

ORDERS FROM JUNE 23 THROUGH  
JUNE 24, 1986

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JUNE 23, 1986

*Affirmed on Appeal*

No. 85-441. ROBERTS, COMMISSIONER OF LABOR OF THE STATE OF NEW YORK *v.* BURLINGTON INDUSTRIES, INC.; and

No. 85-460. GILBERT ET AL. *v.* BURLINGTON INDUSTRIES, INC. Affirmed on appeals from C. A. 2d Cir. Reported below: 765 F. 2d 320.

No. 85-944. BROOKS, COMMISSIONER OF LABOR OF NORTH CAROLINA *v.* BURLINGTON INDUSTRIES, INC., ET AL. Affirmed on appeal from C. A. 4th Cir. Reported below: 772 F. 2d 1140.

No. 85-1066. MARTIN, GOVERNOR OF NORTH CAROLINA, ET AL. *v.* HAITH. Affirmed on appeal from D. C. E. D. N. C. Reported below: 618 F. Supp. 410.

*Appeals Dismissed*

No. 84-922. LINEAS AEREAS COSTARRICENSES, S.A., ET AL. *v.* FLORIDA DEPARTMENT OF REVENUE. Appeal from Sup. Ct. Fla. dismissed for want of substantial federal question. JUSTICE BLACKMUN would note probable jurisdiction and set case for oral argument. Reported below: 457 So. 2d 1007.

No. 84-1041. AIR JAMAICA LTD. ET AL. *v.* FLORIDA DEPARTMENT OF REVENUE. Appeal from Sup. Ct. Fla. dismissed for want of substantial federal question. JUSTICE BLACKMUN would note probable jurisdiction and set case for oral argument. Reported below: 455 So. 2d 324.

No. 85-1690. GOODYEAR FARMS ET AL. *v.* CITY OF AVONDALE. Appeal from Sup. Ct. Ariz. Motion of Arizona for leave to intervene granted. Appeal dismissed for want of substantial federal question. JUSTICE BRENNAN and JUSTICE WHITE would postpone further consideration of the question of jurisdiction to a hearing of the case on the merits. Reported below: 148 Ariz. 216, 714 P. 2d 386.

June 23, 1986

477 U. S.

No. 85-1859. LUNDGARD *v.* OHIO. Appeal from Ct. App. Ohio, Miami County, dismissed for want of substantial federal question.

No. 85-6850. HARDESTY *v.* MICHIGAN. Appeal from Ct. App. Mich. dismissed for want of substantial federal question. Reported below: 139 Mich. App. 124, 362 N. W. 2d 787.

*Vacated and Remanded on Appeal*

No. 85-1165. NANTAHALA POWER & LIGHT CO. ET AL. *v.* THORNBURG, ATTORNEY GENERAL OF NORTH CAROLINA, ET AL. Appeal from Sup. Ct. N. C. Judgment vacated and case remanded for further consideration in light of *Nantahala Power & Light Co. v. Thornburg*, 476 U. S. 953 (1986). JUSTICE POWELL and JUSTICE STEVENS took no part in the consideration or decision of this case. Reported below: 314 N. C. 246, 333 S. E. 2d 217.

No. 85-1307. NANTAHALA POWER & LIGHT CO. ET AL. *v.* THORNBURG, ATTORNEY GENERAL OF NORTH CAROLINA, ET AL. Appeal from Sup. Ct. N. C. Judgment vacated and case remanded for further consideration in light of *Nantahala Power & Light Co. v. Thornburg*, 476 U. S. 953 (1986). JUSTICE POWELL and JUSTICE STEVENS took no part in the consideration or decision of this case. Reported below: 314 N. C. 122, 333 S. E. 2d 453.

*Certiorari Granted—Vacated and Remanded*

No. 85-12. POTT INDUSTRIES, INC. *v.* INGRAM RIVER EQUIPMENT, INC. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *East River S.S. Corp. v. Transamerica Delaval Inc.*, 476 U. S. 858 (1986). Reported below: 756 F. 2d 649.

No. 85-406. ARIYOSHI, GOVERNOR OF HAWAII, ET AL. *v.* ROBINSON ET AL. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U. S. 172 (1985). Reported below: 753 F. 2d 1468.

*Miscellaneous Orders*

No. A-944 (85-1975). POLYAK *v.* HULEN ET AL. C. A. 6th Cir. Application for an injunction, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

477 U. S.

June 23, 1986

No. 85-6948. *IN RE GAY*. Petition for writ of mandamus denied.

*Probable Jurisdiction Noted*

No. 85-1798. *PENNZOIL CO. v. TEXACO INC.* Appeal from C. A. 2d Cir. Probable jurisdiction noted. Reported below: 784 F. 2d 1133.

*Certiorari Granted*

No. 85-998. *UNITED STATES v. DUNN*. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 782 F. 2d 1226.

No. 85-1329. *YOUNG ET AL. v. UNITED STATES EX REL. VUITTON ET FILS S.A. ET AL.*; and

No. 85-6207. *KLAYMINC v. UNITED STATES EX REL. VUITTON ET FILS S.A. ET AL.* C. A. 2d Cir. Motion of petitioner in No. 85-6207 for leave to proceed *in forma pauperis* granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 780 F. 2d 179.

No. 85-1358. *LUKHARD, COMMISSIONER, VIRGINIA DEPARTMENT OF SOCIAL SERVICES v. REED ET AL.* C. A. 4th Cir. Motion of respondents Reed et al. for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 774 F. 2d 1270.

*Certiorari Denied*

No. 84-1808. *WHITE, DBA BLUE WAVE OYSTER CO., ET AL. v. M/V TESTBANK ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 752 F. 2d 1019.

No. 84-1966. *CWT FARMS, INC., ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 11th Cir. Certiorari denied. Reported below: 755 F. 2d 790.

No. 85-873. *CAMACHO ET AL. v. BUNYAN*. C. A. 9th Cir. Certiorari denied. Reported below: 770 F. 2d 773.

No. 85-929. *SLACK ET AL. v. BURLINGTON INDUSTRIES, INC., ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 772 F. 2d 1140.

No. 85-1030. *RADOL ET AL. v. THOMAS ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 772 F. 2d 244.

June 23, 1986

477 U. S.

No. 85-1301. *HASTINGS, JUDGE, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA v. JUDICIAL CONFERENCE OF THE UNITED STATES ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 248 U. S. App. D. C. 180, 770 F. 2d 1093.

No. 85-1491. *BELL v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 776 F. 2d 965.

No. 85-1503. *WATTENBARGER v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 21 M. J. 41.

No. 85-1528. *HUBBLE v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied. Reported below: 509 Pa. 497, 504 A. 2d 168.

No. 85-1540. *PRACHT v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 777 F. 2d 703.

No. 85-1594. *INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES & MOVING PICTURE MACHINE OPERATORS OF UNITED STATES AND CANADA ET AL. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 779 F. 2d 552.

No. 85-1609. *HASTINGS, UNITED STATES DISTRICT JUDGE, ET AL. v. GODBOLD, CHIEF JUDGE, UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 783 F. 2d 1488.

No. 85-1628. *PAYNE, INDEPENDENT EXECUTOR OF THE ESTATE OF JOHNSTON v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 779 F. 2d 1123.

No. 85-1648. *CALIFORNIA HOSPITAL ASSN. ET AL. v. HENNING, LABOR COMMISSIONER, DIVISION OF LABOR STANDARDS ENFORCEMENT, DEPARTMENT OF INDUSTRIAL RELATIONS OF CALIFORNIA.* C. A. 9th Cir. Certiorari denied. Reported below: 770 F. 2d 856 and 783 F. 2d 946.

No. 85-1650. *N. O. C., T/A NOBLE OIL Co. v. ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY.* C. A. 3d Cir. Certiorari denied. Reported below: 782 F. 2d 1030.

No. 85-1674. *NADWORNY v. MASSACHUSETTS.* Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 396 Mass. 342, 486 N. E. 2d 675.

477 U. S.

June 23, 1986

No. 85-1676. *MCKEE ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 781 F. 2d 1043.

No. 85-1713. *DRUM v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 783 F. 2d 1179.

No. 85-1761. *HOLYOKE WATER POWER CO. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 1st Cir. Certiorari denied. Reported below: 778 F. 2d 49.

No. 85-1766. *MOSS v. MUNICIPAL COURT OF THE NORTH ORANGE COUNTY JUDICIAL DISTRICT (CALIFORNIA, REAL PARTY IN INTEREST)*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 85-1770. *GIBSON ET AL. v. AT&T TECHNOLOGIES, INC.* C. A. 7th Cir. Certiorari denied. Reported below: 782 F. 2d 686.

No. 85-1780. *BIC LEISURE PRODUCTS, INC., ET AL. v. WINDSURFING INTERNATIONAL, INC.* C. A. Fed. Cir. Certiorari denied. Reported below: 782 F. 2d 995.

No. 85-1793. *WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS v. SMITH*. C. A. 11th Cir. Certiorari denied. Reported below: 777 F. 2d 609.

No. 85-1803. *SLAB FORK COAL CO. v. UNITED VIRGINIA BANK ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 784 F. 2d 1188.

No. 85-1808. *DAVIS v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 85-1811. *OHIO DEPARTMENT OF NATURAL RESOURCES v. SPIERS, TRUSTEE*. C. A. 6th Cir. Certiorari denied. Reported below: 780 F. 2d 585.

No. 85-1817. *AVERY v. JENNINGS ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 786 F. 2d 233.

No. 85-1846. *SHELTON ET AL. v. CITY OF COLLEGE STATION ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 780 F. 2d 475.

No. 85-1875. *SCHUCHMAN ET UX. v. UNITED STATES ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 779 F. 2d 54.

June 23, 1986

477 U. S.

No. 85-1898. *WAGNER ET AL. v. OFFICE OF PERSONNEL MANAGEMENT*. C. A. Fed. Cir. Certiorari denied. Reported below: 783 F. 2d 1042.

No. 85-1899. *DAVID v. DEFENSE LOGISTICS AGENCY*. C. A. Fed. Cir. Certiorari denied. Reported below: 776 F. 2d 1065.

No. 85-1900. *EAKES v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 783 F. 2d 499.

No. 85-1917. *BILLS ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 786 F. 2d 1145.

No. 85-1919. *PARNESS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 779 F. 2d 820.

No. 85-1920. *BATSON ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 782 F. 2d 1307.

No. 85-5901. *CLIFTON v. MCCARTHY, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 774 F. 2d 1173.

No. 85-6418. *ISSA v. MERIT SYSTEMS PROTECTION BOARD*. C. A. Fed. Cir. Certiorari denied. Reported below: 790 F. 2d 90.

No. 85-6535. *WILSON ET AL. v. HUDSON COUNTY PROSECUTORS OFFICE ET AL.* C. A. 4th Cir. Certiorari denied.

No. 85-6550. *OWENS v. LOPEZ, REGIONAL COMMISSIONER, UNITED STATES PAROLE COMMISSION, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 788 F. 2d 5.

No. 85-6581. *SOHAPPY ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 770 F. 2d 816.

No. 85-6595. *METZGER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 778 F. 2d 1195.

No. 85-6602. *GARY v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 499 A. 2d 815.

No. 85-6616. *FERNANDEZ ET AL. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 778 F. 2d 1558.

No. 85-6626. *GATES v. ALABAMA*. Sup. Ct. Ala. Certiorari denied. Reported below: 493 So. 2d 410.

477 U. S.

June 23, 1986

No. 85-6667. *BOAG v. RICKETTS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS*. C. A. 9th Cir. Certiorari denied. Reported below: 780 F. 2d 1025.

No. 85-6819. *MCCONNELL v. WEE ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 786 F. 2d 1171.

No. 85-6824. *NORTH v. EDWARDS, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 785 F. 2d 309.

No. 85-6826. *SELLNER v. PANAGOULIS, AKA HUDNALL, ET AL.* Ct. App. Md. Certiorari denied. Reported below: 304 Md. 631, 500 A. 2d 649.

No. 85-6833. *LACY v. DISTRICT COURT OF DALLAS COUNTY, TEXAS*. C. A. 5th Cir. Certiorari denied.

No. 85-6839. *OTIS v. SEARS, ROEBUCK & Co.* C. A. 7th Cir. Certiorari denied. Reported below: 785 F. 2d 312.

No. 85-6840. *WALTER v. DICKSON ET AL.* C. A. 5th Cir. Certiorari denied.

No. 85-6843. *BRYANT v. VOSE, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION*. C. A. 1st Cir. Certiorari denied. Reported below: 785 F. 2d 364.

No. 85-6845. *TOLER v. NEW HANOVER COUNTY BOARD OF EDUCATION*. C. A. 4th Cir. Certiorari denied.

No. 85-6851. *DAIGRE v. BLACKBURN, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 785 F. 2d 1033.

No. 85-6853. *FOWLER ET AL. v. JAGO, SUPERINTENDENT, LONDON CORRECTIONAL INSTITUTION, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 787 F. 2d 589.

No. 85-6854. *PLIES v. LAZARE ET AL.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 85-6855. *TATU ET AL. v. LAWSON & HARTNELL*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 85-6856. *HENDERSON v. IDAHO ET AL.* Sup. Ct. Idaho. Certiorari denied. Reported below: 110 Idaho 308, 715 P. 2d 978.

No. 85-6857. *WRENN v. ST. CHARLES HOSPITAL*. C. A. 6th Cir. Certiorari denied. Reported below: 786 F. 2d 1167.

June 23, 1986

477 U. S.

No. 85-6862. CAMACHO *v.* RITZ-CARLTON WATER TOWER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 786 F. 2d 242.

No. 85-6914. DE ROSA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 783 F. 2d 1401.

No. 85-6962. GEORGALIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 788 F. 2d 5.

No. 85-6967. CABLE *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 65 Md. App. 493, 501 A. 2d 108.

No. 85-6971. EBERWINE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 779 F. 2d 1088.

No. 85-6984. CASTANEDA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 85-6985. TANNOUS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 785 F. 2d 1.

No. 85-6989. GIAQUINTO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 787 F. 2d 584.

No. 85-6995. MEANS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 787 F. 2d 598.

No. 84-1907. KAISER ALUMINUM & CHEMICAL CORP. ET AL. *v.* BONJORNO ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 752 F. 2d 802.

No. 85-6871. BRANTLEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 786 F. 2d 1322.

No. 85-1579. BOGGILD ET AL. *v.* KENNER PRODUCTS, A DIVISION OF CPG PRODUCTS CORP. C. A. 6th Cir. Motion of American Intellectual Property Law Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 776 F. 2d 1315.

No. 85-1653. BALISTRIERI ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari limited to Question II presented by the petition. Reported below: 778 F. 2d 1226.

477 U. S.

June 23, 1986

No. 85-1664. ALABAMA *v.* CROWE. Sup. Ct. Ala. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 485 So. 2d 373.

No. 85-1683. CITY OF PHOENIX *v.* WEST PUBLISHING CO. Ct. App. Ariz. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 148 Ariz. 31, 712 P. 2d 944.

No. 85-1792. BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES *v.* RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD CO. C. A. 4th Cir. Certiorari before judgment denied.

No. 85-6523. PHILLIPS, AKA BASHIR *v.* TEXAS. Ct. Crim. App. Tex.;

No. 85-6545. JAMES *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Fla.;

No. 85-6696. MATHENIA *v.* MISSOURI. Sup. Ct. Mo.;

No. 85-6963. JONES *v.* MISSOURI. Sup. Ct. Mo.; and

No. 85-6974. PEEDE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: No. 85-6523, 701 S. W. 2d 875; No. 85-6545, 484 So. 2d 1235; No. 85-6696, 702 S. W. 2d 840; No. 85-6963, 705 S. W. 2d 19; No. 85-6974, 474 So. 2d 808.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

Adhering to our views that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 227, 231 (1976), we would grant certiorari and vacate the death sentences in these cases.

#### *Rehearing Denied*

No. 84-1942. NATIONWIDE MUTUAL INSURANCE CO. *v.* CLAY, 476 U. S. 1101;

No. 85-695. ILLINOIS CENTRAL GULF RAILROAD CO. *v.* COLEMAN, 476 U. S. 1104;

No. 85-1020. GELLERT *v.* EASTERN AIR LINES, INC., 475 U. S. 1036;

No. 85-1362. STERN ET AL. *v.* TARRANT COUNTY HOSPITAL DISTRICT ET AL., 476 U. S. 1108; and

No. 85-1464. NEWKIRK ET AL. *v.* BIGARD, INDIVIDUALLY AND DBA B & B OIL CO., ET AL., 475 U. S. 1140. Petitions for rehearing denied.

June 23, 24, 1986

477 U. S.

No. 85-6507. *KELLER v. PETSOCK*, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND DIAGNOSTIC AND CLASSIFICATION CENTER, ET AL., 475 U. S. 1143;

No. 85-6548. *RYAN v. STEPHEN*, 476 U. S. 1107;

No. 85-6674. *IN RE DYSON*, 476 U. S. 1111;

No. 85-6686. *MORGAN v. UNITED STATES*, 476 U. S. 1122; and

No. 85-6702. *IN RE MUELLER*, 476 U. S. 1113. Petitions for rehearing denied.

JUNE 24, 1986

*Certiorari Denied*

No. 85-7182 (A-1000). *BOWDEN v. KEMP*, WARDEN. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE POWELL, and by him referred to the Court, denied. Certiorari denied. Reported below: 793 F. 2d 273.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

Adhering to our views that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 227, 231 (1976), we would grant the application for stay and the petition for writ of certiorari, and would vacate the death sentence in this case.