [State] executive branch," Haw. Rev. Stat. § 10–4 (1993); OHA executes a trust, which, by its very character, must be administered for the benefit of Hawaiians and native Hawaiians, §§ 10–2, 10–3(1), 10–13.5; and OHA is to be governed by a board of trustees that will reflect the interests of the trust's native Hawaiian beneficiaries, Haw. Const., Art. XII, § 5 (1993); Haw. Rev. Stat. § 13D–3(b) (1993). OHA is thus "directed to participation by the governed in the governing agency." *Mancari*, 417 U. S., at 554. In this respect among others, the requirement is "reasonably and directly related to a legitimate, nonracially based goal." *Ibid.*

The foregoing reasons are to me more than sufficient to justify the OHA trust system and trustee election provision under the Fourteenth Amendment.

## III

Although the Fifteenth Amendment tests the OHA scheme by a different measure, it is equally clear to me that the trustee election provision violates neither the letter nor the spirit of that Amendment.[12]

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[12] Just as one cannot divorce the Indian law context of this case from an analysis of the OHA scheme under the Fourteenth Amendment, neither can one pretend that this law fits simply within our non-Indian cases under the Fifteenth Amendment. As the preceding discussion of *Mancari* and our other Indian law cases reveals, this Court has never understood laws relating to indigenous peoples simply as legal classifications defined by

Section 1 of the Fifteenth Amendment provides:

> "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." U. S. Const., Amdt. 15.

As the majority itself must tacitly admit, *ante,* at 513–514, the terms of the Amendment itself do not here apply. The OHA voter qualification speaks in terms of ancestry and current residence, not of race or color. OHA trustee voters must be "Hawaiian," meaning "any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples have thereafter continued to reside in Hawaii." Haw. Rev. Stat. § 10–2 (1993). The ability to vote is a function of the lineal *descent* of a modern-day resident of Hawaii, not the blood-based characteristics of that resident, or of the blood-based proximity of that resident to the "peoples" from whom that descendant arises.

The distinction between ancestry and race is more than simply one of plain language. The ability to trace one's ancestry to a particular progenitor at a single distant point in time may convey no information about one's own apparent or acknowledged race today. Neither does it of necessity imply one's own identification with a particular race, or the exclusion of any others "*on account of race.*" The terms manifestly carry distinct meanings, and ancestry was not included by the Framers in the Amendment's prohibitions.

Presumably recognizing this distinction, the majority relies on the fact that "[a]ncestry can be a proxy for race." *Ante,* at 514. That is, of course, true, but it by no means

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race. Even where, unlike here, blood quantum requirements are express, this Court has repeatedly acknowledged that an overlapping political interest predominates. It is only by refusing to face this Court's entire body of Indian law, see *ante,* at 511–512, that the majority is able to hold that the OHA qualification denies non-"Hawaiians" the right to vote "on account of race."

follows that ancestry is always a proxy for race. Cases in which ancestry served as such a proxy are dramatically different from this one. For example, the literacy requirement at issue in *Guinn* v. *United States*, 238 U. S. 347 (1915), relied on such a proxy. As part of a series of blatant efforts to exclude blacks from voting, Oklahoma exempted from its literacy requirement people whose ancestors were entitled to vote prior to the enactment of the Fifteenth Amendment. The *Guinn* scheme patently "served only to perpetuate . . . old [racially discriminatory voting] laws and to effect a transparent racial exclusion." *Ante*, at 513. As in *Guinn*, the voting laws held invalid under the Fifteenth Amendment in all of the cases cited by the majority were fairly and properly viewed through a specialized lens—a lens honed in specific detail to reveal the realities of time, place, and history behind the voting restrictions being tested.

That lens not only fails to clarify, it fully obscures the realities of this case, virtually the polar opposite of the Fifteenth Amendment cases on which the Court relies. In *Terry* v. *Adams*, 345 U. S. 461 (1953), for example, the Court held that the Amendment proscribed the Texas "Jaybird primaries" that used neutral voting qualifications "with a single proviso—Negroes are excluded," *id.*, at 469. Similarly, in *Smith* v. *Allwright*, 321 U. S. 649, 664 (1944), it was the blatant "discrimination against Negroes" practiced by a political party that was held to be state action within the meaning of the Amendment. Cases such as these that "strike down these voting systems . . . designed to exclude one racial class (at least) from voting," *ante*, at 513–514, have no application to a system designed to empower politically the remaining members of a class of once sovereign, indigenous people.

Ancestry surely can be a proxy for race, or a pretext for invidious racial discrimination. But it is simply neither proxy nor pretext here. All of the persons who are eligible to vote for the trustees of OHA share two qualifications that no other person old enough to vote possesses: They are bene-

ficiaries of the public trust created by the State and administered by OHA, and they have at least one ancestor who was a resident of Hawaii in 1778. A trust whose terms provide that the trustees shall be elected by a class including beneficiaries is hardly a novel concept. See 2 A. Scott & W. Fratcher, Law of Trusts § 108.3 (4th ed. 1987). The Committee that drafted the voting qualification explained that the trustees here should be elected by the beneficiaries because "people to whom assets belong should have control over them . . . . The election of the board will enhance representative governance and decision-making accountability and, as a result, strengthen the fiduciary relationship between the board member, as trustee, and the native Hawaiian, as beneficiary."[13] The described purpose of this aspect of the classification thus exists wholly apart from race. It is directly focused on promoting both the delegated federal mandate, and the terms of the State's own trustee responsibilities.

The majority makes much of the fact that the OHA trust—which it assumes is legitimate—should be read as principally intended to benefit the smaller class of "native Hawaiians," who are defined as at least one-half descended from a native islander circa 1778, Haw. Rev. Stat. § 10–2 (1993), not the larger class of "Hawaiians," which includes "any descendant" of those aboriginal people who lived in Hawaii in 1778 and "which peoples thereafter have continued to reside in Hawaii," *ibid.* See *ante*, at 523. It is, after all, the majority notes, the larger class of Hawaiians that enjoys the suffrage right in OHA elections. There is therefore a mismatch in interest alignment between the trust beneficiaries and the trustee electors, the majority contends, and it thus cannot be said that the class of qualified voters here is defined solely by beneficiary status.

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[13] 1 Proceedings of the Constitutional Convention of Hawaii of 1978, Standing Committee Rep. No. 59, p. 644.

While that may or may not be true depending upon the construction of the terms of the trust, there is surely nothing racially invidious about a decision to enlarge the class of eligible voters to include "any descendant" of a 1778 resident of the Islands. The broader category of eligible voters serves quite practically to ensure that, regardless how "dilute" the *race* of native Hawaiians becomes—a phenomenon also described in the majority's lavish historical summary, *ante,* at 506–507—there will remain a voting interest whose ancestors were a part of a political, cultural community, and who have inherited through participation and memory the set of traditions the trust seeks to protect. The putative mismatch only underscores the reality that it cannot be purely a racial interest that either the trust or the election provision seeks to secure; the political and cultural interests served are—unlike *racial* survival—shared by both native Hawaiians and Hawaiians.[14]

[14] Of course, the majority's concern about the absence of alignment becomes salient only if one assumes that something other than a *Mancari*-like political classification is at stake. As this Court has approached cases involving the relationship among the Federal Government, its delegates, and the indigenous peoples—including countless federal definitions of "classes" of Indians determined by blood quantum, see n. 7, *supra*—any "racial" aspect of the voting qualification here is eclipsed by the political significance of membership in a once-sovereign indigenous class.

Beyond even this, the majority's own historical account makes clear that the inhabitants of the Hawaiian Islands whose descendants constitute the instant class are identified and remain significant as much because of culture as because of race. By the time of Cook's arrival, "the Hawaiian people had developed, over the preceding 1,000 years or so, a cultural and political structure . . . well-established traditions and customs and . . . a polytheistic religion." *Ante,* at 500. Prior to 1778, although there "was no private ownership of land," *Hawaii Housing Authority* v. *Midkiff,* 467 U. S. 229, 232 (1984), the native Hawaiians "lived in a highly organized, self-sufficient, subsistence social system based on communal land tenure with a sophisticated language, culture, and religion," 42 U. S. C. § 11701(4). According to Senator Akaka, their society "was steeped in science [and they] honored their *'aina* (land) and environment, and therefore developed methods of irrigation, agriculture, aquaculture, navigation,

Even if one refuses to recognize the beneficiary status of OHA trustee voters entirely,[15] it cannot be said that the ancestry-based voting qualification here simply stands in the

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medicine, fishing and other forms of subsistence whereby the land and sea were efficiently used without waste or damage. Respect for the environment and for others formed the basis of their culture and tradition." App. E to Brief for Hawai'i Congressional Delegation as *Amicus Curiae* E–4. Legends and oral histories passed from one generation to another are reflected in artifacts such as carved images, colorful feathered capes, songs, and dances that survive today. For some, Pele, the God of Fire, still inhabits the crater of Kilauea, and the word of the Kahuna is still law. It is this culture, rather than the Polynesian race, that is uniquely Hawaiian and in need of protection.

[15] JUSTICE BREYER's even broader contention that "there is no 'trust' for native Hawaiians here," *ante*, at 525, appears to make the greater mistake of conflating the public trust established by Hawaii's Constitution and laws, see *supra*, at 537, with the "trust" relationship between the Federal Government and the indigenous peoples. According to JUSTICE BREYER, the "analogy on which Hawaii's justification must depend," *ante*, at 527, is "destroy[ed]" in part by the fact that OHA is not a trust (in the former sense of a trust) for native Hawaiians alone. Rather than looking to the terms of the public trust itself for this proposition, JUSTICE BREYER relies on the terms of the land conveyance to Hawaii in part of the Admissions Act. But the portion of the trust administered by OHA does not purport to contain in its corpus all 1.2 million acres of federal trust lands set aside for the benefit of all Hawaiians, including native Hawaiians. By its terms, only "[t]wenty per cent of all revenue derived from the public land trust shall be expended by the office for the betterment of the conditions of native Hawaiians." Haw. Rev. Stat. § 10–13.5 (1993). This portion appears to coincide precisely with the one-fifth described purpose of the Admissions Act trust lands to better the conditions of native Hawaiians. Admissions Act § 5(f), 73 Stat. 6. Neither the fact that native Hawaiians have a specific, beneficial interest in only 20% of trust revenues, nor the fact that the portion of the trust administered by OHA is supplemented to varying degrees by nontrust moneys, negates the existence of the trust itself.

Moreover, neither the particular terms of the State's public trust nor the particular source of OHA funding "destroys" the centrally relevant trust "analogy" on which Hawaii relies—that of the relationship between the Federal Government and indigenous Indians on this continent, as compared with the relationship between the Federal Government and indige-

shoes of a classification that would either privilege or penalize "on account of" race. The OHA voting qualification—part of a statutory scheme put in place by democratic vote of a multiracial majority of all state citizens, including those non-"Hawaiians" who are not entitled to vote in OHA trustee elections—appropriately includes every resident of Hawaii having at least one ancestor who lived in the islands in 1778. That is, among other things, the audience to whom the congressional apology was addressed. Unlike a class including only full-blooded Polynesians—as one would imagine were the class strictly defined in terms of race—the OHA election provision *excludes* all full-blooded Polynesians currently residing in Hawaii who are not descended from a 1778 resident of Hawaii. Conversely, unlike many of the old southern voting schemes in which any potential voter with a "taint" of non-Hawaiian blood would be excluded, the OHA scheme excludes no descendant of a 1778 resident because he or she is also part European, Asian, or African as a matter of race. The classification here is thus both too inclusive and not inclusive enough to fall strictly along racial lines.

At pains then to identify at work here a singularly "racial purpose," *ante*, at 515, 517—whatever that might mean, although one might assume the phrase a "proxy" for "racial discrimination"—the majority next posits that "[o]ne of the principal reasons race is treated as a forbidden classification is that it demeans the dignity and worth of a person to be judged by ancestry instead of by his or her own merit and essential qualities." *Ante*, at 517. That is, of course, true when ancestry is the basis for denying or abridging one's right to vote or to share the blessings of freedom. But it is quite wrong to ignore the relevance of ancestry to claims of

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nous Hawaiians in the now United States-owned Hawaiian Islands. That trust relationship—the only trust relevant to the Indian law analogy—includes the power to delegate authority to the States. As we have explained, *supra*, at 531–534, the OHA scheme surely satisfies the established standard for testing an exercise of that power.

an interest in trust property, or to a shared interest in a proud heritage. There would be nothing demeaning in a law that established a trust to manage Monticello and provided that the descendants of Thomas Jefferson should elect the trustees. Such a law would be equally benign, regardless of whether those descendants happened to be members of the same race.[16]

In this light, it is easy to understand why the classification here is not "demeaning" at all, *ante*, at 523, for it is simply not based on the "premise that citizens of a particular race are somehow more qualified than others to vote on certain matters," *ibid.* It is based on the permissible assumption in this context that families with "any" ancestor who lived in Hawaii in 1778, and whose ancestors thereafter continued to live in Hawaii, have a claim to compensation and self-determination that others do not. For the multiracial majority of the citizens of the State of Hawaii to recognize that deep reality is not to demean their own interests but to honor those of others.

It thus becomes clear why the majority is likewise wrong to conclude that the OHA voting scheme is likely to "become the instrument for generating the prejudice and hostility all too often directed against persons whose particular ancestry

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[16] Indeed, "[i]n one form or another, the right to pass on property—to one's family in particular—has been part of the Anglo-American legal system since feudal times." *Hodel* v. *Irving,* 481 U. S. 704, 716 (1987). Even the most minute fractional interests that can be identified after allotted lands are passed through several generations can receive legal recognition and protection. Thus, we held not long ago that inherited shares of parcels allotted to the Sioux in 1889 could not be taken without compensation even though their value was nominal and it was necessary to use a common denominator of 3,394,923,840,000 to identify the size of the smallest interest. *Id.*, at 713–717. Whether it is wise to provide recompense for all of the descendants of an injured class after several generations have come and gone is a matter of policy, but the fact that their interests were acquired by inheritance rather than by assignment surely has no constitutional significance.

is disclosed by their ethnic characteristics and cultural traditions." *Ante*, at 517. The political and cultural concerns that motivated the nonnative majority of Hawaiian voters to establish OHA reflected an interest in preserving through the self-determination of a particular people ancient traditions that they value. The fact that the voting qualification was established by the entire electorate in the State—the vast majority of which is not native Hawaiian—testifies to their judgment concerning the Court's fear of "prejudice and hostility" against the majority of state residents who are not "Hawaiian," such as petitioner. Our traditional understanding of democracy and voting preferences makes it difficult to conceive that the majority of the State's voting population would have enacted a measure that discriminates against, or in any way represents prejudice and hostility toward, that self-same majority. Indeed, the best insurance against that danger is that the electorate here retains the power to revise its laws.

## IV

The Court today ignores the overwhelming differences between the Fifteenth Amendment case law on which it relies and the unique history of the State of Hawaii. The former recalls an age of abject discrimination against an insular minority in the old South; the latter at long last yielded the "political consensus" the majority claims it seeks, *ante*, at 524—a consensus determined to recognize the special claim to self-determination of the indigenous peoples of Hawaii. This was the considered and correct view of the District Judge for the United States District Court for the District of Hawaii, as well as the three Circuit Judges on the Court of Appeals for the Ninth Circuit.[17] As Judge Rymer explained:

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[17] Indeed, the record indicates that none of the 20-plus judges on the Ninth Circuit to whom the petition for rehearing en banc was circulated even requested a vote on the petition. App. to Pet. for Cert. 44a.

"The special election for trustees is not equivalent to a general election, and the vote is not for officials who will perform general governmental functions in either a representative or executive capacity. . . . Nor does the limitation in these circumstances suggest that voting eligibility was designed to exclude persons who would otherwise be interested in OHA's affairs. . . . Rather, it reflects the fact that the trustees' fiduciary responsibilities run only to native Hawaiians and Hawaiians and 'a board of trustees chosen from among those who are interested parties would be the best way to insure proper management and adherence to the needed fiduciary principles.'[18] The challenged part of Hawaii law was not contrived to keep non-Hawaiians from voting in general, or in any respect pertinent to their legal interests. Therefore, we cannot say that [petitioner's] right to vote has been denied or abridged in violation of the Fifteenth Amendment.

"[18] 1 Proceedings of the Constitutional Convention of Hawaii of 1978, Standing Comm. Rep. No. 59 at 644. The Committee reporting on Section 5, establishing OHA, further noted that trustees should be so elected because 'people to whom assets belong should have control over them. . . . The election of the board will enhance representative governance and decision-making accountability and, as a result, strengthen the fiduciary relationship between the board member, as trustee, and the native Hawaiian, as beneficiary.' *Id.*"

146 F. 3d 1075, 1081–1082 (CA9 1998).

In my judgment, her reasoning is far more persuasive than the wooden approach adopted by the Court today.

Accordingly, I respectfully dissent.

JUSTICE GINSBURG, dissenting.

I dissent essentially for the reasons stated by JUSTICE STEVENS in Part II of his dissenting opinion. *Ante,* at 529–538 (relying on established federal authority over Native

Americans). Congress' prerogative to enter into special trust relationships with indigenous peoples, *Morton* v. *Mancari*, 417 U. S. 535 (1974), as JUSTICE STEVENS cogently explains, is not confined to tribal Indians. In particular, it encompasses native Hawaiians, whom Congress has in numerous statutes reasonably treated as qualifying for the special status long recognized for other once-sovereign indigenous peoples. See *ante*, at 533–534, and n. 9 (STEVENS, J., dissenting). That federal trust responsibility, both the Court and JUSTICE STEVENS recognize, has been delegated by Congress to the State of Hawaii. Both the Office of Hawaiian Affairs and the voting scheme here at issue are "tied rationally to the fulfillment" of that obligation. See *Mancari*, 417 U. S., at 555. No more is needed to demonstrate the validity of the Office and the voting provision under the Fourteenth and Fifteenth Amendments.

Syllabus

# ROTELLA *v.* WOOD ET AL.

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

No. 98–896. Argued November 3, 1999—Decided February 23, 2000

Petitioner Rotella was admitted to a private psychiatric facility in 1985 and discharged in 1986. In 1994, the facility's parent company and one of its directors pleaded guilty to criminal fraud related to improper relationships and illegal agreements between the company and its doctors. Rotella learned of the plea that same year, and in 1997 he filed a civil damages action under the Racketeer Influenced and Corrupt Organizations Act (RICO), claiming that respondents, doctors and related business entities, had conspired to keep him hospitalized to maximize their profits. RICO makes it criminal "to conduct" an "enterprise's affairs through a pattern of racketeering activity," 18 U. S. C. § 1962(c). A "pattern" requires at least two acts of racketeering activity, the last of which occurred within 10 years after the commission of a prior act. § 1961(5). A person injured by a RICO violation may bring a civil RICO action. § 1964(c). The District Court granted respondents summary judgment on the ground that the 4-year limitations period for civil RICO claims, see *Agency Holding Corp.* v. *Malley-Duff & Associates, Inc.*, 483 U. S. 143, 156, had expired in 1990, four years after Rotella admitted discovering his injury. In affirming, the Fifth Circuit rejected Rotella's argument that the limitations period does not begin to run until a plaintiff discovers (or should have discovered) both the injury and the pattern of racketeering activity.

*Held:* The "injury and pattern discovery" rule invoked by Rotella does not govern the start of the limitations period for civil RICO claims. Pp. 553–561.

(a) In *Malley-Duff*, this Court based its choice of a uniform 4-year statute of limitations period for civil RICO on a Clayton Act analogy, but did not decide when the period began to run. In *Malley-Duff*'s wake, some Circuits, like the Fifth, applied an injury discovery accrual rule starting the clock when a plaintiff knew or should have known of his injury, while others applied the injury and pattern discovery rule that Rotella seeks. This Court has rejected the Third Circuit's "last predicate act" rule, *Klehr* v. *A. O. Smith Corp.*, 521 U. S. 179, and now eliminates another possibility. Pp. 553–554.

(b) The injury and pattern discovery rule is unsound for a number of reasons. It would extend the potential limitations period for most civil

Syllabus

RICO cases well beyond the time when a plaintiff's cause of action is complete. Under a provision recognizing the possibility of predicate acts 10 years apart, even an injury occurrence rule unsoftened by a discovery feature could in theory open the door to proof of predicate acts occurring 10 years before injury and 14 years before commencement of suit. A pattern discovery rule would allow proof even more remote from time of trial and, hence, litigation even more at odds with the basic policies of all limitations provisions: repose, elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities. See, *e. g., Klehr, supra,* at 187. In the circumstance of medical malpractice, where the cry for a discovery rule is loudest, the Court has been emphatic that the justification for such a rule does not extend beyond the injury. *United States* v. *Kubrick,* 444 U. S. 111, 122. A person suffering from inadequate treatment is thus responsible for determining within the limitations period then running whether the inadequacy was malpractice. There is no good reason for accepting a lesser degree of responsibility on a RICO plaintiff's part. The fact, as Rotella notes, that identifying a pattern in civil RICO may require considerable effort does not place a RICO plaintiff in a significantly different position from the malpractice victim, who may be thwarted by ignorance of the details of treatment decisions or of prevailing medical practice standards. This Court has also recognized that the connection between fraud and civil RICO is an insufficient ground for recognizing a limitations period beyond four years, *Malley-Duff, supra,* at 149, and adopting Rotella's lenient rule would amount to backtracking from *Malley-Duff.* Rotella's less demanding discovery rule would also clash with the limitations imposed on Clayton Act suits. There is a clear legislative record of congressional reliance on the Clayton Act when RICO was under consideration, and the Clayton Act's injury-focused accrual rule was well established by the time civil RICO was enacted. Both statutes share a common congressional objective of encouraging civil litigation not merely to compensate victims but also to turn them into private attorneys general, supplementing Government efforts by undertaking litigation in the public good. The Clayton Act analogy reflects Congress's clear intent to reject a potentially longer basic rule under RICO. Neither of Rotella's two remaining points—that this Court itself has undercut the Clayton Act analogy; and that without a pattern discovery rule, some plaintiffs will be barred from suit by Federal Rule of Civil Procedure 9(b), which requires that fraud be pleaded with particularity—supports adoption of a more protracted basic limitations period. Pp. 555–561.

147 F. 3d 438, affirmed.

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

*Richard P. Hogan, Jr.*, argued the cause for petitioner. With him on the briefs were *Kevin Dubose*, *Richard W. Mithoff*, *Tommy Jacks*, and *Robert F. Andrews*.

*Charles T. Frazier, Jr.*, argued the cause for respondents. With him on the brief were *Debora B. Alsup*, *John H. Martin*, *Tom Renfro*, and *Joseph R. Cleveland, Jr.**

JUSTICE SOUTER delivered the opinion of the Court.

The commencement of petitioner's civil treble-damages action under the Racketeer Influenced and Corrupt Organizations Act (RICO) was timely only if the so-called "injury and pattern discovery" rule governs the start of the 4-year limitations period. We hold that it does not.

## I

In February 1985, petitioner, Mark Rotella, was admitted to the Brookhaven Psychiatric Pavilion with a diagnosis of major depression. *Rotella* v. *Pederson*, 144 F. 3d 892, 894 (CA5 1998). He was discharged in 1986. In 1994, Brookhaven's parent company and one of its directors pleaded guilty to charges of criminal fraud perpetrated through improper relationships and illegal agreements between the company and its doctors. Rotella learned of the plea agreement that same year, and in 1997 he filed a civil RICO claim against respondents, a group of doctors and related business entities, in Federal District Court.[1]

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**Daniel J. Popeo* and *Richard A. Samp* filed a brief for the Washington Legal Foundation et al. as *amici curiae* urging affirmance.

*Philip Allen Lacovara*, *Evan M. Tager*, and *Gary E. Hughes* filed a brief for the American Council of Life Insurance as *amicus curiae*.

[1] Rotella alleged that "a group of doctors and their related business entities . . . improperly conspir[ed] to admit, treat, and retain him at Brookhaven Psychiatric Pavilion for reasons related to their own financial interests rather than the patient's psychiatric condition." 147 F. 3d 438, 439 (CA5 1998). As injuries, he alleged, among other things, confinement

RICO, 18 U. S. C. §§ 1961–1968 (1994 ed. and Supp. III), makes it criminal "to conduct" an "enterprise's affairs through a pattern of racketeering activity," 18 U. S. C. § 1962(c), defined as behavior that violates certain other laws, either enumerated federal statutes or state laws addressing specified topics and bearing specified penalties, 18 U. S. C. § 1961(1) (Supp. III). "Pattern" is also a defined term requiring "at least two acts of racketeering activity . . . , the last of which occurred within ten years . . . after the commission of a prior act of racketeering activity." 18 U. S. C. § 1961(5).

RICO provides for civil actions (like this one) by which "[a]ny person injured in his business or property" by a RICO violation may seek treble damages and attorney's fees. 18 U. S. C. § 1964(c) (Supp. III). Rotella alleged such injury, in that respondents had conspired to admit, treat, and retain him at Brookhaven not for any medical reason but simply to maximize their profits. Respondents raised the statute of limitations as a defense and sought summary judgment on the ground that the period for bringing the civil action had expired before Rotella sued.

*Agency Holding Corp.* v. *Malley-Duff & Associates, Inc.*, 483 U. S. 143, 156 (1987), established a 4-year limitations period for civil RICO claims. The District Court held that the period began when Rotella discovered his injury, which he concedes he did in 1986 at the latest. 147 F. 3d 438, 439 (CA5 1998). Under this "injury discovery" rule, the limitations period expired in 1990, and the District Court accordingly ordered summary judgment for respondents. Rotella appealed to the Fifth Circuit, arguing that the RICO limitations period does not begin to run until the plaintiff discovers (or should have discovered) both the injury and the pattern

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for an excessive period because of the conspiracy to draw down his and other patients' insurance coverage, loss of a number of personal items, and fraudulent charges for unnecessary treatment. Brief for Petitioner 3; App. 20–24.

of racketeering activity. After the Fifth Circuit ruled against him, *ibid.*, we granted certiorari to address a split of authority among the Courts of Appeals on whether the limitations period is triggered in accordance with the "injury and pattern discovery" rule invoked by Rotella. 526 U. S. 1003 (1999). We now affirm.

## II

Given civil RICO's want of any express limitations provision for civil enforcement actions, in *Malley-Duff* we undertook to derive one and determined that the limitations period should take no account of differences among the multifarious predicate acts of racketeering activity covered by the statute. Although we chose a uniform 4-year period on a Clayton Act analogy, § 4B, as added, 69 Stat. 283, 15 U. S. C. § 15b, we did not decide when the period began to run, and the question has divided the Courts of Appeals.

Three distinct approaches emerged in the wake of *Malley-Duff*. Some Circuits, like the Fifth in this case, applied an injury discovery accrual rule starting the clock when a plaintiff knew or should have known of his injury. See, *e. g.*, *Grimmett* v. *Brown*, 75 F. 3d 506, 511 (CA9 1996); *McCool* v. *Strata Oil Co.*, 972 F. 2d 1452, 1464–1465 (CA7 1992); *Rodriguez* v. *Banco Central Corp.*, 917 F. 2d 664, 665–666 (CA1 1990); *Bankers Trust Co.* v. *Rhoades*, 859 F. 2d 1096, 1102 (CA2 1988); *Pocahontas Supreme Coal Co.* v. *Bethlehem Steel Corp.*, 828 F. 2d 211, 220 (CA4 1987).

Some applied the injury and pattern discovery rule that Rotella seeks, under which a civil RICO claim accrues only when the claimant discovers, or should discover, both an injury and a pattern of RICO activity. See, *e. g.*, *Caproni* v. *Prudential Securities, Inc.*, 15 F. 3d 614, 619–620 (CA6 1994); *Granite Falls Bank* v. *Henrikson*, 924 F. 2d 150, 154 (CA8 1991); *Bath* v. *Bushkin, Gaims, Gaines & Jonas*, 913 F. 2d 817, 820–821 (CA10 1990); *Bivens Gardens Office*

*Building, Inc.* v. *Barnett Bank*, 906 F. 2d 1546, 1554–1555 (CA11 1990).

The Third Circuit applied a "last predicate act" rule, see *Keystone Ins. Co.* v. *Houghton*, 863 F. 2d 1125, 1130 (CA3 1988). Under this rule, the period began to run as soon as the plaintiff knew or should have known of the injury and the pattern of racketeering activity, but began to run anew upon each predicate act forming part of the same pattern.

In *Klehr* v. *A. O. Smith Corp.*, 521 U. S. 179 (1997), we cut the possibilities by one in rejecting the last predicate act rule. Since a pattern of predicate acts can continue indefinitely, with each separated by as many as 10 years, that rule might have extended the limitations period to many decades, and so beyond any limit that Congress could have contemplated. See *ibid.* Preserving a right of action for such a vast stretch of time would have thwarted the basic objective of repose underlying the very notion of a limitations period. See *id.*, at 189. The last predicate act rule was likewise at odds with the model for civil RICO, the Clayton Act, under which "[g]enerally, a cause of action accrues and the statute begins to run when a defendant commits an act that injures a plaintiff's business." *Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 401 U. S. 321, 338 (1971); *Klehr*, *supra*, at 188.

The decision in *Klehr* left two candidates favored by various Courts of Appeals: some form of the injury discovery rule (preferred by a majority of Circuits to have considered it), and the injury and pattern discovery rule. Today, guided by principles enunciated in *Klehr*, we eliminate the latter.[2]

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[2] We do not, however, settle upon a final rule. In addition to the possibilities entertained in the Courts of Appeals, JUSTICE SCALIA has espoused an "injury occurrence" rule, under which discovery would be irrelevant, *Klehr* v. *A. O. Smith Corp.*, 521 U. S. 179, 198 (1997) (opinion concurring in part and concurring in judgment), and our decision in *Klehr* leaves open the possibility of a straight injury occurrence rule. *Amicus* American Council of Life Insurance urges us to adopt this injury occurrence rule in this case, see Brief for American Council of Life Insurance

## III

We think the minority injury and pattern discovery rule unsound for a number of reasons. We start with the realization that under the provision recognizing the possibility of finding a pattern of racketeering in predicate acts 10 years apart, even an injury occurrence rule unsoftened by a discovery feature could in theory open the door to proof of predicate acts occurring 10 years before injury and 14 before commencement of litigation. A pattern discovery rule would allow proof of a defendant's acts even more remote from time of trial and, hence, litigation even more at odds with the basic policies of all limitations provisions: repose, elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities. See, *e. g.*, *Klehr*, *supra*, at 187; *Malley-Duff*, 483 U. S., at 150, 156; *Wilson* v. *Garcia*, 471 U. S. 261, 270, 271 (1985).

How long is too long is, of course, a matter of judgment based on experience, and it gives us great pause that the injury and pattern discovery rule is an extension of the traditional federal accrual rule of injury discovery, and unwarranted by the injury discovery rule's rationale. Federal courts, to be sure, generally apply a discovery accrual rule when a statute is silent on the issue, as civil RICO is here. *Klehr*, *supra*, at 191 (citing *Connors* v. *Hallmark & Son Coal Co.*, 935 F. 2d 336, 342 (CADC 1991), and 1 C. Corman, Limitation of Actions § 6.5.5.1, p. 449 (1991)). But in applying a discovery accrual rule, we have been at pains to explain that discovery of the injury, not discovery of the other elements of a claim, is what starts the clock. In the circumstance of medical malpractice, where the cry for a discovery rule is loudest, we have been emphatic that the justification for a discovery rule does not extend beyond the injury:

> "We are unconvinced that for statute of limitations purposes a plaintiff's ignorance of his legal rights and his

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as *Amicus Curiae* 5–14, but the parties have not focused on this option, and we would not pass upon it without more attentive advocacy.

> ignorance of the fact of his injury or its cause should receive identical treatment. That he has been injured in fact may be unknown or unknowable until the injury manifests itself; and the facts about causation may be in the control of the putative defendant, unavailable to the plaintiff or at least very difficult to obtain. The prospect is not so bleak for a plaintiff in possession of the critical facts that he has been hurt and who has inflicted the injury. He is no longer at the mercy of the latter. There are others who can tell him if he has been wronged, and he need only ask." *United States* v. *Kubrick*, 444 U. S. 111, 122 (1979).

A person suffering from inadequate treatment is thus responsible for determining within the limitations period then running whether the inadequacy was malpractice.

We see no good reason for accepting a lesser degree of responsibility on the part of a RICO plaintiff. It is true, of course, as Rotella points out, that RICO has a unique pattern requirement, see *Malley-Duff, supra,* at 154 ("[T]he heart of any RICO complaint is the allegation of a *pattern* of racketeering"); *H. J. Inc.* v. *Northwestern Bell Telephone Co.*, 492 U. S. 229, 236 (1989) (referring to "RICO's key requirement of a pattern of racketeering"). And it is true as well that a pattern of predicate acts may well be complex, concealed, or fraudulent. But identifying professional negligence may also be a matter of real complexity, and its discovery is not required before the statute starts running. *Kubrick, supra,* at 122, 124. Although we said that the potential malpractice plaintiff "need only ask" if he has been wronged by a doctor, considerable enquiry and investigation may be necessary before he can make a responsible judgment about the actionability of the unsuccessful treatment he received. The fact, then, that a considerable effort may be required before a RICO plaintiff can tell whether a pattern of racketeering is demonstrable does not place him in a significantly different position from the malpractice victim. A RICO plaintiff's

ability to investigate the cause of his injuries is no more impaired by his ignorance of the underlying RICO pattern than a malpractice plaintiff is thwarted by ignorance of the details of treatment decisions or of prevailing standards of medical practice.

Nor does Rotella's argument gain strength from the fact that some patterns of racketeering will include fraud, which is generally associated with a different accrual rule; we have already found the connection between civil RICO and fraud to be an insufficient ground for recognizing a limitations period beyond four years, *Malley-Duff*, *supra*, at 149, and the lenient rule Rotella seeks would amount to backsliding from *Malley-Duff*.

What is equally bad is that a less demanding basic discovery rule than federal law generally applies would clash with the limitations imposed on Clayton Act suits. This is important because, as we have previously noted, there is a clear legislative record of congressional reliance on the Clayton Act when RICO was under consideration, see *Sedima, S. P. R. L.* v. *Imrex Co.*, 473 U. S. 479, 489 (1985), and we have recognized before that the Clayton Act's injury-focused accrual rule was well established by the time civil RICO was enacted. *Klehr*, 521 U. S., at 189. In rejecting a significantly different focus under RICO, therefore, we are honoring an analogy that Congress itself accepted and relied upon, and one that promotes the objectives of civil RICO as readily as it furthers the objects of the Clayton Act. Both statutes share a common congressional objective of encouraging civil litigation to supplement Government efforts to deter and penalize the respectively prohibited practices. The object of civil RICO is thus not merely to compensate victims but to turn them into prosecutors, "private attorneys general," dedicated to eliminating racketeering activity.[3] *Id.*, at 187

[3] This objective of encouraging prompt litigation to combat racketeering is the most obvious answer to Rotella's argument that the injury and pattern discovery rule should be adopted because "RICO is to be read

(citing *Malley-Duff*, 483 U. S., at 151) (civil RICO specifically has a "further purpose [of] encouraging potential private plaintiffs diligently to investigate"). The provision for treble damages is accordingly justified by the expected benefit of suppressing racketeering activity, an object pursued the sooner the better. It would, accordingly, be strange to provide an unusually long basic limitations period that could only have the effect of postponing whatever public benefit civil RICO might realize. The Clayton Act avoids any such policy conflict by its accrual rule that "[g]enerally, a cause of action accrues and the statute begins to run when a defendant commits an act that injures a plaintiff's business," *Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 401 U. S., at 338, and the Clayton Act analogy reflects the clear intent of Congress to reject a potentially longer basic rule under RICO.

In sum, any accrual rule softened by a pattern discovery feature would undercut every single policy we have mentioned. By tying the start of the limitations period to a plaintiff's reasonable discovery of a pattern rather than to the point of injury or its reasonable discovery, the rule would extend the potential limitations period for most civil RICO cases well beyond the time when a plaintiff's cause of action is complete,[4] as this case shows. Rotella does not deny that

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broadly" and "'liberally construed to effectuate its remedial purposes,'" *Sedima, S. P. R. L.* v. *Imrex Co.*, 473 U. S. 479, 497–498 (1985) (quoting Pub. L. 91–452, § 904(a), 84 Stat. 947).

[4] Some Circuits apply injury and pattern discovery out of fear that when the injury precedes a second predicate act, the limitations period might otherwise expire before the pattern is created. *E. g., Granite Falls Bank* v. *Henrikson*, 924 F. 2d 150, 154 (CA8 1991). Respondents argue that this overlooks the cardinal principle that a limitations period does not begin to run until the cause of action is complete. *Rawlings* v. *Ray*, 312 U. S. 96, 98 (1941); see also *United States* v. *Lindsay*, 346 U. S. 568, 569 (1954); *Clark* v. *Iowa City*, 20 Wall. 583, 589 (1875).

The quandary is hypothetical here; Rotella does not dispute that his injury in 1986 completed the elements of his cause of action. Hence, we

he knew of his injury in 1986 when it occurred, or that his civil RICO claim was complete and subject to suit at that time. But under Rotella's rule, the clock would have started only in 1994, when he discovered the pattern of predicate acts (his assumption being that he could not reasonably have been expected to discover them sooner). A limitations period that would have begun to run only eight years after a claim became ripe would bar repose, prove a godsend to stale claims, and doom any hope of certainty in identifying potential liability. Whatever disputes may arise about pinpointing the moment a plaintiff should have discovered an injury to himself would be dwarfed by the controversy inherent in divining when a plaintiff should have discovered a racketeering pattern that might well be complex, concealed or fraudulent, and involve harm to parties wholly unrelated to an injured plaintiff. The fact, as Rotella notes, that difficulty in identifying a pattern is inherent in civil RICO, see *H. J. Inc.*, 492 U. S., at 235, n. 2 (collecting cases), only reinforces our reluctance to parlay the necessary complexity of RICO into worse trouble in applying its limitations rule. Cf. *Wilson*, 471 U. S., at 270 (discussing need for firmly defined, easily applied rules). A pattern discovery rule would patently disserve the congressional objective of a civil enforcement scheme parallel to the Clayton Act regime, aimed at rewarding the swift who undertake litigation in the public good.

Rotella has two remaining points about which a word should be said. We have already encountered his argument that differences between RICO and the Clayton Act render their analogy inapt, and we have explained why neither the RICO pattern requirement nor the occurrence of fraud in

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need not and do not decide whether civil RICO allows for a cause of action when a second predicate act follows the injury, or what limitations accrual rule might apply in such a case. In any event, doubt about whether a harm might be actionable before a pattern is complete is a weak justification for the cost of a general pattern discovery rule.

RICO patterns is a good reason to ignore the Clayton Act model, see *supra*, at 556–557. Here it remains only to respond to Rotella's argument that we ourselves undercut the force of the Clayton Act analogy when we held that RICO had no racketeering injury requirement comparable to the antitrust injury requirement under the Clayton Act, see *Sedima*, 473 U. S., at 495. This point not only fails to support but even cuts against Rotella's position. By eliminating the complication of anything like an antitrust injury element we have, to that extent, recognized a simpler RICO cause of action than its Clayton Act counterpart, and RICO's comparative simplicity in this respect surely does not support the adoption of a more protracted basic limitations period.

Finally, Rotella returns to his point that RICO patterns will involve fraud in many cases, when he argues that unless a pattern discovery rule is recognized, a RICO plaintiff will sometimes be barred from suit by Federal Rule of Civil Procedure 9(b), which provides that fraud must be pleaded with particularity. While we will assume that Rule 9(b) will exact some cost, we are wary of allowing speculation about that cost to control the resolution of the issue here. Rotella has presented no case in which Rule 9(b) has effectively barred a claim like his, and he ignores the flexibility provided by Rule 11(b)(3), allowing pleadings based on evidence reasonably anticipated after further investigation or discovery. See, *e. g.*, *Corley* v. *Rosewood Care Center, Inc. of Peoria*, 142 F. 3d 1041, 1050–1051 (CA7 1998) (relaxing particularity requirements of Rule 9(b) where RICO plaintiff lacks access to all facts necessary to detail claim). It is not that we mean to reject Rotella's concern about allowing "blameless ignorance" to defeat a claim, *Urie* v. *Thompson*, 337 U. S. 163, 170 (1949); we simply do not think such a concern should control the decision about the basic limitations rule. In rejecting pattern discovery as a basic rule, we do not unsettle the understanding that federal statutes of limitations are generally subject to equitable principles of tolling, see *Holm-*

*berg* v. *Armbrecht*, 327 U. S. 392, 397 (1946), and where a pattern remains obscure in the face of a plaintiff's diligence in seeking to identify it, equitable tolling may be one answer to the plaintiff's difficulty, complementing Federal Rule of Civil Procedure 11(b)(3). See *ibid.*; see generally *Klehr*, 521 U. S., at 192–193 (noting distinctions between different equitable devices). The virtue of relying on equitable tolling lies in the very nature of such tolling as the exception, not the rule.

The judgment of the Court of Appeals is affirmed.

*It is so ordered.*

Syllabus

# VILLAGE OF WILLOWBROOK ET AL. *v.* OLECH

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

No. 98–1288. Argued January 10, 2000—Decided February 23, 2000

When respondent Olech and her late husband first asked petitioner Village of Willowbrook (Village) to connect their property to the municipal water supply, the Village conditioned the connection on the Olechs granting it a 33-foot easement. Although it subsequently reduced the easement to the 15 feet required of other property owners, Olech sued, claiming that the Village's demand for an additional 18-foot easement violated the Fourteenth Amendment's Equal Protection Clause, and asserting that the easement was irrational and arbitrary, that the Village was motivated by ill will resulting from the Olechs' success in an unrelated lawsuit against the Village, and that the Village acted either with the intent to deprive Olech of her rights or in reckless disregard of her rights. The District Court dismissed the suit for failure to state a claim, but the Seventh Circuit reversed, holding that Olech's spiteful ill will allegation stated a claim.

*Held:* The Equal Protection Clause gives rise to a cause of action on behalf of a "class of one" where the plaintiff does not allege membership in a class or group, but alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for such treatment. See, *e. g., Sioux City Bridge Co.* v. *Dakota County,* 260 U. S. 441. The Clause secures every person within a State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by a statute's express terms or by its improper execution. *Id.,* at 445. Here, Olech's allegations that the Village intentionally demanded a 33-foot easement from her when it required only 15 feet from similarly situated property owners, that the demand was irrational and arbitrary, and that the Village ultimately connected her property in return for a 15-foot easement—quite apart from the Village's subjective motive—state a claim for relief under traditional equal protection analysis. Thus, the Court does not reach the alternative "subjective ill will" theory on which the Seventh Circuit relied.

160 F. 3d 386, affirmed.

*James L. DeAno* argued the cause and filed briefs for petitioners.

*Irving L. Gornstein* argued the cause for the United States as *amicus curiae.* With him on the brief were *Solicitor General Waxman*, *Acting Assistant Attorney General Ogden*, *Deputy Solicitor General Underwood*, and *Mark B. Stern.*

*John R. Wimmer* argued the cause and filed a brief for respondent.*

PER CURIAM.

Respondent Grace Olech and her late husband Thaddeus asked petitioner Village of Willowbrook (Village) to connect their property to the municipal water supply. The Village at first conditioned the connection on the Olechs granting the Village a 33-foot easement. The Olechs objected, claiming that the Village only required a 15-foot easement from other property owners seeking access to the water supply. After a 3-month delay, the Village relented and agreed to provide water service with only a 15-foot easement.

Olech sued the Village, claiming that the Village's demand of an additional 18-foot easement violated the Equal Protection Clause of the Fourteenth Amendment. Olech asserted that the 33-foot easement demand was "irrational and wholly arbitrary"; that the Village's demand was actually motivated by ill will resulting from the Olechs' previous filing of an unrelated, successful lawsuit against the Village; and that the Village acted either with the intent to deprive Olech of her rights or in reckless disregard of her rights. App. 10, 12.

The District Court dismissed the lawsuit pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a cognizable claim under the Equal Protection Clause. Relying on Circuit precedent, the Court of Appeals for the Sev-

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**Richard Ruda*, *James I. Crowley*, and *Donald B. Ayer* filed a brief for the International City/County Management Association et al. as *amici curiae* urging reversal.

*Harvey Grossman*, *Steven R. Shapiro*, and *Richard J. O'Brien* filed a brief for the ACLU as *amicus curiae* urging affirmance.

enth Circuit reversed, holding that a plaintiff can allege an equal protection violation by asserting that state action was motivated solely by a "'spiteful effort to "get" him for reasons wholly unrelated to any legitimate state objective.'" 160 F. 3d 386, 387 (1998) (quoting *Esmail* v. *Macrane*, 53 F. 3d 176, 180 (CA7 1995)). It determined that Olech's complaint sufficiently alleged such a claim. 160 F. 3d, at 388. We granted certiorari to determine whether the Equal Protection Clause gives rise to a cause of action on behalf of a "class of one" where the plaintiff did not allege membership in a class or group.* 527 U. S. 1067 (1999).

Our cases have recognized successful equal protection claims brought by a "class of one," where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. See *Sioux City Bridge Co.* v. *Dakota County*, 260 U. S. 441 (1923); *Allegheny Pittsburgh Coal Co.* v. *Commission of Webster Cty.*, 488 U. S. 336 (1989). In so doing, we have explained that "'[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.'" *Sioux City Bridge Co.*, *supra*, at 445 (quoting *Sunday Lake Iron Co.* v. *Township of Wakefield*, 247 U. S. 350, 352 (1918)).

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*We note that the complaint in this case could be read to allege a class of five. In addition to Grace and Thaddeus Olech, their neighbors Rodney and Phyllis Zimmer and Howard Brinkman requested to be connected to the municipal water supply, and the Village initially demanded the 33-foot easement from all of them. The Zimmers and Mr. Brinkman were also involved in the previous, successful lawsuit against the Village, which allegedly created the ill will motivating the excessive easement demand. Whether the complaint alleges a class of one or of five is of no consequence because we conclude that the number of individuals in a class is immaterial for equal protection analysis.

That reasoning is applicable to this case. Olech's complaint can fairly be construed as alleging that the Village intentionally demanded a 33-foot easement as a condition of connecting her property to the municipal water supply where the Village required only a 15-foot easement from other similarly situated property owners. See *Conley* v. *Gibson*, 355 U. S. 41, 45–46 (1957). The complaint also alleged that the Village's demand was "irrational and wholly arbitrary" and that the Village ultimately connected her property after receiving a clearly adequate 15-foot easement. These allegations, quite apart from the Village's subjective motivation, are sufficient to state a claim for relief under traditional equal protection analysis. We therefore affirm the judgment of the Court of Appeals, but do not reach the alternative theory of "subjective ill will" relied on by that court.

*It is so ordered.*

JUSTICE BREYER, concurring in the result.

The Solicitor General and the village of Willowbrook have expressed concern lest we interpret the Equal Protection Clause in this case in a way that would transform many ordinary violations of city or state law into violations of the Constitution. It might be thought that a rule that looks only to an intentional difference in treatment and a lack of a rational basis for that different treatment would work such a transformation. Zoning decisions, for example, will often, perhaps almost always, treat one landowner differently from another, and one might claim that, when a city's zoning authority takes an action that fails to conform to a city zoning regulation, it lacks a "rational basis" for its action (at least if the regulation in question is reasonably clear).

This case, however, does not directly raise the question whether the simple and common instance of a faulty zoning decision would violate the Equal Protection Clause. That is because the Court of Appeals found that in this case respond-

ent had alleged an extra factor as well—a factor that the Court of Appeals called "vindictive action," "illegitimate animus," or "ill will." 160 F. 3d 386, 388 (CA7 1998). And, in that respect, the court said this case resembled *Esmail* v. *Macrane*, 53 F. 3d 176 (CA7 1995), because the *Esmail* plaintiff had alleged that the municipality's differential treatment "was the result not of prosecutorial discretion honestly (even if ineptly—even if arbitrarily) exercised but of an illegitimate desire to 'get' him." 160 F. 3d, at 388.

In my view, the presence of that added factor in this case is sufficient to minimize any concern about transforming run-of-the-mill zoning cases into cases of constitutional right. For this reason, along with the others mentioned by the Court, I concur in the result.

## Reporter's Note

The next page is purposely numbered 801. The numbers between 566 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 4, 1999, THROUGH FEBRUARY 28, 2000

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## OCTOBER 4, 1999

*Certiorari Granted—Vacated and Remanded*

No. 98–9308. CROSS *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist.; and

No. 98–9504. COOPER *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and cases remanded for further consideration in light of *Lilly* v. *Virginia*, 527 U. S. 116 (1999).

*Miscellaneous Orders*

No. D–1961. IN RE DISBARMENT OF WEISSER. Disbarment entered. [For earlier order herein, see 524 U. S. 913.]

No. D–2073. IN RE DISBARMENT OF NUNES. Disbarment entered. [For earlier order herein, see 526 U. S. 1128.]

No. D–2076. IN RE DISBARMENT OF PATT. Disbarment entered. [For earlier order herein, see 526 U. S. 1143.]

No. D–2088. IN RE DISBARMENT OF ROBINS. Disbarment entered. [For earlier order herein, see 527 U. S. 1020.]

No. D–2101. IN RE DISBARMENT OF JACOBS. Patricia Dianne Jacobs, of Washington, D. C., 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–2102. IN RE DISBARMENT OF EAGLE. Saul L. Eagle, of New York, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2103. IN RE DISBARMENT OF MANEY. William Kenneth Maney, of Johnson City, 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–2104. IN RE DISBARMENT OF PONZINI. Robert J. Ponzini, of Tarrytown, 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–2105. IN RE DISBARMENT OF WARREN. Kenneth Xavier Warren, of Baltimore, Md., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 98M75. MORGAN *v.* CMS/DATA CORP. Motion for reconsideration of order denying leave to file petition for writ of certiorari out of time [527 U. S. 1002] denied.

No. 99M1. CHANEY *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS;

No. 99M2. WEST *v.* UNITED STATES;

No. 99M3. EVANS *v.* CITY OF VICTORVILLE ET AL.;

No. 99M4. PARRISH *v.* NEBRASKA ET AL.;

No. 99M5. CARTER *v.* UNITED STATES;

No. 99M6. FLORIDA *v.* RODRIGUEZ;

No. 99M7. ORLEANS LEVEE DISTRICT ET AL. *v.* LANGE ET AL.;

No. 99M8. WARD *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY;

No. 99M9. AUTODIE INTERNATIONAL, INC. *v.* NATIONAL LABOR RELATIONS BOARD;

No. 99M10. BOLANOS PORTILLO *v.* IMMIGRATION AND NATURALIZATION SERVICE;

No. 99M11. DOMINGUEZ *v.* CASEY, UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF ARKANSAS;

No. 99M13. ZWICKER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.;

No. 99M14. SOLIVAN *v.* SCOTTSDALE JUSTICE COURT ET AL.;

No. 99M15. POWELL *v.* POWELL ET AL.;

No. 99M16. ASPELMEIER *v.* GILMORE, WARDEN;

No. 99M17. CALDERON *v.* DUGAN;

No. 99M19. SLAYTON *v.* MOUNTAIN CITY CLUB;

No. 99M23. HEINEMANN *v.* MID-STATE TRUST IV;

No. 99M24. TARVER *v.* HALEY, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS;

No. 99M25. BICKFORD *v.* ANCHORAGE SCHOOL DISTRICT;

No. 99M26. MAHON ET UX. *v.* CREDIT BUREAU OF PLACER COUNTY ET AL.; and

No. 99M27. CHERRY *v.* ATHENS-CLARKE COUNTY, GEORGIA, ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 99M12. SANDERS *v.* GRAMLEY, WARDEN. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 99M18. IN RE CLANCY. Motion to direct the Clerk to file submitted pleadings denied.

No. 99M20. ROTZINGER *v.* UNITED STATES ET AL. Motion to direct the Clerk to file petition for writ of certiorari that does not comply with the Rules of this Court denied.

No. 99M21. LAM, AKA MOODY *v.* MOODY. Motion to direct the Clerk to file petition for writ of certiorari denied.

No. 99M22. COUNCIL *v.* SOUTH CAROLINA. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 8, Orig. ARIZONA *v.* CALIFORNIA ET AL. Report of the Special Master received and ordered filed. Exceptions to the Report, with supporting briefs, may be filed by the parties within 45 days. Reply briefs, if any, may be filed by the parties within 30 days. [For earlier order herein, see, *e. g.*, 514 U. S. 1081.]

No. 98–238. WEST, SECRETARY OF VETERANS AFFAIRS *v.* GIBSON, 527 U. S. 212. Motion of respondent to retax costs denied, except that respondent is relieved of $45.56 in costs.

No. 98–1037. SMITH, WARDEN *v.* ROBBINS. C. A. 9th Cir. [Certiorari granted, 526 U. S. 1003.] Motion of petitioner to strike lodged materials denied, except that the uncertified transcript of the oral argument before the United States Court of Appeals for the Ninth Circuit is stricken.

No. 98–1161. CITY OF ERIE ET AL. *v.* PAP'S A. M., TDBA "KANDYLAND." Sup. Ct. Pa. [Certiorari granted, 526 U. S.

1111.] Motions of Erie County Citizens Coalition Against Violent Pornography, American Liberties Institute et al., and Orange County, Florida, for leave to file briefs as *amici curiae* granted.

No. 98–1189. BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM *v.* SOUTHWORTH ET AL. C. A. 7th Cir. [Certiorari granted, 526 U. S. 1038.] Motion of Student Rights Law Center, Inc., for leave to file a brief as *amicus curiae* granted.

No. 98–1441. ROE, WARDEN *v.* FLORES-ORTEGA. C. A. 9th Cir. [Certiorari granted, 526 U. S. 1097.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 98–1480. BECK *v.* PRUPIS ET AL. C. A. 11th Cir. [Certiorari granted, 526 U. S. 1158.] Motion of Washington Legal Foundation et al. for leave to file a brief as *amici curiae* granted.

No. 98–1747. PEREZ ET AL. *v.* PASADENA INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir.;

No. 98–1768. BUCKMAN CO. *v.* PLAINTIFFS' LEGAL COMMITTEE. C. A. 3d Cir.;

No. 98–1836. UNITED STATES HEALTHCARE SYSTEMS OF PENNSYLVANIA, INC. *v.* PENNSYLVANIA HOSPITAL INSURANCE CO. ET AL. Sup. Ct. Pa.;

No. 98–1971. ROBINSON ET AL. *v.* ADMINISTRATIVE COMMITTEE OF THE SEA RAY EMPLOYEES' STOCK OWNERSHIP AND PROFIT SHARING PLAN ET AL. C. A. 6th Cir.;

No. 98–1987. VALDESPINO ET AL. *v.* ALAMO HEIGHTS INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir.; and

No. 98–9663. DAVIS *v.* HOPPER, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 98–8384. WILLIAMS *v.* TAYLOR, WARDEN. C. A. 4th Cir. [Certiorari granted, 526 U. S. 1050.] Motions of Marvin Frankel et al. and Lance Banning et al. for leave to file briefs as *amici curiae* granted.

No. 98–8711. TYLER ET AL. *v.* MORIARTY, JUDGE, CIRCUIT COURT OF MISSOURI, CITY OF ST. LOUIS, ET AL. C. A. 8th

Cir. Motion of petitioners for reconsideration of order denying leave to proceed *in forma pauperis* [526 U. S. 1143] denied.

No. 98–8785. BAEZ *v.* BRESLIN. C. A. 11th Cir.;

No. 98–8798. BALAWAJDER *v.* SCOTT, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE. C. A. 5th Cir.; and

No. 98–8802. CUNNINGHAM *v.* POPPELL, WARDEN, ET AL. C. A. 5th Cir. Motions of petitioners for reconsideration of order denying leave to proceed *in forma pauperis* [526 U. S. 1157] denied.

No. 98–8821. ARBOGAST *v.* ALCOA BUILDING PRODUCTS. C. A. 7th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [526 U. S. 1157] denied.

No. 98–9085. WHITFIELD *v.* TEXAS (three judgments). Ct. Crim. App. Tex. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [527 U. S. 885] denied.

No. 98–9133. COHEA *v.* BRAY ET AL. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [527 U. S. 1034] denied.

No. 98–9473. IN RE HILL. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [527 U. S. 1002] denied.

No. 98–9254. CHRISPEN *v.* FEINER ET AL. C. A. 11th Cir.;

No. 98–9261. CHRISPEN *v.* FEINER ET AL. C. A. 11th Cir.;

No. 98–9282. CROSS *v.* MURPHY ET AL. Ct. App. Cal., 6th App. Dist.;

No. 98–9301. GALLOWAY *v.* CALIFORNIA. Sup. Ct. Cal.;

No. 98–9384. BRAUN *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 8th Cir.;

No. 98–9431. MANGRUM *v.* REDDY ET AL. C. A. 11th Cir.;

No. 98–9443. BROWNING *v.* WEICHERT. C. A. 9th Cir.;

No. 98–9475. HILL *v.* PENNSYLVANIA. Sup. Ct. Pa.;

No. 98–9516. TYLER *v.* CRYNE. Sup. Ct. Neb.;

No. 98–9545. MASON *v.* WESTMINSTER INVESTMENTS ET AL. Ct. App. Cal., 2d App. Dist.;

No. 98–9553. LYLE *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN. C. A. 6th Cir.;

No. 98–9557. TAYLOR *v.* WINNEBAGO COUNTY JAIL ET AL. C. A. 7th Cir.;

No. 98–9634. THOMPSON *v.* FEDERAL BUREAU OF INVESTIGATION. C. A. 8th Cir.;

No. 98–9765. SHABAZZ *v.* KEATING, GOVERNOR OF OKLAHOMA, ET AL. Sup. Ct. Okla.;

No. 98–9903. ORIAKHI *v.* HARDING ET AL. C. A. 4th Cir.;

No. 98–9922. BABA *v.* WARREN MANAGEMENT CONSULTANTS, INC., ET AL. C. A. 2d Cir.;

No. 98–9965. MANGRUM *v.* CHARTER PROPERTY MANAGEMENT CO., INC. C. A. 11th Cir.;

No. 98–10019. HIGGASON *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir.;

No. 99–5007. BROWNING *v.* FAMILY FITNESS CENTER. Ct. App. Cal., 2d App. Dist.;

No. 99–5362. FABIAN *v.* PARADISE PARK APARTMENTS ET AL. C. A. 11th Cir.;

No. 99–5390. LYLE *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN. C. A. 6th Cir.;

No. 99–5566. BAILEY *v.* UNITED STATES. C. A. 7th Cir.;

No. 99–5616. BENNETT *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir.;

No. 99–5829. IN RE GANEY; and

No. 99–6052. IN RE ALTSCHUL. Motions of petitioners for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioners are allowed until October 25, 1999, 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. 98–9539. LAI *v.* INTERNATIONAL IMMUNOLOGY CORP. ET AL. Ct. App. Cal., 4th App. Dist.;

No. 98–9749. MCFALL *v.* DEPARTMENT OF AGRICULTURE. C. A. Fed. Cir.;

No. 98–9760. BOONE *v.* CHARLIE OBAUGH PONTIAC BUICK, INC. Sup. Ct. Va.;

No. 98–9992. SHARIF-JOHNSON *v.* ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD ET AL. App. Ct. Ill., 1st Dist.;

No. 98–10040. BASTA *v.* FARNER. Cir. Ct. Wood County, W. Va.;

No. 99–5301. LADNER *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir.; and

No. 99–5599. SUMNER *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 25, 1999, 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. 99–5. UNITED STATES *v.* MORRISON ET AL.; and

No. 99–29. BRZONKALA *v.* MORRISON ET AL. C. A. 4th Cir. [Certiorari granted, 527 U. S. 1068.] Motion of Pacific Legal Foundation for leave to file a brief as *amicus curiae* granted.

No. 99–5746. WEEKS *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. [Certiorari granted, 527 U. S. 1060.] Motion for appointment of counsel granted, and it is ordered that Timothy M. Richardson, Esq., of Virginia Beach, Va., be appointed to serve as counsel for petitioner in this case.

No. 98-9743. IN RE JOHNSON;
No. 98–9908. IN RE COLEMAN;
No. 98–9928. IN RE ROBINSON;
No. 98–10017. IN RE DAVIS;
No. 98–10024. IN RE TENNILLE;
No. 99–5025. IN RE TOWNSEND;
No. 99–5108. IN RE CROWDER;
No. 99–5147. IN RE HOLSTON;
No. 99–5170. IN RE MALLARD;
No. 99–5228. IN RE VERDONE;
No. 99–5259. IN RE COTNER;
No. 99–5292. IN RE MINARIK;
No. 99–5294. IN RE JONES;
No. 99–5380. IN RE POE;
No. 99–5424. IN RE MCKEE;
No. 99–5446. IN RE BAYNES;
No. 99–5567. IN RE COACH;
No. 99–5593. IN RE WOODS;
No. 99–5604. IN RE TIFFANY;
No. 99–5617. IN RE CLINCY;
No. 99–5648. IN RE NHA KHIEM TRAN;
No. 99–5649. IN RE WEBB-EL;

No. 99–5696. IN RE ROSS;
No. 99–5853. IN RE MCCOWIN;
No. 99–5974. IN RE STONE; and
No. 99–6055. IN RE BREWER. Petitions for writs of habeas corpus denied.

No. 98–2048. IN RE WALKER;
No. 98–9171. IN RE JOHNSON;
No. 98–9311. IN RE PROCTOR;
No. 98–9335. IN RE NICHOLSON-EL;
No. 98–9428. IN RE WATKIS;
No. 98–9503. IN RE WARREN;
No. 98–9766. IN RE OGUNDE;
No. 98–9845. IN RE TUCKER;
No. 98–9917. IN RE ANDERSON;
No. 98–9926. IN RE PROCTOR;
No. 99–57. IN RE FALLIN ET AL.;
No. 99–5028. IN RE ROY;
No. 99–5092. IN RE FARRELL;
No. 99–5135. IN RE FRANCIS;
No. 99–5336. IN RE GRADY;
No. 99–5343. IN RE BRANNAN;
No. 99–5383. IN RE SANTO-GARCIA;
No. 99–5408. IN RE BEAN;
No. 99–5410. IN RE MAXWELL;
No. 99–5474. IN RE BARTEL; and
No. 99–5549. IN RE WALLACE. Petitions for writs of mandamus denied.

No. 98–2037. IN RE JACKSON; and
No. 99–5592. IN RE WOODY. Petitions for writs of mandamus and/or prohibition denied.

*Certiorari Granted*

No. 99–150. WAL-MART STORES, INC. *v.* SAMARA BROTHERS, INC. C. A. 2d Cir. Certiorari granted limited to the following question: "What must be shown to establish that a product's design is inherently distinctive for purposes of Lanham Act tradedress protection?" Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, November 18, 1999. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Mon-

day, December 20, 1999. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, January 10, 2000. This Court's Rule 29.2 does not apply. Reported below: 165 F. 3d 120.

*Certiorari Denied*

No. 98–1270. ALBERTSON'S, INC. *v.* UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL–CIO AND CLC, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 157 F. 3d 758.

No. 98–1584. IVESTER *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 978 S. W. 2d 762.

No. 98–1599. MORTHAM, SECRETARY OF STATE OF FLORIDA, ET AL. *v.* WALKER ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 158 F. 3d 1177.

No. 98–1600. UNSER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 165 F. 3d 755.

No. 98–1649. SEA-LAND SERVICE, INC. *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 153 F. 3d 1051 and 164 F. 3d 480.

No. 98–1651. KIM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 172 F. 3d 45.

No. 98–1654. CARLETON ET AL. *v.* CITY OF TULSA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 166 F. 3d 1220.

No. 98–1662. ALEXANDER *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 165 F. 3d 474.

No. 98–1688. BONNEVILLE ASSOCIATES, LIMITED PARTNERSHIP, ET AL. *v.* BARRAM, ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION. C. A. Fed. Cir. Certiorari denied. Reported below: 165 F. 3d 1360.

No. 98–1689. PORTER *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 163 F. 3d 1304.

No. 98–1692. MICCOSUKEE TRIBE OF INDIANS OF FLORIDA ET AL. *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 163 F. 3d 1359.

No. 98–1695. PRUDENTIAL INSURANCE COMPANY OF AMERICA ET AL. *v.* PRINCE GEORGE CENTER, INC., ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 704 A. 2d 141.

No. 98–1698. RENTERIA-PRADO *v.* PASQUARELL, DISTRICT DIRECTOR, SAN ANTONIO DISTRICT OF THE IMMIGRATION AND NATURALIZATION SERVICE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 174 F. 3d 198.

No. 98–1700. HINDENLANG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 164 F. 3d 1029.

No. 98–1702. ABU-JAMAL *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 553 Pa. 485, 720 A. 2d 79.

No. 98–1715. KRILICH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 159 F. 3d 1020.

No. 98–1718. RHODES *v.* KILLIAN, DIRECTOR, ARIZONA DEPARTMENT OF REVENUE, ET AL. Sup. Ct. Ariz. Certiorari denied. Reported below: 193 Ariz. 273, 972 P. 2d 606.

No. 98–1725. RAHIM *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 98–1729. MCNEIL *v.* UTAH, MEDICAID SECTION. Sup. Ct. Utah. Certiorari denied. Reported below: 972 P. 2d 446.

No. 98–1735. BESTFOODS, FKA CPC INTERNATIONAL, INC. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 165 F. 3d 1371.

No. 98–1740. BENITO *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 256 App. Div. 2d 221, 683 N. Y. S. 2d 27.

No. 98–1743. MCM PARTNERS, INC. *v.* ANDREWS-BARTLETT & ASSOCIATES, INC., DBA ANDREWS-BARTLETT EXPOSITION SERVICES, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 161 F. 3d 443.

No. 98–1744. TAYLOR *v.* MONFILS, SPECIAL ADMINISTRATOR OF THE ESTATE OF MONFILS, DECEASED, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 165 F. 3d 511.

No. 98–1745. VAN HORNE *v.* EVERGREEN MEDIA CORP. ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 185 Ill. 2d 299, 705 N. E. 2d 898.

No. 98–1756. EVANS ET UX. *v.* TOHONO O'ODHAM NATION ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–1761. RAINSONG CO. *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 151 F. 3d 1231.

No. 98–1763. STONE CASKET COMPANY OF OKLAHOMA CITY *v.* OKLAHOMA BOARD OF EMBALMERS AND FUNERAL DIRECTORS. Ct. Civ. App. Okla. Certiorari denied. Reported below: 976 P. 2d 1074.

No. 98–1771. SKAGGS, GUARDIAN OF PERSON AND ESTATE OF SKAGGS, INCAPACITATED *v.* OTIS ELEVATOR CO. C. A. 10th Cir. Certiorari denied. Reported below: 164 F. 3d 511.

No. 98–1772. MIR *v.* FHP, INC. C. A. 9th Cir. Certiorari denied. Reported below: 164 F. 3d 631.

No. 98–1774. JONES *v.* CITY OF BERKELEY RENT STABILIZATION BOARD. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 98–1778. KOVELESKIE *v.* SBC CAPITAL MARKETS, INC., AKA SBC WARBURG, INC. C. A. 7th Cir. Certiorari denied. Reported below: 167 F. 3d 361.

No. 98–1779. MULLIN *v.* RAYTHEON CO. C. A. 1st Cir. Certiorari denied. Reported below: 164 F. 3d 696.

No. 98–1780. SORROW *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 234 Ga. App. 357, 505 S. E. 2d 842.

No. 98–1782. DEERWESTER *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 298 Ill. App. 3d 250, 698 N. E. 2d 550.

No. 98–1784. PACK *v.* KMART CORP. C. A. 10th Cir. Certiorari denied. Reported below: 166 F. 3d 1300.

No. 98–1785. BOGGS *v.* SUMMERS, SECRETARY OF THE TREASURY, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 161 F. 3d 37.

No. 98–1794. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 351 *v.* COOPER NATURAL RESOURCES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 163 F. 3d 916.

No. 98–1795. MARTINEZ *v.* CITY OF LOS FRESNOS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 98–1797. IGLESIAS *v.* MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. C. A. 1st Cir. Certiorari denied. Reported below: 156 F. 3d 237.

No. 98–1799. KNOX COUNTY EDUCATION ASSN. *v.* KNOX COUNTY BOARD OF EDUCATION. C. A. 6th Cir. Certiorari denied. Reported below: 158 F. 3d 361.

No. 98–1800. PHILADELPHIA, BETHLEHEM & NEW ENGLAND RAILROAD CO. *v.* NEWHARD. C. A. 3d Cir. Certiorari denied. Reported below: 175 F. 3d 1011.

No. 98–1801. SWISHER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 256 Va. 471, 506 S. E. 2d 763.

No. 98–1802. BALTIMORE CITY POLICE DEPARTMENT ET AL. *v.* FRATERNAL ORDER OF POLICE, LODGE 3, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 164 F. 3d 624.

No. 98–1803. GIBSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 166 F. 3d 1210.

No. 98–1804. KAUL ET VIR *v.* KANSAS DEPARTMENT OF REVENUE ET AL. Sup. Ct. Kan. Certiorari denied. Reported below: 266 Kan. 464, 970 P. 2d 60.

No. 98–1805. IRVING *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 162 F. 3d 154.

No. 98–1807. INDUSTRIAL CHEMICALS, INC. *v.* CITY OF TUSCALOOSA ET AL.; and

No. 98–1997. HARCROS CHEMICALS, INC. *v.* CITY OF TUSCALOOSA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 158 F. 3d 548.

No. 98–1808. CURETON ET AL. *v.* SHARPE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 172 F. 3d 873.

No. 98–1810. MCGINNIS *v.* ANCHORAGE SCHOOL DISTRICT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 166 F. 3d 343.

No. 98–1813. BAKER ET AL. *v.* HADLEY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 167 F. 3d 1014.

No. 98–1820. SPANGLER ET AL. *v.* ALTEC INTERNATIONAL LIMITED PARTNERSHIP ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 172 F. 3d 53.

No. 98–1823. ACRI *v.* VANDERVEEN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 162 F. 3d 1167.

No. 98–1827. HUNT *v.* HUNT. Sup. Ct. N. H. Certiorari denied.

No. 98–1829. ORTHO BIOTECH, INC. *v.* MEDLOCK. C. A. 10th Cir. Certiorari denied. Reported below: 164 F. 3d 545.

No. 98–1831. MONTALVO, PARENT AND GUARDIAN OF MONTALVO *v.* RADCLIFFE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 167 F. 3d 873.

No. 98–1833. DOHERTY, DBA THE MENLO CLUB *v.* WIRELESS BROADCASTING SYSTEMS OF SACRAMENTO, INC., DBA PACIFIC WEST CABLE TELEVISION. C. A. 9th Cir. Certiorari denied. Reported below: 151 F. 3d 1129.

No. 98–1837. DIETTRICH *v.* NORTHWEST AIRLINES, INC. C. A. 7th Cir. Certiorari denied. Reported below: 168 F. 3d 961.

No. 98–1838. COHEN ET AL. *v.* RECREATION AND PARK COMMISSION FOR THE PARISH OF EAST BATON ROUGE (BREC) ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 728 So. 2d 31.

No. 98–1842. PATTERSON ET VIR *v.* PREMIER BANK. C. A. 5th Cir. Certiorari denied. Reported below: 172 F. 3d 870.

No. 98–1843. GREEN *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–1844. SUDARSKY *v.* CITY OF NEW YORK ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 247 App. Div. 2d 206, 668 N. Y. S. 2d 350.

No. 98–1846. PFAU *v.* REED, DIRECTOR, DEFENSE CONTRACT AUDIT AGENCY. C. A. 5th Cir. Certiorari denied. Reported below: 167 F. 3d 228.

No. 98–1849. McClain *v.* Scharrer et al. C. A. 6th Cir. Certiorari denied.

No. 98–1850. J. F. *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 714 A. 2d 467.

No. 98–1853. Webb *v.* California Department of Rehabilitation et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–1854. Anaeme *v.* Diagnostek, Inc., et al. C. A. 10th Cir. Certiorari denied. Reported below: 164 F. 3d 1275.

No. 98–1857. Esperance, Ltd. *v.* Den Norske Bank. C. A. 11th Cir. Certiorari denied. Reported below: 166 F. 3d 353.

No. 98–1859. Babcock *v.* City of Manchester. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 984 S. W. 2d 161.

No. 98–1860. Bianchi, fdba M. Bianchi of California *v.* Walker, Comptroller General of the United States, et al. C. A. 9th Cir. Certiorari denied. Reported below: 163 F. 3d 564.

No. 98–1862. Gordon *v.* Community First Bank of Nebraska, fka The Abbott Bank, et al. Sup. Ct. Neb. Certiorari denied. Reported below: 255 Neb. 637, 587 N. W. 2d 343.

No. 98–1863. Riggan *v.* R. W. Moore Equipment Co. C. A. 4th Cir. Certiorari denied. Reported below: 163 F. 3d 599.

No. 98–1864. Pueschel *v.* Slater, Secretary of Transportation. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 425.

No. 98–1866. Karam et al. *v.* New Jersey Department of Environmental Protection et al. Sup. Ct. N. J. Certiorari denied. Reported below: 157 N. J. 187, 723 A. 2d 943.

No. 98–1867. Davis *v.* Lauria. App. Ct. Mass. Certiorari denied. Reported below: 46 Mass. App. 1112, 707 N. E. 2d 409.

No. 98–1869. Gagliano *v.* Storage Technology Corp. C. A. 10th Cir. Certiorari denied. Reported below: 172 F. 3d 878.

No. 98–1872. NASHUA CORP. *v.* RICOH CO., LTD., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 185 F. 3d 884.

No. 98–1875. EVERETT ET AL. *v.* US AIRWAYS GROUP, INC., ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 194 F. 3d 173.

No. 98–1876. SHEREN *v.* DAYTON HUDSON CORP. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1021.

No. 98–1877. GIPSON *v.* KAJIMA ENGINEERING & CONSTRUCTION CO. C. A. 9th Cir. Certiorari denied. Reported below: 173 F. 3d 860.

No. 98–1878. GARRICK ET UX. *v.* THIBODEAUX ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 174 F. 3d 198.

No. 98–1879. COURT OF INDIAN OFFENSES OF THE CHOCTAW NATION ET AL. *v.* DRY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 168 F. 3d 1207.

No. 98–1880. LEADER *v.* LIVINGSTON PARISH SCHOOL BOARD ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 172 F. 3d 870.

No. 98–1881. LIU ET UX. *v.* SILVERMAN, CHAPTER 7 TRUSTEE OF THE ESTATE OF LIU, ET UX. C. A. 2d Cir. Certiorari denied. Reported below: 166 F. 3d 1200.

No. 98–1882. PEEK *v.* PEEK. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 983 S. W. 2d 564.

No. 98–1883. POLARIS PICTURES CORP. ET AL. *v.* CIGNA PROPERTY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 159 F. 3d 412.

No. 98–1884. SIMMS *v.* OKLAHOMA EX REL. OKLAHOMA DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES. C. A. 10th Cir. Certiorari denied. Reported below: 165 F. 3d 1321.

No. 98–1885. CARELLA, TRUSTEE/RECEIVER *v.* NEW JERSEY DEPARTMENT OF TREASURY, BY CRANE, TREASURER. Super. Ct. N. J., App. Div. Certiorari denied.

No. 98–1888. EDWARDS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 424.

No. 98–1889. BROOKS *v.* THE GAS CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 166 F. 3d 342.

No. 98–1890. PACE ET AL. *v.* MORTGAGE INVESTORS, INC. C. A. 11th Cir. Certiorari denied.

No. 98–1891. WAITE *v.* EMPSON ET AL. Ct. App. Neb. Certiorari denied. Reported below: 8 Neb. App. xiii.

No. 98–1892. FRANKLIN *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 178 F. 3d 1312.

No. 98–1894. BUCKLEY *v.* CALIFORNIA COASTAL COMMISSION. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 68 Cal. App. 4th 178, 80 Cal. Rptr. 2d 562.

No. 98–1895. SANK *v.* BERGEN COUNTY SUPERINTENDENT OF ELECTIONS ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 98–1896. JACKSON *v.* HOUSTON COUNTY BOARD OF EDUCATION. C. A. 11th Cir. Certiorari denied. Reported below: 168 F. 3d 506.

No. 98–1897. FISHER ET UX. *v.* AETNA LIFE INSURANCE & ANNUITY CO. C. A. 3d Cir. Certiorari denied. Reported below: 176 F. 3d 472.

No. 98–1898. JOHNSON *v.* SUMMERS, SECRETARY OF THE TREASURY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 165 F. 3d 40.

No. 98–1899. CONK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 164 F. 3d 627.

No. 98–1902. ADCOCK *v.* CHRYSLER CORP. C. A. 9th Cir. Certiorari denied. Reported below: 166 F. 3d 1290.

No. 98–1903. BENSON *v.* BENSON. Ct. Civ. App. Ala. Certiorari denied. Reported below: 757 So. 2d 490.

No. 98–1905. TOMPKINS ET AL. *v.* ALABAMA STATE UNIVERSITY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 174 F. 3d 203.

No. 98–1906. ROMANO ET UX. *v.* BIBLE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 169 F. 3d 1182.

No. 98–1909. HUNEYCUTT ET AL. *v.* CITY OF SUFFOLK. Sup. Ct. Va. Certiorari denied.

No. 98–1911. RODRIGUEZ ET AL. *v.* LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 731 So. 2d 560.

No. 98–1912. OWENS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 159 F. 3d 221.

No. 98–1913. CLIFTON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–1914. PAULSON ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 166 F. 3d 339.

No. 98–1917. NUSSBECK *v.* NUSSBECK. Sup. Ct. Colo. Certiorari denied. Reported below: 974 P. 2d 493.

No. 98–1918. LIGHTFOOT *v.* UNION CARBIDE CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 175 F. 3d 1008.

No. 98–1919. CITY OF NEWARK ET AL. *v.* FRATERNAL ORDER OF POLICE NEWARK LODGE NO. 12 ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 170 F. 3d 359.

No. 98–1920. IN RE S. H. Sup. Ct. Alaska. Certiorari denied. Reported below: 967 P. 2d 91.

No. 98–1922. KREISCHER ET AL. *v.* KERRISONS DRY GOODS CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 172 F. 3d 863.

No. 98–1923. FREUND *v.* BUTTERWORTH, ATTORNEY GENERAL OF FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 165 F. 3d 839.

No. 98–1924. WOJCIECHOWSKI *v.* MONTEVIDEO PARTNERSHIP ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 173 F. 3d 861.

No. 98–1925. CAMPBELL *v.* CITY OF PLYMOUTH. Ct. App. Mich. Certiorari denied.

No. 98–1926. COCKRELL ET AL. *v.* CITY OF SOUTHAVEN. Sup. Ct. Miss. Certiorari denied. Reported below: 730 So. 2d 1119.

No. 98–1927. BRAUN *v.* BUREAU OF STATE AUDITS ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 67 Cal. App. 4th 1382, 79 Cal. Rptr. 2d 791.

No. 98–1928. LOPEZ CANTU *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 167 F. 3d 198.

No. 98–1929. AMERICAN LUNG ASSN. ET AL. *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. D. C. Cir. Certiorari denied.

No. 98–1930. CHAMBERS *v.* MCCLENNEY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 166 F. 3d 1220.

No. 98–1934. CARLSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 98–1936. SHAW *v.* SHIVERS, CONSERVATOR FOR LEVITZ, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 176 F. 3d 493.

No. 98–1937. VEY *v.* RIDGE, GOVERNOR OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied.

No. 98–1938. KIEL *v.* SELECT ARTIFICIALS, INC. C. A. 8th Cir. Certiorari denied. Reported below: 169 F. 3d 1131.

No. 98–1939. DAWSON *v.* LOVELL ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–1940. PITTMAN, A MINOR, BY PITTMAN, HER FATHER AND LEGAL CUSTODIAN, ET AL. *v.* ICELANDAIR, INC. C. A. 2d Cir. Certiorari denied. Reported below: 149 F. 3d 111.

No. 98–1941. MCNAUGHTON *v.* UNITED HEALTHCARE SERVICES, INC., ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 728 So. 2d 592.

No. 98–1943. ESPINOZA *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 969 P. 2d 542.

No. 98–1944. OIKNINE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 162 F. 3d 1170.

No. 98–1945. BURNETTE *v.* GROVE ISLE CLUB, INC., ET AL. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 710 So. 2d 80.

No. 98–1946. FRANKLIN *v.* WEST, SECRETARY OF VETERANS AFFAIRS. C. A. 10th Cir. Certiorari denied. Reported below: 172 F. 3d 62.

No. 98–1947. JANDU *v.* NATIONAL SCIENCE FOUNDATION. C. A. 5th Cir. Certiorari denied. Reported below: 172 F. 3d 869.

No. 98–1948. ANGULO ALVAREZ ET AL. *v.* APONTE DE LA TORRE ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 170 F. 3d 246.

No. 98–1950. BOLINGER *v.* RIDGE, GOVERNOR OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 178 F. 3d 1278.

No. 98–1951. FOROGLOU *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 1st Cir. Certiorari denied. Reported below: 170 F. 3d 68.

No. 98–1952. MARATHON OIL CO. *v.* BABBITT, SECRETARY OF THE INTERIOR, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 166 F. 3d 1221.

No. 98–1953. FERGUSON *v.* FEDERAL DEPOSIT INSURANCE CORPORATION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 164 F. 3d 894.

No. 98–1954. LOCAL UNION 1393, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL–CIO *v.* UTILITIES DISTRICT OF WESTERN INDIANA RURAL ELECTRIC MEMBERSHIP COOPERATIVE. C. A. 7th Cir. Certiorari denied. Reported below: 167 F. 3d 1181.

No. 98–1955. WOJCIECHOWSKI *v.* WALT DISNEY CONCERT HALL NO. 1 ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 173 F. 3d 862.

No. 98–1956. JOHNSON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 98–1957. BENNETT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 161 F. 3d 171.

No. 98–1958. ACHEBE *v.* CHICAGO BOARD OF EDUCATION. C. A. 7th Cir. Certiorari denied. Reported below: 172 F. 3d 52.

No. 98–1959. HARRIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 172 F. 3d 54.

No. 98–1962. BURNS *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 98–1963. FRANKLIN *v.* CITY OF BIRMINGHAM ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 163 F. 3d 1361.

No. 98–1965. WELCH ET AL. *v.* TOWN OF MOUNTAIN CITY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 168 F. 3d 507.

No. 98–1966. SHERMAN PARK APARTMENTS ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 162 F. 3d 1123.

No. 98–1968. GRESHAM *v.* HENDERSON, POSTMASTER GENERAL. C. A. 10th Cir. Certiorari denied. Reported below: 166 F. 3d 347.

No. 98–1969. MORELLI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 169 F. 3d 798.

No. 98–1970. COMMERCIAL ENERGIES, INC. *v.* DANZIG, SECRETARY OF THE NAVY. C. A. Fed. Cir. Certiorari denied. Reported below: 194 F. 3d 1330.

No. 98–1972. CONSTANT *v.* ADVANCED MICRO-DEVICES, INC., ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–1973. SZENAY *v.* YUKINS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 178 F. 3d 1296.

No. 98–1974. MERGENS ET AL. *v.* DREYFOOS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 166 F. 3d 1114.

No. 98–1975. BUGGS ET VIR *v.* TISDALE ET AL. C. A. 7th Cir. Certiorari denied.

No. 98–1977. PAREDES-RAVELO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 98–1978. HAEFLING *v.* UNITED PARCEL SERVICE, INC. C. A. 7th Cir. Certiorari denied. Reported below: 169 F. 3d 494.

No. 98–1979. SMALL *v.* UNITED STATES; and NEPTUNE ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 158 F. 3d 576 (first judgment); 178 F. 3d 1306 (second judgment).

No. 98–1980. ALLISON ET UX. *v.* PACIFIC BELL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–1981. CONTECH DIVISION, SPX CORP. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 164 F. 3d 297.

No. 98–1982. LEE *v.* HAWAII. Sup. Ct. Haw. Certiorari denied. Reported below: 90 Haw. 130, 976 P. 2d 444.

No. 98–1984. SPIERS *v.* SYDNOR. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 852.

No. 98–1985. MORRISSEY ET AL. *v.* JACKSON. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 911.

No. 98–1986. ROAD SPRINKLER FITTERS LOCAL UNION NO. 669, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL–CIO *v.* AMERICAN AUTOMATIC SPRINKLER SYSTEMS, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 163 F. 3d 209.

No. 98–1988. SWAINSTON ET AL. *v.* TURNIPSEED, NEVADA STATE ENGINEER, ET AL. Sup. Ct. Nev. Certiorari denied.

No. 98–1990. MOLE *v.* BUCKHORN RUBBER PRODUCTS, INC. C. A. 8th Cir. Certiorari denied. Reported below: 165 F. 3d 1212.

No. 98–1992. WORTH CAPITAL, INC. *v.* HERMAN MILLER, INC. C. A. 2d Cir. Certiorari denied. Reported below: 173 F. 3d 844.

No. 98–1994. BRIAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 198 F. 3d 255.

No. 98–1995. GRAPHIC COMMUNICATIONS INTERNATIONAL UNION, LOCAL 1B *v.* BUREAU OF ENGRAVING, INC. C. A. 8th Cir. Certiorari denied. Reported below: 164 F. 3d 427.

No. 98–1999. LUTHER *v.* MINNESOTA COMMISSIONER OF REVENUE. Sup. Ct. Minn. Certiorari denied. Reported below: 588 N. W. 2d 502.

No. 98–2000. POTTS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 430.

No. 98–2002. BALOGH ET AL. *v.* RAMOS. Ct. App. Tex., 13th Dist. Certiorari denied. Reported below: 978 S. W. 2d 696.

No. 98–2003. HOFFMAN ET AL. *v.* BALLEW, SHERIFF, LEFLORE COUNTY, OKLAHOMA, ET AL. Sup. Ct. Okla. Certiorari denied.

No. 98–2005. BANNUM, INC., ET AL. *v.* CITY OF FORT LAUDERDALE. C. A. 11th Cir. Certiorari denied. Reported below: 157 F. 3d 819.

No. 98–2008. DAVIS *v.* DAVIS. C. A. 5th Cir. Certiorari denied. Reported below: 170 F. 3d 475.

No. 98–2009. FLORIDA DEPARTMENT OF CORRECTIONS *v.* GOMEZ ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 733 So. 2d 499.

No. 98–2010. CHARLES SCHWAB CORP. ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 161 F. 3d 1231.

No. 98–2011. DAVIS ET AL. *v.* TABACHNICK. App. Ct. Mass. Certiorari denied. Reported below: 46 Mass. App. 1109, 707 N. E. 2d 406.

No. 98–2012. JOSENHANS *v.* SHERWOOD MEDICAL CORP. ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–2013. KAMASINSKI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 98–2014. BLOUNTT *v.* GLICKMAN, SECRETARY OF AGRICULTURE, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1019.

No. 98–2015. INTERSTATE BRANDS CORP. *v.* BAKERY DRIVERS & BAKERY GOODS VENDING MACHINES, LOCAL NO. 550, INTERNATIONAL BROTHERHOOD OF TEAMSTERS. C. A. 2d Cir. Certiorari denied. Reported below: 167 F. 3d 764.

No. 98–2017. COGGINS *v.* DISTRICT OF COLUMBIA. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 424.

No. 98–2018. OAKLEY *v.* WILSON. Sup. Ct. Tenn. Certiorari denied. Reported below: 984 S. W. 2d 898.

No. 98–2019. JAMES *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 270 Ga. 675, 513 S. E. 2d 207.

No. 98–2020. CARPENTER *v.* FEDERAL NATIONAL MORTGAGE ASSOCIATION. C. A. D. C. Cir. Certiorari denied. Reported below: 165 F. 3d 69.

No. 98–2022. CORLEY *v.* CITY OF LONGVIEW. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 265.

No. 98–2023. ALABAMA MUNICIPAL INSURANCE CORP. ET AL. *v.* ALABAMA ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 730 So. 2d 107.

No. 98–2024. FURLOW ET VIR *v.* ALLIED CONVEYOR, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 172 F. 3d 53.

No. 98–2025. PIKE ET UX. *v.* ARIZONA DEPARTMENT OF TRANSPORTATION ET AL. Ct. App. Ariz. Certiorari denied.

No. 98–2026. LOCASCIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 166 F. 3d 1202.

No. 98–2027. LAWSON ET AL. *v.* ABRAMS, FORMER ATTORNEY GENERAL OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 166 F. 3d 1200.

No. 98–2028. LEWIS *v.* COWEN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 165 F. 3d 154.

No. 98–2029. ROTHBURY INVESTMENTS ET AL. *v.* DURA-CORP., INC. Super. Ct. Pa. Certiorari denied. Reported below: 714 A. 2d 1090.

No. 98–2030. SAPP ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 166 F. 3d 349.

No. 98–2031. KAHRE ET AL. *v.* INTERNATIONAL MONETARY FUND ET AL. Sup. Ct. Nev. Certiorari denied.

No. 98–2032. MCQUEEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 176 F. 3d 478.

No. 98–2033. SCHLOSSER *v.* TOWN OF WOODSIDE ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 98–2034. ROBINSON ET AL. *v.* SHERIFF OF COOK COUNTY. C. A. 7th Cir. Certiorari denied. Reported below: 167 F. 3d 1155.

No. 98–2035. MCGEE ET UX. *v.* COUNTY OF ORANGE. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 55.

No. 98–2036. JACKSON *v.* THE RIGHT STUFF, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 176 F. 3d 472.

No. 98–2038. GREENE *v.* CITY OF MONTGOMERY. Ct. Crim. App. Ala. Certiorari denied. Reported below: 741 So. 2d 492.

No. 98–2039. GUIDISH *v.* WHITE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 175 F. 3d 1010.

No. 98–2040. GOURLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 168 F. 3d 165.

No. 98–2041. JEFFERSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 161 F. 3d 12.

No. 98–2042. BENJAMIN ET AL. *v.* KERIK, COMMISSIONER, NEW YORK CITY DEPARTMENT OF CORRECTION, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 172 F. 3d 144.

No. 98–2044. ALOUPIS ET VIR *v.* ROOP ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 166 F. 3d 331.

No. 98–2045. PELULLO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 173 F. 3d 131.

No. 98–2046. THOMPSON *v.* NATIONAL AERONAUTICS AND SPACE ADMINISTRATION. C. A. Fed. Cir. Certiorari denied. Reported below: 178 F. 3d 1309.

No. 98–2047. DITTLER *v.* ROBEY. Ct. App. Wash. Certiorari denied. Reported below: 93 Wash. App. 1069.

No. 98–2049. DOUROS ET UX. *v.* SHARON SAVINGS BANK, FORMERLY SHARON SAVINGS AND LOAN ASSN. Super. Ct. Pa. Certiorari denied.

No. 98–2050. MATTEO *v.* BRENNAN, SUPERINTENDENT, ALBION CORRECTIONAL INSTITUTION, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 171 F. 3d 877.

No. 98–2054. JOBE, ASSIGNEE OF AIR NEW ORLEANS, INC. *v.* ATR MARKETING, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 174 F. 3d 198.

No. 98–2055. DUNN ET AL. *v.* COMMODITY FUTURES TRADING COMMISSION. C. A. 2d Cir. Certiorari denied. Reported below: 169 F. 3d 785.

No. 98–2057. NORTON ET UX., AS PARENTS OF NORTON, A MINOR *v.* ORINDA UNION SCHOOL DISTRICT. C. A. 9th Cir. Certiorari denied. Reported below: 168 F. 3d 500.

No. 98–2058. R. M. S. TITANIC, INC., SUCCESSOR IN INTEREST TO TITANIC VENTURES, LIMITED PARTNERSHIP *v.* HAVER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 171 F. 3d 943.

No. 98–2061. PI ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 174 F. 3d 745.

No. 98–8002. MARTINEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–8051. DEWBERRY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 98–8159. TURPIN *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 98–8318. BARRAZA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–8359. GONZALEZ *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 184 Ill. 2d 402, 704 N. E. 2d 375.

No. 98–8551. BEETS *v.* KAUTZKY, DIRECTOR, IOWA DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied. Reported below: 164 F. 3d 1131.

No. 98–8571. SHEPPARD *v.* UNITED STATES;
No. 98–8589. SHEPPARD *v.* UNITED STATES;
No. 98–8604. SHEPPARD *v.* UNITED STATES;
No. 98–8614. BROWN *v.* UNITED STATES; and
No. 98–9006. EDWARDS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 159 F. 3d 1117.

No. 98–8629. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 164 F. 3d 627.

No. 98–8702. SORIANO *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 98–8777. CHESTER *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 724 So. 2d 1276.

No. 98–8795. FULLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 162 F. 3d 256.

No. 98–8799. CROMER *v.* SMITH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 159 F. 3d 875.

No. 98–8804. SOSA *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 177 F. 3d 982.

No. 98–8828. WATSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 168 F. 3d 485.

No. 98–8840. GONZALEZ-ALMARAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 168 F. 3d 485.

No. 98–8894. BARAJAS-CHAVEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 162 F. 3d 1285.

No. 98–8896. MANCILLAS-ZARATE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 168 F. 3d 485.

No. 98–8907. PATTERSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–8929. BELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 168 F. 3d 483.

No. 98–8972. GUTIERREZ *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 168 F. 3d 1318.

No. 98–8973. GRIFFITH *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 983 S. W. 2d 282.

No. 98–8981. ROMANELLI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 165 F. 3d 37.

No. 98–8999. VAIL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 165 F. 3d 920.

No. 98–9044. DEGEN *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 720 So. 2d 470.

No. 98–9057. THOMAS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 552 Pa. 621, 717 A. 2d 468.

No. 98–9061. BAEZ *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 554 Pa. 66, 720 A. 2d 711.

No. 98–9066. CASTRO *v.* UNITED STATES; and
No. 98–9090. GOMEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 166 F. 3d 728.

No. 98–9073. WILLIAMS *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 728 So. 2d 239.

No. 98–9095. RITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 164 F. 3d 1323.

No. 98–9096. SHEARER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 167 F. 3d 538.

No. 98–9121. DURFEE, FKA DUPRE, ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 167 F. 3d 36.

No. 98–9124. BULL *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 185 Ill. 2d 179, 705 N. E. 2d 824.

No. 98–9137. OLMSTEAD *v.* SOCIAL AND REHABILITATIVE SERVICES OF WYANDOTTE COUNTY. Ct. App. Kan. Certiorari denied. Reported below: 25 Kan. App. 2d xxi, 975 P. 2d 273.

No. 98–9147. SCHELL *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 165 F. 3d 917.

No. 98–9148. SORTON *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 58.

No. 98–9149. RIVERA *v.* SISTRUNK, SUPERINTENDENT, CHARLOTTE CORRECTIONAL INSTITUTION, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 163 F. 3d 1358.

No. 98–9154. MACRI *v.* LACOILLE ET AL. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 710 So. 2d 1389.

No. 98–9155. KREAGER *v.* STRUBLE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 57.

No. 98–9156. MILES *v.* UGAST ET AL. C. A. D. C. Cir. Certiorari denied.

No. 98–9161. LEE *v.* JOHNSON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 166 F. 3d 1209.

No. 98–9162. JACKSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 175 F. 3d 600.

No. 98–9170. LEE *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 98–9174. LEONARD *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 114 Nev. 1196, 969 P. 2d 288.

No. 98–9175. MORRIS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 98–9178. STEWART *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–9180. PAIRIS *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 98–9182. MUHLEISEN *v.* IEYOUB, ATTORNEY GENERAL OF LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 168 F. 3d 840.

No. 98–9186. WRIGHT *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 987 S. W. 2d 26.

No. 98–9187. WILSON ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 160 F. 3d 732.

No. 98–9192. WILLIAMS *v.* JOHNSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CRESSON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 98–9199. RELIFORD *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–9200. SMITH *v.* PETERS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 132 F. 3d 36.

No. 98–9205. BURKES *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 719 So. 2d 29.

No. 98–9207. LISENBEE *v.* HENRY. C. A. 9th Cir. Certiorari denied. Reported below: 166 F. 3d 997.

No. 98–9211. WEASELHEAD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 165 F. 3d 1209.

No. 98–9212. WEBSTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 162 F. 3d 308.

No. 98–9213. ZAGORSKI *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 983 S. W. 2d 654.

No. 98–9214. WELCH *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 968 P. 2d 1231.

No. 98–9216. MACRI *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 185 Ill. 2d 1, 705 N. E. 2d 772.

No. 98–9217. JAMES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–9220. MAYFIELD-EL *v.* SCHOTTEY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 172 F. 3d 49.

No. 98–9221. JOINER *v.* BENNETT. C. A. 5th Cir. Certiorari denied. Reported below: 172 F. 3d 869.

No. 98–9223. RAMSEY *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 98–9227. ANTONIO SANCHEZ *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 98–9230. GANUS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 185 Ill. 2d 355, 706 N. E. 2d 875.

No. 98–9234. HAND *v.* MENSH AND MACINTOSH, P. A. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 718 So. 2d 234.

No. 98–9238. DUNCAN *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 98–9239. SARVEY *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 98–9243. LYNES *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 46 Mass. App. 1106, 706 N. E. 2d 730.

No. 98–9244. JOHNSON *v.* STUBBLEFIELD, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 98–9245. JEFFERIES *v.* ANDREWS. C. A. 4th Cir. Certiorari denied. Reported below: 166 F. 3d 1209.

No. 98–9247. RAYAS MEJIA *v.* COLE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 168 F. 3d 485.

No. 98–9250. THOMAS *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 114 Nev. 1127, 967 P. 2d 1111.

No. 98–9257. OLSON ET UX. *v.* CHRISTIAN COUNTY PLANNING AND ZONING ET AL. C. A. 8th Cir. Certiorari denied.

No. 98–9259. JACKSON *v.* TOWN OF JONESBORO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 156 F. 3d 181.

No. 98–9265. STEWARD *v.* UNITED STATES; and
No. 98–9286. HARRIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 154 F. 3d 1082 and 163 F. 3d 608.

No. 98–9268. ALEXANDER *v.* CATOE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 172 F. 3d 862.

No. 98–9269. ALEXANDER *v.* DOE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 172 F. 3d 862.

No. 98–9272. WEAVER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 982 S. W. 2d 892.

No. 98–9276. COPENHEFER *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 553 Pa. 285, 719 A. 2d 242.

No. 98–9281. KLINER *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 185 Ill. 2d 81, 705 N. E. 2d 850.

No. 98–9283. CONNERS ET AL. *v.* ALABAMA DEPARTMENT OF CORRECTIONS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 165 F. 3d 39.

No. 98–9284. DAVIS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 98–9285. HAMILTON *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 168 F. 3d 499.

No. 98–9287. DUTCH *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 98–9289. DOMINGUEZ-CARMONA *v.* UNITED STATES;
No. 98–9290. HERNANDEZ-VILLANUEVA *v.* UNITED STATES; and
No. 98–9295. RUBIO-LOYA ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 166 F. 3d 1052.

No. 98–9298. SCOTT *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 728 So. 2d 172.

No. 98–9300. FROST *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 727 So. 2d 417.

No. 98–9310. RODGERS *v.* TOBIN, JUDGE, COURT OF COMMON PLEAS OF OHIO, COLUMBIANA COUNTY, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 429.

No. 98–9312. RICHARDSON *v.* NORTH CAROLINA DEPARTMENT OF CORRECTION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 166 F. 3d 333.

No. 98–9314. PENNINGTON *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 337 Ark. xix.

No. 98–9315. YOUNG *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 98–9319. WOODS *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 98–9325. MOORE *v.* PARROTT, JUDGE, SUPERIOR COURT OF GEORGIA, JASPER COUNTY, ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–9326. MILBURN *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 204 W. Va. 203, 511 S. E. 2d 828.

No. 98–9327. STROUD *v.* PATTON, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 98–9328. ROYBAL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 19 Cal. 4th 481, 966 P. 2d 521.

No. 98–9329. PESEK *v.* COURT OF APPEALS OF WISCONSIN, DISTRICT III, ET AL. Sup. Ct. Wis. Certiorari denied.

No. 98–9330. BURRAL *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 352 Md. 707, 724 A. 2d 65.

No. 98–9332. TURNER *v.* MILLER COUNTY SHERIFF'S DEPARTMENT. C. A. 8th Cir. Certiorari denied.

No. 98–9333. MAHAN *v.* HARGETT, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 166 F. 3d 1221.

No. 98–9334. KING *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 98–9336. MCBROOM *v.* TECHNEGLAS, INC. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 98–9337. WIGGINS *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 352 Md. 580, 724 A. 2d 1.

No. 98–9338. BOGGS *v.* TREADWAY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 875.

No. 98–9339. PESEK *v.* COURT OF APPEALS OF WISCONSIN, DISTRICT III. Sup. Ct. Wis. Certiorari denied.

No. 98–9345. JOHNSON *v.* SAN BERNARDINO COUNTY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 925.

No. 98–9346. RIVERA *v.* NELSON ET AL. C. A. 8th Cir. Certiorari denied.

No. 98–9347. STEVENS *v.* WINGARD, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 172 F. 3d 49.

No. 98–9352. CAVENDER *v.* MILLER, JUDGE, CIRCUIT COURT OF KENTUCKY, WOLFE COUNTY. Sup. Ct. Ky. Certiorari denied. Reported below: 984 S. W. 2d 848.

No. 98–9354. LEMLEY *v.* LEMLEY. Ct. Sp. App. Md. Certiorari denied. Reported below: 123 Md. App. 791.

No. 98–9369. SPLUNGE *v.* ANDERSON, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied. Reported below: 160 F. 3d 369.

No. 98–9370. REID *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 256 Va. 561, 506 S. E. 2d 787.

No. 98–9371. SMITH *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 727 So. 2d 173.

No. 98–9375. SYKES-BEY *v.* MARYLAND; and
No. 99–5085. EVANS *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 352 Md. 496, 723 A. 2d 423.

No. 98–9381. MAGANA-CARDONA *v.* PAPAC ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 57.

No. 98–9382. ANGEHRN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 90 Wash. App. 339, 952 P. 2d 195.

No. 98–9383. BRAXTON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 98–9385. BYRD *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–9387. COOK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 163 F. 3d 1354.

No. 98–9388. CLARKE *v.* SIKES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 176 F. 3d 494.

No. 98–9389. BARKSDALE *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 98–9390. CAUDLE *v.* HIGHTOWER, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 98–9392. BOGARD *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 98–9396. HOWELL *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 967 P. 2d 1221.

No. 98–9400. FOLCK *v.* MASCHNER, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 98–9408. RATHER *v.* SUTHERS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Colo. Certiorari denied. Reported below: 973 P. 2d 1264.

No. 98–9410. TONG PARK *v.* SAN MATEO COUNTY, CALIFORNIA, ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 98–9411. MARTINEZ-VILLAREAL *v.* ARIZONA. Super. Ct. Ariz., Cochise County. Certiorari denied.

No. 98–9413. MAESTAS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 987 S. W. 2d 59.

No. 98–9415. MCSHEFFREY *v.* HENRY, WARDEN; MCSHEFFREY *v.* CRUMP ET AL.; MCSHEFFREY *v.* UNITED STATES; and MCSHEFFREY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 164 F. 3d 625 (first judgment); 166 F. 3d 333 (second judgment).

No. 98–9416. BURRELL *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 98–9417. CLOSSON *v.* PITCHER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–9420. COOKS *v.* WARD, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 165 F. 3d 1283.

No. 98–9421. TORTORICI *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 92 N. Y. 2d 757, 709 N. E. 2d 87.

No. 98–9422. WELDON *v.* WYOMING. Dist. Ct. Wyo., Natrona County. Certiorari denied.

No. 98–9423. WAYNE *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 553 Pa. 614, 720 A. 2d 456.

No. 98–9424. TRULL *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 349 N. C. 428, 509 S. E. 2d 178.

No. 98–9425. ZIGMUND *v.* NORKO ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 165 F. 3d 16.

No. 98–9426. CRAWFORD *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–9430. JOHNSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–9437. PERELMAN *v.* RENO, ATTORNEY GENERAL, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1015.

No. 98–9438. HOBSON *v.* DEPARTMENT OF THE TREASURY. C. A. 6th Cir. Certiorari denied.

No. 98–9440. PERELMAN *v.* RENO, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 194 F. 3d 174.

No. 98–9441. SMITH *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 98–9444. CHHIM *v.* CITY OF HOUSTON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 168 F. 3d 486.

No. 98–9447. HANSON *v.* SOUTH DAKOTA. Sup. Ct. S. D. Certiorari denied. Reported below: 588 N. W. 2d 885.

No. 98–9448. EGEOLU *v.* UNIVERSITY OF TEXAS AT SAN ANTONIO. C. A. 5th Cir. Certiorari denied. Reported below: 167 F. 3d 537.

No. 98–9450. FRANKLIN *v.* GOODWIN, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–9451. FRENCH *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–9457. SUMTER *v.* SAYBOLT, INC. Super. Ct. N. J., App. Div. Certiorari denied.

No. 98–9459. TROBAUGH *v.* IOWA. Sup. Ct. Iowa. Certiorari denied.

No. 98–9463. COUNTERMAN *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 553 Pa. 370, 719 A. 2d 284.

No. 98–9465. RAPHAEL *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 98–9466. MENDEZ *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–9467. MCCALL-BEY *v.* BRADY, JUDGE, CIRCUIT COURT OF ILLINOIS, COOK COUNTY. Sup. Ct. Ill. Certiorari denied.

No. 98–9468. MCDANIEL-ORTEGA *v.* WILLIAMS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 172 F. 3d 879.

No. 98–9469. LUNTAO *v.* EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 161 F. 3d 2.

No. 98–9470. HARRIS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–9471. FRANKS *v.* THOMAS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–9477. CORTEZ ESCAMILLA *v.* PRUNTY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–9479. HODGES *v.* BLOCKER ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 163 F. 3d 602.

No. 98–9482. FLYNN *v.* ENDICOTT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 98–9483. GLEASON *v.* BURTNER. C. A. 9th Cir. Certiorari denied. Reported below: 161 F. 3d 12.

No. 98–9484. FANE *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 98–9485. GAFFIN *v.* CLARKE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 98–9486. HAYDEN *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–9489. HERBIN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 98–9490. NORTHINGTON *v.* ELO, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 429.

No. 98–9492. VASQUEZ DEL ROSARIO *v.* RADLOFF ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 176 F. 3d 473.

No. 98–9495. BRANNON *v.* TARLOV ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 164 F. 3d 617.

No. 98–9502. YOUNG *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 992 P. 2d 332.

No. 98–9505. SPIRES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 167 F. 3d 541.

No. 98–9506. MAHMOUD *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 163 F. 3d 1355.

No. 98–9507. MCCANTS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 732 So. 2d 327.

No. 98–9509. GALVAN RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 169 F. 3d 217.

No. 98–9510. SISK *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–9511. BROWN ET AL. *v.* OHIO; and JOHNSON ET AL. *v.* OHIO. Ct. App. Ohio, Ross County. Certiorari denied.

No. 98–9515. WATSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–9517. ROBBINS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–9520. WEATHERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 169 F. 3d 336.

No. 98–9522. VEGA *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 730 So. 2d 691.

No. 98–9523. SKIBINSKI *v.* BELL ATLANTIC ET AL. C. A. 2d Cir. Certiorari denied.

No. 98–9526. CARDALES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 168 F. 3d 548.

No. 98–9528. HOSKINS *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. 9th Cir. Certiorari before judgment denied.

No. 98–9530. HOMMRICH *v.* MARINETTE COUNTY, WISCONSIN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1020.

No. 98–9532. FRAZIER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 175 F. 3d 1025.

No. 98–9534. PARKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 176 F. 3d 486.

No. 98–9535. PADGETT *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 98–9541. MCNEILL *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 349 N. C. 634, 509 S. E. 2d 415.

No. 98–9542. KIRTMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 172 F. 3d 63.

No. 98–9543. MUNIZ-HERRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 174 F. 3d 198.

No. 98–9544. MURILLO *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 349 N. C. 573, 509 S. E. 2d 752.

No. 98–9546. SHAW *v.* LINDSEY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–9547. RUSHING *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 98–9548. ROQUE *v.* LOUISIANA. C. A. 5th Cir. Certiorari denied.

No. 98–9549. MUHAMMAD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–9550. LOMAX *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 98–9552. MONTOYA *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 98–9555. SCHULTZ *v.* UNITED STATES; and
No. 99–5535. BIGGINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 174 F. 3d 201.

No. 98–9556. SMITH *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–9558. SHIELDS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 172 F. 3d 880.

No. 98–9559. BELL *v.* UNITED STATES; and
No. 98–9746. BELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 178 F. 3d 1296.

No. 98–9560. CHAPA *v.* ADAMS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 168 F. 3d 1036.

No. 98–9561. CROWE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 168 F. 3d 483.

No. 98–9562. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 172 F. 3d 864.

No. 98–9564. BURNS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 174 F. 3d 203.

No. 98–9565. BISHOP *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 172 F. 3d 63.

No. 98–9566. OSPINA *v.* PATAKI, GOVERNOR OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 98–9568. MENDOZA-PEREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 168 F. 3d 503.

No. 98–9570. NAGY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 173 F. 3d 847.

No. 98–9571. MIKE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 172 F. 3d 880.

No. 98–9572. L. M. K., A JUVENILE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 166 F. 3d 1051.

No. 98–9573. MCQUILLION *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 98–9574. MAHIQUE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 180 F. 3d 269.

No. 98–9575. MIDDLETON *v.* RAY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 166 F. 3d 1221.

No. 98–9576. TURNER *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 301 Ill. App. 3d 1115, 746 N. E. 2d 351.

No. 98–9577. VILLARREAL-FUENTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 174 F. 3d 198.

No. 98–9578. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 172 F. 3d 882.

No. 98–9579. MARTINEZ *v.* KELLY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 98–9581. MACK *v.* MOHR ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 172 F. 3d 867.

No. 98–9582. TERIO *v.* KURTZMAN & HASPEL, TRUSTEE, ET AL. C. A. 2d Cir. Certiorari denied.

No. 98–9583. WELCH *v.* LAMBERT, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 156 F. 3d 1241.

No. 98–9584. WHEELER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 98–9585. WILLIAMS *v.* SCHRIRO, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 8th Cir. Certiorari denied.

No. 98–9586. TYLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 60.

No. 98–9587. BATES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 98–9591. CONTRERAS-CARDENAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 59.

No. 98–9592. CAVE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 727 So. 2d 227.

No. 98–9593. BELL *v.* DAY ET AL. C. A. 5th Cir. Certiorari denied.

No. 98–9594. TERRY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 60.

No. 98–9596. WESLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 98–9597. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 427.

No. 98–9598. WELLS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 163 F. 3d 889.

No. 98–9599. WILSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 172 F. 3d 865.

No. 98–9600. WILSON *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 98–9602. ATONDO *v.* CALIFORNIA; and
No. 98–9796. ATONDO *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 98–9603. CARRILLO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 98–9604. CRIPPEN *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 98–9605. BUCHHOLZ *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 98–9606. COE *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 161 F. 3d 320.

No. 98–9607. JACKSON *v.* HOUSTON, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 176 F. 3d 493.

No. 98–9608. NATALE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 176 F. 3d 491.

No. 98–9609. MOORE *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 983 S. W. 2d 479.

No. 98–9611. SEARCY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 430.

No. 98–9612. SINGLETON *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 235 Ga. App. 88, 508 S. E. 2d 461.

No. 98–9613. PAYAN-SOLIS *v.* UNITED STATES;
No. 98–9658. RIVAS-LERMA *v.* UNITED STATES;
No. 98–9719. ROJAS RENTERIA *v.* UNITED STATES;
No. 98–9797. MORCILLO-VIDAL *v.* UNITED STATES;
No. 98–9841. PALMA-ROBAYO *v.* UNITED STATES;
No. 98–9947. FERRARO MONTESDEOCA *v.* UNITED STATES;
No. 98–9948. LERMA-LERMA *v.* UNITED STATES;
No. 98–9950. OTERO-ESTUPINAN *v.* UNITED STATES; and
No. 98–9954. CAICEDO PINEDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 144 F. 3d 1249.

No. 98–9614. ROLLACK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 853.

No. 98–9615. WILLIAMS *v.* GALAZA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–9616. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 176 F. 3d 493.

No. 98–9618. BONNELL *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 98–9619. AGUILAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 173 F. 3d 862.

No. 98–9620. COLE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 101 F. 3d 680.

No. 98–9621. MEDINA *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–9622. O'NEAL *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 98–9623. SOLIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 169 F. 3d 224.

No. 98–9624. OKEEZIE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 178 F. 3d 1295.

No. 98–9625. SELLNER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 166 F. 3d 344.

No. 98–9626. SHEETS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 165 F. 3d 920.

No. 98–9627. ROSTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 168 F. 3d 377.

No. 98–9628. STROTHER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 175 F. 3d 1009.

No. 98–9629. SHARROW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 174 F. 3d 202.

No. 98–9630. PAYTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 168 F. 3d 1103.

No. 98–9631. SMALL *v.* IDAHO. Ct. App. Idaho. Certiorari denied. Reported below: 132 Idaho 327, 971 P. 2d 1151.

No. 98–9632. COLE *v.* YEARWOOD, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–9633. WASHINGTON *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 98–9635. LUSK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 176 F. 3d 479.

No. 98–9636. SMITH *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 98–9637. SIMON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 168 F. 3d 1271.

No. 98–9638. BILDERBECK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 163 F. 3d 971.

No. 98–9639. BENNETT *v.* STEWART, SUPERINTENDENT, MCNEIL ISLAND CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 98–9640. AGUILAR *v.* ABBOTT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 172 F. 3d 868.

No. 98–9641. COOK *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 98–9642. BISHOP *v.* ROMER, GOVERNOR OF COLORADO, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 172 F. 3d 62.

No. 98–9643. WILSON *v.* REYNOLDS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 172 F. 3d 874.

No. 98–9644. WALKER *v.* COLLINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–9645. CARTHANE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 727 So. 2d 903.

No. 98–9646. CASEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 20.

No. 98–9647. HILTON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 167 F. 3d 61.

No. 98–9648. HERRERA ET UX. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 175 F. 3d 1011.

No. 98–9649. CHONG LING DAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 178 F. 3d 1281.

No. 98–9650. DEAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 176 F. 3d 478.

No. 98–9651. GARCIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 852.

No. 98–9652. FOWLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 176 F. 3d 491.

No. 98–9653. FREEMAN *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 925.

No. 98–9654. GRAHAM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 169 F. 3d 787.

No. 98–9655. GARCIA *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 92 N. Y. 2d 726, 708 N. E. 2d 992.

No. 98–9656. EKANDEM *v.* DISTRICT OF COLUMBIA ET AL. C. A. D. C. Cir. Certiorari denied.

No. 98–9657. POLAND *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 169 F. 3d 573.

No. 98–9659. EDMONDSON *v.* UNITED STATES; and
No. 99–5423. VARGAS NAVARRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 169 F. 3d 228.

No. 98–9660. EAGLE TAIL *v.* UNITED STATES; and
No. 98–9890. JACKSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 164 F. 3d 403.

No. 98–9661. FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 168 F. 3d 502.

No. 98–9662. FLEMING *v.* CAPE MAY COUNTY COURTHOUSE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 172 F. 3d 859.

No. 98–9664. HARRIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 174 F. 3d 202.

No. 98–9665. GILLIAM *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 167 F. 3d 628.

No. 98–9666. GREEN, AKA U'ALLAH *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 350 N. C. 59, 510 S. E. 2d 375.

No. 98–9667. GONZALEZ-LOZOYA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 174 F. 3d 198.

No. 98–9668. GOODWIN *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 84 Ohio St. 3d 331, 703 N. E. 2d 1251.

No. 98–9669. ROBINSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 167 F. 3d 824.

No. 98–9670. SWEDZINSKI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 160 F. 3d 498.

No. 98–9671. SOLTERO *v.* INGLE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–9672. SMITH *v.* PRESS. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 425.

No. 98–9673. STEWART *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 730 So. 2d 1246.

No. 98–9675. HOSKINS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 162 F. 3d 1170.

No. 98–9677. HUGHES *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 589 N. W. 2d 912.

No. 98–9678. FISHER *v.* A. D. T. SECURITY SYSTEM. C. A. 3d Cir. Certiorari denied. Reported below: 173 F. 3d 420.

No. 98–9679. FILIPPI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 172 F. 3d 864.

No. 98–9680. COOK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 168 F. 3d 507.

No. 98–9681. BARRETT *v.* ACEVEDO. C. A. 8th Cir. Certiorari denied. Reported below: 169 F. 3d 1155.

No. 98–9682. THOMAS *v.* CALDERA, SECRETARY OF THE ARMY. C. A. D. C. Cir. Certiorari denied.

No. 98–9683. OUTLAW *v.* RYAN, GOVERNOR OF ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1020.

No. 98–9684. ROBINSON *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 720 So. 2d 1124.

No. 98–9685. ROSEMAN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 729 So. 2d 394.

No. 98–9686. RAMOS *v.* ROGERS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 170 F. 3d 560.

No. 98–9687. BROWN *v.* OHIO. Ct. App. Ohio, Huron County. Certiorari denied.

No. 98–9688. CAVALIERI, AKA CAVALIERI-CONWAY *v.* L. BUTTERMAN & ASSOCIATES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 172 F. 3d 52.

No. 98–9689. BARRENO *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–9690. LYNAS *v.* GODFREY. C. A. 9th Cir. Certiorari denied.

No. 98–9691. LAUGHLIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 929.

No. 98–9692. SHAW *v.* GOMEZ ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–9693. MCDONALD *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 194 F. 3d 175.

No. 98–9694. LOPEZ-GAMEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 877.

No. 98–9695. CLEARMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 98–9696. ALFORD *v.* WILKINSON, DIRECTOR, OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 428.

No. 98–9697. BOLES ET AL. *v.* BRADLEY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 166 F. 3d 1213.

No. 98–9698. ROBINSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 164 F. 3d 1068.

No. 98–9699. PERKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 853.

No. 98–9700. OLIVER *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 36 Mass. App. 1110, 633 N. E. 2d 443.

No. 98–9702. ROBINSON *v.* HENDERSON ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–9703. PRATT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 177 F. 3d 983.

No. 98–9704. JEROME *v.* OHIO. C. A. 6th Cir. Certiorari denied.

No. 98–9705. AVILES ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 170 F. 3d 863.

No. 98–9706. COLBERT *v.* CORCORAN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 172 F. 3d 862.

No. 98–9707. VINCENT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 167 F. 3d 428.

No. 98–9708. TUCKER ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 187 F. 3d 627.

No. 98–9709. MILES *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 98–9710. NASON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 98–9711. KULAS *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA. C. A. 9th Cir. Certiorari denied.

No. 98–9712. BLACKSHEAR *v.* RUSSELL, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 854.

No. 98–9713. AGUILAR *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–9714. CANTRELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 430.

No. 98–9715. BRAUN *v.* FLOWERS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 172 F. 3d 62.

No. 98–9716. ROBINSON *v.* BAKER HUGHES OILFIELD OPERATIONS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 170 F. 3d 183.

No. 98–9717. CORDERO-GODINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 176 F. 3d 479.

No. 98–9718. CLAWSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 104.

No. 98–9720. JENNINGS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 170 F. 3d 183.

No. 98–9722. TYABJI *v.* CALIFORNIA (two judgments). Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 98–9723. THOMPSON *v.* MISSOURI. Ct. App. Mo., Southern Dist. Certiorari denied.

No. 98–9724. KREAGER *v.* A TO Z AUTO RECYCLER ET AL. Ct. App. Ariz. Certiorari denied.

No. 98–9725. BOTERO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 172 F. 3d 39.

No. 98–9726. CLARK *v.* MITCHEM, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 98–9727. BISBY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–9728. BERKOVICH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 168 F. 3d 64.

No. 98–9729. POWERS *v.* SHANKS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 172 F. 3d 879.

No. 98–9730. ROGERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 98–9731. POWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 172 F. 3d 45.

No. 98–9732. KLEIN *v.* UNITED STATES; and
No. 99–5597. COOPERMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 177 F. 3d 981.

No. 98–9733. NERVIL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 166 F. 3d 1211.

No. 98–9734. MILLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 176 F. 3d 492.

No. 98–9735. MCGEORGE *v.* UNITED STATES; and
No. 98–9736. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 426.

No. 98–9737. LONG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 853.

No. 98–9738. MOORE *v.* WHITE. C. A. 8th Cir. Certiorari denied.

No. 98–9739. NEACSU *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 740 So. 2d 616.

No. 98–9740. LINDSTEDT *v.* MISSOURI LIBERTARIAN PARTY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 160 F. 3d 1197.

No. 98–9742. MORRIS *v.* CITY OF BUFFALO. C. A. 2d Cir. Certiorari denied.

No. 98–9744. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 166 F. 3d 340.

No. 98–9747. BOWEN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 171 F. 3d 24.

No. 98–9748. BROWN *v.* CONLEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–9750. DUNG HOANG LE *v.* LAMBERT, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 98–9751. MORSE *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied. Reported below: 172 F. 3d 983.

No. 98–9753. BROOKS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 98–9754. CARPENTER *v.* LUTHERAN SOCIAL SERVICES. Ct. App. Wash. Certiorari denied.

No. 98–9755. BRAMWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 20.

No. 98–9756. AGUILAR *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 160 F. 3d 1052.

No. 98–9757. BAKER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 174 F. 3d 197.

No. 98–9758. BOYD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 168 F. 3d 1077.

No. 98–9759. ANDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 98–9761. COBB *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 741 So. 2d 483.

No. 98–9762. CARTER *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 98–9763. ROSE *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Haywood County, N. C. Certiorari denied.

No. 98–9764. RANDOLPH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 176 F. 3d 492.

No. 98–9767. GARRETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 176 F. 3d 478.

No. 98–9768. GARDINER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 98–9769. FOGARTY *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 270 Ga. 609, 513 S. E. 2d 493.

No. 98–9770. FABIANO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 169 F. 3d 1299.

No. 98–9771. DURON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 176 F. 3d 479.

No. 98–9772. HATHCOCK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 877.

No. 98–9773. GIBSON *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 553 Pa. 648, 720 A. 2d 473.

No. 98–9774. GARCIA *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 166 F. 3d 351.

No. 98–9775. GREEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 175 F. 3d 822.

No. 98–9776. GOUGH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 857.

No. 98–9777. FRANKLIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 164 F. 3d 243.

No. 98–9778. HICKS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 164 F. 3d 389.

No. 98–9779. PEEPLES *v.* OHIO. Ct. App. Ohio, Pickaway County. Certiorari denied.

No. 98–9780. FELLOWS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 157 F. 3d 1197.

No. 98–9781. ESQUIVEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 176 F. 3d 491.

No. 98–9782. GRAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 168 F. 3d 503.

No. 98–9783. FUNTANILLA *v.* CAMBRA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 162 F. 3d 1168.

No. 98–9784. SMITH *v.* WALKER, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 98–9786. SOUTHERLAND *v.* HEINE ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–9787. RASHED *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 166 F. 3d 344.

No. 98–9789. MALLETT *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 160 F. 3d 456.

No. 98–9790. TERRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 94.

No. 98–9791. CASON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 175 F. 3d 1025.

No. 98–9792. CHAPPELL *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 114 Nev. 1403, 972 P. 2d 838.

No. 98–9794. BALLEK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 170 F. 3d 871.

No. 98–9795. ALLEN *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 98–9798. MACALLISTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 160 F. 3d 1304.

No. 98–9799. MILLER *v.* UNITED STATES;
No. 98–9885. COBBS *v.* UNITED STATES; and
No. 98–9888. WALKER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 173 F. 3d 846.

No. 98–9800. MADEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 173 F. 3d 865.

No. 98–9801. LOVELOCK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 170 F. 3d 339.

No. 98–9802. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 912.

No. 98–9803. BROWN *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 7th Cir. Certiorari denied.

No. 98–9804. BILES *v.* SMITH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 172 F. 3d 43.

No. 98–9806. MAZZAGLIA *v.* MAZZAGLIA. Sup. Ct. N. H. Certiorari denied.

No. 98–9807. LANCASTER *v.* STUBBLEFIELD, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER, ET AL. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 985 S. W. 2d 854.

No. 98–9809. TURNER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 431.

No. 98–9810. WILLIAMS *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 170 F. 3d 431.

No. 98–9811. VERNATTER *v.* HOLLAND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1018.

No. 98–9812. ZIGMUND *v.* SOLNIT ET AL. C. A. 2d Cir. Certiorari denied.

No. 98–9813. WILSON *v.* MILLHOUSE. C. A. 6th Cir. Certiorari denied.

No. 98–9814. TAYLOR *v.* COUNTRY BROOK ESTATES. Cir. Ct. Jefferson County, Ky. Certiorari denied.

No. 98–9815. RIDDICK *v.* WRIGHT, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 851.

No. 98–9816. SHERRILL *v.* PICO. Int. Ct. App. Haw. Certiorari denied. Reported below: 91 Haw. 139, 980 P. 2d 1013.

No. 98–9817. PEREZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 166 F. 3d 336.

No. 98–9818. PINNOCK *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 194 F. 3d 175.

No. 98–9820. RONDEAU *v.* NEW HAMPSHIRE ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 201 F. 3d 428.

No. 98–9821. RODRIGUEZ-RODRIGUEZ *v.* BITTENBENDER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 170 F. 3d 183.

No. 98–9822. SERRA-NAVAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 177 F. 3d 981.

No. 98–9823. SPEED *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 270 Ga. 688, 512 S. E. 2d 896.

No. 98–9824. WARD *v.* UNITED STATES;
No. 98–9884. COX *v.* UNITED STATES; and
No. 99–5318. GIBSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 171 F. 3d 188.

No. 98–9826. ROBLEDO-ROBLEDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 176 F. 3d 480.

No. 98–9827. ROBERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1021.

No. 98–9829. ROJAS-ORTIZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 178 F. 3d 1281.

No. 98–9830. MCGRADY ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 426.

No. 98–9831. SANCHEZ-MENDOZA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 857.

No. 98–9833. CRUZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1016.

No. 98–9834. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 104.

No. 98–9835. BLUNT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 178 F. 3d 1280.

No. 98–9838. CRANDON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 173 F. 3d 122.

No. 98–9839. CASTILLO-CHAVEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 177 F. 3d 977.

No. 98–9842. SEXTON *v.* FRENCH, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 163 F. 3d 874.

No. 98–9843. PAGE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 715 A. 2d 890.

No. 98–9844. PASSEE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 426.

No. 98–9846. THOMAS *v.* DURHAM, SHERIFF, CLEBURNE COUNTY, ALABAMA. C. A. 11th Cir. Certiorari denied. Reported below: 178 F. 3d 1303.

No. 98–9847. HILDWIN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 727 So. 2d 193.

No. 98–9848. ATAYANTS *v.* UNITED STATES;
No. 98–9895. MOVSESYANTS *v.* UNITED STATES; and
No. 99–5076. NAGORNIUK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 98–9849. HOOD *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 172 F. 3d 863.

No. 98–9851. TIDWELL *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 98–9852. GILBERT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 974.

No. 98–9853. HOLMES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 98–9854. FRANKS *v.* THOMAS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–9855. GIBSON *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 8th Cir. Certiorari denied. Reported below: 175 F. 3d 1024.

No. 98–9856. GIVENS *v.* ROULAIN, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 156 F. 3d 187.

No. 98–9857. DOUGLAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 877.

No. 98–9858. HUTCHING *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 104.

No. 98–9859. HAMM *v.* CAMPBELL, COMMISSIONER, TENNESSEE DEPARTMENT OF CORRECTION. C. A. 6th Cir. Certiorari denied.

No. 98–9860. DIXON *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 731 So. 2d 559.

No. 98–9861. HOWARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 182 F. 3d 914.

No. 98–9862. HANSBORO *v.* CLAYTON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 172 F. 3d 53.

No. 98–9863. EDWARDS *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 301 Ill. App. 3d 966, 704 N. E. 2d 982.

No. 98–9864. GILBERT, AKA SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 176 F. 3d 476.

No. 98–9865. DRAYTON *v.* CATOE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 168 F. 3d 481.

No. 98–9866. HOSKINS *v.* U S WEST, INC., ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–9867. CARTER ET AL. *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 98–9868. MOSLEY *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–9869. DONG SOO KIM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 176 F. 3d 1126.

No. 98–9870. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 169 F. 3d 1092.

No. 98–9871. MARTIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 162 F. 3d 1157.

No. 98–9872. MONSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 853.

No. 98–9873. KIRKMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 168 F. 3d 482.

No. 98–9874. MANNING *v.* MICHIGAN. Cir. Ct. Mich., Saginaw County. Certiorari denied.

No. 98–9875. NULL *v.* PENNSYLVANIA BOARD OF PROBATION AND PAROLE. Commw. Ct. Pa. Certiorari denied.

No. 98–9876. KNIPFER *v.* PITZER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–9877. KING *v.* CRIST, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 98–9878. MCINTYRE *v.* BAYER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 178 F. 3d 1300.

No. 98–9879. PROSSER *v.* ROSS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 175 F. 3d 1025.

No. 98–9880. POLLACK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 98–9881. REEVES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 853.

No. 98–9882. STOKES *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 194 F. 3d 175.

No. 98–9883. CASIMIER *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 194 F. 3d 1330.

No. 98–9886. WASHINGTON *v.* DAVIS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 853.

No. 98–9887. WEDGEWORTH *v.* SUTTON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–9889. KING *v.* LOVE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 172 F. 3d 869.

No. 98–9891. LLOYD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 426.

No. 98–9892. JACKSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 177 F. 3d 978.

No. 98–9893. LUMBEF *v.* FINN ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–9894. KALLIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 877.

No. 98–9896. LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 929.

No. 98–9897. MCGEE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 952.

No. 98–9898. MARK *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–9899. WALTON *v.* BOOKER, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL. C. A. 5th Cir. Certiorari denied.

No. 98–9900. WOODS *v.* KLINGLER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 172 F. 3d 880.

No. 98–9901. VIG *v.* UNITED STATES; and
No. 98–9902. VIG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 167 F. 3d 443.

No. 98–9904. STEWART *v.* STUBBLEFIELD, SUPERINTENDENT, EASTERN MISSOURI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 98–9905. WILKERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 170 F. 3d 1040.

No. 98–9906. ROBERTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 166 F. 3d 336.

No. 98–9907. BEGHTEL *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 98–9909. BAUTISTA *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied.

No. 98–9910. AMEZCUA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 98–9911. BLEAM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 173 F. 3d 864.

No. 98–9912. KRATZER *v.* FIRST HEALTHCARE CORP. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 173 F. 3d 863.

No. 98–9914. BRITT *v.* MARTIN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 172 F. 3d 862.

No. 98–9915. BLAND *v.* TURNER. Ct. Civ. App. Ala. Certiorari denied. Reported below: 771 So. 2d 513.

No. 98–9916. BROWN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 258 App. Div. 2d 661, 683 N. Y. S. 2d 915.

No. 98–9918. CARTER *v.* WRIGHT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 100.

No. 98–9919. COLLINS *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–9920. CUPIT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 169 F. 3d 536.

No. 98–9921. CARROLL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 98–9923. ANDERSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–9924. BRASWELL *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 98–9925. BEY ET AL. *v.* CITY OF NEW YORK DEPARTMENT OF CORRECTION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 164 F. 3d 617.

No. 98–9927. SINGLETON *v.* UNITED STATES; and
No. 99–5900. MOORE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 928.

No. 98–9929. SANAPAW ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 171 F. 3d 514.

No. 98–9930. HILL *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 725 So. 2d 1108.

No. 98–9931. ALFORD *v.* UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT (three judgments). C. A. D. C. Cir. Certiorari denied.

No. 98–9932. BACCHUS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 178 F. 3d 1280.

No. 98–9934. BRIGAERTS *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari before judgment denied.

No. 98–9935. WOODS *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 701 N. E. 2d 1208.

No. 98–9937. COE *v.* PRUNTY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–9938. COOK *v.* BROWN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 176 F. 3d 471.

No. 98–9939. COX *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 172 F. 3d 879.

No. 98–9940. BARNES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 166 F. 3d 1210.

No. 98–9941. COFFEY *v.* BOOKER, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL. C. A. 5th Cir. Certiorari denied.

No. 98–9942. BROWNER *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 98–9943. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 170 F. 3d 617.

No. 98–9944. MARSHALL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 166 F. 3d 349.

No. 98–9945. JIMENEZ-ROMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 928.

No. 98–9946. MESSINA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 178 F. 3d 1297.

No. 98–9949. AHMAD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 173 F. 3d 846.

No. 98–9951. STEPHEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1018.

No. 98–9952. SCHIAPPA *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 248 Conn. 132, 728 A. 2d 466.

No. 98–9953. OCHOA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 19 Cal. 4th 353, 966 P. 2d 442.

No. 98–9955. BOOKER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 98–9956. SPAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 170 F. 3d 798.

No. 98–9957. PREVOST *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 98–9958. PROFIT *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 591 N. W. 2d 451.

No. 98–9959. GULLEY *v.* CIRCUIT COURT FOR MILWAUKEE COUNTY. Ct. App. Wis. Certiorari denied.

No. 98–9960. CHAPPELL *v.* EASLEY, ATTORNEY GENERAL OF NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 849.

No. 98–9961. BLACKBURN *v.* NEW MEXICO DEPARTMENT OF CORRECTIONS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 172 F. 3d 62.

No. 98–9962. BACA *v.* CAMBRA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–9963. ARROYO *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–9964. MATHIS *v.* RATELLE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 166 F. 3d 1218.

No. 98–9966. MONTEFUSCO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 182 F. 3d 902.

No. 98–9967. CLARK *v.* BOOKER, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 98–9968. BRANT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 163 F. 3d 1360.

No. 98–9969. COURTNEY *v.* HOLMES, DEPUTY WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 428.

No. 98–9970. TAYLOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 165 F. 3d 920.

No. 98–9971. TATUM *v.* MARYLAND DIVISION OF CORRECTION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 425.

No. 98–9972. GRIFFIN *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 98–9973. HIGHTOWER *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 98–9974. DONALDSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 176 F. 3d 492.

No. 98–9975. DAVIS *v.* SCOTT, FORMER DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 172 F. 3d 867.

No. 98–9976. HOFFMAN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 256 App. Div. 2d 1195, 685 N. Y. S. 2d 142.

No. 98–9977. GREENLEAF *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 591 N. W. 2d 488.

No. 98–9978. ENCISO DEL-CARMEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 173 F. 3d 862.

No. 98–9979. DELEON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 170 F. 3d 494.

No. 98–9980. FRANKLIN *v.* BILBRAY ET AL.; and FRANKLIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 56 (first judgment); 165 F. 3d 919 (second judgment).

No. 98–9981. ST. FLEUR *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 98–9982. OWENS *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 98–9983. RICOTTA *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 173 F. 3d 861.

No. 98–9985. HAMILTON *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–9986. DUA *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied.

No. 98–9987. GORHAM *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 981 S. W. 2d 315.

No. 98–9988. HOOPER *v.* STRINGFELLOW. Sup. Ct. Ga. Certiorari denied.

No. 98–9989. MOORE *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 731 So. 2d 666.

No. 98–9990. MARK *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 166 F. 3d 1209.

No. 98–9991. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 182 F. 3d 913.

No. 98–9993. BRADY *v.* PRISON HEALTH CARE SERVICES, INC., ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–9994. SIMPSON *v.* SIKES, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 98–9995. MANCINI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 134 F. 3d 380.

No. 98–9996. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1017.

No. 98–9997. BARBER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 173 F. 3d 864.

No. 98–9998. EVANS *v.* HICKS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 98–9999. FULLER *v.* TIDWELL ET AL. C. A. 8th Cir. Certiorari denied.

No. 98–10000. DAWSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 168 F. 3d 505.

No. 98–10001. EATON *v.* WEBER, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 98–10003. FERRUSCA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 928.

No. 98–10004. GRIER, AKA AVERY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1017.

No. 98–10005. HASSAN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–10006. WHITE *v.* PARKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–10007. GRAHAM *v.* LEWIS ET AL. Sup. Ct. Va. Certiorari denied.

No. 98–10008. CRENSHAW *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 172 F. 3d 50.

No. 98–10009. CARTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 168 F. 3d 502.

No. 98–10010. BUTLER *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 68 Cal. App. 4th 421, 80 Cal. Rptr. 2d 357.

No. 98–10011. CAVINESS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 168 F. 3d 483.

No. 98–10012. BATTERMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1016.

No. 98–10013. WRIGHT *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–10014. MCCARTY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 177 F. 3d 978.

No. 98–10015. HAYNIE *v.* FURLONG ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 172 F. 3d 62.

No. 98–10016. FREDERICK *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 223 Wis. 2d 267, 588 N. W. 2d 928.

No. 98–10018. DANZEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 98–10020. HERNANDEZ *v.* YEARWOOD, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–10021. GORDON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 162 F. 3d 1174.

No. 98–10022. GOINES *v.* MCANINCH, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 855.

No. 98–10023. TURNER *v.* FARM BUREAU INSURANCE AGENCY. C. A. 8th Cir. Certiorari denied.

No. 98–10025. COLES *v.* SUPERVALU, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 178 F. 3d 1293.

No. 98–10026. YARBROUGH *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–10027. THOMAS *v.* MEYERS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 98–10028. WARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 172 F. 3d 865.

No. 98–10029. WARE *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 98–10030. BADDOUR *v.* BIRKENBACH. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 98–10031. COLBERT *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–10032. DUFFUS, AKA LEWIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 174 F. 3d 333.

No. 98–10033. CLEMENTS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 104.

No. 98–10034. WILSON *v.* SCHRIRO, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 8th Cir. Certiorari denied.

No. 98–10035. WINZY *v.* LENSING, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 98–10036. CONARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 168 F. 3d 483.

No. 98–10037. BURROWS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 98–10038. BUCKHANA *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 98–10039. BUNN *v.* GRIMES, SHERIFF, ET AL. C. A. 8th Cir. Certiorari denied.

No. 98–10041. PALACIOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 173 F. 3d 847.

No. 98–10042. SKIBINSKI *v.* LAZAROFF ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 173 F. 3d 846.

No. 98–10043. OPONG-MENSAH *v.* DEPARTMENT OF PERSONNEL ADMINISTRATION. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 98–10044. BIRCH *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 299 Ill. App. 3d 1129, 740 N. E. 2d 100.

No. 98–10045. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 176 F. 3d 492.

No. 98–10046. TAYLOR *v.* SECURITIES AND EXCHANGE COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 194 F. 3d 175.

No. 98–10047. BROUGHTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 177 F. 3d 978.

No. 99–1. WHITE *v.* FIST, PERSONAL REPRESENTATIVE OF THE ESTATE OF GELLER, DECEASED, ET AL. Ct. Civ. App. Okla. Certiorari denied. Reported below: 980 P. 2d 665.

No. 99–3. ACE AUTO BODY & TOWING, LTD., ET AL. *v.* CITY OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 171 F. 3d 765.

No. 99–4. BEGALA *v.* PNC BANK, OHIO, NATIONAL ASSN. C. A. 6th Cir. Certiorari denied. Reported below: 163 F. 3d 948.

No. 99–6. A. S. GOLDMEN & CO., INC. *v.* NEW JERSEY BUREAU OF SECURITIES. C. A. 3d Cir. Certiorari denied. Reported below: 163 F. 3d 780.

No. 99–7. HAIK ET AL. *v.* TOWN OF ALTA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 176 F. 3d 488.

No. 99–8. LOUISIANA SEAFOOD MANAGEMENT COUNCIL ET AL. *v.* LOUISIANA WILDLIFE AND FISHERIES COMMISSION ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 719 So. 2d 119.

No. 99–9. OLIVER & WRIGHT MOTORS, INC., INDIVIDUALLY AND AS CLASS REPRESENTATIVE *v.* CITY OF HOOVER ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 730 So. 2d 608.

No. 99–10. LEGGETT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 162 F. 3d 237.

No. 99–11. BARRIS *v.* COUNTY OF LOS ANGELES. Sup. Ct. Cal. Certiorari denied. Reported below: 20 Cal. 4th 101, 972 P. 2d 966.

No. 99–13. BRYANT ET UX. *v.* WALTHAM SCHOOL COMMITTEE ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 429 Mass. 1001, 705 N. E. 2d 625.

No. 99–14. SUPREME OIL CO. *v.* METROPOLITAN TRANSPORTATION AUTHORITY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 157 F. 3d 148.

No. 99–15. BLACKLEY *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 167 F. 3d 543.

No. 99–16. BURNETTE *v.* SIGNET/CAPITAL ONE BANK. C. A. 4th Cir. Certiorari denied. Reported below: 172 F. 3d 862.

No. 99–17. COUCH *v.* OREGON DEPARTMENT OF FISH AND WILDLIFE. Ct. App. Ore. Certiorari denied. Reported below: 155 Ore. App. 302, 966 P. 2d 248.

No. 99–19. WAINSCOTT *v.* MEDUSA AGGREGATES CO. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 857.

No. 99–21. LAROCHE *v.* VOSE ET AL. C. A. 1st Cir. Certiorari denied.

No. 99–22. MISSISSIPPI TAX COMMISSION *v.* H. J. WILSON CO., INC.; and

No. 99–30. H. J. WILSON CO., INC. *v.* MISSISSIPPI TAX COMMISSION. Sup. Ct. Miss. Certiorari denied. Reported below: 737 So. 2d 981.

No. 99–23. LA VELLE *v.* CALIFORNIA WORKERS' COMPENSATION APPEALS BOARD ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–25. GENCARELLI *v.* MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION ET AL. App. Ct. Mass. Certiorari denied. Reported below: 46 Mass. App. 1112, 707 N. E. 2d 409.

No. 99–27. SHELTON *v.* ROSBOTTOM ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 176 F. 3d 478.

No. 99–28. PHYSICIANS INSURANCE COMPANY OF WISCONSIN ET AL. *v.* SCHREIBER, A MINOR, BY HER GUARDIAN AD LITEM, KRUEGER, ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 223 Wis. 2d 417, 588 N. W. 2d 26.

No. 99–32. BLUE *v.* NEW MEXICO. Ct. App. N. M. Certiorari denied. Reported below: 125 N. M. 826, 965 P. 2d 945.

No. 99–33. FERNANDES *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. 3d Cir. Certiorari denied.

No. 99–35. IN RE KRAMER. Ct. App. N. Y. Certiorari denied. Reported below: 93 N. Y. 2d 883, 711 N. E. 2d 639.

No. 99–36. MARCHI *v.* BOARD OF COOPERATIVE EDUCATIONAL SERVICES OF ALBANY, SCHOHARIE, SCHENECTADY, AND SARA-

TOGA COUNTIES. C. A. 2d Cir. Certiorari denied. Reported below: 173 F. 3d 469.

No. 99–37. TAUBE *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 299 Ill. App. 3d 715, 702 N. E. 2d 573.

No. 99–40. SHEPLEY ET AL. *v.* NEW COLEMAN HOLDINGS INC., FKA COLEMAN CO., INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 174 F. 3d 65.

No. 99–43. BAST, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF BAST, DECEASED, ET AL. *v.* PRUDENTIAL INSURANCE COMPANY OF AMERICA. C. A. 9th Cir. Certiorari denied. Reported below: 150 F. 3d 1003.

No. 99–45. WEEREN, DBA VENTURA MARINA AND LANDING *v.* VENTURA GROUP LLC ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–46. STONE ET AL. *v.* CITY OF PRESCOTT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 173 F. 3d 1172.

No. 99–49. CLEARY, BY HIS NEXT FRIEND, CLEARY, ET UX. *v.* WALDMAN, COMMISSIONER, NEW JERSEY DEPARTMENT OF HUMAN SERVICES, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 167 F. 3d 801.

No. 99–50. WENZEL *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 162 F. 3d 1171.

No. 99–52. HERB HALLMAN CHEVROLET ET AL. *v.* NASH-HOLMES ET AL.; and

No. 99–211. NASH-HOLMES ET AL. *v.* HERB HALLMAN CHEVROLET ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 169 F. 3d 636.

No. 99–53. POLSBY *v.* CHASE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 19.

No. 99–54. PERSICO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 164 F. 3d 796.

No. 99–55. MANTZ ET UX. *v.* KIRCHMAN, ACTING JUDGE, CRAWFORD COUNTY. Ct. App. Wis. Certiorari denied.

No. 99–56. GILES *v.* SONS OF CONFEDERATE VETERANS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 260.

No. 99–58. HAWKINS ET AL. *v.* CITY AND COUNTY OF DENVER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 170 F. 3d 1281.

No. 99–60. RAINEY BROTHERS CONSTRUCTION CO., INC. *v.* MEMPHIS AND SHELBY COUNTY BOARD OF ADJUSTMENT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 178 F. 3d 1295.

No. 99–63. VOSBURGH ET AL. *v.* WELCH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 166 F. 3d 344.

No. 99–64. ADVOCACY ORGANIZATION FOR PATIENTS AND PROVIDERS ET AL. *v.* AUTO CLUB INSURANCE ASSN. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 176 F. 3d 315.

No. 99–66. THREADGILL ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 172 F. 3d 357.

No. 99–67. SUPER SULKY, INC. *v.* UNITED STATES TROTTING ASSN. C. A. 6th Cir. Certiorari denied. Reported below: 174 F. 3d 733.

No. 99–68. FRANK *v.* ORANGE COUNTY SOCIAL SERVICES AGENCY. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 99–69. NEMETH ET AL. *v.* FLORIDA DEPARTMENT OF REVENUE ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 733 So. 2d 970.

No. 99–70. BENNETT ET AL. *v.* CONRAIL MATCHED SAVINGS PLAN ADMINISTRATIVE COMMITTEE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 168 F. 3d 671.

No. 99–72. CHEMINOR DRUGS, LTD., ET AL. *v.* ETHYL CORP. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 168 F. 3d 119.

No. 99–73. CRENSHAW *v.* SHEPARD, CHIEF JUSTICE, SUPREME COURT OF INDIANA, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 170 F. 3d 725.

No. 99–74. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 176 F. 3d 476.

No. 99–76. BERG *v.* NORAND CORP. C. A. 8th Cir. Certiorari denied. Reported below: 169 F. 3d 1140.

No. 99–78. FISHING VESSEL OWNERS & MARINE WAYS, INC. *v.* BANK OF AMERICA NT&SA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 175 F. 3d 1109.

No. 99–79. REEDER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 170 F. 3d 93.

No. 99–82. VARDANEGA *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 170 F. 3d 1184.

No. 99–83. MEDINA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 173 F. 3d 89.

No. 99–84. DESSELLE, CO-EXECUTOR FOR THE ESTATE OF MCNAIL, DECEASED *v.* EIDSON. Ct. App. Kan. Certiorari denied. Reported below: 25 Kan. App. 2d xvi, 975 P. 2d 272.

No. 99–85. WILSON *v.* HART, UNITED STATES DISTRICT JUDGE, NORTHERN DISTRICT OF ILLINOIS. C. A. 7th Cir. Certiorari denied.

No. 99–87. CONSTRUCTORA LLUCH, INC., ET AL. *v.* PUERTO RICO AQUEDUCT AND SEWER AUTHORITY. C. A. 1st Cir. Certiorari denied. Reported below: 169 F. 3d 68.

No. 99–88. BISCHOFF *v.* BISCHOFF. Ct. App. Ky. Certiorari denied. Reported below: 987 S. W. 2d 798.

No. 99–90. BOCALBOS *v.* NATIONAL WESTERN LIFE INSURANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 162 F. 3d 379.

No. 99–91. DEMPSTER *v.* WASTE MANAGEMENT, INC., T/A WASTE MANAGEMENT OF PITTSBURGH. Super. Ct. Pa. Certiorari denied. Reported below: 736 A. 2d 687.

No. 99–93. HILL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 167 F. 3d 1055.

No. 99–94. ZVI ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 168 F. 3d 49.

No. 99–96. UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL NO. 324, AFL–CIO, CLC *v.* K. V. MART CO., DBA TOP

VALU MARKETS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 173 F. 3d 1221.

No. 99–98. IBRAHIM *v.* NEW YORK STATE DEPARTMENT OF HEALTH. C. A. 2d Cir. Certiorari denied. Reported below: 173 F. 3d 844.

No. 99–100. LAMONTAGNE *v.* ST. LOUIS DEVELOPMENT CORP. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 172 F. 3d 555.

No. 99–101. SCHOLL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 166 F. 3d 964.

No. 99–102. TOPINK, ILLINOIS STATE TREASURER *v.* COMMONWEALTH EDISON CO. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 174 F. 3d 870.

No. 99–103. ALLENDER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 99–108. MCDONALD ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 430.

No. 99–110. CHERRIX *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 257 Va. 292, 513 S. E. 2d 642.

No. 99–112. MCFADDEN *v.* MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE. Sup. Ct. Miss. Certiorari denied. Reported below: 735 So. 2d 145.

No. 99–113. VILLAGE OF NORTHFIELD *v.* 10280 NORTHFIELD ROAD, LLC. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 429.

No. 99–114. QUALIA *v.* QUALIA ET AL. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 99–115. HARRIS *v.* GEORGIA. Ct. App. Ga. Certiorari denied.

No. 99–117. LUMBERMENS MUTUAL CASUALTY CO. *v.* LIBERTY MUTUAL INSURANCE CO. ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 172 F. 3d 919.

No. 99–118. ELK CORPORATION OF DALLAS *v.* GAF BUILDING MATERIALS CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 168 F. 3d 28.

No. 99–121. HARDIN *v.* S. C. JOHNSON & SON, INC. C. A. 7th Cir. Certiorari denied. Reported below: 167 F. 3d 340.

No. 99–122. GOODMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 165 F. 3d 169.

No. 99–123. LAZY OIL CO. ET AL. *v.* WITCO CORP. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 166 F. 3d 581.

No. 99–124. TOWERS ET AL. *v.* CITY OF CHICAGO. C. A. 7th Cir. Certiorari denied. Reported below: 173 F. 3d 619.

No. 99–126. ADAMS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 99–129. ACKERMAN ET AL. *v.* NORTHWESTERN MUTUAL LIFE INSURANCE CO. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 172 F. 3d 467.

No. 99–130. MOODY HILL FARMS LIMITED PARTNERSHIP ET AL. *v.* DEPARTMENT OF THE INTERIOR, NATIONAL PARKS SERVICE. C. A. 2d Cir. Certiorari denied. Reported below: 205 F. 3d 554.

No. 99–131. MICKLE ET AL. *v.* MOORE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 174 F. 3d 464.

No. 99–133. SPRECHER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 181 F. 3d 83.

No. 99–134. OMEGA HOMES, INC. *v.* CITY OF BUFFALO ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 171 F. 3d 755.

No. 99–136. MIDDLETON *v.* ALBRIGHT, SECRETARY OF STATE. C. A. D. C. Cir. Certiorari denied.

No. 99–139. WARN ET AL. *v.* M/Y MARIDOME ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 169 F. 3d 625.

No. 99–140. WILLIAMS *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 593 N. W. 2d 227.

No. 99–144. PARESI ET AL. *v.* CITY OF PORTLAND. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 665.

No. 99–146. FERNSLER ET AL. *v.* TWO MEN AND A TRUCK INTERNATIONAL, INC. C. A. 6th Cir. Certiorari denied. Reported below: 172 F. 3d 49.

No. 99–147. MENJIVAR ET AL. *v.* WILES. C. A. 9th Cir. Certiorari denied. Reported below: 176 F. 3d 483.

No. 99–148. DALTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1016.

No. 99–149. ADOFO-KISSI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1017.

No. 99–151. MENSAH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 172 F. 3d 53.

No. 99–152. POLYAK *v.* BURSON ET AL. C. A. 6th Cir. Certiorari denied.

No. 99–155. CALIFORNIA *v.* WEBB. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–156. DOBKIN ET AL. *v.* JOHNS HOPKINS UNIVERSITY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 172 F. 3d 43.

No. 99–157. RIVERA *v.* UNITED STATES;
No. 99–5059. MILLET *v.* UNITED STATES;
No. 99–5543. MORALES *v.* UNITED STATES;
No. 99–5555. CRUZ *v.* UNITED STATES; and
No. 99–5564. VIDRO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 176 F. 3d 52.

No. 99–158. KING *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 989 S. W. 2d 319.

No. 99–159. AMERICAN MOTORISTS INSURANCE CO. *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES (MONTROSE CHEMICAL CORPORATION OF CALIFORNIA, REAL PARTY IN INTEREST). Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–160. AMERICAN STORES CO. AND SUBSIDIARIES *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 10th Cir. Certiorari denied. Reported below: 170 F. 3d 1267.

No. 99–162. JOHNSON *v.* GILA RIVER INDIAN COMMUNITY. C. A. 9th Cir. Certiorari denied. Reported below: 174 F. 3d 1032.

No. 99–164. HOWSER *v.* CITY OF LONG BEACH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 876.

No. 99–165. HICKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 180 F. 3d 272.

No. 99–167. JOSEPH *v.* NEW YORK CITY BOARD OF EDUCATION. C. A. 2d Cir. Certiorari denied. Reported below: 171 F. 3d 87.

No. 99–168. MCCLINTOCK ET AL. *v.* EICHELBERGER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 169 F. 3d 812.

No. 99–169. SCHOLZ *v.* OKLAHOMA. Ct. Civ. App. Okla. Certiorari denied.

No. 99–170. STATEN *v.* WEST, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 155 F. 3d 572.

No. 99–171. ROBERTSON *v.* ALABAMA DEPARTMENT OF REVENUE. Ct. Civ. App. Ala. Certiorari denied. Reported below: 733 So. 2d 397.

No. 99–172. LEVY ET AL. *v.* GENERAL ACCOUNTING OFFICE. C. A. 2d Cir. Certiorari denied. Reported below: 175 F. 3d 254.

No. 99–173. ROSENTHAL *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1020.

No. 99–174. AMERICAN COMMERCE NATIONAL BANK ET AL. *v.* OFFICE OF THE COMPTROLLER OF THE CURRENCY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 168 F. 3d 497.

No. 99–175. MILBANK, CHAPTER 7 BANKRUPTCY TRUSTEE FOR THE ESTATE OF MCINTYRE *v.* GEARY & SPENCER, P. C., FKA GEARY, STAHL & SPENCER, P. C., ET AL. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 99–176. DASS *v.* CAPLINGER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 170 F. 3d 183.

No. 99–177. CARPENTER *v.* FEDERAL NATIONAL MORTGAGE ASSOCIATION. C. A. D. C. Cir. Certiorari denied. Reported below: 174 F. 3d 231.

No. 99–178. VIRGINIA MORTGAGE CO. *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1018.

No. 99–179. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–180. KONKEL *v.* BOB EVANS FARMS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 275.

No. 99–181. ARKANSAS HIGHWAY POLICE *v.* CRITTENDEN COUNTY PROSECUTING ATTORNEY'S OFFICE ET AL. Sup. Ct. Ark. Certiorari denied. Reported below: 337 Ark. 74, 987 S. W. 2d 663.

No. 99–182. PINK *v.* MODOC INDIAN HEALTH PROJECT, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 157 F. 3d 1185.

No. 99–183. O'NEAL *v.* FHP, INC., ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 99–187. LOWENSCHUSS, TRUSTEE OF THE FRED LOWENSCHUSS ASSOCIATES, ATTORNEYS AT LAW, PENSION AND PROFIT SHARING PLAN *v.* SELNICK. C. A. 9th Cir. Certiorari denied. Reported below: 171 F. 3d 673.

No. 99–188. ADAMS ET AL. *v.* DELTA AIR LINES, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 175 F. 3d 1007.

No. 99–191. TAYLOR *v.* FEDERAL AVIATION ADMINISTRATION. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 58.

No. 99–192. CRENSHAW *v.* DISCIPLINARY COMMISSION OF THE SUPREME COURT OF INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 708 N. E. 2d 859.

No. 99–194. TUTTLE *v.* MISSOURI DEPARTMENT OF AGRICULTURE. C. A. 8th Cir. Certiorari denied. Reported below: 172 F. 3d 1025.

No. 99–196. ANR COAL CO., INC. *v.* COGENTRIX OF NORTH CAROLINA, INC. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 493.

No. 99–197. BALLIET *v.* HEYDT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 176 F. 3d 471.

No. 99–205. BRAWLEY *v.* COLORADO. Dist. Ct. Colo., Adams County. Certiorari denied.

No. 99–209. PATRICK ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 103.

No. 99–221. MOTT *v.* ROBINSON. C. A. 6th Cir. Certiorari denied.

No. 99–222. PAGAN *v.* FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES. C. A. 11th Cir. Certiorari denied.

No. 99–225. EELLS *v.* DIRNFELD & ZELNER ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–229. WOODS ET UX. *v.* KENAN, TRUSTEE. C. A. 10th Cir. Certiorari denied. Reported below: 173 F. 3d 770.

No. 99–230. TILLMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 430.

No. 99–238. EIBLE *v.* HOUSTOUN, SECRETARY, DEPARTMENT OF PUBLIC WELFARE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 187 F. 3d 625.

No. 99–240. MCQUIDDY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 99–246. SHERWOOD *v.* PATEL, UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 161 F. 3d 14.

No. 99–250. GILES ET UX. *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 99–257. TENNER *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied.

No. 99–263. CUNEO *v.* CUNEO. Super. Ct. Pa. Certiorari denied. Reported below: 726 A. 2d 417.

No. 99–273. GRUPPO AGUSTA ET AL. *v.* PARAMOUNT AVIATION CORP. C. A. 3d Cir. Certiorari denied. Reported below: 178 F. 3d 132.

No. 99–275. ENGLISH *v.* UNITED STATES; and

No. 99–5788. MANLEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1021.

No. 99–276. TIWARI *v.* BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 180 F. 3d 273.

No. 99–281. YOUNG *v.* MONTGOMERY CITY COUNCIL ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 165 F. 3d 40.

No. 99–283. D'AURIA *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 187 F. 3d 625.

No. 99–287. CATALDO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 171 F. 3d 1316.

No. 99–303. MOSS *v.* STINNES CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 169 F. 3d 784.

No. 99–304. ROGERS *v.* DISTRICT OF COLUMBIA. C. A. D. C. Cir. Certiorari denied. Reported below: 194 F. 3d 174.

No. 99–305. ROSS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 177 F. 3d 981.

No. 99–306. ROBERTSON ET UX. *v.* COMPTROLLER OF THE TREASURY OF MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 354 Md. 115, 729 A. 2d 406.

No. 99–311. PEREZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 168 F. 3d 480.

No. 99–325. FLORES, AKA HAGGARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 181 F. 3d 96.

No. 99–329. CARR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–332. BOWEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 55.

No. 99–333. HARILALL *v.* UNIVERSITY HEALTH SYSTEM DEVELOPMENT CORP., FKA BEXAR COUNTY HOSPITAL DISTRICT, DBA UNIVERSITY HOSPITAL SYSTEM, AKA UNIVERSITY HOSPITAL. C. A. 5th Cir. Certiorari denied. Reported below: 174 F. 3d 197.

No. 99–338. BURTON ET AL. *v.* CHARLES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 169 F. 3d 1322.

No. 99–344. AYRES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 166 F. 3d 991.

No. 99–347. WILSON *v.* CATOE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 266.

No. 99–5001. PORNES-GARCIA *v.* UNITED STATES; and SOSA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 171 F. 3d 142 (first judgment); 173 F. 3d 847 (second judgment).

No. 99–5002. SMITH *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 193 Ariz. 452, 974 P. 2d 431.

No. 99–5004. PETERS *v.* ENDICOTT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 99–5005. BECK *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 99–5006. TAPIA *v.* LEMASTER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 172 F. 3d 1193.

No. 99–5008. CALLOWAY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–5009. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 166 F. 3d 1211.

No. 99–5010. MOCEO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 929.

No. 99–5011. NEWMAN *v.* KRAMER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–5012. KELLEY *v.* KELLEY. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 298 Ill. App. 3d 1170, 738 N. E. 2d 237.

No. 99–5013. YOUNG *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 161 F. 3d 1159.

No. 99–5014. WILLIAMS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 350 N. C. 1, 510 S. E. 2d 626.

No. 99–5015. WATERS *v.* BROWN. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1022.

No. 99–5016. WOODS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 262.

No. 99–5017. OMOIKE *v.* LOUISIANA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 817.

No. 99–5018. PARKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 166 F. 3d 1211.

No. 99–5019. SANDERS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–5020. ROY *v.* BRIGANO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–5021. WALKER *v.* SNYDER, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 299 Ill. App. 3d 1135, 740 N. E. 2d 102.

No. 99–5022. CARRILLO-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 177 F. 3d 979.

No. 99–5023. SERRATOS BELTRAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 165 F. 3d 1266.

No. 99–5024. WOODS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5026. WRONKE *v.* MADIGAN, SHERIFF, CHAMPAIGN COUNTY, ILLINOIS. C. A. 7th Cir. Certiorari denied.

No. 99–5027. TERRELL *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 185 Ill. 2d 467, 708 N. E. 2d 309.

No. 99–5030. PEWENOFKIT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 173 F. 3d 865.

No. 99–5031. ROOKS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 105.

No. 99–5032. RAMIREZ-GAMEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 171 F. 3d 236.

No. 99–5033. ORTEGA-FRANCO, AKA ZARATE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 177 F. 3d 979.

No. 99–5034. WOODLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 178 F. 3d 1297.

No. 99–5036. BROCK *v.* MYERS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–5037. CAMPBELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 168 F. 3d 263.

No. 99–5038. ADKINS *v.* SEITER. C. A. 8th Cir. Certiorari denied.

No. 99–5039. SCHWARTZ *v.* CITY OF PITTSBURGH ET AL. C. A. 3d Cir. Certiorari denied.

No. 99–5040. RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–5041. RUDD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 60.

No. 99–5042. RUMLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 172 F. 3d 49.

No. 99–5043. TAVAKOLI-NOURI *v.* CENTRAL INTELLIGENCE AGENCY. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 852.

No. 99–5044. WALKER *v.* SAFFLE, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 173 F. 3d 865.

No. 99–5045. TUCKER *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–5046. WILLIAMS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 171 F. 3d 300.

No. 99–5047. TARINTINO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 166 F. 3d 344.

No. 99–5048. WOODS *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY. C. A. 6th Cir. Certiorari denied.

No. 99–5049. JACKSON *v.* DAY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–5050. JACKSON *v.* CHAMPION, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 172 F. 3d 62.

No. 99–5051. WILLS *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 99–5052. BAKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 167 F. 3d 538.

No. 99–5053. ELLIS *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 294 Ill. App. 3d 1130, 721 N. E. 2d 865.

No. 99–5054. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 20.

No. 99–5055. JORDAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 168 F. 3d 484.

No. 99–5056. ALSTON *v.* BROWN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 173 F. 3d 843.

No. 99–5057. MCCAUGHAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 929.

No. 99–5058. JOHNSTON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 162 F. 3d 630.

No. 99–5062. LARKIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 171 F. 3d 556.

No. 99–5064. PIPPEN *v.* SHERATON OPERATING CORP. C. A. 11th Cir. Certiorari denied.

No. 99–5065. SMITH *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–5066. MOORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 168 F. 3d 1234.

No. 99–5068. MURPHY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 176 F. 3d 490.

No. 99–5069. NILLO *v.* HALLAHAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 165 F. 3d 916.

No. 99–5070. MAYES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 105.

No. 99–5071. SPELLER *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 132 N. C. App. 135, 517 S. E. 2d 427.

No. 99–5072. ORTIZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 182 F. 3d 934.

No. 99–5073. SMITH *v.* MANN, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 173 F. 3d 73.

No. 99–5074. PIERCE *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 99–5075. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 176 F. 3d 485.

No. 99–5078. ZARATE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 173 F. 3d 865.

No. 99–5079. THOMAS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 729 So. 2d 369.

No. 99–5080. WILLIAMS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 186 Ill. 2d 55, 708 N. E. 2d 1152.

No. 99–5081. MCMANUS *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 166 F. 3d 333.

No. 99–5082. HALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 174 F. 3d 197.

No. 99–5083. HILL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 172 F. 3d 50.

No. 99–5084. HAZEEM *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 181 F. 3d 83.

No. 99–5086. GARNETT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 857.

No. 99–5087. ESTEP *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 99–5088. HOYOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 172 F. 3d 37.

No. 99–5089. HOLLOMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 263.

No. 99–5090. DORSEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 174 F. 3d 331.

No. 99–5091. GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 178 F. 3d 1290.

No. 99–5093. HURON *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 194 F. 3d 1336.

No. 99–5094. SETTLE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 99–5095. PUGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 929.

No. 99–5096. GREEN ET AL. *v.* CARVER STATE BANK ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 163 F. 3d 1360.

No. 99–5097. GREEN ET AL. *v.* CARVER STATE BANK ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 163 F. 3d 1360.

No. 99–5099. HINES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 99–5100. KUPLEN *v.* HARDY ET AL. Ct. App. N. C. Certiorari denied.

No. 99–5102. THORNSBURY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 99–5103. KINNEY *v.* BANKERS TRUST CO. App. Ct. Conn. Certiorari denied.

No. 99–5104. JAMES *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–5105. STARZ ET AL. *v.* CALIFORNIA. App. Dept., Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 99–5109. FLETCHER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 242 F. 3d 391.

No. 99–5110. FIELDS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5111. FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 695.

No. 99–5112. EDWARDS, AKA COOPER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 172 F. 3d 45.

No. 99–5113. HARRIS *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–5114. HOLSTICK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 178 F. 3d 1302.

No. 99–5115. GLADFELTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 168 F. 3d 1078.

No. 99–5117. DELLAMONICA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 181 F. 3d 107.

No. 99–5118. GORDON, AKA JONSTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 173 F. 3d 761.

No. 99–5119. CABRERA *v.* BARBO, ADMINISTRATOR, NORTHERN STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 175 F. 3d 307.

No. 99–5120. ARIZA-SALAZAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 178 F. 3d 1290.

No. 99–5121. BUTLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 174 F. 3d 202.

No. 99–5122. BUCHANAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 167 F. 3d 1207.

No. 99–5123. ADEMAJ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 170 F. 3d 58.

No. 99–5124. CLINE *v.* BAYER, DIRECTOR, NEVADA DEPARTMENT OF PRISONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 176 F. 3d 482.

No. 99–5126. DOWNS *v.* TAYLOR. C. A. 8th Cir. Certiorari denied.

No. 99–5127. ENGLE *v.* MILLION, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–5128. HARE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5129. GRATE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 426.

No. 99–5130. ELLIOTT *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 99–5131. GILLIS *v.* MCCAUGHTRY, WARDEN. Ct. App. Wis. Certiorari denied.

No. 99–5132. VASQUEZ *v.* HILL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–5133. ENGLISH *v.* SHELL ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–5134. HOWLAND *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 990 S. W. 2d 274.

No. 99–5136. SMITH *v.* ZLAKET ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 166 F. 3d 1218.

No. 99–5138. ROSS *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 165 F. 3d 793.

No. 99–5139. PATTERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 105.

No. 99–5141. DONOHUE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 99–5142. HAMILTON *v.* LEHMAN, SECRETARY, WASHINGTON DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 99–5143. GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–5144. FITZPATRICK *v.* PERRIN ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–5145. GILCHRIST *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 270 Ga. 287, 508 S. E. 2d 409.

No. 99–5146. DARBY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 176 F. 3d 479.

No. 99–5148. FLETCHER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5149. HUGGINS *v.* SAUARIS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 172 F. 3d 878.

No. 99–5150. DURHAM *v.* STUBBLEFIELD, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–5151. HALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 852.

No. 99–5152. HERNANDEZ *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5154. NASH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 175 F. 3d 429.

No. 99–5155. MORRIS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 99–5156. LILLIOCK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 187 F. 3d 627.

No. 99–5157. KEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 176 F. 3d 476.

No. 99–5158. AYALA-MENDEZ *v.* UNITED STATES; and
No. 99–5329. LOPEZ-LLERENAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 168 F. 3d 502.

No. 99–5159. JAIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 174 F. 3d 892.

No. 99–5160. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 180 F. 3d 273.

No. 99–5162. LEWIS *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 99–5163. WISEMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 172 F. 3d 1196.

No. 99–5164. MACON *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 99–5165. KELLY *v.* BEELER, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 178 F. 3d 1279.

No. 99–5166. RINCHER *v.* BURKE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–5167. RELIFORD *v.* MCCARTHY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 19.

No. 99–5168. SIDBERRY *v.* BAILEY, SUPERINTENDENT, FOOTHILLS CORRECTIONAL INSTITUTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 166 F. 3d 1210.

No. 99–5172. LOWERY ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 166 F. 3d 1119.

No. 99–5173. YOUNGS *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 194 F. 3d 1331.

No. 99–5174. ZUBIATE *v.* SONOMA COUNTY SOCIAL SERVICES DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 168 F. 3d 504.

No. 99–5175. TREADWELL *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 99–5176. YOUNG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 853.

No. 99–5177. ZAKHIA *v.* PINCHAK, ADMINISTRATOR, EAST JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 99–5178. WILLIAMS *v.* LENSING, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–5179. ROBINSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 178 F. 3d 1290.

No. 99–5180. SAYLER *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied. Reported below: 721 So. 2d 1152.

No. 99–5181. OATES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 173 F. 3d 651.

No. 99–5183. MCNEIL *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 99–5184. WOODARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 717.

No. 99–5185. LAMBERT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 175 F. 3d 1012.

No. 99–5186. MONROE *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 729 So. 2d 942.

No. 99–5187. BARTEL *v.* FLETCHER. C. A. 11th Cir. Certiorari denied. Reported below: 168 F. 3d 507.

No. 99–5188. AENK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 99–5189. WALLACE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 99–5190. CARROLL *v.* GRAND CASINO MILLE LACS ET AL. Ct. App. Minn. Certiorari denied.

No. 99–5191. GULLEY *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 7th Cir. Certiorari denied.

No. 99–5192. HOUSER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 172 F. 3d 872.

No. 99–5193. GREEN *v.* SELSKY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 165 F. 3d 13.

No. 99–5194. GOODMAN *v.* JOHNSON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 170 F. 3d 187.

No. 99–5195. FLEENOR *v.* ANDERSON, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied. Reported below: 171 F. 3d 1096.

No. 99–5197. FLOYD ET AL. *v.* WAITERS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 171 F. 3d 1264.

No. 99–5198. CHAUDHRY ET AL. *v.* GALLERIZZO ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 174 F. 3d 394.

No. 99–5199. PRICE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1288.

No. 99–5200. SMALL *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 988 S. W. 2d 671.

No. 99–5201. PATTERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–5202. RADLEY *v.* NIXON, ATTORNEY GENERAL OF MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied.

No. 99–5203. SMITH *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5204. BLACK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 176 F. 3d 485.

No. 99–5205. TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–5206. DOTY *v.* WHALEN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–5207. MCCULLOUGH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 F. 3d 911.

No. 99–5208. MARQUEZ-FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 176 F. 3d 485.

No. 99–5209. LONGORIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 177 F. 3d 1179.

No. 99–5210. NELSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 99–5211. LEONG *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 91 Wash. App. 1075.

No. 99–5212. JONES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5214. KING *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 169 F. 3d 1035.

No. 99–5215. LEWIS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 970 P. 2d 1158.

No. 99–5216. ISRAEL *v.* COHN, COMMISSIONER, INDIANA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied.

No. 99–5217. MILLER *v.* KELLY ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–5218. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 166 F. 3d 335.

No. 99–5219. JILES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 99–5220. JAMISON *v.* THOMAS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 157 F. 3d 906.

No. 99–5221. STEINDLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 99–5222. FOWLE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 99–5223. KEITHLEY *v.* HOPKINS, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 99–5224. FRENCH *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied.

No. 99–5225. TAYLOR *v.* HANNIGAN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 166 F. 3d 1222.

No. 99–5226. CHUKWUEZI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1016.

No. 99–5227. BRADLEY *v.* TAYLOR. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 99–5229. CAMPBELL ET AL. *v.* CITY OF UPLAND. C. A. 9th Cir. Certiorari denied. Reported below: 164 F. 3d 629.

No. 99–5230. STEDMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–5231. SWANSON *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied.

No. 99–5232. OHAEGBU *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 174 F. 3d 201.

No. 99–5233. REED *v.* PHILLIPS, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–5234. CASTLEBERRY *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 758 So. 2d 749.

No. 99–5235. BELASQUEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 176 F. 3d 476.

No. 99–5237. CATOE *v.* MILLER, SUPERINTENDENT, EASTERN NEW YORK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 99–5238. CORONA ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 172 F. 3d 1048.

No. 99–5239. KOENIG *v.* HAGY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1014.

No. 99–5240. JOHNSON *v.* DELOACH, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–5241. JENKINS, AKA WRIGHT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 176 F. 3d 473.

No. 99–5243. DUNLAP *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 975 P. 2d 723.

No. 99–5244. HATHAWAY ET UX. *v.* ESSEX COUNTY, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 172 F. 3d 37.

No. 99–5245. WRIGHT *v.* UNIVERSAL MORTGAGE CORP. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 298 Ill. App. 3d 1177, 738 N. E. 2d 240.

No. 99–5246. HOUSE *v.* NEW MEXICO. Sup. Ct. N. M. Certiorari denied. Reported below: 127 N. M. 151, 978 P. 2d 967.

No. 99–5247. HOWINGTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 176 F. 3d 492.

No. 99–5248. WHITE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 187 F. 3d 627.

No. 99–5249. VALENCIA-GONZALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 172 F. 3d 344.

No. 99–5250. HAFEMEISTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 166 F. 3d 353.

No. 99–5251. DAVIDSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 260.

No. 99–5252. BURNETT *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 178 F. 3d 1299.

No. 99–5254. RATHFON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 705 A. 2d 448.

No. 99–5255. RAMSEY *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 165 F. 3d 980.

No. 99–5256. SAMPLES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 178 F. 3d 1303.

No. 99–5257. OWENS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 167 F. 3d 739.

No. 99–5261. MAKOKA *v.* TENNESSEE DEPARTMENT OF HUMAN SERVICES ET AL. C. A. 6th Cir. Certiorari denied.

No. 99–5262. LOCKLEAR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1287.

No. 99–5263. JONES *v.* JONES, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 163 F. 3d 285.

No. 99–5264. MARTINEZ *v.* LENSING, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–5265. JONES *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 99–5266. LOERA *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–5267. MCCLAIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 168 F. 3d 503.

No. 99–5268. LOSS *v.* WARD ET AL.; and LOSS *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN. C. A. 6th Cir. Certiorari denied. Reported below: 178 F. 3d 1295 (first judgment).

No. 99–5269. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 21.

No. 99–5270. MUSGROVE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 176 F. 3d 476.

No. 99–5271. RICHARDSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 167 F. 3d 621.

No. 99–5272. PURNELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 174 F. 3d 202.

No. 99–5273. SCHWYHART *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 187 F. 3d 627.

No. 99–5274. STOREY *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 986 S. W. 2d 462.

No. 99–5275. MASUOKA *v.* HAWAII ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 173 F. 3d 861.

No. 99–5276. SALAZAR *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 973 P. 2d 315.

No. 99–5277. SMITH *v.* LEONBERGER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1021.

No. 99–5278. SHAKUR *v.* HAWK, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 99–5279. SMITH *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 99–5280. PUCKETT *v.* KAYLO, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–5281. WILLIAMSON *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–5284. DANIEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 427.

No. 99–5285. STROBLE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 173 F. 3d 865.

No. 99–5286. RIOS-GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 261.

No. 99–5288. KELLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 99–5289. MCCLAINE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 261.

No. 99–5290. MYLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 262.

No. 99–5293. JENKINS *v.* ABRAMS ET UX. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 99–5296. SPEARS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 159 F. 3d 1081.

No. 99–5297. CRUZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 187 F. 3d 627.

No. 99–5298. MARSHALL *v.* ALABAMA DISABILITY DETERMINATION SERVICE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 168 F. 3d 507.

No. 99–5299. MARSHALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–5300. MILLER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 977 P. 2d 1099.

No. 99–5302. ANTHONY Y. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 172 F. 3d 1249.

No. 99–5303. COOPER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 99–5304. CASTON *v.* MICHIGAN. Ct. App. Mich. Certiorari denied. Reported below: 228 Mich. App. 291, 579 N. W. 2d 368.

No. 99–5305. SANCHEZ *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5306. RUIZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 178 F. 3d 877.

No. 99–5307. REED *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 167 F. 3d 984.

No. 99–5308. RICKERBY *v.* EVERETT, WARDEN. Sup. Ct. Wyo. Certiorari denied.

No. 99–5309. LOFTIN *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 157 N. J. 253, 724 A. 2d 129.

No. 99–5310. MILLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 929.

No. 99–5311. LAWRENCE *v.* ARMONTROUT. C. A. 8th Cir. Certiorari denied.

No. 99–5312. LARK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 21.

No. 99–5313. MESA *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 172 F. 3d 867.

No. 99–5314. FRYE *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Catawba County, N. C. Certiorari denied.

No. 99–5315. FELICIANO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 187 F. 3d 627.

No. 99–5317. WHITE *v.* ALASKA. C. A. 9th Cir. Certiorari denied.

No. 99–5319. FAIRFULL *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 99–5321. TORRES *v.* MALONEY, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 174 F. 3d 43.

No. 99–5322. TOLLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 431.

No. 99–5323. LYNN *v.* DEPARTMENT OF LABOR ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 172 F. 3d 41.

No. 99–5324. KABEDE *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 99–5325. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 91.

No. 99–5326. RHODES *v.* WASHINGTON, SUPERINTENDENT, CHILLICOTHE CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–5327. RUSCH *v.* HORN, COMMISSIONER, PENNSYLVANIA DEPARTMENT OF CORRECTIONS. Commw. Ct. Pa. Certiorari denied.

No. 99–5328. SINEUS *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–5330. JENNINGS *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 99–5332. BATTLE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1021.

No. 99–5333. PEREZ ET AL. *v.* GENERAL NUTRITION CORP. C. A. 11th Cir. Certiorari denied. Reported below: 176 F. 3d 493.

No. 99–5334. TORRES *v.* B. F. I. WASTE SYSTEMS. C. A. 2d Cir. Certiorari denied. Reported below: 173 F. 3d 846.

No. 99–5335. GINES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 166 F. 3d 1222.

No. 99–5337. TYRONE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 181 F. 3d 96.

No. 99–5338. GILLIS *v.* O'BRIEN. Sup. Ct. Wis. Certiorari denied. Reported below: 224 Wis. 2d 268, 590 N. W. 2d 492.

No. 99–5339. GRAHAM *v.* GREEN ET AL. Sup. Ct. Va. Certiorari denied.

No. 99–5340. GARRETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 260.

No. 99–5342. NIXON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 730 A. 2d 145.

No. 99–5344. HOLLAND *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 729 So. 2d 937.

No. 99–5345. HOOKER *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–5346. HALL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 99–5347. ENRIQUEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 99–5348. TRUESDALE ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 161 F. 3d 5.

No. 99–5349. YOUNG *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–5351. TURNER *v.* HAWAII. Sup. Ct. Haw. Certiorari denied.

No. 99–5352. TAYLOR *v.* LEONARD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–5356. HALL *v.* WELLA CORP. C. A. 4th Cir. Certiorari denied. Reported below: 135 F. 3d 769.

No. 99–5357. GILLAM ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 167 F. 3d 1273.

No. 99–5358. GRACE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 168 F. 3d 502.

No. 99–5359. HARRIS ET UX. *v.* HENDERSON, POSTMASTER GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 855.

No. 99–5360. CHEUK-YAN FUNG *v.* STEWART, SUPERINTENDENT, MCNEIL ISLAND CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 99–5361. DELPIT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 99–5363. HUETTL *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied.

No. 99–5364. SANDERS *v.* RICKERTSEN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1020.

No. 99–5365. AYERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 262.

No. 99–5366. BATTLE *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 180 F. 3d 268.

No. 99–5367. NEALY, AKA KEYS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1288.

No. 99–5368. LEWIS *v.* DUCHARME, SUPERINTENDENT, MONROE CORRECTIONAL COMPLEX. C. A. 9th Cir. Certiorari denied.

No. 99–5369. BURTON *v.* WEST, SECRETARY OF VETERANS AFFAIRS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 176 F. 3d 481.

No. 99–5370. STRAUSS *v.* TAYLOR, SUPERINTENDENT, WESTERN MISSOURI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 175 F. 3d 1025.

No. 99–5371. WRIGHT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 188 F. 3d 510.

No. 99–5372. BAAH *v.* CALIFORNIA BUREAU OF STATE AUDITS. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 55.

No. 99–5374. HART *v.* SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 99–5375. HUMPHREY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5376. FULLER, AKA SHERRILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 93.

No. 99–5378. PEGUES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 871.

No. 99–5379. SOURS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 173 F. 3d 865.

No. 99–5381. POUNDERS *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–5382. SHABAZZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–5384. SMITH *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 852.

No. 99–5387. TAYLOR *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 987 S. W. 2d 302.

No. 99–5388. LANE *v.* RUSSELL, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 178 F. 3d 1295.

No. 99–5389. MAPP *v.* UNITED STATES; and
No. 99–5632. MOORE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 170 F. 3d 328.

No. 99–5391. FRANCIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 178 F. 3d 1290.

No. 99–5392. SLAUGHTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 633.

No. 99–5393. RIOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 262.

No. 99–5394. ROBLYER *v.* PENNSYLVANIA DEPARTMENT OF CORRECTIONS ET AL. C. A. 3d Cir. Certiorari denied.

No. 99–5396. YASIN ET AL. *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 176 F. 3d 472.

No. 99–5397. BLATZ *v.* SEABOLD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–5398. WOLFF *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 99–5399. BERNARDINO *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 194 F. 3d 1330.

No. 99–5400. SKAGGS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 99–5401. PARRISH *v.* HOLIDAY INN. Ct. App. Neb. Certiorari denied. Reported below: 7 Neb. App. xxxii.

No. 99–5403. BREWER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5404. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 99–5405. VALDES *v.* HAHN, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 163 F. 3d 1359.

No. 99–5406. BEKOVICH *v.* COYLE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–5407. BELL-EL *v.* PITCHER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–5409. CURRY *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 99–5411. LEVY *v.* SUPERINTENDENT OF PUBLIC SCHOOLS, FAIRFAX COUNTY, VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1014.

No. 99–5412. MAGGARD *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–5413. ANDERSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 185 F. 3d 875.

No. 99–5414. CURRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1016.

No. 99–5415. COOPER *v.* BUTLER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 172 F. 3d 52.

No. 99–5416. PARCHUE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 99–5417. OWENS *v.* NOSKER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 187 F. 3d 626.

No. 99–5418. SCOTT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 99–5419. PATRICK *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 125 Md. App. 784.

No. 99–5420. MOHEMMED *v.* HILL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 176 F. 3d 484.

No. 99–5421. MILLER *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 555 Pa. 354, 724 A. 2d 895.

No. 99–5422. MILLIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 172 F. 3d 49.

No. 99–5425. LIONS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 99–5426. LAMBERT *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–5427. MAILE *v.* TRIPPETT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–5428. MOORE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5429. AYELE *v.* SIMKINS INDUSTRIES, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 166 F. 3d 1199.

No. 99–5430. CONTRERAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 180 F. 3d 1204.

No. 99–5431. CLAYTON *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 99–5432. TAYLOR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 183 F. 3d 1199.

No. 99–5433. THOMPSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 177 F. 3d 981.

No. 99–5434. WILSON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 983 P. 2d 448.

No. 99–5437. THIERRY *v.* GIBSON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 173 F. 3d 864.

No. 99–5438. WANGBOJE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 178 F. 3d 1281.

No. 99–5439. THOMPSON *v.* ALASKA. Ct. App. Alaska. Certiorari denied.

No. 99–5441. CZECK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 175 F. 3d 1023.

No. 99–5442. BROWN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–5443. JONES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5444. BOUYEA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 192.

No. 99–5448. PETERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1021.

No. 99–5449. SMART ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 165 F. 3d 37.

No. 99–5450. SIMPSON *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 297 Ill. App. 3d 1140, 737 N. E. 2d 717.

No. 99–5451. ROBERTS *v.* DAVIS. Sup. Ct. Nev. Certiorari denied. Reported below: 114 Nev. 1461, 970 P. 2d 1084.

No. 99–5452. MAZZARELLA *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 185 F. 3d 885.

No. 99–5453. ISBY *v.* DUCKWORTH, SUPERINTENDENT, CORRECTIONAL INDUSTRIAL FACILITY, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1020.

No. 99–5454. LAWSON *v.* MISSISSIPPI DEPARTMENT OF CORRECTIONS. Sup. Ct. Miss. Certiorari denied.

No. 99–5455. AUSTIN *v.* DEPARTMENT OF THE TREASURY. C. A. Fed. Cir. Certiorari denied. Reported below: 194 F. 3d 1333.

No. 99–5456. CALVIN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5457. CAIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–5458. CASAPINI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 99–5459. BELL *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 266 Kan. 896, 975 P. 2d 239.

No. 99–5460. CHAMPION *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5461. CLARKSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 288 Ill. App. 3d 1099, 711 N. E. 2d 822.

No. 99–5462. BAKER *v.* PITZER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–5463. PLUTA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 176 F. 3d 43.

No. 99–5464. POLLOCK *v.* BRIGANO, WARDEN, ET AL. Ct. App. Ohio, Warren County. Certiorari denied. Reported below: 130 Ohio App. 3d 505, 720 N. E. 2d 571.

No. 99–5465. SCRUGGS *v.* MCBRIDE, SUPERINTENDENT, WESTVILLE CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 99–5466. PAGE-BEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 99–5468. PRESTON *v.* HUGHES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 178 F. 3d 1295.

No. 99–5469. BRICE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 194 F. 3d 175.

No. 99–5470. PRINS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 929.

No. 99–5471. STEWART *v.* KNUTSON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 174 F. 3d 530.

No. 99–5472. ARNOLD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 178 F. 3d 1303.

No. 99–5473. COLE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1021.

No. 99–5475. BANE *v.* ROBINSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 910.

No. 99–5478. STROUPE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 176 F. 3d 476.

No. 99–5479. GARDNER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 99–5480. FARR *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 224 Wis. 2d 641, 590 N. W. 2d 281.

No. 99–5481. GAUVIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 173 F. 3d 798.

No. 99–5482. ERNEST *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–5483. EDWARDS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1021.

No. 99–5484. GALBREATH *v.* WEAR ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 768 So. 2d 428.

No. 99–5485. GOMEZ, AKA IZQUIERDO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 164 F. 3d 1354.

No. 99–5486. DOKE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 171 F. 3d 240.

No. 99–5487. HAWKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 176 F. 3d 476.

No. 99–5488. GRAHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 184 F. 3d 822.

No. 99–5491. HUCKS *v.* UNITED STATES;
No. 99–5586. MARTINEZ *v.* UNITED STATES;
No. 99–5664. GOMEZ *v.* UNITED STATES; and
No. 99–5724. AGUDELO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1286.

No. 99–5492. EASTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 261.

No. 99–5493. LONG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 175 F. 3d 1026.

No. 99–5494. KASCHENBACH *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 123 Md. App. 791.

No. 99–5495. MILLER *v.* WALTER, SUPERINTENDENT, AIRWAY HEIGHTS CORRECTIONS CENTER, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 156 F. 3d 1238.

No. 99–5496. LATHAN *v.* STUBBLEFIELD, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–5497. ADKISM ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 264.

No. 99–5498. ANDERSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5499. ASHWORTH *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 85 Ohio St. 3d 56, 706 N. E. 2d 1231.

No. 99–5500. BROOKS *v.* BUNCH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 849.

No. 99–5501. BROWN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–5504. WILLIAMS *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 974 S. W. 2d 324.

No. 99–5505. BRAXTON *v.* MARYLAND. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1013.

No. 99–5506. ASHLEY *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 99–5507. APAMPA *v.* LAYNG ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 157 F. 3d 1103.

No. 99–5509. ALSTON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 249 App. Div. 2d 404, 670 N. Y. S. 2d 796.

No. 99–5510. BURNETTE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 170 F. 3d 567.

No. 99–5511. ALVAREZ-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 162 F. 3d 1170.

No. 99–5512. BROWN *v.* BRIICK ET AL. C. A. 7th Cir. Certiorari denied.

No. 99–5513. ANDERSON *v.* STUBBLEFIELD, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–5514. COOPER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5515. ALANIZ-ALANIZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–5516. TAYLOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–5518. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 172 F. 3d 864.

No. 99–5519. ROBINSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–5521. HOLMAN *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 350 N. C. 86, 511 S. E. 2d 305.

No. 99–5522. GRAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 175 F. 3d 617.

No. 99–5523. EESLEY *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 225 Wis. 2d 248, 591 N. W. 2d 846.

No. 99–5524. GILBERT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–5527. JEAN-PIERRE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 173 F. 3d 847.

No. 99–5529. JOHNSON *v.* CHRISTOPHER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 182 F. 3d 903.

No. 99–5530. LAWSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 173 F. 3d 666.

No. 99–5532. AYSISAYH *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 740 So. 2d 545.

No. 99–5533. COLEMAN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 728 A. 2d 1230.

No. 99–5534. CHEE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 173 F. 3d 864.

No. 99–5536. BARNES *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 99–5537. VALDES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 181 F. 3d 108.

No. 99–5538. LEE *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 173 F. 3d 434.

No. 99–5541. NOGUERAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 176 F. 3d 492.

No. 99–5547. TRUAX *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 99–5548. WOFFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–5550. BYRD *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 99–5551. SURRATT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 172 F. 3d 559.

No. 99–5552. SMITH *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 178 F. 3d 22.

No. 99–5553. REYES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 178 F. 3d 1301.

No. 99–5554. RANGEL-SILVA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 178 F. 3d 1291.

No. 99–5556. CONYERS *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 354 Md. 132, 729 A. 2d 910.

No. 99–5562. NECOCHEA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 169 F. 3d 1188.

No. 99–5570. DAVIS *v.* INTERNATIONAL MANAGEMENT GROUP ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 173 F. 3d 859.

No. 99–5571. HAYES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 99–5572. HERNANDEZ-SOTO, AKA GONZALEZ-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 264.

No. 99–5574. HALL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 181 F. 3d 83.

No. 99–5576. WALKER *v.* NEW YORK. Sup. Ct. N. Y., Queens County. Certiorari denied.

No. 99–5577. PITTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 176 F. 3d 239.

No. 99–5579. ORTEGA-TORRES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 174 F. 3d 1199.

No. 99–5580. KNOX *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 731 So. 2d 558.

No. 99–5582. BOWLER *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 46 Mass. App. 1108, 707 N. E. 2d 406.

No. 99–5587. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 184 F. 3d 824.

No. 99–5588. MOOSAVI *v.* EVANS. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 89.

No. 99–5589. MOOSAVI *v.* ZOOK, DIRECTOR OF ZONING ADMINISTRATION, ZONING ENFORCEMENT BRANCH. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 89.

No. 99–5591. QUADROS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 177 F. 3d 76.

No. 99–5594. TOBIN *v.* BOARD OF EDUCATION, CITY OF BUFFALO. C. A. 2d Cir. Certiorari denied.

No. 99–5595. CABEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1286.

No. 99–5596. ADAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 176 F. 3d 793.

No. 99–5598. BAKER *v.* BARBO, ADMINISTRATOR, NORTHERN STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 177 F. 3d 149.

No. 99–5600. BILIS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 170 F. 3d 88.

No. 99–5601. MARSH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 177 F. 3d 978.

No. 99–5602. RRAPI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 175 F. 3d 742.

No. 99–5603. WEBB *v.* WEST, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 215 F. 3d 1342.

No. 99–5605. WELDON *v.* EVERETT, WARDEN. Sup. Ct. Wyo. Certiorari denied.

No. 99–5609. CALDWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 172 F. 3d 864.

No. 99–5611. GREEN *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 194 F. 3d 1330.

No. 99–5612. FAULKNER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 104.

No. 99–5613. SZABO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 176 F. 3d 930.

No. 99–5615. ESPINOZA ANGIANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 869.

No. 99–5620. RODRIGUEZ-VARELA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 929.

No. 99–5621. BURGESS *v.* OREGON BOARD OF PAROLE AND POST-PRISON SUPERVISION. Ct. App. Ore. Certiorari denied. Reported below: 159 Ore. App. 426, 979 P. 2d 315.

No. 99–5623. BRYANT *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5627. PRICE *v.* RYDER SYSTEM, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 177 F. 3d 978.

No. 99–5629. PARSON *v.* UNITED STATES; and
No. 99–5646. PARSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 181 F. 3d 107.

No. 99–5631. JENKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1287.

No. 99–5634. JENKINS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 175 F. 3d 1208.

No. 99–5635. JOLLIFF *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–5636. MAYES *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 99–5640. FORD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 99–5643. VASQUEZ-ALVAREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 176 F. 3d 1294.

No. 99–5644. WORKMAN *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 178 F. 3d 759.

No. 99–5647. COUNCE *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 99–5650. WORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 105.

No. 99–5651. WEAVER *v.* ARKANSAS. Ct. App. Ark. Certiorari denied. Reported below: 66 Ark. App. 249, 990 S. W. 2d 572.

No. 99–5653. HOCK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 676.

No. 99–5655. HARRELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 104.

No. 99–5657. NIEVES *v.* KELLY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 99–5661. TEAL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 99–5665. HEDGES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 175 F. 3d 1312.

No. 99–5666. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 94.

No. 99–5668. TAYLOR *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 99–5669. SALEEM *v.* UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT. C. A. 6th Cir. Certiorari denied.

No. 99–5671. BROESKE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 178 F. 3d 887.

No. 99–5672. BARBEE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 929.

No. 99–5673. TIFFANY *v.* ROEDER, SHERIFF, GREENE COUNTY, IOWA, ET AL. C. A. 8th Cir. Certiorari denied.

No. 99–5675. JOSEPH *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 169 F. 3d 9.

No. 99–5677. LEWITZKE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 176 F. 3d 1022.

No. 99–5678. MASON *v.* CORCORAN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 851.

No. 99–5679. LEESE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 176 F. 3d 740.

No. 99–5682. MACK *v.* UNITED STATES POSTAL SERVICE. C. A. 2d Cir. Certiorari denied. Reported below: 181 F. 3d 83.

No. 99–5683. ROBINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 176 F. 3d 476.

No. 99–5684. SCHULTE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 105.

No. 99–5688. GRIGGER *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 244 App. Div. 2d 501, 665 N. Y. S. 2d 570.

No. 99–5691. FREEMAN *v.* COWAN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 99–5694. HOBBS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 194 F. 3d 175.

No. 99–5700. BROWN *v.* FEDERAL TRADE COMMISSION. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1282.

No. 99–5703. SENGER *v.* BARBO, ADMINISTRATOR, NORTHERN STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 99–5704. ARNOLD, AKA PITTS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 178 F. 3d 1291.

No. 99–5706. MANN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 181 F. 3d 109.

No. 99–5707. LOUDERMILK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 929.

No. 99–5708. LOPEZ-CARVAJAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 929.

No. 99–5709. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 187 F. 3d 644.

No. 99–5711. STONE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 172 F. 3d 865.

No. 99–5714. DIAZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 178 F. 3d 1301.

No. 99–5717. TYLER *v.* SCHRIRO, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS. Sup. Ct. Mo. Certiorari denied.

No. 99–5718. TYLER *v.* SCHRIRO, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS. Sup. Ct. Mo. Certiorari denied.

No. 99–5719. BROWN *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 7th Cir. Certiorari denied.

No. 99–5721. GWIN *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 995 S. W. 2d 78.

No. 99–5723. SEALED PETITIONER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 194 F. 3d 175.

No. 99–5725. RYAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 178 F. 3d 1281.

No. 99–5726. SPRINGER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 182 F. 3d 905.

No. 99–5731. VIRAY *v.* DEPARTMENT OF THE NAVY. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 99–5732. RUCKER *v.* HENDERSON, POSTMASTER GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 178 F. 3d 1300.

No. 99–5733. JOHNSON *v.* SUPREME COURT OF ILLINOIS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 165 F. 3d 1140.

No. 99–5734. JONES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 928.

No. 99–5735. CLEVELAND *v.* MIDDLETON, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–5736. WADE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 177 F. 3d 688.

No. 99–5740. BRUCE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 99–5759. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1287.

No. 99–5761. MCCRAY *v.* WARDEN, MARYLAND HOUSE OF CORRECTION ANNEX, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 89.

No. 99–5762. MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 929.

No. 99–5763. LOPEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 21.

No. 99–5768. WASHINGTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 182 F. 3d 913.

No. 99–5769. TIMLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 188 F. 3d 520.

No. 99–5775. CAPALDI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 928.

No. 99–5776. ADAMS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 748 So. 2d 1041.

No. 99–5777. BRENTWOOD *v.* BOEING CO. C. A. 9th Cir. Certiorari denied. Reported below: 168 F. 3d 498.

No. 99–5778. AYERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 99–5781. MURRAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 176 F. 3d 476.

No. 99–5786. ACOSTA-TORRES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 99–5790. JACKSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 99–5791. NEWSOME *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 182 F. 3d 915.

No. 99–5795. VILLAMAN-RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 167 F. 3d 687.

No. 99–5797. SAINZ-IBARRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 870.

No. 99–5801. STONNER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 165 F. 3d 16.

No. 99–5804. REED *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 94.

No. 99–5805. MOORE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 929.

No. 99–5806. LOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 818.

No. 99–5807. MITCHELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 177 F. 3d 236.

No. 99–5808. BAKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 181 F. 3d 96.

No. 99–5809. CALDWELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 176 F. 3d 898.

No. 99–5810. CARLIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 928.

No. 99–5816. JENNINGS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 99–5819. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 168 F. 3d 484.

No. 99–5821. GARRETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–5823. DICKERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–5827. GERTH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 852.

No. 99–5830. SANJURJO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 176 F. 3d 493.

No. 99–5832. SAUNDERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1288.

No. 99–5834. CRITTON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–5835. GROSS-BEY *v.* SIZER, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1283.

No. 99–5836. HUNT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 170 F. 3d 186.

No. 99–5837. HICKS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 99–5838. HILL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 176 F. 3d 492.

No. 99–5839. HALEY *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 99–5845. FREDERICK *v.* BRIGANO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–5854. OKAFOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–5855. PRI-HAR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 99–5858. FORTT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 182 F. 3d 904.

No. 99–5864. GUANIPA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–5866. DEWITT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 99–5868. FLETCHER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 20.

No. 99–5875. EDWARDS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 99–5876. HAMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–5878. RECINOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 173 F. 3d 862.

No. 99–5879. PEREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 182 F. 3d 902.

No. 99–5882. TRAYLOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 816.

No. 99–5883. VEE CHOONG CHIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 92.

No. 99–5888. WRIGHT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 182 F. 3d 905.

No. 99–5890. VANOLI *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 99–5895. MENDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 486.

No. 99–5896. MUNSTERMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 177 F. 3d 1139.

No. 99–5897. JACKSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 60.

No. 99–5899. INGRATI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 175 F. 3d 1011.

No. 99–5901. MATHIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 857.

No. 99–5902. MCCULLOUGH *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 99–5903. KING *v.* UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT. C. A. 8th Cir. Certiorari denied.

No. 99–5904. MARTINSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 99–5905. TINEO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 99–5906. TELEMAQUE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 166 F. 3d 351.

No. 99–5908. WEATHERSPOON *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied.

No. 99–5910. SOLIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 99–5911. ZELAYA-AMAYA *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 99–5912. BORGMANN *v.* ANDERSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 99.

No. 99–5913. AUGUST *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–5919. NEWLAND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 871.

No. 99–5920. GIBBS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 870.

No. 99–5922. HANSEL *v.* OHIO. Ct. App. Ohio, Stark County. Certiorari denied.

No. 99–5923. GAMBRELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 178 F. 3d 927.

No. 99–5924. DIXON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 92.

No. 99–5926. SOLIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 99–5927. SHERBAK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–5933. WOODARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 92.

No. 99–5934. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–5939. GLENN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 177 F. 3d 981.

No. 99–5940. GOODE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 919.

No. 99–5944. LONG *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 176 F. 3d 1304.

No. 99–5950. LONG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 632.

No. 99–5952. SPITZAUER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 176 F. 3d 486.

No. 99–5957. ARAUJO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 99–5965. LEWIS *v.* UNITED STATES; and
No. 99–5966. LEWIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 182 F. 3d 914.

No. 99–5972. PALMER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 98–1716. KOTTERMAN ET AL. *v.* KILLIAN, DIRECTOR, ARIZONA DEPARTMENT OF REVENUE, ET AL. Sup. Ct. Ariz. Motion of National School Boards Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 193 Ariz. 273, 972 P. 2d 606.

No. 98–1748. LAY, DBA WINTERGREEN NURSERIES, ET AL. *v.* E. I. DU PONT DE NEMOURS & CO. ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 162 F. 3d 619.

No. 98–1789. PHONOMETRICS, INC. *v.* INTERNATIONAL BUSINESS MACHINES. C. A. Fed. Cir. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 185 F. 3d 882.

No. 98–1796. CONSECO ANNUITY ASSURANCE CO. *v.* TROSTEL ET AL. C. A. 8th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 168 F. 3d 1105.

No. 99–143. MANUFACTURERS BANK *v.* AMOCO OIL CO. C. A. 7th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 170 F. 3d 692.

No. 99–195. A. B. CHANCE CO. *v.* ENFIELD, BY AND THROUGH HIS CONSERVATOR AND NATURAL MOTHER, ENFIELD. C. A. 10th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 182 F. 3d 931.

No. 99–5674. MACHOLL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 176 F. 3d 485.

No. 98–1908. PROFESSIONAL DIVERS OF NEW ORLEANS *v.* WISNER. Sup. Ct. La. Motion of Halliburton Energy Services, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 731 So. 2d 200.

No. 98–1910. PENNSYLVANIA *v.* ALLEN. Sup. Ct. Pa. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 555 Pa. 522, 725 A. 2d 737.

No. 98–1931. CALDERON, WARDEN *v.* BEAN. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 163 F. 3d 1073.

No. 99–41. WASHINGTON *v.* FINCH. Sup. Ct. Wash. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 137 Wash. 2d 792, 975 P. 2d 967.

No. 98–2001. ASSA'AD-FALTAS *v.* UNIVERSITY OF SOUTH CAROLINA ET AL.; and ASSA'AD-FALTAS *v.* ATTORNEY GENERAL OF

VIRGINIA ET AL. C. A. 4th Cir. Motion of petitioner to consolidate this case with No. 98–1189, *Board of Regents of the University of Wisconsin System* v. *Southworth et al.* [certiorari granted, 526 U. S. 1038], denied. Motion of petitioner to strike the brief in opposition and other relief denied. Certiorari denied. JUSTICE SOUTER took no part in the consideration or decision of these motions and this petition. Reported below: 165 F. 3d 910 (first judgment); 164 F. 3d 623 (second judgment).

No. 98–2004. RINGLING BROS.-BARNUM & BAILEY COMBINED SHOWS, INC. *v.* UTAH DIVISION OF TRAVEL DEVELOPMENT. C. A. 4th Cir. Motion of Revlon Consumer Products Corp. et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 170 F. 3d 449.

No. 98–2052. FENTON ET AL. *v.* UNIHEALTH AMERICA, INC., ET AL. Ct. App. Cal., 2d App. Dist. Motion of American Academy of Emergency Medicine et al. for leave to file a brief as *amici curiae* granted. Certiorari denied.

No. 99–81. PULSE COMMUNICATIONS, INC. *v.* DSC COMMUNICATIONS CORP. C. A. Fed. Cir. Motion of Computer and Communications Industry Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 170 F. 3d 1354.

No. 99–132. MULLIGAN *v.* ASSOCIATES LEASING, INC., ET AL. C. A. 4th Cir. Motion of Fred W. Allnutt, Sr., for leave to intervene denied. Certiorari denied.

No. 99–267. KEYERLEBER *v.* CHAMPION INTERNATIONAL CORP. C. A. 6th Cir. Motion of Association of Trial Lawyers of America et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 178 F. 3d 1294.

No. 99–5196. FILIAGGI *v.* OHIO. Sup. Ct. Ohio. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 85 Ohio St. 3d 1443, 708 N. E. 2d 209.

*Rehearing Denied*

No. 98–619. JONAS *v.* BRIGGS, EXECUTRIX OF THE ESTATE OF MOREY, DECEASED, 525 U. S. 1041;

No. 98–1233. CHAVIS *v.* UNITED STATES, 526 U. S. 1006;

No. 98–1900. AZAMBER *v.* FRANCHISE TAX BOARD OF CALIFORNIA, 527 U. S. 1039;

No. 98–8624. COUNCIL *v.* UNITED STATES, 526 U. S. 1080;

No. 98–8893. COUCH *v.* GEORGIA, 527 U. S. 1007;

No. 98–9099. FISHER ET UX. *v.* SUNKIST GROWERS, 527 U. S. 1040; and

No. 98–9224. RAINES *v.* UNITED STATES, 526 U. S. 1164. Petitions for rehearing denied.

No. 98–1855. GIBSON *v.* SLATER, SECRETARY OF TRANSPORTATION, 527 U. S. 1023. Motion of petitioner for leave to proceed further herein *in forma pauperis* granted. Motion for leave to file petition for rehearing denied.

## OCTOBER 8, 1999

*Miscellaneous Order*

No. 99A241 (99–451). LEWIS, WARDEN, ET AL. *v.* GARCIA DELGADO. C. A. 9th Cir. Motion for reconsideration of stay entered September 27, 1999 [527 U. S. 1066], denied.

## OCTOBER 12, 1999

*Dismissal Under Rule 46*

No. 98–1915. CATAPULT ENTERTAINMENT, INC. *v.* PERLMAN. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 165 F. 3d 747.

*Miscellaneous Orders.* (See also No. 98–9913, *ante*, p. 1; Nos. 98–9933 and 99–5445, *ante*, p. 3; No. 99–5260, *ante*, p. 5; No. 99–5283, *ante*, p. 7; and No. 99–5316, *ante*, p. 9.)

No. D–2087. IN RE DISBARMENT OF PEEK. Disbarment entered. [For earlier order herein, see 527 U. S. 1020.]

No. D–2089. IN RE DISBARMENT OF RAPHAEL. Disbarment entered. [For earlier order herein, see 527 U. S. 1032.]

No. D–2091. IN RE DISBARMENT OF TURTLETAUB. Disbarment entered. [For earlier order herein, see 527 U. S. 1053.]

No. D–2092. IN RE DISBARMENT OF LEWIS. Disbarment entered. [For earlier order herein, see 527 U. S. 1053.]

No. D–2093. In re Disbarment of Bykofsky. Disbarment entered. [For earlier order herein, see 527 U. S. 1053.]

No. D–2094. In re Disbarment of Ondeck. Disbarment entered. [For earlier order herein, see 527 U. S. 1053.]

No. D–2096. In re Disbarment of Durie. Disbarment entered. [For earlier order herein, see 527 U. S. 1053.]

No. D–2097. In re Disbarment of Wilkes. Disbarment entered. [For earlier order herein, see 527 U. S. 1053.]

No. D–2106. In re Disbarment of Pipes. Richard Alan Pipes, of Upper Tumon, Guam, 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–2107. In re Disbarment of Buckley. F. Mac Buckley, of Hartford, Conn., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2108. In re Disbarment of Passalacqua. Richard M. Passalacqua, of Framingham, Mass., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 99M28. Torain *v.* Siemens Rolm Communications, Inc.;
No. 99M29. Carpenter *v.* White, Warden;
No. 99M30. Sherrill *v.* Pico;
No. 99M31. Sherrill *v.* Arizona Registrar of Contractors;
No. 99M33. Barrios *v.* Goux Enterprises, Inc.; and
No. 99M34. Pierson *v.* Wilshire Terrace Corp. et al. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 99M32. Munoz *v.* Texas. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner 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 $3,189.83 for the period April 1 through June 30, 1999, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 526 U. S. 1085.]

No. 98–1170. PORTUONDO, SUPERINTENDENT, FISHKILL CORRECTIONAL FACILITY *v.* AGARD. C. A. 2d Cir. [Certiorari granted, 526 U. S. 1016.] Motion for appointment of counsel granted, and it is ordered that Beverly Van Ness, Esq., of New York, N. Y., be appointed to serve as counsel for respondent in this case.

No. 99–5542. REIMAN *v.* WAGSTAFF ET AL. C. A. 9th Cir.;

No. 99–5932. ROSENBERG *v.* BUSH ET AL. C. A. D. C. Cir.; and

No. 99–6033. IN RE VENERI. Motions of petitioners for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioners are allowed until November 2, 1999, 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. 99–5925. HENLEY *v.* STATE BAR OF GEORGIA. Sup. Ct. Ga. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 2, 1999, 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. 99–5884. IN RE CORNELL; and

No. 99–5918. IN RE KWASIGROCH. Petitions for writs of mandamus denied.

No. 99–5667. IN RE SANDERS. Petition for writ of mandamus and/or prohibition denied.

*Certiorari Granted*

No. 98–1991. PUBLIC LANDS COUNCIL ET AL. *v.* BABBITT, SECRETARY OF THE INTERIOR, ET AL. C. A. 10th Cir. Certiorari granted. Reported below: 167 F. 3d 1287.

No. 99–166. UNITED STATES *v.* HUBBELL. C. A. D. C. Cir. Certiorari granted. Reported below: 167 F. 3d 552.

No. 98–1167. CHRISTENSEN ET AL. *v.* HARRIS COUNTY ET AL. C. A. 5th Cir. Certiorari granted limited to the following ques-

tion: "Whether a public agency governed by the compensatory time provisions of the Fair Labor Standards Act of 1938, 29 U. S. C. § 207(*o*), may, absent a preexisting agreement, require its employees to use accrued compensatory time?" Reported below: 158 F. 3d 241.

No. 98–9349. BOND *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 167 F. 3d 225.

*Certiorari Denied*

No. 98–1713. ARKANSAS *v.* MAZEPINK. Sup. Ct. Ark. Certiorari denied. Reported below: 336 Ark. 171, 987 S. W. 2d 648.

No. 98–1886. MAYOR AND CITY COUNCIL OF BALTIMORE *v.* ONE 1995 CORVETTE VIN #1G1YY220585103433. Ct. App. Md. Certiorari denied. Reported below: 353 Md. 114, 724 A. 2d 680.

No. 98–1933. AZTEC GENERAL AGENCY *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. 5th Cir. Certiorari denied. Reported below: 158 F. 3d 584.

No. 98–8272. WIPPERT *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 98–9273. WHITE *v.* GIBSON, WARDEN, ET AL. Ct. Crim. App. Okla. Certiorari denied.

No. 98–9377. MAYS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–9595. WILKERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 427.

No. 98–9721. MIDDLETON *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 114 Nev. 1089, 968 P. 2d 296.

No. 98–9793. AKINTOBI ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 159 F. 3d 401.

No. 99–20. ROBINSON, PLAN ADMINISTRATOR OF THE LANDMARK INSURANCE GROUP PLAN, ET AL. *v.* CLOCK TOWER PLACE INVESTMENTS, LTD., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1013.

No. 99–34. YANKTON SIOUX TRIBE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 187 F. 3d 645.

No. 99–44. PARADISSIOTIS *v.* SUMMERS, SECRETARY OF THE TREASURY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 171 F. 3d 983.

No. 99–59. NEW MEXICO TAXATION AND REVENUE DEPARTMENT *v.* RAMAH NAVAJO SCHOOL BOARD, INC., ET AL.; and

No. 99–228. RAMAH NAVAJO SCHOOL BOARD, INC., ET AL. *v.* NEW MEXICO TAXATION AND REVENUE DEPARTMENT. Ct. App. N. M. Certiorari denied. Reported below: 127 N. M. 101, 977 P. 2d 1021.

No. 99–65. FELDMAN *v.* CHUNG WU HO ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 171 F. 3d 494.

No. 99–71. KOSTMAYER ET AL. *v.* DEPARTMENT OF THE TREASURY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 178 F. 3d 1291.

No. 99–75. KAPLAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 171 F. 3d 1351.

No. 99–80. CALLAHAN *v.* SUFFOLK COUNTY DEPARTMENT OF SOCIAL SERVICES. Ct. App. N. Y. Certiorari denied. Reported below: 93 N. Y. 2d 111, 710 N. E. 2d 1079.

No. 99–86. WHEELING & LAKE ERIE RAILWAY CO. *v.* PENNSYLVANIA PUBLIC UTILITY COMMISSION ET AL.; and

No. 99–234. PENNSYLVANIA PUBLIC UTILITY COMMISSION ET AL. *v.* WHEELING & LAKE ERIE RAILWAY CO. C. A. 3d Cir. Certiorari denied. Reported below: 141 F. 3d 88.

No. 99–99. STATE LINE HOTEL, INC. *v.* BUDDENSICK. Ct. App. Utah. Certiorari denied. Reported below: 972 P. 2d 928.

No. 99–104. COUNTY OF HAWAII *v.* ANDERSON. C. A. 9th Cir. Certiorari denied. Reported below: 176 F. 3d 1231.

No. 99–106. FRATERNAL ORDER OF POLICE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 173 F. 3d 898.

No. 99–107. LUNDELL *v.* WATKINS ET UX. C. A. 8th Cir. Certiorari denied. Reported below: 169 F. 3d 540.

No. 99–111. MIKEL ET UX. *v.* ALLEN ET AL. Sup. Ct. Va. Certiorari denied.

No. 99–154. PENNSYLVANIA DEPARTMENT OF REVENUE ET AL. *v.* NEWMAN ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 556 Pa. 289, 728 A. 2d 351.

No. 99–189. KANSAS *v.* GARZA. Ct. App. Kan. Certiorari denied. Reported below: 26 Kan. App. 2d 426, 991 P. 2d 905.

No. 99–193. PARRISH ET AL. *v.* NIKOLITS, PROPERTY APPRAISER OF PALM BEACH COUNTY. C. A. 11th Cir. Certiorari denied. Reported below: 170 F. 3d 188.

No. 99–198. EVANS, CONSERVATOR OF EVANS *v.* LEDERLE LABORATORIES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 167 F. 3d 1106.

No. 99–199. EMERY *v.* CITY OF TOLEDO ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 178 F. 3d 1294.

No. 99–202. SMITH *v.* CENTRA BENEFIT SERVICES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 177 F. 3d 979.

No. 99–204. MALLEY *v.* KEENAN, UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 99–207. GOMEZ, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* HART. C. A. 9th Cir. Certiorari denied. Reported below: 174 F. 3d 1067.

No. 99–212. BERGENDAHL, ADMINISTRATRIX OF THE ESTATE OF BERGENDAHL, DECEASED *v.* MASSACHUSETTS ELECTRIC CO. App. Ct. Mass. Certiorari denied. Reported below: 45 Mass. App. 715, 701 N. E. 2d 656.

No. 99–214. GREENE ET AL. *v.* HAM. Sup. Ct. Conn. Certiorari denied. Reported below: 248 Conn. 508, 729 A. 2d 740.

No. 99–215. CASEY ET AL. *v.* RETIREMENT BOARD OF THE RHODE ISLAND EMPLOYEES' RETIREMENT SYSTEM ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 172 F. 3d 22.

No. 99–217. HOFFMANN *v.* TWAMLEY ET AL. C. A. 8th Cir. Certiorari denied.

No. 99–226. YOUNG *v.* GREGOIRE, ATTORNEY GENERAL OF WASHINGTON. C. A. 9th Cir. Certiorari denied.

No. 99–227. BROOKS *v.* BODWELL ET AL. Super. Ct. N. H., Hillsborough County. Certiorari denied.

No. 99–231. LLAMPALLAS *v.* MINI-CIRCUITS LAB., INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 163 F. 3d 1236.

No. 99–233. DESHAY ET VIR, INDIVIDUALLY AND AS NEXT FRIENDS OF THEIR SON, DESHAY *v.* BASTROP INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 262.

No. 99–235. DEMASSE ET AL. *v.* ITT CORP., DBA ITT CANNON. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 866.

No. 99–236. SLOOP *v.* ABTCO, INC. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1285.

No. 99–237. CHIROPRACTIC AMERICA *v.* LAVECCHIA, COMMISSIONER, DEPARTMENT OF BANKING AND INSURANCE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 180 F. 3d 99.

No. 99–239. PARRETT *v.* MIZE. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 99–241. CHEN-LI PANG *v.* ALLSTATE INSURANCE CO. C. A. 2d Cir. Certiorari denied. Reported below: 173 F. 3d 845.

No. 99–242. TAYLOR COMMUNICATIONS GROUP, INC. *v.* SOUTHWESTERN BELL TELEPHONE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 172 F. 3d 385.

No. 99–245. JACKSON *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 99–247. FREEDMAN *v.* MCCANDLESS. Super. Ct. Pa. Certiorari denied. Reported below: 731 A. 2d 203.

No. 99–249. GUARDIAN LIFE INSURANCE COMPANY OF AMERICA *v.* UNIBELL ANESTHESIA, P. C. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 256 App. Div. 2d 252, 682 N. Y. S. 2d 193.

No. 99–252. COMBUSTION ENGINEERING, INC. *v.* MCGILL ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 170 F. 3d 1320.

No. 99–254. STROUT ET AL. *v.* ALBANESE, COMMISSIONER, MAINE DEPARTMENT OF EDUCATION. C. A. 1st Cir. Certiorari denied. Reported below: 178 F. 3d 57.

No. 99–260. JOHNSTON *v.* EASLEY, ATTORNEY GENERAL OF NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 88.

No. 99–264. DICKERSON ET AL. *v.* CITY OF DALLAS. C. A. 5th Cir. Certiorari denied. Reported below: 181 F. 3d 96.

No. 99–266. COOK COUNTY *v.* CHANDLER. C. A. 7th Cir. Certiorari denied.

No. 99–272. NEWMAN ET UX. *v.* DEITER ET AL. Ct. App. Ind. Certiorari denied. Reported below: 702 N. E. 2d 1093.

No. 99–277. PLETCHER *v.* KENTUCKY. Ct. App. Ky. Certiorari denied. Reported below: 992 S. W. 2d 852.

No. 99–279. OCKENDEN ET UX. *v.* JOSEPHINE COUNTY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 868.

No. 99–280. KIN SIU TAM *v.* GEORGIA. C. A. 11th Cir. Certiorari denied. Reported below: 172 F. 3d 883.

No. 99–288. CARTER, PERSONAL REPRESENTATIVE OF THE ESTATE OF CARTER, DECEASED, AND AS NEXT FRIEND AND NATURAL AND LEGAL GUARDIAN OF CARTER ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 924.

No. 99–290. DAVIS *v.* CITY OF MALDEN BOARD OF ASSESSORS. App. Tax Bd. Mass. Certiorari denied.

No. 99–291. SCARBOROUGH *v.* FISCHER. C. A. 8th Cir. Certiorari denied. Reported below: 171 F. 3d 638.

No. 99–293. SACHS ET AL. *v.* INTELOGIC TRACE, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 174 F. 3d 198.

No. 99–300. COASTAL FUELS OF PUERTO RICO, INC. *v.* CARIBBEAN PETROLEUM CORP. C. A. 1st Cir. Certiorari denied. Reported below: 175 F. 3d 18.

No. 99–307. MOORE ET AL. *v.* TIME INC. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 180 F. 3d 463.

No. 99–310. PERRY *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1020.

No. 99–313. CUMMINS *v.* PEPSI-COLA CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 100.

No. 99–314. FOFANA ET AL. *v.* LANDTECH ENGINEERING ET AL. Ct. App. Md. Certiorari denied. Reported below: 353 Md. 269, 725 A. 2d 1068.

No. 99–316. BROADWAY *v.* SINEX ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 166 F. 3d 339.

No. 99–317. ARNETT *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 99.

No. 99–318. MCGLONE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 716 A. 2d 1280.

No. 99–320. AKS DAKS COMMUNICATIONS, INC., ET AL. *v.* ARIZONA CORPORATIONS COMMISSION ET AL. Ct. App. Ariz. Certiorari denied. Reported below: 194 Ariz. 104, 977 P. 2d 826.

No. 99–322. MCGUINNESS *v.* REGENTS OF THE UNIVERSITY OF NEW MEXICO. C. A. 10th Cir. Certiorari denied. Reported below: 183 F. 3d 1172.

No. 99–327. DANIELSON *v.* HAWAII. Sup. Ct. Haw. Certiorari denied. Reported below: 90 Haw. 475, 979 P. 2d 71.

No. 99–330. DAVIDSON *v.* DETROIT FREE PRESS, INC., ET AL. Ct. App. Mich. Certiorari denied.

No. 99–335. TICHENOR *v.* CALDERA, SECRETARY OF THE ARMY. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 104.

No. 99–336. GILLAND *v.* CALDERA, SECRETARY OF THE ARMY. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 100.

No. 99–346. BOGGIA *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 167 F. 3d 113.

No. 99–350. COX *v.* UNITED STATES;

No. 99–5935. LONG *v.* UNITED STATES; and
No. 99–5989. TROUT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 177 F. 3d 272.

No. 99–352. JONES *v.* HENDERSON, POSTMASTER GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 177 F. 3d 977.

No. 99–357. WATERMAN STEAMSHIP CO. *v.* WEEKS MARINE, INC. C. A. 2d Cir. Certiorari denied. Reported below: 175 F. 3d 274.

No. 99–364. RICE ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 166 F. 3d 1088.

No. 99–382. HAY *v.* LAZAROFF, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 99–383. HUTCHERSON *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied.

No. 99–385. KING *v.* WASHINGTON ADVENTIST HOSPITAL ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 194 F. 3d 1336.

No. 99–397. MCFARLAND *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 337 Ark. 386, 989 S. W. 2d 899.

No. 99–400. STEELE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 178 F. 3d 1230.

No. 99–406. FINNEGAN ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 168 F. 3d 498.

No. 99–407. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 178 F. 3d 790.

No. 99–408. CREA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 168 F. 3d 61.

No. 99–413. LUKACS *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 851.

No. 99–421. FERMIN, AND ON BEHALF OF THE ESTATE OF FERMIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 263.

No. 99–425. WALLACE *v.* STIEHL, SENIOR JUDGE, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS. C. A. 7th Cir. Certiorari denied.

No. 99–5063. NICHOLS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 169 F. 3d 1255.

No. 99–5137. SEARS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 270 Ga. 834, 514 S. E. 2d 426.

No. 99–5236. BEUKE *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied. Reported below: 130 Ohio App. 3d 633, 720 N. E. 2d 962.

No. 99–5242. IHU, AKA IHUBOYE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 99–5253. CHARLES *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 260.

No. 99–5354. WRIGHT *v.* HALEY, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 169 F. 3d 695.

No. 99–5402. BATTLE *v.* BRUTON, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 99–5508. PESEK *v.* WISCONSIN DEPARTMENT OF HEALTH AND FAMILY SERVICES. Ct. App. Wis. Certiorari denied. Reported below: 223 Wis. 2d 800, 589 N. W. 2d 455.

No. 99–5528. MASON *v.* HAGERSTOWN POLICE DEPARTMENT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 172 F. 3d 44.

No. 99–5540. MCBROOM *v.* BOB-BOYD LINCOLN MERCURY, INC. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 99–5544. JONES *v.* MINNESOTA MINING & MANUFACTURING CO. ET AL. C. A. 8th Cir. Certiorari denied.

No. 99–5545. JONES *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 99–5558. BROWN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 99–5559. BROWN *v.* DAVIS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 174 F. 3d 198.

No. 99–5563. MELENDEZ *v.* ARIZONA DEPARTMENT OF ECONOMIC SECURITY ET AL. Ct. App. Ariz. Certiorari denied.

No. 99–5565. TAYLOR *v.* WALL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 172 F. 3d 864.

No. 99–5568. BUCHANAN *v.* BIRNIE ET AL. Ct. App. S. C. Certiorari denied.

No. 99–5569. CARTER *v.* HERNANDEZ, CLERK, DISTRICT COURT OF NEW MEXICO, LEA COUNTY, ET AL. Sup. Ct. N. M. Certiorari denied.

No. 99–5573. GREEN *v.* CUMBERLAND ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 178 F. 3d 1294.

No. 99–5575. FLYNN *v.* THOMAS ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 301 Ill. App. 3d 1078, 746 N. E. 2d 333.

No. 99–5581. COLEMAN *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 3 S. W. 3d 19.

No. 99–5583. BARKER *v.* FLORIDA PAROLE COMMISSION ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 735 So. 2d 1283.

No. 99–5584. BROWN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5585. PIRTLE *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 99–5590. RABB *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 99–5606. TAYLOR *v.* VEIGAS ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–5607. CRUTHIRD *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 99–5610. GRAY *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 925.

No. 99–5618. CURRO *v.* KELLY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 181 F. 3d 82.

No. 99–5619. STUBBS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 732 So. 2d 1075.

No. 99–5622. VO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 99–5624. CARLSON *v.* WOODS, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 178 F. 3d 1291.

No. 99–5625. BAILEY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 99–5626. SCHOUSTER *v.* LANGLEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–5633. JOHNSON *v.* SUPER FRESH FOOD MARKETS, INC. C. A. 3d Cir. Certiorari denied. Reported below: 178 F. 3d 1279.

No. 99–5637. ADAMS *v.* INMAN. C. A. 8th Cir. Certiorari denied.

No. 99–5638. GRIFFIN *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY, ET AL. C. A. 5th Cir. Certiorari denied.

No. 99–5641. SHARP *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 193 Ariz. 414, 973 P. 2d 1171.

No. 99–5642. THIBODEAUX *v.* LOUISIANA. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 728 So. 2d 416.

No. 99–5645. LANCASTER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 99–5652. HATTER *v.* NEW YORK CITY HOUSING AUTHORITY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 165 F. 3d 14.

No. 99–5654. ATHMER *v.* HILL ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 178 F. 3d 473.

No. 99–5656. MENDLOW *v.* UNIVERSITY OF WASHINGTON ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 919.

No. 99–5658. MORELAND *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 175 F. 3d 347.

No. 99–5659. MCKENNA *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 114 Nev. 1044, 968 P. 2d 739.

No. 99–5660. LEGGETT *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5662. WOODS *v.* CAESAR ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 178 F. 3d 1298.

No. 99–5680. MCCLAIN *v.* PRYOR, ATTORNEY GENERAL OF ALABAMA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 177 F. 3d 982.

No. 99–5681. LEACH *v.* ALABAMA. C. A. 11th Cir. Certiorari denied.

No. 99–5685. CUMMINGS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 99–5686. FRAZIER *v.* MONTANA STATE PRISON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 168 F. 3d 498.

No. 99–5687. DOUGLAS *v.* LEHMAN, SECRETARY, WASHINGTON DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–5689. DODSON *v.* LEONARD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–5690. DAVIS *v.* EARHART ET AL. C. A. 3d Cir. Certiorari denied.

No. 99–5692. HOLLIDAY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5693. DIAL *v.* DELOACH, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–5695. ANH TUAN HOANG *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5697. STANCLIFF *v.* COFFIELD ET AL. C. A. 5th Cir. Certiorari denied.

No. 99–5698. SNIPES *v.* WARDEN, CADDO CORRECTIONAL CENTER. C. A. 5th Cir. Certiorari denied.

No. 99–5701. OWENS *v.* RAY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 182 F. 3d 904.

No. 99–5705. ALLEN *v.* WEST VIRGINIA ET AL.; ALLEN *v.* FRAZIER ET AL.; and ALLEN *v.* WEST VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 423.

No. 99–5710. SAVIOR *v.* VENTURA, GOVERNOR OF MINNESOTA, ET AL. Ct. App. Minn. Certiorari denied.

No. 99–5712. WASHINGTON *v.* MARGOLIS. C. A. 9th Cir. Certiorari denied.

No. 99–5713. GREEN *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 194 F. 3d 1330.

No. 99–5715. HANLEY *v.* CITY OF HOUSTON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 178 F. 3d 1290.

No. 99–5720. MADASCI *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–5722. WHITE *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 85 Ohio St. 3d 433, 709 N. E. 2d 140.

No. 99–5727. BLAND *v.* BEVERLY HILLS UNIFIED SCHOOL DISTRICT ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–5728. MANCE *v.* ARIZONA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 57.

No. 99–5730. KING *v.* SMITH, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 181 F. 3d 109.

No. 99–5738. STEVENSON *v.* NIXON, ATTORNEY GENERAL OF MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 99–5752. BRYAN *v.* KANSAS. Sup. Ct. Kan. Certiorari denied.

No. 99–5754. ROBERTS *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 735 So. 2d 1270.

No. 99–5757. STONE *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 156 Ore. App. 640, 967 P. 2d 533.

No. 99–5758. PATTON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 973 P. 2d 270.

No. 99–5764. LEVITAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 170 F. 3d 188.

No. 99–5767. YBARRA VILLAGRANA *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 99–5796. OUTLAND *v.* HENDERSON, POSTMASTER GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 265.

No. 99–5802. SIMMONS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5815. LEFORCE *v.* SZMUTKO. Ct. App. Ariz. Certiorari denied.

No. 99–5817. THOMPSON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 181 F. 3d 109.

No. 99–5820. FERNANDEZ *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 52 Conn. App. 599, 728 A. 2d 1.

No. 99–5822. DELGADO *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 99–5824. GALVAN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5831. STEWART *v.* SCOTT, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. Certiorari denied.

No. 99–5843. DUPARD *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–5844. DUREN *v.* HALEY, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 161 F. 3d 655.

No. 99–5846. HARRIS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5850. CLARK *v.* NASSAU COUNTY, NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 175 F. 3d 1007.

No. 99–5852. PINK *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 7th Cir. Certiorari denied.

No. 99–5856. POWELL *v.* OHIO. Ct. App. Ohio, Summit County. Certiorari denied.

No. 99–5857. SOVAK *v.* BOARD OF EDUCATION OF THE CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 181 F. 3d 83.

No. 99–5859. FOSTER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5861. HERNANDEZ *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5871. HILL *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–5874. HINSON *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 720 So. 2d 520.

No. 99–5889. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 869.

No. 99–5893. PARRISH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1017.

No. 99–5921. FLEMING *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 350 N. C. 109, 512 S. E. 2d 720.

No. 99–5937. GERMANY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 718 A. 2d 857.

No. 99–5938. GOODRICH *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 99–5941. PERRY *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO. C. A. 6th Cir. Certiorari denied.

No. 99–5943. MICHAELS, AKA BLUMBERG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 877.

No. 99–5948. KING *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 99–5953. RAINE *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 175 F. 3d 1025.

No. 99–5954. FICKLIN *v.* HATCHER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 177 F. 3d 1147.

No. 99–5971. SILVA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 177 F. 3d 76.

No. 99–5978. CAPERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1016.

No. 99–5981. ALBAUGH *v.* OHIO. Ct. App. Ohio, Stark County. Certiorari denied.

No. 99–5983. SMITH *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 294 Ill. App. 3d 1126, 721 N. E. 2d 863.

No. 99–5984. SERGENT *v.* OHIO. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 99–5986. PAYAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 182 F. 3d 914.

No. 99–5988. WEED *v.* UNITED STATES; and
No. 99–6013. CLANCY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1021.

No. 99–5991. TURCIO-SALMERON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 182 F. 3d 914.

No. 99–5992. TAFOLLA-CARRILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 871.

No. 99–5993. WARD *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 297 Ill. App. 3d 1140, 737 N. E. 2d 717.

No. 99–5994. THOMPSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 99–5995. YURTIS *v.* PHIPPS. Ct. App. Wash. Certiorari denied.

No. 99–5998. COLYAR *v.* GILMAN, CONGRESSMAN. C. A. 2d Cir. Certiorari denied. Reported below: 165 F. 3d 13.

No. 99–5999. CHAPPELL *v.* UNITED STATES; and
No. 99–6044. CAVER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 928.

No. 99–6002. COOK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 104.

No. 99–6005. QUINONES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 182 F. 3d 902.

No. 99–6009. DAVIES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 870.

No. 99–6012. KAMOGA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 177 F. 3d 617.

No. 99–6014. HURTADO MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 192 F. 3d 126.

No. 99–6015. JORDAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 187 F. 3d 644.

No. 99–6019. PATTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–6021. PERELMAN *v.* RENO, ATTORNEY GENERAL, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–6024. MOHLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 919.

No. 99–6025. MOORE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 178 F. 3d 994.

No. 99–6026. JACKSON *v.* SACCHET, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 424.

No. 99–6029. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 99–6031. JACKSON *v.* MCMANAMON ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 86 Ohio St. 3d 1434, 713 N. E. 2d 1047.

No. 99–6032. MARCELLO *v.* TOWN OF STETSON, MAINE. Sup. Jud. Ct. Me. Certiorari denied.

No. 99–6036. SANTA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 180 F. 3d 20.

No. 99–6043. ALLEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–6045. KELLY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 182 F. 3d 923.

No. 99–6046. MILBURN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 99–6050. WASHINGTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 263.

No. 99–6056. COOK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 182 F. 3d 914.

No. 99–6057. GARCIA *v.* MCCAUGHTRY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 99–6061. GOMEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 182 F. 3d 935.

No. 99–6063. FRIENDS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 99–6064. BAUTISTA DE LA CRUZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 166 F. 3d 1218.

No. 99–6065. DAVID *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 870.

No. 99–6074. MITCHELL *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 182 F. 3d 272.

No. 99–6075. MCHORSE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 179 F. 3d 889.

No. 99–6076. MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 1107.

No. 99–6079. ASHER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 178 F. 3d 486.

No. 99–6081. LOVE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 350 N. C. 586, 516 S. E. 2d 382.

No. 99–6085. MATTHEWS ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 178 F. 3d 295.

No. 99–6087. ORTIZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 182 F. 3d 902.

No. 99–6090. STEELE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 193 F. 3d 520.

No. 99–6091. OROZCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 871.

No. 99–6094. UKOSITKUL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 650.

No. 99–6099. PERKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 187 F. 3d 639.

No. 99–6100. PRICE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 266.

No. 99–6104. NOBLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 F. 3d 911.

No. 99–6107. DEL PILAR REYNOSO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 99–6109. LINDSEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 141 F. 3d 1189.

No. 99–6111. ANDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 172 F. 3d 881.

No. 99–6112. POWERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 168 F. 3d 741.

No. 99–6117. LANGWORTHY *v.* DEAN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 88.

No. 99–6124. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 93.

No. 99–6133. RONCONE *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 99–6134. SAUCEDO MENDOZA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 919.

No. 99–6141. BUSTAMANTE TOBON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 176 F. 3d 492.

No. 99–6144. BOONE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 99–6148. HUBBARD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 182 F. 3d 934.

No. 99–6152. DEERING, AKA WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 179 F. 3d 592.

No. 99–6154. HART, AKA MAJOR, AKA GORDEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 175 F. 3d 1011.

No. 99–6155. GRAHAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 631.

No. 99–6160. BOUTHOT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 99–6167. LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 870.

No. 99–6170. MITCHELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 178 F. 3d 904.

No. 99–6171. LOZANO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 171 F. 3d 1129.

No. 99–6183. CASH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 92.

No. 98–1932. PATAKI, GOVERNOR OF NEW YORK, ET AL. *v.* GRUMET ET AL. Ct. App. N. Y. Certiorari denied. JUSTICE O'CONNOR, JUSTICE SCALIA, and JUSTICE THOMAS would grant certiorari. Reported below: 93 N. Y. 2d 677, 720 N. E. 2d 66.

No. 98–1942. NIKE, INC. *v.* WAL-MART STORES, INC., ET AL. C. A. Fed. Cir. Motion of Reebok International Ltd. and Rockport Co., Inc., for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 138 F. 3d 1437.

No. 98–2007. CITY OF NEW YORK ET AL. *v.* COVINGTON. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 171 F. 3d 117.

No. 99–203. COYLE, WARDEN *v.* MAPES. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 171 F. 3d 408.

No. 99–77. GIBSON *v.* HEAD, WARDEN. Sup. Ct. Ga. Motions of Southern Center for Human Rights, NAACP Legal Defense & Educational Fund, and American Bar Association for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 270 Ga. 855, 513 S. E. 2d 186.

No. 99–95. EXCEL COMMUNICATIONS, INC., ET AL. *v.* AT&T CORP. C. A. Fed. Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 172 F. 3d 1352.

Statement of JUSTICE STEVENS respecting the denial of the petition for writ of certiorari.

The importance of the question presented in this certiorari petition makes it appropriate to reiterate the fact that the denial of

the petition does not constitute a ruling on the merits. See *Carpenter* v. *Gomez*, 516 U. S. 981 (1995) (opinion of STEVENS, J., respecting denial of certiorari); *Maryland* v. *Baltimore Radio Show, Inc.*, 338 U. S. 912, 917–919 (1950) (opinion of Frankfurter, J., respecting denial of certiorari).

No. 99–163. BAGLEY ET AL. *v.* RAYMOND SCHOOL DEPARTMENT ET AL. Sup. Jud. Ct. Me. Motion of Texas Justice Foundation et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 728 A. 2d 127.

No. 99–292. MCCARTY, COMMISSIONER OF THE INDIANA DEPARTMENT OF INSURANCE AND LIQUIDATOR OF CLASSIC FIRE & MARINE INSURANCE CO. *v.* BROWN ET AL. Ct. App. La., 4th Cir. Motion of National Association of Insurance Commissioners for leave to file a brief as *amicus curiae* granted. Certiorari denied.

No. 99–6071 (99A209). CRANE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 178 F. 3d 309.

No. 99–6101. ROWLES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 172 F. 3d 877.

*Rehearing Denied*

No. 98–8300. ABDUS-SABIR *v.* HIGHTOWER, WARDEN, ET AL., 526 U. S. 1100; and

No. 98–8790. SMITH *v.* UNITED STATES ET AL., 526 U. S. 1136. Petitions for rehearing denied.

## OCTOBER 14, 1999

*Certiorari Denied*

No. 99–6249 (99A239). MCFADDEN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and

JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 166 F. 3d 757.

## OCTOBER 15, 1999

*Dismissal Under Rule 46*

No. 99–381. WEAVER ET AL. *v.* BURGER KING CORP. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 169 F. 3d 1310.

## OCTOBER 18, 1999

*Certiorari Granted—Reversed and Remanded.* (See No. 98–8770, *ante*, p. 11.)

*Miscellaneous Orders.* (See also No. 99–5440, *ante*, p. 16.)

No. D–2109. IN RE DISBARMENT OF EL-AMIN. Saad El-Amin, of Richmond, Va., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2110. IN RE DISBARMENT OF MORGENSTERN. Mark J. Morgenstern, of Rockville, 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–2111. IN RE DISBARMENT OF KRAMER. Marc Lawrence Kramer, of Chicago, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 99M35. BOARD OF FIRE COMMISSIONERS, FARMINGVILLE FIRE DISTRICT *v.* PIETRAS. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 98–1161. CITY OF ERIE ET AL. *v.* PAP'S A. M., TDBA "KANDYLAND." Sup. Ct. Pa. [Certiorari granted, 526 U. S. 1111.] Motion of Bill Conte et al. for leave to file a brief as *amici curiae* granted.

No. 98–1480. BECK *v.* PRUPIS ET AL. C. A. 11th Cir. [Certiorari granted, 526 U. S. 1158.] Motion of respondent Frederick Mezey for divided argument denied.

No. 98–6322. SLACK *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. [Certiorari granted, 525 U. S. 1138.] Case restored to calendar for reargument. The parties are directed to file supplemental briefs not to exceed 25 pages addressing the following questions: "(1) Do the provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), specifically including 28 U. S. C. § 2253(c) and 28 U. S. C. § 2244(b), control the proceedings on appeal? (2) If AEDPA does control the proceedings on appeal, may a certificate of appealability issue under 28 U. S. C. § 2253(c)?" Briefs are to be filed with the Clerk and served upon opposing parties on or before 3 p.m., Wednesday, December 15, 1999. Reply briefs, if any, not to exceed 10 pages, are to be filed with the Clerk and served upon opposing parties on or before 3 p.m., Friday, January 14, 2000. The Solicitor General is invited to file a brief, not to exceed 25 pages, expressing the views of the United States. Any brief as *amicus curiae,* not to exceed 15 pages, may be filed with the Clerk and served upon the parties on or before 3 p.m., Wednesday, December 15, 1999. This Court's Rule 29.2 does not apply.

No. 99–5811. BRIGGS *v.* DALKON SHIELD CLAIMANTS TRUST. C. A. 4th Cir.;

No. 99–5813. MCCLOUD *v.* COMMUNITY HOSPITAL ET AL. C. A. 11th Cir.; and

No. 99–6126. MINFORD *v.* DOMALAKES, JUDGE, COURT OF COMMON PLEAS OF PENNSYLVANIA, SCHUYLKILL COUNTY, ET AL. C. A. 3d Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 8, 1999, 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. 99–6197. IN RE ARRIOLA. Petition for writ of mandamus denied.

*Certiorari Granted*

No. 99–312. NORFOLK SOUTHERN RAILWAY CO. *v.* SHANKLIN, INDIVIDUALLY AND AS NEXT FRIEND OF SHANKLIN. C. A. 6th Cir. Certiorari granted. Reported below: 173 F. 3d 386.

No. 98–9828. OHLER *v.* UNITED STATES. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 169 F. 3d 1200.

No. 99–5153. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 181 F. 3d 105.

*Certiorari Denied*

No. 98–1998. WITHROW ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 1433.

No. 98–9752. NAUTON *v.* NEWLAND, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 444.

No. 98–10048. BRADFORD *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 99–31. W. R. GRACE & CO.-CONN. ET AL. *v.* WASHINGTON DEPARTMENT OF REVENUE;

No. 99–38. BUFFELEN WOODWORKING CO. ET AL. *v.* WASHINGTON DEPARTMENT OF REVENUE; and

No. 99–223. WASHINGTON DEPARTMENT OF REVENUE *v.* W. R. GRACE & CO.-CONN. ET AL. Sup. Ct. Wash. Certiorari denied. Reported below: 137 Wash. 2d 580, 973 P. 2d 1011.

No. 99–119. BRONCO WINE CO. *v.* BUREAU OF ALCOHOL, TOBACCO AND FIREARMS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 168 F. 3d 498.

No. 99–120. TUSCHNER & CO., INC., ET AL. *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 8th Cir. Certiorari denied. Reported below: 167 F. 3d 396.

No. 99–127. BACH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 172 F. 3d 520.

No. 99–135. WESTERN COAL TRAFFIC LEAGUE *v.* SURFACE TRANSPORTATION BOARD ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 169 F. 3d 1099.

No. 99–184. SULLIVAN *v.* COUNTY OF SUFFOLK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 174 F. 3d 282.

No. 99–185. MEINHARDT ET AL. *v.* UNISYS CORP. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 173 F. 3d 145.

No. 99–255. VENTO *v.* COLORADO NATIONAL BANK ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 182 F. 3d 934.

No. 99–261. MALLORY ET AL. *v.* OHIO ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 377.

No. 99–285. AVALOS *v.* HUNTER, SHERIFF, COLLIER COUNTY. C. A. 11th Cir. Certiorari denied. Reported below: 172 F. 3d 881.

No. 99–286. RCK PROPERTIES, INC., FKA FOREST PROPERTIES, INC. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 177 F. 3d 1360.

No. 99–289. BUTLER *v.* ORANGEBURG COUNTY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 849.

No. 99–297. HAZANI *v.* OKI ELECTRIC INDUSTRY CO., LTD., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 194 F. 3d 1336.

No. 99–298. BRYANT *v.* GOLDEN FLAKE SNACK FOODS, INC., ET AL.; and GUNTER *v.* CITY OF BELLEVIEW ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 732 So. 2d 1071 (first judgment) and 1073 (second judgment).

No. 99–299. KING ET UX. *v.* EAST LAMPETER TOWNSHIP ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 182 F. 3d 903.

No. 99–301. HOLYWELL CORP. *v.* BANK OF NEW YORK ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 181 F. 3d 107.

No. 99–302. FIELDS ET AL. *v.* ASSAF. C. A. 3d Cir. Certiorari denied. Reported below: 178 F. 3d 170.

No. 99–319. MINGTAI FIRE & MARINE INSURANCE CO., LTD. *v.* UNITED PARCEL SERVICE, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 177 F. 3d 1142.

No. 99–334. FREEMAN *v.* JOHNSON. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 99–343. WATER WORKS AND SEWER BOARD OF THE CITY OF BIRMINGHAM *v.* DEPARTMENT OF THE ARMY, CORPS OF ENGI-

NEERS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 162 F. 3d 98.

No. 99–349. CRENSHAW *v.* BAYNERD ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 180 F. 3d 866.

No. 99–354. THERESA *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 99–355. WENZEL *v.* INTERNATIONAL BUSINESS MACHINES CORP. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1022.

No. 99–360. BROWN ET AL. *v.* PACIFIC BELL DIRECTORY. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 99–363. ROBI *v.* REED ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 173 F. 3d 736.

No. 99–426. LUKACS *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.; and

No. 99–429. LUKACS *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1284.

No. 99–440. LAGRUA ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 182 F. 3d 901.

No. 99–482. ZORA ENTERPRISES, INC., ET AL. *v.* TOWN OF MARION ET AL. App. Ct. Mass. Certiorari denied. Reported below: 46 Mass. App. 1120, 708 N. E. 2d 154.

No. 99–5003. POLK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 929.

No. 99–5287. RIOS ROMERO *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 555 Pa. 4, 722 A. 2d 1014.

No. 99–5295. BRAMBLETT *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 257 Va. 263, 513 S. E. 2d 400.

No. 99–5353. WHEAT *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 99–5355. HEDRICK *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 257 Va. 328, 513 S. E. 2d 634.

No. 99–5742. ROCHEVILLE *v.* CATOE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1015.

No. 99–5744. SCOGGIN *v.* KAISER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 186 F. 3d 1203.

No. 99–5747. HARTNETT *v.* FRANKLIN, KANSAS SECRETARY OF HUMAN RESOURCES. Sup. Ct. Kan. Certiorari denied.

No. 99–5748. HARTNETT *v.* CITY OF DODGE CITY ET AL. Ct. App. Kan. Certiorari denied. Reported below: 25 Kan. App. 2d xiv, 963 P. 2d 442.

No. 99–5749. TAYLOR *v.* DEES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–5750. WILSON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–5751. ODLE ET AL. *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 743 So. 2d 651.

No. 99–5753. PRAVDA *v.* CITY OF ALBANY, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 99–5755. PARKER *v.* MCGINNIS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 102.

No. 99–5756. SIMS *v.* MOTOROLA, INC. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1021.

No. 99–5760. KNIGHTEN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5765. MARION *v.* FORD MOTOR CREDIT. C. A. 3d Cir. Certiorari denied. Reported below: 176 F. 3d 472.

No. 99–5766. YUILLE *v.* WEBB ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 95.

No. 99–5771. HART ET UX. *v.* ELDER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1158.

No. 99–5772. THOMAS *v.* CLAGETT, JUDGE, CIRCUIT COURT OF MARYLAND, CALVERT COUNTY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1286.

No. 99–5773. THANNISCH *v.* SCOTT, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 185 F. 3d 875.

No. 99–5779. COLEMAN *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 85 Ohio St. 3d 129, 707 N. E. 2d 476.

No. 99–5780. AJIWOJU *v.* HOUSING AUTHORITY OF KANSAS CITY, KANSAS. C. A. 10th Cir. Certiorari denied. Reported below: 173 F. 3d 863.

No. 99–5782. LESLIE *v.* LITSCHER, SECRETARY, WISCONSIN DEPARTMENT OF CORRECTIONS; and

No. 99–6006. PISCHKE *v.* LITSCHER, SECRETARY, WISCONSIN DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied. Reported below: 178 F. 3d 497.

No. 99–5783. NELMS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 99–5784. ASHER *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 99–5785. BEATHARD *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 177 F. 3d 340.

No. 99–5787. LEMONS *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–5789. NUBINE *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied.

No. 99–5794. SYVERTSON *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 597 N. W. 2d 652.

No. 99–5798. SMITH *v.* SNYDER, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 99–5799. ACKER *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA. C. A. 9th Cir. Certiorari denied.

No. 99–5800. COOLIDGE *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA. C. A. 8th Cir. Certiorari denied.

No. 99–5803. RELIFORD *v.* DALE COUNTY DEPARTMENT OF HUMAN RESOURCES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 90.

No. 99–5812. BILLUPS *v.* WOODARD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 423.

No. 99–5814. JOHNSON *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–5818. WELLS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5825. ESTRADA *v.* CORNYN, ATTORNEY GENERAL OF TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 174 F. 3d 197.

No. 99–5826. HEIDELBERG ET AL. *v.* ILLINOIS PRISONER REVIEW BOARD ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 163 F. 3d 1025.

No. 99–5828. DUNN *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–5833. SPEARS *v.* MARSH ET AL. C. A. 4th Cir. Certiorari denied.

No. 99–5841. DICKERSON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 265.

No. 99–5842. DANIELS *v.* LINDSEY. C. A. 5th Cir. Certiorari denied.

No. 99–5847. GUILFOYLE *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 163 F. 3d 598.

No. 99–5848. DAVIS *v.* CAMBRA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 99–5849. WILLIAMS *v.* COMMUNITY BANK/NATIONSBANK. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 816.

No. 99–5886. SYVERTSON *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 597 N. W. 2d 644.

No. 99–5891. WASH *v.* BOOKER, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 99–5929. BLAND *v.* MITCHEM, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–5945. SCHERF *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 93 Wash. App. 1081.

No. 99–5949. MATIAZ JUAN *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 99–5955. BROOKS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 990 S. W. 2d 278.

No. 99–5973. BROWN *v.* HICKMAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 99–5985. SHEMONSKY *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 215 F. 3d 1340.

No. 99–5987. ROBERTSON *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 99–6054. BUCKNER *v.* FRANCO, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 178 F. 3d 1293.

No. 99–6073. LONDON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–6092. SIMENTAL *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 301 Ill. App. 3d 1101, 746 N. E. 2d 345.

No. 99–6095. WAGENER *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 99–6098. O'CONNOR *v.* STATE MUTUAL LIFE ASSURANCE COMPANY OF AMERICA. C. A. 11th Cir. Certiorari denied. Reported below: 174 F. 3d 202.

No. 99–6114. SOURS *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 99–6115. QUINTERO *v.* NORTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1285.

No. 99–6116. WHETHERS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 726 A. 2d 1084.

No. 99–6118. KEENAN *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. Cir. Ct. Saginaw County, Mich. Certiorari denied.

No. 99–6130. RUCKER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 178 F. 3d 1369.

No. 99–6131. ROMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 176 F. 3d 52.

No. 99–6132. SUMPTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 177 F. 3d 980.

No. 99–6156. HAYNES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 179 F. 3d 1045.

No. 99–6157. HARRIS *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 26 Kan. App. 2d 42, 975 P. 2d 1228.

No. 99–6158. CARVER *v.* UNITED STATES; and
No. 99–6196. COLEMAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 179 F. 3d 1056.

No. 99–6168. MARSACK *v.* MICHIGAN. Ct. App. Mich. Certiorari denied. Reported below: 231 Mich. App. 364, 586 N. W. 2d 234.

No. 99–6173. WALLS *v.* CROWLEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–6179. MEDVECKY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 99–6182. BARCLAY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 181 F. 3d 83.

No. 99–6184. AYALA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 165 F. 3d 919.

No. 99–6188. REYNOLDS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 99–6192. WARD, AKA CONNELLY, AKA RIEMER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 185 F. 3d 876.

No. 99–6193. JENKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 187 F. 3d 638.

No. 99–6195. ALLEGREE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 175 F. 3d 648.

No. 99–6198. COLEMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1016.

No. 99–6204. ALAFFA-FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 262.

No. 99–6205. BURDEAU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 168 F. 3d 352.

No. 99–6207. BARRETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 175 F. 3d 605.

No. 99–6208. ISCHY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 817.

No. 99–6209. LIPPITT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 180 F. 3d 873.

No. 99–6210. LEWIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1287.

No. 99–6215. RICKETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–6220. RODRIGUEZ-DE LA CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 817.

No. 99–6221. KING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 178 F. 3d 1376.

No. 99–6222. LAUGHLIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 185 F. 3d 875.

No. 99–6232. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

*Rehearing Denied*

No. 98–1746. PETTUS *v.* UNITED STATES, 526 U. S. 1146; and

No. 98–8878. PACK *v.* UNION STATION TERMINAL, 527 U. S. 1007. Petitions for rehearing denied.

OCTOBER 19, 1999

*Certiorari Denied*

No. 99–6303 (99A249). JOSEPH *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. Motion of William Broaddus et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 184 F. 3d 320.

OCTOBER 20, 1999

*Certiorari Denied*

No. 99–6652 (99A317). BOYD *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Surry County, 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.

OCTOBER 26, 1999

*Dismissal Under Rule 46*

No. 98–1916. SAN HUAN NEW MATERIALS HIGH TECH, INC., ET AL. *v.* INTERNATIONAL TRADE COMMISSION ET AL. C. A. Fed. Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 161 F. 3d 1347.

*Miscellaneous Orders*

No. 99A321 (99–6675). SIMS *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 without prejudice in light of the Supreme Court of Florida's order, case No. 96,818, granting a temporary stay to and including 7:00 a.m. on Tuesday, November 2, 1999.

No. 99–6732 (99A335). IN RE ORTIZ. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR,

and by her referred to the Court, denied. Petition for writ of habeas corpus denied.

*Certiorari Granted*

No. 99–6723 (99A330). BRYAN *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, granted. Motion to consolidate with case Nos. 99–6668 and 99–6675 denied. Motion for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 744 So. 2d 452.

OCTOBER 27, 1999

*Certiorari Denied*

No. 99–6129 (99A287). CANTU *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 193 F. 3d 516.

No. 99–6757 (99A345). ORTIZ *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Certiorari denied. Reported below: 195 F. 3d 520.

No. 99–6758 (99A346). ORTIZ *v.* ARIZONA. Sup. Ct. Ariz. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Certiorari denied.

OCTOBER 28, 1999

*Certiorari Granted*

No. 99–6615 (99A307). WILLIAMS *v.* TAYLOR, WARDEN. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, granted. Motion for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 2 presented by the petition. Reported below: 189 F. 3d 421.

NOVEMBER 1, 1999

*Miscellaneous Orders*

No. D–2095. IN RE DISBARMENT OF CONNORS. Disbarment entered. [For earlier order herein, see 527 U. S. 1053.]

No. D–2098. IN RE DISBARMENT OF HARRIS. Disbarment entered. [For earlier order herein, see 527 U. S. 1057.]

No. D–2100. IN RE DISBARMENT OF MMAHAT. Disbarment entered. [For earlier order herein, see 527 U. S. 1057.]

No. D–2112. IN RE DISBARMENT OF ELKINS. Randy D. Elkins, of Ruston, La., 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–2113. IN RE DISBARMENT OF SUMNER. William Emslie Sumner, of Atlanta, Ga., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2114. IN RE DISBARMENT OF BEEM. John R. Beem, of Glen Ellyn, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2115. IN RE DISBARMENT OF JACKSON. Diane Patricia Jackson, of Phoenix, Ariz., 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. 99M36. THEEDE *v.* DEPARTMENT OF LABOR ET AL.;
No. 99M37. PATILLO *v.* CUMBERLAND FARMS, INC.;
No. 99M38. BENJU CORP. *v.* PETERS, SECRETARY OF THE AIR FORCE;
No. 99M39. BOWEN *v.* UNITED STATES; and
No. 99M40. SMITH *v.* DEPARTMENT OF THE ARMY. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 98–1161. CITY OF ERIE ET AL. *v.* PAP'S A. M., TDBA "KANDYLAND." Sup. Ct. Pa. [Certiorari granted, 526 U. S. 1111.] Motion of Kansas and Ohio for leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 98–1648. MITCHELL ET AL. *v.* HELMS ET AL. C. A. 5th Cir. [Certiorari granted, 527 U. S. 1002.] Motion of the Solicitor General for divided argument granted.

No. 98–1667. BARAL *v.* UNITED STATES. C. A. D. C. Cir. [Certiorari granted, 527 U. S. 1067.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 98–1696. UNITED STATES *v.* JOHNSON. C. A. 6th Cir. [Certiorari granted, 527 U. S. 1062.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 99–5873. HICKOX ET UX. *v.* MLA, INC. Sup. Ct. Fla.; and

No. 99–6023. LAZICH *v.* WESTCHESTER COUNTY, NEW YORK, ET AL. C. A. 2d Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 22, 1999, 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. 99–6391. IN RE STONE. Petition for writ of habeas corpus denied.

No. 99–18. IN RE JOSENHANS;

No. 99–372. IN RE BERNOFSKY;

No. 99–5350. IN RE WASHINGTON; and

No. 99–5476. IN RE MCCARTY. Petitions for writs of mandamus denied.

*Certiorari Granted*

No. 99–116. FISCHER *v.* UNITED STATES. C. A. 11th Cir. Certiorari granted. Reported below: 168 F. 3d 1273.

No. 98–1993. Florida *v.* J. L. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 727 So. 2d 204.

*Certiorari Denied*

No. 98–1989. Shepherd *v.* Comptroller of Public Accounts of Texas. C. A. 5th Cir. Certiorari denied. Reported below: 168 F. 3d 871.

No. 98–2016. Guarino *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 169 F. 3d 418.

No. 98–2056. Belli *v.* Immigration and Naturalization Service. C. A. 5th Cir. Certiorari denied. Reported below: 177 F. 3d 979.

No. 98–2059. Brown *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 170 F. 3d 188.

No. 98–8327. Domingues *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 114 Nev. 783, 961 P. 2d 1279.

No. 99–2. McDaniel et al. *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 175 F. 3d 1009.

No. 99–12. Unity Real Estate Co. et al. *v.* Hudson et al. C. A. 3d Cir. Certiorari denied. Reported below: 178 F. 3d 649.

No. 99–26. Henry *v.* Lockyer, Attorney General of California. C. A. 9th Cir. Certiorari denied. Reported below: 164 F. 3d 1240.

No. 99–39. Quintero *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 165 F. 3d 831.

No. 99–42. Central Newspapers, Inc. *v.* Johnson et al. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 722 So. 2d 1224.

No. 99–141. Mattison *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 173 F. 3d 225.

No. 99–142. Hyundai Merchant Marine Co., Ltd., et al. *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 1187.

No. 99–153. Oregon Natural Desert Assn. et al. *v.* Dombeck, Chief, United States Forest Service, et al. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 1092.

No. 99–186. Standard Insurance Co. *v.* Kearney. C. A. 9th Cir. Certiorari denied. Reported below: 175 F. 3d 1084.

No. 99–190. Kunin *v.* Sears, Roebuck & Co. C. A. 3d Cir. Certiorari denied. Reported below: 175 F. 3d 289.

No. 99–206. Wimmer *v.* Suffolk County Police Department et al. C. A. 2d Cir. Certiorari denied. Reported below: 176 F. 3d 125.

No. 99–208. Franklin Savings Corp. et al. *v.* United States et al. C. A. 10th Cir. Certiorari denied. Reported below: 180 F. 3d 1124.

No. 99–210. Hospital Service District No. 1 of Tangipahoa Parish et al. *v.* Surgical Care Center of Hammond, L. C., et al.; and Richland Parish Hospital Service District 1–B, dba Richland Parish Medical Center, et al. *v.* Abraham et al. C. A. 5th Cir. Certiorari denied. Reported below: 171 F. 3d 231 (first judgment); 181 F. 3d 96 (second judgment).

No. 99–232. Townes *v.* City of New York et al. C. A. 2d Cir. Certiorari denied. Reported below: 176 F. 3d 138.

No. 99–271. City of Niagara Falls et al. *v.* Capton. C. A. 2d Cir. Certiorari denied. Reported below: 175 F. 3d 1007.

No. 99–308. Dena' Nena' Henash, aka Tanana Chiefs Conference, Inc. *v.* Ipalook et al. Sup. Ct. Alaska. Certiorari denied. Reported below: 985 P. 2d 442.

No. 99–309. Webb, Special Deputy Receiver for Employers National Insurance Company in Receivership *v.* B. C. Rogers Poultry, Inc., et al. C. A. 5th Cir. Certiorari denied. Reported below: 174 F. 3d 697.

No. 99–324. Cole *v.* Tully et al. Super. Ct. Pa. Certiorari denied. Reported below: 736 A. 2d 678.

No. 99–331. Early et al. *v.* Toledo Blade Co. et al. Ct. App. Ohio, Lucas County. Certiorari denied. Reported below: 130 Ohio App. 3d 302, 720 N. E. 2d 107.

No. 99–339. HOLLANDER *v.* AMERICAN CYANAMID CO. C. A. 2d Cir. Certiorari denied. Reported below: 172 F. 3d 192.

No. 99–341. SIGNET BANK/VIRGINIA ET AL. *v.* YU ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 69 Cal. App. 4th 1377, 82 Cal. Rptr. 2d 304.

No. 99–342. MIDWEST PRIDE IV *v.* OHIO. Ct. App. Ohio, Fayette County. Certiorari denied. Reported below: 131 Ohio App. 3d 1, 721 N. E. 2d 458.

No. 99–351. SALEM *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 232 Ga. App. 886, 503 S. E. 2d 62.

No. 99–353. KIM *v.* BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 167 F. 3d 541.

No. 99–358. WHITE, WARDEN *v.* VANSICKEL; and
No. 99–5770. VANSICKEL *v.* WHITE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 166 F. 3d 953.

No. 99–361. SMITH ET AL. *v.* MULTI-FLOW DISPENSERS OF OHIO, INC. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 103.

No. 99–366. CHASE MANHATTAN BANK ET AL. *v.* GENE GAVIN, COMMISSIONER OF REVENUE SERVICE OF CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 249 Conn. 172, 733 A. 2d 782.

No. 99–369. ALLIED SYSTEMS, LTD. *v.* TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTERS INDUSTRY NEGOTIATION COMMITTEE, LOCAL UNION 327, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 179 F. 3d 982.

No. 99–370. EVANS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 186 Ill. 2d 83, 708 N. E. 2d 1158.

No. 99–371. BOYAJIAN *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 99–374. WILSON *v.* BEGAN ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–375. ROACH *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 176 F. 3d 210.

No. 99–376. SINGLETON *v.* CECIL ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 176 F. 3d 419.

No. 99–377. SMITH, PERSONALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED *v.* CITY OF FORT LAUDERDALE. C. A. 11th Cir. Certiorari denied. Reported below: 177 F. 3d 954.

No. 99–378. TUCKER, MOTHER OF BRANNING, DECEASED, ET AL. *v.* RELIANCE NATIONAL INSURANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 171 F. 3d 1033.

No. 99–379. SULLIVAN *v.* NATIONAL RAILROAD PASSENGER CORPORATION. C. A. 11th Cir. Certiorari denied. Reported below: 107 F. 3d 1056.

No. 99–384. ROBERT BOGETTI & SONS ET AL. *v.* BANK OF AMERICA, N. T. & S. A. C. A. 9th Cir. Certiorari denied. Reported below: 178 F. 3d 1300.

No. 99–386. LUHR BROS., INC. *v.* HANKS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 303 Ill. App. 3d 661, 707 N. E. 2d 1266.

No. 99–389. HIRSCHFELD *v.* ARPAIO, SHERIFF, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 178 F. 3d 1299.

No. 99–392. SHANER ET AL. *v.* BROWN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 172 F. 3d 927.

No. 99–393. TURNER ET AL. *v.* POULLARD. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 815.

No. 99–396. CONSTANT *v.* RAY, TRUSTEE, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–402. FREIGHT, CONSTRUCTION, GENERAL DRIVERS, WAREHOUSEMEN & HELPERS LOCAL 287 ET AL. *v.* BROOKE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 175 F. 3d 680.

No. 99–404. WRIGHT *v.* OREGON STATE BOARD OF PAROLE. C. A. 9th Cir. Certiorari denied.

No. 99–410. CUNEO *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 734 A. 2d 433.

No. 99–427. MEDINA *v.* UNITED STATES; and

No. 99–450. MEDINA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 818.

No. 99–430. LIGGINS *v.* MCDONNELL DOUGLAS CORP. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 175 F. 3d 1024.

No. 99–435. GASTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 176 F. 3d 476.

No. 99–436. RNJ INTERSTATE CORP. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 181 F. 3d 1329.

No. 99–443. BUSTOS *v.* WEST, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 179 F. 3d 1378.

No. 99–444. LAFAVER *v.* PRAGER. C. A. 10th Cir. Certiorari denied. Reported below: 180 F. 3d 1185.

No. 99–447. XOMOX CORP. ET AL. *v.* FEDERAL INSURANCE CO., AS SUBROGEE OF CHARLES LOWE CO. C. A. 9th Cir. Certiorari denied. Reported below: 178 F. 3d 1299.

No. 99–453. WILLETT *v.* CITY UNIVERSITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 173 F. 3d 848.

No. 99–454. RICHARDSON *v.* DEPARTMENT OF VETERANS AFFAIRS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 172 F. 3d 866.

No. 99–457. FRITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 92.

No. 99–472. JASON B. *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 248 Conn. 543, 729 A. 2d 760.

No. 99–473. LABORERS NATIONAL PENSION FUND ET AL. *v.* AMERICAN NATIONAL BANK & TRUST COMPANY OF CHICAGO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 173 F. 3d 313.

No. 99–477. BROWN *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 99.

No. 99–480. TRIVEDI *v.* THAYER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 182 F. 3d 901.

No. 99–485. SNYDER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 172 F. 3d 53.

No. 99–492. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 870.

No. 99–496. BIERI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 99–497. NEBRASKA *v.* FRANCO. Sup. Ct. Neb. Certiorari denied. Reported below: 257 Neb. 15, 594 N. W. 2d 633.

No. 99–504. ZELAZEK *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 299 Ill. App. 3d 1125, 740 N. E. 2d 98.

No. 99–506. MCCARTHY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1287.

No. 99–507. ROCKWOOD BANK *v.* GAIA. C. A. 8th Cir. Certiorari denied. Reported below: 170 F. 3d 833.

No. 99–509. HIGHAM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 99–512. HUTCHINSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 181 F. 3d 83.

No. 99–514. TOCCO *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 258 App. Div. 2d 374, 685 N. Y. S. 2d 699.

No. 99–517. ROJAS RIVERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 467.

No. 99–523. BOYKIN *v.* ENTERGY OPERATIONS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 262.

No. 99–525. ALBERT *v.* CITY OF SPARKS ET AL. Sup. Ct. Nev. Certiorari denied.

No. 99–526. MCCRAY *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 868.

No. 99–572. NEILSON ET AL. *v.* MICHIGAN. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 102.

No. 99–595. ELECTIONS BOARD OF WISCONSIN *v.* WISCONSIN MANUFACTURERS & COMMERCE ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 227 Wis. 2d 650, 597 N. W. 2d 721.

No. 99–5035. TAYLOR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 857.

No. 99–5067. MAYABB *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 168 F. 3d 863.

No. 99–5077. TURNER *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 732 So. 2d 937.

No. 99–5116. HODGE *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 248 Conn. 207, 726 A. 2d 531.

No. 99–5373. CHAMBERS *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. Sup. Ct. Mo. Certiorari denied.

No. 99–5435. WINTERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 174 F. 3d 478.

No. 99–5517. VANN *v.* SAFFLE, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 172 F. 3d 878.

No. 99–5520. TANNER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 99–5526. MAGUNA-CELAYA *v.* HARO, CHIEF WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 172 F. 3d 883.

No. 99–5539. KOZIOL ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 178 F. 3d 1301.

No. 99–5557. BROWN *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1282.

No. 99–5639. GWYNN *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 555 Pa. 86, 723 A. 2d 143.

No. 99–5729. KUPLEN *v.* ARNOLD, CHIEF JUDGE, ET AL. Sup. Ct. N. C. Certiorari denied.

No. 99–5860. GILBERT *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 735 So. 2d 1284.

No. 99–5862. HOWLAND *v.* CORNYN, ATTORNEY GENERAL OF TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 176 F. 3d 478.

No. 99–5863. HOARD *v.* REDDY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 531.

No. 99–5865. CARTER *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–5869. FORDJOUR *v.* BUDOFF, JUDGE, SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY, ET AL. Ct. App. Ariz. Certiorari denied.

No. 99–5870. HINSON *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 736 So. 2d 1184.

No. 99–5872. GEE *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 156 Ore. App. 241, 965 P. 2d 462, and 158 Ore. App. 597, 976 P. 2d 80.

No. 99–5877. HANSBROUGH *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–5880. O'BRIEN *v.* LECUREUX, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–5885. CHANDLER *v.* CASE WESTERN RESERVE UNIVERSITY. C. A. 6th Cir. Certiorari denied. Reported below: 178 F. 3d 1293.

No. 99–5887. POTTS *v.* MCDONALD. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 467.

No. 99–5892. YOUNG *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 99–5894. SETSER *v.* LUCERO, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 176 F. 3d 489.

No. 99–5898. MEROLA *v.* NEW JERSEY DEPARTMENT OF CORRECTIONS ET AL. C. A. 3d Cir. Certiorari denied.

No. 99–5907. WALKER *v.* BONNET, LM, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 737 So. 2d 552.

No. 99–5909. WILLIAMS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 733 So. 2d 517.

No. 99–5914. SANTA CRUZ *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 301 Ill. App. 3d 1091, 746 N. E. 2d 340.

No. 99–5916. FARRELL *v.* GRIEVANCE COMMITTEE FOR THE SOUTHERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 181 F. 3d 82.

No. 99–5917. KELLEY *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 172 F. 3d 62.

No. 99–5928. BAGBY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 99–5930. BEVERLIN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–5931. COTTON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 182 F. 3d 914.

No. 99–5942. SPRUNK *v.* ARIZONA. Super. Ct. Ariz., Maricopa County. Certiorari denied.

No. 99–5947. WASHINGTON *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–5956. AGUILAR *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 99–5958. CHISOLM *v.* NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 182 F. 3d 898.

No. 99–5960. RODRIGUEZ *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 174 F. 3d 202.

No. 99–5961. KNIGHTEN *v.* JOHN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 264.

No. 99–5962. LONG *v.* KENTUCKY. C. A. 6th Cir. Certiorari denied. Reported below: 187 F. 3d 636.

No. 99–5963. MIKKILINENI *v.* CITY OF HOUSTON, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 172 F. 3d 868.

No. 99–5964. JOHNSON *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 169 F. 3d 1239.

No. 99–5967. KOEHLER *v.* KOEHLER. Ct. App. Ariz. Certiorari denied.

No. 99–5968. CARTWRIGHT *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 99–5969. CASTOR *v.* MODISETT, ATTORNEY GENERAL OF INDIANA, ET AL. C. A. 7th Cir. Certiorari denied.

No. 99–5970. CRIOLLO *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–5976. PARKER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 99–5977. POWELL *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 99–5979. ROSS *v.* BILOW ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 166 F. 3d 1201.

No. 99–5980. CRUMP *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 99–5982. ROWE *v.* JOHNSON, SUPERINTENDENT, SANTA ROSA CORRECTIONAL INSTITUTION, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 733 So. 2d 517.

No. 99–5990. WALKER *v.* MITCHEM, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–5996. PHILLIPS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 99–5997. RODGERS *v.* OHIO. Ct. App. Ohio, Columbiana County. Certiorari denied.

No. 99–6000. ANDERSON *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 350 N. C. 153, 513 S. E. 2d 296.

No. 99–6001. BOUTIN *v.* HVASS, COMMISSIONER, MINNESOTA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Minn. Certiorari denied. Reported below: 591 N. W. 2d 711.

No. 99–6007. RICHARDSON *v.* WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 90.

No. 99–6010. FLANAGAN ET UX. *v.* ARNAIZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 925.

No. 99–6011. LAVINE ET AL. *v.* JACKSON ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 730 So. 2d 958.

No. 99–6020. PERELMAN *v.* GEORGE ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–6022. KELLY *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 99–6027. SCOTT *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 736 A. 2d 685.

No. 99–6028. JARRETT *v.* HAYWARD MANOR APARTMENTS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 173 F. 3d 860.

No. 99–6030. MAY *v.* WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES. Ct. App. Wash. Certiorari denied.

No. 99–6034. WRIGHT *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–6038. JACKSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–6039. JOHNSON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 99–6040. MESSERE *v.* MALONEY, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION, ET AL. App. Ct. Mass. Certiorari denied. Reported below: 46 Mass. App. 1121, 708 N. E. 2d 154.

No. 99–6041. CROMARTIE *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 270 Ga. 780, 514 S. E. 2d 205.

No. 99–6042. COOK *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 270 Ga. 820, 514 S. E. 2d 657.

No. 99–6047. KAMPMANN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 99–6048. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1287.

No. 99–6049. VIRAY *v.* BENEFICIAL CALIFORNIA, INC. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 99–6053. MAGIC *v.* GENERAL ELECTRIC CO. C. A. 7th Cir. Certiorari denied. Reported below: 182 F. 3d 922.

No. 99–6058. GRAHAM *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 994 S. W. 2d 651.

No. 99–6059. GLASPER *v.* RICE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 647.

No. 99–6060. HOWARD *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 751 So. 2d 783.

No. 99–6066. DEVERNEY *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 592 N. W. 2d 837.

No. 99–6067. BROWN *v.* MCCAUGHTRY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1019.

No. 99–6068. CHO *v.* HAWAII. Sup. Ct. Haw. Certiorari denied. Reported below: 90 Haw. 474, 979 P. 2d 70.

No. 99–6069. BARNES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 816.

No. 99–6072. LEDFORD *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 99–6077. BRADBURY *v.* MANOR HEALTHCARE CORP. C. A. 7th Cir. Certiorari denied. Reported below: 182 F. 3d 921.

No. 99–6078. WILBORN, AKA ADAMS *v.* HARVARD ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–6080. KIEFFER *v.* RISKE. C. A. 8th Cir. Certiorari denied. Reported below: 168 F. 3d 494.

No. 99–6082. TYSON *v.* BOONE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 182 F. 3d 933.

No. 99–6083. DENNIS *v.* SCOTT, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 185 F. 3d 873.

No. 99–6084. MONSEBROTEN *v.* MAASS, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 926.

No. 99–6086. BASILIO *v.* CAMRAY DEVELOPMENT & CONSTRUCTION CO. ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 99–6089. PURSELL *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 555 Pa. 233, 724 A. 2d 293.

No. 99–6097. ORTIZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 172 F. 3d 881.

No. 99–6103. JEFFERSON *v.* JOHNSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–6120. KENNEDY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–6123. TORRES *v.* DUFRAIN, SUPERINTENDENT, FRANKLIN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 99–6128. WIDMER *v.* NOBLE ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 731 So. 2d 1280.

No. 99–6138. SMITH *v.* MOTES, JUDGE, PIEDMONT JUDICIAL CIRCUIT. Sup. Ct. Ga. Certiorari denied. Reported below: 271 Ga. 132, 516 S. E. 2d 295.

No. 99–6139. STEVENS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 99–6142. WYATT *v.* HENRY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 99–6150. RODRIGUEZ DE VARON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 175 F. 3d 930.

No. 99–6159. REED *v.* IVANHOE CITRUS ASSN. ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–6162. ANDERSON *v.* GENERAL MOTORS CORP. C. A. 10th Cir. Certiorari denied. Reported below: 176 F. 3d 488.

No. 99–6178. MATHIS *v.* RATELLE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 173 F. 3d 861.

No. 99–6181. BELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 466.

No. 99–6216. TRUE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 179 F. 3d 1087.

No. 99–6226. ROSALES-LIZALDE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 819.

No. 99–6231. KIMBERLIN *v.* JUDGES, UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT. C. A. 4th Cir. Certiorari denied. Reported below: 188 F. 3d 502.

No. 99–6235. ROHLSEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 185 F. 3d 864.

No. 99–6236. BROCK *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 819.

No. 99–6242. GUZMAN RESENDEZ, AKA GARCIA GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 818.

No. 99–6243. WILLIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 816.

No. 99–6245. RUCKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 171 F. 3d 1359.

No. 99–6247. STROZIER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 178 F. 3d 1303.

No. 99–6250. MENCHACA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 468.

No. 99–6252. COLE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 185 F. 3d 863.

No. 99–6253. CIRIACO-GOMEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 869.

No. 99–6254. BARRETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 91.

No. 99–6255. MARTINES, AKA MARTINOS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 F. 3d 911.

No. 99–6256. MORA-PERALTA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 188 F. 3d 520.

No. 99–6257. MORENO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 181 F. 3d 206.

No. 99–6258. JEFFERSON *v.* JOHNSON, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 99–6261. MOORE, AKA SWILLINGS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 105.

No. 99–6262. SHEPPARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 129 F. 3d 615.

No. 99–6263. BARRON SALAZAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 819.

No. 99–6264. RIDGEWAY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 467.

No. 99–6265. PEOPLES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 99–6267. RODGERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 176 F. 3d 490.

No. 99–6268. PLEASANTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 F. 3d 911.

No. 99–6269. SNYDER *v.* DOBUCKI, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 99–6276. BALDWIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 91.

No. 99–6279. GARRETT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 179 F. 3d 1143.

No. 99–6280. HAPPEL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 182 F. 3d 923.

No. 99–6281. DOE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 170 F. 3d 1162.

No. 99–6282. HICKMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 919.

No. 99–6285. PAYTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 919.

No. 99–6287. LEAF *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–6296. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–6298. MARKIEWICZ *v.* WASHINGTON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1020.

No. 99–6304. ROSARIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 181 F. 3d 108.

No. 99–6305. TERREFORTE QUIDGLEY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 99–6306. MASON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 650.

No. 99–6311. SCHUSTER *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 182 F. 3d 922.

No. 99–6317. JENKINS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 185 F. 3d 863.

No. 99–6320. THOMPSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 180 F. 3d 270.

No. 99–6322. SANCHEZ *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 982 P. 2d 149.

No. 99–6324. LAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 F. 3d 911.

No. 99–6327. MCLILLY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 99–6331. STADTHER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 650.

No. 99–6335. BROWN *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 998 S. W. 2d 531.

No. 99–6337. CAULEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 181 F. 3d 107.

No. 99–6339. AGUILERA-GOMEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 649.

No. 99–6340. CARLISLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 483.

No. 99–6345. ESPINOZA BETANCOURT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 168 F. 3d 502.

No. 99–6346. ALLEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 560.

No. 99–6347. LARA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 181 F. 3d 183.

No. 99–6348. JACKSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 189 F. 3d 502.

No. 99–6351. WILSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 106.

No. 99–6352. YOUNG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 F. 3d 912.

No. 99–6357. ORTEGON-UVALDE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 179 F. 3d 956.

No. 99–6358. LEVESQUE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 99–6365. PICKERING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 178 F. 3d 1168.

No. 99–6366. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 265.

No. 99–6367. O'NEAL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 180 F. 3d 115.

No. 99–6368. BROOKS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 185 F. 3d 864.

No. 99–6369. HURT *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 99–6375. TAMAYO-NAVARRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 191 F. 3d 462.

No. 99–6376. VILLAREAL-GONZALEZ, AKA GONZALEZ-VASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 818.

No. 99–6377. TRAYNHAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1288.

No. 99–6379. TOLEDO-CASTANEDA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 480.

No. 99–6380. GOINS *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 151 F. 3d 1029.

No. 99–6382. GRIGGS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 481.

No. 99–6385. WATTS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 482.

No. 99–6386. WINESTOCK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 633.

No. 99–6387. WALKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 774.

No. 99–6390. O'KANE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 185 F. 3d 875.

No. 99–6397. MCCOY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 105.

No. 99–6398. TERRERO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 485.

No. 99–6399. WILSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1288.

No. 99–6409. MCGLAMRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 853.

No. 99–6413. CRAIG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 181 F. 3d 1124.

No. 99–6415. BROWN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 869.

No. 99–6416. HAWKINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 181 F. 3d 911.

No. 99–6417. GIBBS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 870.

No. 99–6429. VANDROSS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1288.

No. 99–6434. IBIDA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 187 F. 3d 638.

No. 99–6439. QUINTERO-LOAIZA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 481.

No. 99–6440. PRYOR *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 99–6442. SMITH *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 194 F. 3d 175.

No. 99–6443. SALAIS-PEREA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 185 F. 3d 875.

No. 99–6452. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 168 F. 3d 1234 and 181 F. 3d 1205.

No. 99–6457. NEUMANN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 183 F. 3d 753.

No. 99–6458. LINDSAY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 184 F. 3d 1138.

No. 99–6459. MEJIA-SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 1172.

No. 99–6464. RUBIO-RAMOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 190 F. 3d 542.

No. 99–6465. RUVALCABA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 468.

No. 99–6467. PINEIRO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 632.

No. 99–6472. MEREDYTH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 188 F. 3d 520.

No. 99–6473. YOUNG *v.* OHIO. Ct. App. Ohio, Stark County. Certiorari denied.

No. 99–6476. LAZO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–6484. JAMES, AKA ALI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 181 F. 3d 83.

No. 99–6486. NOSAIR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 189 F. 3d 88.

No. 99–6488. LOWERY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 93.

No. 99–367. SMYLY *v.* INTERNATIONAL BUSINESS MACHINES CORP. C. A. 9th Cir. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 182 F. 3d 927.

No. 99–398. ARIZONA *v.* SANDERS. Ct. App. Ariz. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 194 Ariz. 156, 978 P. 2d 133.

## NOVEMBER 5, 1999

*Dismissal Under Rule 46*

No. 99–161. WEISGRAM ET AL. *v.* MARLEY CO. ET AL. C. A. 8th Cir. [Certiorari granted, 527 U. S. 1069.] Writ of certiorari as to State Farm Fire & Casualty Insurance Co. dismissed under this Court's Rule 46.1.

*Miscellaneous Order*

No. 99A320. ZELMAN, SUPERINTENDENT OF PUBLIC INSTRUCTION OF OHIO, ET AL. *v.* SIMMONS-HARRIS ET AL. Treating the application as a request for a stay of the preliminary injunction, application for stay presented to JUSTICE STEVENS, and by him referred to the Court, granted. Preliminary injunction entered by the United States District Court for the Northern District of Ohio, case No. 99 CV 1740, on August 24, 1999, is stayed pending final disposition of the appeal by the United States Court of Appeals for the Sixth Circuit. JUSTICE STEVENS, JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER would deny the application for stay.

NOVEMBER 8, 1999

*Certiorari Dismissed*

No. 99–6093. IN RE TYLER ET AL. C. A. 8th Cir. Motion of petitioners for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner Tyler has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner Tyler 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. D–2116. IN RE DISBARMENT OF CATO. Michael Cato, of Houston, Tex., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2117. IN RE DISBARMENT OF BESSEY. John Daniel Bessey, of Sacramento, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2118. IN RE DISBARMENT OF BROWN. David Eugene Brown, of Sacramento, Cal., is suspended from the practice of law

in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2119. IN RE DISBARMENT OF CULLEN. Rick S. Cullen, of Tallahassee, Fla., 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–2120. IN RE DISBARMENT OF GELBWAKS. Aaron Gelbwaks, of New York, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2121. IN RE DISBARMENT OF WECHSLER. Alan Lewis Wechsler, 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. 99M41. HALAS *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari denied.

No. 98–1109. SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. *v.* ILLINOIS COUNCIL ON LONG TERM CARE, INC. C. A. 7th Cir. [Certiorari granted, 526 U. S. 1063.] Motion of respondent for leave to cite additional authority in response to the reply brief of the Solicitor General denied.

No. 98–9828. OHLER *v.* UNITED STATES. C. A. 9th Cir. [Certiorari granted, *ante*, p. 950.] Motion for appointment of counsel granted, and it is ordered that Benjamin L. Coleman, Esq., of San Diego, Cal., be appointed to serve as counsel for petitioner in this case.

No. 99–6578. IN RE HINES; and

No. 99–6599. IN RE PURVIS. Petitions for writs of habeas corpus denied.

No. 99–6088. IN RE TYLER. 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. 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. 99–535. IN RE RIVERA. Petition for writ of mandamus and/or prohibition denied.

No. 99–6096. IN RE LEDET. 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. 99–409. HARTFORD UNDERWRITERS INSURANCE CO. *v.* UNION PLANTERS BANK, N. A. C. A. 8th Cir. Certiorari granted. Reported below: 177 F. 3d 719.

No. 99–536. REEVES *v.* SANDERSON PLUMBING PRODUCTS, INC. C. A. 5th Cir. Certiorari granted. Reported below: 197 F. 3d 688.

No. 98–2060. EDWARDS, WARDEN *v.* CARPENTER. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 163 F. 3d 938.

*Certiorari Denied*

No. 98–1964. JONES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 982 S. W. 2d 386.

No. 98–9539. LAI *v.* INTERNATIONAL IMMUNOLOGY CORP. ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 99–125. DE LA MATA ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 172 F. 3d 806.

No. 99–216. AMATI ET AL. *v.* CITY OF WOODSTOCK ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 176 F. 3d 952.

No. 99–218. LOPEZ-LUKIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 170 F. 3d 186.

No. 99–326. AMALGAMATED TRANSIT UNION, AFL–CIO, CLC, ET AL. *v.* NIEHAUS. C. A. 9th Cir. Certiorari denied. Reported below: 173 F. 3d 1207.

No. 99–403. EARTHMAN *v.* INGRAM. Ct. App. Tenn. Certiorari denied. Reported below: 993 S. W. 2d 611.

No. 99–415. SNYDER *v.* THE UPJOHN CO. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 58.

No. 99–432. KARAGOUNIS *v.* UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 168 F. 3d 485.

No. 99–458. DON VICENTE MACIAS, INC. *v.* TEXAS GULF TRAWLING CO., INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 168 F. 3d 209.

No. 99–460. SCHEFFLER *v.* DOW JONES & CO., INC. C. A. 3d Cir. Certiorari denied. Reported below: 185 F. 3d 862.

No. 99–462. BLANCHE ET UX. *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 169 F. 3d 956.

No. 99–468. DIXON, PERSONAL REPRESENTATIVE FOR DIXON, DECEASED *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 185 F. 3d 873.

No. 99–487. STAGMAN *v.* RYAN, ATTORNEY GENERAL OF ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 176 F. 3d 986.

No. 99–491. TEJEDA *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 99–544. MELOF ET AL. *v.* JAMES ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 735 So. 2d 1172.

No. 99–561. CHAVEZ-GALVAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 180 F. 3d 268.

No. 99–565. CARLTON *v.* HENDERSON, POSTMASTER GENERAL. C. A. 5th Cir. Certiorari denied.

No. 99–566. KING *v.* ANDERSON. C. A. 5th Cir. Certiorari denied. Reported below: 182 F. 3d 913.

No. 99–567. WALLACE *v.* ALASKA. Ct. App. Alaska. Certiorari denied. Reported below: 933 P. 2d 1157.

No. 99–568. EFRON, A MINOR, BY AND THROUGH EFRON ET UX., HER NEXT FRIENDS *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 482.

No. 99–590. IDA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 176 F. 3d 580.

No. 99–608. HASTINGS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 173 F. 3d 847.

No. 99–609. GARCIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 182 F. 3d 1165.

No. 99–621. O'BRIEN ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 174 F. 3d 720.

No. 99–5098. HUNTER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 734 A. 2d 436.

No. 99–5101. TAYLOR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 538.

No. 99–5169. RENEAU *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 99–5171. OSBORNE *v.* BOONE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 176 F. 3d 489.

No. 99–6008. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 188 F. 3d 520.

No. 99–6102. LUNA VASQUEZ *v.* NEAL, SUPERINTENDENT, CANON MINIMUM CENTERS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 182 F. 3d 934.

No. 99–6105. WALKER *v.* EDMONDSON, ATTORNEY GENERAL OF OKLAHOMA, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 167 F. 3d 1339.

No. 99–6110. COPELAND *v.* PASTRANO. C. A. 5th Cir. Certiorari denied.

No. 99–6113. KARLS *v.* HUDSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 182 F. 3d 932.

No. 99–6163. SYSOUVONG *v.* MESCHNER, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 171 F. 3d 614.

No. 99–6166. RAINEY *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 99–6189. PARSEE *v.* UNITED STATES; and
No. 99–6237. HARRISON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 178 F. 3d 374.

No. 99–6217. ROGERS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 992 S. W. 2d 183.

No. 99–6219. STRINGER *v.* OHIO. Ct. App. Ohio, Scioto County. Certiorari denied.

No. 99–6223. LYONS *v.* HENRY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 176 F. 3d 483.

No. 99–6228. ADUSUMILLI *v.* CITY OF CHICAGO. C. A. 7th Cir. Certiorari denied. Reported below: 164 F. 3d 353.

No. 99–6283. EADES *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 99–6286. AL-WAHHAB *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 86.

No. 99–6288. MURDOCK *v.* JAMES ET AL. C. A. 6th Cir. Certiorari denied.

No. 99–6292. CONLON *v.* ARIZONA ET AL. Ct. App. Ariz. Certiorari denied.

No. 99–6344. SHED *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–6360. PORTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 632.

No. 99–6373. FLINT *v.* BOOKER, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL. C. A. 5th Cir. Certiorari denied.

No. 99–6395. PFEIL *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied.

No. 99–6405. BOHANNAN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 178 F. 3d 1290.

No. 99–6426. AHMAD *v.* LAMANNA, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 917.

No. 99–6448. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–6470. NELSON *v.* BARBO ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 176 F. 3d 472.

No. 99–6480. RAULERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–6482. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 191 F. 3d 454.

No. 99–6492. BELSER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–6494. CAVANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 483.

No. 99–6497. WOLMARANS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 167 F. 3d 539.

No. 99–6498. SEALED PETITIONER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 149 F. 3d 1198 and 181 F. 3d 128.

No. 99–6501. RIVERA-ROMERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 198 F. 3d 240.

No. 99–6505. PINO-NORIEGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 1089.

No. 99–6506. SMILEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 168 F. 3d 1234 and 181 F. 3d 1205.

No. 99–6508. LLAMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 632.

No. 99–6509. LEE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 183 F. 3d 1029.

No. 99–6529. MA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 176 F. 3d 485.

No. 99–6530. MULLIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 178 F. 3d 334.

No. 99–6536. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 94.

No. 99–6542. LLOYD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 917.

No. 98–9741. KNIGHT, AKA MUHAMMAD *v.* FLORIDA. Sup. Ct. Fla.; and

No. 99–5291. MOORE *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: No. 98–9741, 721 So. 2d 287; No. 99–5291, 256 Neb. 553, 591 N. W. 2d 86.

Opinion of JUSTICE STEVENS respecting the denial of the petitions for writ of certiorari.

It seems appropriate to emphasize that the denial of these petitions for certiorari does not constitute a ruling on the merits. See, *e. g.*, *Barber* v. *Tennessee*, 513 U. S. 1184 (1995) (opinion of STEVENS, J., respecting denial of certiorari).

JUSTICE THOMAS, concurring.

I write only to point out that I am unaware of any support in the American constitutional tradition or in this Court's precedent for the proposition that a defendant can avail himself of the panoply of appellate and collateral procedures and then complain when his execution is delayed. Indeed, were there any such support in our own jurisprudence, it would be unnecessary for proponents of the claim to rely on the European Court of Human Rights, the Supreme Court of Zimbabwe, the Supreme Court of India, or the Privy Council.[1]

[1] In support of his claim, petitioner Knight cites Blackstone, who remarked that "a delayed execution 'affects the minds of the spectators rather as a terrible sight, than as the necessary consequence of transgression.'" Pet. for Cert. in No. 98–9741, p. 15 (quoting 4 W. Blackstone, Commentaries *397). Blackstone was speaking of the effect speedy execution would have on deterring crime: "[P]unishment should follow the crime as early as

It is worth noting, in addition, that, in most cases raising this novel claim, the delay in carrying out the prisoner's execution stems from this Court's Byzantine death penalty jurisprudence, *e. g.*, *Graham* v. *Collins*, 506 U. S. 461, 478 (1993) (THOMAS, J., concurring) (criticizing the Court's holding in *Penry* v. *Lynaugh*, 492 U. S. 302 (1989), that Texas special issues violated the Eighth Amendment by preventing the jury from giving effect to mitigating evidence); *Ohio Adult Parole Authority* v. *Woodard*, 523 U. S. 272, 279 (1998) (opinion of REHNQUIST, C. J.) (disagreeing with the view of five Members of this Court[2] that procedural due process principles govern a clemency hearing in which the clemency decision is entrusted to executive discretion); *Simmons* v. *South Carolina*, 512 U. S. 154, 178 (1994) (SCALIA, J., dissenting) (disputing Court's holding that due process compels a State to inform a sentencing jury of a capital defendant's ineligibility for parole); *Morgan* v. *Illinois*, 504 U. S. 719, 739 (1992) (SCALIA, J., dissenting) (disagreeing with the Court's holding that the Sixth Amendment requires exclusion of a sentencing juror who would always impose the death penalty upon proof of the defendant's guilt of a capital offense).[3] In that sense, JUSTICE BREYER is unmistakably correct when he notes that one cannot "justify lengthy delays [between conviction and sentence] by reference to

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possible; that the prospect of gratification or advantage, which tempts a man to commit the crime, should instantly awake the attendant idea of punishment." *Ibid.* In this regard, Blackstone observed that "throughout the kingdom, by statute 25 Geo. II. c. 37. it is enacted that, in case of murder, the judge shall in his sentence direct execution to be performed on the next day but one after sentence passed." *Ibid.* I have no doubt that such a system, if reenacted, would have the deterrent effect that JUSTICE BREYER finds lacking in the current system, but I am equally confident that such a procedure would find little support from this Court.

[2] See 523 U. S., at 288 (O'CONNOR, J., concurring in part and concurring in judgment); *id.*, at 290 (STEVENS, J., concurring in part and dissenting in part).

[3] Furthermore, I observed prior to Congress' adoption of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. 104–132, Tit. IV–B, § 413(f), 110 Stat. 1269, that this Court has radically expanded federal habeas corpus review for state prisoners, which until AEDPA had been delineated in scope by an unchanged statutory formulation. See *Wright* v. *West*, 505 U. S. 277, 285–287 (1992) (opinion of THOMAS, J.) (tracing the expansion of federal habeas corpus relief from its original conception as a mechanism for prisoners to challenge the jurisdiction of the state court that had rendered judgment).

[our] constitutional tradition." *Post*, at 995. 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. See *Coleman* v. *Balkcom*, 451 U. S. 949, 952 (1981) (STEVENS, J., concurring in denial of certiorari) ("However critical one may be of . . . protracted post-trial procedures, it seems inevitable that there must be a significant period of incarceration on death row during the interval between sentencing and execution"). It is incongruous to arm capital defendants with an arsenal of "constitutional" claims with which they may delay their executions, and simultaneously to complain when executions are inevitably delayed. See *Turner* v. *Jabe*, 58 F. 3d 924, 933 (CA4) (Luttig, J., concurring), cert. denied, 514 U. S. 1136 (1995); Kozinski & Gallagher, Death: The Ultimate Run-On Sentence, 46 Case W. Res. L. Rev. 1, 25 (1995).

Ironically, the neoteric Eighth Amendment claim proposed by JUSTICE BREYER would further prolong collateral review by giving virtually every capital prisoner yet another ground on which to challenge and delay his execution. See U. S. Dept. of Justice, Bureau of Justice Statistics Bulletin, Capital Punishment 1997, p. 12 (Dec. 1998) (for prisoners executed between 1977 and 1997, the average elapsed time on death row was 111 months from the last sentencing date). The claim might, in addition, provide reviewing courts a perverse incentive to give short shrift to a capital defendant's legitimate claims so as to avoid violating the Eighth Amendment right suggested by JUSTICE BREYER. Cf. *United States* v. *Tateo*, 377 U. S. 463, 466 (1964) ("From the standpoint of a defendant, it is at least doubtful that appellate courts would be as zealous as they now are in protecting against the effects of improprieties at the trial or pretrial stage if they knew that reversal of a conviction would put the accused irrevocably beyond the reach of further prosecution. In reality, therefore, the practice of retrial serves defendants' rights as well as society's interest").

Five years ago, JUSTICE STEVENS issued an invitation to state and lower courts to serve as "laboratories" in which the viability of this claim could receive further study. *Lackey* v. *Texas*, 514 U. S. 1045 (1995) (memorandum respecting denial of certiorari). These courts have resoundingly rejected the claim as meritless. See, *e. g.*, *People* v. *Frye*, 18 Cal. 4th 894, 1030–1031, 959 P. 2d 183, 262 (1998); *People* v. *Massie*, 19 Cal. 4th 550, 574, 967 P. 2d

29, 44–45 (1998); *Ex parte Bush*, 695 So. 2d 138, 140 (Ala. 1997); *State* v. *Schackart*, 190 Ariz. 238, 259, 947 P. 2d 315, 336 (1997), cert. denied, 525 U. S. 862 (1998); *Bell* v. *State*, 938 S. W. 2d 35, 53 (Tex. Crim. App. 1996), cert. denied, 522 U. S. 827 (1997); *State* v. *Smith*, 280 Mont. 158, 183–184, 931 P. 2d 1272, 1287–1288 (1996); *White* v. *Johnson*, 79 F. 3d 432, 439–440 (CA5), cert. denied, 519 U. S. 911 (1996); *Stafford* v. *Ward*, 59 F. 3d 1025, 1028 (CA10 1995).[4] I submit that the Court should consider the experiment concluded.

JUSTICE BREYER, dissenting.

These petitions ask us to consider whether the Eighth Amendment prohibits as "cruel and unusual punishmen[t]" the execution of prisoners who have spent nearly 20 years or more on death row. Both of these cases involve astonishingly long delays flowing in significant part from constitutionally defective death penalty procedures. Where a delay, measured in decades, reflects the State's own failure to comply with the Constitution's demands, the claim that time has rendered the execution inhuman is a particularly strong one. I believe this Court should consider that claim now. See *Lackey* v. *Texas*, 514 U. S. 1045 (1995) (STEVENS, J., respecting denial of certiorari); *Elledge* v. *Florida*, 525 U. S. 944 (1998) (BREYER, J., dissenting from denial of certiorari).

The petitioner in *Moore* v. *Nebraska* was sentenced to death on June 20, 1980, more than 19 years ago. By mid-1982, Moore had invoked all his direct appellate remedies and lost. By mid-1984, he had invoked all state collateral remedies and lost. But in 1988 a Federal District Court agreed with Moore that Nebraska's death sentence procedures violated the Constitution because its standards were too vague, permitting the death penalty's arbitrary application. See *Furman* v. *Georgia*, 408 U. S. 238 (1972) *(per curiam)*. The District Court issued a writ of habeas corpus. The Eighth Circuit affirmed. And in May 1992, this Court denied

[4] Each of these cases rejected the claim on the merits. I am not aware of a single American court that has accepted such an Eighth Amendment claim. Some judges have dismissed the claim in the strongest of terms. See, *e. g.*, *Turner* v. *Jabe*, 58 F. 3d 924, 933 (CA4 1995) (Luttig, J., concurring) (describing a similar claim as a "mockery of our system of justice, and an affront to lawabiding citizens").

the State's petition for certiorari, making final the lower federal court decision in Moore's favor.

In April 1995, after modifying its death sentence procedures and 15 years after Moore's first sentencing proceeding, the State held a new sentencing proceeding; Moore was again sentenced to death. By April 1997, Moore had invoked all direct appellate remedies and lost. He then invoked state collateral review and lost in the lower courts. See 210 Neb. 457, 316 N. W. 2d 33 (1982). He now seeks certiorari, asking us to review his claim of inordinate delay (among others)—19 years and 4 months after he was first sentenced to death.

The petitioner in *Knight* v. *Florida* was sentenced to death on April 21, 1975, nearly 25 years ago. By mid-1976, Knight had invoked all his direct appellate remedies and lost. By mid-1983, he had invoked all state collateral remedies and lost. But Knight had also filed a petition for habeas corpus in federal court; and in December 1988, the Federal Court of Appeals for the Eleventh Circuit found that Florida's death penalty sentencing procedure was constitutionally defective because it did not require the jury to take account of an unusually traumatic and abusive childhood as a potentially mitigating factor. See *Lockett* v. *Ohio*, 438 U. S. 586 (1978). The Court of Appeals ordered a new sentencing proceeding.

In February 1996, the State held a new proceeding, and Knight was again sentenced to death. In November 1998, the Florida Supreme Court affirmed. 721 So. 2d 287 (1998). Knight now seeks certiorari, asking us to review his claim of inordinate delay (among others)—24 years and 6 months after he was first sentenced to death.

It is difficult to deny the suffering inherent in a prolonged wait for execution—a matter which courts and individual judges have long recognized. See *Lackey*, *supra*, at 1045–1047. More than a century ago, this Court described as "horrible" the "feelings" that accompany uncertainty about whether, or when, the execution will take place. *In re Medley*, 134 U. S. 160, 172 (1890). The California Supreme Court has referred to the "dehumanizing effects of . . . lengthy imprisonment prior to execution." *People* v. *Anderson*, 6 Cal. 3d 628, 649, 493 P. 2d 880, 894 (1972). In *Furman* v. *Georgia*, *supra*, at 288–289 (concurring opinion), Justice Brennan wrote of the "inevitable long wait" that exacts "a frightful toll." Justice Frankfurter noted that the "onset of insanity

while awaiting execution of a death sentence is not a rare phenomenon." *Solesbee* v. *Balkcom*, 339 U. S. 9, 14 (1950) (dissenting opinion). See Strafer, Volunteering for Execution, 74 J. Crim. L. & C. 860, 872, n. 44 (1983) (a study of Florida inmates showed that 35% of those confined on death row attempted suicide; 42% seriously considered suicide). And death row conditions of special isolation may well aggravate that suffering. See Connolly, Better Never Than Late, 23 New England J. on Crim. & Civ. Confinement 101, 121 (1997); Strafer, *supra*, at 870–871, n. 37.

At the same time, the longer the delay, the weaker the justification for imposing the death penalty in terms of punishment's basic retributive or deterrent purposes. *Lackey*, *supra*, at 1046. Nor can one justify lengthy delays by reference to constitutional tradition, for our Constitution was written at a time when delay between sentencing and execution could be measured in days or weeks, not decades. See *Pratt* v. *Attorney General for Jamaica*, [1994] 2 A. C. 1, 18, 4 All E. R. 769, 773 (P. C. 1993) (en banc) (Great Britain's "Murder Act" of 1751 prescribed that execution take place on the next day but one after sentence).

A growing number of courts outside the United States—*courts that accept or assume the lawfulness of the death penalty*—have held that lengthy delay in administering a *lawful* death penalty renders ultimate execution inhuman, degrading, or unusually cruel. In *Pratt* v. *Attorney General for Jamaica*, *supra*, for example, the Privy Council considered whether Jamaica lawfully could execute two prisoners held for 14 years after sentencing. The Council noted that Jamaican law authorized the death penalty and that the United Nations Committee on Human Rights has written that "'capital punishment is not per se unlawful under the [Human Rights] Covenant.'" *Id.*, at 26, 4 All E. R., at 780. But the Privy Council concluded that it was an "inhuman act to keep a man facing the agony of execution over a long extended period of time," *id.*, at 29, 4 All E. R., at 783, and the delay of 14 years was "shocking," *id.*, at 33, 4 All E. R., at 786. It held that the delay (and presumptively any delay of more than five years) was "'inhuman or degrading punishment or other treatment'" forbidden by Jamaica's Constitution unless "due entirely to the fault of the accused." *Id.*, at 29, 4 All E. R., at 783.

The Supreme Court of India has held that an appellate court, which itself has authority to sentence, must take account of delay when deciding whether to impose a death penalty. *Sher Singh*

v. *State of Punjab*, A. I. R. 1983 S. C. 465. A condemned prisoner may ask whether it is "just and fair" to permit execution in instances of "[p]rolonged delay." *Id.*, at 470–471. The Supreme Court of Zimbabwe, after surveying holdings of many foreign courts, concluded that delays of five and six years were "inordinate" and constituted "'torture or . . . inhuman or degrading punishment or other such treatment.'" *Catholic Commission for Justice and Peace in Zimbabwe* v. *Attorney-General*, [1993] 1 Zimb. L. R. 239, 240, 269 (S) (Aug. 4, 1999), http://www.law.wits.ac.za/salr/catholic.html. And the European Court of Human Rights, interpreting the European Convention on Human Rights, noted the convention did not forbid capital punishment. But, in the court's view, the convention nonetheless prohibited the United Kingdom from extraditing a potential defendant to the Commonwealth of Virginia—in large part because the 6- to 8-year delay that typically accompanied a death sentence amounts to "cruel, inhuman, [or] degrading treatment or punishment" forbidden by the convention. *Soering* v. *United Kingdom*, 11 Eur. Ct. H. R. (ser. A), pp. 439, 478, ¶ 111 (1989).

Not all foreign authority reaches the same conclusion. The Supreme Court of Canada, for example, held that Canadian constitutional standards, though roughly similar to those of the European Convention on Human Rights, did *not* bar extradition to the United States of a defendant facing the death penalty. *Kindler* v. *Minister of Justice*, [1991] 2 S. C. R. 779, 838 (joint opinion). And the United Nations Human Rights Committee has written that a delay of 10 years does *not* necessarily violate roughly similar standards set forth in the Universal Declaration of Human Rights. Views adopted by the United Nations Human Rights Committee, 44th Sess., Mar. 30, 1992, *In re: Barrett* v. *Jamaica* (Nos. 270/1988 and 271/1988) § 8.4. Given the closeness of the Canadian Court's decision (4 to 3) and language that the United Nations Human Rights Committee used to describe the 10-year delay ("disturbingly long"), one cannot be certain what position those bodies would take in respect to delays of 19 and 24 years.

Obviously this foreign authority does not bind us. After all, we are interpreting a "Constitution for the United States of America." *Thompson* v. *Oklahoma*, 487 U. S. 815, 868, n. 4 (1988) (SCALIA, J., dissenting). And indeed, after *Soering*, the United States Senate insisted on reservations to language imposing similar standards in various human rights treaties, specifying, for

example, that the language in question did not "restrict or prohibit the United States from applying the death penalty consistent with the . . . Constitution of the United States, including any constitutional period of confinement prior to the imposition of the death penalty." 136 Cong. Rec. 36192–36199 (1990) (U. S. Senate Resolution of Advice and Consent to Ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

Nonetheless, the treaty reservations say nothing about whether a particular "period of confinement" is "constitutional." And this Court has long considered as relevant and informative the way in which foreign courts have applied standards roughly comparable to our own constitutional standards in roughly comparable circumstances. In doing so, the Court has found particularly instructive opinions of former Commonwealth nations insofar as those opinions reflect a legal tradition that also underlies our own Eighth Amendment. *Thompson* v. *Oklahoma*, *supra*, at 830–831 (opinion of STEVENS, J.) (considering practices of Anglo-American nations regarding executing juveniles); *Enmund* v. *Florida*, 458 U. S. 782, 796–797, n. 22 (1982) (noting that the doctrine of felony murder has been eliminated or restricted in England, India, Canada, and a "number of other Commonwealth countries"); *Coker* v. *Georgia*, 433 U. S. 584, 596, n. 10 (1977) (observing that only 3 of 60 nations surveyed in 1965 retained the death penalty for rape); *Trop* v. *Dulles*, 356 U. S. 86, 102–103 (1958) (noting that only 2 of 84 countries surveyed imposed denationalization as a penalty for desertion). See also *Washington* v. *Glucksberg*, 521 U. S. 702, 710, n. 8, and 718–719, n. 16 (1997) (surveying other nations' laws regarding assisted suicide); *Culombe* v. *Connecticut*, 367 U. S. 568, 583–584, n. 25, and 588 (1961) (considering English practice concerning police interrogation of suspects); *Kilbourn* v. *Thompson*, 103 U. S. 168, 183–189 (1881) (referring to the practices of Parliament in determining whether the House of Representatives has the power to hold a witness in contempt). Willingness to consider foreign judicial views in comparable cases is not surprising in a Nation that from its birth has given a "decent respect to the opinions of mankind."

In these cases, the foreign courts I have mentioned have considered roughly comparable questions under roughly comparable legal standards. Each court has held or assumed that those

standards permit application of the death penalty itself. Consequently, I believe their views are useful even though not binding.

Further, the force of the major countervailing argument is diminished in these two cases. That argument (as set out by the Human Rights Commission) recognizes that there must be an "element of delay between the lawful imposition of a sentence of death and the exhaustion of available remedies." *Barrett*, *supra*, § 8.4. It claims that "even prolonged periods of detention under a severe custodial regime on death row cannot generally be considered to constitute cruel, inhuman or degrading treatment if the convicted person is merely availing himself of appellate remedies." *Ibid.* As the Canadian Supreme Court noted, "a defendant is never forced to undergo the full appeal procedure, but the vast majority choose to do so. It would be ironic if delay caused by the appellant's taking advantage of the full and generous avenue of the appeals available to him should be viewed as a violation of fundamental justice." *Kindler*, *supra*, at 838; see also *Richmond* v. *Lewis*, 948 F. 2d 1473, 1491–1492 (CA9 1990).

The cases before us, however, involve delays which resulted in large part from the States' failure to apply constitutionally sufficient procedures at the time of initial sentencing. They also involve extensive delays of close to two decades or more. Petitioners argue that the state-induced portion of the delay, perhaps up to 12 years in Moore's case, up to 15 years in Knight's, should not be charged against them in any constitutional calculus. Cf. *Pratt*, 2 A. C., at 29, 4 All E. R., at 783 (counting against the prisoner only that portion of the delay caused by "escape . . . or frivolous and time wasting resort to legal procedures"). Twenty years or more could not be necessary to provide a "reasonable time for appeal and consideration of reprieve." *Id.*, at 33, 4 All E. R., at 786. For these reasons, I think petitioners' argument cannot be rejected out of hand.

Nor do I agree with JUSTICE THOMAS that the lower courts have "resoundingly rejected" petitioners' claim. *Ante*, at 992. I have found about two dozen post-1995 lower court cases in which prisoners have raised *Lackey* claims. Most involve procedural failings that in part or in whole determined the outcome of the case. Of the eight cases (other than the two cases below) that decided *Lackey* claims solely on the merits, only four involve lengthy delays for which the State arguably bears responsibility. See *Bell* v. *State*, 938 S. W. 2d 35 (Tex. Crim. App. 1996) (20 years;

conviction overturned once); *Ex parte Bush*, 695 So. 2d 138 (Ala. 1997) (16 years; conviction overturned twice); *State* v. *Smith*, 280 Mont. 158, 931 P. 2d 1272 (1996) (13 years; sentence overturned once); *People* v. *Massie*, 19 Cal. 4th 550, 967 P. 2d 29 (1998) (16 years; sentence overturned once). Neither the opinions in these four cases, nor those in any other of the lower court cases that I have found, discuss the potential significance of that state responsibility at any length. Thus, although the experiment may have begun, it is hardly evident that we "should consider the experiment concluded." *Ante*, at 993.

Finally, the constitutional issue, even if limited to delays of close to 20 years or more, has considerable practical importance. Available statistics indicate that as of two years ago, December 1997, 24 prisoners sentenced to death had been on death row for more than 20 years. At that time 125 prisoners on death row had been sentenced in or before 1980 and therefore may now fall within the relevant category. U. S. Dept. of Justice, Bureau of Justice Statistics Bulletin, Capital Punishment 1997, p. 13 (Dec. 1998). Given these figures and the nature of the question, despite the absence of a division among the lower federal courts, this Court should consider the issue.

I would grant the petitions for certiorari in these two cases.

No. 99–5258. STOJETZ *v.* OHIO. Sup. Ct. Ohio. Motion of petitioner to strike the brief in opposition denied. Certiorari denied. Reported below: 84 Ohio St. 452, 705 N. E. 2d 329.

*Rehearing Denied*

No. 98–1937. VEY *v.* RIDGE, GOVERNOR OF PENNSYLVANIA, ET AL., *ante*, p. 818;

No. 98–8777. CHESTER *v.* LOUISIANA, *ante*, p. 826;

No. 98–9336. MCBROOM *v.* TECHNEGLAS, INC., *ante*, p. 832;

No. 98–9550. LOMAX *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 839;

No. 98–9582. TERIO *v.* KURTZMAN & HASPEL, TRUSTEE, ET AL., *ante*, p. 840;

No. 98–9633. WASHINGTON *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, *ante*, p. 843;

No. 98–9715. BRAUN *v.* FLOWERS, WARDEN, ET AL., *ante*, p. 849;

No. 98–9889. KING *v.* LOVE ET AL., *ante*, p. 858;

No. 99–5026. WRONKE *v.* MADIGAN, SHERIFF, CHAMPAIGN COUNTY, ILLINOIS, *ante,* p. 881; and

No. 99–5475. BANE *v.* ROBINSON ET AL., *ante,* p. 906. Petitions for rehearing denied.

## NOVEMBER 9, 1999

*Miscellaneous Order*

No. 99A393. BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER *v.* CHAMBERS. Application to vacate stay of execution of sentence of death entered by the United States Court of Appeals for the Eighth Circuit on November 5, 1999, presented to JUSTICE THOMAS, and by him referred to the Court, denied.

*Certiorari Denied*

No. 99–6840 (99A363). ROYAL *v.* TAYLOR, WARDEN. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 188 F. 3d 239.

## NOVEMBER 12, 1999

*Miscellaneous Order*

No. 99A359. RENO, ATTORNEY GENERAL, ET AL. *v.* KIM HO MA. D. C. W. D. Wash. Application for stay, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied.

## NOVEMBER 15, 1999

*Miscellaneous Orders*

No. 99M15. POWELL *v.* POWELL ET AL.; and

No. 99M24. TARVER *v.* HALEY, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. Motions of petitioners for reconsideration of order denying motions to direct the Clerk to file petitions for writs of certiorari out of time [*ante,* pp. 802–803] denied.

No. 99M42. RICKARD *v.* SANCHEZ ET AL. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

No. 126, Orig. KANSAS *v.* NEBRASKA ET AL. It is ordered that the Honorable Vincent L. McKusick, Esq., of Portland, Me., be appointed Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings, and with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem it necessary to call for. The Special Master is directed to submit such reports as he may deem appropriate.

The compensation of the Special Master, the allowances to him, the compensation paid to his legal, technical, stenographic, and clerical assistants, the cost of printing his report, and all other proper expenses, including travel expenses, shall be charged against and be borne by the parties in such proportion as the Court may hereafter direct. Motion of Nebraska to dismiss the complaint is referred to the Special Master. [For earlier order herein, see, *e. g.*, 527 U. S. 1020.]

No. 98–1811. GEIER ET AL. *v.* AMERICAN HONDA MOTOR CO., INC., ET AL. C. A. D. C. Cir. [Certiorari granted, 527 U. S. 1063.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 98–7540. CARMELL *v.* TEXAS. Ct. App. Tex., 2d Dist. [Certiorari granted, 527 U. S. 1002.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 98–1828. VERMONT AGENCY OF NATURAL RESOURCES *v.* UNITED STATES EX REL. STEVENS. C. A. 2d Cir. [Certiorari granted, 527 U. S. 1034.] Motion of the Solicitor General for divided argument granted.

No. 99–56. GILES *v.* SONS OF CONFEDERATE VETERANS, INC., *ante*, p. 871. Motion of respondent for attorney's fees denied without prejudice to filing in the United States Court of Appeals for the Fifth Circuit.

No. 99–6033. IN RE VENERI. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 926] denied.

No. 99–6433. WRIGHT *v.* SOUTH DAKOTA. Ct. App. Colo. Motion of petitioner for leave to proceed *in forma pauperis* de-

nied. Petitioner is allowed until December 6, 1999, 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. 99–6625. IN RE NATHAN; and
No. 99–6678. IN RE JOHNSON. Petitions for writs of habeas corpus denied.

No. 99–6161. IN RE AWOFOLU;
No. 99–6180. IN RE AWOFOLU;
No. 99–6200. IN RE ANDERSON; and
No. 99–6225. IN RE IOANE. Petitions for writs of mandamus denied.

*Certiorari Granted*

No. 99–62. SANTA FE INDEPENDENT SCHOOL DISTRICT *v.* DOE, INDIVIDUALLY AND AS NEXT FRIEND FOR HER MINOR CHILDREN, ET AL. C. A. 5th Cir. Motion of Rutherford Institute for leave to file a brief as *amicus curiae* granted. Certiorari granted limited to the following question: "Whether petitioner's policy permitting student-led, student-initiated prayer at football games violates the Establishment Clause?" Reported below: 168 F. 3d 806.

No. 99–244. MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST, INC. *v.* UNITED STATES; and
No. 99–253. MARATHON OIL CO. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 177 F. 3d 1331.

No. 99–5739. JONES *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to the following question: "Whether, in light of *United States* v. *Lopez*, 514 U. S. 549 (1995), and the interpretive rule that constitutionally doubtful constructions should be avoided, see *Edward J. DeBartolo Corp.* v. *Florida Gulf Coast Building & Constr. Trades Council*, 485 U. S. 568, 575 (1988), 18 U. S. C. § 844(i) applies to the arson of a private residence; and if so, whether its application to the private residence in the present case is constitutional?" Reported below: 178 F. 3d 479.

*Certiorari Denied*

No. 98–9545. MASON *v.* WESTMINSTER INVESTMENTS ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–9749. MCFALL *v.* DEPARTMENT OF AGRICULTURE. C. A. Fed. Cir. Certiorari denied. Reported below: 178 F. 3d 1307.

No. 98–9760. BOONE *v.* CHARLIE OBAUGH PONTIAC BUICK, INC. Sup. Ct. Va. Certiorari denied.

No. 98–9785. PRESTON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–9992. SHARIF-JOHNSON *v.* ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD ET AL. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 99–24. ORANGE COUNTY DEPARTMENT OF PROBATION *v.* WARNER. C. A. 2d Cir. Certiorari denied. Reported below: 173 F. 3d 120.

No. 99–47. RUVALCABA *v.* CITY OF LOS ANGELES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 167 F. 3d 514.

No. 99–97. PAGE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 167 F. 3d 325.

No. 99–256. B. WILLIS, C. P. A., INC. *v.* PUBLIC SERVICE COMPANY OF OKLAHOMA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 182 F. 3d 931.

No. 99–258. CONNECTICUT GENERAL LIFE INSURANCE CO. ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied. Reported below: 177 F. 3d 136.

No. 99–259. LOZADA COLON *v.* DEPARTMENT OF STATE ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 170 F. 3d 191.

No. 99–262. ANKER ENERGY CORP. ET AL. *v.* UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 177 F. 3d 161.

No. 99–265. NAKAMURA ET AL. *v.* BABBITT, SECRETARY OF THE INTERIOR. C. A. 9th Cir. Certiorari denied. Reported below: 165 F. 3d 916.

No. 99–274. JOHNSON ET AL. *v.* E. A. MILLER, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 172 F. 3d 62.

No. 99–278. RUIZ CORONADO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 182 F. 3d 936.

No. 99–282. BLACKFEET NATIONAL BANK ET AL. *v.* NELSON, FLORIDA TREASURER AND INSURANCE COMMISSIONER. C. A. 11th Cir. Certiorari denied. Reported below: 171 F. 3d 1237.

No. 99–417. EPSTEIN ET AL. *v.* MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 179 F. 3d 641.

No. 99–420. MIDWEST MOTOR EXPRESS, INC., ET AL. *v.* CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND. C. A. 7th Cir. Certiorari denied. Reported below: 181 F. 3d 799.

No. 99–428. PERDUE *v.* HUNTER ET AL. Ct. App. D. C. Certiorari denied.

No. 99–433. COUNTY OF ORANGE ET AL. *v.* WEHRLI. C. A. 9th Cir. Certiorari denied. Reported below: 175 F. 3d 692.

No. 99–441. KIRKPATRICK ET UX. *v.* CITY OF BANGOR. Sup. Ct. Me. Certiorari denied. Reported below: 728 A. 2d 1268.

No. 99–442. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL–CIO *v.* R. L. COOLSAET CONSTRUCTION CO. C. A. 7th Cir. Certiorari denied. Reported below: 177 F. 3d 648.

No. 99–445. OGLESBY ET UX. *v.* GENERAL MOTORS CORP. C. A. 2d Cir. Certiorari denied. Reported below: 180 F. 3d 458.

No. 99–452. TORRES *v.* BONILLA ET AL.; and ONOSSIAN ET AL. *v.* BLOCK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 869 (first judgment); 175 F. 3d 1169 (second judgment).

No. 99–459. CONNICK, DISTRICT ATTORNEY, ORLEANS PARISH *v.* HUDSON. C. A. 5th Cir. Certiorari denied. Reported below: 174 F. 3d 677.

No. 99–481. Roe, Representing Unknown Employees of the Philadelphia District Attorney's Office *v.* Carter. C. A. 3d Cir. Certiorari denied. Reported below: 181 F. 3d 339.

No. 99–486. Waring et al. *v.* UMLIC-Nine Corp. C. A. 10th Cir. Certiorari denied. Reported below: 168 F. 3d 1173.

No. 99–495. In re Barkman. Commw. Ct. Pa. Certiorari denied. Reported below: 726 A. 2d 440.

No. 99–499. Bandido's, Inc. *v.* Journal-Gazette Co., Inc. Sup. Ct. Ind. Certiorari denied. Reported below: 712 N. E. 2d 446.

No. 99–508. Haggerty *v.* City of Mountain View et al. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 99–515. Wojcik et al. *v.* Meek. C. A. 9th Cir. Certiorari denied. Reported below: 183 F. 3d 962.

No. 99–530. C & C Building Co., Inc., et al. *v.* Michigan Department of Consumer and Industry Affairs, Bureau of Occupational and Professional Regulation. Ct. App. Mich. Certiorari denied.

No. 99–531. L. M. M. *v.* E. N. O. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 429 Mass. 824, 711 N. E. 2d 886.

No. 99–559. Moore et al. *v.* Owens-Corning et al. Sup. Ct. Tex. Certiorari denied. Reported below: 997 S. W. 2d 560.

No. 99–569. Gebman *v.* Pataki, Governor of New York, et al. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 256 App. Div. 2d 854, 681 N. Y. S. 2d 701.

No. 99–577. Glover *v.* City of Memphis et al. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 101.

No. 99–584. Cavallaro *v.* Gallant, Administrator of the Estate of Cavallaro. Sup. Ct. Conn. Certiorari denied.

No. 99–593. Emerick *v.* United Technologies Corp. App. Ct. Conn. Certiorari denied. Reported below: 52 Conn. App. 724, 737 A. 2d 456.

No. 99–599. Braver *v.* Parker Real Estate, Inc. Ct. Civ. App. Okla. Certiorari denied.

No. 99–618. PLANNED PARENTHOOD OF MID-MISSOURI AND EASTERN KANSAS, INC. *v.* MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 99–627. DANIELS *v.* PENNSYLVANIA PUBLIC UTILITY COMMISSION. C. A. 3d Cir. Certiorari denied.

No. 99–667. LEPPO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 177 F. 3d 93.

No. 99–670. SCHACHNER *v.* OHIO. Ct. App. Ohio, Lucas County. Certiorari denied. Reported below: 131 Ohio App. 3d 808, 723 N. E. 2d 1127.

No. 99–675. WAHL *v.* SAN DIEGO SHEET METAL WORKS, INC., ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 99–5213. MINNICK *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 698 N. E. 2d 745.

No. 99–5282. GOSIER *v.* PAGE, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 504.

No. 99–5301. LADNER *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 181 F. 3d 83.

No. 99–5377. GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 165 F. 3d 312.

No. 99–5386. WILEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–5676. MACK *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 736 So. 2d 681.

No. 99–5743. PRUITT *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 270 Ga. 745, 514 S. E. 2d 639.

No. 99–5851. NAGEL *v.* OSBORNE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 164 F. 3d 582.

No. 99–5946. THOMAS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 350 N. C. 315, 514 S. E. 2d 486.

No. 99–6037. LEE *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 270 Ga. 798, 514 S. E. 2d 1.

No. 99–6106. BERRIOS QUINONES *v.* NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 173 F. 3d 845.

No. 99–6108. SCOTT *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 768 So. 2d 1031.

No. 99–6119. JONES *v.* CHEEKS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 629.

No. 99–6121. WILDER *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 182 F. 3d 934.

No. 99–6122. VOTTA *v.* GNAZZO ET AL. C. A. 1st Cir. Certiorari denied.

No. 99–6127. TURNER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 177 F. 3d 390.

No. 99–6137. SHELDON *v.* KITCHELL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–6140. TAYLOR *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 740 So. 2d 544.

No. 99–6145. CORPUZ *v.* WALTER, SUPERINTENDENT, AIRWAY HEIGHTS CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 99–6146. BEARD *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 751 So. 2d 61.

No. 99–6151. HAMPTON *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 750 So. 2d 867.

No. 99–6153. JONES *v.* HINES ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–6164. ROMNEY *v.* DISESSA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 927.

No. 99–6165. POTTS *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 99–6169. KING *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 992 S. W. 2d 946.

No. 99–6174. KUKES *v.* CALDERON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 178 F. 3d 1300.

No. 99–6175. JACKSON *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 701 So. 2d 270.

No. 99–6176. NIEBLAS *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied.

No. 99–6177. MARTINEZ *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 99–6185. SAUNDERS *v.* TAYLOR, COMMISSIONER, DELAWARE DEPARTMENT OF CORRECTION, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 181 F. 3d 85.

No. 99–6186. RAVESLOOT *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 99–6187. REEDY *v.* PHILLIPS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–6190. KRUEGER *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 99–6191. JACOBS *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–6194. MCKEE *v.* STEWART. C. A. 9th Cir. Certiorari denied.

No. 99–6202. PRICE *v.* MAZURKIEWICZ ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 182 F. 3d 904.

No. 99–6203. ALLAH *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 924.

No. 99–6211. JORDAN *v.* FANELLO, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 99–6212. WARDELL *v.* RYDEN, DEPUTY SHERIFF, LARIMER COUNTY, COLORADO, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 166 F. 3d 1223.

No. 99–6213. SEWARD *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 99–6214. SHERRILL *v.* HARGETT, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 184 F. 3d 1172.

No. 99–6229. GRONQUIST *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 138 Wash. 2d 388, 978 P. 2d 1083.

No. 99–6230. CARR *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–6246. WOODS *v.* SECURITIES AND EXCHANGE COMMISSION ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 176 F. 3d 473.

No. 99–6248. KILLION *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–6260. LOPEZ *v.* UDALL, ATTORNEY GENERAL OF NEW MEXICO. C. A. 10th Cir. Certiorari denied. Reported below: 185 F. 3d 874.

No. 99–6270. DECK *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 994 S. W. 2d 527.

No. 99–6277. DILLARD *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 995 S. W. 2d 366.

No. 99–6284. DRAKE *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 99–6291. BELEI *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–6321. ROBERTS *v.* LEE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 182 F. 3d 909.

No. 99–6334. PERELMAN *v.* RENO, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 99–6336. CARLSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 99–6350. MCCARTY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 977 P. 2d 1116.

No. 99–6355. PERELMAN *v.* RENO, ATTORNEY GENERAL. C. A. 1st Cir. Certiorari denied.

No. 99–6359. JONES *v.* CORCORAN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 629.

No. 99–6421. FALONI *v.* FREEH, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 87.

No. 99–6427. THURSTON *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 181 F. 3d 109.

No. 99–6428. WEAVER *v.* GASKINS. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 872.

No. 99–6441. SHURN *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 177 F. 3d 662.

No. 99–6445. SELLERS *v.* HENRY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 868.

No. 99–6462. BAKER *v.* TOLEDO BOARD OF EDUCATION. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 99.

No. 99–6496. YOUNG *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 301 Ill. App. 3d 1093, 746 N. E. 2d 341.

No. 99–6499. WALLIS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–6510. MONROE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 178 F. 3d 304.

No. 99–6524. BROWN *v.* THOMPSON ET AL. Sup. Ct. Haw. Certiorari denied. Reported below: 91 Haw. 1, 979 P. 2d 586.

No. 99–6525. DEL PILAR MARIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 484.

No. 99–6526. KEYS *v.* GONZALEZ, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 513.

No. 99–6531. LEGGETT *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 99–6533. CLEMMONS *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 177 F. 3d 680.

No. 99–6534. BASKET *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 486.

No. 99–6537. VARGAS-MEJIAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 484.

No. 99–6539. LESTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 99–6541. MARSHALL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 176 F. 3d 485.

No. 99–6545. SLATE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1017.

No. 99–6547. PADGETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 188 F. 3d 505.

No. 99–6548. QUINTANILLA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 189 F. 3d 479.

No. 99–6549. SOSA-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 650.

No. 99–6550. PEYTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 485.

No. 99–6552. PANIAGUA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 476.

No. 99–6554. SHORTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 188 F. 3d 505.

No. 99–6569. GUTIERREZ-GONZALEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 184 F. 3d 1160.

No. 99–6571. GARAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 484.

No. 99–6573. DA PING HUANG *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 178 F. 3d 184.

No. 99–6580. FREEMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 177 F. 3d 272.

No. 99–6582. ELAM, AKA WHITE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 482.

No. 99–6583. DE MENDOZA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 184 F. 3d 821.

No. 99–6585. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 194 F. 3d 1307.

No. 99–6586. TAYLOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 181 F. 3d 97.

No. 99–6600. OTERO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 99–6602. MCKINLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 483.

No. 99–6603. NURSE *v.* UNITED STATES; and
No. 99–6620. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 483.

No. 99–6605. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 857.

No. 99–6606. MIRANDA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 185 F. 3d 780.

No. 99–6608. RATIGAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 929.

No. 99–6612. NAJIY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 180 F. 3d 269.

No. 99–6613. KELLY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 182 F. 3d 923.

No. 99–6614. JACKSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 167 F. 3d 1280.

No. 99–6617. LASZCZYNSKI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 99–6619. CRUZ-MENDOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 147 F. 3d 1069 and 163 F. 3d 1149.

No. 99–6624. BROWN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 928.

No. 99–6632. STEPHENSON, AKA MCCURVIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 183 F. 3d 110.

No. 99–6697. NORMINGTON *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 228 Wis. 2d 509, 597 N. W. 2d 773.

No. 99–414. HATCH, ATTORNEY GENERAL OF MINNESOTA *v.* MINNESOTA TWINS PARTNERSHIP ET AL. Sup. Ct. Minn. Motion of Consumer Federation of America for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 592 N. W. 2d 847.

No. 99–455. SONS *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Motion of petitioner for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted. Certiorari denied.

No. 99–6149. MORROW *v.* HVASS, COMMISSIONER, MINNESOTA DEPARTMENT OF CORRECTIONS. Sup. Ct. Minn. Motion of petitioner to vacate judgment of the Supreme Court of Minnesota denied. Certiorari denied. Reported below: 590 N. W. 2d 787.

No. 99–6272 (99A309). LAMB *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 179 F. 3d 352.

*Rehearing Denied*

No. 98–2032. MCQUEEN *v.* UNITED STATES, *ante,* p. 823;
No. 98–9387. COOK *v.* UNITED STATES, *ante,* p. 833;
No. 98–9422. WELDON *v.* WYOMING, *ante,* p. 834;

No. 98–9682. THOMAS *v.* CALDERA, SECRETARY OF THE ARMY, *ante*, p. 846;

No. 98–9980. FRANKLIN *v.* BILBRAY ET AL.; and FRANKLIN *v.* UNITED STATES, *ante*, p. 863;

No. 99–152. POLYAK *v.* BURSON ET AL., *ante*, p. 875;

No. 99–225. EELLS *v.* DIRNFELD & ZELNER ET AL., *ante*, p. 878;

No. 99–421. FERMIN, AND ON BEHALF OF THE ESTATE OF FERMIN *v.* UNITED STATES, *ante*, p. 933;

No. 99–5020. ROY *v.* BRIGANO, WARDEN, *ante*, p. 881;

No. 99–5500. BROOKS *v.* BUNCH ET AL., *ante*, p. 908;

No. 99–5537. VALDES *v.* UNITED STATES, *ante*, p. 910;

No. 99–5538. LEE *v.* UNITED STATES, *ante*, p. 910;

No. 99–5605. WELDON *v.* EVERETT, WARDEN, *ante*, p. 912;

No. 99–5717. TYLER *v.* SCHRIRO, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, *ante*, p. 915;

No. 99–5718. TYLER *v.* SCHRIRO, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, *ante*, p. 915;

No. 99–5732. RUCKER *v.* HENDERSON, POSTMASTER GENERAL, *ante*, p. 916;

No. 99–5816. JENNINGS *v.* UNITED STATES, *ante*, p. 918; and

No. 99–6117. LANGWORTHY *v.* DEAN ET AL., *ante*, p. 945. Petitions for rehearing denied.

## NOVEMBER 18, 1999

*Dismissal Under Rule 46*

No. 99–494. CHEVRON U. S. A. INC. (FORMERLY GULF OIL CORP.) *v.* OXY USA INC. (FORMERLY CITIES SERVICE CO.). Sup. Ct. Okla. Certiorari dismissed under this Court's Rule 46.1. Reported below: 980 P. 2d 116.

*Miscellaneous Order*

No. 99–7065 (99A421). IN RE BROWN, AKA MUHAMMED. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

*Certiorari Denied*

No. 99–6841 (99A364). BROWN, AKA MUHAMMED *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Moore County, 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.

NOVEMBER 19, 1999

*Miscellaneous Order*

No. 98–1828. VERMONT AGENCY OF NATURAL RESOURCES *v.* UNITED STATES EX REL. STEVENS. C. A. 2d Cir. [Certiorari granted, 527 U. S. 1034.] The parties are directed to file supplemental briefs addressing the following question: "Does a private person have standing under Article III to litigate claims of fraud upon the Government?" Briefs are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, November 30, 1999. Twenty copies of the briefs prepared under Rule 33.2 may be filed initially in order to meet the November 30 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.

NOVEMBER 23, 1999

*Miscellaneous Order*

No. 99A416 (99–7000). RAMDASS *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, granted pending disposition of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay shall terminate automically. 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 24, 1999

*Miscellaneous Order*

No. 98–1701. UNITED STATES *v.* LOCKE, GOVERNOR OF WASHINGTON, ET AL.; and

No. 98–1706. INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS (INTERTANKO) *v.* LOCKE, GOVERNOR OF WASHINGTON, ET AL. C. A. 9th Cir. [Certiorari granted, 527 U. S. 1063.] Motion of the Solicitor General for divided argument

granted. Motion of respondent/intervenor for divided argument denied.

NOVEMBER 29, 1999

*Dismissal Under Rule 46*

No. 99–613. GEORGE ET UX. *v.* CITY OF MORRO BAY ET AL. C. A. 9th Cir. Certiorari dismissed as to Santa Lucia National Bank under this Court's Rule 46.1. Reported below: 177 F. 3d 885 and 185 F. 3d 866.

*Certiorari Granted—Reversed in Part and Remanded.* (See No. 98–1111, *ante,* p. 18.)

*Certiorari Dismissed*

No. 99–6310. BABA *v.* JAPAN TRAVEL BUREAU INTERNATIONAL, INC., 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: 166 F. 3d 1199.

*Miscellaneous Orders*

No. D–1961. IN RE DISBARMENT OF WEISSER. Motion for reconsideration of order of disbarment [*ante,* p. 801] denied.

No. D–2099. IN RE DISBARMENT OF HERNANDEZ. Disbarment entered. [For earlier order herein, see 527 U. S. 1057.]

No. D–2102. IN RE DISBARMENT OF EAGLE. Disbarment entered. [For earlier order herein, see *ante,* p. 801.]

No. D–2122. IN RE DISBARMENT OF ARNOLD. Robert R. Arnold, of Wichita, Kan., 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. 99M43. METZENBAUM *v.* HUNTINGTON NATIONAL BANK. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 98–1446. S & R COMPANY OF KINGSTON ET AL. *v.* LATONA TRUCKING, INC. C. A. 2d Cir. Motion of the parties to further defer consideration of petition for writ of certiorari granted.

No. 98–1856. HILL ET AL. *v.* COLORADO ET AL. Sup. Ct. Colo. [Certiorari granted, 527 U. S. 1068.] Motion of Alan Ernest to allow counsel to represent children unborn and born alive denied. Motion of Alan Ernest for leave to file a brief as *amicus curiae* denied.

No. 98–1991. PUBLIC LANDS COUNCIL ET AL. *v.* BABBITT, SECRETARY OF THE INTERIOR, ET AL. C. A. 10th Cir. [Certiorari granted, *ante*, p. 926.] Motion of petitioners to dispense with printing the joint appendix granted.

No. 98–9384. BRAUN *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 8th Cir.; and

No. 98–9922. BABA *v.* WARREN MANAGEMENT CONSULTANTS, INC., ET AL. C. A. 2d Cir. Motions of petitioners for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, pp. 805–806] denied.

No. 98–9913. BRANCATO *v.* GUNN ET AL. C. A. 8th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1] denied.

No. 99–729. CITY OF WEST HAVEN ET AL. *v.* THOMAS ET AL. Sup. Ct. Conn. Motion of petitioners West Haven et al. to consolidate this case with No. 98–1288, *Village of Willowbrook et al.* v. *Olech* [certiorari granted, 527 U. S. 1067], denied.

No. 99–6799. IN RE EDWARDS;

No. 99–6915. IN RE DORROUGH; and

No. 99–6916. IN RE HARRIS. Petitions for writs of habeas corpus denied.

No. 99–6673. IN RE TYLER. 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. 99–6657. IN RE TAYLOR. Petition for writ of mandamus denied.

No. 99–6389. IN RE STONE. 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. 99–6532. IN RE REIDT. 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. 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. 99–6275. IN RE LAVERTU; and

No. 99–6341. IN RE PARKER. Petitions for writs of mandamus and/or prohibition denied.

*Certiorari Granted*

No. 99–391. FREE ET AL. *v.* ABBOTT LABORATORIES, INC., ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 176 F. 3d 298.

No. 99–474. NATSIOS, SECRETARY OF ADMINISTRATION AND FINANCE OF MASSACHUSETTS, ET AL. *v.* NATIONAL FOREIGN TRADE COUNCIL. C. A. 1st Cir. Certiorari granted. Reported below: 181 F. 3d 38.

No. 99–478. APPRENDI *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari granted. Reported below: 159 N. J. 7, 731 A. 2d 485.

No. 99–502. NELSON *v.* ADAMS USA, INC., ET AL. C. A. Fed. Cir. Certiorari granted. Reported below: 175 F. 3d 1343.

No. 98–9537. SIMS *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 200 F. 3d 229.

*Certiorari Denied*

No. 99–48. LEWIS COUNTY ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 175 F. 3d 671.

No. 99–89. Bogan et al. *v.* Hodgkins. C. A. 2d Cir. Certiorari denied. Reported below: 166 F. 3d 509.

No. 99–92. Hollingsworth & Vose Co. *v.* Ruckstuhl. Sup. Ct. La. Certiorari denied. Reported below: 731 So. 2d 881.

No. 99–219. Castillo et al. *v.* City of Round Rock et al. C. A. 5th Cir. Certiorari denied. Reported below: 177 F. 3d 977.

No. 99–284. Papa *v.* Katy Industries, Inc., et al. C. A. 7th Cir. Certiorari denied. Reported below: 166 F. 3d 937.

No. 99–315. Cooper *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 173 F. 3d 1192.

No. 99–340. Hossain *v.* Immigration and Naturalization Service. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 876.

No. 99–345. United States *v.* Cook County et al. C. A. 7th Cir. Certiorari denied. Reported below: 167 F. 3d 381.

No. 99–368. Wilson *v.* Area Plan Commission of Evansville and Vanderburgh County et al. Ct. App. Ind. Certiorari denied. Reported below: 701 N. E. 2d 856.

No. 99–373. Shannon *v.* Consolidated Freightways Corp. et al. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 103.

No. 99–463. Sullivan *v.* River Valley School Board et al. Ct. App. Mich. Certiorari denied.

No. 99–467. Trice *v.* Board of Trustees for Okolona Municipal Separate School District et al. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 816.

No. 99–469. Karavan Trailers, Inc. *v.* Midwest Industries, Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 175 F. 3d 1356.

No. 99–471. Sandage et ux. *v.* Bankhead Enterprises, Inc., dba Bankhead Transportation Equipment Co. C. A. 8th Cir. Certiorari denied. Reported below: 177 F. 3d 670.

No. 99–476. Valence Technology, Inc., et al. *v.* Berry et al. C. A. 9th Cir. Certiorari denied. Reported below: 175 F. 3d 699.

No. 99–483. RESTAURANT ROW ASSOCIATES ET AL. *v.* HORRY COUNTY. Sup. Ct. S. C. Certiorari denied. Reported below: 335 S. C. 209, 516 S. E. 2d 442.

No. 99–488. RODRIGUEZ *v.* MUHLENBERG HOSPITAL CENTER. C. A. 3d Cir. Certiorari denied. Reported below: 185 F. 3d 862.

No. 99–490. GRIDER ET AL. *v.* CITY OF LOUISVILLE. C. A. 6th Cir. Certiorari denied. Reported below: 180 F. 3d 739.

No. 99–493. GREEN ET UX. *v.* LEVIS MOTORS, INC., DBA LEVIS MITSUBISHI, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 179 F. 3d 286.

No. 99–503. HERMAN ET AL. *v.* BLOCKBUSTER ENTERTAINMENT GROUP ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 182 F. 3d 899.

No. 99–511. SANDERS *v.* VILLAGE OF DIXMOOR. C. A. 7th Cir. Certiorari denied. Reported below: 178 F. 3d 869.

No. 99–516. WISDOM *v.* WARD, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 182 F. 3d 934.

No. 99–518. ZAHRAN ET UX. *v.* FRANKENMUTH MUTUAL INSURANCE CO. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1022.

No. 99–521. FITZGERALD ET AL. *v.* STALDER, INDIVIDUALLY AND IN HIS CAPACITY AS SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 731 So. 2d 500.

No. 99–524. JIRICKO *v.* MOSER & MARSALEK, P. C. C. A. 8th Cir. Certiorari denied. Reported below: 187 F. 3d 641.

No. 99–529. TALYANSKY *v.* XEROX CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 182 F. 3d 901.

No. 99–533. PARKER *v.* UNITED STATES AIR FORCE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 173 F. 3d 861.

No. 99–534. MONTANA RAIL LINK, INC. *v.* WATTS ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 293 Mont. 167, 975 P. 2d 283.

No. 99–539. DECKER *v.* URRUTIA ET AL. Sup. Ct. Tex. Certiorari denied. Reported below: 992 S. W. 2d 440.

No. 99–541. OMLIN *v.* URSETTI. Ct. App. Ohio, Lake County. Certiorari denied.

No. 99–546. HORTON ET AL. *v.* CITY OF HOUSTON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 179 F. 3d 188.

No. 99–549. ALLRED'S PRODUCE *v.* DEPARTMENT OF AGRICULTURE. C. A. 5th Cir. Certiorari denied. Reported below: 178 F. 3d 743.

No. 99–550. GARCIA SANCHEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 995 S. W. 2d 677.

No. 99–552. SUN INTERNATIONAL NORTH AMERICA, INC. *v.* LOWENSCHUSS, TRUSTEE. C. A. 3d Cir. Certiorari denied. Reported below: 181 F. 3d 505.

No. 99–553. CORCORAN ET AL. *v.* CROIXLAND PROPERTIES LIMITED PARTNERSHIP. C. A. D. C. Cir. Certiorari denied. Reported below: 174 F. 3d 213.

No. 99–555. FENT ET UX. *v.* OKLAHOMA CAPITOL IMPROVEMENT AUTHORITY (two judgments). Sup. Ct. Okla. Certiorari denied. Reported below: 984 P. 2d 200 (second judgment).

No. 99–556. NORFOLK SOUTHERN RAILWAY CO. *v.* BAKER, PERSONAL REPRESENTATIVE OF THE ESTATE OF BAKER, DECEASED. Ct. App. Ga. Certiorari denied. Reported below: 237 Ga. App. 292, 514 S. E. 2d 448.

No. 99–562. CUNIGAN ET AL. *v.* SHAMAEIZADEH. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 391.

No. 99–563. DEERING, PERSONAL REPRESENTATIVE OF THE ESTATE OF DEERING, DECEASED *v.* REICH. C. A. 7th Cir. Certiorari denied. Reported below: 183 F. 3d 645.

No. 99–564. BADO *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 99–578. KOSTER *v.* TRANS WORLD AIRLINES, INC. C. A. 1st Cir. Certiorari denied. Reported below: 181 F. 3d 24.

No. 99–580. ALSTON *v.* GTE DIRECTORIES CORP. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1019.

No. 99–583. EMERSON *v.* DELTA AIRLINES, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 177 F. 3d 983.

No. 99–586. NORTH BROWARD HOSPITAL DISTRICT ET AL. *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. D. C. Cir. Certiorari denied. Reported below: 172 F. 3d 90.

No. 99–587. GLAVAN ET UX. *v.* OMI CORP. ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 249 App. Div. 2d 42, 670 N. Y. S. 2d 771.

No. 99–588. VICTORIA INDEPENDENT SCHOOL DISTRICT ET AL. *v.* HARRIS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 168 F. 3d 216.

No. 99–591. AVELAR *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied. Reported below: 132 Idaho 775, 979 P. 2d 648.

No. 99–594. FISHER ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 174 F. 3d 201.

No. 99–611. NATIONAL FEDERATION OF THE BLIND, INC., ET AL. *v.* CROSS, DIRECTOR, DIVISION OF FAMILY SERVICES OF MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 184 F. 3d 973.

No. 99–654. STANLEY *v.* UNIVERSITY OF SOUTHERN CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 178 F. 3d 1069.

No. 99–659. FOSTER *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 132 N. C. App. 823, 519 S. E. 2d 783.

No. 99–682. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 169 F. 3d 687.

No. 99–690. ADAMS *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 132 N. C. App. 819, 513 S. E. 2d 588.

No. 99–707. HIGHTOWER *v.* KENDALL CO., AN UNINCORPORATED DIVISION OF TYCO INTERNATIONAL (US) INC. C. A. 11th Cir. Certiorari denied.

No. 99–712. ANDERSON *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 51 M. J. 145.

No. 99–725. CASSO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 187 F. 3d 261.

No. 99–780. ENGLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 174 F. 3d 1215.

No. 99–5060. MCMAHON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 182 F. 3d 934.

No. 99–5061. NUFIO-ORTIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 177 F. 3d 979.

No. 99–5182. TIDWELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 178 F. 3d 946.

No. 99–5490. DELOZIER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 991 P. 2d 22.

No. 99–5628. SPAZIANO *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 735 So. 2d 1287.

No. 99–5745. PAUL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 175 F. 3d 906.

No. 99–5792. SMITH *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 993 S. W. 2d 6.

No. 99–5867. GRIMES, AKA GREENWOOD *v.* GHIANDA ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 731 So. 2d 20.

No. 99–5925. HENLEY *v.* STATE BAR OF GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 271 Ga. 21, 518 S. E. 2d 418.

No. 99–6227. GALLOWAY *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 86 Ohio St. 3d 1403, 711 N. E. 2d 231.

No. 99–6234. FLORES SANCHEZ *v.* STEWART, SUPERINTENDENT, MCNEIL ISLAND CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 99–6238. GARDNER *v.* DUCHARME, SUPERINTENDENT, WASHINGTON STATE REFORMATORY. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 647.

No. 99–6239. GILLARD *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 85 Ohio St. 3d 363, 708 N. E. 2d 708.

No. 99–6241. GARCIA *v.* YLST, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 866.

No. 99–6244. PRESTON *v.* CARUSO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–6266. PERRY *v.* ZAENTZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 868.

No. 99–6271. KIMBROUGH *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 99–6273. JACOBS *v.* JACOBS ET AL. Ct. App. Ore. Certiorari denied. Reported below: 156 Ore. App. 396, 972 P. 2d 1227.

No. 99–6274. ZUBIATE *v.* MCCAUSLAND. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 99–6289. BARLOW *v.* BALLARD, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, PAROLE DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 819.

No. 99–6290. TURRENTINE *v.* NORTHERN TELECOM INC. C. A. 2d Cir. Certiorari denied. Reported below: 173 F. 3d 846.

No. 99–6294. ZAETLER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 180 F. 3d 269.

No. 99–6295. ROBINSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 302 Ill. App. 3d 1093, 746 N. E. 2d 911.

No. 99–6297. WILLIAMS *v.* JARVIS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 95.

No. 99–6299. WARMSLEY *v.* WEST ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 193 F. 3d 518.

No. 99–6300. TELLIER *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 99–6301. MACKAY *v.* WEINER. C. A. 3d Cir. Certiorari denied. Reported below: 189 F. 3d 464.

No. 99–6308. KING *v.* MTA BRIDGES AND TUNNELS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 173 F. 3d 844.

No. 99–6312. PRESTIA *v.* O'CONNOR ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 178 F. 3d 86.

No. 99–6314. VENEGAS *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 99–6316. MCKIMBLE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 99–6318. IRVING *v.* GURNEY. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1014.

No. 99–6325. MCLAUGHLIN *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Bladen County, N. C. Certiorari denied.

No. 99–6326. NEWTON *v.* VIRGINIA. Ct. App. Va. Certiorari denied. Reported below: 29 Va. App. 433, 512 S. E. 2d 846.

No. 99–6332. REED-BEY *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–6333. PENNUCCI *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 99–6338. BRANCH *v.* MINNESOTA ET AL. Ct. App. Minn. Certiorari denied.

No. 99–6343. RIDDICK *v.* WRIGHT, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 851.

No. 99–6354. SCOTT *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–6356. ROLL *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 177 F. 3d 697.

No. 99–6361. LENOIR *v.* KERLEY. C. A. 11th Cir. Certiorari denied. Reported below: 181 F. 3d 108.

No. 99–6362. KENDALL *v.* REID ET AL. Ct. App. Wash. Certiorari denied. Reported below: 93 Wash. App. 1050.

No. 99–6371. GREEN *v.* SOMMERS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 174 F. 3d 203.

No. 99–6372. GWYNN *v.* MAZURKIEWICZ ET AL. C. A. 3d Cir. Certiorari denied.

No. 99–6381. GOOD *v.* HILLTOP HOUSE ET AL. Sup. Ct. Va. Certiorari denied.

No. 99–6384. FUENTES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 991 S. W. 2d 267.

No. 99–6388. THIBODEAUX *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–6392. SMITH *v.* JOHNSON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 99–6393. STIVER *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 99–6394. SCARBROUGH *v.* G A B ROBINS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 818.

No. 99–6400. WHITE *v.* WILKINSON, DIRECTOR, OHIO DEPARTMENT OF REHABILITATION AND CORRECTION. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 920.

No. 99–6404. THOMAS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 259 App. Div. 2d 997, 688 N. Y. S. 2d 305.

No. 99–6406. BASS *v.* THOMAS JEFFERSON UNIVERSITY HOSPITAL. C. A. 3d Cir. Certiorari denied. Reported below: 189 F. 3d 463.

No. 99–6418. EDWARDS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 750 So. 2d 893.

No. 99–6432. WINCHESTER *v.* LITTLE. Ct. App. Tenn. Certiorari denied. Reported below: 996 S. W. 2d 818.

No. 99–6449. CLAYTON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 995 S. W. 2d 468.

No. 99–6451. COULIBALY *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 4th Cir. Certiorari denied. Reported below: 176 F. 3d 475.

No. 99–6455. MCWILLIAMS *v.* JONES. C. A. 11th Cir. Certiorari denied. Reported below: 178 F. 3d 1303.

No. 99–6475. MOORE *v.* ANDERSON, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL. C. A. 5th Cir. Certiorari denied.

No. 99–6493. BURTON *v.* HILL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 646.

No. 99–6512. JAMES *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 99–6513. BRYAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 649.

No. 99–6516. ALFORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 918.

No. 99–6523. TEACHERSON *v.* OFFICE OF PATENTS AND TRADEMARKS. C. A. 11th Cir. Certiorari denied.

No. 99–6535. TISDALE *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 99–6551. SHOCKETT *v.* MASSACHUSETTS. C. A. 1st Cir. Certiorari denied.

No. 99–6553. RESPER *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 354 Md. 611, 732 A. 2d 863.

No. 99–6559. LUEDTKE *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 194 F. 3d 174.

No. 99–6579. LEWIS *v.* GRIMMETT. C. A. 5th Cir. Certiorari denied.

No. 99–6588. CENDEJAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 178 F. 3d 1301.

No. 99–6589. BURNETTE *v.* CACI, INC. C. A. 4th Cir. Certiorari denied. Reported below: 176 F. 3d 475.

No. 99–6592. BROWN *v.* DIERCKS ET AL. C. A. 7th Cir. Certiorari denied.

No. 99–6593. COX, AKA COOK *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 737 So. 2d 1080.

No. 99–6604. NAPIER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 172 F. 3d 874.

No. 99–6609. WADE *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 260 App. Div. 2d 798, 688 N. Y. S. 2d 733.

No. 99–6611. SNYDER *v.* DOBUCKI, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 99–6618. MURRAY *v.* CISAR ET AL. Ct. App. Minn. Certiorari denied. Reported below: 594 N. W. 2d 918.

No. 99–6627. MENDEZ-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 476.

No. 99–6628. VELAZQUEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 182 F. 3d 923.

No. 99–6630. VARGAS-MOLINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 476.

No. 99–6631. WASKOM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 179 F. 3d 303.

No. 99–6635. RIVAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 476.

No. 99–6636. PEAKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 631.

No. 99–6637. LOPEZ-GARCIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 194 F. 3d 1321.

No. 99–6638. NORRED *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 185 F. 3d 875.

No. 99–6640. LINEBERGER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 93.

No. 99–6642. WHEELER *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 178 F. 3d 1301.

No. 99–6643. WEIR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–6645. WOODS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1018.

No. 99–6647. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 94.

No. 99–6651. AL-MUQSIT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 191 F. 3d 928.

No. 99–6653. VEST *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 125 F. 3d 676.

No. 99–6654. WHITE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 99–6656. WIMBUSH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–6664. CARNIGLIA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 187 F. 3d 643.

No. 99–6665. PINET *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 189 F. 3d 465.

No. 99–6666. SMITH *v.* BRIGANO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–6669. NELSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 184 F. 3d 953.

No. 99–6670. AMERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 185 F. 3d 676.

No. 99–6674. BONILLA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 92.

No. 99–6676. VINEYARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 633.

No. 99–6679. BILLMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 425.

No. 99–6682. FOSTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 190 F. 3d 541.

No. 99–6685. GARCIA-ACUNA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 175 F. 3d 1143.

No. 99–6686. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 183 F. 3d 313.

No. 99–6687. OSORIO DE ESCOBAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 484.

No. 99–6689. DANIELS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 475.

No. 99–6691. DELEON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 187 F. 3d 60.

No. 99–6692. GOMEZ-JARAMILLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 484.

No. 99–6693. HOOKS *v.* EASLEY, ATTORNEY GENERAL OF NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 182 F. 3d 907.

No. 99–6695. EADY *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 249 Conn. 431, 733 A. 2d 112.

No. 99–6696. AVALOS-CERVANTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 190 F. 3d 537.

No. 99–6701. COALLA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 190 F. 3d 540.

No. 99–6702. VELEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 1048.

No. 99–6703. TAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 476.

No. 99–6706. BOULANGER *v.* COHEN, SECRETARY OF DEFENSE. C. A. 9th Cir. Certiorari denied. Reported below: 176 F. 3d 481.

No. 99–6711. OCHOA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 190 F. 3d 537.

No. 99–6712. SADEGHI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 99–6713. BULGER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 466.

No. 99–6714. BARNES *v.* EASLEY, ATTORNEY GENERAL OF NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 628.

No. 99–6718. BEWS *v.* MORGAN, SUPERINTENDENT, CLALLAM BAY CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 472.

No. 99–6719. RECLUSADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 476.

No. 99–6721. BRIDGEFORTH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 475.

No. 99–6722. BROOKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 190 F. 3d 538.

No. 99–6726. WOODS *v.* HENDERSON, POSTMASTER GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 173 F. 3d 848.

No. 99–6728. OSBORNE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1287.

No. 99–6733. CADIAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 190 F. 3d 542.

No. 99–6734. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 632.

No. 99–6736. ZUKOWSKI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 187 F. 3d 639.

No. 99–6739. TILMON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 182 F. 3d 915.

No. 99–6740. MANDINA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 99–6742. JACKO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 182 F. 3d 914.

No. 99–6744. DE AZA-PAEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 166 F. 3d 413.

No. 99–6745. RANGEL-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 476.

No. 99–6746. SUM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 99–6747. RUDD *v.* BUREAU OF PRISONS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 188 F. 3d 509.

No. 99–6749. LONG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 190 F. 3d 471.

No. 99–6751. MORGAN *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied.

No. 99–6752. BETANCOUR-ECHEVERRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 190 F. 3d 540.

No. 99–6754. CAMPBELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 181 F. 3d 1263.

No. 99–6755. CARL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 99–6756. PEREZ-AYON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 877.

No. 99–6759. MAYDAK, AKA DAVID, AKA MAIDAK, AKA FIGG *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 182 F. 3d 904.

No. 99–6760. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 188 F. 3d 510.

No. 99–6761. MATHIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 190 F. 3d 541.

No. 99–6765. WILHOITE *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 194 F. 3d 1339.

No. 99–6769. WILLIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 187 F. 3d 639.

No. 99–6770. JOHNSON *v.* CATOE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied.

No. 99–6772. McCoy *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1021.

No. 99–6778. Wood *v.* Social Security Administration. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 95.

No. 99–6780. Arboleda *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 99–6781. Baldwin *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 186 F. 3d 99.

No. 99–6782. Gipson *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 919.

No. 99–6785. Goodson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 198 F. 3d 238.

No. 99–6786. Hayes *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1017.

No. 99–6787. Haynes *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 194 F. 3d 1306.

No. 99–6793. Quary *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 188 F. 3d 520.

No. 99–6794. Ross *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 190 F. 3d 446.

No. 99–6796. Stackhouse *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 183 F. 3d 900.

No. 99–6798. Durham *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 178 F. 3d 796.

No. 99–6803. Flucas *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 99–6806. Hilton, aka Montana *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 178 F. 3d 1303.

No. 99–6810. Bailey *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 188 F. 3d 773.

No. 99–6812. Spearman *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 186 F. 3d 743.

No. 99–6813. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 188 F. 3d 520.

No. 99–6826. CASTRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 181 F. 3d 97.

No. 99–6832. PACE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 196 F. 3d 1262.

No. 99–6835. JOHNSTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 180 F. 3d 269.

No. 99–6842. BRUMMITT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 194 F. 3d 1311.

No. 99–6843. ARROYO-GORROSTIETA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 192 F. 3d 126.

No. 99–6845. LOPEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 198 F. 3d 235.

No. 99–6848. JOHN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 182 F. 3d 936.

No. 99–6860. WOODERTS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 468.

No. 99–6863. WATKINS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 188 F. 3d 520.

No. 99–6864. VELEZ-VELASQUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 190 F. 3d 542.

No. 99–6868. CHAMBERS *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. Sup. Ct. Mo. Certiorari denied.

No. 98–9183. MARX *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 987 S. W. 2d 577.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, dissenting.

The Court today forgoes the opportunity to prevent an expansion of the exception it recently created to the Sixth Amendment right of the defendant "[i]n all criminal prosecutions . . . to be confronted with the witnesses against him." In *Maryland* v. *Craig*, 497 U. S. 836 (1990), the Court held for the first time that the right "to be confronted" with a trial witness does not necessarily require that the witness testify in the defendant's presence.

It said that (a) as to the category of witnesses involved in that case, and (b) after the preliminary trial-court finding that the statute in that case required, the State could restrict the defendant to viewing the trial testimony over closed-circuit television. The witnesses at issue were the alleged child victim in a sexual abuse case, and other child victims testifying concerning *their own abuse*. The preliminary finding required was that testifying in the defendant's presence would cause the child serious emotional trauma. *Id.*, at 840–841.

I dissented in *Craig*, because I thought it subordinated the plain language of the Bill of Rights to the "tide of prevailing current opinion." *Id.*, at 860. See also *Danner* v. *Kentucky*, 525 U. S. 1010 (1998) (SCALIA, J., dissenting from denial of certiorari). I do not think the Court should ever depart from the plain meaning of the Bill of Rights. But when it does take such a step into the dark it has an obligation, it seems to me, to clarify as soon as possible the extent of its permitted departure. The present case represents an expansion of *Craig* both as to the category of witness covered and as to the finding required. First, it extends the holding of that case to a child witness whose abuse is neither the subject of the prosecution nor will be the subject of her testimony. The only basis for excusing her from real confrontation with the defendant is that, according to the prosecution, she also was the subject of sexual abuse, on another occasion, by the same defendant. The State's extension of our novel confrontation-via-TV jurisprudence to this situation should alone warrant our accepting this case for review.

But the case expands *Craig* even further with regard to the preliminary finding. The state statute at issue in *Craig* permitted confrontation-via-TV only when the trial court found that real confrontation would produce "'serious emotional distress such that the child cannot reasonably communicate,'" 497 U. S., at 856 (quoting Md. Cts. & Jud. Proc. Code Ann. § 9–102(a)(1)(ii) (1989)). Our opinion left open the question of "the minimum showing of emotional trauma" constitutionally required. 497 U. S., at 856. If the lower court's opinion in this case is in the ballpark, the "minimum showing" required is no showing at all, and in all abused-child-witness cases this Court's exception has swallowed the constitutional rule.

The facts are as follows: Jeffrey Steven Marx was charged in separate indictments with sexually abusing B. J., a 13-year-old

girl, and J. M., a 6-year-old girl. Before the trial concerning Marx's abuse of B. J., the court held a hearing to determine whether to permit J. M.—who had witnessed the abuse—to testify via closed-circuit television as to what she had seen. At the hearing, the prosecutor asked J. M.'s mother whether J. M. would suffer additional "emotional . . . and psychological trauma," Tr. 68 (Apr. 17, 1995), were she to testify in Marx's presence. J. M.'s mother initially answered in the affirmative. After defense counsel clarified for J. M.'s mother that her daughter's testimony would deal only with the incidents between Marx and B. J., however, J. M.'s mother indicated that her daughter would be "ready for that":

> "Q. Do you understand we're talking about testifying just in the case that she's a witness in, not in the case in which she was allegedly abused in? Do you understand that?
>
> "A. Yes.
>
> "Q. Okay. And you understand all she's going to be asked to testify to in this proceeding is what she allegedly saw through some window?
>
> "A. Okay.
>
> "Q. Okay. You understand the difference now?
>
> "A. Okay. Well, that does make a difference.
>
> "Q. Well, sure. All she's going to be asked to testify to is what she—
>
> "A. Okay. So this isn't her case?
>
> "Q. No.
>
> . . . . .
>
> "A. Okay. Well, that she's okay with. I mean, she's ready for that.
>
> "Q. I mean, what she saw hasn't caused her any kind of emotional distress or problems, what she allegedly saw through a window?
>
> "A. No. She just—I mean, she could probably do it." *Id.*, at 69.

In addition, Dr. Anita June Calvert, who had examined J. M., engaged in the following colloquy with the prosecutor:

> "Q. Okay. Doctor, do you feel like if she testifies in open court in the presence of Jeffrey Steven Marx, that she will—

the result would cause further serious emotional and physical distress than what she has now?

"A. If no one was ugly to her, you know, made her feel really badly about it—I think [she] is more of a talker than most. She will probably come on and do it.

"Q. Of course, we can make her do that as you well know, but my concern is what would be the emotional and physical distress that would cause—that would be resulting from her testifying in open court in the presence of another.

"A. In the presence of Jeffrey?

"Q. Yes, ma'am.

"A. She tells me she wants to. So unless she gets more frightened than I expect, that little girl would probably testify okay." *Id.*, at 76.

In response to questions from the judge, Dr. Calvert reiterated her belief that J. M. would suffer no additional trauma as a result of testifying.

"Q. Do you feel like there would be any emotional or physical trauma if she were to be in confrontation with the defendant in the ordinary involvement in the courtroom trial?

"A. You mean if she had to go and interact with him or if she just—

"Q. If she had to sit there and testify from the witness stand.

"A. I can't say for sure, but she says she wants to tell what happened, and she's a very strong little girl, strong-willed child like that.

"Q. Do you think she would suffer any emotional or physical problems as a result of that confrontation?

"A. I couldn't guarantee it, but I think—occasionally there's a child who wants to tell their story.

"Q. Listen to my question.

"A. Okay.

"Q. Do you think that there would be any emotional or physical problems with her confronting—testifying from that witness stand and having to confront her uncle?

"A. Your Honor, I couldn't say for sure that there would not be. I wouldn't expect it." *Id.*, at 77–78.

Dr. Calvert subsequently testified that "*if* there was going to be any trauma to [J. M.]" from testifying in the presence of Marx, the risk of such trauma would of course be lessened if she were permitted to testify via closed-circuit television. *Id.*, at 79 (emphasis added). The trial court, without any elaboration, granted the prosecution's motion to allow J. M. to testify outside of Marx's presence. A divided Court of Criminal Appeals of Texas affirmed. 987 S. W. 2d 577 (1999) (en banc).

Quite unlike the child witnesses in *Craig*, who "'wouldn't be able to communicate effectively,'" or who "'would probably stop talking and . . . would withdraw and curl up,'" 497 U. S., at 842 (quoting *Craig* v. *State*, 316 Md. 551, 568–569, 560 A. 2d 1120, 1128–1129 (1989)), the witness exempted by the court below affirmatively "want[ed] to" testify, and by all accounts was "ready for that." If the decision here is correct, the right to confrontation of allegedly abused child witnesses has not simply been, as I suggested in *Danner*, "water[ed] down," 525 U. S., at 1012; it has been washed away.

I respectfully dissent.

No. 99–645. LUCKEY ET AL. *v.* BAXTER HEALTHCARE CORP. C. A. 7th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 183 F. 3d 730.

No. 99–692. DOE *v.* MARSHALL, ACTING ADMINISTRATOR OF THE DRUG ENFORCEMENT AGENCY, ET AL. C. A. 3d Cir. Motion of petitioner for protective order denied. Certiorari denied. Reported below: 182 F. 3d 903.

*Rehearing Denied*

No. 97–5401. WOOLLEY *v.* ZIMMERMAN, SUPERINTENDENT, PENNSYLVANIA STATE CORRECTIONAL INSTITUTION AT WAYMART, ET AL., 522 U. S. 892;

No. 98–1810. MCGINNIS *v.* ANCHORAGE SCHOOL DISTRICT ET AL., *ante*, p. 812;

No. 98–1881. LIU ET UX. *v.* SILVERMAN, CHAPTER 7 TRUSTEE OF THE ESTATE OF LIU, ET UX., *ante*, p. 815;

No. 98–1894. BUCKLEY *v.* CALIFORNIA COASTAL COMMISSION, *ante*, p. 816;

No. 98–1924. WOJCIECHOWSKI *v.* MONTEVIDEO PARTNERSHIP ET AL., *ante*, p. 817;

No. 98–1955. WOJCIECHOWSKI *v.* WALT DISNEY CONCERT HALL NO. 1 ET AL., *ante*, p. 819;

No. 98–1975. BUGGS ET VIR *v.* TISDALE ET AL., *ante*, p. 820;

No. 98–1982. LEE *v.* HAWAII, *ante*, p. 821;

No. 98–2031. KAHRE ET AL. *v.* INTERNATIONAL MONETARY FUND ET AL., *ante*, p. 823;

No. 98–2041. JEFFERSON *v.* UNITED STATES, *ante*, p. 824;

No. 98–2047. DITTLER *v.* ROBEY, *ante*, p. 824;

No. 98–2048. IN RE WALKER, *ante*, p. 808;

No. 98–7567. DAVIS *v.* MUROV ET AL., 525 U. S. 1182;

No. 98–8002. MARTINEZ *v.* TEXAS, *ante*, p. 825;

No. 98–8551. BEETS *v.* KAUTZKY, DIRECTOR, IOWA DEPARTMENT OF CORRECTIONS, *ante*, p. 825;

No. 98–9345. JOHNSON *v.* SAN BERNARDINO COUNTY ET AL., *ante*, p. 832;

No. 98–9444. CHHIM *v.* CITY OF HOUSTON ET AL., *ante*, p. 835;

No. 98–9492. VASQUEZ DEL ROSARIO *v.* RADLOFF ET AL., *ante*, p. 837;

No. 98–9585. WILLIAMS *v.* SCHRIRO, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 841;

No. 98–9606. COE *v.* BELL, WARDEN, *ante*, p. 842;

No. 98–9642. BISHOP *v.* ROMER, GOVERNOR OF COLORADO, ET AL., *ante*, p. 844;

No. 98–9742. MORRIS *v.* CITY OF BUFFALO, *ante*, p. 850;

No. 98–9789. MALLETT *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 853;

No. 98–9823. SPEED *v.* GEORGIA, *ante*, p. 855;

No. 98–9886. WASHINGTON *v.* DAVIS, WARDEN, ET AL., *ante*, p. 858;

No. 98–9892. JACKSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 858;

No. 98–9920. CUPIT *v.* UNITED STATES, *ante*, p. 860;

No. 98–9960. CHAPPELL *v.* EASLEY, ATTORNEY GENERAL OF NORTH CAROLINA, ET AL., *ante*, p. 862;

No. 98–9972. GRIFFIN *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 863;

No. 98–10028. WARD *v.* UNITED STATES, *ante*, p. 866;

No. 98–10035. WINZY *v.* LENSING, WARDEN, *ante*, p. 867;

No. 98–10046. TAYLOR *v.* SECURITIES AND EXCHANGE COMMISSION ET AL., *ante*, p. 867;

No. 99–60. Rainey Brothers Construction Co., Inc. *v.* Memphis and Shelby County Board of Adjustment et al., *ante*, p. 871;

No. 99–68. Frank *v.* Orange County Social Services Agency, *ante*, p. 871;

No. 99–103. Allender *v.* United States, *ante*, p. 873;

No. 99–132. Mulligan *v.* Associates Leasing, Inc., et al., *ante*, p. 923;

No. 99–173. Rosenthal *v.* United States et al., *ante*, p. 876;

No. 99–176. Dass *v.* Caplinger et al., *ante*, p. 876;

No. 99–245. Jackson *v.* Texas, *ante*, p. 930;

No. 99–276. Tiwari *v.* Board of Regents of the University System of Georgia et al., *ante*, p. 879;

No. 99–281. Young *v.* Montgomery City Council et al., *ante*, p. 879;

No. 99–310. Perry *v.* United States et al., *ante*, p. 932;

No. 99–316. Broadway *v.* Sinex et al., *ante*, p. 932;

No. 99–385. King *v.* Washington Adventist Hospital et al., *ante*, p. 933;

No. 99–5039. Schwartz *v.* City of Pittsburgh et al., *ante*, p. 882;

No. 99–5056. Alston *v.* Brown et al., *ante*, p. 883;

No. 99–5079. Thomas *v.* Moore, Secretary, Florida Department of Corrections, et al., *ante*, p. 884;

No. 99–5137. Sears *v.* Georgia, *ante*, p. 934;

No. 99–5176. Young *v.* United States, *ante*, p. 890;

No. 99–5196. Filiaggi *v.* Ohio, *ante*, p. 923;

No. 99–5214. King *v.* United States, *ante*, p. 892;

No. 99–5275. Masuoka *v.* Hawaii et al., *ante*, p. 895;

No. 99–5308. Rickerby *v.* Everett, Warden, *ante*, p. 897;

No. 99–5317. White *v.* Alaska, *ante*, p. 898;

No. 99–5363. Huettl *v.* Wisconsin, *ante*, p. 900;

No. 99–5402. Battle *v.* Bruton, Warden, et al., *ante*, p. 934;

No. 99–5404. Williams *v.* United States, *ante*, p. 902;

No. 99–5422. Millis *v.* United States, *ante*, p. 903;

No. 99–5509. Alston *v.* New York, *ante*, p. 908;

No. 99–5540. McBroom *v.* Bob-Boyd Lincoln Mercury, Inc., *ante*, p. 934;

No. 99–5550. Byrd *v.* Texas, *ante*, p. 910;

No. 99–5603. WEBB *v.* WEST, SECRETARY OF VETERANS AFFAIRS, *ante*, p. 912;

No. 99–5618. CURRO *v.* KELLY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY, ET AL., *ante*, p. 936;

No. 99–5644. WORKMAN *v.* BELL, WARDEN, *ante*, p. 913;

No. 99–5658. MORELAND *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 937;

No. 99–5678. MASON *v.* CORCORAN, WARDEN, ET AL., *ante*, p. 914;

No. 99–5782. LESLIE *v.* LITSCHER, SECRETARY, WISCONSIN DEPARTMENT OF CORRECTIONS, *ante*, p. 954;

No. 99–5985. SHEMONSKY *v.* UNITED STATES, *ante*, p. 956;

No. 99–6043. ALLEN *v.* UNITED STATES, *ante*, p. 943; and

No. 99–6087. ORTIZ *v.* UNITED STATES, *ante*, p. 944. Petitions for rehearing denied.

No. 98–2038. GREENE *v.* CITY OF MONTGOMERY, *ante*, p. 824. Motion of petitioner to present issues from prior related cases denied. Petition for rehearing denied.

## NOVEMBER 30, 1999

*Dismissal Under Rule 46*

No. 99–714. IRVINE ET AL. *v.* MURAD SKIN RESEARCH LABORATORIES, INC. C. A. 1st Cir. Certiorari dismissed under this Court's Rule 46.

## DECEMBER 1, 1999

*Dismissal Under Rule 46*

No. 99–5489. FIORENTINO *v.* UNITED STATES. C. A. 8th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 170 F. 3d 843.

*Miscellaneous Order*

No. 99–7144 (99A434). IN RE COOKS. 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 3, 1999

*Vacated and Remanded After Certiorari Granted*

No. 98–1904. UNITED STATES ET AL. *v.* WEATHERHEAD. C. A. 9th Cir. [Certiorari granted, 527 U. S. 1063.] Judgment vacated, and case remanded to the Court of Appeals with directions to order the vacation of the judgment of the United States District Court for the Eastern District of Washington and to dismiss the case as moot. JUSTICE SCALIA dissents.

DECEMBER 6, 1999

*Certiorari Dismissed*

No. 99–6491. COUSINO *v.* NOWICKI 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. Reported below: 181 F. 3d 100.

No. 99–6495. BABA *v.* NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 99–6705. BURGESS *v.* KITZHABER ET AL. Ct. App. Ore. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 161 Ore. App. 667, 984 P. 2d 959.

*Miscellaneous Orders*

No. D–2103. IN RE DISBARMENT OF MANEY. Disbarment entered. [For earlier order herein, see *ante*, p. 801.]

No. D–2105. IN RE DISBARMENT OF WARREN. Disbarment entered. [For earlier order herein, see *ante*, p. 802.]

No. D–2107. IN RE DISBARMENT OF BUCKLEY. Disbarment entered. [For earlier order herein, see *ante*, p. 925.]

No. D–2123. IN RE DISBARMENT OF ROMM. Stuart A. Romm, of Brockton, Mass., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring

him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2124. IN RE DISBARMENT OF KINANE. Daniel Edward Kinane, Jr., of Dayton, Ohio, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2125. IN RE DISBARMENT OF TESSEYMAN. Francis William Tesseyman, Jr., of West Seneca, 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–2126. IN RE DISBARMENT OF HANBERY. William Lee Hanbery, of Florence, Ala., 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–2127. IN RE DISBARMENT OF THOMAS. Gregory LeeAndrew Thomas, of Washington, D. C., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2128. IN RE DISBARMENT OF JACKSON. C. Michael Jackson, of Fort Myers, Fla., 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. 99M44. RANDALL *v.* WASS;

No. 99M45. TOLBERT ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE; and

No. 99M46. LOCAL 496, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA *v.* ALEXANDER ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 98–1701. UNITED STATES *v.* LOCKE, GOVERNOR OF WASHINGTON, ET AL.; and

No. 98–1706. INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS (INTERTANKO) *v.* LOCKE, GOVERNOR OF WASH-

INGTON, ET AL. C. A. 9th Cir. [Certiorari granted, 527 U. S. 1063.] Motion of Counties of Pierce, Mason, and Skagit to join brief *amici curiae* of Washington Counties of San Juan et al. denied.

No. 98–1828. VERMONT AGENCY OF NATURAL RESOURCES *v.* UNITED STATES EX REL. STEVENS. C. A. 2d Cir. [Certiorari granted, 527 U. S. 1034.] Motions for leave to file briefs as *amici curiae* filed by the following are granted: Federation of American Health Systems, FMC Corp., Friends of the Earth et al., Chamber of Commerce of the United States et al., Project on Government Oversight, National Employment Lawyers Association, Taxpayers Against Fraud, American Petroleum Institute et al., American Clinical Laboratory Association, American Medical Association et al., and Aerospace Industries Association of America, Inc.

No. 99–5. UNITED STATES *v.* MORRISON ET AL.; and

No. 99–29. BRZONKALA *v.* MORRISON ET AL. C. A. 4th Cir. [Certiorari granted, 527 U. S. 1068.] Motions of Association of the Bar of the City of New York, Equal Rights Advocates et al., Lawyers' Committee for Civil Rights Under Law et al., and Association of Trial Lawyers of America for leave to file briefs as *amici curiae* granted. Motion of the Solicitor General for divided argument granted.

No. 99–138. TROXEL ET VIR *v.* GRANVILLE. Sup. Ct. Wash. [Certiorari granted, 527 U. S. 1069.] Motion of Grandparents United for Children's Rights for leave to file a brief as *amicus curiae* granted.

No. 99–6126. MINFORD *v.* DOMALAKES, JUDGE, COURT OF COMMON PLEAS OF PENNSYLVANIA, SCHUYLKILL COUNTY, ET AL. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 949] denied.

No. 99–6444. PAVELETZ *v.* UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 27, 1999, 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. 99–6615. WILLIAMS *v.* TAYLOR, WARDEN. C. A. 4th Cir. [Certiorari granted, *ante*, p. 960.] Motion for appointment of

counsel granted, and it is ordered that Barbara L. Hartung, Esq., of Richmond, Va., be appointed to serve as counsel for petitioner in this case.

No. 99–6959. IN RE NEFF. Petition for writ of habeas corpus denied.

No. 99–6430. IN RE TAYLOR. Petition for writ of mandamus denied.

*Certiorari Granted*

No. 99–224. DUCKWORTH, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY, ET AL. *v.* FRENCH ET AL.; and

No. 99–582. UNITED STATES *v.* FRENCH ET AL. C. A. 7th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 178 F. 3d 437.

No. 99–5525. DICKERSON *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Paul G. Cassell, Esq., of Salt Lake City, Utah, is invited to brief and argue this case, as *amicus curiae*, in support of the judgment below. Reported below: 166 F. 3d 667.

*Certiorari Denied*

No. 99–388. NATIONAL ENGINEERING & CONTRACTING CO., INC. *v.* HERMAN, SECRETARY OF LABOR, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 715.

No. 99–394. BANK OF AMERICA CORP. ET AL. *v.* HERMAN, SECRETARY OF LABOR, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 174 F. 3d 424.

No. 99–405. HAY *v.* EVINS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 428.

No. 99–438. TRIVETTE ET UX., AS CO-ADMINISTRATORS OF THE ESTATE OF TRIVETTE, ET AL. *v.* NORTH CAROLINA BAPTIST HOSPITALS, INC. Sup. Ct. N. C. Certiorari denied. Reported below: 350 N. C. 299, 512 S. E. 2d 425.

No. 99–470. LANGFORD *v.* MAKITA CORPORATION OF AMERICA. C. A. 5th Cir. Certiorari denied. Reported below: 181 F. 3d 96.

No. 99–505. SALDANA SANCHEZ ET AL. *v.* VEGA SOSA ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 175 F. 3d 35.

No. 99–510. INDIANA HIGH SCHOOL ATHLETIC ASSN., INC., ET AL. *v.* WASHINGTON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 181 F. 3d 840.

No. 99–527. RYAN ET AL. *v.* POWELL ET AL.; and

No. 99–574. RIDGE, GOVERNOR OF PENNSYLVANIA, ET AL. *v.* POWELL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 189 F. 3d 387.

No. 99–542. JAWOROWSKI *v.* NEW YORK CITY TRANSIT AUTHORITY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 182 F. 3d 900.

No. 99–554. GOODYEAR TIRE & RUBBER CO. ET AL. *v.* VINSON. Sup. Ct. Ala. Certiorari denied. Reported below: 749 So. 2d 393.

No. 99–575. MORETON ROLLESTON, JR., LIVING TRUST, ET AL. *v.* ESTATE OF SIMMS, CHERRY, EXECUTOR. Ct. App. Ga. Certiorari denied. Reported below: 237 Ga. App. 733, 521 S. E. 2d 1.

No. 99–581. NORTH STAR STEEL CO. *v.* MIDAMERICAN ENERGY HOLDINGS CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 184 F. 3d 732.

No. 99–600. FLOWERS *v.* SEKI ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 176 F. 3d 482.

No. 99–601. INTERACTIVE TECHNOLOGIES, INC. *v.* PITTWAY CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 194 F. 3d 1337.

No. 99–606. WILLIS ET AL. *v.* GOODPASTER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 183 F. 3d 1231.

No. 99–610. KRAJICEK *v.* JUSTIN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 178 F. 3d 1294.

No. 99–616. WILLARS *v.* JONES, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–620. MORTERS *v.* CROEN & BARR ET AL. Ct. App. Wis. Certiorari denied. Reported below: 228 Wis. 2d 508, 597 N. W. 2d 773.

No. 99–622. LOFTUS *v.* SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 187 F. 3d 626.

No. 99–623. WELLS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 182 F. 3d 936.

No. 99–631. DERRYBERRY *v.* TENNESSEE VALLEY AUTHORITY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 916.

No. 99–637. NORVILLE ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 175 F. 3d 1133.

No. 99–638. ZORA ENTERPRISES, INC. *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 46 Mass. App. 1120, 708 N. E. 2d 154.

No. 99–644. HOYOS *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 172 F. 3d 882.

No. 99–649. RARDIN, WARDEN, ET AL. *v.* RICARDO. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 474.

No. 99–652. AGEE *v.* MORSE. C. A. 2d Cir. Certiorari denied.

No. 99–657. ALTHOFF ET UX. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 194 F. 3d 1336.

No. 99–676. TINSLEY *v.* EQUIFAX CREDIT INFORMATION SERVICES, INC., ET AL. C. A. D. C. Cir. Certiorari denied.

No. 99–686. HARGROVE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 350 N. C. 96, 533 S. E. 2d 465.

No. 99–700. LOPEZ *v.* HENDERSON, POSTMASTER GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 190 F. 3d 538.

No. 99–702. CAPITAL LEASING OF OHIO, INC., DBA BUDGET RENT-A-CAR OF COLUMBUS *v.* COLUMBUS MUNICIPAL AIRPORT AUTHORITY. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 916.

No. 99–716. RUIZ RIVERA *v.* DEPARTMENT OF EDUCATION ET AL. C. A. 1st Cir. Certiorari denied.

No. 99–717. SABAH SHIPYARD SDN. BHD. *v.* M/V HARBEL TAPPER, IN REM, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 178 F. 3d 400.

No. 99–726. CAUDILLO *v.* CONTINENTAL BANK/BANK OF AMERICA ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 191 F. 3d 455.

No. 99–734. GALLUZZI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 99–736. BENIN *v.* HOME SAVINGS OF AMERICA, FSB, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 173 F. 3d 859.

No. 99–738. WILHELMSEN *v.* WALSH ET AL. Sup. Ct. Alaska. Certiorari denied.

No. 99–757. CAMBRIDGE HOSPITAL *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. D. C. Cir. Certiorari denied.

No. 99–789. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–790. TINGLE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 183 F. 3d 719.

No. 99–793. CHAVES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 169 F. 3d 687.

No. 99–797. SOUTHWELL *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied. Reported below: 187 F. 3d 638.

No. 99–5608. CARAWAY *v.* TEXAS. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 99–6125. ZUKER *v.* ANDREWS. C. A. 1st Cir. Certiorari denied. Reported below: 181 F. 3d 81.

No. 99–6363. JAMES *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–6364. LASSAN *v.* BOLTON. C. A. 11th Cir. Certiorari denied.

No. 99–6396. PETTWAY *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 740 So. 2d 528.

No. 99–6402. BIVENS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 182 F. 3d 936.

No. 99–6403. BIGGINS *v.* WITHERS, ASSISTANT ATTORNEY GENERAL OF DELAWARE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 99–6407. MORRIS ET AL. *v.* BOROUGH OF RED BANK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 178 F. 3d 1280.

No. 99–6408. MARCICKY *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 99–6410. DELGADO MEDRANO *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–6411. MACK *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–6412. BEY *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 85 Ohio St. 3d 487, 709 N. E. 2d 484.

No. 99–6414. BASTON *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 85 Ohio St. 3d 418, 709 N. E. 2d 128.

No. 99–6419. HEMMERLE *v.* BAKST. C. A. 11th Cir. Certiorari denied. Reported below: 177 F. 3d 981.

No. 99–6420. HARPER *v.* RATELLE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–6423. HERRERA *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 993 P. 2d 854.

No. 99–6424. HOFFMAN *v.* CALIFORNIA FRANCHISE TAX BOARD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 513.

No. 99–6431. LINEHAN *v.* MINNESOTA ET AL. Sup. Ct. Minn. Certiorari denied. Reported below: 594 N. W. 2d 867.

No. 99–6435. KIEFFER *v.* RISKE. C. A. 8th Cir. Certiorari denied.

No. 99–6436. BLANTON *v.* ELO, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 186 F. 3d 712.

No. 99–6437. BROWNING *v.* LIBERTY MUTUAL INSURANCE CO. C. A. 8th Cir. Certiorari denied. Reported below: 178 F. 3d 1043.

No. 99–6438. SIMMONS *v.* PARRISH ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 185 F. 3d 875.

No. 99–6446. PRICE *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 99–6447. STEELE *v.* SENTINEL COMMUNICATIONS ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 743 So. 2d 510.

No. 99–6450. COUNCIL *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 335 S. C. 1, 515 S. E. 2d 508.

No. 99–6453. WESSINGER *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 736 So. 2d 162.

No. 99–6454. MOORE *v.* PAYLESS SHOE SOURCE, INC. C. A. 8th Cir. Certiorari denied. Reported below: 187 F. 3d 845.

No. 99–6456. MCLEAN *v.* MCGINNIS, SUPERINTENDENT, SOUTHPORT CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 189 F. 3d 461.

No. 99–6460. MILLER *v.* MILLER ET AL. C. A. 7th Cir. Certiorari denied.

No. 99–6463. AJIWOJU *v.* GRONNEMAN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 189 F. 3d 477.

No. 99–6468. ROBERTS *v.* WARD, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 176 F. 3d 489.

No. 99–6471. JOYNER *v.* INDUSTRIAL ACCIDENT BOARD OF DELAWARE. C. A. 3d Cir. Certiorari denied. Reported below: 185 F. 3d 862.

No. 99–6474. YANCY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–6477. MILLER *v.* PUGH ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 189 F. 3d 478.

No. 99–6478. WHITE *v.* RODRIGUEZ MENDOZA, CLERK, DISTRICT COURT OF TEXAS, TRAVIS COUNTY. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 467.

No. 99–6479. RE *v.* NEW MEXICO. C. A. 10th Cir. Certiorari denied. Reported below: 173 F. 3d 864.

No. 99–6481. OMOSEFUNMI *v.* FARQUHARSON. C. A. 1st Cir. Certiorari denied. Reported below: 187 F. 3d 622.

No. 99–6483. PONDER *v.* HILL, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. Sup. Ct. Ore. Certiorari denied.

No. 99–6487. ARROYO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 99–6489. BROWN *v.* ELLIS ET AL. C. A. 5th Cir. Certiorari denied.

No. 99–6490. CEGLAREK *v.* JOHN CRANE, INC. C. A. 7th Cir. Certiorari denied. Reported below: 182 F. 3d 921.

No. 99–6502. PALMER *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 271 Ga. 234, 517 S. E. 2d 502.

No. 99–6514. ANDERSON *v.* AULT, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 99–6517. WASHINGTON *v.* RUSSELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–6518. PALMER *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 263 App. Div. 2d 361, 693 N. Y. S. 2d 539.

No. 99–6567. MUCHEN *v.* HOPEWELL CENTER, INC. C. A. 8th Cir. Certiorari denied. Reported below: 187 F. 3d 642.

No. 99–6577. GIBBS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 408.

No. 99–6581. GUILLORY *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 468.

No. 99–6584. TENNER *v.* SCHOMIG, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 184 F. 3d 608.

No. 99–6587. WHITE *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT. C. A. 5th Cir. Certiorari denied.

No. 99–6597. SOUN *v.* LINDSEY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 474.

No. 99–6607. PORTER *v.* DEPARTMENT OF LABOR, BENEFITS REVIEW BOARD, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 176 F. 3d 484.

No. 99–6623. CHEW *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 150 N. J. 30, 695 A. 2d 1301, and 159 N. J. 183, 731 A. 2d 1070.

No. 99–6639. MARESCA *v.* IGNACIO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 99–6641. LUKENS *v.* OREGON STATE OFFICE FOR SERVICES TO CHILDREN AND FAMILIES. Ct. App. Ore. Certiorari denied. Reported below: 159 Ore. App. 680, 979 P. 2d 315.

No. 99–6655. WILLIAMS ET UX. *v.* TSAKOPOULOS INVESTMENTS ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 99–6661. TEMPLETON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–6683. HORNE *v.* COUGHLIN, COMMISSIONER, NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 191 F. 3d 244.

No. 99–6700. HAWKS *v.* CLARK, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–6707. BAUMER *v.* MELTON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 472.

No. 99–6710. PRICE *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 99–6720. ODOM *v.* STUBBLEFIELD, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–6725. MURRAY *v.* STUBBLEFIELD, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–6743. DEANGELIS *v.* WIDENER UNIVERSITY SCHOOL OF LAW ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 187 F. 3d 625.

No. 99–6763. WILLIAMS *v.* CLARK, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 99–6790. HELEM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 186 F. 3d 449.

No. 99–6795. ORLOV *v.* PALMATEER, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 474.

No. 99–6800. DEAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 176 F. 3d 492.

No. 99–6811. BARRETT *v.* BARRETT. Sup. Ct. Minn. Certiorari denied.

No. 99–6821. JACKSON *v.* TEXAS ELECTRIC UTILITY SERVICE CO. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 99–6833. SEXTON *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 631.

No. 99–6839. MOORE *v.* PONTE. C. A. 1st Cir. Certiorari denied. Reported below: 186 F. 3d 26.

No. 99–6849. KARALL *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 99–6852. MARTIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 192 F. 3d 130.

No. 99–6858. RANGLIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 190 F. 3d 541.

No. 99–6869. BURNETT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 188 F. 3d 519.

No. 99–6871. ANDERSON *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 50 M. J. 447.

No. 99–6876. SPEARS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 194 F. 3d 1307.

No. 99–6877. SANTOS-RIVIERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 183 F. 3d 367.

No. 99–6878. WILDER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 650.

No. 99–6880. KAM FAR LEE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 182 F. 3d 900.

No. 99–6881. MENSAH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–6882. MIDDLETON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 995 S. W. 2d 443.

No. 99–6884. SAUMANI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 476.

No. 99–6886. PALMER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 182 F. 3d 937.

No. 99–6889. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–6891. ALEMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 192 F. 3d 130.

No. 99–6893. WILLIAM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 470.

No. 99–6901. GREEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 216.

No. 99–6902. ESPARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 190 F. 3d 538.

No. 99–6904. HARPLE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 193 F. 3d 514.

No. 99–6906. ESCALANTI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 515.

No. 99–6910. GORDON *v.* UNITED STATES; and
No. 99–6947. BODDIE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 919.

No. 99–6911. HARRIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 999.

No. 99–6914. ESTEVEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 172 F. 3d 882.

No. 99–6922. CAIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 177 F. 3d 272.

No. 99–6923. SALGADO ROMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 94.

No. 99–6927. OGBONNA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 447.

No. 99–6930. JOHNSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 202 F. 3d 255.

No. 99–6932. JACOBS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 192 F. 3d 126.

No. 99–6934. MARSHALL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 99–6936. KING *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 188 F. 3d 509.

No. 99–6937. JOSEPH *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA. C. A. 11th Cir. Certiorari denied.

No. 99–6938. WEST *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 633.

No. 99–6942. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 633.

No. 99–6943. RAMOS-TORRES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 187 F. 3d 909.

No. 99–6944. YOUNG *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 202 F. 3d 276.

No. 99–6948. BATTLE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 188 F. 3d 519.

No. 99–6949. ANDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 192 F. 3d 130.

No. 99–6951. ROBBIO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 186 F. 3d 37.

No. 99–6952. SHORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 516.

No. 99–6956. MEACHUM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 182 F. 3d 923.

No. 99–6975. HONKEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 184 F. 3d 961.

No. 99–6978. MITCHELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 476.

No. 99–6984. BURKE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 187 F. 3d 638.

No. 99–678. CRANDALL *v.* WAGNER. Ct. App. Cal., 1st App. Dist. Motion of Legal Advocates for Children and Youth et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 71 Cal. App. 4th 524, 84 Cal. Rptr. 2d 48.

No. 99–5560. KLAT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 180 F. 3d 264.

*Rehearing Denied*

No. 98–8579. XIN HANG CHEN *v.* RAZ ET AL., 526 U. S. 1134;
No. 98–9465. RAPHAEL *v.* TEXAS, *ante*, p. 836;
No. 98–9645. CARTHANE *v.* FLORIDA, *ante*, p. 844;
No. 98–9883. CASIMIER *v.* UNITED STATES POSTAL SERVICE, *ante*, p. 858;
No. 98–9891. LLOYD *v.* UNITED STATES, *ante*, p. 858;
No. 99–217. HOFFMANN *v.* TWAMLEY ET AL., *ante*, p. 929;
No. 99–288. CARTER, PERSONAL REPRESENTATIVE OF THE ESTATE OF CARTER, DECEASED, AND AS NEXT FRIEND AND NATURAL AND LEGAL GUARDIAN OF CARTER ET AL. *v.* UNITED STATES, *ante*, p. 931;

No. 99–5045. TUCKER *v.* CAIN, WARDEN, *ante*, p. 882;

No. 99–5096. GREEN ET AL. *v.* CARVER STATE BANK ET AL., *ante*, p. 885;

No. 99–5097. GREEN ET AL. *v.* CARVER STATE BANK ET AL., *ante*, p. 885;

No. 99–5239. KOENIG *v.* HAGY ET AL., *ante*, p. 893;

No. 99–5259. IN RE COTNER, *ante*, p. 807;

No. 99–5394. ROBLYER *v.* PENNSYLVANIA DEPARTMENT OF CORRECTIONS ET AL., *ante*, p. 902;

No. 99–5410. IN RE MAXWELL, *ante*, p. 808;

No. 99–5514. COOPER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 908;

No. 99–5688. GRIGGER *v.* NEW YORK, *ante*, p. 914;

No. 99–5710. SAVIOR *v.* VENTURA, GOVERNOR OF MINNESOTA, ET AL., *ante*, p. 938;

No. 99–5765. MARION *v.* FORD MOTOR CREDIT, *ante*, p. 953;

No. 99–5777. BRENTWOOD *v.* BOEING CO., *ante*, p. 917;

No. 99–5849. WILLIAMS *v.* COMMUNITY BANK/NATIONSBANK, *ante*, p. 955;

No. 99–5850. CLARK *v.* NASSAU COUNTY, NEW YORK, *ante*, p. 940;

No. 99–5907. WALKER *v.* BONNET, LM, ET AL., *ante*, p. 971;

No. 99–5995. YURTIS *v.* PHIPPS, *ante*, p. 942;

No. 99–5998. COLYAR *v.* GILMAN, CONGRESSMAN, *ante*, p. 942; and

No. 99–6032. MARCELLO *v.* TOWN OF STETSON, MAINE, *ante*, p. 943. Petitions for rehearing denied.

No. 98–9496. CHAMBERS *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, 527 U. S. 1029 and 1059. Motion of petitioner for leave to file second petition for rehearing denied.

## DECEMBER 8, 1999

*Miscellaneous Order*

No. 99–7269 (99A475). IN RE ROSS. 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. 99–7181 (99A445). LONG *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS, JUSTICE GINSBURG, and JUSTICE BREYER would grant the application for stay of execution. Reported below: 189 F. 3d 469.

No. 99–7328 (99A487). FLEENOR *v.* ANDERSON, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted. Certiorari denied.

## DECEMBER 9, 1999

*Certiorari Denied*

No. 99–7270 (99A478). GRAHAM *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: 191 F. 3d 447.

No. 99–7368 (99A489). GRAHAM *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 before judgment denied.

## DECEMBER 13, 1999

*Dismissal Under Rule 46*

No. 98–1446. S & R COMPANY OF KINGSTON ET AL. *v.* LATONA TRUCKING, INC. C. A. 2d Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 159 F. 3d 80.

*Certiorari Granted—Vacated and Remanded*

No. 99–200. McCLURE ET AL. *v.* AMELKIN ET AL. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Los Angeles Police Dept.* v. *United Reporting Publishing Corp.*, *ante*, p. 32. Reported below: 168 F. 3d 893.

*Certiorari Dismissed*

No. 99–6663. CUNNINGHAM *v.* MORENO. 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. 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. 99M47. HOU HAWAIIANS ET AL. *v.* CAYETANO, GOVERNOR OF HAWAII, ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 99M48. SHEPPARD *v.* OHIO. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 108, Orig. NEBRASKA *v.* WYOMING ET AL. Motion of the Special Master for compensation and reimbursement of expenses granted, and the Special Master is awarded a total of $84,772.75 for the period June 1 through December 1, 1999, to be paid as follows: 34% by Nebraska, 34% by Wyoming, 5% by Colorado, 24% by the United States, and 3% by Basin Electric Power Cooperative. [For earlier order herein, see, *e. g.*, 527 U. S. 1033.]

No. 98–1288. VILLAGE OF WILLOWBROOK ET AL. *v.* OLECH. C. A. 7th Cir. [Certiorari granted, 527 U. S. 1067.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 98–1856. HILL ET AL. *v.* COLORADO ET AL. Sup. Ct. Colo. [Certiorari granted, 527 U. S. 1068.] Motion of the Solicitor Gen-

eral for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 98–1993. FLORIDA *v.* J. L. Sup. Ct. Fla. [Certiorari granted, *ante*, p. 963.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 98–2060. EDWARDS, WARDEN *v.* CARPENTER. C. A. 6th Cir. [Certiorari granted, *ante*, p. 985.] Motion for appointment of counsel granted, and it is ordered that J. Joseph Bodine, Jr., Esq., of Columbus, Ohio, be appointed to serve as counsel for respondent in this case.

No. 99–150. WAL-MART STORES, INC. *v.* SAMARA BROTHERS, INC. C. A. 2d Cir. [Certiorari granted, *ante*, p. 808.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of Payless ShoeSource, Inc., for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 99–6433. WRIGHT *v.* SOUTH DAKOTA. Ct. App. Colo. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1001] denied.

No. 99–6590. IN RE BROWN;
No. 99–7045. IN RE MANLEY; and
No. 99–7083. IN RE CAMPBELL. Petitions for writs of habeas corpus denied.

No. 99–721. IN RE DURBIN ET UX. Petition for writ of mandamus denied.

*Certiorari Granted*

No. 99–5716. CARTER *v.* UNITED STATES. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 185 F. 3d 863.

*Certiorari Denied*

No. 98–9676. F. B. *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 555 Pa. 661, 726 A. 2d 361.

No. 99–109. LONERGAN, AKA KOURY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 172 F. 3d 861.

No. 99–248. LOYD ET AL. *v.* ALABAMA DEPARTMENT OF CORRECTIONS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 176 F. 3d 1336.

No. 99–412. LOUISVILLE COUNTRY CLUB ET AL. *v.* WATTS, EXECUTIVE DIRECTOR, KENTUCKY COMMISSION ON HUMAN RIGHTS, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 178 F. 3d 1295.

No. 99–419. GEORGIA POWER CO. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 176 F. 3d 494.

No. 99–446. HINDI ET AL. *v.* TOSCO CORP. ET AL.; and

No. 99–551. SIMMONS ET AL. *v.* UNOCAL CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 177 F. 3d 755 and 187 F. 3d 648.

No. 99–461. WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY *v.* SWANKS. C. A. D. C. Cir. Certiorari denied. Reported below: 179 F. 3d 929.

No. 99–465. CITY OF WESTMINSTER ET AL. *v.* HERR ET AL.; and

No. 99–650. DAVIS, RENO & COURTNEY *v.* CITY OF WESTMINSTER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 177 F. 3d 839.

No. 99–532. SLICK ET AL. *v.* MCINTOSH. Sup. Ct. Ohio. Certiorari denied. Reported below: 85 Ohio St. 3d 465, 709 N. E. 2d 468.

No. 99–612. WYSONG LASER CO., INC., ET AL. *v.* VIDIMOS, INC. C. A. 7th Cir. Certiorari denied. Reported below: 179 F. 3d 1063.

No. 99–615. PERINI CORP. *v.* CITY OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 182 F. 3d 901.

No. 99–617. NEO GEN SCREENING, INC. *v.* NEW ENGLAND NEWBORN SCREENING PROGRAM, UNIVERSITY OF MASSACHUSETTS, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 187 F. 3d 24.

No. 99–624. CORSINI *v.* U-HAUL INTERNATIONAL, INC., ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 257 App. Div. 2d 441, 682 N. Y. S. 2d 578.

No. 99–625. JEWELL *v.* DALLAS INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 469.

No. 99–634. ANDERSON *v.* DALLAS AREA RAPID TRANSIT. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 265.

No. 99–635. SEPE *v.* MCDONNELL DOUGLAS CORP. C. A. 8th Cir. Certiorari denied. Reported below: 176 F. 3d 1113.

No. 99–639. CIRCLE INDUSTRIES USA, INC. *v.* PARKE CONSTRUCTION GROUP, INC. C. A. 2d Cir. Certiorari denied. Reported below: 183 F. 3d 105.

No. 99–643. WAREHAM EDUCATION ASSN. ET AL. *v.* MASSACHUSETTS LABOR RELATIONS COMMISSION ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 430 Mass. 81, 713 N. E. 2d 363.

No. 99–646. ROGAN *v.* EVANS. C. A. 1st Cir. Certiorari denied. Reported below: 175 F. 3d 75.

No. 99–647. FONTENOT ET AL. *v.* DUAL DRILLING CO. C. A. 5th Cir. Certiorari denied. Reported below: 179 F. 3d 969.

No. 99–648. MCGLOTHLIN *v.* CULLINGTON. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 989 S. W. 2d 449.

No. 99–660. MCDUFFIE, DBA D & M CONTRACTING CO. *v.* CITY OF JACKSONVILLE. C. A. 11th Cir. Certiorari denied. Reported below: 184 F. 3d 822.

No. 99–661. WILLMAN *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 920.

No. 99–665. IN RE MOTHERSHED. C. A. 10th Cir. Certiorari denied.

No. 99–691. HOCKADAY *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 689 So. 2d 1009.

No. 99–744. PREMIER GAMES, INC., ET AL. *v.* LOUISIANA ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 739 So. 2d 852.

No. 99–758. WENC *v.* CABLE NEWS NETWORK, INC., C/O TURNER BROADCASTING INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 178 F. 3d 1301.

No. 99–801. KAY *v.* SMYSER, UNITED STATES MAGISTRATE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 191 F. 3d 445.

No. 99–813. SANTOBELLO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 99–814. ALLEN ET AL. *v.* ENTERGY CORP. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 181 F. 3d 902.

No. 99–835. STEWART *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 185 F. 3d 112.

No. 99–5385. QUINTANA-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 263.

No. 99–5873. HICKOX ET UX. *v.* MLA, INC. Sup. Ct. Fla. Certiorari denied. Reported below: 733 So. 2d 516.

No. 99–5959. YOUNG *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 991 S. W. 2d 835.

No. 99–6503. SMITH *v.* SOUTH CAROLINA. Ct. App. S. C. Certiorari denied. Reported below: 329 S. C. 550, 495 S. E. 2d 798.

No. 99–6504. OCASIO *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 260 App. Div. 2d 256, 686 N. Y. S. 2d 706.

No. 99–6507. PRAVDA *v.* SARATOGA COUNTY, NEW YORK, ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 255 App. Div. 2d 717, 680 N. Y. S. 2d 705.

No. 99–6519. PLANTE *v.* SURPITSKI ET AL. C. A. 1st Cir. Certiorari denied.

No. 99–6520. PATTERSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 816.

No. 99–6521. SNIPES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 737 So. 2d 551.

No. 99–6522. STEWART *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 468.

No. 99–6528. LANTZ *v.* ARCTIC ORION FISHERIES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 173 F. 3d 860.

No. 99–6538. GARDNER ET AL. *v.* NISSAN MOTOR ACCEPTANCE CORP. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 99–6540. MOORE *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 182 F. 3d 935.

No. 99–6543. WILLIAMS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 190 F. 3d 538.

No. 99–6555. KIDWELL *v.* SHAWNEE COUNTY BOARD OF COUNTY COMMISSIONERS. C. A. 10th Cir. Certiorari denied. Reported below: 189 F. 3d 478.

No. 99–6557. LOPEZ *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 99–6561. WELLS *v.* LAMSON & SESSIONS CO. ET AL. C. A. 8th Cir. Certiorari denied.

No. 99–6562. CLARK *v.* LAND ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 467.

No. 99–6563. CARMELO JIMENEZ *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 99–6564. MELTON *v.* VASQUEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 178 F. 3d 1300.

No. 99–6565. JILES *v.* SPARKMAN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 99–6658. BUBENCHIK *v.* OHIO. Ct. App. Ohio, Stark County. Certiorari denied.

No. 99–6748. ROONEY *v.* KELLY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 99–6767. THOMAS *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 99–6804. HATCHER *v.* OFFICE OF COMPLIANCE. C. A. Fed. Cir. Certiorari denied. Reported below: 194 F. 3d 1335.

No. 99–6808. GENCO *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–6819. MAXWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 424.

No. 99–6834. O'DONNELL *v.* BRILL, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 188 F. 3d 519.

No. 99–6850. JAMES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 430.

No. 99–6866. CAMERON *v.* GARRAGHTY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1282.

No. 99–6874. SCHOMAKER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 99–6919. GERMOSEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 165 F. 3d 15.

No. 99–6920. ROGERS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–6929. RODRIGUEZ-ESTUPINAN *v.* UNITED STATES; and
No. 99–6931. MUNERA-URIBE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 192 F. 3d 126.

No. 99–6945. BERGER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 646.

No. 99–6950. CARDENAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 481.

No. 99–6960. TATUM *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 183 F. 3d 875.

No. 99–6981. PASTRANA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 476.

No. 99–6983. OFORHA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 188 F. 3d 505.

No. 99–6989. MIXON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 185 F. 3d 875.

No. 99–7007. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 183 F. 3d 1306.

No. 99–7010. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 193 F. 3d 516.

No. 99–7014. ANDERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 182 F. 3d 921.

No. 99–7019. ZAPATA-ROBLES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 516.

No. 99–7026. DEWITT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 99–7032. DUNMORE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 99–7069. THOMAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 83 F. 3d 259.

No. 99–422. SPIEGEL *v.* PROBATE PROCEEDING, WILL OF WARSASKI, DECEASED. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Motion of Concerned Illinois Lawyers and Law Professors for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 258 App. Div. 2d 379, 685 N. Y. S. 2d 684.

No. 99–628. ANDREWS ET AL. *v.* VERMONT DEPARTMENT OF EDUCATION ET AL. Sup. Ct. Vt. Motion of Christian Legal Society et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 169 Vt. 310, 738 A. 2d 539.

No. 99–5546. SHISINDAY *v.* TEXAS. Ct. App. Tex., 14th Dist. Motion of petitioner to strike brief in opposition denied. Certiorari denied.

*Rehearing Denied*

No. 98–9268. ALEXANDER *v.* CATOE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 830;

No. 98–9570. NAGY *v.* UNITED STATES, *ante*, p. 840;

No. 98–9698. ROBINSON *v.* UNITED STATES, *ante*, p. 848;

No. 99–355. WENZEL *v.* INTERNATIONAL BUSINESS MACHINES CORP., *ante*, p. 952;

No. 99–526. MCCRAY *v.* NATIONAL LABOR RELATIONS BOARD, *ante*, p. 968;

No. 99–5016. WOODS *v.* UNITED STATES, *ante*, p. 881;

No. 99–5081. MCMANUS *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante*, p. 884;

No. 99–5230. STEDMAN *v.* UNITED STATES, *ante*, p. 893;

No. 99–5373. CHAMBERS *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 969;

No. 99–6010. FLANAGAN ET UX. *v.* ARNAIZ ET AL., *ante*, p. 973; and

No. 99–6078. WILBORN, AKA ADAMS *v.* HARVARD ET AL., *ante*, p. 975. Petitions for rehearing denied.

## DECEMBER 14, 1999

*Certiorari Denied*

No. 99–817 (99A437). FELDER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS, JUSTICE GINSBURG, and JUSTICE BREYER would grant the application for stay of execution. Reported below: 180 F. 3d 206.

## DECEMBER 15, 1999

*Rehearing Denied*

No. 99–817. FELDER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, this page. Petition for rehearing denied. JUSTICE SCALIA took no part in the consideration or decision of this petition.

## DECEMBER 28, 1999

*Dismissal Under Rule 46*

No. 99–704. E. I. DU PONT DE NEMOURS & CO. *v.* MATSUURA, INDIVIDUALLY AND DBA ORCHID ISLE NURSERY, ET AL. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 179 F. 3d 1131.

JANUARY 5, 2000

*Miscellaneous Order*

No. 99-7618 (99A545). IN RE JOHNSON. 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.

JANUARY 7, 2000

*Certiorari Granted*

No. 99–387. RALEIGH, CHAPTER 7 TRUSTEE FOR THE ESTATE OF STOECKER *v.* ILLINOIS DEPARTMENT OF REVENUE. C. A. 7th Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, February 22, 2000. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, March 23, 2000. 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 10, 2000. This Court's Rule 29.2 does not apply. Reported below: 179 F. 3d 546.

No. 99–579. HARRIS TRUST AND SAVINGS BANK, AS TRUSTEE FOR THE AMERITECH PENSION TRUST, ET AL. *v.* SALOMON SMITH BARNEY INC. ET AL. C. A. 7th Cir. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, February 22, 2000. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, March 23, 2000. 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 10, 2000. This Court's Rule 29.2 does not apply. Reported below: 184 F. 3d 646.

No. 99–7000. RAMDASS *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, February 22, 2000. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, March 23, 2000. 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 10, 2000.

This Court's Rule 29.2 does not apply. Reported below: 187 F. 3d 396.

JANUARY 10, 2000

*Certiorari Dismissed*

No. 99–6704. BURGESS *v.* BALDWIN, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. Ct. App. Ore. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 161 Ore. App. 667, 984 P. 2d 959.

No. 99–6797. FREDERICK *v.* GUDMANSON, WARDEN. 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.

No. 99–6818. LYLE *v.* THOMPSON 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: 187 F. 3d 636.

No. 99–6820. RAWLINS *v.* LEE. 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. Reported below: 173 F. 3d 861.

No. 99–6909. FABIAN *v.* PROGRESSIVE AMERICAN INSURANCE CO. ET AL. C. A. 11th 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: 189 F. 3d 485.

No. 99–6940. TURNER *v.* INTERNAL REVENUE SERVICE. 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. Reported below: 181 F. 3d 91.

No. 99–7137. ORIAKHI *v.* UNITED STATES. 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. Reported below: 181 F. 3d 93.

*Miscellaneous Orders*

No. 99A464. CHIINGIRIAN *v.* UNITED STATES. Application for release pending appeal, addressed to JUSTICE SOUTER and referred to the Court, denied.

No. D–1956. IN RE DISBARMENT OF BLEECKER. Disbarment entered. [For earlier order herein, see 524 U. S. 902.]

No. D–2106. IN RE DISBARMENT OF PIPES. Disbarment entered. [For earlier order herein, see *ante*, p. 925.]

No. D–2108. IN RE DISBARMENT OF PASSALACQUA. Disbarment entered. [For earlier order herein, see *ante*, p. 925.]

No. D–2109. IN RE DISBARMENT OF EL-AMIN. Disbarment entered. [For earlier order herein, see *ante*, p. 948.]

No. D–2110. IN RE DISBARMENT OF MORGENSTERN. Disbarment entered. [For earlier order herein, see *ante*, p. 948.]

No. D–2112. IN RE DISBARMENT OF ELKINS. Disbarment entered. [For earlier order herein, see *ante*, p. 961.]

No. D–2115. IN RE DISBARMENT OF JACKSON. Disbarment entered. [For earlier order herein, see *ante*, p. 961.]

No. D–2117. IN RE DISBARMENT OF BESSEY. Disbarment entered. [For earlier order herein, see *ante*, p. 983.]

No. D–2118. IN RE DISBARMENT OF BROWN. Disbarment entered. [For earlier order herein, see *ante*, p. 983.]

No. D–2119. IN RE DISBARMENT OF CULLEN. Disbarment entered. [For earlier order herein, see *ante*, p. 984.]

No. D–2121. IN RE DISBARMENT OF WECHSLER. Disbarment entered. [For earlier order herein, see *ante*, p. 984.]

No. D–2129. IN RE DISBARMENT OF HORN. Jerry L. Horn, of Lexington, Ky., 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–2130. IN RE DISBARMENT OF MALERBA. Robert F. Malerba, of Huntington, 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–2131. IN RE DISBARMENT OF ZEEGERS. Donna Lee Zeegers, of Manchester, Me., 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–2132. IN RE DISBARMENT OF GRINDLE. B. Dean Grindle, Jr., of Dahlonega, Ga., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2133. IN RE DISBARMENT OF PHILOMENA. James A. Philomena, of Canfield, Ohio, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2134. In re Disbarment of Groskin. Lawrence J. Groskin, of Tuxedo Park, 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–2135. In re Disbarment of Kuhlman. Jack Frank Kuhlman, of Hinsdale, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2136. In re Disbarment of Miller. Steven G. Miller, of Junction City, Ore., 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. 99M49. Cowhig *v.* Caldera, Secretary of the Army. Motion of petitioner for leave to proceed as a veteran denied.

No. 99M51. Pryor *v.* Westmoreland Coal Co. et al.;
No. 99M52. Williams *v.* East Coast Truck Lines;
No. 99M54. Jancuk *v.* Donofrio, Judge, et al.; and
No. 99M55. Fielitz *v.* Fielitz et al. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 99–5525. Dickerson *v.* United States. C. A. 4th Cir. [Certiorari granted, *ante*, p. 1045.] Motion for appointment of counsel granted, and it is ordered that James W. Hundley, Esq., of Fairfax, Va., be appointed to serve as counsel for petitioner in this case.

No. 99–6088. In re Tyler. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 984] denied.

No. 99–6093. In re Tyler et al. C. A. 8th Cir. Motion of petitioners for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 983] denied.

No. 99–6905. Friend *v.* Reno, Attorney General, et al. C. A. 9th Cir.; and
No. 99–7180. Stevens *v.* Michigan. Sup. Ct. Mich. Motions of petitioners for leave to proceed *in forma pauperis* denied.

Petitioners are allowed until January 31, 2000, 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. 99–7086. IN RE NANCE;
No. 99–7222. IN RE MAYES;
No. 99–7303. IN RE CAMPBELL;
No. 99–7332. IN RE SPENCER;
No. 99–7362. IN RE WARREN;
No. 99–7366. IN RE RAMIREZ VELA;
No. 99–7404. IN RE YOUNGBEAR; and
No. 99–7430. IN RE WILLIAMS. Petitions for writs of habeas corpus denied.

No. 99–7631 (99A548). IN RE THOMAS. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

No. 99–6601. IN RE MROCH;
No. 99–6671. IN RE CANTY; and
No. 99–7023. IN RE WARREN. Petitions for writs of mandamus denied.

*Certiorari Denied*

No. 99–201. PEREZ *v.* O'SULLIVAN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 99–269. NEW YORK ET AL. *v.* SENECA NATION OF INDIANS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 178 F. 3d 95.

No. 99–359. LANDRY ET AL. *v.* REILLY, ATTORNEY GENERAL OF MASSACHUSETTS, ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 429 Mass. 336, 709 N. E. 2d 1085.

No. 99–380. VIRGINIA ET AL. *v.* COLLINS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 924.

No. 99–395. ARMSTRONG *v.* ACCREDITING COUNCIL FOR CONTINUING EDUCATION & TRAINING, INC., ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 168 F. 3d 1362 and 177 F. 3d 1036.

No. 99–399. ARIZONA *v.* FLANNIGAN. Ct. App. Ariz. Certiorari denied. Reported below: 194 Ariz. 150, 978 P. 2d 127.

No. 99–431. ATLANTIC CITY POLICE DEPARTMENT *v.* HURLEY. C. A. 3d Cir. Certiorari denied. Reported below: 174 F. 3d 95.

No. 99–439. NATURE'S DAIRY ET AL. *v.* GLICKMAN, SECRETARY OF AGRICULTURE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 429.

No. 99–448. ENSCO OFFSHORE CO. *v.* SMITH. C. A. 5th Cir. Certiorari denied. Reported below: 181 F. 3d 97.

No. 99–466. CITY OF LOS ANGELES ET AL. *v.* DEPARTMENT OF TRANSPORTATION ET AL.; and

No. 99–500. AIRPORTS COUNCIL INTERNATIONAL-NORTH AMERICA *v.* DEPARTMENT OF TRANSPORTATION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 165 F. 3d 972.

No. 99–484. ROBERTS *v.* OHIO. Ct. App. Ohio, Guernsey County. Certiorari denied.

No. 99–489. HERNDON *v.* SUNSERVICE, A DIVISION OF SUN MICROSYSTEMS, INC. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 867.

No. 99–501. DETROIT AUTO AUCTION *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 916.

No. 99–520. VISITING NURSE SERVICES OF WESTERN MASSACHUSETTS, INC. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 177 F. 3d 52.

No. 99–537. HILL, WARDEN, ET AL. *v.* RUMBLES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 1064.

No. 99–540. BARTELS ET AL. *v.* RILEY, SECRETARY OF EDUCATION, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 483.

No. 99–547. PALOMAR POMERADO HEALTH SYSTEM *v.* BONTA, DIRECTOR, CALIFORNIA DEPARTMENT OF HEALTH SERVICES, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 180 F. 3d 1104.

No. 99–548. FALBAUM ET AL. *v.* LESLIE FAY COS., INC. C. A. 2d Cir. Certiorari denied. Reported below: 182 F. 3d 899.

No. 99–558. READING & BATES CORP. ET AL. *v.* STIER; and No. 99–770. STIER *v.* READING & BATES CORP. ET AL. Sup. Ct. Tex. Certiorari denied. Reported below: 992 S. W. 2d 423.

No. 99–560. WITTER ET AL. *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 5th Cir. Certiorari denied.

No. 99–571. JOHNSON ET AL. *v.* NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL–CIO. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 1071 and 185 F. 3d 867.

No. 99–576. L. A. DEVELOPMENT *v.* CITY OF SHERWOOD. Ct. App. Ore. Certiorari denied. Reported below: 159 Ore. App. 125, 977 P. 2d 392.

No. 99–597. MINNESOTA DEPARTMENT OF REVENUE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 184 F. 3d 725.

No. 99–607. GOODMAN *v.* TEMPLE SHIR AMI, INC., ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 737 So. 2d 1077.

No. 99–642. OREGON LABORERS-EMPLOYERS HEALTH AND WELFARE FUND ET AL. *v.* PHILIP MORRIS, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 957.

No. 99–651. FIORIGLIO *v.* CITY OF ATLANTIC CITY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 185 F. 3d 861.

No. 99–653. LORAL FAIRCHILD CORP. *v.* SONY CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 181 F. 3d 1313.

No. 99–662. SHOEN ET AL. *v.* SHOEN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 176 F. 3d 1150.

No. 99–663. PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION *v.* NIGRO, TRUSTEE, ESTATE OF TRI-STATE CLINICAL LABORATORIES, INC. C. A. 3d Cir. Certiorari denied. Reported below: 178 F. 3d 685.

No. 99–666. LRC ELECTRONICS, INC. *v.* JOHN MEZZALINGUA ASSOCIATES, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 194 F. 3d 1337.

No. 99–668. SHAW *v.* AUTOZONE, INC. C. A. 7th Cir. Certiorari denied. Reported below: 180 F. 3d 806.

No. 99–673. GMA ACCESSORIES, INC. *v.* GOOTNICK ENTERPRISES, INC., DBA IT'S ALL GREEK TO ME CORP. C. A. 2d Cir. Certiorari denied. Reported below: 181 F. 3d 82.

No. 99–674. WEEDEN ET UX. *v.* AUTO WORKERS CREDIT UNION. C. A. 6th Cir. Certiorari denied. Reported below: 173 F. 3d 857.

No. 99–683. BRIERLY, ADMINISTRATOR OF THE ESTATE OF BRIERLY, DECEASED *v.* ALUSUISSE FLEXIBLE PACKAGING, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 184 F. 3d 527.

No. 99–684. VINCENT *v.* DELTA AIRLINES, INC., ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–687. ORTHOFIX S. R. L. ET AL. *v.* EBI MEDICAL SYSTEMS, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 181 F. 3d 446.

No. 99–688. SANCHEZ, NEXT FRIEND OF SANCHEZ *v.* BACA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 182 F. 3d 933.

No. 99–693. LICHTIG *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–695. WILLIAMSON ET AL. *v.* CHICAGO TRANSIT AUTHORITY. C. A. 7th Cir. Certiorari denied. Reported below: 185 F. 3d 792.

No. 99–698. HOY, GUARDIAN FOR BROWN *v.* SIMPSON, SHERIFF OF LOUDOUN COUNTY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 182 F. 3d 908.

No. 99–701. WOLK *v.* UNUM LIFE INSURANCE OF AMERICA. C. A. 3d Cir. Certiorari denied. Reported below: 186 F. 3d 352.

No. 99–705. BATISTE ET AL. *v.* ISLAND RECORDS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 179 F. 3d 217.

No. 99–706. CANTY *v.* LARHETTE ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 201 F. 3d 426.

No. 99–708. HAMANN *v.* BIO-RAD LABORATORIES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 925.

No. 99–709. PENNSYLVANIA *v.* WILLIAMS. Sup. Ct. Pa. Certiorari denied. Reported below: 557 Pa. 285, 733 A. 2d 593.

No. 99–710. SHEPLER *v.* EVANS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 188 F. 3d 519.

No. 99–711. ORTIZ ET UX. *v.* COUNTY OF LOS ANGELES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 648.

No. 99–713. SMITH *v.* BOARD OF TRUSTEES FOR THE OKOLONA MUNICIPAL SEPARATE SCHOOL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 190 F. 3d 538.

No. 99–715. RASH *v.* RASH. C. A. 11th Cir. Certiorari denied. Reported below: 173 F. 3d 1376.

No. 99–718. CARRILLO *v.* ACF INDUSTRIES, INC. Sup. Ct. Cal. Certiorari denied. Reported below: 20 Cal. 4th 1158, 980 P. 2d 386.

No. 99–720. ALCAN ALUMINUM CORP. *v.* PRUDENTIAL ASSURANCE CO. LTD. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 173 F. 3d 859.

No. 99–722. CASINO VENTURES, INC. *v.* STEWART, CHIEF, SOUTH CAROLINA LAW ENFORCEMENT DIVISION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 183 F. 3d 307.

No. 99–723. METRO COMMUNICATIONS CO. ET AL. *v.* AMERITECH CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 916.

No. 99–724. LOUIS ET AL. *v.* GRANT, TRUSTEE. C. A. 11th Cir. Certiorari denied. Reported below: 181 F. 3d 108.

No. 99–727. TENG LI-ANN LEE *v.* CITY OF RANCHO PALOS VERDES ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–728. CENTRAL MAINE POWER CO. *v.* MAINE PUBLIC UTILITIES COMMISSION. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 734 A. 2d 1120.

No. 99–730. PENNSYLVANIA *v.* LOOMIS. Super. Ct. Pa. Certiorari denied. Reported below: 737 A. 2d 1275.

No. 99–732. WEBER *v.* STRIPPIT, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 186 F. 3d 907.

No. 99–733. BEVERLY ENTERPRISES, INC., ET AL. *v.* TRUMP ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 182 F. 3d 183.

No. 99–735. SHIPLETT *v.* NATIONAL RAILROAD PASSENGER CORPORATION, DBA AMTRAK. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 918.

No. 99–737. MOSLEY *v.* HALTER MARINE GROUP. C. A. 5th Cir. Certiorari denied. Reported below: 190 F. 3d 537.

No. 99–740. PHILLIPS *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 779 So. 2d 257.

No. 99–743. MCBURNEY *v.* JEREMIAH. Sup. Ct. R. I. Certiorari denied. Reported below: 735 A. 2d 212.

No. 99–745. SCANLON *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 237 Ga. App. 362, 514 S. E. 2d 876.

No. 99–749. LOT$OFF CORP. *v.* CHASE MANHATTAN BANK, N. A. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 247.

No. 99–750. TAKAHASHI *v.* PHILLIPS ET AL. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 99–752. PENNSYLVANIA *v.* COLLAZO. Super. Ct. Pa. Certiorari denied. Reported below: 737 A. 2d 1270.

No. 99–753. ABBOTT LABORATORIES *v.* GENEVA PHARMACEUTICALS, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 182 F. 3d 1315.

No. 99–754. FORMAN *v.* REGAL INSURANCE CO. Sup. Ct. Va. Certiorari denied.

No. 99–755. SNYDER *v.* O'BANNON, GOVERNOR AND CHIEF EXECUTIVE OF INDIANA. C. A. 7th Cir. Certiorari denied. Reported below: 191 F. 3d 456.

No. 99–759. ROACH *v.* ROACH. Ct. App. Ga. Certiorari denied. Reported below: 237 Ga. App. 264, 514 S. E. 2d 44.

No. 99–760. TAYLOR *v.* SLICK, EXECUTOR OF THE ESTATE OF BALLANTINE, DECEASED. C. A. 3d Cir. Certiorari denied. Reported below: 178 F. 3d 698.

No. 99–761. WILLIS *v.* CALIFORNIA STATE BAR. Sup. Ct. Cal. Certiorari denied.

No. 99–762. TORRES *v.* MCLAUGHLIN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 163 F. 3d 169.

No. 99–763. CYGAN *v.* MICHIGAN DEPARTMENT OF THE TREASURY. Ct. App. Mich. Certiorari denied.

No. 99–764. KRIDEL *v.* FLORIDA PUBLIC EMPLOYEES RELATIONS COMMISSION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 180 F. 3d 269.

No. 99–767. YORK PRODUCTS, INC., ET AL. *v.* LRV ACQUISITION CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 215 F. 3d 1343.

No. 99–768. N. A. S. HOLDINGS, INC. *v.* PAFUNDI. Sup. Ct. Vt. Certiorari denied. Reported below: 169 Vt. 437, 736 A. 2d 780.

No. 99–769. WHITE *v.* SMI OF PATTISON AVENUE, L. P., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 191 F. 3d 446.

No. 99–771. PENNSYLVANIA *v.* LARSON. Super. Ct. Pa. Certiorari denied. Reported below: 734 A. 2d 436.

No. 99–773. DLUGOSZ *v.* SCARANO, JUDGE, SARATOGA COUNTY COURT, ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 255 App. Div. 2d 747, 681 N. Y. S. 2d 120.

No. 99–777. UNITED FARMERS PLANT FOOD, INC., DBA FARMERS AG CENTER, INC. *v.* LEBANON CHEMICAL CORP., DBA LEBANON SEABOARD CORP. C. A. 8th Cir. Certiorari denied. Reported below: 179 F. 3d 1095.

No. 99–778. BAJA *v.* DUCHARME, SUPERINTENDENT, WASHINGTON STATE REFORMATORY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 1075.

No. 99–787. ROGERS *v.* ADMINISTRATOR OF VETERANS ADMINISTRATION HOSPITAL ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–791. LABORERS LOCAL 17 HEALTH AND BENEFIT FUND ET AL. *v.* PHILIP MORRIS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 191 F. 3d 229.

No. 99–807. SPIEGEL *v.* DESROSIERS ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 302 Ill. App. 3d 1095, 746 N. E. 2d 912.

No. 99–811. FLOYD *v.* FEDERAL COMMUNICATIONS COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 194 F. 3d 173.

No. 99–819. HOWARD *v.* NEW YORK TIMES CO. C. A. 2d Cir. Certiorari denied. Reported below: 182 F. 3d 899.

No. 99–820. LAWSON *v.* NEW YORK. County Ct., Erie County, N. Y. Certiorari denied.

No. 99–825. LEWIS, PERSONAL REPRESENTATIVE OF THE ESTATE OF LEWIS, DECEASED *v.* LOCAL 382, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL–CIO). Sup. Ct. S. C. Certiorari denied. Reported below: 335 S. C. 562, 518 S. E. 2d 583.

No. 99–831. GAIL M., FKA GAIL L. *v.* JEROME E. M. Ct. App. Wis. Certiorari denied. Reported below: 229 Wis. 2d 253, 599 N. W. 2d 666.

No. 99–832. HANNA *v.* FARMON, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 647.

No. 99–839. HOLLEY *v.* WEST, SECRETARY OF VETERANS AFFAIRS. C. A. 3d Cir. Certiorari denied.

No. 99–842. SCHLUNEGER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 184 F. 3d 1154.

No. 99–844. BROCKMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 183 F. 3d 891.

No. 99–847. ALBANY INSURANCE CO. *v.* BANCO MEXICANO, S. A. C. A. 2d Cir. Certiorari denied. Reported below: 182 F. 3d 898.

No. 99–852. NEAL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 187 F. 3d 639.

No. 99–875. PELULLO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 185 F. 3d 861.

No. 99–876. WILBURN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 190 F. 3d 541.

No. 99–877. KENNEDY *v.* GOLDIN, ADMINISTRATOR, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 184 F. 3d 824.

No. 99–889. NEWSPAPER AND MAIL DELIVERERS UNION OF NEW YORK AND VICINITY *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 250 App. Div. 2d 207, 683 N. Y. S. 2d 488.

No. 99–891. WILSON *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 191 F. 3d 462.

No. 99–909. LUKACS *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 89.

No. 99–911. VEY *v.* THE UNIVERSE ET AL. C. A. 3d Cir. Certiorari denied.

No. 99–945. PULLMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 187 F. 3d 816.

No. 99–947. INSURANCE CONSULTANTS OF KNOX, INC., ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 187 F. 3d 755.

No. 99–975. AKSELRAD *v.* CITY OF PHILADELPHIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 187 F. 3d 625.

No. 99–5140. SHIROSAKI *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 194 F. 3d 175.

No. 99–5320. VASQUEZ-CHAMORRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 176 F. 3d 479.

No. 99–5331. MORA-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 262.

No. 99–5467. BUSBY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 990 S. W. 2d 263.

No. 99–5477. SIMPSON *v.* MATESANZ, SUPERINTENDENT, BAY STATE CORRECTIONAL CENTER. C. A. 1st Cir. Certiorari denied. Reported below: 175 F. 3d 200.

No. 99–5503. TEAGNE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1288.

No. 99–5561. MILLS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 161 F. 3d 1273.

No. 99–5578. ROBINSON *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 554 Pa. 293, 721 A. 2d 344.

No. 99–5599. SUMNER *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 194 F. 3d 1330.

No. 99–5737. VALDEZ *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 99–5741. PIRELA *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 556 Pa. 32, 726 A. 2d 1026.

No. 99–5811. BRIGGS *v.* DALKON SHIELD CLAIMANTS TRUST. C. A. 4th Cir. Certiorari denied. Reported below: 166 F. 3d 331.

No. 99–5813. MCCLOUD *v.* COMMUNITY HOSPITAL ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 174 F. 3d 202.

No. 99–5881. OROZCO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 160 F. 3d 1309.

No. 99–5915. ELDRIDGE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 99–6062. DAVIS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 724 A. 2d 1163.

No. 99–6070. CHAMBERLAIN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 998 S. W. 2d 230.

No. 99–6206. CATHEY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 992 S. W. 2d 460.

No. 99–6251. RAMIREZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 99–6293. BLOUNT *v.* UNITED STATES; and
No. 99–6309. KIMBLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 178 F. 3d 1163.

No. 99–6307. LOVELL *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 984 P. 2d 382.

No. 99–6330. MILLER *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 702 N. E. 2d 1053.

No. 99–6342. RODRIGUEZ-ORTIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 929.

No. 99–6353. WELLINGTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 482.

No. 99–6374. HOWERIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 175 F. 3d 1304.

No. 99–6422. FORD *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–6556. KELLOGG *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 94 Wash. App. 1003.

No. 99–6566. MOSLEY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 99–6568. ESTRADA *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–6570. GADSON *v.* LEVITT, CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION. C. A. D. C. Cir. Certiorari denied.

No. 99–6574. HOLMES *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 99–6575. HENDERSON *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 271 Ga. 264, 517 S. E. 2d 61.

No. 99–6576. HUGHES *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 735 So. 2d 238.

No. 99–6591. CALDWELL *v.* PHILLIPS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–6594. AUCHMUTY *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 736 So. 2d 1200.

No. 99–6595. SINGLETON *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. Sup. Ct. Ark. Certiorari denied. Reported below: 338 Ark. 135, 992 S. W. 2d 768.

No. 99–6596. PARKER *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 350 N. C. 411, 516 S. E. 2d 106.

No. 99–6598. RHINE *v.* BOONE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 182 F. 3d 1153.

No. 99–6610. WOODRESS *v.* WOODRESS ET AL. C. A. 7th Cir. Certiorari denied.

No. 99–6616. MULDOON *v.* DOME SHEET METAL, INC., ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 429 Mass. 1005, 708 N. E. 2d 657.

No. 99–6621. COOPER *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 151 N. J. 326, 700 A. 2d 306, and 159 N. J. 55, 731 A. 2d 1000.

No. 99–6622. ROBERTS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 744 So. 2d 965.

No. 99–6634. PHILLIPS *v.* GARRISON ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–6644. TRAVIS *v.* PRUNTY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 475.

No. 99–6646. YOUNG *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–6648. WAMRE *v.* NORTH DAKOTA; and
No. 99–6649. WAMRE *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 599 N. W. 2d 268.

No. 99–6659. WINSLOW *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 99–6660. BARRETT *v.* BROSS ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 735 So. 2d 1283.

No. 99–6662. TRUST *v.* JACKSON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 187 F. 3d 643.

No. 99–6667. ROGERS *v.* CHAPMAN, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 486.

No. 99–6672. AUGMAN *v.* LEBLANC, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–6677. WILSON *v.* SAGER ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–6680. CUOZZO *v.* WAYNICK ET AL. C. A. 6th Cir. Certiorari denied.

No. 99–6694. HART *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 20 Cal. 4th 546, 976 P. 2d 683.

No. 99–6698. GUENTHER *v.* HOLT, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 173 F. 3d 1328.

No. 99–6699. HARVEY *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 151 N. J. 117, 699 A. 2d 596.

No. 99–6708. O'NEILL *v.* COHN, COMMISSIONER, INDIANA DEPARTMENT OF CORRECTION. C. A. 7th Cir. Certiorari denied.

No. 99–6709. SHORT *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 980 P. 2d 1081.

No. 99–6715. MALIK, AKA PRINCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 93.

No. 99–6716. TRUN MINH LE *v.* BARBOUR, SUPERINTENDENT, TWIN RIVERS CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 57.

No. 99–6717. NORDIC *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 99–6724. LEININGER *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 99–6727. O'DONNELL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–6729. PHILLIPS *v.* REYES, SHERIFF, PINAL COUNTY, ARIZONA, ET AL.; and PHILLIPS *v.* APACHE JUNCTION POLICE DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–6730. RENOIR *v.* MCMILLAN. C. A. 4th Cir. Certiorari denied. Reported below: 198 F. 3d 237.

No. 99–6731. SCOTT *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–6735. JONES *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Jones County, N. C. Certiorari denied.

No. 99–6741. MOSSERI *v.* LESER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 199 F. 3d 1322.

No. 99–6750. MCGLOTHURN *v.* KAYLO, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–6753. BARONE *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 329 Ore. 210, 986 P. 2d 5.

No. 99–6764. WADE *v.* MARYLAND. C. A. 4th Cir. Certiorari denied.

No. 99–6766. WALKER *v.* NEILSEN, CHAIRMAN, CALIFORNIA BOARD OF PRISON TERMS. C. A. 9th Cir. Certiorari denied.

No. 99–6768. WILKINS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 985 P. 2d 184.

No. 99–6771. CLEMONS *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 222 Wis. 2d 216, 587 N. W. 2d 213.

No. 99–6773. MCLEAN ET AL. *v.* CRABTREE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 173 F. 3d 1176.

No. 99–6776. ZHARN *v.* UNITED STATES FIDELITY & GUARANTY CO. ET AL. Ct. App. Mich. Certiorari denied.

No. 99–6777. WILLIAMS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 467.

No. 99–6779. CRUZ *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 99–6783. HEMMERLE *v.* BAKST. C. A. 11th Cir. Certiorari denied. Reported below: 190 F. 3d 542.

No. 99–6784. GRAY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–6788. GRIESENBECK *v.* CURRY, JUDGE, 73RD DISTRICT COURT, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 466.

No. 99–6791. GATLIN *v.* MADDING, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 882.

No. 99–6792. RELIFORD *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 99–6801. HARPER *v.* SPARKMAN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 99–6802. HILL *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 175 F. 3d 915.

No. 99–6805. FORTNER *v.* DEES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 176 F. 3d 492.

No. 99–6809. WRIGHT *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–6815. BRAXTON *v.* MARYLAND. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 86.

No. 99–6816. BRYANT *v.* VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 182 F. 3d 907.

No. 99–6817. LAMBERT *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 984 P. 2d 221.

No. 99–6822. SPITERI *v.* GOMEZ, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–6823. BOWMAN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 182 F. 3d 913.

No. 99–6824. TAYLOR *v.* STALDER, SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 193 F. 3d 518.

No. 99–6825. CANTERBURY *v.* WEST, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 215 F. 3d 1342.

No. 99–6827. SYVERTSON *v.* SCHUETZLE ET AL. C. A. 8th Cir. Certiorari denied.

No. 99–6828. POWELL *v.* CARTER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 182 F. 3d 932.

No. 99–6829. SPANN *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 99–6830. SMITH *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–6831. SMITH *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 99–6836. KOKOSZKA *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 182 F. 3d 908.

No. 99–6837. LOWE *v.* CONSOLIDATED FREIGHTWAYS OF DELAWARE, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 177 F. 3d 640.

No. 99–6853. MASON *v.* ST. FRANCIS HEALTH SYSTEM ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 737 A. 2d 1286.

No. 99–6854. BOWMAN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 182 F. 3d 913.

No. 99–6855. PORTLEY-EL *v.* ZAVARAS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 188 F. 3d 519.

No. 99–6856. RIVERA *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 99–6857. REED *v.* MOSLEY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 194 F. 3d 1309.

No. 99–6859. SIMPSON *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–6861. WILEY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–6867. BROOKS *v.* TEXAS. C. A. 5th Cir. Certiorari denied.

No. 99–6870. ARROYO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 99–6872. ADAMS *v.* PRESLEY, CLERK, DISTRICT COURT OF OKLAHOMA COUNTY, ET AL. Ct. Crim. App. Okla. Certiorari denied.

No. 99–6873. ANDERSON *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 99–6875. PONCE *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 99–6883. JOHNSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–6885. PAGANO *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 47 Mass. App. 55, 710 N. E. 2d 1034.

No. 99–6888. PATTERSON *v.* RIVERS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 191 F. 3d 452.

No. 99–6890. ALVERSON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 983 P. 2d 498.

No. 99–6892. LEWIS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 2d Dist. Certiorari denied.

No. 99–6894. IRVIN *v.* BORG ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 647.

No. 99–6895. MINIGAN *v.* IRVIN, SUPERINTENDENT, WENDE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 99–6896. KANIKAYNAR *v.* SISNEROS, DIRECTOR, BERNALILLO COUNTY DETENTION CENTER, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 190 F. 3d 1115.

No. 99–6899. ERICSON *v.* IDC SERVICES, INC., ET AL. C. A. 2d Cir. Certiorari denied.

No. 99–6900. FILIAGGI *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 86 Ohio St. 3d 230, 714 N. E. 2d 867.

No. 99–6908. DANIELS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 99–6912. THOMPSON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–6913. GENCO *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON (two judgments). C. A. 9th Cir. Certiorari denied.

No. 99–6917. HOOD *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 302 Ill. App. 3d 1091, 746 N. E. 2d 910.

No. 99–6918. HUDSON *v.* DOOLING, JUDGE, CIRCUIT COURT OF ILLINOIS, COOK COUNTY, ET AL. C. A. 7th Cir. Certiorari denied.

No. 99–6926. BYRD *v.* SOCIETY NATIONAL BANK. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 99–6953. SIMONSEN *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 329 Ore. 288, 986 P. 2d 566.

No. 99–6955. OLGUINI *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 99–6961. LEWIS *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 203 F. 3d 52.

No. 99–6969. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 181 F. 3d 108.

No. 99–6970. GARCIA-SOSA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 192 F. 3d 126.

No. 99–6974. DURAND *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–6977. LINVILLE *v.* RICKS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 89.

No. 99–6979. HARRIS *v.* LEE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 182 F. 3d 907.

No. 99–6980. WALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 194 F. 3d 1307.

No. 99–6982. DANKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 187 F. 3d 643.

No. 99–6986. SALCEDO-CASTRO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 485.

No. 99–6987. CHU *v.* HOLLAND, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 187 F. 3d 635.

No. 99–6990. LANG *v.* UNITED STATES; and
No. 99–7141. LAWRENCE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 467.

No. 99–6993. MONTES-ESCALERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 516.

No. 99–6996. ANDERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 479.

No. 99–6997. CONRAD *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 193 F. 3d 516.

No. 99–7001. PINO-DOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 516.

No. 99–7003. ORIAKHI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 632.

No. 99–7004. SHORT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 181 F. 3d 620.

No. 99–7008. BROWN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 99–7012. LIPARI ET UX. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 99–7013. LAIRD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–7016. ASBURY *v.* AETNA LIFE INSURANCE & ANNUITY CO. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 99.

No. 99–7018. WHITMER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 633.

No. 99–7021. WOODY *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 517.

No. 99–7028. FISHER *v.* VARNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT RETREAT. C. A. 3d Cir. Certiorari denied.

No. 99–7031. EHNES *v.* CARD, SUPERINTENDENT, TIPTON CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 99–7034. DAVID *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 92.

No. 99–7035. GARCIA *v.* VANYUR, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 629.

No. 99–7036. FRAZIER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 99–7038. HYLTON *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 88.

No. 99–7039. REID *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 193 F. 3d 523.

No. 99–7040. SEABROOKES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 99–7041. RICH *v.* WOODFORD, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 1064.

No. 99–7046. FEDEE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 181 F. 3d 83.

No. 99–7047. DUNN *v.* GORDON, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–7049. HOPSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 184 F. 3d 634.

No. 99–7051. DAVAGE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 426.

No. 99–7052. DILLIBE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 99–7053. HOWELL *v.* HELMAN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 99–7057. KELLY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–7059. MOORE *v.* HARRIS, JUDGE, CIRCUIT COURT OF KENTUCKY, SIMPSON COUNTY. Sup. Ct. Ky. Certiorari denied.

No. 99–7063. ADENIJI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 193 F. 3d 514.

No. 99–7064. ANDERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–7066. SLOVAK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 516.

No. 99–7070. TAYLOR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 99–7072. WENTZELL *v.* MCDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 99–7073. ALSTON *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 99–7077. TOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 178 F. 3d 1302.

No. 99–7078. FORGAC *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 515.

No. 99–7079. ROBINSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 99–7080. RAHMAN *v.* UNITED STATES;
No. 99–7085. KHALLAFALLA ET AL. *v.* UNITED STATES;
No. 99–7090. ABDELGANI *v.* UNITED STATES;
No. 99–7091. ABDELGANI *v.* UNITED STATES;
No. 99–7093. ABDELGANI *v.* UNITED STATES;
No. 99–7094. ALVAREZ *v.* UNITED STATES;
No. 99–7097. HAMPTON-EL *v.* UNITED STATES;
No. 99–7098. ELHASSAN *v.* UNITED STATES; and
No. 99–7099. ELHASSAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 189 F. 3d 88.

No. 99–7082. SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 193 F. 3d 516.

No. 99–7089. MURRY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 179 F. 3d 834.

No. 99–7095. ALLEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 190 F. 3d 540.

No. 99–7100. FINLEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 175 F. 3d 645.

No. 99–7102. FRANKLIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 181 F. 3d 107.

No. 99–7103. HOLICK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 186 F. 3d 617.

No. 99–7104. HOUSTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 187 F. 3d 593.

No. 99–7106. FERNANDEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 919.

No. 99–7107. GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 515.

No. 99–7108. HEAD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 178 F. 3d 1205.

No. 99–7113. KEEPER *v.* HOLLAND, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 187 F. 3d 636.

No. 99–7114. LIVINGSTON *v.* GALANOS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 180 F. 3d 271.

No. 99–7117. LEWIS, AKA FOSTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 516.

No. 99–7118. STONE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 193 F. 3d 523.

No. 99–7120. CURRY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 187 F. 3d 762.

No. 99–7121. SHAKOOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 188 F. 3d 505.

No. 99–7124. HERNANDEZ-ROCHA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 649.

No. 99–7125. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 177 F. 3d 272.

No. 99–7126. FRANCISCO DE LA FUENTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 192 F. 3d 127.

No. 99–7128. HOWARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 193 F. 3d 519.

No. 99–7131. HESTER *v.* CARTER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–7132. GIBSON *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 175 F. 3d 1024.

No. 99–7134. ROBERTSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 99–7136. SPAULDING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 193 F. 3d 517.

No. 99–7138. MCHONE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied.

No. 99–7139. MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 185 F. 3d 465.

No. 99–7140. LEONARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 191 F. 3d 461.

No. 99–7145. LARA-ACEVES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 183 F. 3d 1007.

No. 99–7149. BAGLEY *v.* CUNIFF ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 126 Md. App. 710.

No. 99–7151. ANDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 188 F. 3d 503.

No. 99–7152. BENNETT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 191 F. 3d 446.

No. 99–7154. LAWRENCE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 179 F. 3d 343.

No. 99–7159. SOTO ZAMARRIPA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 190 F. 3d 537.

No. 99–7160. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 188 F. 3d 505.

No. 99–7162. LEGETTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 481.

No. 99–7163. SCHEETS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 188 F. 3d 829.

No. 99–7167. VERNOR *v.* LOCK, SUPERINTENDENT, CENTRAL MISSOURI CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 99–7172. BLACK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 172 F. 3d 864.

No. 99–7185. SMITH *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 996 S. W. 2d 518.

No. 99–7186. RICHARDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 195 F. 3d 192.

No. 99–7187. SPRUTH ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 871.

No. 99–7189. PELULLO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 185 F. 3d 863.

No. 99–7191. ROBINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 188 F. 3d 505.

No. 99–7192. COLLINS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 189 F. 3d 479.

No. 99–7193. BENITEZ-VILLAFUERTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 186 F. 3d 651.

No. 99–7194. BELTRAN-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 179 F. 3d 1200.

No. 99–7203. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 192 F. 3d 126.

No. 99–7204. LAPENSE, AKA ZUNIGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 870.

No. 99–7206. PERKINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 184 F. 3d 781.

No. 99–7208. PATTERSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 189 F. 3d 462.

No. 99–7209. SNYDER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 189 F. 3d 640.

No. 99–7212. ZANGHI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 189 F. 3d 71.

No. 99–7213. MAJOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 200 F. 3d 819.

No. 99–7214. MARTIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 189 F. 3d 547.

No. 99–7215. KUEHNOEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 649.

No. 99–7226. COPENHAVER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 185 F. 3d 178.

No. 99–7236. HARRIS *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 184 F. 3d 744.

No. 99–7238. HEARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 193 F. 3d 518.

No. 99–7240. FRANCIES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 99–7241. GILBERT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 191 F. 3d 461.

No. 99–7242. DJELILATE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 201 F. 3d 437.

No. 99–7243. DELGENIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 193 F. 3d 519.

No. 99–7244. DRISKILL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 194 F. 3d 1321.

No. 99–7245. GOODEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 188 F. 3d 504.

No. 99–7246. NIXON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 728 A. 2d 582.

No. 99–7249. FOX *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 1115.

No. 99–7250. HUDSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 516.

No. 99–7251. COOPER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 189 F. 3d 479.

No. 99–7252. CHARLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 189 F. 3d 1251.

No. 99–7274. CRANDALL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 99–7275. COLLIER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 189 F. 3d 479.

No. 99–7276. BOYD *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 181 F. 3d 183.

No. 99–7352. ESPINOZA-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 469.

No. 99–7354. MARTINEZ-GILL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–1628. SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT *v.* DAWAVENDEWA. C. A. 9th Cir. Motion of Navajo Nation for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 154 F. 3d 1117.

No. 98–2006. CLOER ET AL. *v.* GYNECOLOGY CLINIC, INC., DBA PALMETTO STATE MEDICAL CENTER. Sup. Ct. S. C. Certiorari denied. Reported below: 334 S. C. 555, 514 S. E. 2d 592.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, dissenting.

Petitioner Michael Cloer is senior pastor of Siloam Baptist Church in Easley, South Carolina, and the founder and director of petitioner Pastors for Life, Inc., a group of pastors dedicated to protesting against, and offering alternatives to, abortion. Since 1989, Pastor Cloer and Pastors for Life have organized protests outside Palmetto State Medical Center, a facility in Greenville, South Carolina, operated by respondent Gynecology Clinic, Inc., that performs abortions.

In 1994, respondent filed suit against Cloer, Pastors for Life, and others, in South Carolina state court, alleging private nuisance, public nuisance, and civil conspiracy under state law. Respondent initially sought injunctive relief and damages, but subsequently waived its claim for damages. The trial court granted defendants' motion to dismiss the public-nuisance cause of action; after a bench trial, it rendered judgment for defendants on the private-nuisance claim, and for respondent on the civil-conspiracy claim. It entered an injunction barring the defendants from (1) trespassing on the private property of the clinic; (2) interfering with ingress to and egress from the clinic; (3) interfering with the free flow of traffic on the property of the clinic and adjoining public streets and sidewalks and approaching any physician employed by the clinic or any vehicle containing such a physician; (4) protesting within a 12-foot buffer zone along the public sidewalk on either side of the driveway of the clinic; (5) obstructing the view of street traffic by any vehicle that is attempting to exit the clinic; and (6) making any noise that would be heard inside the clinic. App. to Pet. for Cert. 8a–9a. The South Carolina Supreme Court affirmed the judgment in a summary opinion. 334 S. C. 555, 514 S. E. 2d 592 (1999).

Although in my judgment the scope of the injunction is unconstitutionally broad insofar as it prohibits approaching any physician or any vehicle containing a physician, and prohibits any noise that can be heard inside the clinic during any of its business hours, see *Madsen* v. *Women's Health Center, Inc.*, 512 U. S. 753, 812 (1994) (SCALIA, J., concurring in judgment in part and dissenting in part), there would be nothing about this case warranting

our attention if the judgment were based upon, and the scope of the injunction determined by, unlawful acts committed by petitioners. The First Amendment is not a license for lawlessness, and when abortion protesters engage in such acts as trespassing upon private property and deliberately obstructing access to clinics, they are accountable to the law. What makes the present case remarkable, however, and establishes it as a terrifying deterrent to legitimate, peaceful First Amendment activity throughout South Carolina, is the fact that the South Carolina Supreme Court's affirmance did not rest upon its determination that there was adequate evidence of unlawful activity. The analysis contained in its brief *per curiam* opinion begins as follows:

> "Appellants first assert that, because their actions are protected by the First Amendment, they cannot be the basis for a civil conspiracy. Under South Carolina law, lawful acts may become actionable as a civil conspiracy when the object is to ruin or damage the business of another. . . . The record is replete with evidence that appellants' goal is to discourage women from patronizing respondent's business with the goal of making abortion unavailable. Assuming appellants' acts were lawful, that fact does not prevent the finding of a civil conspiracy." 334 S. C., at 556, 514 S. E. 2d, at 592 (internal quotation marks and citations omitted).

This extraordinary application of state civil-conspiracy law to attempts to persuade persons not to patronize certain businesses would outlaw many activities long thought to be protected by the First Amendment—routine picketing by striking unions, for example, and the civil-rights boycotts directed against businesses with segregated lunch counters in the 1960's. It may well be that an attempt, by lawful persuasion, to harm someone's business out of sheer malice, or in order to capture his clientele, can be made illegal. But seeking to harm it (through persuasion) because of principled objection to the nature of the business—whether because of moral disapproval of abortion, or social disapproval of segregation, or economic disapproval of substandard wages—is an entirely different matter. If this sort of persuasive activity can be swept away under state civil-conspiracy laws, some of our most significant First Amendment jurisprudence becomes academic. Consider, for example, how the South Carolina Supreme Court's theory makes a nullity of our statement in a lead-

ing case involving the boycott of segregated businesses in Mississippi:

> "A massive and prolonged effort to change the social, political, and economic structure of a local environment cannot be characterized as a violent conspiracy simply by reference to the ephemeral consequences of relatively few violent acts. Such a characterization must be supported by findings that adequately disclose the evidentiary basis for concluding that specific parties agreed to use unlawful means, that carefully identify the impact of such unlawful conduct, and that recognize the importance of avoiding the imposition of punishment for constitutionally protected activity." *NAACP* v. *Claiborne Hardware Co.*, 458 U. S. 886, 933–934 (1982).

I would also note that even on its own terms the result produced by the South Carolina Supreme Court's opinion is irrational: If seeking to harm an abortion clinic's business through persuasion is indeed unlawful in South Carolina, why does the injunction permit such harm so long as it is inflicted at a distance of 12 feet from the driveway? The cryptic last paragraph of the South Carolina Supreme Court's opinion reads as follows: "Finally, appellants raise numerous evidentiary challenges to the findings of the trial judge which form the basis for the injunctive relief granted respondent. We find no evidentiary or constitutional error in the injunction issued here." 334 S. C., at 557, 514 S. E. 2d, at 593. Given what preceded (and avoiding the attribution of illogic to the South Carolina Supreme Court), this can mean nothing more than that the evidentiary findings supporting civil conspiracy, which would have justified a total ban of the antiabortion protests, adequately support the more limited ban. But even if it means that the trial court's findings of unlawful acts (such as trespass and obstruction of access) justified the terms of the injunction; and even if it means (quite illogically) that such unlawful acts will always be necessary to fix the scope of *injunctive* relief; the court's plain holding that "discourag[ing] women from patronizing [abortion clinics] with the goal of making abortion unavailable" *id.*, at 556, 514 S. E. 2d, at 592, *is an unlawful civil conspiracy* subjects all such activity—no matter how peaceful and law abiding—to civil damages.

I would grant certiorari in this case to consider the constitutionality of a novel civil-conspiracy doctrine that places routine,

lawful First Amendment activity under threat of financial liability, and probably under threat of injunction, throughout the State of South Carolina.

No. 99–323. HANOUSEK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 176 F. 3d 1116.

JUSTICE THOMAS, with whom JUSTICE O'CONNOR joins, dissenting.

In 1994, petitioner Edward Hanousek, Jr., was employed by the Pacific & Arctic Railway and Navigation Company as the roadmaster of the White Pass & Yukon Railroad. In that capacity, petitioner supervised a rock quarrying project at a site known as "6-mile," which is located on an embankment 200 feet above the Skagway River six miles outside of Skagway, Alaska. During rock removal operations, a backhoe operator employed by Hunz & Hunz, an independent contractor retained before petitioner was hired, accidentally struck a petroleum pipeline near the railroad tracks. The operator's mistake caused the pipeline to rupture and spill between 1,000 and 5,000 gallons of oil into the river.

Petitioner, who was off duty and at home when the accident occurred, was indicted and convicted under the Clean Water Act (CWA or Act), 86 Stat. 859, 33 U. S. C. §§ 1319(c)(1)(A), 1321(b)(3), for negligently discharging oil into a navigable water of the United States.[1] Petitioner was fined $5,000 and sentenced to sequential terms of six months' imprisonment, six months in a halfway house, and six months of supervised release. On appeal, petitioner argued, among other things, that it would violate his due process rights to impose criminal liability for ordinary negligence in discharging oil into the river.

In rejecting the due process claim, the United States Court of Appeals for the Ninth Circuit reasoned, in part, that the criminal provisions of the CWA are "public welfare legislation" because the CWA "is designed to protect the public from potentially harmful or injurious items" and criminalizes "'a type of conduct that a reasonable person should know is subject to stringent public regulation and may seriously threaten the com-

[1] Section 1319(c)(1)(A) provides that anyone who "negligently [violates certain provisions of the CWA] shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both." Section 1321(b)(3) prohibits "[t]he discharge of oil . . . into or upon the navigable waters of the United States."

munity's health or safety.'" 176 F. 3d 1116, 1121 (CA9 1999) (quoting *Liparota* v. *United States*, 471 U. S. 419, 433 (1985)). Whether the CWA is appropriately characterized as a public welfare statute is an issue on which the Courts of Appeals are divided. Compare, *e. g.*, *United States* v. *Kelley Technical Coatings, Inc.*, 157 F. 3d 432, 439, n. 4 (CA6 1998) ("[V]iolations of the CWA fit squarely within the public welfare offense doctrine"), and *United States* v. *Weitzenhoff*, 35 F. 3d 1275, 1286 (CA9 1993) ("The criminal provisions of the CWA are clearly designed to protect the public at large from the potentially dire consequences of water pollution . . . and as such fall within the category of public welfare legislation"), with *United States* v. *Ahmad*, 101 F. 3d 386, 391 (CA5 1996) (rejecting the argument that the CWA is public welfare legislation).

Whatever the merits of petitioner's underlying due process claim, I think that it is erroneous to rely, even in small part, on the notion that the CWA is a public welfare statute. We have said that "to determine as a threshold matter whether a particular statute defines a public welfare offense, a court must have in view some category of dangerous and deleterious devices that will be assumed to alert an individual that he stands in 'responsible relation to a public danger.'" *Staples* v. *United States*, 511 U. S. 600, 613, n. 6 (1994). See also *id.*, at 628–629 (STEVENS, J., dissenting) ("'Public welfare' offenses . . . regulate 'dangerous or deleterious devices or products or obnoxious waste materials'") (quoting *United States* v. *International Minerals & Chemical Corp.*, 402 U. S. 558, 565 (1971)). Although provisions of the CWA regulate certain dangerous substances, this case illustrates that the CWA also imposes criminal liability for persons using standard equipment to engage in a broad range of ordinary industrial and commercial activities. This fact strongly militates against concluding that the public welfare doctrine applies. As we have said, "[e]ven dangerous items can, in some cases, be so commonplace and generally available" that we would not consider regulation of them to fall within the public welfare doctrine. *Staples*, 511 U. S., at 611. I think we should be hesitant to expose countless numbers of construction workers and contractors to heightened criminal liability for using ordinary devices to engage in normal industrial operations.

We have also distinguished those criminal statutes within the doctrine of "public welfare offenses" from those outside it by

considering the severity of the penalty imposed. See, *e. g.*, *id.*, at 616–618. We have said, with respect to public welfare offenses, that "penalties commonly are relatively small, and conviction does no grave damage to an offender's reputation." *Morissette* v. *United States*, 342 U. S. 246, 256 (1952). See also Sayre, Public Welfare Offenses, 33 Colum. L. Rev. 55, 72 (1933) (stating that it is a "cardinal principle" of public welfare offenses that the penalty not be severe). The CWA provides that any person who "negligently" violates the Act may be imprisoned for up to one year. § 1319(c)(1). A second negligent violation of the Act may subject a person to imprisonment for up to two years. *Ibid.* The CWA also contains a felony provision that provides that any person who "knowingly" violates § 1321(b)(3) "shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $100,000 per day of violation, or by imprisonment of not more than 6 years, or by both." § 1319(c)(2).[2] The seriousness of these penalties counsels against concluding that the CWA can accurately be classified as a public welfare statute.

The Court of Appeals disregarded these factors, and relied instead on our previous statements that public welfare offenses regulate "'conduct that a reasonable person should know is subject to stringent public regulation and may seriously threaten the community's health or safety.'" 176 F. 3d, at 1121 (quoting *Liparota* v. *United States*, *supra*, at 433). But we have never held that any statute can be described as creating a public welfare offense so long as the statute regulates conduct that is known to be subject to extensive regulation and that may involve a risk to the community. Indeed, such a suggestion would extend this narrow doctrine to virtually any criminal statute applicable to industrial activities. I presume that in today's heavily regulated society, any person engaged in industry is aware that his activities are the object of sweeping regulation and that an

[2] Some courts interpreting the felony provisions of the CWA have used the public welfare doctrine to determine that a person may "knowingly" violate the statute even if he is not aware that he is violating the law. See, *e. g.*, *United States* v. *Weitzenhoff*, 35 F. 3d 1275, 1284–1286 (CA9 1993).

industrial accident could threaten health or safety. To the extent that any of our prior opinions have contributed to the Court of Appeals' overly broad interpretation of this doctrine, I would reconsider those cases. Because I believe the Courts of Appeals invoke this narrow doctrine too readily, I would grant certiorari to further delineate its limits.

No. 99–362. SHORT *v.* UNITED STATES. C. A. Armed Forces. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 50 M. J. 370.

No. 99–434. WAL-MART STORES, INC. *v.* DANCO, INC., ET AL. C. A. 1st Cir. Motion of Chamber of Commerce of the United States for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 178 F. 3d 8.

No. 99–456. HENSON *v.* RELIGIOUS TECHNOLOGY CENTER. C. A. 9th Cir. Motion of Electronic Frontier Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 182 F. 3d 927.

No. 99–498. MICROSOFT CORP. ET AL. *v.* VIZCAINO ET AL. C. A. 9th Cir. Motion of Information Technology Association of America et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 173 F. 3d 713 and 184 F. 3d 1070.

No. 99–522. CITY OF MACEDONIA ET AL. *v.* DEPIERO. C. A. 6th Cir. Motion of Ohio Municipal League for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 180 F. 3d 770.

No. 99–545. STEAMFITTERS LOCAL UNION NO. 420 WELFARE FUND ET AL. *v.* PHILIP MORRIS, INC., ET AL. C. A. 3d Cir. Motion of United Association of Journeymen, Plumbing, and Pipe Fitting et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 171 F. 3d 912.

No. 99–689. STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. *v.* WALLACE. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 184 F. 3d 1112.

No. 99–703. MILLS *v.* MEADOWS ET AL. C. A. 4th Cir. Motion of National Association of Police Organizations for leave to

file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 187 F. 3d 630.

No. 99–748. U S WEST, INC., ET AL. *v.* TRISTANI, CHAIRMAN, NEW MEXICO STATE CORPORATION COMMISSION, ET AL. C. A. 10th Cir. Motion of Attorney General of New Mexico for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 182 F. 3d 1202.

No. 99–772. DOE ET AL. *v.* MUTUAL OF OMAHA INSURANCE CO. C. A. 7th Cir. Motion of Infectious Diseases Society of America et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 179 F. 3d 557.

No. 99–775. LUCENT INFORMATION MANAGEMENT, INC. *v.* LUCENT TECHNOLOGIES, INC. C. A. 3d Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 186 F. 3d 311.

No. 99–6650. WILLIAMS *v.* WATERS, WARDEN. C. A. 11th Cir. Certiorari before judgment denied.

No. 99–7734 (99A562). THOMAS *v.* GARRAGHTY, WARDEN. Sup. Ct. Va. 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: 258 Va. 530, 522 S. E. 2d 865.

*Rehearing Denied*

No. 98–9149. RIVERA *v.* SISTRUNK, SUPERINTENDENT, CHARLOTTE CORRECTIONAL INSTITUTION, ET AL., *ante*, p. 827;

No. 98–9297. SNELL *v.* MASSACHUSETTS, 527 U. S. 1010;

No. 98–9325. MOORE *v.* PARROTT, JUDGE, SUPERIOR COURT OF GEORGIA, JASPER COUNTY, ET AL., *ante*, p. 831;

No. 98–9471. FRANKS *v.* THOMAS, WARDEN, ET AL., *ante*, p. 836;

No. 98–9539. LAI *v.* INTERNATIONAL IMMUNOLOGY CORP. ET AL., *ante*, p. 985;

No. 98–9677. HUGHES *v.* NORTH DAKOTA, *ante*, p. 846;

No. 98–9744. MARTINEZ *v.* UNITED STATES, *ante*, p. 850;

No. 98–9820. RONDEAU *v.* NEW HAMPSHIRE ET AL., *ante*, p. 854;

No. 98–9851. TIDWELL *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, *ante*, p. 856;

No. 98–9912. KRATZER *v.* FIRST HEALTHCARE CORP. ET AL., *ante*, p. 860;

No. 98–10031. COLBERT *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL., *ante*, p. 866;

No. 99–2. MCDANIEL ET AL. *v.* UNITED STATES, *ante*, p. 963;

No. 99–259. LOZADA COLON *v.* DEPARTMENT OF STATE ET AL., *ante*, p. 1003;

No. 99–311. PEREZ *v.* UNITED STATES, *ante*, p. 879;

No. 99–339. HOLLANDER *v.* AMERICAN CYANAMID CO., *ante*, p. 965;

No. 99–379. SULLIVAN *v.* NATIONAL RAILROAD PASSENGER CORPORATION, *ante*, p. 966;

No. 99–496. BIERI *v.* UNITED STATES, *ante*, p. 968;

No. 99–569. GEBMAN *v.* PATAKI, GOVERNOR OF NEW YORK, ET AL., *ante*, p. 1005;

No. 99–627. DANIELS *v.* PENNSYLVANIA PUBLIC UTILITY COMMISSION, *ante*, p. 1006;

No. 99–5048. WOODS *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY, *ante*, p. 883;

No. 99–5052. BAKER *v.* UNITED STATES, *ante*, p. 883;

No. 99–5233. REED *v.* PHILLIPS, WARDEN, *ante*, p. 893;

No. 99–5244. HATHAWAY ET UX. *v.* ESSEX COUNTY, NEW YORK, ET AL., *ante*, p. 894;

No. 99–5350. IN RE WASHINGTON, *ante*, p. 962;

No. 99–5375. HUMPHREY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 901;

No. 99–5429. AYELE *v.* SIMKINS INDUSTRIES, INC., ET AL., *ante*, p. 904;

No. 99–5452. MAZZARELLA *v.* UNITED STATES POSTAL SERVICE, *ante*, p. 905;

No. 99–5563. MELENDEZ *v.* ARIZONA DEPARTMENT OF ECONOMIC SECURITY ET AL., *ante*, p. 935;

No. 99–5568. BUCHANAN *v.* BIRNIE ET AL., *ante*, p. 935;

No. 99–5606. TAYLOR *v.* VEIGAS ET AL., *ante*, p. 935;

No. 99–5627. PRICE *v.* RYDER SYSTEM, INC., ET AL., *ante*, p. 912;

No. 99–5715. HANLEY *v.* CITY OF HOUSTON ET AL., *ante*, p. 938;

No. 99–5731. VIRAY *v.* DEPARTMENT OF THE NAVY, *ante*, p. 916;

No. 99–5743. PRUITT *v.* GEORGIA, *ante*, p. 1006;
No. 99–5749. TAYLOR *v.* DEES, WARDEN, ET AL., *ante*, p. 953;
No. 99–5753. PRAVDA *v.* CITY OF ALBANY, NEW YORK, ET AL., *ante*, p. 953;
No. 99–5794. SYVERTSON *v.* NORTH DAKOTA, *ante*, p. 954;
No. 99–5852. PINK *v.* UNITED STATES POSTAL SERVICE ET AL., *ante*, p. 940;
No. 99–5976. PARKER *v.* OKLAHOMA, *ante*, p. 972;
No. 99–6041. CROMARTIE *v.* GEORGIA, *ante*, p. 974;
No. 99–6042. COOK *v.* GEORGIA, *ante*, p. 974;
No. 99–6049. VIRAY *v.* BENEFICIAL CALIFORNIA, INC., *ante*, p. 974;
No. 99–6083. DENNIS *v.* SCOTT, WARDEN, *ante*, p. 975;
No. 99–6086. BASILIO *v.* CAMRAY DEVELOPMENT & CONSTRUCTION CO. ET AL., *ante*, p. 975;
No. 99–6151. HAMPTON *v.* LOUISIANA, *ante*, p. 1007;
No. 99–6178. MATHIS *v.* RATELLE, WARDEN, ET AL., *ante*, p. 976;
No. 99–6216. TRUE *v.* UNITED STATES, *ante*, p. 976;
No. 99–6341. IN RE PARKER, *ante*, p. 1018;
No. 99–6387. WALKER *v.* UNITED STATES, *ante*, p. 980;
No. 99–6400. WHITE *v.* WILKINSON, DIRECTOR, OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, *ante*, p. 1026;
No. 99–6427. THURSTON *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA ET AL., *ante*, p. 1010; and
No. 99–6480. RAULERSON *v.* UNITED STATES, *ante*, p. 989. Petitions for rehearing denied.

No. 98–1945. BURNETTE *v.* GROVE ISLE CLUB, INC., ET AL., *ante*, p. 818. Motion of petitioner for leave to proceed further herein *in forma pauperis* granted. Petition for rehearing denied.

No. 99–404. WRIGHT *v.* OREGON STATE BOARD OF PAROLE, *ante*, p. 966. Motion of petitioner for leave to proceed further *in forma pauperis* granted. Motion for leave to file petition for rehearing denied.

JANUARY 12, 2000

*Certiorari Granted—Reversed and Remanded.* (See No. 99–295, *ante*, p. 216.)

*Miscellaneous Order*

No. 99–7774 (99A575). IN RE HEISELBETZ. 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. 99–7333 (99A512). HEISELBETZ *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 190 F. 3d 538.

JANUARY 14, 2000

*Certiorari Granted*

No. 99–658. CASTILLO ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, February 28, 2000. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 29, 2000. 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 17, 2000. This Court's Rule 29.2 does not apply. Reported below: 179 F. 3d 321.

No. 99–699. BOY SCOUTS OF AMERICA ET AL. *v.* DALE. Sup. Ct. N. J. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, February 28, 2000. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 29, 2000. 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 17, 2000. This Court's Rule 29.2 does not apply. Reported below: 160 N. J. 562, 734 A. 2d 1196.

No. 99–830. STENBERG, ATTORNEY GENERAL OF NEBRASKA, ET AL. *v.* CARHART. C. A. 8th Cir. Motion of New Jersey Legislature et al. for leave to file a brief as *amici curiae* granted. Certiorari granted limited to Questions 1 and 2 presented by the petition. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, February 28, 2000. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 29, 2000. 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 17, 2000. This Court's Rule 29.2 does not apply. Reported below: 192 F. 3d 1142.

JANUARY 18, 2000

*Affirmed on Appeal*

No. 99–475. TORRES ET AL. *v.* SABLAN ET AL. Affirmed on appeal from D. C. Northern Mariana Islands. Reported below: 95 F. Supp. 2d 1133.

*Certiorari Granted—Vacated and Remanded*

No. 98–821. TENNESSEE BOARD OF REGENTS ET AL. *v.* COGER ET AL. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Kimel* v. *Florida Bd. of Regents*, *ante*, p. 62. Reported below: 154 F. 3d 296.

No. 98–1117. ILLINOIS STATE UNIVERSITY ET AL. *v.* VARNER ET AL. C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Kimel* v. *Florida Bd. of Regents*, *ante*, p. 62. Reported below: 150 F. 3d 706.

No. 98–1178. BOARD OF REGENTS OF THE UNIVERSITY OF NEW MEXICO *v.* MIGNEAULT ET AL. C. A. 10th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Kimel* v. *Florida Bd. of Regents*, *ante*, p. 62. Reported below: 158 F. 3d 1131.

No. 98–1524. BOARD OF TRUSTEES OF THE UNIVERSITY OF CONNECTICUT ET AL. *v.* DAVIS ET AL. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Kimel* v. *Florida Bd. of Regents*, *ante*, p. 62. Reported below: 162 F. 3d 770.

No. 98–1845. STATE UNIVERSITY OF NEW YORK, COLLEGE AT NEW PALTZ, ET AL. *v.* ANDERSON. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Kimel* v. *Florida Bd. of Regents*, *ante*, p. 62. Reported below: 169 F. 3d 117.

No. 99–61. RENO, ATTORNEY GENERAL, ET AL. *v.* PRYOR, ATTORNEY GENERAL OF ALABAMA, ET AL. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Reno* v. *Condon*, *ante*, p. 141. Reported below: 171 F. 3d 1281.

No. 99–411. BOARD OF TRUSTEES OF SOUTHERN ILLINOIS UNIVERSITY *v.* WICHMANN ET AL. C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Kimel* v. *Florida Bd. of Regents*, *ante*, p. 62. Reported below: 180 F. 3d 791.

No. 99–519. PRESCOTT ET AL. *v.* COUNTY OF EL DORADO ET AL. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Friends of Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, *ante*, p. 167. Reported below: 177 F. 3d 1102.

No. 99–850. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM ET AL. *v.* ARNETT ET AL. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Kimel* v. *Florida Bd. of Regents*, *ante*, p. 62. JUSTICE BREYER took no part in the consideration or decision of this case. Reported below: 179 F. 3d 690.

*Certiorari Dismissed*

No. 99–7075. KARIM-PANAHI *v.* CALIFORNIA. 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.

No. 99–7087. KINNELL *v.* WEST, SECRETARY OF VETERANS AFFAIRS, ET AL. 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. Reported below: 198 F. 3d 258.

No. 99–7401. TURNER *v.* UNITED STATES. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 215 F. 3d 1342.

*Miscellaneous Orders*

No. 99A525. ROBINSON ET AL. *v.* DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT. Ct. App. D. C. Application for stay, addressed to JUSTICE GINSBURG and referred to the Court, denied.

No. D–2137. IN RE DISBARMENT OF GEREIGHTY. Thomas M. Gereighty, of New Orleans, La., 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–2138. IN RE DISBARMENT OF JONES. Adair D. Jones, of Baton Rouge, La., 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–2139. IN RE DISBARMENT OF HENCKE. Albert L. Hencke, of Blue Springs, Mo., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 99M56. MUNOZ, AKA DOE *v.* UNITED STATES;
No. 99M57. KAFERLY *v.* U S WEST TECHNOLOGIES ET AL.;
No. 99M59. GUIDO *v.* CALIFORNIA; and
No. 99M60. WILLIAMS *v.* COMMISSIONER OF INTERNAL REVENUE. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 99M58. LENNIX *v.* BIG 3 INDUSTRIES ET AL. Motion to direct the Clerk to file petition for writ of certiorari denied.

No. 98–1828. VERMONT AGENCY OF NATURAL RESOURCES *v.* UNITED STATES EX REL. STEVENS. C. A. 2d Cir. [Certiorari granted, 527 U. S. 1034.] Motion of Hamilton Securities Group, Inc., for leave to file a supplemental brief as *amicus curiae* out of time denied.

No. 98–1949. PEGRAM ET AL. *v.* HERDRICH. C. A. 7th Cir. [Certiorari granted, 527 U. S. 1068.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 98–6322. SLACK *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. [Certiorari granted, 525 U. S. 1138.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 99–62. SANTA FE INDEPENDENT SCHOOL DISTRICT *v.* DOE, INDIVIDUALLY AND AS NEXT FRIEND FOR HER MINOR CHILDREN, ET AL. C. A. 5th Cir. [Certiorari granted, *ante*, p. 1002.] Motion of Rutherford Institute for leave to file a brief as *amicus curiae* granted.

No. 99–166. UNITED STATES *v.* HUBBELL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 926.] Motion of United States Department of Justice for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 99–1112. MILLER, ATTORNEY GENERAL OF IOWA *v.* PLANNED PARENTHOOD OF GREATER IOWA, INC., ET AL. C. A. 8th Cir. Motion of respondents to expedite consideration of petition for writ of certiorari denied.

No. 99–6615. WILLIAMS *v.* TAYLOR, WARDEN. C. A. 4th Cir. [Certiorari granted, *ante*, p. 960.] Motions of American Civil Liberties Union et al., Legal Ethics Professors et al., and Virginia College of Criminal Defense Attorneys et al. for leave to file briefs as *amici curiae* granted.

No. 99–6988. CHOUDHARY *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 1st Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until February 8, 2000, 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. 99–7439. IN RE MILLER;
No. 99–7498. IN RE SCHIANO;
No. 99–7512. IN RE LEGRANDE; and
No. 99–7580. IN RE CORNELL. Petitions for writs of habeas corpus denied.

No. 99–7022. IN RE WEAVER;
No. 99–7284. IN RE MOSBY; and
No. 99–7319. IN RE KENNEDY. Petitions for writs of mandamus denied.

*Certiorari Denied*

No. 98–584. California State Board of Equalization *v.* Southern Pacific Transportation Co. et al. C. A. 9th Cir. Certiorari denied.

No. 98–1235. United States *v.* Regents of the University of Minnesota et al. C. A. 8th Cir. Certiorari denied. Reported below: 152 F. 3d 822.

No. 98–1448. California State Board of Equalization *v.* Atchison, Topeka & Santa Fe Railway Co. C. A. 9th Cir. Certiorari denied.

No. 98–1747. Perez et al. *v.* Pasadena Independent School District et al. C. A. 5th Cir. Certiorari denied. Reported below: 165 F. 3d 368.

No. 98–1760. Oklahoma Department of Public Safety *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 161 F. 3d 1266.

No. 98–1818. Wisconsin Department of Transportation, Division of Motor Vehicles, et al. *v.* Reno, Attorney General, et al. C. A. 7th Cir. Certiorari denied. Reported below: 163 F. 3d 1000.

No. 98–1971. Robinson et al. *v.* Administrative Committee of the Sea Ray Employees' Stock Ownership and Profit Sharing Plan et al. C. A. 6th Cir. Certiorari denied. Reported below: 164 F. 3d 981.

No. 98–1983. Gigante *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 166 F. 3d 75.

No. 98–1987. Valdespino et al. *v.* Alamo Heights Independent School District et al. C. A. 5th Cir. Certiorari denied. Reported below: 168 F. 3d 848.

No. 98–7501. Scott *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 64 Cal. App. 4th 550, 75 Cal. Rptr. 2d 315.

No. 98–9663. Davis *v.* Hopper, Commissioner, Alabama Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 171 F. 3d 1289.

No. 99–251. DAVIS *v.* NUNEZ. C. A. 9th Cir. Certiorari denied. Reported below: 169 F. 3d 1222.

No. 99–270. COLLINS *v.* MONTGOMERY COUNTY BOARD OF PRISON INSPECTORS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 176 F. 3d 679.

No. 99–328. CITY OF NEW YORK ET AL. *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 179 F. 3d 29.

No. 99–348. KIEL *v.* SCOTT, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 172 F. 3d 879.

No. 99–528. FIELDS ET AL. *v.* DEPARTMENT OF LABOR, ADMINISTRATIVE REVIEW BOARD, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 173 F. 3d 811.

No. 99–543. LOUIS *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 170 F. 3d 1232.

No. 99–573. SEAGATE TECHNOLOGY, INC. *v.* RODIME PLC. C. A. Fed. Cir. Certiorari denied. Reported below: 174 F. 3d 1294.

No. 99–585. BRANSON *v.* CITY OF LOS ANGELES ET AL.; and
No. 99–796. LOCKHEED MARTIN IMS ET AL. *v.* BRANSON. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 646.

No. 99–589. SHEPPARD *v.* COOK, CAPTAIN, CHIEF OF TEXAS RANGERS. C. A. 5th Cir. Certiorari denied. Reported below: 179 F. 3d 360.

No. 99–598. PACIFIC LUMBER CO. ET AL. *v.* MARBLED MURRELET (BRACHYRAMPHUS MARMORATUS) ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 1091.

No. 99–602. TAYLOR, EXECUTOR OF THE ESTATE OF TAYLOR, DECEASED *v.* PAUL B. HALL REGIONAL MEDICAL CENTER, DBA PAINTSVILLE HOSPITAL CO., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 918.

No. 99–605. THOMAS ET AL. *v.* NETWORK SOLUTIONS ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 176 F. 3d 500.

No. 99–614. TIPP-IT, INC. *v.* CONBOY, OMAHA CITY PROSECUTOR. Sup. Ct. Neb. Certiorari denied. Reported below: 257 Neb. 219, 596 N. W. 2d 304.

No. 99–619. SYDNOR ET AL. *v.* SMITH, FOR HIMSELF AND ALL PLAN PARTICIPANTS SIMILARLY SITUATED ON BEHALF OF THE JAMES MCGRAW, INC., 401(K) PLAN. C. A. 4th Cir. Certiorari denied. Reported below: 184 F. 3d 356.

No. 99–626. GILLESPIE *v.* CITY OF INDIANAPOLIS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 185 F. 3d 693.

No. 99–630. MATASSARIN *v.* LYNCH ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 174 F. 3d 549.

No. 99–632. BROWNE ET UX. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 176 F. 3d 25.

No. 99–636. YAKAMA INDIAN NATION *v.* WASHINGTON DEPARTMENT OF REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 176 F. 3d 1241.

No. 99–640. REDWOOD EMPIRE LIFE SUPPORT *v.* COUNTY OF SONOMA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 190 F. 3d 949.

No. 99–655. NOEL *v.* FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR WESTERN GULF SAVINGS AND LOAN ASSN. C. A. 10th Cir. Certiorari denied. Reported below: 177 F. 3d 911.

No. 99–656. NEW YORK DEPARTMENT STORES DE PUERTO RICO, INC. *v.* ALMACENES RODRIGUEZ, INC., ET AL. Sup. Ct. P. R. Certiorari denied.

No. 99–664. FARR ET AL. *v.* U S WEST, INC., ET AL.; and
No. 99–853. U S WEST, INC., ET AL. *v.* FARR ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 151 F. 3d 908 and 179 F. 3d 1252.

No. 99–681. ACKERLEY ET AL. *v.* LAMBERT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 180 F. 3d 997.

No. 99–685. KENT ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 867.

No. 99–741. HAREL *v.* LAWRENCE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 191 F. 3d 444.

No. 99–751. BIG RIVER MINERALS CORP. ET AL. *v.* HOLLAND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 597.

No. 99–756. MIMS, TRUSTEE OF THE ESTATE OF COASTAL PLAINS, INC., ET AL. *v.* BROWNING MANUFACTURING. C. A. 5th Cir. Certiorari denied. Reported below: 179 F. 3d 197.

No. 99–792. NVR HOMES, INC. *v.* CLERKS OF THE CIRCUIT COURTS FOR ANNE ARUNDEL COUNTY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 189 F. 3d 442.

No. 99–794. ROBERTS *v.* WOOTON, ADMINISTRATRIX OF THE ESTATE OF WOOTON, DECEASED. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 205 W. Va. 404, 518 S. E. 2d 645.

No. 99–798. LIPPINCOTT ADAMS *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied. Reported below: 170 F. 3d 173.

No. 99–800. PAWLOWSKI *v.* NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORP. C. A. 7th Cir. Certiorari denied. Reported below: 186 F. 3d 997.

No. 99–802. LACUESTA ET AL. *v.* ARCHULETA, PERSONAL REPRESENTATIVE OF THE ESTATE OF ARCHULETA, DECEASED. Ct. App. N. M. Certiorari denied. Reported below: 128 N. M. 13, 988 P. 2d 883.

No. 99–803. HAMM ET AL. *v.* RHONE-POULENC RORER PHARMACEUTICALS, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 187 F. 3d 941.

No. 99–805. MITCHELL *v.* TOTAL ACTION AGAINST POVERTY IN ROANOKE VALLEY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1015.

No. 99–806. GRANBERRY ET AL. *v.* ISLAY INVESTMENTS ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–808. FARR *v.* NC MACHINERY CO. C. A. 9th Cir. Certiorari denied. Reported below: 186 F. 3d 1165.

No. 99–816. KOENICK *v.* FELTON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 190 F. 3d 259.

No. 99–821. COUNTY OF ARMSTRONG ET AL. *v.* CLARK. C. A. 3d Cir. Certiorari denied. Reported below: 189 F. 3d 463.

No. 99–822. SANDBERG ET AL. *v.* STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 927.

No. 99–823. NIEMAN *v.* DRYCLEAN U. S. A. FRANCHISE CO., INC. C. A. 11th Cir. Certiorari denied. Reported below: 178 F. 3d 1126.

No. 99–827. STEINHILBER *v.* MCFARLAND ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 187 F. 3d 642.

No. 99–828. JUDDS BROTHERS CONSTRUCTION CO. *v.* BURLINGTON NORTHERN RAILROAD CO. C. A. 8th Cir. Certiorari denied. Reported below: 184 F. 3d 743.

No. 99–838. MCCAIN *v.* CITY OF LAFAYETTE ET AL. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 741 So. 2d 720.

No. 99–843. MAPLE LANES, INC., DBA FRANKIES, ET AL. *v.* MESSER, SHERIFF, OGLE COUNTY. C. A. 7th Cir. Certiorari denied. Reported below: 186 F. 3d 823.

No. 99–854. MENDEZ *v.* COMMERCIAL CREDIT CORP. C. A. 10th Cir. Certiorari denied. Reported below: 189 F. 3d 478.

No. 99–861. TALYANSKY *v.* MERCURY PRINT PRODUCTION, INC.; and TALYANSKY *v.* SYRACUSE LANGUAGE SYSTEMS, INC. C. A. 2d Cir. Certiorari denied. Reported below: 189 F. 3d 462 (first judgment); 199 F. 3d 1323 (second judgment).

No. 99–870. LIDDY *v.* WELLS. C. A. 4th Cir. Certiorari denied. Reported below: 186 F. 3d 505.

No. 99–915. MCMASTER *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 177 F. 3d 936.

No. 99–930. MORRIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 190 F. 3d 483.

No. 99–943. MACARO *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 260 App. Div. 2d 648, 687 N. Y. S. 2d 279.

No. 99–946. SOHI *v.* OHIO STATE DENTAL BOARD. Ct. App. Ohio, Hamilton County. Certiorari denied. Reported below: 130 Ohio App. 3d 414, 720 N. E. 2d 187.

No. 99–997. REILLY *v.* NATWEST MARKETS GROUP, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 181 F. 3d 253.

No. 99–1002. LOPEZ *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 52 M. J. 435.

No. 99–1063. BOYLE *v.* INTERNAL REVENUE SERVICE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 194 F. 3d 1316.

No. 99–5395. SYNEK *v.* GRAMLEY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 99–5774. BROOKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 175 F. 3d 605.

No. 99–6135. O'SHEA *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 556 Pa. 6, 726 A. 2d 376.

No. 99–6224. NEVAREZ-GONZALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 817.

No. 99–6370. GARNER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 181 F. 3d 988.

No. 99–6383. FELIZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 182 F. 3d 82.

No. 99–6444. PAVELETZ *v.* UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT. C. A. 3d Cir. Certiorari denied. Reported below: 178 F. 3d 1280.

No. 99–6544. LESCS *v.* WILLIAM R. HUGHES, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 168 F. 3d 482.

No. 99–6560. LIBBY *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 115 Nev. ——, 975 P. 2d 833.

No. 99–6633. PAZ-AGUILAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 480.

No. 99–6851. KING *v.* PENNSYLVANIA; and

No. 99–6897. MARTIN *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 554 Pa. 331, 721 A. 2d 763.

No. 99–6924. REED *v.* MOSLEY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 194 F. 3d 1309.

No. 99–6928. SPRINGER *v.* MARICOPA COUNTY MEDICAL CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 868.

No. 99–6933. KEHLER *v.* WORKERS' COMPENSATION APPEAL BOARD (DEPARTMENT OF PUBLIC WELFARE). Commw. Ct. Pa. Certiorari denied.

No. 99–6935. MACIEL *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 648.

No. 99–6939. TIBBS *v.* CORCORAN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 631.

No. 99–6941. REYNOLDS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 994 S. W. 2d 944.

No. 99–6946. CHINN *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 85 Ohio St. 3d 548, 709 N. E. 2d 1166.

No. 99–6954. ROGERS *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 173 F. 3d 1278.

No. 99–6957. NICHOLS *v.* PRESLEY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 194 F. 3d 1321.

No. 99–6958. KEY *v.* GRAYSON, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 179 F. 3d 996.

No. 99–6962. JOHNSON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 768 So. 2d 1026.

No. 99–6963. JAMES *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 99–6964. LARRY *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 99–6966. GILLIAM *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 179 F. 3d 990.

No. 99–6967. ENOCH *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 99–6971. GREEN ET AL. *v.* SOMMERS. C. A. 11th Cir. Certiorari denied. Reported below: 182 F. 3d 937.

No. 99–6972. FINK *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–6976. MORA *v.* COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION ONE. Sup. Ct. Cal. Certiorari denied.

No. 99–6985. BARTON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 998 S. W. 2d 19.

No. 99–6992. MAHON *v.* COUNTY OF LOS ANGELES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 473.

No. 99–6998. BUCHANAN *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 182 F. 3d 907.

No. 99–6999. BAKER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 767 So. 2d 423.

No. 99–7002. PHILIPPE *v.* LACY, SUPERINTENDENT, BARE HILL CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 99–7009. BEETS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 190.

No. 99–7011. MINER *v.* SCHRIRO, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied.

No. 99–7015. VAZQUEZ *v.* DUFRAIN, SUPERINTENDENT, FRANKLIN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 99–7020. THOMAS *v.* KUHLMANN, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 99–7024. DUKE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–7025. ELLINGTON *v.* PRUNTY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 925.

No. 99–7027. EDMON *v.* MCDANIEL ET AL. C. A. 5th Cir. Certiorari denied.

No. 99–7029. DUNN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–7030. GREEN *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 99–7033. ELLISON *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–7037. GIBSON *v.* SONDALLE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 99–7042. PARKER *v.* ELEVENTH AVENUE MEDICAL GROUP ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–7043. SHAW *v.* TEXAS BOARD OF PARDONS. C. A. 5th Cir. Certiorari denied.

No. 99–7044. SHEA *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 226 Wis. 2d 161, 594 N. W. 2d 419.

No. 99–7048. DAFT *v.* WEST VIRGINIA. Cir. Ct. Preston County, W. Va. Certiorari denied.

No. 99–7050. ENGLEHART *v.* DUVAL. C. A. 1st Cir. Certiorari denied.

No. 99–7054. VALENZUELA FLORES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–7056. MIMS *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 2d Cir. Certiorari denied. Reported below: 182 F. 3d 900.

No. 99–7058. JOHNSON *v.* CAMPBELL, COMMISSIONER, TENNESSEE DEPARTMENT OF CORRECTION, ET AL. C. A. 6th Cir. Certiorari denied.

No. 99–7060. McGuire *v.* Arkansas et al. C. A. 8th Cir. Certiorari denied. Reported below: 168 F. 3d 494.

No. 99–7061. Bradley *v.* Hofbauer, Warden. C. A. 6th Cir. Certiorari denied.

No. 99–7067. Peachlum *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 736 A. 2d 12.

No. 99–7068. Overholt *v.* Auglaize County et al. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 918.

No. 99–7071. Valdes *v.* Florida. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 736 So. 2d 1241.

No. 99–7074. Nottingham *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 99–7076. Nelson *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 748 So. 2d 237.

No. 99–7081. Shriner *v.* Wiley, Warden. C. A. 3d Cir. Certiorari denied.

No. 99–7084. Jones *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–7088. Dobson *v.* Moore, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 99–7092. Thomas *v.* Bush et al. C. A. 6th Cir. Certiorari denied. Reported below: 187 F. 3d 638.

No. 99–7096. Brown *v.* Kaltenbach et al. Ct. App. Ky. Certiorari denied.

No. 99–7111. Matthews *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–7112. Jackson *v.* Champion, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 182 F. 3d 932.

No. 99–7115. Jackson *v.* New York. C. A. 2d Cir. Certiorari denied.

No. 99–7116. MOSES *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 350 N. C. 741, 517 S. E. 2d 853.

No. 99–7122. CARR *v.* WEST VIRGINIA. Cir. Ct. Wood County, W. Va. Certiorari denied.

No. 99–7123. DOWNS *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 99–7143. JONES *v.* UNITED STATES;
No. 99–7146. MCKENITH *v.* UNITED STATES; and
No. 99–7233. ENGLAND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 649.

No. 99–7150. CRIST *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–7155. LYONS, AKA JOHNSON *v.* NORTH CAROLINA; and
No. 99–7392. LYONS *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Forsyth County, N. C. Certiorari denied.

No. 99–7157. RASTEN *v.* DEPARTMENT OF LABOR. C. A. 1st Cir. Certiorari denied. Reported below: 181 F. 3d 80.

No. 99–7158. WILKERSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 193 F. 3d 516.

No. 99–7161. BANKS *v.* GRIER. C. A. 11th Cir. Certiorari denied. Reported below: 174 F. 3d 204.

No. 99–7171. BREWER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–7173. CHAPMAN *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 628.

No. 99–7174. WILLIAMS *v.* HUTCHISON. C. A. 11th Cir. Certiorari denied. Reported below: 199 F. 3d 442.

No. 99–7176. WILLARD *v.* WEST, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 215 F. 3d 1349.

No. 99–7179. ZIMBOVSKY *v.* MASSACHUSETTS. C. A. 1st Cir. Certiorari denied. Reported below: 181 F. 3d 81.

No. 99–7190. SOPER *v.* SHANKS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 189 F. 3d 478.

No. 99–7195. BACON *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Onslow County, N. C. Certiorari denied.

No. 99–7198. MCEACHIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 201 F. 3d 438.

No. 99–7199. POLO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 189 F. 3d 462.

No. 99–7201. NAGIB *v.* CONNER, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 192 F. 3d 127.

No. 99–7219. WALKER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 258 Va. 54, 515 S. E. 2d 565.

No. 99–7228. MCGINNIS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 181 F. 3d 686.

No. 99–7230. ROBBINS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 99–7232. HILL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 193 F. 3d 522.

No. 99–7247. JOHNSON *v.* THOMAS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 99–7248. MOSS *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 744 So. 2d 1012.

No. 99–7253. PATTERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 99–7254. PETTA *v.* LOUISIANA. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 729 So. 2d 29.

No. 99–7256. PHAVONG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 191 F. 3d 462.

No. 99–7257. SANDERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 194 F. 3d 1324.

No. 99–7258. MARCINKOWSKY *v.* UNION CARBIDE CORP. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 630.

No. 99–7259. LOPEZ-GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 183 F. 3d 933.

No. 99–7260. LOGAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 187 F. 3d 639.

No. 99–7267. ALBERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 188 F. 3d 519.

No. 99–7271. BOWLING *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1021.

No. 99–7272. BRYANT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 194 F. 3d 1323.

No. 99–7273. CHESNEL *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 734 A. 2d 1131.

No. 99–7278. COOK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 105.

No. 99–7279. RAPOSO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 198 F. 3d 262.

No. 99–7280. ROGERS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 180 F. 3d 349.

No. 99–7285. LERRO *v.* BOARD OF REVIEW, DEPARTMENT OF LABOR, ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 99–7286. KOST *v.* FANELLO, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 191 F. 3d 445.

No. 99–7287. MCDONALD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 93.

No. 99–7289. NEWMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1287.

No. 99–7292. CASTELLON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 189 F. 3d 479.

No. 99–7294. SAWYER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 180 F. 3d 1319.

No. 99–7295. POSEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 469.

No. 99–7298. TURNER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 188 F. 3d 510.

No. 99–7301. PALACIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 650.

No. 99–7305. ANTHONY *v.* DEPARTMENT OF JUSTICE. C. A. Fed. Cir. Certiorari denied. Reported below: 178 F. 3d 1312.

No. 99–7306. MEJIA-DUARTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 191 F. 3d 461.

No. 99–7309. TRENT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 201 F. 3d 439.

No. 99–7311. WHITE *v.* GODINEZ. C. A. 7th Cir. Certiorari denied. Reported below: 192 F. 3d 607.

No. 99–7312. TURKS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 99–7313. PERRY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 181 F. 3d 896.

No. 99–7314. ROMAN *v.* UNITED STATES;
No. 99–7418. SEPULVEDA *v.* UNITED STATES; and
No. 99–7421. PERRY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 181 F. 3d 183.

No. 99–7315. STOTTS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 176 F. 3d 880.

No. 99–7317. MARTINEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 191 F. 3d 156.

No. 99–7318. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 191 F. 3d 453.

No. 99–7320. HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 185 F. 3d 307.

No. 99–7321. FULLERTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 187 F. 3d 587.

No. 99–7323. IVY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 99–7325. HUNTE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 193 F. 3d 173.

No. 99–7326. DARITY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 92.

No. 99–7327. FIGUEROA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 187 F. 3d 627.

No. 99–7329. SILO *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 631.

No. 99–7331. SMITH *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–7334. FLEMING *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 99–7338. HALL *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–7341. HAMILTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1287.

No. 99–7344. GRAYER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–7346. FRANKLIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 166 F. 3d 344.

No. 99–7356. WATTS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 99–7359. KRATZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 179 F. 3d 1039.

No. 99–7365. RAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 183 F. 3d 1029 and 187 F. 3d 650.

No. 99–7375. CHAMPION *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 192 F. 3d 125.

No. 99–7376. CICERO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 198 F. 3d 233.

No. 99–7377. VASSELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 633.

No. 99–7379. MARTIN *v.* ARKANSAS. Ct. App. Ark. Certiorari denied. Reported below: 67 Ark. App. xxiii.

No. 99–7382. ROWLAND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 199 F. 3d 1329.

No. 99–7383. PADILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–7384. SMALLWOOD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 188 F. 3d 905.

No. 99–7389. MENDEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 99–7391. LEBLANC *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 201 F. 3d 445.

No. 99–7395. PACHECO-CAMACHO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 199 F. 3d 1334.

No. 99–7410. MOBLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 191 F. 3d 449.

No. 99–7411. MURPHY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 191 F. 3d 446.

No. 99–7413. LUNDY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 466.

No. 99–7414. LAFORTUNE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 192 F. 3d 157.

No. 99–7415. PELAEZ MELO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 188 F. 3d 504.

No. 99–7416. MCGEE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 194 F. 3d 1321.

No. 99–7420. RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 516.

No. 99–7422. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 945.

No. 99–7424. VASQUEZ-BERNAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 197 F. 3d 169.

No. 99–7426. BELCHER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 631.

No. 99–7427. BROWN *v.* UNITED STATES; and
No. 99–7456. BANKS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 726 A. 2d 149.

No. 99–7428. WINFIELD *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 5 S. W. 3d 505.

No. 99–7432. SPENCE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 187 F. 3d 644.

No. 99–7433. RAULSTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 99–7434. SPRY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 190 F. 3d 829.

No. 99–7435. SENA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 196 F. 3d 1256.

No. 99–7442. RIVERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 99–7443. BROWN *v.* MONEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–7446. HOOPER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 190 F. 3d 541.

No. 99–7448. DONALDSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 191 F. 3d 453.

No. 99–7449. EMERY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 186 F. 3d 921.

No. 99–7451. EDWARDS ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 188 F. 3d 230.

No. 99–7452. HERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 196 F. 3d 1261.

No. 99–7453. FERRERAS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 192 F. 3d 5.

No. 99–7454. GIBBS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 190 F. 3d 188.

No. 99–7459. CHAVEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 196 F. 3d 1257.

No. 99–7460. ARGUETA *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 99–7467. TROBAUGH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 99–296. WALKER ET AL. *v.* CITY OF MESQUITE ET AL. C. A. 5th Cir. Motion of Lawyers' Committee for Civil Rights Under Law for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 169 F. 3d 973.

No. 99–416. HANNA *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. JUSTICE O'CONNOR would grant certiorari. Reported below: 458 Mich. 862, 587 N. W. 2d 637.

No. 99–557. SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY *v.* LANNING ET AL. C. A. 3d Cir. Motion of Equal Employment Advisory Council for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 181 F. 3d 478.

No. 99–795. FLORIDA *v.* RAMIREZ. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 739 So. 2d 568.

No. 99–826. PENNSYLVANIA *v.* CHMIEL. Sup. Ct. Pa. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 558 Pa. 478, 738 A. 2d 406.

No. 99–840. SUSSMAN ET AL. *v.* AMERICAN BROADCASTING COS., INC., DBA KABC–TV INC., ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 186 F. 3d 1200.

No. 99–7105. EATON *v.* DAKOTA COUNTY HOUSING REDEVELOPMENT AUTHORITIES ET AL. C. A. 8th Cir. Certiorari before judgment denied.

No. 99–7539 (99A558). GOODMAN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DI-

VISION. 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 would grant the application for stay of execution.

*Rehearing Denied*

No. 99–525. ALBERT *v.* CITY OF SPARKS ET AL., *ante*, p. 968;
No. 99–529. TALYANSKY *v.* XEROX CORP. ET AL., *ante*, p. 1020;
No. 99–533. PARKER *v.* UNITED STATES AIR FORCE ET AL., *ante*, p. 1020;
No. 99–583. EMERSON *v.* DELTA AIRLINES, INC., ET AL., *ante*, p. 1022;
No. 99–5386. WILEY *v.* UNITED STATES, *ante*, p. 1006;
No. 99–5860. GILBERT *v.* FLORIDA, *ante*, p. 970;
No. 99–6164. ROMNEY *v.* DISESSA ET AL., *ante*, p. 1007;
No. 99–6462. BAKER *v.* TOLEDO BOARD OF EDUCATION, *ante*, p. 1010; and
No. 99–6468. ROBERTS *v.* WARD, WARDEN, *ante*, p. 1050. Petitions for rehearing denied.

No. 98–1837. DIETTRICH *v.* NORTHWEST AIRLINES, INC., *ante*, p. 813; and
No. 98–9986. DUA *v.* UNITED STATES ET AL., *ante*, p. 864. Motions for leave to file petitions for rehearing denied.

JANUARY 20, 2000

*Certiorari Denied*

No. 99–7845 (99A589). HICKS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 186 F. 3d 634.

JANUARY 21, 2000

*Certiorari Granted*

No. 98–829. FLORIDA DEPARTMENT OF CORRECTIONS *v.* DICKSON ET AL. C. A. 11th Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing

counsel on or before 3 p.m., Friday, March 3, 2000. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 31, 2000. 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 17, 2000. This Court's Rule 29.2 does not apply. Reported below: 139 F. 3d 1426.

No. 99–401. California Democratic Party et al. *v.* Jones, Secretary of State of California, et al. C. A. 9th Cir. Motion of Republican Party of Alaska et al. for leave to file a brief as *amici curiae* granted. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 3, 2000. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 31, 2000. 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 17, 2000. This Court's Rule 29.2 does not apply. Reported below: 169 F. 3d 646.

## January 24, 2000

*Certiorari Granted—Vacated and Remanded*

No. 98–1427. Kramer, Warden *v.* Davis. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Smith* v. *Robbins*, *ante*, p. 259. Reported below: 167 F. 3d 494.

No. 99–451. Lewis, Warden, et al. *v.* Garcia Delgado. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Smith* v. *Robbins*, *ante*, p. 259. Reported below: 181 F. 3d 1087.

*Certiorari Dismissed*

No. 99–6723. Bryan *v.* Moore, Secretary, Florida Department of Corrections. Sup. Ct. Fla. [Certiorari granted, *ante*, p. 960.] In light of the representation by the State of Florida, through its Attorney General, that petitioner's "death sentence will be carried out by lethal injection, unless petitioner affirmatively elects death by electrocution" pursuant to the recent

amendments to § 922.10 of the Florida Statutes, the writ of certiorari is dismissed as improvidently granted.

No. 99–7235. BENTLEY *v.* BURNS ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 259 App. Div. 2d 1057, 685 N. Y. S. 2d 568.

No. 99–7402. TURNER *v.* VIRGINIA. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 203 F. 3d 53.

*Miscellaneous Orders*

No. 99M61. COLLINS *v.* WARNER-LAMBERT CO. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 98–1167. CHRISTENSEN ET AL. *v.* HARRIS COUNTY ET AL. C. A. 5th Cir. [Certiorari granted, *ante*, p. 926.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 98–1993. FLORIDA *v.* J. L. Sup. Ct. Fla. [Certiorari granted, *ante,* p. 963.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 99–62. SANTA FE INDEPENDENT SCHOOL DISTRICT *v.* DOE, INDIVIDUALLY AND AS NEXT FRIEND FOR HER MINOR CHILDREN, ET AL. C. A. 5th Cir. [Certiorari granted, *ante*, p. 1002.] Motion of Students and Parents of Santa Fe Independent School District for leave to participate in oral argument as *amicus curiae* and for additional time for oral argument denied.

No. 99–312. NORFOLK SOUTHERN RAILWAY CO. *v.* SHANKLIN, INDIVIDUALLY AND AS NEXT FRIEND OF SHANKLIN. C. A. 6th Cir. [Certiorari granted, *ante*, p. 949.] Motion of Texas et al. for leave to participate in oral argument as *amici curiae* and for divided argument granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 99–6673. IN RE TYLER. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1017] denied.

No. 99–6705. BURGESS *v.* KITZHABER ET AL. Ct. App. Ore. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1042] denied.

No. 99–7178. TSU ET UX. *v.* TRACY FEDERAL BANK ET AL. C. A. 9th Cir. Motion of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until February 14, 2000, 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. 99–7343. IN RE EHNES; and
No. 99–7591. IN RE MCNALLY. Petitions for writs of habeas corpus denied.

No. 99–7133. IN RE SIMON. Petition for writ of mandamus denied.

No. 99–910. IN RE TAPIA-ORTIZ. Petition for writ of mandamus and/or prohibition denied.

*Certiorari Denied*

No. 98–7579. MARROQUIN *v.* PRUNTY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 163 F. 3d 606.

No. 98–8406. BARONE *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 328 Ore. 68, 969 P. 2d 1013.

No. 98–8625. WAGENHEIM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 166 F. 3d 352.

No. 98–8712. SAMS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 721 A. 2d 945.

No. 99–479. NTAKIRUTIMANA *v.* RENO, ATTORNEY GENERAL, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 419.

No. 99–613. GEORGE ET UX. *v.* CITY OF MORRO BAY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 177 F. 3d 885 and 185 F. 3d 866.

No. 99–641. STEINHARDT *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 184 F. 3d 131.

No. 99–671. SHELTON *v.* BENEFIT PLAN OF EXXON CORPORATION AND PARTICIPATING AFFILIATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 182 F. 3d 915.

No. 99–680. HSIA *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 176 F. 3d 517.

No. 99–731. RICHARDS, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF RICHARDS, DECEASED *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 176 F. 3d 652.

No. 99–747. LEWIS *v.* KMART CORP. C. A. 4th Cir. Certiorari denied. Reported below: 180 F. 3d 166.

No. 99–776. GIBERNA ET UX. *v.* CARTER ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 99–784. AMERICAN HOME PRODUCTS CORP. *v.* OREGON ET AL. Ct. App. Ore. Certiorari denied. Reported below: 158 Ore. App. 292, 974 P. 2d 224, and 160 Ore. App. 19, 981 P. 2d 340.

No. 99–799. WASHINGTON *v.* HEALTH COST CONTROLS OF ILLINOIS, INC. C. A. 7th Cir. Certiorari denied. Reported below: 187 F. 3d 703.

No. 99–824. BOYD, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BOYD, DECEASED *v.* WATERFRONT EMPLOYERS-I. L. A. PENSION PLAN, IN THE PORTS OF SOUTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 182 F. 3d 907.

No. 99–833. DAIN *v.* COUNTY OF VENTURA ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–834. CONLEY *v.* PITNEY BOWES, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 176 F. 3d 1044.

No. 99–846. PIAMBA CORTES *v.* AMERICAN AIRLINES, INC. C. A. 11th Cir. Certiorari denied. Reported below: 177 F. 3d 1272.

No. 99–848. BLAKE ET AL. *v.* WRIGHT. C. A. 6th Cir. Certiorari denied. Reported below: 179 F. 3d 1003.

No. 99–849. EIE Guam Corp. *v.* Supreme Court of Guam (Long-Term Credit Bank of Japan, Ltd., Real Party in Interest). C. A. 9th Cir. Certiorari denied. Reported below: 191 F. 3d 1123.

No. 99–851. Sugarbaker *v.* SSM Healthcare, dba St. Marys Health Center. C. A. 8th Cir. Certiorari denied. Reported below: 190 F. 3d 905.

No. 99–856. Lin *v.* Lin. Ct. App. N. C. Certiorari denied. Reported below: 128 N. C. App. 533, 496 S. E. 2d 849.

No. 99–857. Dayton Newspapers, Inc. *v.* General Truckdrivers, Chauffeurs, Warehousemen and Helpers, Local Union No. 957. C. A. 6th Cir. Certiorari denied. Reported below: 190 F. 3d 434.

No. 99–860. 31/32 Lexington Associates *v.* Tax Appeals Tribunal of New York et al. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 258 App. Div. 2d 684, 685 N. Y. S. 2d 329.

No. 99–865. Stinnett Enterprises, Inc. *v.* Dragon Textile Mills. C. A. 5th Cir. Certiorari denied. Reported below: 192 F. 3d 127.

No. 99–868. Voit *v.* Kentucky. Cir. Ct. Jefferson County, Ky. Certiorari denied.

No. 99–871. Starr *v.* Pliler et al. C. A. 9th Cir. Certiorari denied.

No. 99–872. Hill *v.* Kansas City Area Transportation Authority. C. A. 8th Cir. Certiorari denied. Reported below: 181 F. 3d 891.

No. 99–873. Tyler *v.* O'Neill et al. C. A. 3d Cir. Certiorari denied. Reported below: 189 F. 3d 465.

No. 99–880. International Bank of Commerce-Brownsville *v.* International Energy Development Corp. Ct. App. Tex., 13th Dist. Certiorari denied. Reported below: 981 S. W. 2d 38.

No. 99–883. Bradley et al. *v.* Kelly, Director, Arizona Health Care Cost Containment System, et al. Ct. App. Ariz. Certiorari denied.

No. 99–884. LEVERETTE *v.* LOUISVILLE LADDER CO. C. A. 5th Cir. Certiorari denied. Reported below: 183 F. 3d 339.

No. 99–885. YU *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 99–886. HEMPSTEAD TOWN BOARD ET AL. *v.* GOOSBY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 180 F. 3d 476.

No. 99–888. DAVIS *v.* TOWNSHIP OF HILLSIDE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 190 F. 3d 167.

No. 99–890. COLUMBIA FALLS ALUMINUM CO. ET AL. *v.* ADMINISTRATOR, BONNEVILLE POWER ADMINISTRATION. C. A. 9th Cir. Certiorari denied. Reported below: 175 F. 3d 1156.

No. 99–892. MANNATT ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 868.

No. 99–894. HARTEY *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 186 F. 3d 367.

No. 99–895. LOOMIS FARGO & CO. *v.* KEELEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 183 F. 3d 257.

No. 99–900. ESPY *v.* BOROUGH OF ROARING SPRING. Commw. Ct. Pa. Certiorari denied. Reported below: 718 A. 2d 918.

No. 99–904. NEW VALLEY CORP. *v.* CORPORATE PROPERTY ASSOCIATES 2 ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 181 F. 3d 517.

No. 99–918. EAST LAKE METHODIST EPISCOPAL CHURCH, INC., ET AL. *v.* TRUSTEES OF THE PENINSULA-DELAWARE ANNUAL CONFERENCE OF THE UNITED METHODIST CHURCH, INC., ET AL. Sup. Ct. Del. Certiorari denied. Reported below: 731 A. 2d 798.

No. 99–923. BRIGHT *v.* NORSHIPCO ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1282.

No. 99–926. LOVELL *v.* HIGHTOWER, CLAIBORNE PARISH ASSESSOR, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 193 F. 3d 520.

No. 99–928. COSMAIR, INC. *v.* MICHIGAN DEPARTMENT OF THE TREASURY. Ct. App. Mich. Certiorari denied.

No. 99–931. CREFISA INC. *v.* WASHINGTON MUTUAL BANK, F. A., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 186 F. 3d 46.

No. 99–952. MURLIN-GARDNER *v.* PENNSYLVANIA DEPARTMENT OF REVENUE. C. A. 3d Cir. Certiorari denied. Reported below: 191 F. 3d 445.

No. 99–955. CLASSIC CORP. *v.* AMERICAN NATIONAL WATERMATTRESS CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 191 F. 3d 459.

No. 99–976. WILBANKS *v.* A. H. ROBBINS CO., INC. C. A. 5th Cir. Certiorari denied. Reported below: 196 F. 3d 1257.

No. 99–979. WIESNER *v.* WILLKIE, FARR & GALLAGHER ET AL. C. A. D. C. Cir. Certiorari denied.

No. 99–1008. GEHL CO. *v.* KINSER, HEIR-AT-LAW AND PERSONAL REPRESENTATIVE OF THE ESTATE OF KINSER, DECEASED. C. A. 10th Cir. Certiorari denied. Reported below: 184 F. 3d 1259.

No. 99–1023. KALAN *v.* BOCKHORST, EHRLICH & KAMINSKEE. Ct. App. Wis. Certiorari denied. Reported below: 230 Wis. 2d 746, 604 N. W. 2d 33.

No. 99–1028. COSTA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 481.

No. 99–1033. BORNFIELD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 184 F. 3d 1144.

No. 99–1050. JASIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 191 F. 3d 446.

No. 99–1057. DRUCKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 198 F. 3d 261.

No. 99–1061. FOGG *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 52 M. J. 144.

No. 99–1080. WIENER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 191 F. 3d 446.

No. 99–6401. TAYLOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–6515. COCKE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 818.

No. 99–6572. ERICKSON *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 227 Wis. 2d 758, 596 N. W. 2d 749.

No. 99–6690. DAVIS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 141 F. 3d 1202.

No. 99–6898. HUNTER *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 172 F. 3d 1016.

No. 99–7119. PORTS *v.* DEAN, SUPERINTENDENT, LAKE CORRECTIONAL INSTITUTION, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–7130. HORTON *v.* MCCAUGHTRY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1019.

No. 99–7135. OSWALD *v.* PITCHER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–7142. JOHNSON *v.* REYNOLDS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 189 F. 3d 477.

No. 99–7147. MOODY *v.* MCCROWSKEY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 851.

No. 99–7148. KANAZEH *v.* SANDGROUND, BARONDESS & WEST ET AL. Sup. Ct. Va. Certiorari denied.

No. 99–7153. KOROTKA *v.* SONDALLE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 99–7156. RABAH *v.* BARBO, ADMINISTRATOR, NORTHERN STATE PRISON. C. A. 3d Cir. Certiorari denied.

No. 99–7164. SMITH *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–7165. BENN *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 735 So. 2d 629.

No. 99–7166. BROWN *v.* CAREY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–7168. WINWARD *v.* CARR ET AL. (three judgments). C. A. 3d Cir. Certiorari denied.

No. 99–7170. COOPER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 735 So. 2d 1284.

No. 99–7175. VARGAS *v.* LINAHAN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 99–7184. WUCHANG ET AL. *v.* CITY OF REDWOOD CITY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 872.

No. 99–7196. BOYSIEWICK *v.* SCHRIRO, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 179 F. 3d 616.

No. 99–7202. LEE ET AL. *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 99–7217. WEATHERSPOON *v.* UNITED STATES;
No. 99–7218. WALLACE *v.* UNITED STATES; and
No. 99–7296. WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 191 F. 3d 446.

No. 99–7231. BURGESS *v.* COOK, DIRECTOR, OREGON DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Ore. Certiorari denied.

No. 99–7255. SEAWORTH *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied.

No. 99–7261. LONG *v.* DOW CHEMICAL CO., INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 189 F. 3d 461.

No. 99–7262. THORNTON *v.* SCARDELLETTI ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 201 F. 3d 437.

No. 99–7266. CLARK *v.* AT ENTERTAINMENT, INC., ET AL. C. A. 5th Cir. Certiorari denied.

No. 99–7277. ALLAH *v.* STACHELEK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 178 F. 3d 1278.

No. 99–7330. SWINSON *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 631.

No. 99–7348. KRUEGER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 186 F. 3d 1136.

No. 99–7350. VAILE *v.* WALTER, SUPERINTENDENT, AIRWAY HEIGHTS CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 99–7361. HARROLD *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 256 Neb. 829, 593 N. W. 2d 299.

No. 99–7431. JARED W. *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 99–7461. HARRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 196 F. 3d 1257.

No. 99–7464. MORENO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 99–7471. LAFOND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 198 F. 3d 238.

No. 99–7480. TAYLOR, AKA BRYANT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 484.

No. 99–7482. ARMETTA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 191 F. 3d 448.

No. 99–7483. ALLEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 196 F. 3d 1258.

No. 99–7484. CAMPBELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 194 F. 3d 1305.

No. 99–7491. CAMPBELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 100.

No. 99–7493. CLEMMONS *v.* O'BRIEN, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 191 F. 3d 455.

No. 99–7501. LACEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 196 F. 3d 1257.

No. 99–7503. JIMENEZ-ARREGUIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 199 F. 3d 439.

No. 99–7506. LEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–7508. NICKELSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 516.

No. 99–7513. MCCOLL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 166 F. 3d 335.

No. 99–7514. KELLY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 189 F. 3d 465.

No. 99–7516. JAMES *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 187 F. 3d 866.

No. 99–7517. SIMMONS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–7519. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 194 F. 3d 1321.

No. 99–7520. VALADEZ-CAMARENA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 194 F. 3d 1321.

No. 99–7521. CUEVAS-ZAVALA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 194 F. 3d 1318.

No. 99–7530. JONES *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 226 Wis. 2d 565, 594 N. W. 2d 738.

No. 99–7531. MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–7535. COLEMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 191 F. 3d 454.

No. 99–7540. HATCHER, AKA RAYMOND *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 190 F. 3d 541.

No. 99–7541. DRAKE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 194 F. 3d 1306.

No. 99–7543. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 183 F. 3d 1315.

No. 99–7544. DUCHARME *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 193 F. 3d 559.

No. 99–7546. HALL *v.* UNITED STATES (two judgments). C. A. 6th Cir. Certiorari denied.

No. 99–7548. DAWODU *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 194 F. 3d 1305.

No. 99–7549. GUTIERREZ-OROZCO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 191 F. 3d 578.

No. 99–7550. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 194 F. 3d 1306.

No. 99–7551. MILLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 191 F. 3d 449.

No. 99–7552. MCCOY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 199 F. 3d 444.

No. 99–7555. FEREBE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 194 F. 3d 1306.

No. 99–7556. GOODLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 196 F. 3d 1258.

No. 99–7563. CHACON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 194 F. 3d 1321.

No. 99–7565. BANKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 191 F. 3d 448.

No. 99–7569. STOTTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 F. 3d 911.

No. 99–7573. TRUJILLO MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 516.

No. 99–7574. ROACH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 94.

No. 99–449. OKUNIEFF *v.* SKOMOROSSKY ET AL. C. A. 2d Cir. Motion of National Association for Rights Protection and Advo-

cacy et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 166 F. 3d 507.

No. 99–864. ACKERMAN ET AL. *v.* COCA-COLA ENTERPRISES, INC. C. A. 10th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 179 F. 3d 1260.

No. 99–878. CRAWFORD ET UX. *v.* SIGNET BANK ET AL. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 179 F. 3d 926.

No. 99–7425. WALKER *v.* CLINTON, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari before judgment denied.

No. 99–7701 (99A555). HUGHES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 191 F. 3d 607.

*Rehearing Denied*

No. 98–9450. FRANKLIN *v.* GOODWIN, WARDEN, ET AL., *ante*, p. 835;

No. 98–9925. BEY ET AL. *v.* CITY OF NEW YORK DEPARTMENT OF CORRECTION ET AL., *ante*, p. 860;

No. 99–5518. JOHNSON *v.* UNITED STATES, *ante*, p. 909;

No. 99–5833. SPEARS *v.* MARSH ET AL., *ante*, p. 955;

No. 99–5864. GUANIPA *v.* UNITED STATES, *ante*, p. 919;

No. 99–6037. LEE *v.* GEORGIA, *ante*, p. 1006;

No. 99–6125. ZUKER *v.* ANDREWS, *ante*, p. 1048;

No. 99–6453. WESSINGER *v.* LOUISIANA, *ante*, p. 1050;

No. 99–6490. CEGLAREK *v.* JOHN CRANE, INC., *ante*, p. 1051; and

No. 99–6640. LINEBERGER *v.* UNITED STATES, *ante*, p. 1028. Petitions for rehearing denied.

No. 98–9583. WELCH *v.* LAMBERT, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY, *ante*, p. 840. Motion for leave to file petition for rehearing denied.

JANUARY 25, 2000

*Certiorari Granted*

No. 99–423. ALSBROOK *v.* ARKANSAS ET AL. C. A. 8th Cir. Certiorari granted limited to Question 1 presented by the petition, case consolidated with No. 98–829, *Florida Department of Corrections* v. *Dickson et al.* [certiorari granted, *ante,* p. 1132], and a total of one hour allotted for oral argument. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 3, 2000. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 31, 2000. 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 17, 2000. This Court's Rule 29.2 does not apply. Reported below: 184 F. 3d 999.

*Certiorari Denied*

No. 99–7870 (99A599). MCGINNIS *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 27, 2000

*Miscellaneous Order*

No. 99–7902 (99A602). IN RE MORELAND. 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.

FEBRUARY 3, 2000

*Miscellaneous Order*

No. 99A625 (99–8044). IN RE TARVER. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, granted pending further order of the Court.

FEBRUARY 7, 2000

*Dismissal Under Rule 46*

No. 99–145. SOUTH CAROLINA LAW ENFORCEMENT DIVISION *v.* GLOVER. C. A. 4th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 170 F. 3d 411.

## February 9, 2000

*Certiorari Denied*

No. 99–8054 (99A626). Roberts *v.* Gibson, Warden. C. A. 10th Cir. Application for stay of execution of sentence of death, presented to Justice Breyer, and by him referred to the Court, denied. Certiorari denied.

## February 10, 2000

*Dismissal Under Rule 46*

No. 99–908. Martini *v.* Federal National Mortgage Association et al.; and

No. 99–1100. Federal National Mortgage Association et al. *v.* Martini. C. A. D. C. Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 178 F. 3d 1336.

## February 15, 2000

*Certiorari Denied*

No. 99–8169 (99A646). Chaney *v.* Arizona. Super. Ct. Ariz., Maricopa County. Application for stay of execution of sentence of death, presented to Justice O'Connor, and by her referred to the Court, denied. Certiorari denied.

## February 16, 2000

*Miscellaneous Order*

No. 99–8242 (99A659). In re Chaney. Application for stay of execution of sentence of death, presented to Justice O'Connor, and by her referred to the Court, denied. Petition for writ of habeas corpus denied.

## February 18, 2000

*Miscellaneous Orders*

No. 8, Orig. Arizona *v.* California et al. Motion of West Bank Homeowners Association for leave to file a brief as *amicus curiae* granted. Exceptions to the Report of the Special Master are set for oral argument in due course. [For earlier order herein, see, *e. g.*, *ante*, p. 803.]

No. 99–312. NORFOLK SOUTHERN RAILWAY CO. *v.* SHANKLIN, INDIVIDUALLY AND AS NEXT FRIEND OF SHANKLIN. C. A. 6th Cir. [Certiorari granted, *ante*, p. 949.] Motion of Kansas for leave to participate in oral argument as *amicus curiae* denied.

*Certiorari Denied*

No. 99–6675. SIMS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. In light of the recent amendments to § 922.10 of the Florida Statutes (providing that capital prisoners will be executed by lethal injection unless they affirmatively elect execution by electrocution), and the Florida Supreme Court's recent conclusion that those amendments do not violate Art. X, § 9, of the Florida Constitution, *Sims* v. *State*, 754 So. 2d 657 (2000), certiorari denied. Reported below: 744 So. 2d 456.

FEBRUARY 22, 2000

*Certiorari Granted—Vacated and Remanded*

No. 98–978. BRAY *v.* SHRINK MISSOURI GOVERNMENT PAC ET AL. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Nixon* v. *Shrink Missouri Government PAC*, *ante*, p. 377. Reported below: 161 F. 3d 519.

*Certiorari Dismissed*

No. 99–7396. PIZZO *v.* LOUISIANA. Ct. App. La., 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 99–7476. STEELE *v.* CALIFORNIA DEPARTMENT OF SOCIAL SERVICES 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. Reported below: 185 F. 3d 869.

No. 99–7492. ABIDEKUN *v.* DEPARTMENT OF EDUCATION. 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.

No. 99–7528. OMOIKE *v.* LOUISIANA STATE UNIVERSITY BOARD OF SUPERVISORS ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dis-

missed. See this Court's Rule 39.8. Reported below: 199 F. 3d 438.

No. 99–7748. BURGESS *v.* MONTANA. Sup. Ct. Mont. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

*Miscellaneous Orders*

No. 99A515. ASKANAZI *v.* UNITED STATES. C. A. 6th Cir. Application for stay, addressed to JUSTICE GINSBURG and referred to the Court, denied.

No. D–2101. IN RE DISBARMENT OF JACOBS. Disbarment entered. [For earlier order herein, see *ante*, p. 801.]

No. D–2111. IN RE DISBARMENT OF KRAMER. Disbarment entered. [For earlier order herein, see *ante*, p. 948.]

No. D–2113. IN RE DISBARMENT OF SUMNER. Disbarment entered. [For earlier order herein, see *ante*, p. 961.]

No. D–2114. IN RE DISBARMENT OF BEEM. Disbarment entered. [For earlier order herein, see *ante*, p. 961.]

No. D–2116. IN RE DISBARMENT OF CATO. Disbarment entered. [For earlier order herein, see *ante*, p. 983.]

No. D–2122. IN RE DISBARMENT OF ARNOLD. Disbarment entered. [For earlier order herein, see *ante*, p. 1016.]

No. D–2123. IN RE DISBARMENT OF ROMM. Disbarment entered. [For earlier order herein, see *ante*, p. 1042.]

No. D–2124. IN RE DISBARMENT OF KINANE. Disbarment entered. [For earlier order herein, see *ante*, p. 1043.]

No. D–2125. IN RE DISBARMENT OF TESSEYMAN. Disbarment entered. [For earlier order herein, see *ante*, p. 1043.]

No. D–2126. IN RE DISBARMENT OF HANBERY. Disbarment entered. [For earlier order herein, see *ante*, p. 1043.]

No. D–2128. IN RE DISBARMENT OF JACKSON. Disbarment entered. [For earlier order herein, see *ante*, p. 1043.]

No. D–2130. IN RE DISBARMENT OF MALERBA. Robert F. Malerba, of Huntington, N. Y., having requested to resign as a

member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on January 10, 2000 [*ante,* p. 1071], is discharged.

No. D–2140. IN RE DISBARMENT OF MOORE. Franklin Keith Payne Moore, of Puerto Vallarta, Mexico, 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–2141. IN RE DISBARMENT OF MCGILL. Michael E. McGill, of Toledo, Ohio, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2142. IN RE DISBARMENT OF GLAZER. Jack D. Glazer, of Lindenhurst, 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–2143. IN RE DISBARMENT OF SPINA. Nicholas M. Spina, of Melrose Park, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2144. IN RE DISBARMENT OF BERMAN. John R. Berman, of Waltham, Mass., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2145. IN RE DISBARMENT OF MAININI. Alfred J. Mainini, of Framingham, Mass., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2146. IN RE DISBARMENT OF SCULLY. Roger Tehan Scully, of Rockville, Md., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, re-

quiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2147. IN RE DISBARMENT OF CARLSON. Glenn Herbert Carlson, of Washington, D. C., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 99M62. BROWN *v.* UNITED STATES;
No. 99M64. STEWART *v.* WHITLEY, WARDEN;
No. 99M65. LAFEVERS *v.* WARD, WARDEN, ET AL.;
No. 99M66. WILLIAMS *v.* BOARD OF EDUCATION OF MONTGOMERY COUNTY ET AL.; and
No. 99M67. HING CHUN TING *v.* COLLEGE OF PODIATRIC MEDICINE AND SURGERY ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 99M63. MOORE *v.* TEXAS. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 126, Orig. KANSAS *v.* NEBRASKA ET AL. First Report of the Special Master received and ordered filed. Exceptions to the Report, with supporting briefs, may be filed by the parties within 45 days. Replies, if any, with supporting briefs may be filed within 30 days. [For earlier order herein, see, *e. g., ante,* p. 1001.]

No. 99–138. TROXEL ET VIR *v.* GRANVILLE. Sup. Ct. Wash. [Certiorari granted, 527 U. S. 1069.] Motion of Debra Hein for leave to file a brief as *amicus curiae* granted.

No. 99–387. RALEIGH, CHAPTER 7 TRUSTEE FOR THE ESTATE OF STOECKER *v.* ILLINOIS DEPARTMENT OF REVENUE. C. A. 7th Cir. [Certiorari granted, *ante,* p. 1068.] Motion of the parties to dispense with printing the joint appendix granted.

No. 99–905. ARMSTRONG SURGICAL CENTER, INC. *v.* ARMSTRONG COUNTY MEMORIAL HOSPITAL ET AL. C. A. 3d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 99–6940. TURNER *v.* INTERNAL REVENUE SERVICE. C. A. 4th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 1069] denied.

No. 99–7000. RAMDASS *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. [Certiorari granted, *ante*, p. 1068.] Motion for appointment of counsel granted, and it is ordered that F. Nash Bilisoly, Esq., of Norfolk, Va., be appointed to serve as counsel for petitioner in this case.

No. 99–7406. WILLIAMS *v.* CITY OF ATLANTA. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until March 14, 2000, 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. 99–1222. IN RE HIRSCHFELD;
No. 99–7373. IN RE BROWN;
No. 99–7649. IN RE GULLION;
No. 99–7794. IN RE MELENDEZ;
No. 99–7830. IN RE SALEEM;
No. 99–7842. IN RE MCSHEFFREY;
No. 99–7848. IN RE VINSON;
No. 99–7865. IN RE ROBINSON; and
No. 99–7929. IN RE THOMPSON. Petitions for writs of habeas corpus denied.

No. 99–8044. IN RE TARVER. Petition for writ of habeas corpus denied. JUSTICE STEVENS, JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER would set the case for oral argument. Order of this Court heretofore entered February 3, 2000, vacated, and application for stay of execution of sentence of death denied.

No. 99–8335 (99A678). IN RE SIMS. 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. 99–953. IN RE AMES;
No. 99–7227. IN RE WOODARD;
No. 99–7518. IN RE SIEGEL; and
No. 99–7659. IN RE GARCIA-BELTRAN. Petitions for writs of mandamus denied.

No. 99–7405. IN RE TRAYLOR; and
No. 99–7661. IN RE GENCO. Petitions for writs of mandamus and/or prohibition denied.

*Certiorari Granted*

No. 99–1030. CITY OF INDIANAPOLIS ET AL. *v.* EDMOND ET AL. C. A. 7th Cir. Certiorari granted. Reported below: 183 F. 3d 659.

No. 99–901. BRENTWOOD ACADEMY *v.* TENNESSEE SECONDARY SCHOOL ATHLETIC ASSN. ET AL. C. A. 6th Cir. Motion of Memphis University School et al. for leave to file a brief as *amici curiae* granted. Motion of petitioner for summary reversal denied. Certiorari granted. Reported below: 180 F. 3d 758.

*Certiorari Denied*

No. 98–1887. NORTH CAROLINA RIGHT TO LIFE, INC., ET AL. *v.* BARTLETT, EXECUTIVE SECRETARY-DIRECTOR, NORTH CAROLINA BOARD OF ELECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 168 F. 3d 705.

No. 98–1976. FIREMAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 99–128. ALASKA CIVIL LIBERTIES UNION *v.* ALASKA. Sup. Ct. Alaska. Certiorari denied. Reported below: 978 P. 2d 597.

No. 99–418. LAGUERRE ET AL. *v.* RENO, ATTORNEY GENERAL, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 164 F. 3d 1035.

No. 99–570. LAWRENCE AVIATION INDUSTRIES, INC. *v.* HERMAN, SECRETARY OF LABOR, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 182 F. 3d 900.

No. 99–629. WHITE *v.* LACHANCE, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 174 F. 3d 1378.

No. 99–672. BLANKENSHIP *v.* MCDONALD, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 176 F. 3d 1192.

No. 99–694. JOHNSON, DBA F. C. JOHNSON CONSTRUCTION CO. *v.* HERMAN, SECRETARY OF LABOR, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 182 F. 3d 914.

No. 99–719. FREDERICK ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 182 F. 3d 496.

No. 99–739. LABORERS' INTERNATIONAL UNION OF NORTH AMERICA *v.* ALEXANDER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 177 F. 3d 394.

No. 99–742. BINDER ET UX. *v.* WILSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 184 F. 3d 1059.

No. 99–746. LEHMAN *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 736 A. 2d 256.

No. 99–783. BUCHANAN *v.* WASHINGTON; and
No. 99–964. WASHINGTON *v.* BUCHANAN. Sup. Ct. Wash. Certiorari denied. Reported below: 138 Wash. 2d 186, 978 P. 2d 1070.

No. 99–810. UNITED TRANSPORTATION UNION, LOCAL 60, ET AL. *v.* RUOCCHIO ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 181 F. 3d 376.

No. 99–815. CHIMBLO ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 177 F. 3d 119.

No. 99–829. CERVANTES *v.* JONES; and
No. 99–1044. JONES *v.* CERVANTES. C. A. 7th Cir. Certiorari denied. Reported below: 188 F. 3d 805.

No. 99–836. BARFIELD *v.* ORMET PRIMARY ALUMINUM CORP. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 467.

No. 99–841. PRIMEAUX, FKA LAMONT, FKA BAD WOUND *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 181 F. 3d 876.

No. 99–858. CITY OF ANAHEIM *v.* CALIFORNIA CREDIT UNION LEAGUE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 190 F. 3d 997.

No. 99–862. WELCH *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 20 Cal. 4th 701, 976 P. 2d 754.

No. 99–867. KOORITZKY *v.* HERMAN, SECRETARY OF LABOR. C. A. D. C. Cir. Certiorari denied. Reported below: 178 F. 3d 1315.

No. 99–893. STATLAND ET UX. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 178 F. 3d 465.

No. 99–896. CRUMP *v.* BEST TEMPS. Sup. Ct. Del. Certiorari denied. Reported below: 748 A. 2d 406.

No. 99–906. WILKINSON ET AL. *v.* RUSSELL ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 182 F. 3d 89.

No. 99–907. RINGO *v.* WASHINGTON STATE LIQUOR CONTROL BOARD. Ct. App. Wash. Certiorari denied.

No. 99–912. KLINE ET AL. *v.* CITY OF KANSAS CITY. C. A. 8th Cir. Certiorari denied. Reported below: 175 F. 3d 660.

No. 99–913. ARCTIC ALASKA FISHERIES CORP. *v.* HODDEVIK. Ct. App. Wash. Certiorari denied. Reported below: 94 Wash. App. 268, 970 P. 2d 828.

No. 99–914. KELLENBERG MEMORIAL HIGH SCHOOL ET AL. *v.* SECTION VIII OF THE NEW YORK STATE PUBLIC HIGH SCHOOL ATHLETIC ASSN., INC. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 255 App. Div. 2d 320, 679 N. Y. S. 2d 660.

No. 99–917. PINKLEY INC., T/A "BRADLEY BOOKS" *v.* SERVACEK ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 191 F. 3d 394.

No. 99–921. HOWARD *v.* OAKWOOD HOMES CORP. Ct. App. N. C. Certiorari denied. Reported below: 134 N. C. App. 116, 516 S. E. 2d 879.

No. 99–924. FIELDS *v.* POOL CO. C. A. 5th Cir. Certiorari denied. Reported below: 182 F. 3d 353.

No. 99–925. INTERSTELLAR STARSHIP SERVICES, LTD., ET AL. *v.* EPIX, INC. C. A. 9th Cir. Certiorari denied. Reported below: 184 F. 3d 1107.

No. 99–927. ROSS ET AL. *v.* ALASKA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 1107.

No. 99–932. STEARNS ET AL. *v.* CITY OF GIG HARBOR; and GIG HARBOR MARINA, INC., DBA ARABELLA'S LANDING, ET AL. *v.* CITY OF GIG HARBOR. Ct. App. Wash. Certiorari denied. Re-

ported below: 94 Wash. App. 1051 (first judgment); 94 Wash. App. 789, 973 P. 2d 1081 (second judgment).

No. 99–933. HATLEY *v.* MCCARTER. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 99–934. HUGH CHALMERS MOTORS, INC. *v.* GULF STATES TOYOTA, INC. C. A. 8th Cir. Certiorari denied. Reported below: 184 F. 3d 761.

No. 99–938. MORROW ET AL. *v.* STATE BAR OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 1174.

No. 99–942. NATIONAL AMERICAN INSURANCE CO. ET AL. *v.* RUPPERT LANDSCAPE CO., INC. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 439.

No. 99–948. CIMINO ET AL. *v.* PITTSBURGH CORNING CORP. C. A. 3d Cir. Certiorari denied. Reported below: 189 F. 3d 463.

No. 99–951. ANDERSON ET UX. *v.* FORD MOTOR CO. C. A. 8th Cir. Certiorari denied. Reported below: 186 F. 3d 918.

No. 99–954. GEORGE *v.* NATIONAL ASSOCIATION OF LETTER CARRIERS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 185 F. 3d 380.

No. 99–957. CHAMBLEY ET AL. *v.* PIKE COUNTY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 485.

No. 99–958. YSLETA DEL SUR PUEBLO *v.* TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 192 F. 3d 126.

No. 99–962. PETTIT ET AL. *v.* BAY AREA PIPE TRADES PENSION TRUST FUND ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 978 and 189 F. 3d 473.

No. 99–963. BELLO *v.* UNIVERSITY OF DAYTON SCHOOL OF LAW ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 916.

No. 99–965. SMITH *v.* FAUCHEUX ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 194 F. 3d 1308.

No. 99–966. JULIEN *v.* COUNTY OF ALAMEDA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 473.

No. 99–968. HERNANDEZ *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 99–970. AIKEN *v.* CITY OF MEMPHIS. C. A. 6th Cir. Certiorari denied. Reported below: 190 F. 3d 753.

No. 99–972. THOMPSON *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 99–974. MCKINLEY *v.* NORTHERN TELECOM. C. A. 5th Cir. Certiorari denied.

No. 99–980. MILETTE *v.* RHODE ISLAND. Sup. Ct. R. I. Certiorari denied. Reported below: 727 A. 2d 1236.

No. 99–982. STEINHILBER *v.* MCFARLAND ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 187 F. 3d 642.

No. 99–983. PULLIAM *v.* OHIO CASUALTY INSURANCE CO. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 918.

No. 99–984. FINCH *v.* BOB'S DISTRIBUTING CO., INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 191 F. 3d 460.

No. 99–987. SMITH *v.* COUNTY OF CULPEPER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 191 F. 3d 448.

No. 99–988. SOUDAVAR ET AL. *v.* ISLAMIC REPUBLIC OF IRAN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 186 F. 3d 671.

No. 99–990. SPENCER *v.* BOARD OF POLICE COMMISSIONERS OF KANSAS CITY, MISSOURI, POLICE DEPARTMENT, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 183 F. 3d 902.

No. 99–992. GOMEZ *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 991 S. W. 2d 870.

No. 99–996. ROBINSON *v.* METTS, SHERIFF, LEXINGTON COUNTY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 188 F. 3d 503.

No. 99–999. CLAIR ET AL. *v.* HARRIS TRUST AND SAVINGS BANK ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 190 F. 3d 495.

No. 99–1003. WEISS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 20 Cal. 4th 1073, 978 P. 2d 1257.

No. 99–1004. MICHELFELDER *v.* THOMAS JEFFERSON UNIVERSITY ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 736 A. 2d 22.

No. 99–1005. AYLWARD *v.* BAMBERG. C. A. 7th Cir. Certiorari denied. Reported below: 182 F. 3d 921.

No. 99–1006. NATIONWIDE MUTUAL INSURANCE CO. *v.* BERRYMAN PRODUCTS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 196 F. 3d 1256.

No. 99–1007. MCDUFFIE, DBA D&M CONTRACTING CO. *v.* CITY OF JACKSONVILLE. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 740 So. 2d 533.

No. 99–1017. O'SHELL *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1020.

No. 99–1018. PENNSYLVANIA *v.* HUFFMAN. Sup. Ct. Pa. Certiorari denied. Reported below: 558 Pa. 399, 737 A. 2d 733.

No. 99–1020. PENNSYLVANIA *v.* FLANDERS. Sup. Ct. Pa. Certiorari denied. Reported below: 557 Pa. 508, 734 A. 2d 1280.

No. 99–1022. YOUNG *v.* GENERAL MOTORS CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 191 F. 3d 454.

No. 99–1024. VOIGT, PERSONAL REPRESENTATIVE OF THE ESTATE OF VOIGT, DECEASED, ET AL. *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 192 F. 3d 131.

No. 99–1026. BANKS ET AL. *v.* NEW YORK LIFE INSURANCE CO. Sup. Ct. La. Certiorari denied. Reported below: 737 So. 2d 1275.

No. 99–1027. B. A. T. INDUSTRIES *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO (NORTH COAST TRUST FUND ET AL., REAL PARTIES IN INTEREST). Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 99–1031. GOMEZ *v.* DADE COUNTY SCHOOL BOARD. C. A. 11th Cir. Certiorari denied. Reported below: 181 F. 3d 108.

No. 99–1035. HOUSTON *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 177 F. 3d 901.

No. 99–1036. TREASURE CHEST CASINO ET AL. *v.* MULLEN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 186 F. 3d 620.

No. 99–1047. GREEN *v.* ILLINOIS POWER CO. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1019.

No. 99–1051. BENEDICT *v.* EAU CLAIRE PUBLIC SCHOOLS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 191 F. 3d 455.

No. 99–1053. KENNEDY *v.* NATIONAL JUVENILE DETENTION ASSN. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 187 F. 3d 690.

No. 99–1055. WOOSLEY *v.* SMITH ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 191 F. 3d 446.

No. 99–1056. R. M. TAYLOR, INC. *v.* GENERAL MOTORS CORP. C. A. 8th Cir. Certiorari denied. Reported below: 187 F. 3d 809.

No. 99–1058. KUEMMERLIN *v.* NEVADA DEPARTMENT OF MOTOR VEHICLES AND PUBLIC SAFETY. Sup. Ct. Nev. Certiorari denied. Reported below: 115 Nev. ——, 985 P. 2d 750.

No. 99–1059. HOOPER *v.* CARGILL, INC. C. A. 6th Cir. Certiorari denied. Reported below: 187 F. 3d 635.

No. 99–1064. EL-RAMLY *v.* UNIVERSITY OF HAWAII ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 182 F. 3d 925.

No. 99–1068. CITY OF NEW YORK ET AL. *v.* LATINO OFFICERS ASSN. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 196 F. 3d 458.

No. 99–1071. HENDERSON *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 52 M. J. 14.

No. 99–1075. AMUSO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 99–1076. WILSON PARTNERS ET AL. *v.* PENNSYLVANIA BOARD OF FINANCE AND REVENUE. Sup. Ct. Pa. Certiorari denied. Reported below: 558 Pa. 462, 737 A. 2d 1215.

No. 99–1077. THAN *v.* UNIVERSITY OF TEXAS MEDICAL SCHOOL AT HOUSTON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 188 F. 3d 633.

No. 99–1090. KANSAS CITY SOUTHERN RAILWAY CO. *v.* RUSHING ET UX. C. A. 5th Cir. Certiorari denied. Reported below: 185 F. 3d 496.

No. 99–1091. HAMIL AMERICA, INC. *v.* GFI, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 193 F. 3d 92.

No. 99–1094. FRANKLIN *v.* STAINER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 161 F. 3d 12.

No. 99–1095. REDLER *v.* JACKSON COUNTY, OREGON. Ct. App. Ore. Certiorari denied. Reported below: 157 Ore. App. 723, 972 P. 2d 1231.

No. 99–1097. ROBERTS *v.* SLATER, SECRETARY OF TRANSPORTATION. C. A. 4th Cir. Certiorari denied. Reported below: 194 F. 3d 1305.

No. 99–1102. SALVATORI *v.* WESTINGHOUSE ELECTRIC CORP. C. A. 11th Cir. Certiorari denied. Reported below: 190 F. 3d 1244.

No. 99–1103. MANN *v.* CITY OF CHICAGO ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 182 F. 3d 922.

No. 99–1104. WHITE ET UX. *v.* SECURITY PACIFIC FINANCIAL SERVICES, INC. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 99–1105. GREENE *v.* BERGER & MONTAGUE ET AL. C. A. 2d Cir. Certiorari denied.

No. 99–1107. GRINE ET AL. *v.* COOMBS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 189 F. 3d 464.

No. 99–1108. ROCKWOOD *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 52 M. J. 98.

No. 99–1115. SCOTT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 191 F. 3d 457.

No. 99–1116. BRASWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 198 F. 3d 263.

No. 99–1118. PATEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–1119. PATTERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1288.

No. 99–1120. BHUTANI ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 572.

No. 99–1121. LUNA *v.* COUNTY OF SAN BERNARDINO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 165 F. 3d 35.

No. 99–1126. GUZMAN *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 993 S. W. 2d 232.

No. 99–1127. EASTMAN KODAK CO. *v.* THOMAS. C. A. 1st Cir. Certiorari denied. Reported below: 183 F. 3d 38.

No. 99–1128. TOMEO *v.* HONEYWELL INTERNATIONAL, INC., ET AL. C. A. 2d Cir. Certiorari denied.

No. 99–1138. ROSENBAUM *v.* ROSENBAUM. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 99–1139. MOORE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 184 F. 3d 790.

No. 99–1145. ROOT *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 195 Ariz. 9, 985 P. 2d 494.

No. 99–1147. KNICKERBOCKER *v.* OVAKO-AJAX, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 187 F. 3d 636.

No. 99–1150. ALEXANDER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 182 F. 3d 643.

No. 99–1154. FORD ET UX. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 184 F. 3d 566.

No. 99–1155. BICAKSIZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 194 F. 3d 390.

No. 99–1157. AMOIA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 99–1164. RAVEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 193 F. 3d 517.

No. 99–1168. SCHERPING ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 187 F. 3d 796.

No. 99–1188. GARRISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 191 F. 3d 449.

No. 99–1201. AUSTIN *v.* HARPER HOSPITAL. C. A. 6th Cir. Certiorari denied. Reported below: 194 F. 3d 1311.

No. 99–1202. HENNING *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 198 F. 3d 247.

No. 99–1219. TREVINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–1230. BLONDHEIM *v.* MORGAN, WARDEN. Sup. Ct. Ohio. Certiorari denied. Reported below: 87 Ohio St. 3d 1428, 718 N. E. 2d 446.

No. 99–5840. HOUSE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–5936. NAPOLI, AKA BIANCO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 173 F. 3d 847 and 179 F. 3d 1.

No. 99–6051. CLARK *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 994 S. W. 2d 166.

No. 99–6172. NEAL *v.* PAGE, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 170 F. 3d 659 and 179 F. 3d 1024.

No. 99–6349. JOHNSON *v.* WING ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 178 F. 3d 611.

No. 99–6425. GRANT *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 256 App. Div. 2d 418, 682 N. Y. S. 2d 232.

No. 99–6466. STEFONEK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 179 F. 3d 1030.

No. 99–6469. SPENCE *v.* UNITED STATES; and
No. 99–6485. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 F. 3d 910.

No. 99–6527. McDowell *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 182 F. 3d 911.

No. 99–6546. Panchal et al. *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 170 F. 3d 188.

No. 99–6629. Vieux *v.* Pepe, Superintendent, Massachusetts Correctional Institution at Shirley, et al. C. A. 1st Cir. Certiorari denied. Reported below: 184 F. 3d 59.

No. 99–6688. Hackett *v.* Pennsylvania. Sup. Ct. Pa. Certiorari denied. Reported below: 558 Pa. 78, 735 A. 2d 688.

No. 99–6737. Vaca-Hernandez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 871.

No. 99–6838. McGinn *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 199 F. 3d 440.

No. 99–6844. Alejado *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 176 F. 3d 485.

No. 99–6846. McKendrick *v.* United States;
No. 99–6887. Ries *v.* United States; and
No. 99–7006. Reed *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 177 F. 3d 824.

No. 99–6847. Lage *v.* United States; and
No. 99–6903. Diaz *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 183 F. 3d 374.

No. 99–6905. Friend *v.* Reno, Attorney General, et al. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 638.

No. 99–6965. Ayers et al. *v.* Fordice, Governor of Mississippi, et al. C. A. 5th Cir. Certiorari denied.

No. 99–6991. Keaton *v.* Pennsylvania. Sup. Ct. Pa. Certiorari denied. Reported below: 556 Pa. 442, 729 A. 2d 529.

No. 99–6994. Lewis *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 183 F. 3d 791.

No. 99–6995. Johnson *v.* Pennsylvania. Sup. Ct. Pa. Certiorari denied. Reported below: 556 Pa. 216, 727 A. 2d 1089.

No. 99–7005. PETERSON *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 350 N. C. 518, 516 S. E. 2d 131.

No. 99–7017. TAYLOR *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Cumberland County, N. C. Certiorari denied.

No. 99–7055. BREWER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 173 F. 3d 852.

No. 99–7062. COLEMAN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–7109. DECORSO *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 993 P. 2d 837.

No. 99–7180. STEVENS *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 460 Mich. 626, 597 N. W. 2d 53.

No. 99–7197. MEKALONIS *v.* WORKERS' COMPENSATION APPEAL BOARD ET AL. Commw. Ct. Pa. Certiorari denied.

No. 99–7200. MILLS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 996 S. W. 2d 473.

No. 99–7210. STANCLIFF *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–7211. WILSON ET AL. *v.* KRAUS INVESTMENTS. Ct. App. Ariz. Certiorari denied.

No. 99–7216. LUCZAK *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 306 Ill. App. 3d 319, 714 N. E. 2d 995.

No. 99–7221. MINSKE *v.* SONDALLE, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 191 F. 3d 456.

No. 99–7223. MANERS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–7224. MARTINEZ *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–7225. JOHNSON *v.* WALKER, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 262 App. Div. 2d 1005, 692 N. Y. S. 2d 632.

No. 99–7229. SEALS *v.* MIRANDA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 198 F. 3d 255.

No. 99–7234. AJIWOJU *v.* KUNCE. C. A. 10th Cir. Certiorari denied. Reported below: 198 F. 3d 257.

No. 99–7237. WEINER *v.* MICHIGAN. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 99–7263. TENERELLI *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 598 N. W. 2d 668.

No. 99–7264. ANDERSON *v.* COLORADO DEPARTMENT OF CORRECTIONS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 185 F. 3d 873.

No. 99–7265. CANNOY *v.* LAKELAND POLICE DEPARTMENT. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 743 So. 2d 515.

No. 99–7281. RITT *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 599 N. W. 2d 802.

No. 99–7282. SIRBAUGH *v.* ELO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–7283. SHAARA *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 196 F. 3d 1262.

No. 99–7288. MONTES-CAMPOS *v.* HATCHER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 99–7290. COLLINS *v.* MICHIGAN PAROLE BOARD. Ct. App. Mich. Certiorari denied.

No. 99–7291. BEAN *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 99–7293. ARREGUIN *v.* PRUNTY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 512.

No. 99–7297. VALENTINO, AKA WILLIAMS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 99–7300. SLAUGHTER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–7302. SILER *v.* DILLINGHAM SHIP REPAIR ET AL. Sup. Ct. Ore. Certiorari denied.

No. 99–7304. CAMERON *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 988 S. W. 2d 835.

No. 99–7307. BECKHAM *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–7308. TYLER *v.* WIESMAN, JUDGE, CIRCUIT COURT OF MISSOURI, ST. LOUIS COUNTY. Sup. Ct. Mo. Certiorari denied.

No. 99–7322. WATTS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–7335. HICKS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 995 S. W. 2d 377.

No. 99–7336. HUSSEY *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 99–7337. HUTCHINS *v.* LINAHAN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 99–7339. HARTLINE *v.* ORANGE COUNTY CORRECTIONS DIVISION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 182 F. 3d 935.

No. 99–7340. GILBERT *v.* MOODY ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 743 So. 2d 512.

No. 99–7342. GRINNELL *v.* BRENNAN ET AL. C. A. 3d Cir. Certiorari denied.

No. 99–7345. GLASS *v.* CITY OF CARLSBAD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 178 F. 3d 1299.

No. 99–7353. LAU *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 740 So. 2d 528.

No. 99–7355. JONES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–7357. KULAS *v.* VALDEZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 159 F. 3d 453.

No. 99–7358. LONGSTRETH *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 295 Mont. 457, 984 P. 2d 157.

No. 99–7360. PRATT *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 99–7363. RANDON *v.* HUBBARD, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 99–7364. RIDGEWAY *v.* KAISER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 188 F. 3d 519.

No. 99–7369. BOYD *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 179 F. 3d 904.

No. 99–7370. BROOKS *v.* MIKKELSEN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 178 F. 3d 1293.

No. 99–7371. BAYRAMOGLU *v.* GOMEZ, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 512.

No. 99–7372. BRIDGES *v.* BOOHER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 189 F. 3d 477.

No. 99–7374. BLACK *v.* KELLY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 99–7378. MIDDLETON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 998 S. W. 2d 520.

No. 99–7380. ROGERS *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 99–7381. SWARTZ *v.* IOWA. Sup. Ct. Iowa. Certiorari denied. Reported below: 601 N. W. 2d 348.

No. 99–7385. RAYFORD *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–7386. SINGLETON *v.* HARGETT, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 188 F. 3d 519.

No. 99–7387. RUIZ *v.* HAWAII. Sup. Ct. Haw. Certiorari denied. Reported below: 92 Haw. 632, 994 P. 2d 564.

No. 99–7388. MATHEWS *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied. Reported below: 133 Idaho 300, 986 P. 2d 323.

No. 99–7390. KRUELSKI *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 250 Conn. 1, 737 A. 2d 377.

No. 99–7393. STRALEY *v.* GALETKA, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 188 F. 3d 519.

No. 99–7394. PATINO *v.* SMITH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 99–7397. SHEPPARD *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 99–7399. TEARFIE *v.* WHITTLESEA BLUE CAB CO. C. A. 9th Cir. Certiorari denied. Reported below: 176 F. 3d 485.

No. 99–7400. WILSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 303 Ill. App. 3d 1035, 710 N. E. 2d 408.

No. 99–7403. STARLING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 174 F. 3d 203.

No. 99–7408. WRIGHT *v.* DAVIS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 482.

No. 99–7412. JACKSON *v.* FLORIDA DEPARTMENT OF CORRECTIONS ET AL. Sup. Ct. Fla. Certiorari denied.

No. 99–7417. PEDRAGLIO LOLI *v.* CITIBANK, INC. C. A. 2d Cir. Certiorari denied. Reported below: 173 F. 3d 845.

No. 99–7419. RIVERA *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 990 S. W. 2d 882.

No. 99–7423. WILLIAMS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–7429. ZUBIA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 998 S. W. 2d 226.

No. 99–7436. RENUSCH *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 99–7437. JOSEPH *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 193 F. 3d 519.

No. 99–7438. NELSON *v.* WALKER, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 99–7440. JONES *v.* CALIFORNIA ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–7441. LOFLEY *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–7444. PLUMMER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 306 Ill. App. 3d 574, 714 N. E. 2d 63.

No. 99–7445. FINK *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 646.

No. 99–7447. HULLUM *v.* MALONEY, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 201 F. 3d 427.

No. 99–7450. FISHER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 188 F. 3d 504.

No. 99–7455. COSTLEY *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 123 Md. App. 797.

No. 99–7457. COLEN *v.* GLOBAL INVESTMENTS, LLC. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–7458. BREAKIRON *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 556 Pa. 519, 729 A. 2d 1088.

No. 99–7462. LETT *v.* ANTWINE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 196 F. 3d 1257.

No. 99–7463. LUEDTKE *v.* BERTRAND, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 99–7465. MITCHELL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–7466. JOHNSON *v.* OKLAHOMA ET AL. Ct. Crim. App. Okla. Certiorari denied.

No. 99–7468. TOWNSEND *v.* POPPER ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 737 So. 2d 552.

No. 99–7469. TOWNSEND *v.* CHAPIN ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 737 So. 2d 552.

No. 99–7470. LOFTON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 199 F. 3d 438.

No. 99–7473. MALAVE *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 250 Conn. 722, 737 A. 2d 442.

No. 99–7474. MILLIGAN *v.* KITZHABER, GOVERNOR OF OREGON, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 473.

No. 99–7477. SMART-DAVIS *v.* JOHNS HOPKINS UNIVERSITY. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1016.

No. 99–7478. ROBINSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 302 Ill. App. 3d 1093, 746 N. E. 2d 911.

No. 99–7479. ROBERSON *v.* SHRAEL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 193 F. 3d 518.

No. 99–7481. WILLIAMS *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 714 N. E. 2d 644.

No. 99–7485. MADDEN *v.* MADDEN. Ct. App. Ky. Certiorari denied.

No. 99–7486. CROSS *v.* MICHIGAN. Cir. Ct. Muskegon County, Mich. Certiorari denied.

No. 99–7488. QUARTARARO *v.* HANSLMAIER, SUPERINTENDENT, WOODBOURNE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 186 F. 3d 91.

No. 99–7490. BEAVEN *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 712 N. E. 2d 57.

No. 99–7494. CHAIDEZ *v.* WEIR, JUDGE, SUPERIOR COURT OF CALIFORNIA, DEL NORTE COUNTY, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–7495. CISCO *v.* LEONARDO, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 99–7496. BROWN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–7497. STEELE *v.* ALLEN ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–7499. SMALLEY *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 215 F. 3d 1349.

No. 99–7500. RICHARDS *v.* TRUSTEES OF UNIVERSITY OF MASSACHUSETTS ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 181 F. 3d 80.

No. 99–7502. MITCHELL *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 54 Conn. App. 361, 738 A. 2d 188.

No. 99–7507. MITCHELL *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 469.

No. 99–7509. JOHNSON ET AL. *v.* THALER, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 202 F. 3d 265.

No. 99–7515. MATIC *v.* MEISSNER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 194 F. 3d 1309.

No. 99–7522. ZANDER *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 99–7524. WRONKE *v.* MADIGAN, SHERIFF, CHAMPAIGN COUNTY, ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 99–7525. WEEKS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 99–7526. SUTTON *v.* KOOISTRA ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 202 F. 3d 275.

No. 99–7527. RELIFORD *v.* WANTLAND ET AL. C. A. 8th Cir. Certiorari denied.

No. 99–7529. SHAVERS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 723 So. 2d 371.

No. 99–7532. JOHNSON *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 271 Ga. 375, 519 S. E. 2d 221.

No. 99–7533. KIBBE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 198 F. 3d 238.

No. 99–7534. ADAMS *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 194 Ariz. 408, 984 P. 2d 16.

No. 99–7536. GULLEY *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 271 Ga. 337, 519 S. E. 2d 655.

No. 99–7538. HUGGINS *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 336 S. C. 200, 519 S. E. 2d 574.

No. 99–7542. DUNKINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 192 F. 3d 125.

No. 99–7553. JONES *v.* SUTHERS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 188 F. 3d 518.

No. 99–7557. VIGNEAU *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 187 F. 3d 70.

No. 99–7562. CORNWELL *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 86 Ohio St. 3d 560, 715 N. E. 2d 1144.

No. 99–7564. GARCIA AMBRIZ *v.* PLILER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 99–7570. KARANICOLAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 202 F. 3d 255.

No. 99–7575. RODRIGUEZ *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–7576. O'DONNELL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–7577. BONNER *v.* DEPARTMENT OF THE AIR FORCE. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 99.

No. 99–7578. CLEVELAND *v.* FRAZIER, DIRECTOR, ARKANSAS DEPARTMENT OF HUMAN SERVICES. Sup. Ct. Ark. Certiorari denied. Reported below: 338 Ark. 581, 999 S. W. 2d 188.

No. 99–7581. GRIBBLE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 196 F. 3d 1258.

No. 99–7582. SANCHEZ *v.* HENDERSON, POSTMASTER GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 188 F. 3d 740.

No. 99–7583. SOSA *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–7584. SHANNON *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 736 So. 2d 1202.

No. 99–7585. RIGSBY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 175 F. 3d 1021.

No. 99–7587. SHARPE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 193 F. 3d 852.

No. 99–7589. LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 196 F. 3d 1261.

No. 99–7590. MOODY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 198 F. 3d 261.

No. 99–7595. WEISS *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 99–7596. VALANCE *v.* WALKER, WARDEN. Sup. Ct. Ohio. Certiorari denied. Reported below: 86 Ohio St. 3d 1486, 716 N. E. 2d 719.

No. 99–7598. BEATTY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 198 F. 3d 235.

No. 99–7599. SEQUEIRA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 99–7601. PARRISH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 198 F. 3d 263.

No. 99–7604. BOMAR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 191 F. 3d 453.

No. 99–7606. TAYLOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 198 F. 3d 241.

No. 99–7613. ORRELIEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 632.

No. 99–7614. PETERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 194 F. 3d 692.

No. 99–7615. OLIVEIRA *v.* WHITE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 198 F. 3d 254.

No. 99–7616. REYES-VALENCIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 194 F. 3d 1306.

No. 99–7617. ROBINSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 187 F. 3d 644.

No. 99–7619. MCKINNEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 99–7621. LEWIS *v.* OHIO. Ct. App. Ohio, Stark County. Certiorari denied.

No. 99–7625. IOANE ET AL. *v.* B. A. PROPERTIES, INC. C. A. 9th Cir. Certiorari denied.

No. 99–7628. AVILEZ-REYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 204 F. 3d 1118.

No. 99–7630. RILEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 183 F. 3d 1155.

No. 99–7633. WILSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 198 F. 3d 240.

No. 99–7634. LEON ZUNIGA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 99–7635. GRIFFITH *v.* DEPARTMENT OF AGRICULTURE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 198 F. 3d 233.

No. 99–7636. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 188 F. 3d 505.

No. 99–7638. GRAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 194 F. 3d 1314.

No. 99–7639. GRAY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–7640. HARRIS *v.* COUNTY OF COOK ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 202 F. 3d 273.

No. 99–7648. GRISSO *v.* LEARY. C. A. D. C. Cir. Certiorari denied. Reported below: 203 F. 3d 52.

No. 99–7650. DUNLAP *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 F. 3d 910.

No. 99–7651. NIXON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 180 F. 3d 268.

No. 99–7654. MCKINNEY *v.* STATE EMPLOYEES' RETIREMENT SYSTEM. Ct. App. Mich. Certiorari denied.

No. 99–7657. HILL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 193 F. 3d 522.

No. 99–7664. FORDHAM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 187 F. 3d 344.

No. 99–7668. FRAZIER *v.* LEA COUNTY DISTRICT COURT. Sup. Ct. N. M. Certiorari denied.

No. 99–7669. HAZEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 F. 3d 910.

No. 99–7672. RUSSEL *v.* UNKNOWN FEDERAL DISTRICT COURT JUDGES. C. A. D. C. Cir. Certiorari denied. Reported below: 203 F. 3d 53.

No. 99–7675. LAI *v.* PITZER, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 466.

No. 99–7678. SMITH *v.* CADWELL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–7679. BENDER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 99–7681. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 188 F. 3d 510.

No. 99–7683. HILL ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 195 F. 3d 258.

No. 99–7684. DICK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 194 F. 3d 1314.

No. 99–7685. ESCOBAR-DE JESUS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 187 F. 3d 148.

No. 99–7686. DRAYER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 190 F. 3d 410.

No. 99–7687. GREGG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 179 F. 3d 1312.

No. 99–7689. FRENCH *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 99–7690. HOLLIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 198 F. 3d 262.

No. 99–7691. BARRETT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 178 F. 3d 34.

No. 99–7692. HADDAD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–7693. DEL RIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 180 F. 3d 269.

No. 99–7694. BRADFORD *v.* BARRETT ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 199 F. 3d 443.

No. 99–7699. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 191 F. 3d 448.

No. 99–7702. MORIN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–7703. KALWAY *v.* MOODY, SUPERINTENDENT, TAYLOR CORRECTIONAL INSTITUTION, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–7707. AKINKOYE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 185 F. 3d 192.

No. 99–7708. MCIVER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 186 F. 3d 1119.

No. 99–7709. MATTHEWS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–7711. KELLY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 F. 3d 911.

No. 99–7712. LOCSKAI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 181 F. 3d 85.

No. 99–7714. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 919.

No. 99–7721. HERNANDEZ-CORONA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 194 F. 3d 1318.

No. 99–7722. TURNER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–7724. TREVINO-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 196 F. 3d 1258.

No. 99–7727. PILLOW *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 191 F. 3d 403.

No. 99–7729. CHACON MORALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 191 F. 3d 602.

No. 99–7730. THOMAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 185 F. 3d 864.

No. 99–7731. SMILEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 194 F. 3d 1323.

No. 99–7732. MOSQUERA-LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 480.

No. 99–7733. RAMIRO MUNIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–7740. STANDING ROCK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 99–7741. RASHID *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 191 F. 3d 446.

No. 99–7744. CARSON *v.* UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT. C. A. 11th Cir. Certiorari denied.

No. 99–7745. COWEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 198 F. 3d 247.

No. 99–7746. CHRISTOFERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 179 F. 3d 1320.

No. 99–7747. BARRIOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 198 F. 3d 261.

No. 99–7749. BROWN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 200 F. 3d 700.

No. 99–7750. PAYTON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 99–7757. RHOADS *v.* BARNETT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 99–7758. DANIELS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 202 F. 3d 255.

No. 99–7759. REAVES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 194 F. 3d 1315.

No. 99–7761. SIERRA-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 192 F. 3d 501.

No. 99–7764. MOORE *v.* RENO, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 1054.

No. 99–7765. MAYBERRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 174 F. 3d 1215.

No. 99–7770. CARROLL *v.* COYLE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 187 F. 3d 635.

No. 99–7771. SHAW *v.* CORCORAN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 191 F. 3d 448.

No. 99–7772. SYVERTSON *v.* HEIT. Sup. Ct. N. D. Certiorari denied. Reported below: 606 N. W. 2d 137.

No. 99–7773. FIORANI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 99–7777. TRAPP *v.* SUPREME COURT OF WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 99–7779. SCHREIBMAN *v.* HOLMES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 203 F. 3d 53.

No. 99–7782. WATERHOUSE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 99–7789. VAN HOORELBEKE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 199 F. 3d 1334.

No. 99–7792. JUSTESEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 198 F. 3d 238.

No. 99–7793. MCDANIEL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 182 F. 3d 923.

No. 99–7807. GARCES-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 198 F. 3d 242.

No. 99–7811. BANDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 199 F. 3d 437.

No. 99–7824. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 194 F. 3d 1307.

No. 99–7827. PINEDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 191 F. 3d 462.

No. 99–7828. SAYAKHOM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 186 F. 3d 928 and 197 F. 3d 959.

No. 99–7831. ADAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 198 F. 3d 238.

No. 99–7833. LANDRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 484.

No. 99–7837. JOYNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 199 F. 3d 1329.

No. 99–7838. GALLARDO *v.* UNITED STATES PAROLE COMMISSION. C. A. 3d Cir. Certiorari denied. Reported below: 202 F. 3d 253.

No. 99–7840. KIND, AKA SWAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 194 F. 3d 900.

No. 99–7843. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–7847. TALLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 194 F. 3d 758.

No. 99–7849. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 198 F. 3d 248.

No. 99–7852. TORRES ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 191 F. 3d 799.

No. 99–7859. NIX *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 193 F. 3d 852.

No. 99–7862. IBRAHIM *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 99–7868. ANDERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–7880. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 182 F. 3d 910.

No. 99–7881. DAVIDSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 195 F. 3d 402.

No. 99–7888. DIAZ, AKA LUZ LUCIO DE LA CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 199 F. 3d 439.

No. 99–7891. HUBERT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 202 F. 3d 264.

No. 99–7892. FROGGE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 475.

No. 99–7907. BEKEDEREMO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 201 F. 3d 449.

No. 99–7913. VILD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 651.

No. 99–7915. MOREL ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 205 F. 3d 1330.

No. 99–7917. TUGWELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 650.

No. 99–7922. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 483.

No. 99–7924. CAMARENA-PERALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 515.

No. 99–7945. PUTNEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 201 F. 3d 438.

No. 99–596. GEORGE MASON UNIVERSITY *v.* LITMAN ET AL. C. A. 4th Cir. Motions of Pacific Legal Foundation and Center for Original Intent of the Constitution for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 186 F. 3d 544.

No. 99–669. AMERICAN TELEPHONE & TELEGRAPH CO. *v.* SECURITY WATCH, INC., ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 176 F. 3d 369.

No. 99–1032. ABBOTT LABORATORIES *v.* MYLAN PHARMACEUTICALS, INC. C. A. Fed. Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 217 F. 3d 853.

No. 99–786. HJB, INC., ET AL. *v.* AMERISOURCE CORP. ET AL. C. A. 7th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 186 F. 3d 781.

No. 99–902. FLORIDA *v.* ALMEIDA. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 748 So. 2d 922.

No. 99–903. FLORIDA *v.* ALMEIDA. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 737 So. 2d 520.

No. 99–916. ENRON POWER MARKETING, INC. *v.* NORTHERN STATES POWER CO. ET AL. C. A. 8th Cir. Motion of Electricity Consumers Resource Council et al. for leave to file a brief as *amici curiae* granted. Petitioner's memorandum suggesting mootness and motion to vacate denied. Certiorari denied. Reported below: 176 F. 3d 1090.

No. 99–973. BAKER *v.* JOHN. Sup. Ct. Alaska. Motion of Drue Pearce and Brian Porter for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 982 P. 2d 738.

No. 99–994. SYSCO FOOD SERVICES OF SAN FRANCISCO, INC. *v.* NORRIS. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 191 F. 3d 1043.

No. 99–1042. ZAHRAN ET UX. *v.* SCHMIDT ET AL. C. A. 7th Cir. Motion of petitioners to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 175 F. 3d 1022.

No. 99–1137. METCALF *v.* MARTIN ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE SOUTER took no part in the consideration or decision of this petition. Reported below: 188 F. 3d 508.

No. 99–1166. CREWS *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Motion of petitioner for leave to proceed as a veteran granted. Certiorari denied. Reported below: 217 F. 3d 854.

No. 99–6668. PROVENZANO *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. In light of the recent amendments to § 922.10 of the Florida Statutes (providing that capital prisoners will be executed by lethal injection unless they affirmatively elect execution by electrocution), and the Florida Supreme Court's recent conclusion that those amendments do not violate Art. X, § 9, of the Florida Constitution, *Sims* v. *State*, 754 So. 2d 657 (2000), certiorari denied. Reported below: 744 So. 2d 413.

No. 99–7822 (99A577). JIMENEZ *v.* UNITED STATES. C. A. 2d Cir. Application for stay, addressed to JUSTICE SOUTER and referred to the Court, denied. Certiorari denied.

No. 99–7953 (99A670). SIMS *v.* FLORIDA. 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: 750 So. 2d 622.

No. 99–8043 (99A624). TARVER *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. 99–8330 (99A675). SIMS *v.* FLORIDA. 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: 754 So. 2d 657.

*Rehearing Denied*

No. 98–1903. BENSON *v.* BENSON, *ante*, p. 816;

No. 98–7256. IN RE RICE, 525 U. S. 1138;

No. 98–9269. ALEXANDER *v.* DOE ET AL., *ante*, p. 830;

No. 98–9523. SKIBINSKI *v.* BELL ATLANTIC ET AL., *ante*, p. 838;

No. 98–10042. SKIBINSKI *v.* LAZAROFF ET AL., *ante*, p. 867;

No. 99–151. MENSAH *v.* UNITED STATES, *ante*, p. 875;

No. 99–575. MORETON ROLLESTON, JR., LIVING TRUST, ET AL. *v.* ESTATE OF SIMMS, CHERRY, EXECUTOR, *ante*, p. 1046;

No. 99–634. ANDERSON *v.* DALLAS AREA RAPID TRANSIT, *ante*, p. 1062;

No. 99–661. WILLMAN *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL., *ante*, p. 1062;

No. 99–716. RUIZ RIVERA *v.* DEPARTMENT OF EDUCATION ET AL., *ante*, p. 1047;

No. 99–911. VEY *v.* THE UNIVERSE ET AL., *ante*, p. 1081;

No. 99–5212. JONES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 892;

No. 99–5652. HATTER *v.* NEW YORK CITY HOUSING AUTHORITY ET AL., *ante*, p. 936;

No. 99–5859. FOSTER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 940;

No. 99–5962. LONG *v.* KENTUCKY, *ante*, p. 972;

No. 99–6028. JARRETT *v.* HAYWARD MANOR APARTMENTS ET AL., *ante*, p. 973;

No. 99–6145. CORPUZ *v.* WALTER, SUPERINTENDENT, AIRWAY HEIGHTS CORRECTIONS CENTER, *ante*, p. 1007;

No. 99–6266. PERRY *v.* ZAENTZ ET AL., *ante*, p. 1024;

No. 99–6275. IN RE LAVERTU, *ante*, p. 1018;

No. 99–6308. KING *v.* MTA BRIDGES AND TUNNELS ET AL., *ante*, p. 1025;

No. 99–6344. SHED *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 988;

No. 99–6406. BASS *v.* THOMAS JEFFERSON UNIVERSITY HOSPITAL, *ante*, p. 1026;

No. 99–6419. HEMMERLE *v.* BAKST, *ante*, p. 1049;

No. 99–6479. RE *v.* NEW MEXICO, *ante*, p. 1051;

No. 99–6502. PALMER *v.* GEORGIA, *ante*, p. 1051;

No. 99–6535. TISDALE *v.* OHIO, *ante*, p. 1027;

No. 99–6538. GARDNER ET AL. *v.* NISSAN MOTOR ACCEPTANCE CORP., *ante*, p. 1064;

No. 99–6551. SHOCKETT *v.* MASSACHUSETTS, *ante*, p. 1027;

No. 99–6607. PORTER *v.* DEPARTMENT OF LABOR, BENEFITS REVIEW BOARD, ET AL., *ante*, p. 1052;

No. 99–6700. HAWKS *v.* CLARK, WARDEN, ET AL., *ante*, p. 1052;

No. 99–6800. DEAN *v.* UNITED STATES, *ante*, p. 1053;

No. 99–6866. CAMERON *v.* GARRAGHTY, WARDEN, *ante*, p. 1065;

No. 99–6888. PATTERSON *v.* RIVERS, WARDEN, *ante*, p. 1089;

No. 99–6916. IN RE HARRIS, *ante*, p. 1017;

No. 99–6961. LEWIS *v.* UNITED STATES ET AL., *ante*, p. 1090;

No. 99–7023. IN RE WARREN, *ante*, p. 1073; and

No. 99–7362. IN RE WARREN, *ante*, p. 1073. Petitions for rehearing denied.

FEBRUARY 23, 2000

*Dismissal Under Rule 46*

No. 98–829. FLORIDA DEPARTMENT OF CORRECTIONS *v.* DICKSON ET AL. C. A. 11th Cir. [Certiorari granted, *ante*, p. 1132.] Writ of certiorari dismissed under this Court's Rule 46.1.

*Miscellaneous Order*

No. 99–8322 (99A684). IN RE BRYAN. 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.

*Certiorari Denied*

No. 99–8231 (99A658). GOSS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 199 F. 3d 439.

No. 99–8351 (99A682). BRYAN *v.* FLORIDA. 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: 753 So. 2d 1244.

No. 99–8352 (99A685). BRYAN *v.* FLORIDA. 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. Reported below: 244 F. 3d 803.

FEBRUARY 24, 2000

*Dismissal Under Rule 46*

No. 99–1125. KANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM, INC. *v.* REIMER & KOGER ASSOCIATES, INC., ET AL. C. A. 8th Cir. Certiorari dismissed as to Shook, Hardy & Bacon; Frank P. Sebree; and Blackwell, Sanders, Matheny, Weary & Lombardi under this Court's Rule 46.1. Reported below: 194 F. 3d 922.

*Miscellaneous Order*

No. 99A688. BEETS *v.* TEXAS BOARD OF PARDONS AND PAROLES ET AL. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

FEBRUARY 28, 2000

*Certiorari Granted—Vacated and Remanded*

No. 98–1473. CARRILLO, WARDEN *v.* SALMON. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Roe* v. *Flores-Ortega*, *ante*, p. 470.

No. 98–1967. F. W. WOOLWORTH CO. ET AL. *v.* FRANCHISE TAX BOARD. Ct. App. Cal., 1st App. Dist. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Hunt-Wesson, Inc.* v. *Franchise Tax Bd. of Cal.*, *ante*, p. 458.

No. 98–9701. SARROCA *v.* UNITED STATES. C. A. 2d 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 *Roe* v. *Flores-Ortega*, *ante*, p. 470.

No. 99–5699. RICE *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Roe* v. *Flores-Ortega*, *ante*, p. 470.

No. 99–5951. RADILLO-CONTRERAS *v.* UNITED STATES. 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 *Roe* v. *Flores-Ortega*, *ante*, p. 470.

No. 99–6233. MILLER *v.* KALOROUMAKIS, ADMINISTRATOR, EASTERN CORRECTIONAL INSTITUTION, ET AL. C. A. 4th 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 *Roe* v. *Flores-Ortega*, *ante*, p. 470. Reported below: 178 F. 3d 1284.

*Certiorari Dismissed*

No. 99–7909. SINDRAM *v.* UNITED STATES. 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: 199 F. 3d 1329.

*Miscellaneous Orders*

No. D–2073. IN RE DISBARMENT OF NUNES, *ante*, p. 801. Petition for reconsideration denied.

No. 99M68. ELJACK *v.* HAMMOUND. Motion to direct the Clerk to file petition for writ of certiorari denied.

No. 99–62. SANTA FE INDEPENDENT SCHOOL DISTRICT *v.* DOE, INDIVIDUALLY AND AS NEXT FRIEND FOR HER MINOR CHILDREN, ET AL. C. A. 5th Cir. [Certiorari granted, *ante*, p. 1002.] Motion of Marian Ward for leave to intervene denied.

No. 99–6704. BURGESS *v.* BALDWIN, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. Ct. App. Ore. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1069] denied.

No. 99–7814. IN RE DAVAGE. Petition for writ of mandamus denied.

*Certiorari Granted*

No. 99–936. FERGUSON ET AL. *v.* CITY OF CHARLESTON ET AL. C. A. 4th Cir. Motion of American Public Health Association et al. for leave to file a brief as *amici curiae* granted. Certiorari granted. Reported below: 186 F. 3d 469.

*Certiorari Denied*

No. 99–696. AMERICAN GRAIN TRIMMERS, INC., ET AL. *v.* OFFICE OF WORKERS' COMPENSATION PROGRAMS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 181 F. 3d 810.

No. 99–729. CITY OF WEST HAVEN ET AL. *v.* THOMAS ET AL. Sup. Ct. Conn. Certiorari denied. Reported below: 249 Conn. 385, 734 A. 2d 535.

No. 99–765. CSC CONSULTING, INC. *v.* TINGLEY SYSTEMS, INC. C. A. 1st Cir. Certiorari denied. Reported below: 181 F. 3d 174.

No. 99–809. LATRIESTE RESTAURANT & CABARET, INC., DBA THE DIAMOND CLUB *v.* VILLAGE OF PORT CHESTER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 188 F. 3d 65.

No. 99–855. RAY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 21 Cal. 4th 464, 981 P. 2d 928.

No. 99–869. U S WEST COMMUNICATIONS, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 177 F. 3d 1057.

No. 99–874. NGUYEN *v.* INOVA ALEXANDRIA HOSPITAL. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 630.

No. 99–967. MACLEOD *v.* GEORGETOWN UNIVERSITY MEDICAL CENTER ET AL. Ct. App. D. C. Certiorari denied. Reported below: 736 A. 2d 977.

No. 99–995. SMS SYSTEMS MAINTENANCE SERVICES, INC. *v.* DIGITAL EQUIPMENT CORP. C. A. 1st Cir. Certiorari denied. Reported below: 188 F. 3d 11.

No. 99–1037. ANATIAN *v.* COUTTS BANK (SWITZERLAND) LTD., FKA COUTTS & CO. AG. C. A. 2d Cir. Certiorari denied. Reported below: 193 F. 3d 85.

No. 99–1065. SUTTON *v.* BELLSOUTH TELECOMMUNICATIONS, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 1318.

No. 99–1066. JOHNNY BLASTOFF, INC. *v.* LOS ANGELES RAMS FOOTBALL CO. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 188 F. 3d 427.

No. 99–1067. INTERCONTINENTAL BULKTANK CORP. ET AL. *v.* SELICO. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 733 So. 2d 1240.

No. 99–1073. DENT *v.* CONSOLIDATED RAIL CORPORATION. C. A. 6th Cir. Certiorari denied. Reported below: 187 F. 3d 635.

No. 99–1079. PATEL *v.* OMH MEDICAL CENTER, INC., ET AL.; and

No. 99–1101. PATEL *v.* OMH MEDICAL CENTER, INC., ET AL. Sup. Ct. Okla. Certiorari denied. Reported below: 987 P. 2d 1185.

No. 99–1082. CROFTS, INDIVIDUALLY AND AS STATUTORY BENEFICIARY OF AND PERSONAL REPRESENTATIVE OF THE ESTATE OF CROFTS, DECEASED *v.* DALLAS COUNTY HOSPITAL DISTRICT, DBA PARKLAND MEMORIAL HOSPITAL. C. A. 5th Cir. Certiorari denied. Reported below: 192 F. 3d 125.

No. 99–1083. HULL *v.* FALLON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 188 F. 3d 939.

No. 99–1086. D'ANNUNZIO ET VIR *v.* BAYLOR UNIVERSITY. C. A. 5th Cir. Certiorari denied. Reported below: 193 F. 3d 517.

No. 99–1088. BRYAN R. *v.* WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK ET AL. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 738 A. 2d 839.

No. 99–1092. TAYLOR ET AL. *v.* VIRGINIA UNION UNIVERSITY. C. A. 4th Cir. Certiorari denied. Reported below: 193 F. 3d 219.

No. 99–1093. REZZONICO ET UX. *v.* H & R BLOCK, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 182 F. 3d 144.

No. 99–1106. BASTIAN ET AL. *v.* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL–CIO, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 175 F. 3d 1009.

No. 99–1109. EIMERS *v.* NEW YORK. County Ct., Chautauqua County, N. Y. Certiorari denied.

No. 99–1111. SEMPLE, ADMINISTRATOR OF THE ESTATE OF SEMPLE, DECEASED, ET AL. *v.* CITY OF MOUNDSVILLE. C. A. 4th Cir. Certiorari denied. Reported below: 195 F. 3d 708.

No. 99–1114. DICK *v.* COMMERCE BANCSHARES, INC., ET AL. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 99–1122. SOTO-RIVERA *v.* SANTIAGO-GUADARRAMA, SCHOOL SUPERINTENDENT, RIO PIEDRAS I DISTRICT, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 201 F. 3d 428.

No. 99–1135. CHAPPELL, IN INTEREST OF A. M. K. *v.* MEESE ET AL. Ct. App. Colo. Certiorari denied.

No. 99–1141. FERM *v.* UNITED STATES TRUSTEE. C. A. 9th Cir. Certiorari denied. Reported below: 194 F. 3d 954.

No. 99–1142. ELECTRONIC DATA SYSTEMS ET AL. *v.* SPOSATO, ADMINISTRATOR OF THE ESTATE OF SPOSATO, DECEASED. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 1146.

No. 99–1146. CAMP *v.* BUREAU OF LAND MANAGEMENT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 183 F. 3d 1141 and 189 F. 3d 472.

No. 99–1149. KENNEDY *v.* DRESSER RAND CO. C. A. 2d Cir. Certiorari denied. Reported below: 193 F. 3d 120.

No. 99–1151. PARKS *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–1153. HUFF *v.* NORTHWEST SAVINGS BANK, FKA FIRST NATIONAL BANK OF CONTRE HALL. C. A. 3d Cir. Certiorari denied.

No. 99–1161. ZIRKIND *v.* NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 199 F. 3d 1325.

No. 99–1167. LAVI *v.* DUNCAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 99–1182. URIBE *v.* SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–1186. SHELTON *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 114 Nev. 67, 988 P. 2d 862.

No. 99–1197. SPENCER *v.* NEW YORK CITY TRANSIT AUTHORITY ET AL. C. A. 2d Cir. Certiorari denied.

No. 99–1208. LAMBERT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 189 F. 3d 670.

No. 99–1216. SIEWERT *v.* WEST, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 217 F. 3d 856.

No. 99–1224. LEFKOWITZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 187 F. 3d 644.

No. 99–1231. AMBORT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 193 F. 3d 1169.

No. 99–1233. BRAMLETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–1243. LOREFICE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 192 F. 3d 647.

No. 99–1255. Ross *v.* CareAmerica Health Plans, Inc. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–1278. Juntunen *v.* Wagner et al. (two judgments). Ct. App. Ohio, Trumbull County. Certiorari denied.

No. 99–1284. Huerta *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 99–1288. Owens *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 205 F. 3d 1342.

No. 99–1301. Jaffe *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 99–1308. Frega *v.* United States; and
No. 99–8023. Malkus *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 179 F. 3d 793.

No. 99–1310. Hammer *v.* Immigration and Naturalization Service. C. A. 6th Cir. Certiorari denied. Reported below: 195 F. 3d 836.

No. 99–6240. Flores *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 99–6511. Lages *v.* Florida. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 743 So. 2d 518.

No. 99–6807. Huerta *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 182 F. 3d 361.

No. 99–6814. Osburn *v.* Apfel, Commissioner of Social Security. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 918.

No. 99–7182. Ybarra *v.* McDaniel, Warden. Sup. Ct. Nev. Certiorari denied.

No. 99–7220. Vallimont *v.* Eastman Kodak Co. C. A. 2d Cir. Certiorari denied. Reported below: 198 F. 3d 235.

No. 99–7347. Malcolm *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 737 A. 2d 1275.

No. 99–7510. Robinson *v.* North Carolina. Gen. Ct. Justice, Super. Ct. Div., Cumberland County, N. C. Certiorari denied.

No. 99–7559. PALMER *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 257 Neb. 702, 600 N. W. 2d 756.

No. 99–7561. BLACK *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 99–7566. SLEPPY *v.* OHIO. Ct. App. Ohio, Darke County. Certiorari denied.

No. 99–7567. SULLIVAN *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 160 Ore. App. 701, 981 P. 2d 399.

No. 99–7568. SMITH *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 99–7571. LOUIS *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 99–7572. MCFADDEN *v.* FORD MOTOR CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 187 F. 3d 636.

No. 99–7586. SHANKS *v.* HUBBARD, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 514.

No. 99–7593. MAYBERRY *v.* STONER ET AL. Ct. Civ. App. Ala. Certiorari denied. Reported below: 777 So. 2d 329.

No. 99–7597. WILLIAMS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–7600. SLAUGHTER *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 99–7624. MOLINA *v.* SPANOS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 208 F. 3d 226.

No. 99–7652. MARTIN *v.* CLINTON, PRESIDENT OF THE UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 199 F. 3d 439.

No. 99–7667. HOWARD *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 560 Pa. 741, 747 A. 2d 366.

No. 99–7674. LAU *v.* SULLIVAN COUNTY DISTRICT ATTORNEY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 201 F. 3d 431.

No. 99–7704. MARTIN *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–7719. RIVERA *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied.

No. 99–7725. WARD *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 187 Ill. 2d 249, 718 N. E. 2d 117.

No. 99–7735. MURRAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1015.

No. 99–7742. SIMPSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 633.

No. 99–7776. WINSETT *v.* WEST, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 217 F. 3d 854.

No. 99–7790. WELDON *v.* HOLT, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 485.

No. 99–7796. NAGY *v.* LAPPIN. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 89.

No. 99–7798. BRADLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 99–7801. DONLEY *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 99–7809. GARDNER *v.* BASKERVILLE, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 99–7810. DICKERSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–7813. FELIX *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 175 F. 3d 1014.

No. 99–7815. GUTIERREZ-GALLEGOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 172 F. 3d 877.

No. 99–7823. JACKSON *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 430 Mass. 260, 717 N. E. 2d 1001.

No. 99–7836. MENDOZA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–7844. COSMANO *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 99–7855. PETTIES *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 2d Cir. Certiorari denied.

No. 99–7856. ANDERSON *v.* WALKER, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 99–7864. PONDER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 198 F. 3d 262.

No. 99–7867. SIMMONS *v.* TAYLOR, SUPERINTENDENT, ALGOA CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 195 F. 3d 346.

No. 99–7883. LAWWELL *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 99–7886. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 199 F. 3d 443.

No. 99–7895. GALLOWAY *v.* CARTER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–7899. MONJARAS-CASTANEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 190 F. 3d 326.

No. 99–7903. JONES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 202 F. 3d 273.

No. 99–7904. MARULANDA-VELASQUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 199 F. 3d 442.

No. 99–7906. BEACH *v.* MCCORMICK, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 191 F. 3d 459.

No. 99–7910. TURNER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 183 F. 3d 474.

No. 99–7911. WARDELL *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 99–7919. YELVERTON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 197 F. 3d 531.

No. 99–7921. CAWLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 199 F. 3d 1333.

No. 99–7923. ARVIDSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 99–7925. TERRY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 650.

No. 99–7926. MOORE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 516.

No. 99–7931. NAGY *v.* GOLDSTEIN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 181 F. 3d 83.

No. 99–7933. LONG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 201 F. 3d 438.

No. 99–7936. BAYLIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 198 F. 3d 247.

No. 99–7937. CULP *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 188 F. 3d 519.

No. 99–7941. COOK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 202 F. 3d 283.

No. 99–7943. BERNHARDT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 198 F. 3d 259.

No. 99–7944. SUAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 200 F. 3d 814.

No. 99–7946. POWELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 199 F. 3d 1334.

No. 99–7947. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 199 F. 3d 438.

No. 99–7948. OLIVERIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 198 F. 3d 255.

No. 99–7950. MCQUAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 99–7955. MANNING *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 99–7957. STUCKY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 199 F. 3d 1334.

No. 99–7965. SHEPARDSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 196 F. 3d 306.

No. 99–7966. STRADWICK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 199 F. 3d 1329.

No. 99–7967. SERRANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 476.

No. 99–7975. TRENT *v.* UNITED STATES; and
No. 99–8000. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 201 F. 3d 439.

No. 99–7979. COOK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 202 F. 3d 255.

No. 99–7980. ABBOTT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 195 F. 3d 946.

No. 99–7981. CARTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 200 F. 3d 815.

No. 99–7984. KAYER *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 194 Ariz. 423, 984 P. 2d 31.

No. 99–7985. JAMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 200 F. 3d 819.

No. 99–7989. MCKENZIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 178 F. 3d 1287.

No. 99–7996. MOSBY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 177 F. 3d 1067.

No. 99–7997. MASCIANDARO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 189 F. 3d 462.

No. 99–8001. HOLLIE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 198 F. 3d 248.

No. 99–8002. HANGS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 189 F. 3d 480.

No. 99–8003. HARRIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 199 F. 3d 1324.

No. 99–8006. DIAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 204 F. 3d 1117.

No. 99–8007. EVANS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 202 F. 3d 255.

No. 99–8008. GOMEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 199 F. 3d 438.

No. 99–8009. GREER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 198 F. 3d 256.

No. 99–8010. DARNBUSH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 205 F. 3d 1343.

No. 99–8011. DEVILLASEE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 199 F. 3d 1328.

No. 99–8012. MOBLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 199 F. 3d 442.

No. 99–8022. NELSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 21.

No. 99–8024. WALLACE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 99–8026. OKEREKE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 192 F. 3d 129.

No. 99–8027. BAKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 197 F. 3d 211.

No. 99–897. LEE, WARDEN, ET AL. *v.* TAYLOR. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 186 F. 3d 557.

No. 99–1078. KERNAN, WARDEN *v.* HENRY. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 197 F. 3d 1021.

No. 99–1087. LAMBERT, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY *v.* LORD. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 184 F. 3d 1083.

No. 99–1085. LEVAN ET AL. *v.* CAPITAL CITIES/ABC, INC., ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 190 F. 3d 1230.

No. 99–7884. APPLE *v.* GLENN, FORMER UNITED STATES SENATOR, ET AL. C. A. 6th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 183 F. 3d 477.

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No. 98–9855. GIBSON *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 856;

No. 99–693. LICHTIG *v.* CALIFORNIA, *ante*, p. 1076;

No. 99–727. TENG LI-ANN LEE *v.* CITY OF RANCHO PALOS VERDES ET AL., *ante*, p. 1077;

No. 99–842. SCHLUNEGER *v.* UNITED STATES, *ante*, p. 1080;

No. 99–891. WILSON *v.* CALIFORNIA ET AL., *ante*, p. 1081;

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No. 99–5915. ELDRIDGE *v.* UNITED STATES, *ante*, p. 1082;

No. 99–6821. JACKSON *v.* TEXAS ELECTRIC UTILITY SERVICE CO., *ante*, p. 1053;

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**VOTING DISCRIMINATION.** See **Constitutional Law,** VIII; **Voting Rights Act of 1965.**

**VOTING RIGHTS ACT OF 1965.**

*Redistricting plan—Preclearance.*—In light of § 5's language and Court's holding in *Beer* v. *United States,* 425 U. S. 130, § 5 does not prohibit preclearance of a redistricting plan enacted with a discriminatory but nonretrogressive purpose. Reno v. Bossier Parish School Bd., p. 320.

**WARRANTLESS SEARCHES.** See **Constitutional Law,** IX, 1.

**WEST VIRGINIA.** See **Constitutional Law,** IX, 1.

**WITHHOLDING TAXES.** See **Taxes.**

**WORDS AND PHRASES.**

1. *"Paid."* Internal Revenue Code, 26 U. S. C. § 6511(b)(A)(2). Baral v. United States, p. 431.

2. *"Property and rights to property."* Internal Revenue Code, 26 U. S. C. § 6321. Drye v. United States, p. 49.

3. *"Purpose . . . of denying or abridging the right to vote on account of race or color."* § 5, Voting Rights Act of 1965, 42 U. S. C. § 1973c. Reno v. Bossier Parish School Bd., p. 320.