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VOLUME 525

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CASES ADJUDGED

IN

# THE SUPREME COURT

AT

OCTOBER TERM, 1998

BEGINNING OF TERM

OCTOBER 5, 1998, THROUGH MARCH 1, 1999

TOGETHER WITH OPINION OF INDIVIDUAL JUSTICE IN CHAMBERS

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FRANK D. WAGNER

REPORTER OF DECISIONS

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## Errata

522 U. S. 817, No. 96–1944: "108 F. 3d 345" should be "101 F. 3d 707".
522 U. S. 1087, No. D–1908: "Trammel" should be "Trammell".

# JUSTICES

OF THE

# SUPREME COURT

DURING THE TIME OF THESE REPORTS

---

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

RETIRED

LEWIS F. POWELL, Jr., Associate Justice.*
BYRON R. WHITE, Associate Justice.
HARRY A. BLACKMUN, Associate Justice.

---

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.

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*Justice Powell, who retired effective June 26, 1987 (483 U. S. VII), died on August 25, 1998. See *post*, p. v.

# 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.)

# DEATH OF JUSTICE POWELL

## Supreme Court of the United States

MONDAY, OCTOBER 5, 1998

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

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The Chief Justice said:

As we open this morning, I want to pay tribute to our friend and colleague, Lewis F. Powell, a retired Justice of this Court, who died on August 25, 1998, at his home in Richmond, Virginia.

Lewis Powell took the Oath of Office on January 7, 1972, becoming the 99th Justice to serve on this Court. He retired on June 26, 1987. Following his retirement, he sat on the Court of Appeals for the Fourth Circuit, and taught at both Washington and Lee and the University of Virginia.

Justice Powell was born on September 19, 1907, in Suffolk, Virginia. He graduated first in his class at Washington and Lee College in 1929, then completed his law degree in two years and went on to receive his LL.M. from Harvard Law School in 1932. In that year, he began practicing law in his native city of Richmond. In 1941, at the time of the Japanese attack on Pearl Harbor, he was 34 years old. Though his age and family responsibilities would have excluded him from the draft, he volunteered and was commissioned a First Lieutenant in the Air Force, rising in rank to Colonel, and winning the Legion of Merit and Bronze Star medals. He served overseas with distinction as an Intelligence Officer

in the Air Force for four years during World War II and its aftermath.

After serving the country during the war, he returned to Richmond and the law firm of Hunton and Williams. Throughout his career in Virginia, he gave generously of his time and energy to the Richmond community and to the Commonwealth. He served as the President of the Virginia State Board of Education as well as Chairman of the Richmond Public School Board. He was elected to serve as the President of the American Bar Association and was appointed by President Johnson as a member of the National Commission on Law Enforcement and Administration of Justice.

At the age of 64, already occupying a secure place among the legal leaders of the United States, his country called again and he accepted an appointment to this Court as his patriotic duty. We who served with him during his fifteen years on this Court cherished his intellect, gentlemanly charm, and consummate judicial temperament. We continue to miss him. At an appropriate time in the spring, the traditional memorial observance of the Court and the Bar of the Court will be held in this Courtroom.

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# CASES ADJUDGED

IN THE

# SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1998

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## UNITED STATES *v.* LOUISIANA ET AL. (TEXAS BOUNDARY CASE)

ON JOINT MOTION FOR ENTRY OF SUPPLEMENTAL DECREE

No. 9, Orig. Decided May 31, 1960, December 4, 1967, and March 3, 1969—Final Decree Entered December 12, 1960—Supplemental Decree Entered May 5, 1969—Supplemental Decree Entered October 13, 1998

Supplemental decree entered.

Opinions reported: 363 U. S. 1, 389 U. S. 155, and 394 U. S. 1; final decree reported: 364 U. S. 502; supplemental decree reported: 394 U. S. 836.

The joint motion for entry of a supplemental decree is granted.

### SUPPLEMENTAL DECREE

On December 12, 1960, this Court entered a final decree addressing the entitlement of the United States and the States of Alabama, Florida, Louisiana, Mississippi, and Texas to lands, minerals, and other natural resources underlying the Gulf of Mexico. *United States* v. *Louisiana*, 364 U. S. 502. On May 5, 1969, this Court entered a supplemental decree describing the 1845 coastline of the State of Texas and the offshore boundary between the United States and Texas. *United States* v. *Louisiana*, 394 U. S. 836. For the purpose of identifying with greater particularity the boundary line

between the submerged lands of Texas and those of the United States, it is ordered, adjudged, and decreed as follows:

1. As against the United States, with the exceptions provided by § 5 of the Submerged Lands Act, 67 Stat. 32, 43 U. S. C. § 1313, the State of Texas is entitled to all lands, minerals, and other natural resources underlying the Gulf of Mexico, bounded on the south by the international boundary with the Republic of Mexico and on the east by the boundary between the States of Texas and Louisiana and an extension thereof, that lie landward of the line described in paragraph 3 below.

2. As against the State of Texas, the United States is entitled to all lands, minerals, and other natural resources underlying the Gulf of Mexico, bounded on the south by the international boundary with the Republic of Mexico and on the east by the boundary between the States of Texas and Louisiana and an extension thereof, that lie seaward of the line described in paragraph 3 below.

3. The federal-state boundary line, referred to in paragraphs 1 and 2 above, is located as follows:

| | NAD 27 Texas South Zone (feet) | |
|---|---|---|
| Type Code | x–coordinate | y–coordinate |
| BEGINNING AT | 2499640.190 | 113383.050 |
| BY STRAIGHT LINE TO | 2499530.550 | 116379.990 |
| BY ARC CENTERED AT | 2444923.280 | 113478.030 |
| TO | 2499085.770 | 121013.970 |
| BY STRAIGHT LINE TO | 2498580.340 | 124646.260 |
| BY ARC CENTERED AT | 2444417.930 | 117110.640 |
| TO | 2498520.860 | 125062.040 |
| BY ARC CENTERED AT | 2447716.990 | 104830.000 |
| TO | 2498147.430 | 125977.510 |
| BY STRAIGHT LINE TO | 2498068.220 | 126760.310 |
| BY ARC CENTERED AT | 2443661.000 | 121256.010 |

| Type Code | NAD 27 Texas South Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| TO | 2497382.910 | 131473.560 |
| BY STRAIGHT LINE TO | 2497076.470 | 135705.480 |
| BY STRAIGHT LINE TO | 2497119.050 | 137947.290 |
| BY STRAIGHT LINE TO | 2497240.260 | 139652.480 |
| BY ARC CENTERED AT | 2442693.000 | 143530.000 |
| TO | 2496941.950 | 150421.250 |
| BY STRAIGHT LINE TO | 2496722.950 | 152145.250 |
| BY ARC CENTERED AT | 2442474.000 | 145254.000 |
| TO | 2496369.790 | 154510.440 |
| BY STRAIGHT LINE TO | 2495552.790 | 159267.440 |
| BY ARC CENTERED AT | 2441657.000 | 150011.000 |
| TO | 2495160.620 | 161315.920 |
| BY STRAIGHT LINE TO | 2494874.980 | 162667.810 |
| BY STRAIGHT LINE TO | 2494746.000 | 163636.000 |
| BY STRAIGHT LINE TO | 2494468.310 | 165973.870 |
| BY ARC CENTERED AT | 2443246.710 | 146822.120 |
| TO | 2492810.740 | 169927.290 |
| BY STRAIGHT LINE TO | 2492774.800 | 170112.970 |
| BY ARC CENTERED AT | 2439086.150 | 159722.250 |
| TO | 2492588.170 | 171034.890 |
| BY STRAIGHT LINE TO | 2492205.260 | 174407.590 |
| BY ARC CENTERED AT | 2437625.640 | 171015.450 |
| TO | 2491921.560 | 177526.340 |
| BY STRAIGHT LINE TO | 2491552.740 | 180602.020 |
| BY ARC CENTERED AT | 2437256.820 | 174091.130 |
| TO | 2491382.170 | 181893.990 |
| BY STRAIGHT LINE TO | 2491322.660 | 182306.820 |
| BY STRAIGHT LINE TO | 2491250.280 | 183423.780 |
| BY ARC CENTERED AT | 2436679.820 | 179887.780 |
| TO | 2491038.940 | 185848.050 |
| BY STRAIGHT LINE TO | 2490687.070 | 189057.190 |
| BY ARC CENTERED AT | 2436327.950 | 183096.920 |
| TO | 2490568.140 | 190056.800 |

| Type Code | NAD 27 Texas South Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| BY STRAIGHT LINE TO | 2489781.810 | 196184.910 |
| BY STRAIGHT LINE TO | 2489408.130 | 199725.490 |
| BY ARC CENTERED AT | 2435025.270 | 193985.870 |
| TO | 2488891.700 | 203411.710 |
| BY STRAIGHT LINE TO | 2488385.320 | 206305.540 |
| BY STRAIGHT LINE TO | 2488095.190 | 207985.200 |
| BY STRAIGHT LINE TO | 2487772.010 | 210387.930 |
| BY ARC CENTERED AT | 2433575.160 | 203098.250 |
| TO | 2487561.760 | 211809.440 |
| BY STRAIGHT LINE TO | 2487232.820 | 213848.020 |
| BY ARC CENTERED AT | 2432844.590 | 208159.240 |
| TO | 2487027.760 | 215549.950 |
| BY STRAIGHT LINE TO | 2486636.220 | 218420.430 |
| BY ARC CENTERED AT | 2432453.050 | 211029.720 |
| TO | 2486214.950 | 221034.530 |
| BY STRAIGHT LINE TO | 2485938.220 | 222521.570 |
| BY STRAIGHT LINE TO | 2485815.850 | 223411.880 |
| BY ARC CENTERED AT | 2431640.280 | 215965.660 |
| TO | 2484763.880 | 228939.650 |
| BY STRAIGHT LINE TO | 2484753.860 | 228995.960 |
| BY ARC CENTERED AT | 2430915.120 | 219413.240 |
| TO | 2484707.670 | 229251.920 |
| BY STRAIGHT LINE TO | 2484141.990 | 232344.750 |
| BY ARC CENTERED AT | 2430349.440 | 222506.070 |
| TO | 2483210.720 | 236510.600 |
| BY STRAIGHT LINE TO | 2483055.890 | 237300.960 |
| BY ARC CENTERED AT | 2429390.990 | 226788.270 |
| TO | 2482686.770 | 239035.640 |
| BY STRAIGHT LINE TO | 2482267.080 | 240861.990 |
| BY STRAIGHT LINE TO | 2481855.260 | 242883.000 |
| BY ARC CENTERED AT | 2428271.470 | 231964.400 |
| TO | 2481793.420 | 243182.190 |
| BY STRAIGHT LINE TO | 2481027.530 | 246836.380 |

| Type Code | NAD 27 Texas South Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| BY ARC CENTERED AT | 2427505.580 | 235618.590 |
| TO | 2480357.520 | 249658.190 |
| BY STRAIGHT LINE TO | 2480292.310 | 249903.680 |
| BY ARC CENTERED AT | 2426833.570 | 238388.260 |
| TO | 2479639.120 | 252601.340 |
| BY STRAIGHT LINE TO | 2478059.020 | 258471.870 |
| BY STRAIGHT LINE TO | 2477392.310 | 261606.470 |
| BY ARC CENTERED AT | 2423903.880 | 250229.900 |
| TO | 2476815.070 | 264044.520 |
| BY STRAIGHT LINE TO | 2474580.490 | 272603.140 |
| BY STRAIGHT LINE TO | 2473051.430 | 278464.090 |
| BY STRAIGHT LINE TO | 2472865.110 | 279221.610 |
| BY ARC CENTERED AT | 2419762.850 | 266160.680 |
| TO | 2472134.540 | 281897.390 |
| BY STRAIGHT LINE TO | 2471635.750 | 283557.370 |
| BY STRAIGHT LINE TO | 2471536.110 | 284004.850 |
| BY ARC CENTERED AT | 2418158.400 | 272119.650 |
| TO | 2470645.240 | 287467.950 |
| BY STRAIGHT LINE TO | 2469160.610 | 292544.980 |
| BY ARC CENTERED AT | 2415708.630 | 280998.210 |
| TO | 2468375.640 | 295716.380 |
| BY STRAIGHT LINE TO | 2467281.750 | 299630.710 |
| BY STRAIGHT LINE TO | 2467063.940 | 300479.790 |
| BY ARC CENTERED AT | 2414094.150 | 286891.590 |
| TO | 2466681.490 | 301891.910 |
| BY STRAIGHT LINE TO | 2464286.370 | 310288.600 |
| BY ARC CENTERED AT | 2411699.030 | 295288.280 |
| TO | 2463285.380 | 313434.620 |
| BY STRAIGHT LINE TO | 2461034.980 | 320839.800 |
| BY ARC CENTERED AT | 2408712.780 | 304939.300 |
| TO | 2460234.640 | 323267.860 |
| BY STRAIGHT LINE TO | 2459053.490 | 326588.090 |
| BY ARC CENTERED AT | 2407531.630 | 308259.530 |

| Type Code | NAD 27 Texas South Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| TO | 2458585.720 | 327853.430 |
| BY ARC CENTERED AT | 2406144.130 | 312351.150 |
| TO | 2458085.170 | 329455.830 |
| BY ARC CENTERED AT | 2405329.070 | 315060.150 |
| TO | 2456893.510 | 333268.570 |
| BY STRAIGHT LINE TO | 2456601.800 | 334094.660 |
| BY ARC CENTERED AT | 2402327.560 | 327405.250 |
| TO | 2456491.030 | 334939.170 |
| BY STRAIGHT LINE TO | 2450926.200 | 352123.960 |
| BY ARC CENTERED AT | 2398901.000 | 335277.000 |
| TO | 2450600.010 | 353099.830 |
| BY ARC CENTERED AT | 2402327.560 | 327405.250 |
| TO | 2448841.400 | 356161.200 |
| BY ARC CENTERED AT | 2397154.960 | 338301.920 |
| TO | 2448402.460 | 357384.260 |
| BY STRAIGHT LINE TO | 2448203.960 | 358041.630 |
| BY ARC CENTERED AT | 2395853.580 | 342234.170 |
| TO | 2447351.610 | 360629.590 |
| BY STRAIGHT LINE TO | 2445237.930 | 366546.830 |
| BY STRAIGHT LINE TO | 2444812.700 | 367941.320 |
| BY ARC CENTERED AT | 2392505.710 | 351990.870 |
| TO | 2444593.900 | 368641.950 |
| BY STRAIGHT LINE TO | 2443105.010 | 373299.520 |
| BY ARC CENTERED AT | 2391016.820 | 356648.440 |
| TO | 2442033.710 | 376339.020 |
| BY ARC CENTERED AT | 2389552.290 | 360972.090 |
| TO | 2441418.680 | 378301.810 |
| BY STRAIGHT LINE TO | 2441344.850 | 378626.700 |
| BY ARC CENTERED AT | 2388019.490 | 366508.780 |
| TO | 2439779.110 | 384154.840 |
| BY STRAIGHT LINE TO | 2439562.270 | 385005.700 |
| BY ARC CENTERED AT | 2386571.100 | 371501.090 |
| TO | 2438943.520 | 387235.390 |

| | NAD 27 Texas South Zone (feet) | |
|---|---|---|
| Type Code | x–coordinate | y–coordinate |
| BY STRAIGHT LINE TO | 2437602.910 | 391697.680 |
| BY ARC CENTERED AT | 2385230.490 | 375963.380 |
| TO | 2437284.850 | 392719.940 |
| BY STRAIGHT LINE TO | 2436975.360 | 393681.380 |
| BY STRAIGHT LINE TO | 2436280.090 | 396142.280 |
| BY STRAIGHT LINE TO | 2435935.420 | 397450.420 |
| BY ARC CENTERED AT | 2383055.220 | 383517.610 |
| TO | 2435869.020 | 397700.130 |
| BY ARC CENTERED AT | 2382474.620 | 385889.990 |
| TO | 2434395.970 | 403054.240 |
| BY STRAIGHT LINE TO | 2433650.070 | 405310.550 |
| BY STRAIGHT LINE TO | 2433087.580 | 407425.790 |
| BY ARC CENTERED AT | 2380239.370 | 393372.130 |
| TO | 2432993.510 | 407774.870 |
| BY STRAIGHT LINE TO | 2432437.610 | 409811.000 |
| BY STRAIGHT LINE TO | 2432335.870 | 410202.980 |
| BY ARC CENTERED AT | 2379404.950 | 396464.120 |
| TO | 2432157.640 | 410872.290 |
| BY ARC CENTERED AT | 2378627.400 | 399693.960 |
| TO | 2431651.370 | 413069.200 |
| BY STRAIGHT LINE TO | 2431453.470 | 413853.740 |
| BY STRAIGHT LINE TO | 2431013.370 | 415825.730 |
| BY ARC CENTERED AT | 2377641.480 | 403914.410 |
| TO | 2430848.050 | 416543.720 |
| BY STRAIGHT LINE TO | 2430456.820 | 418191.950 |
| BY ARC CENTERED AT | 2377250.250 | 405562.640 |
| TO | 2430081.080 | 419681.490 |
| BY STRAIGHT LINE TO | 2429782.280 | 420799.550 |
| BY ARC CENTERED AT | 2376492.690 | 408525.150 |
| TO | 2429618.410 | 421490.340 |
| BY STRAIGHT LINE TO | 2429425.410 | 422281.170 |
| BY ARC CENTERED AT | 2376299.690 | 409315.980 |
| TO | 2429115.820 | 423489.710 |

| Type Code | NAD 27 Texas South Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| BY STRAIGHT LINE TO | 2428995.000 | 423939.930 |
| BY STRAIGHT LINE TO | 2428815.500 | 424717.220 |
| BY ARC CENTERED AT | 2375532.880 | 412412.700 |
| TO | 2428479.360 | 426091.600 |
| BY STRAIGHT LINE TO | 2428280.980 | 427102.420 |
| BY ARC CENTERED AT | 2374619.700 | 416571.290 |
| TO | 2427686.310 | 429776.450 |
| BY STRAIGHT LINE TO | 2427221.210 | 432117.020 |
| BY ARC CENTERED AT | 2373585.020 | 421458.800 |
| TO | 2426956.130 | 433373.750 |
| BY STRAIGHT LINE TO | 2426718.550 | 434664.430 |
| BY ARC CENTERED AT | 2372937.210 | 424764.650 |
| TO | 2426443.020 | 436059.350 |
| BY ARC CENTERED AT | 2372724.710 | 425822.890 |
| TO | 2425824.030 | 438895.890 |
| BY STRAIGHT LINE TO | 2425299.740 | 441472.100 |
| BY ARC CENTERED AT | 2371166.980 | 433720.610 |
| TO | 2424769.480 | 444547.000 |
| BY STRAIGHT LINE TO | 2424185.850 | 447436.620 |
| BY STRAIGHT LINE TO | 2424127.670 | 447874.140 |
| BY ARC CENTERED AT | 2369919.910 | 440666.050 |
| TO | 2423862.830 | 449643.980 |
| BY ARC CENTERED AT | 2369485.630 | 443850.710 |
| TO | 2423405.660 | 452964.920 |
| BY STRAIGHT LINE TO | 2422577.640 | 457863.520 |
| BY ARC CENTERED AT | 2368657.610 | 448749.310 |
| TO | 2422499.930 | 458312.070 |
| BY STRAIGHT LINE TO | 2422242.120 | 460576.560 |
| BY ARC CENTERED AT | 2367908.210 | 454390.750 |
| TO | 2422182.660 | 461078.510 |
| BY ARC CENTERED AT | 2367641.220 | 457119.550 |
| TO | 2422138.650 | 461644.150 |
| BY STRAIGHT LINE TO | 2422077.650 | 462326.940 |

| Type Code | NAD 27 Texas South Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| BY ARC CENTERED AT | 2367641.220 | 457119.550 |
| TO | 2421804.280 | 464656.200 |
| BY STRAIGHT LINE TO | 2421763.410 | 464949.880 |
| BY ARC CENTERED AT | 2367204.320 | 461242.220 |
| TO | 2421206.650 | 469855.550 |
| BY STRAIGHT LINE TO | 2421192.970 | 469999.840 |
| BY STRAIGHT LINE TO | 2421148.590 | 470607.900 |
| BY ARC CENTERED AT | 2366608.740 | 466627.610 |
| TO | 2421002.790 | 472260.180 |
| BY STRAIGHT LINE TO | 2420625.570 | 475903.050 |
| BY STRAIGHT LINE TO | 2420474.600 | 477959.400 |
| BY STRAIGHT LINE TO | 2420464.560 | 478299.760 |
| BY ARC CENTERED AT | 2365803.390 | 476688.020 |
| TO | 2420421.760 | 479385.270 |
| BY STRAIGHT LINE TO | 2420325.690 | 480908.060 |
| BY STRAIGHT LINE TO | 2420303.780 | 481206.590 |
| BY ARC CENTERED AT | 2365634.650 | 479892.280 |
| TO | 2420301.800 | 481286.650 |
| BY STRAIGHT LINE TO | 2419964.790 | 486628.350 |
| BY STRAIGHT LINE TO | 2419807.600 | 488421.100 |
| BY STRAIGHT LINE TO | 2419815.100 | 489050.630 |
| BY ARC CENTERED AT | 2365134.050 | 489702.030 |
| TO | 2419817.350 | 489279.390 |
| BY STRAIGHT LINE TO | 2419592.920 | 493821.700 |
| BY STRAIGHT LINE TO | 2419588.860 | 494734.230 |
| BY STRAIGHT LINE TO | 2419586.170 | 494766.260 |
| BY STRAIGHT LINE TO | 2419523.860 | 497706.230 |
| BY STRAIGHT LINE TO | 2419529.920 | 501346.460 |
| BY STRAIGHT LINE TO | 2419441.950 | 506501.720 |
| BY STRAIGHT LINE TO | 2419749.610 | 514044.990 |
| BY STRAIGHT LINE TO | 2419872.320 | 516348.740 |
| BY STRAIGHT LINE TO | 2419879.340 | 516771.410 |
| BY STRAIGHT LINE TO | 2419941.610 | 518160.240 |

| Type Code | NAD 27 Texas South Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| BY ARC CENTERED AT | 2365564.350 | 523952.890 |
| TO | 2420046.380 | 519246.550 |
| BY STRAIGHT LINE TO | 2420164.830 | 521008.880 |
| BY ARC CENTERED AT | 2365603.000 | 524676.000 |
| TO | 2420189.460 | 521395.780 |
| BY ARC CENTERED AT | 2365564.350 | 523952.890 |
| TO | 2420249.280 | 523965.170 |
| BY STRAIGHT LINE TO | 2420314.570 | 524835.970 |
| BY ARC CENTERED AT | 2366101.610 | 532005.080 |
| TO | 2420323.670 | 524905.110 |
| BY STRAIGHT LINE TO | 2420366.920 | 526247.710 |
| BY STRAIGHT LINE TO | 2421336.030 | 538405.930 |
| BY ARC CENTERED AT | 2366824.000 | 542751.000 |
| TO | 2421428.630 | 539788.670 |
| BY STRAIGHT LINE TO | 2421449.160 | 540167.060 |
| BY STRAIGHT LINE TO | 2421590.660 | 540985.590 |
| BY ARC CENTERED AT | 2367705.000 | 550301.000 |
| TO | 2421629.070 | 541210.570 |
| BY ARC CENTERED AT | 2367242.130 | 546911.620 |
| TO | 2421712.320 | 542070.190 |
| BY STRAIGHT LINE TO | 2421873.460 | 543188.510 |
| BY ARC CENTERED AT | 2367747.500 | 550987.350 |
| TO | 2422133.700 | 545279.250 |
| BY STRAIGHT LINE TO | 2422164.040 | 545456.340 |
| BY ARC CENTERED AT | 2368264.240 | 554689.590 |
| TO | 2422202.260 | 545682.270 |
| BY STRAIGHT LINE TO | 2422522.100 | 548828.020 |
| BY STRAIGHT LINE TO | 2422758.260 | 550124.120 |
| BY ARC CENTERED AT | 2368264.240 | 554689.590 |
| TO | 2422789.160 | 550509.280 |
| BY STRAIGHT LINE TO | 2422844.930 | 550845.260 |
| BY ARC CENTERED AT | 2368898.240 | 559800.470 |
| TO | 2422912.170 | 551260.190 |

| Type Code | NAD 27 Texas South Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| BY ARC CENTERED AT | 2369352.490 | 562296.570 |
| TO | 2423047.950 | 551940.930 |
| BY STRAIGHT LINE TO | 2423261.620 | 553048.840 |
| BY STRAIGHT LINE TO | 2423600.420 | 555115.010 |
| BY STRAIGHT LINE TO | 2424692.350 | 560776.670 |
| BY ARC CENTERED AT | 2370786.300 | 569973.380 |
| TO | 2424763.300 | 561202.680 |
| BY STRAIGHT LINE TO | 2424936.150 | 562266.460 |
| BY ARC CENTERED AT | 2371804.880 | 575209.000 |
| TO | 2425189.960 | 563356.800 |
| BY STRAIGHT LINE TO | 2425603.330 | 565500.130 |
| BY STRAIGHT LINE TO | 2425719.410 | 566062.140 |
| BY ARC CENTERED AT | 2371804.880 | 575209.000 |
| TO | 2425970.990 | 567694.050 |
| BY ARC CENTERED AT | 2372891.700 | 580848.170 |
| TO | 2426476.550 | 569934.620 |
| BY STRAIGHT LINE TO | 2426759.750 | 571094.040 |
| BY ARC CENTERED AT | 2373636.620 | 584069.970 |
| TO | 2427001.620 | 572127.690 |
| BY STRAIGHT LINE TO | 2427068.030 | 572424.430 |
| BY ARC CENTERED AT | 2374312.620 | 586822.650 |
| TO | 2428075.200 | 576821.310 |
| BY STRAIGHT LINE TO | 2428113.770 | 577028.640 |
| BY ARC CENTERED AT | 2375731.900 | 592731.550 |
| TO | 2429540.890 | 582983.010 |
| BY STRAIGHT LINE TO | 2429922.920 | 584415.650 |
| BY ARC CENTERED AT | 2377084.350 | 598505.620 |
| TO | 2430569.690 | 587114.410 |
| BY ARC CENTERED AT | 2377692.260 | 601057.820 |
| TO | 2430741.360 | 587782.480 |
| BY STRAIGHT LINE TO | 2431599.780 | 590546.360 |
| BY ARC CENTERED AT | 2379375.720 | 606766.390 |
| TO | 2432118.430 | 592321.740 |

| | NAD 27 Texas South Zone (feet) | |
|---|---|---|
| Type Code | x–coordinate | y–coordinate |
| BY STRAIGHT LINE TO | 2432320.820 | 593060.740 |
| BY ARC CENTERED AT | 2379578.110 | 607505.390 |
| TO | 2432613.420 | 594175.070 |
| BY ARC CENTERED AT | 2380766.020 | 611561.520 |
| TO | 2433949.830 | 598836.580 |
| BY STRAIGHT LINE TO | 2434474.510 | 600505.210 |
| BY ARC CENTERED AT | 2382307.710 | 616908.460 |
| TO | 2434941.410 | 602071.520 |
| BY STRAIGHT LINE TO | 2435346.570 | 603508.820 |
| BY ARC CENTERED AT | 2384049.050 | 622456.270 |
| TO | 2436335.810 | 606439.530 |
| BY STRAIGHT LINE TO | 2436562.320 | 607178.960 |
| BY ARC CENTERED AT | 2385120.810 | 625731.940 |
| TO | 2436838.740 | 607964.060 |
| BY STRAIGHT LINE TO | 2437860.380 | 611265.290 |
| BY STRAIGHT LINE TO | 2440773.250 | 619882.130 |
| BY STRAIGHT LINE TO | 2443621.860 | 627687.240 |
| BY STRAIGHT LINE TO | 2446144.590 | 633614.600 |
| BY STRAIGHT LINE TO | 2449255.470 | 641224.720 |
| BY STRAIGHT LINE TO | 2451943.700 | 647349.180 |
| BY ARC CENTERED AT | 2403216.710 | 672170.980 |
| TO | 2453839.050 | 651487.170 |
| BY STRAIGHT LINE TO | 2454354.520 | 652748.750 |
| BY ARC CENTERED AT | 2404751.450 | 675769.980 |
| TO | 2455233.950 | 654747.150 |
| BY STRAIGHT LINE TO | 2456428.610 | 657615.910 |
| BY STRAIGHT LINE TO | 2457409.770 | 659715.620 |
| BY STRAIGHT LINE TO | 2457492.800 | 659881.530 |
| BY STRAIGHT LINE TO | 2457880.700 | 660588.980 |
| BY ARC CENTERED AT | 2409930.560 | 686880.150 |
| TO | 2459681.540 | 664180.340 |
| BY ARC CENTERED AT | 2410622.500 | 688339.230 |
| TO | 2460486.730 | 665889.290 |

| Type Code | NAD 27 Texas South Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| BY STRAIGHT LINE TO | 2461860.990 | 668941.700 |
| BY ARC CENTERED AT | 2411996.760 | 691391.640 |
| TO | 2462119.470 | 669524.870 |
| BY ARC CENTERED AT | 2412857.140 | 693266.490 |
| TO | 2463355.690 | 672282.250 |
| BY ARC CENTERED AT | 2414870.770 | 697573.640 |
| TO | 2466048.730 | 678305.590 |
| BY STRAIGHT LINE TO | 2466166.030 | 678617.150 |
| BY STRAIGHT LINE TO | 2467162.470 | 680797.150 |
| BY ARC CENTERED AT | 2417426.790 | 703530.470 |
| TO | 2467494.230 | 681537.440 |
| BY STRAIGHT LINE TO | 2469260.580 | 685558.560 |
| BY ARC CENTERED AT | 2419193.140 | 707551.590 |
| TO | 2470435.270 | 688454.830 |
| BY STRAIGHT LINE TO | 2471688.830 | 691818.490 |
| BY STRAIGHT LINE TO | 2471885.230 | 692323.690 |
| BY STRAIGHT LINE TO | 2472205.200 | 692969.770 |
| BY ARC CENTERED AT | 2423200.660 | 717239.030 |
| TO | 2472310.610 | 693183.800 |
| BY STRAIGHT LINE TO | 2473617.860 | 695852.620 |
| BY ARC CENTERED AT | 2426284.340 | 723238.370 |
| TO | 2475216.930 | 698824.380 |
| BY STRAIGHT LINE TO | 2475401.770 | 699194.860 |
| BY ARC CENTERED AT | 2431965.410 | 732417.200 |
| TO | 2477193.450 | 701678.530 |
| BY STRAIGHT LINE TO | 2477226.150 | 701747.670 |
| BY STRAIGHT LINE TO | 2482144.440 | 710612.870 |
| BY ARC CENTERED AT | 2432146.070 | 732762.470 |
| TO | 2483702.310 | 714530.740 |
| BY ARC CENTERED AT | 2439420.060 | 746616.940 |
| TO | 2488071.690 | 721647.760 |
| BY STRAIGHT LINE TO | 2488180.360 | 721859.490 |
| BY ARC CENTERED AT | 2441291.670 | 750000.080 |

| Type Code | NAD 27 Texas South Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| TO | 2489005.570 | 723282.570 |
| BY STRAIGHT LINE TO | 2489076.160 | 723408.630 |
| BY ARC CENTERED AT | 2443300.190 | 753325.220 |
| TO | 2491593.620 | 727670.080 |
| BY STRAIGHT LINE TO | 2491955.580 | 728217.450 |
| BY ARC CENTERED AT | 2446341.710 | 758380.620 |
| TO | 2494300.900 | 732105.970 |
| BY STRAIGHT LINE TO | 2495840.520 | 734483.860 |
| BY ARC CENTERED AT | 2449937.320 | 764204.860 |
| TO | 2496595.180 | 735683.190 |
| BY ARC CENTERED AT | 2452452.610 | 767961.280 |
| TO | 2498869.230 | 739048.680 |
| BY ARC CENTERED AT | 2455279.690 | 772069.780 |
| TO | 2500456.130 | 741255.320 |
| BY STRAIGHT LINE TO | 2500712.690 | 741564.640 |
| BY ARC CENTERED AT | 2458621.980 | 776476.150 |
| TO | 2504252.800 | 746338.630 |
| BY STRAIGHT LINE TO | 2505354.910 | 748007.320 |
| BY ARC CENTERED AT | 2459724.090 | 778144.840 |
| TO | 2505590.820 | 748367.590 |
| BY STRAIGHT LINE TO | 2505983.500 | 748889.880 |
| BY STRAIGHT LINE TO | 2511490.700 | 757056.430 |
| BY STRAIGHT LINE TO | 2515271.770 | 762239.850 |
| BY ARC CENTERED AT | 2471092.000 | 794467.000 |
| TO | 2522659.430 | 776266.950 |
| BY ARC CENTERED AT | 2469699.060 | 789891.960 |
| TO | 2523181.540 | 778487.310 |
| BY STRAIGHT LINE TO | 2524130.650 | 780076.610 |
| BY ARC CENTERED AT | 2477180.560 | 808114.640 |
| TO | 2524616.270 | 780906.270 |
| BY STRAIGHT LINE TO | 2525688.370 | 782775.400 |
| BY STRAIGHT LINE TO | 2526405.610 | 783873.390 |
| BY STRAIGHT LINE TO | 2526912.250 | 784575.150 |
| BY ARC CENTERED AT | 2485221.810 | 819963.690 |

| Type Code | NAD 27 Texas South Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| TO | 2529566.360 | 787963.660 |
| BY STRAIGHT LINE TO | 2530120.660 | 788731.790 |
| BY ARC CENTERED AT | 2485776.110 | 820731.820 |
| TO | 2530599.690 | 789406.300 |
| BY STRAIGHT LINE TO | 2532693.510 | 792048.080 |
| BY ARC CENTERED AT | 2489837.050 | 826015.210 |
| TO | 2533104.660 | 792573.390 |

| Type Code | NAD 27 Texas South Central Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| BEGINNING AT | 2694807.370 | 7920.000 |
| BY ARC CENTERED AT | 2651368.410 | 41138.940 |
| TO | 2695028.050 | 8210.570 |
| BY STRAIGHT LINE TO | 2696328.030 | 9934.210 |
| BY ARC CENTERED AT | 2652668.390 | 42862.580 |
| TO | 2697132.900 | 11029.450 |
| BY STRAIGHT LINE TO | 2697605.010 | 11688.900 |
| BY STRAIGHT LINE TO | 2698950.860 | 13543.300 |
| BY STRAIGHT LINE TO | 2699068.710 | 13696.800 |
| BY ARC CENTERED AT | 2655692.950 | 46998.220 |
| TO | 2699266.660 | 13956.230 |
| BY STRAIGHT LINE TO | 2700474.150 | 15548.600 |
| BY STRAIGHT LINE TO | 2701138.660 | 16356.020 |
| BY ARC CENTERED AT | 2658914.680 | 51106.230 |
| TO | 2703459.340 | 19385.340 |
| BY STRAIGHT LINE TO | 2704242.140 | 20343.120 |
| BY STRAIGHT LINE TO | 2706136.980 | 22576.320 |
| BY ARC CENTERED AT | 2664439.240 | 57956.260 |
| TO | 2707160.620 | 23819.400 |
| BY STRAIGHT LINE TO | 2707981.110 | 24846.220 |
| BY ARC CENTERED AT | 2668397.030 | 62576.080 |

| Type Code | NAD 27 Texas South Central Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| TO | 2711386.470 | 28777.420 |
| BY ARC CENTERED AT | 2672807.810 | 67534.720 |
| TO | 2712913.170 | 30359.440 |
| BY STRAIGHT LINE TO | 2714851.590 | 32807.340 |
| BY STRAIGHT LINE TO | 2720375.410 | 38908.640 |
| BY STRAIGHT LINE TO | 2724706.490 | 43579.770 |
| BY STRAIGHT LINE TO | 2727377.400 | 46418.300 |
| BY ARC CENTERED AT | 2691713.000 | 87873.000 |
| TO | 2728696.140 | 47590.380 |
| BY STRAIGHT LINE TO | 2729240.290 | 48143.360 |
| BY ARC CENTERED AT | 2690262.500 | 86499.240 |
| TO | 2731180.770 | 50220.650 |
| BY STRAIGHT LINE TO | 2732208.340 | 51122.910 |
| BY ARC CENTERED AT | 2691713.000 | 87873.000 |
| TO | 2733517.040 | 52618.730 |
| BY STRAIGHT LINE TO | 2745286.590 | 64044.590 |
| BY STRAIGHT LINE TO | 2759114.410 | 76841.960 |
| BY STRAIGHT LINE TO | 2760917.070 | 78431.750 |
| BY STRAIGHT LINE TO | 2775278.440 | 90137.930 |
| BY STRAIGHT LINE TO | 2780827.390 | 94573.040 |
| BY ARC CENTERED AT | 2746685.000 | 137290.000 |
| TO | 2782550.130 | 96008.850 |
| BY STRAIGHT LINE TO | 2783851.500 | 97139.490 |
| BY STRAIGHT LINE TO | 2791481.830 | 102793.450 |
| BY STRAIGHT LINE TO | 2800074.060 | 109136.540 |
| BY STRAIGHT LINE TO | 2807481.710 | 114229.980 |
| BY STRAIGHT LINE TO | 2814202.430 | 118282.770 |
| BY ARC CENTERED AT | 2785963.000 | 165112.000 |
| TO | 2815384.430 | 119016.220 |
| BY STRAIGHT LINE TO | 2824561.520 | 124873.660 |
| BY STRAIGHT LINE TO | 2831319.290 | 128676.100 |
| BY STRAIGHT LINE TO | 2836670.030 | 131276.120 |
| BY STRAIGHT LINE TO | 2839196.630 | 132253.910 |

| Type Code | NAD 27 Texas South Central Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| BY ARC CENTERED AT | 2819460.000 | 183253.000 |
| TO | 2840052.770 | 132593.560 |
| BY STRAIGHT LINE TO | 2843903.410 | 134158.820 |
| BY STRAIGHT LINE TO | 2844183.740 | 134312.590 |
| BY STRAIGHT LINE TO | 2844955.770 | 134703.330 |
| BY STRAIGHT LINE TO | 2845872.960 | 135155.240 |
| BY ARC CENTERED AT | 2825497.270 | 185902.390 |
| TO | 2849289.540 | 136664.510 |
| BY STRAIGHT LINE TO | 2851199.390 | 137587.370 |
| BY ARC CENTERED AT | 2827407.120 | 186825.250 |
| TO | 2856405.590 | 140462.220 |
| BY STRAIGHT LINE TO | 2858663.940 | 141874.740 |
| BY ARC CENTERED AT | 2829665.470 | 188237.770 |
| TO | 2863238.310 | 145071.740 |
| BY STRAIGHT LINE TO | 2864474.860 | 146033.480 |
| BY ARC CENTERED AT | 2830902.020 | 189199.510 |
| TO | 2869325.100 | 150287.970 |
| BY STRAIGHT LINE TO | 2871170.070 | 152109.780 |
| BY ARC CENTERED AT | 2832746.990 | 191021.320 |
| TO | 2873748.790 | 154837.150 |
| BY STRAIGHT LINE TO | 2874832.670 | 156065.340 |
| BY ARC CENTERED AT | 2833830.870 | 192249.510 |
| TO | 2876665.940 | 158255.420 |
| BY ARC CENTERED AT | 2835315.130 | 194040.220 |
| TO | 2884219.480 | 169569.700 |
| BY STRAIGHT LINE TO | 2885787.250 | 172702.890 |
| BY ARC CENTERED AT | 2836882.900 | 197173.410 |
| TO | 2887801.040 | 177228.870 |
| BY ARC CENTERED AT | 2861037.520 | 224916.980 |
| TO | 2892534.140 | 180213.460 |
| BY ARC CENTERED AT | 2843740.000 | 204903.000 |
| TO | 2893217.860 | 181613.880 |
| BY STRAIGHT LINE TO | 2899305.200 | 186971.240 |

| Type Code | NAD 27 Texas South Central Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| BY STRAIGHT LINE TO | 2899402.030 | 187052.190 |
| BY STRAIGHT LINE TO | 2902597.410 | 189375.210 |
| BY ARC CENTERED AT | 2861037.520 | 224916.980 |
| TO | 2903033.110 | 189891.110 |
| BY STRAIGHT LINE TO | 2904106.160 | 190615.100 |
| BY ARC CENTERED AT | 2873520.570 | 235946.800 |
| TO | 2905080.870 | 191288.220 |
| BY STRAIGHT LINE TO | 2906715.280 | 192443.260 |
| BY STRAIGHT LINE TO | 2907638.010 | 193039.690 |
| BY STRAIGHT LINE TO | 2908291.270 | 193514.600 |
| BY STRAIGHT LINE TO | 2909528.920 | 194309.070 |
| BY STRAIGHT LINE TO | 2913234.320 | 196854.940 |
| BY ARC CENTERED AT | 2882266.880 | 241926.650 |
| TO | 2913575.440 | 197091.220 |
| BY STRAIGHT LINE TO | 2916494.860 | 199129.850 |
| BY ARC CENTERED AT | 2885186.300 | 243965.280 |
| TO | 2917722.370 | 200012.520 |
| BY STRAIGHT LINE TO | 2921608.890 | 202889.520 |
| BY ARC CENTERED AT | 2889072.820 | 246842.280 |
| TO | 2922355.840 | 203452.390 |
| BY STRAIGHT LINE TO | 2924874.060 | 204954.900 |
| BY STRAIGHT LINE TO | 2925427.680 | 205261.000 |
| BY ARC CENTERED AT | 2898967.370 | 253118.010 |
| TO | 2926410.500 | 205817.730 |
| BY STRAIGHT LINE TO | 2929730.690 | 207744.070 |
| BY ARC CENTERED AT | 2902287.560 | 255044.350 |
| TO | 2929788.430 | 207777.620 |
| BY STRAIGHT LINE TO | 2933284.200 | 209811.540 |
| BY STRAIGHT LINE TO | 2935512.090 | 211057.520 |
| BY STRAIGHT LINE TO | 2938136.100 | 212469.450 |
| BY ARC CENTERED AT | 2912224.160 | 260625.580 |
| TO | 2940025.910 | 213535.190 |
| BY STRAIGHT LINE TO | 2941803.060 | 214584.410 |

| Type Code | NAD 27 Texas South Central Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| BY STRAIGHT LINE TO | 2945705.860 | 216708.220 |
| BY ARC CENTERED AT | 2919567.150 | 264741.640 |
| TO | 2945971.370 | 216853.660 |
| BY STRAIGHT LINE TO | 2950356.990 | 219271.780 |
| BY ARC CENTERED AT | 2923952.770 | 267159.760 |
| TO | 2952750.810 | 220671.970 |
| BY STRAIGHT LINE TO | 2952941.730 | 220766.740 |
| BY ARC CENTERED AT | 2928628.000 | 269749.230 |
| TO | 2954636.540 | 221645.200 |
| BY STRAIGHT LINE TO | 2955570.580 | 222150.210 |
| BY ARC CENTERED AT | 2929562.040 | 270254.240 |
| TO | 2956349.210 | 222579.420 |
| BY STRAIGHT LINE TO | 2958574.420 | 223829.710 |
| BY ARC CENTERED AT | 2934873.920 | 273111.830 |
| TO | 2960692.460 | 224905.560 |
| BY STRAIGHT LINE TO | 2963431.970 | 226372.800 |
| BY STRAIGHT LINE TO | 2965204.970 | 227236.970 |
| BY ARC CENTERED AT | 2941245.650 | 276393.790 |
| TO | 2967432.070 | 228386.360 |
| BY ARC CENTERED AT | 2945032.090 | 278273.060 |
| TO | 2971422.390 | 230377.410 |
| BY STRAIGHT LINE TO | 2972631.480 | 231043.620 |
| BY STRAIGHT LINE TO | 2973791.840 | 231637.530 |
| BY STRAIGHT LINE TO | 2974855.500 | 232126.290 |
| BY STRAIGHT LINE TO | 2975886.050 | 232563.650 |
| BY ARC CENTERED AT | 2954522.400 | 282902.860 |
| TO | 2979713.960 | 234366.000 |
| BY STRAIGHT LINE TO | 2981251.110 | 235163.810 |
| BY ARC CENTERED AT | 2962694.900 | 286604.150 |
| TO | 2983148.800 | 235888.480 |
| BY STRAIGHT LINE TO | 2985123.210 | 236684.770 |
| BY ARC CENTERED AT | 2964669.310 | 287400.440 |
| TO | 2987350.630 | 237641.030 |

| Type Code | NAD 27 Texas South Central Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| BY STRAIGHT LINE TO | 2989974.540 | 238837.060 |
| BY ARC CENTERED AT | 2967293.220 | 288596.470 |
| TO | 2991504.860 | 239563.440 |
| BY STRAIGHT LINE TO | 2992692.050 | 240149.650 |
| BY STRAIGHT LINE TO | 2994157.460 | 240845.210 |
| BY ARC CENTERED AT | 2970708.630 | 290247.580 |
| TO | 2996836.490 | 242208.260 |
| BY ARC CENTERED AT | 2975121.040 | 292396.710 |
| TO | 2998927.060 | 243165.470 |
| BY STRAIGHT LINE TO | 3001943.270 | 244623.970 |
| BY STRAIGHT LINE TO | 3005992.320 | 246501.780 |
| BY STRAIGHT LINE TO | 3006383.000 | 246669.180 |
| BY ARC CENTERED AT | 2984845.740 | 296934.360 |
| TO | 3010364.330 | 248568.640 |
| BY STRAIGHT LINE TO | 3012157.230 | 249514.600 |
| BY STRAIGHT LINE TO | 3012669.720 | 249751.240 |
| BY STRAIGHT LINE TO | 3015766.180 | 251135.710 |
| BY ARC CENTERED AT | 2993445.230 | 301057.820 |
| TO | 3018223.300 | 252308.580 |
| BY STRAIGHT LINE TO | 3020665.560 | 253549.920 |
| BY STRAIGHT LINE TO | 3023218.950 | 254739.210 |
| BY ARC CENTERED AT | 3000130.070 | 304310.830 |
| TO | 3025066.900 | 255642.610 |
| BY STRAIGHT LINE TO | 3027348.820 | 256811.830 |
| BY ARC CENTERED AT | 3002411.990 | 305480.050 |
| TO | 3028551.970 | 257447.320 |
| BY STRAIGHT LINE TO | 3032126.990 | 259392.890 |
| BY STRAIGHT LINE TO | 3034886.150 | 260872.740 |
| BY ARC CENTERED AT | 3011486.350 | 310298.350 |
| TO | 3036787.320 | 261818.430 |
| BY STRAIGHT LINE TO | 3040213.090 | 263606.290 |
| BY ARC CENTERED AT | 3014912.120 | 312086.210 |
| TO | 3042854.470 | 265079.120 |

| Type Code | NAD 27 Texas South Central Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| BY STRAIGHT LINE TO | 3043391.400 | 265398.290 |
| BY STRAIGHT LINE TO | 3044340.600 | 265915.800 |
| BY STRAIGHT LINE TO | 3045260.030 | 266396.740 |
| BY ARC CENTERED AT | 3019913.320 | 314852.760 |
| TO | 3050465.910 | 269498.810 |
| BY STRAIGHT LINE TO | 3050938.340 | 269775.110 |
| BY ARC CENTERED AT | 3023330.840 | 316979.640 |
| TO | 3052959.320 | 271016.670 |
| BY STRAIGHT LINE TO | 3053570.440 | 271410.610 |
| BY STRAIGHT LINE TO | 3054073.930 | 271681.910 |
| BY ARC CENTERED AT | 3028133.560 | 319822.730 |
| TO | 3055171.330 | 272289.580 |
| BY STRAIGHT LINE TO | 3056933.050 | 273291.680 |
| BY ARC CENTERED AT | 3029895.280 | 320824.830 |
| TO | 3057177.250 | 273431.420 |
| BY STRAIGHT LINE TO | 3059433.260 | 274730.090 |
| BY ARC CENTERED AT | 3032151.290 | 322123.500 |
| TO | 3062556.130 | 276670.370 |
| BY STRAIGHT LINE TO | 3062977.270 | 276952.080 |
| BY ARC CENTERED AT | 3036185.280 | 324624.200 |
| TO | 3064898.830 | 278084.180 |
| BY STRAIGHT LINE TO | 3067021.350 | 279393.700 |
| BY ARC CENTERED AT | 3038307.800 | 325933.720 |
| TO | 3069004.830 | 280677.400 |
| BY STRAIGHT LINE TO | 3069637.340 | 281067.730 |
| BY ARC CENTERED AT | 3043468.560 | 329084.770 |
| TO | 3073035.950 | 283082.470 |
| BY STRAIGHT LINE TO | 3074010.760 | 283709.020 |
| BY STRAIGHT LINE TO | 3075822.560 | 284817.110 |
| BY ARC CENTERED AT | 3047290.570 | 331468.660 |
| TO | 3078656.890 | 286673.620 |
| BY STRAIGHT LINE TO | 3079619.950 | 287347.970 |
| BY ARC CENTERED AT | 3049567.270 | 333034.710 |

| Type Code | NAD 27 Texas South Central Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| TO | 3079702.580 | 287402.430 |
| BY STRAIGHT LINE TO | 3082003.660 | 288922.050 |
| BY ARC CENTERED AT | 3054525.300 | 336201.870 |
| TO | 3085421.450 | 291081.260 |
| BY STRAIGHT LINE TO | 3088773.840 | 293376.800 |
| BY STRAIGHT LINE TO | 3090741.410 | 294610.440 |
| BY ARC CENTERED AT | 3061692.160 | 340941.670 |
| TO | 3092340.220 | 295652.180 |
| BY STRAIGHT LINE TO | 3094116.700 | 296854.350 |
| BY ARC CENTERED AT | 3063468.640 | 342143.840 |
| TO | 3095040.470 | 297493.410 |
| BY STRAIGHT LINE TO | 3095430.140 | 297768.940 |
| BY STRAIGHT LINE TO | 3096912.310 | 298585.120 |
| BY ARC CENTERED AT | 3070534.190 | 346487.480 |
| TO | 3098138.840 | 299281.290 |
| BY STRAIGHT LINE TO | 3100464.140 | 300641.050 |
| BY ARC CENTERED AT | 3072859.490 | 347847.240 |
| TO | 3101787.990 | 301440.520 |
| BY ARC CENTERED AT | 3076027.690 | 349677.940 |
| TO | 3104438.060 | 302952.230 |
| BY STRAIGHT LINE TO | 3106979.340 | 304497.390 |
| BY ARC CENTERED AT | 3078568.970 | 351223.100 |
| TO | 3108249.870 | 305293.960 |
| BY STRAIGHT LINE TO | 3109812.630 | 306303.870 |
| BY STRAIGHT LINE TO | 3110194.100 | 306530.950 |
| BY ARC CENTERED AT | 3085475.680 | 355310.470 |
| TO | 3112099.850 | 307544.430 |
| BY STRAIGHT LINE TO | 3113786.380 | 308484.480 |
| BY ARC CENTERED AT | 3087162.210 | 356250.520 |
| TO | 3116712.170 | 310237.030 |
| BY STRAIGHT LINE TO | 3117589.020 | 310800.150 |
| BY STRAIGHT LINE TO | 3118082.780 | 311090.820 |
| BY ARC CENTERED AT | 3090340.260 | 358216.120 |

| Type Code | NAD 27 Texas South Central Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| TO | 3118621.310 | 311412.020 |
| BY STRAIGHT LINE TO | 3121372.570 | 313074.450 |
| BY ARC CENTERED AT | 3093091.520 | 359878.550 |
| TO | 3123784.330 | 314619.370 |
| BY STRAIGHT LINE TO | 3125238.200 | 315605.320 |
| BY ARC CENTERED AT | 3096351.420 | 362038.020 |
| TO | 3127470.950 | 317071.180 |
| BY ARC CENTERED AT | 3098829.320 | 363655.500 |
| TO | 3128388.830 | 317648.140 |
| BY STRAIGHT LINE TO | 3130157.030 | 318784.200 |
| BY ARC CENTERED AT | 3100597.520 | 364791.560 |
| TO | 3133615.320 | 321199.510 |
| BY STRAIGHT LINE TO | 3134125.290 | 321585.770 |
| BY STRAIGHT LINE TO | 3134198.270 | 321637.080 |
| BY STRAIGHT LINE TO | 3135152.370 | 322234.400 |
| BY ARC CENTERED AT | 3106134.000 | 368584.970 |
| TO | 3136413.270 | 323048.090 |
| BY ARC CENTERED AT | 3112530.430 | 372242.110 |
| TO | 3143150.490 | 326933.680 |
| BY STRAIGHT LINE TO | 3147344.680 | 329768.170 |
| BY STRAIGHT LINE TO | 3151130.960 | 332331.990 |
| BY ARC CENTERED AT | 3120469.880 | 377612.660 |
| TO | 3151869.500 | 332840.960 |
| BY STRAIGHT LINE TO | 3154262.980 | 334519.580 |
| BY STRAIGHT LINE TO | 3154408.100 | 334609.950 |
| BY ARC CENTERED AT | 3125499.620 | 381029.140 |
| TO | 3156953.120 | 336295.270 |
| BY STRAIGHT LINE TO | 3157670.040 | 336799.350 |
| BY STRAIGHT LINE TO | 3159482.250 | 337125.970 |
| BY ARC CENTERED AT | 3149782.580 | 390943.790 |
| TO | 3160057.260 | 337232.780 |
| BY STRAIGHT LINE TO | 3168664.390 | 342866.180 |
| BY ARC CENTERED AT | 3138717.000 | 388622.000 |

| Type Code | NAD 27 Texas South Central Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| TO | 3172530.430 | 345644.170 |
| BY STRAIGHT LINE TO | 3177771.360 | 349048.780 |
| BY ARC CENTERED AT | 3147981.000 | 394907.000 |
| TO | 3178426.110 | 349480.830 |
| BY STRAIGHT LINE TO | 3184351.110 | 353451.830 |
| BY ARC CENTERED AT | 3153906.000 | 398878.000 |
| TO | 3185298.270 | 354101.140 |
| BY STRAIGHT LINE TO | 3196291.270 | 361808.140 |
| BY ARC CENTERED AT | 3164899.000 | 406585.000 |
| TO | 3197099.170 | 362385.560 |
| BY STRAIGHT LINE TO | 3203248.120 | 366865.190 |
| BY STRAIGHT LINE TO | 3203445.000 | 366995.000 |
| BY STRAIGHT LINE TO | 3205263.990 | 368189.780 |
| BY ARC CENTERED AT | 3182950.000 | 418115.000 |
| TO | 3213258.850 | 372597.800 |
| BY STRAIGHT LINE TO | 3214102.850 | 373159.800 |
| BY ARC CENTERED AT | 3183794.000 | 418677.000 |
| TO | 3230735.560 | 390624.700 |
| BY STRAIGHT LINE TO | 3234005.440 | 393622.130 |
| BY ARC CENTERED AT | 3191421.540 | 427930.340 |
| TO | 3235623.940 | 395734.230 |
| BY STRAIGHT LINE TO | 3235703.680 | 395823.380 |
| BY STRAIGHT LINE TO | 3236968.730 | 397155.570 |
| BY STRAIGHT LINE TO | 3237336.470 | 397529.310 |
| BY STRAIGHT LINE TO | 3237447.590 | 397632.950 |
| BY ARC CENTERED AT | 3203126.420 | 440206.400 |
| TO | 3239992.950 | 399817.040 |
| BY STRAIGHT LINE TO | 3243250.850 | 402790.780 |
| BY ARC CENTERED AT | 3206384.320 | 443180.140 |
| TO | 3243687.070 | 403193.310 |
| BY STRAIGHT LINE TO | 3244158.230 | 403632.840 |
| BY ARC CENTERED AT | 3209175.210 | 445664.140 |
| TO | 3244505.920 | 403924.680 |

| Type Code | NAD 27 Texas South Central Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| BY STRAIGHT LINE TO | 3247383.500 | 406360.430 |
| BY STRAIGHT LINE TO | 3248550.260 | 407332.580 |
| BY STRAIGHT LINE TO | 3250566.680 | 409015.370 |
| BY ARC CENTERED AT | 3215528.190 | 451000.440 |
| TO | 3251544.470 | 409851.090 |
| BY STRAIGHT LINE TO | 3252539.180 | 410721.710 |
| BY STRAIGHT LINE TO | 3253180.840 | 411216.120 |
| BY ARC CENTERED AT | 3219804.150 | 454534.000 |
| TO | 3256039.510 | 413577.440 |
| BY STRAIGHT LINE TO | 3256601.470 | 414074.630 |
| BY STRAIGHT LINE TO | 3258779.810 | 415787.870 |
| BY ARC CENTERED AT | 3224973.600 | 458771.370 |
| TO | 3260398.810 | 417112.080 |
| BY STRAIGHT LINE TO | 3261666.450 | 418190.020 |
| BY STRAIGHT LINE TO | 3263134.150 | 419399.800 |
| BY ARC CENTERED AT | 3228352.030 | 461597.500 |
| TO | 3265357.350 | 421335.260 |
| BY STRAIGHT LINE TO | 3265683.050 | 421566.250 |
| BY STRAIGHT LINE TO | 3267865.630 | 422928.010 |
| BY ARC CENTERED AT | 3238918.550 | 469323.140 |
| TO | 3284820.550 | 439600.280 |
| BY STRAIGHT LINE TO | 3285244.500 | 440255.000 |
| BY ARC CENTERED AT | 3239342.500 | 469977.860 |
| TO | 3288053.370 | 445124.430 |
| BY STRAIGHT LINE TO | 3288295.590 | 445337.940 |
| BY STRAIGHT LINE TO | 3290052.170 | 446826.760 |
| BY STRAIGHT LINE TO | 3293012.610 | 449248.210 |
| BY ARC CENTERED AT | 3258390.270 | 491577.100 |
| TO | 3293509.770 | 449659.770 |
| BY STRAIGHT LINE TO | 3295639.350 | 451443.990 |
| BY STRAIGHT LINE TO | 3299972.020 | 454715.540 |
| BY ARC CENTERED AT | 3267019.120 | 498356.660 |
| TO | 3300771.900 | 455331.180 |

| Type Code | NAD 27 Texas South Central Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| BY STRAIGHT LINE TO | 3304170.660 | 457997.450 |
| BY STRAIGHT LINE TO | 3306387.000 | 459641.100 |
| BY STRAIGHT LINE TO | 3315159.420 | 466351.910 |
| BY STRAIGHT LINE TO | 3320930.060 | 470563.630 |
| BY STRAIGHT LINE TO | 3328194.780 | 475602.400 |
| BY STRAIGHT LINE TO | 3332182.650 | 478117.310 |
| BY ARC CENTERED AT | 3300182.310 | 522461.640 |
| TO | 3337137.810 | 482153.660 |
| BY ARC CENTERED AT | 3304106.530 | 525735.500 |
| TO | 3338662.180 | 483352.150 |
| BY ARC CENTERED AT | 3306777.090 | 527779.420 |
| TO | 3339969.760 | 484320.380 |
| BY STRAIGHT LINE TO | 3341183.900 | 485247.700 |
| BY STRAIGHT LINE TO | 3342310.160 | 485999.640 |
| BY ARC CENTERED AT | 3311945.740 | 531479.790 |
| TO | 3344961.070 | 487885.870 |
| BY STRAIGHT LINE TO | 3345445.170 | 488252.500 |
| BY ARC CENTERED AT | 3315104.830 | 533748.710 |
| TO | 3346381.780 | 488891.230 |
| BY STRAIGHT LINE TO | 3348601.610 | 490439.010 |
| BY ARC CENTERED AT | 3317324.660 | 535296.490 |
| TO | 3348789.000 | 490570.250 |
| BY STRAIGHT LINE TO | 3352514.640 | 493191.190 |
| BY ARC CENTERED AT | 3321050.300 | 537917.430 |
| TO | 3353540.970 | 493931.100 |
| BY STRAIGHT LINE TO | 3356490.310 | 496109.640 |
| BY STRAIGHT LINE TO | 3358425.620 | 497510.560 |
| BY STRAIGHT LINE TO | 3358658.460 | 497656.240 |
| BY STRAIGHT LINE TO | 3359006.390 | 497860.940 |
| BY ARC CENTERED AT | 3331276.600 | 544993.740 |
| TO | 3363039.620 | 500479.110 |
| BY STRAIGHT LINE TO | 3364052.810 | 501202.060 |
| BY STRAIGHT LINE TO | 3365123.820 | 501931.140 |

| Type Code | NAD 27 Texas South Central Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| BY ARC CENTERED AT | 3334351.130 | 547136.040 |
| TO | 3367637.520 | 503748.740 |
| BY ARC CENTERED AT | 3337714.340 | 549520.400 |
| TO | 3368482.930 | 504312.710 |
| BY STRAIGHT LINE TO | 3369268.290 | 504847.230 |
| BY ARC CENTERED AT | 3338499.700 | 550054.920 |
| TO | 3369800.950 | 505214.390 |
| BY STRAIGHT LINE TO | 3372559.410 | 507272.000 |
| BY ARC CENTERED AT | 3338499.700 | 550054.920 |
| TO | 3373614.500 | 508133.660 |
| BY STRAIGHT LINE TO | 3376365.190 | 510437.740 |
| BY ARC CENTERED AT | 3341250.390 | 552359.000 |
| TO | 3377774.640 | 511659.850 |
| BY STRAIGHT LINE TO | 3380903.730 | 514467.960 |
| BY ARC CENTERED AT | 3344379.480 | 555167.110 |
| TO | 3384860.870 | 518401.660 |
| BY STRAIGHT LINE TO | 3385537.490 | 519146.670 |
| BY STRAIGHT LINE TO | 3386633.810 | 520042.560 |
| BY STRAIGHT LINE TO | 3388591.970 | 521628.810 |
| BY ARC CENTERED AT | 3347926.000 | 558190.000 |
| TO | 3393315.840 | 527690.750 |
| BY STRAIGHT LINE TO | 3394122.840 | 528891.750 |
| BY ARC CENTERED AT | 3348733.000 | 559391.000 |
| TO | 3399047.490 | 537969.190 |
| BY STRAIGHT LINE TO | 3399847.490 | 539848.190 |
| BY ARC CENTERED AT | 3349533.000 | 561270.000 |
| TO | 3401544.000 | 544379.250 |
| BY STRAIGHT LINE TO | 3402301.000 | 546710.250 |
| BY ARC CENTERED AT | 3350290.000 | 563601.000 |
| TO | 3404498.140 | 556395.490 |
| BY STRAIGHT LINE TO | 3404679.220 | 557757.790 |
| BY STRAIGHT LINE TO | 3405302.700 | 558362.900 |
| BY STRAIGHT LINE TO | 3407136.430 | 559951.320 |

| Type Code | NAD 27 Texas South Central Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| BY STRAIGHT LINE TO | 3409313.420 | 561569.860 |
| BY STRAIGHT LINE TO | 3413751.663 | 564517.350 |
| BY STRAIGHT LINE TO | 3416817.303 | 566362.990 |
| BY ARC CENTERED AT | 3362234.900 | 569710.060 |
| TO | 3416828.504 | 566550.958 |
| BY STRAIGHT LINE TO | 3418699.836 | 567713.079 |
| BY STRAIGHT LINE TO | 3421382.821 | 569170.219 |
| BY ARC CENTERED AT | 3395283.920 | 617225.280 |
| TO | 3423152.926 | 570174.668 |
| BY STRAIGHT LINE TO | 3425613.944 | 571632.378 |
| BY STRAIGHT LINE TO | 3428804.780 | 573341.880 |
| BY STRAIGHT LINE TO | 3432075.460 | 575071.310 |
| BY STRAIGHT LINE TO | 3437335.520 | 577761.390 |
| BY ARC CENTERED AT | 3412435.990 | 626448.710 |
| TO | 3437610.350 | 577902.930 |
| BY STRAIGHT LINE TO | 3439337.100 | 578798.370 |
| BY ARC CENTERED AT | 3414162.740 | 627344.150 |
| TO | 3440728.600 | 579545.650 |
| BY STRAIGHT LINE TO | 3443235.460 | 580938.940 |
| BY STRAIGHT LINE TO | 3445418.780 | 582040.680 |
| BY STRAIGHT LINE TO | 3447864.630 | 583212.770 |
| BY STRAIGHT LINE TO | 3450072.100 | 584201.860 |
| BY ARC CENTERED AT | 3427711.710 | 634106.320 |
| TO | 3453214.910 | 585732.480 |
| BY STRAIGHT LINE TO | 3454433.220 | 586374.790 |
| BY STRAIGHT LINE TO | 3455501.290 | 586908.130 |
| BY ARC CENTERED AT | 3431070.770 | 635832.470 |
| TO | 3458042.990 | 588262.090 |
| BY STRAIGHT LINE TO | 3458389.230 | 588458.400 |
| BY ARC CENTERED AT | 3435900.240 | 638305.040 |
| TO | 3461841.100 | 590164.480 |
| BY STRAIGHT LINE TO | 3462462.880 | 590465.590 |
| BY ARC CENTERED AT | 3438628.430 | 639683.070 |

| Type Code | NAD 27 Texas South Central Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| TO | 3463035.280 | 590746.920 |
| BY ARC CENTERED AT | 3441833.750 | 641154.620 |
| TO | 3465438.840 | 591826.720 |
| BY STRAIGHT LINE TO | 3468650.230 | 593363.480 |
| BY ARC CENTERED AT | 3445045.140 | 642691.380 |
| TO | 3469131.740 | 593596.800 |
| BY STRAIGHT LINE TO | 3471228.450 | 594625.480 |
| BY ARC CENTERED AT | 3447141.850 | 643720.060 |
| TO | 3471362.930 | 594691.690 |
| BY STRAIGHT LINE TO | 3474132.030 | 596059.680 |
| BY STRAIGHT LINE TO | 3475825.280 | 596817.210 |
| BY ARC CENTERED AT | 3453493.380 | 646734.420 |
| TO | 3476645.540 | 597192.330 |
| BY ARC CENTERED AT | 3456899.830 | 648187.900 |
| TO | 3482481.740 | 599855.640 |
| BY STRAIGHT LINE TO | 3484420.060 | 600717.360 |
| BY ARC CENTERED AT | 3462205.110 | 650686.730 |
| TO | 3484641.120 | 600816.230 |
| BY STRAIGHT LINE TO | 3486522.310 | 601662.550 |
| BY ARC CENTERED AT | 3464086.300 | 651533.050 |
| TO | 3487016.090 | 601887.640 |
| BY STRAIGHT LINE TO | 3491235.290 | 603836.370 |
| BY STRAIGHT LINE TO | 3496213.220 | 606059.140 |
| BY ARC CENTERED AT | 3473916.830 | 655992.220 |
| TO | 3497951.440 | 606872.170 |
| BY STRAIGHT LINE TO | 3498685.120 | 607231.160 |
| BY STRAIGHT LINE TO | 3503806.050 | 609655.650 |
| BY STRAIGHT LINE TO | 3508779.890 | 611990.260 |
| BY ARC CENTERED AT | 3485544.270 | 661493.260 |
| TO | 3511159.360 | 613178.580 |
| BY STRAIGHT LINE TO | 3511659.620 | 613443.800 |
| BY STRAIGHT LINE TO | 3512941.260 | 614091.050 |
| BY STRAIGHT LINE TO | 3515304.430 | 615170.310 |

| Type Code | NAD 27 Texas South Central Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| BY ARC CENTERED AT | 3492586.860 | 664913.190 |
| TO | 3516475.520 | 615722.000 |
| BY STRAIGHT LINE TO | 3518706.360 | 616805.360 |
| BY ARC CENTERED AT | 3494817.700 | 665996.550 |
| TO | 3520121.670 | 617518.200 |
| BY STRAIGHT LINE TO | 3521945.880 | 618470.370 |
| BY STRAIGHT LINE TO | 3526935.900 | 620807.280 |
| BY ARC CENTERED AT | 3503743.370 | 670330.490 |
| TO | 3528200.310 | 621419.350 |
| BY STRAIGHT LINE TO | 3530772.900 | 622705.720 |
| BY STRAIGHT LINE TO | 3533312.180 | 623738.220 |
| BY ARC CENTERED AT | 3512714.270 | 674395.570 |
| TO | 3536696.410 | 625249.880 |
| BY STRAIGHT LINE TO | 3539974.040 | 626849.300 |
| BY ARC CENTERED AT | 3515991.900 | 675994.990 |
| TO | 3540926.870 | 627325.810 |
| BY STRAIGHT LINE TO | 3544631.920 | 629224.040 |
| BY ARC CENTERED AT | 3519696.950 | 677893.220 |
| TO | 3545186.710 | 629512.300 |
| BY STRAIGHT LINE TO | 3548475.960 | 631245.260 |
| BY ARC CENTERED AT | 3522986.200 | 679626.180 |
| TO | 3550505.660 | 632370.270 |
| BY STRAIGHT LINE TO | 3550910.210 | 632605.860 |
| BY STRAIGHT LINE TO | 3552928.580 | 633669.390 |
| BY STRAIGHT LINE TO | 3556148.900 | 635089.470 |
| BY ARC CENTERED AT | 3534084.260 | 685125.390 |
| TO | 3558249.890 | 636069.670 |
| BY STRAIGHT LINE TO | 3560691.670 | 637272.530 |
| BY ARC CENTERED AT | 3536526.040 | 686328.250 |
| TO | 3562430.730 | 638168.220 |
| BY STRAIGHT LINE TO | 3565992.450 | 640084.020 |
| BY STRAIGHT LINE TO | 3566333.520 | 640255.940 |

| Type Code | NAD 27 Texas South Central Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| BY STRAIGHT LINE TO | 3567170.390 | 640628.420 |
| BY STRAIGHT LINE TO | 3568719.440 | 641309.230 |
| BY ARC CENTERED AT | 3546716.500 | 691372.310 |
| TO | 3571167.010 | 642457.960 |
| BY STRAIGHT LINE TO | 3574070.960 | 643909.540 |
| BY STRAIGHT LINE TO | 3576192.050 | 644899.490 |
| BY STRAIGHT LINE TO | 3578268.450 | 645805.500 |
| BY ARC CENTERED AT | 3556398.640 | 695926.880 |
| TO | 3578815.310 | 646047.680 |
| BY STRAIGHT LINE TO | 3579057.520 | 646156.530 |
| BY STRAIGHT LINE TO | 3579114.000 | 646175.640 |
| BY ARC CENTERED AT | 3561590.160 | 697976.770 |
| TO | 3585716.140 | 648901.530 |
| BY STRAIGHT LINE TO | 3586220.680 | 649095.240 |
| BY ARC CENTERED AT | 3566620.680 | 700146.990 |
| TO | 3587589.120 | 649641.880 |
| BY ARC CENTERED AT | 3570958.340 | 701736.590 |
| TO | 3588990.640 | 650110.260 |
| BY STRAIGHT LINE TO | 3590333.400 | 650579.270 |
| BY ARC CENTERED AT | 3579572.410 | 704194.960 |
| TO | 3593415.640 | 651291.210 |
| BY STRAIGHT LINE TO | 3593591.250 | 651337.160 |
| BY STRAIGHT LINE TO | 3594647.370 | 651526.190 |
| BY STRAIGHT LINE TO | 3595223.860 | 651628.040 |
| BY ARC CENTERED AT | 3599949.780 | 706108.380 |
| TO | 3601283.300 | 651439.710 |
| BY STRAIGHT LINE TO | 3602145.680 | 651460.750 |
| BY ARC CENTERED AT | 3603850.670 | 706119.090 |
| TO | 3604799.560 | 651442.390 |
| BY ARC CENTERED AT | 3608144.610 | 706024.920 |
| TO | 3605182.710 | 651420.260 |
| BY STRAIGHT LINE TO | 3606653.510 | 651340.480 |

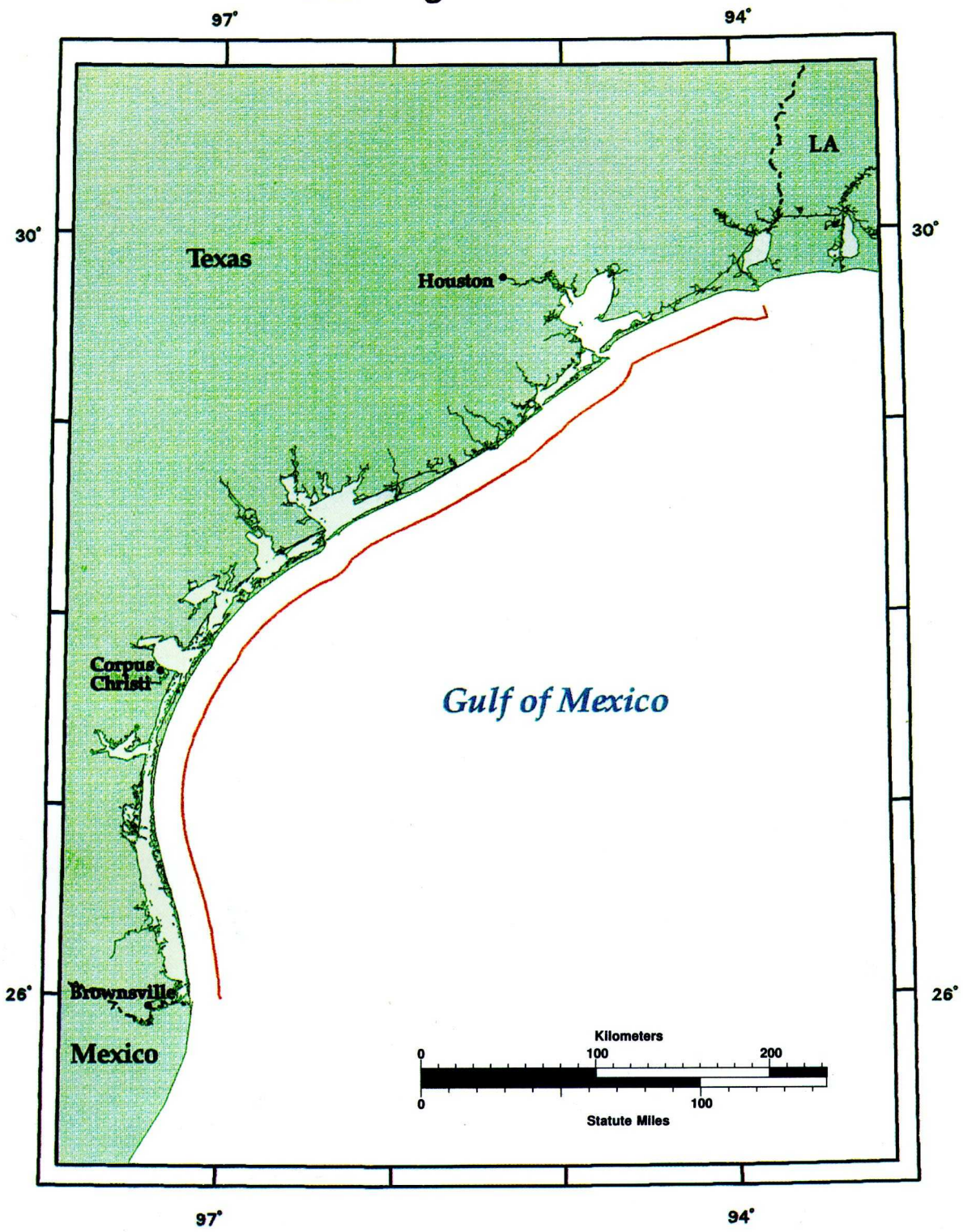
| Type Code | NAD 27 Texas South Central Zone (feet) x–coordinate | y–coordinate |
|---|---|---|
| BY ARC CENTERED AT | 3609615.410 | 705945.140 |
| TO | 3607866.960 | 651288.170 |
| BY STRAIGHT LINE TO | 3609190.540 | 651245.830 |
| BY ARC CENTERED AT | 3613363.750 | 705771.290 |
| TO | 3611677.920 | 651112.350 |
| BY ARC CENTERED AT | 3623588.450 | 704484.450 |
| TO | 3621803.630 | 649828.650 |
| BY STRAIGHT LINE TO | 3622808.970 | 649795.820 |
| BY ARC CENTERED AT | 3624593.790 | 704451.620 |
| TO | 3622868.200 | 649793.920 |
| BY STRAIGHT LINE TO | 3623427.560 | 649776.260 |
| BY STRAIGHT LINE TO | 3628660.560 | 649850.580 |
| BY ARC CENTERED AT | 3627884.000 | 704530.000 |
| TO | 3632507.720 | 650040.890 |
| BY STRAIGHT LINE TO | 3634970.720 | 650249.890 |
| BY ARC CENTERED AT | 3630347.000 | 704739.000 |
| TO | 3651367.500 | 654255.540 |
| BY STRAIGHT LINE TO | 3653430.500 | 655114.540 |
| BY ARC CENTERED AT | 3632410.000 | 705598.000 |
| TO | 3654596.266 | 655615.891 |

4. Plane coordinates refer to the Texas Coordinate Systems, South Zone or South Central Zone, as indicated. All coordinates are referenced to the North American Datum of 1927.

5. The Court retains jurisdiction to entertain such further proceedings, to enter such orders, and to issue such writs as may from time to time be deemed necessary or advisable to give proper force and effect to this decree, or to effectuate the rights of the parties.

[United States-Texas Boundary map follows this page.]

# United States - Texas Boundary for Purposes of Submerged Lands Act




**Legend**

**US/Texas Submerged Lands Act Boundary**

Syllabus

# MARQUEZ *v.* SCREEN ACTORS GUILD, INC., ET AL.

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

No. 97–1056. Argued October 5, 1998—Decided November 3, 1998

The collective bargaining agreement between respondent union, the Screen Actors Guild (SAG), and respondent movie producer, Lakeside Productions (Lakeside), contained a standard "union security clause" tracking the language of § 8(a)(3) of the National Labor Relations Act (NLRA), which authorizes "an agreement . . . to require as a condition of employment membership [in the union] on or after the thirtieth day following the beginning of . . . such employment." The union security clause did not explain that this Court has held that an employee can satisfy § 8(a)(3)'s "membership" condition merely by paying to the union an amount equal to its initiation fees and dues, *NLRB* v. *General Motors Corp.,* 373 U. S. 734, 742–743, and that § 8(a)(3) does not permit unions to exact dues or fees over the objection of nonmembers for activities that are not germane to collective bargaining, grievance adjustment, or contract administration, *Communications Workers* v. *Beck,* 487 U. S. 735, 745, 762–763. The clause did specify, however, that its 30-day grace period provision should be interpreted "to mean that [SAG] membership . . . cannot be required of any performer until . . . 30 . . . days after his first employment as a performer in the motion picture industry." Petitioner, a part-time actress who had previously worked in the industry for more than 30 days, successfully auditioned for a one-line role in a television series produced by Lakeside, but was denied the part when she had not paid SAG's required fees before beginning work. She filed suit alleging, among other things, that SAG had breached its duty of fair representation by negotiating and enforcing a union security clause with two basic flaws. First, she averred, the clause required union "membership" and the payment of full fees and dues when those terms could not be legally enforced under *General Motors* and *Beck*. She argued that the collective bargaining agreement should have contained language, in addition to the statutory language, informing her of her rights not to join the union and to pay only for the union's representational activities. Second, she asserted, the clause term interpreting the 30-day grace period to begin running with any employment in the industry contravened § 8(a)(3), which requires a new grace period with each "such employment." The District Court granted summary judgment to the defendants on all claims. Affirming in pertinent part, the Ninth

Syllabus

Circuit held that SAG had not breached the duty of fair representation merely by negotiating a union security clause that tracked the NLRA language. The Ninth Circuit also held that petitioner's challenge to the grace period provision was at base a claim that the clause violated the NLRA and that this claim fell within the primary jurisdiction of the National Labor Relations Board (NLRB).

*Held:*

1. A union does not breach the duty of fair representation merely by negotiating a union security clause that uses § 8(a)(3)'s language without explaining, in the agreement, this Court's interpretation of that language in *General Motors* and *Beck*. Pp. 42–48.

(a) In resolving this narrow question, the Court is *not* deciding whether SAG illegally enforced the union security clause to require petitioner to become a union member or to pay dues for noncollective bargaining activities. Similarly, the Court is *not* deciding whether SAG breached its fair representation duty by failing to adequately notify petitioner of her *Beck* and *General Motors* rights. Pp. 42–44.

(b) SAG did not breach its duty of fair representation by negotiating a union security clause that tracked the statutory language. A breach of that duty occurs when a union's conduct toward a member of the bargaining unit is arbitrary, discriminatory, or in bad faith. *E. g.*, *Vaca* v. *Sipes*, 386 U. S. 171, 190. Petitioner does not argue that SAG's conduct was discriminatory, and, on this record, SAG's conduct cannot be said to have been either arbitrary or in bad faith. The mere negotiation of a contract that uses terms of art cannot be fairly characterized as so far outside a wide range of reasonableness that it is wholly irrational or arbitrary. See, *e. g.*, *Air Line Pilots* v. *O'Neill*, 499 U. S. 65, 78. After this Court in *General Motors* and *Beck* stated that the statutory language incorporates an employee's rights not to "join" the union (except by paying fees and dues) and to pay for only representational activities, SAG cannot be faulted for using this very language to convey these very concepts. Moreover, petitioner's assertion that SAG acted in bad faith in that it had no reason to use the statutory language except to mislead employees about their *Beck* and *General Motors* rights is unpersuasive. This argument's first component—in effect, that even if SAG always informs workers of their rights and even if it enforces the union security clause in conformity with federal law, use of the statutory language in the agreement is intended to mislead employees—is unconvincing because it is so broad. The second part of petitioner's bad faith argument—that there was no other reason for SAG's choice of the statutory language—fails because a union might choose that language precisely *because* it is a shorthand description of workers' legal rights that

incorporates all of the refinements associated with it. Petitioner's argument that the failure to explain all the intricacies of a term of art in a contract is bad faith has no logical stopping point; that argument would require that all the intricacies of *every* term used in a contract be spelled out. Pp. 44–48.

2. Because petitioner's challenge to the union security clause's grace period provision was based purely on an alleged inconsistency with the statute, the District Court lacked jurisdiction over it. A challenge to an action that is "arguably subject to § 7 or § 8 of the [NLRA]" is within the NLRB's primary jurisdiction, *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236, 245, but a claim alleging a breach of the duty of fair representation is cognizable in federal court, *e. g.*, *Vaca* v. *Sipes*, *supra*, at 177–183. However, the mere incantation of the phrase "duty of fair representation" is insufficient to invoke the primary jurisdiction of federal courts. When a plaintiff's only claim is that the union violated the NLRA, the plaintiff cannot avoid the NLRB's jurisdiction by characterizing this alleged statutory violation as a breach of the duty of fair representation. See *Beck*, 487 U. S., at 743. To invoke federal jurisdiction when the claim is based in part on an NLRA violation, the plaintiff must adduce facts suggesting that the union's statutory violation was arbitrary, discriminatory, or in bad faith. Although federal courts have power to resolve § 7 and § 8 issues that arise as collateral matters in a duty of fair representation suit, *ibid.*, this does not open the door for federal court first instance resolution of all statutory claims. Applying these principles in this case, petitioner's challenge falls squarely within the NLRB's primary jurisdiction. Petitioner's argument that her challenge is structurally identical to the duty of fair representation claim considered in *Beck* is rejected because the latter claim was not premised on the mere unlawfulness of the union's conduct, but on the fact that such conduct was arbitrary and possibly in bad faith. Her challenge to the membership and fees requirements discussed above is similarly distinguishable. Pp. 49–54.

124 F. 3d 1034, affirmed.

O'Connor, J., delivered the opinion for a unanimous Court. Kennedy, J., filed a concurring opinion, in which Thomas, J., joined, *post*, p. 52.

*Raymond J. LaJeunesse, Jr.*, argued the cause and filed briefs for petitioner.

*Leo Geffner* argued the cause for respondents. With him on the briefs were *Ira L. Gottlieb*, *Jonathan P. Hiatt*, *James B. Coppess*, and *Laurence Gold*.

JUSTICE O'CONNOR delivered the opinion of the Court.

Section 8(a)(3) of the National Labor Relations Act (NLRA), 49 Stat. 452, as added, 61 Stat. 140, 29 U. S. C. § 158(a)(3), permits unions and employers to negotiate an agreement that requires union "membership" as a condition of employment for all employees. We have interpreted a proviso to this language to mean that the only "membership" that a union can require is the payment of fees and dues, *NLRB* v. *General Motors Corp.*, 373 U. S. 734, 742 (1963), and we have held that § 8(a)(3) allows unions to collect and expend funds over the objection of nonmembers only to the extent they are used for collective bargaining, contract administration, and grievance adjustment activities, *Communications Workers* v. *Beck*, 487 U. S. 735, 745, 762–763 (1988). In this case, we must determine whether a union breaches its duty of fair representation when it negotiates a union security clause that tracks the language of § 8(a)(3) without explaining, in the agreement, this Court's interpretation of that language. We conclude that it does not.

We are also asked to review the Court of Appeals' decision that the District Court did not have jurisdiction to decide a claim that a union breached the duty of fair representation by negotiating a clause that was inconsistent with the statute. We conclude that because this challenge to the union security clause was based purely on an alleged inconsistency with the statute, the Court of Appeals correctly held that this claim was within the primary jurisdiction of the National Labor Relations Board (NLRB or Board).

## I

### A

The language of § 8(a)(3) is at the heart of this case. In pertinent part, it provides as follows:

> "It shall be an unfair labor practice for an employer—
> "(3) by discrimination in regard to hire or tenure of employment . . . to encourage or discourage membership

> in any labor organization: *Provided*, That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later . . . . *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization . . . if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership." 29 U. S. C. § 158(a)(3).

This section is the statutory authorization for "union security clauses," clauses that require employees to become "member[s]" of a union as a condition of employment. See *Communications Workers* v. *Beck*, *supra*, at 744–745.

The conclusion that § 8(a)(3) permits union security clauses is not the end of the story. This Court has had several occasions to interpret § 8(a)(3), and two of our conclusions about the language of that subsection bear directly on this case. First, in *NLRB* v. *General Motors Corp.*, *supra*, at 742–743 (citing *Radio Officers* v. *NLRB*, 347 U. S. 17, 41 (1954)), we held that although § 8(a)(3) states that unions may negotiate a clause requiring "membership" in the union, an employee can satisfy the membership condition merely by paying to the union an amount equal to the union's initiation fees and dues. See also *Pattern Makers* v. *NLRB*, 473 U. S. 95, 106, n. 16, 108 (1985). In other words, the membership that may be required "as a condition of employment is whittled down to its financial core." *NLRB* v. *General Motors Corp.*, *supra*, at 742. Second, in *Communications Workers* v. *Beck*, *supra*, we considered whether the employee's "financial core" obligation included a duty to pay for support of

union activities beyond those activities undertaken by the union as the exclusive bargaining representative. We held that the language of § 8(a)(3) does not permit unions to exact dues or fees from employees for activities that are not germane to collective bargaining, grievance adjustment, or contract administration. *Id.*, at 745, 762–763. As a result of these two conclusions, § 8(a)(3) permits unions and employers to require only that employees pay the fees and dues necessary to support the union's activities as the employees' exclusive bargaining representative.

B

Respondent Screen Actors Guild (SAG or union) is a labor organization that represents performers in the entertainment industry. In 1994, respondent Lakeside Productions (Lakeside) signed a collective bargaining agreement with SAG, making SAG the exclusive bargaining agent for the performers that Lakeside hired for its productions. This agreement contained a standard union security clause, providing that any performer who worked under the agreement must be "a member of the Union in good standing." App. 28. Tracking the language of § 8(a)(3), the clause also provided:

> "The foregoing [section], requiring as a condition of employment membership in the Union, shall not apply until on or after the thirtieth day following the beginning of such employment or the effective date of this Agreement, whichever is the later; the Union and the Producers interpret this sentence to mean that membership in the Union cannot be required of any performer by a Producer as a condition of employment until thirty (30) days after his first employment as a performer in the motion picture industry . . . . The Producer shall not be held to have violated this paragraph if it employs a performer who is not a member of the Union in good standing . . . if the Producer has reasonable grounds for

believing that membership in the Union was denied to such performer or such performer's membership in the Union was terminated for reasons other than the failure of the performer to tender the periodic dues and the initiation fee uniformly required as a condition of acquiring or retaining membership in the Union . . . ." *Id.*, at 28–29.

The present dispute arose when petitioner, a part-time actress, successfully auditioned for a one-line role in an episode of the television series, Medicine Ball, which was produced by Lakeside. Petitioner accepted the part, and pursuant to the collective bargaining agreement, Lakeside's casting director called SAG to verify that petitioner met the requirements of the union security clause. Because petitioner had previously worked in the motion picture industry for more than 30 days, the union security clause was triggered and petitioner was required to pay the union fees before she could begin working for Lakeside. There is some dispute whether the SAG representative told Lakeside's casting director that petitioner had to "join" or had to "pay" the union; regardless, petitioner understood from the casting director that she had to pay SAG before she could work for Lakeside. Petitioner called SAG's local office and learned that the fees that she would have to pay to join the union would be around $500.

Over the next few days, petitioner attempted to negotiate an agreement with SAG that would allow her to pay the union fees after she was paid for her work by Lakeside. When these negotiations failed to produce an acceptable compromise and petitioner had not paid the required fees by the day before her part was to be filmed, Lakeside hired a different actress to fill the part. At some point after Lakeside hired the new actress, SAG faxed a letter to Lakeside stating that it had no objection to petitioner working in the production. The letter was too late for petitioner; filming proceeded on schedule with the replacement actress.

Petitioner filed suit against Lakeside and SAG alleging, among other things, that SAG had breached the duty of fair representation. According to petitioner, SAG had breached its duty by negotiating and enforcing a union security clause with two basic flaws. First, the union security clause required union "membership" and the payment of full fees and dues when those terms could not be legally enforced under *General Motors* and *Beck*. Petitioner argued that the collective bargaining agreement should have contained language, in addition to the statutory language, informing her of her right not to join the union and of her right, under *Beck*, to pay only for the union's representational activities. Second, the union security clause contained a term that interpreted the 30-day grace period provision to begin running with any employment in the industry. According to petitioner, this interpretation of the grace period provision contravened the express language of § 8(a)(3), which requires that employees be given a 30-day grace period from the beginning of "such employment." She interprets "such employment" to require a new grace period with each employment relationship. Finally, in addition to these claims about the language of the union security clause, petitioner alleged that SAG had violated the duty of fair representation by failing to notify her truthfully about her rights under the NLRA as defined in *Beck* and *General Motors*.

The District Court granted summary judgment to the defendants on all claims, ruling first that SAG did not breach the duty of fair representation by negotiating the union security clause. App. to Pet. for Cert. 28a–29a. The court also determined that no reasonable factfinder could conclude that SAG had attempted to enforce the union security clause beyond the lawful limits. *Id.*, at 30a. Finally, the court ruled that petitioner's challenge to the grace period provision was actually an unfair labor practice claim, and thus it was preempted by the exclusive jurisdiction of the NLRB. *Id.*, at 31a.

Petitioner appealed, and the Court of Appeals for the Ninth Circuit affirmed in part and reversed in part. 124 F. 3d 1034 (1997). The Court of Appeals reversed the grant of summary judgment on petitioner's claim that SAG's enforcement of the union security clause breached the duty of fair representation, finding that there were genuine issues of material fact remaining to be resolved on this issue. For example, the record contains conflicting evidence on whether the union told petitioner that she had to "join" the union, or whether it told her that she had to "pay" the union. *Id.*, at 1041. The Court of Appeals also reversed the grant of summary judgment on petitioner's claim that the union had breached the duty of fair representation by failing to notify her of her right, under *Beck*, to pay only the lesser "core" fees associated with the union's collective bargaining functions. The District Court had not addressed this claim, so the Court of Appeals remanded this issue for consideration. *Id.*, at 1042–1043.

On the two issues before this Court, however, the Court of Appeals affirmed the judgment of the District Court. First, the court held that SAG had not breached the duty of fair representation merely by negotiating a union security clause that tracked the language of the NLRA. The court noted that the statutory language had been given a specialized meaning, but rejected petitioner's argument that the failure to fully explain this meaning in the collective bargaining agreement was an arbitrary or bad faith breach of the duty of fair representation. The court noted that two other Courts of Appeals had recently rejected similar claims. *Id.*, at 1038–1039 (citing *International Union Electronic, Electrical, Salaried, Machine and Furniture Workers* v. *NLRB*, 41 F. 3d 1532 (CADC 1994); *Nielsen* v. *International Assn. of Machinists & Aerospace Workers*, 94 F. 3d 1107 (CA7 1996), cert. denied, 520 U. S. 1165 (1997)). The Ninth Circuit's resolution of this issue is in tension with the decisions of two other Courts of Appeals. See, *e. g.*, *Buzenius* v.

*NLRB*, 124 F. 3d 788 (CA6 1997), cert. pending, No. 97–945; *Bloom* v. *NLRB*, 30 F. 3d 1001 (CA8 1994).

Second, the Court of Appeals affirmed the District Court's judgment that it did not have jurisdiction over petitioner's challenge to the grace period provision. The court acknowledged that federal courts have jurisdiction over duty of fair representation claims, but, noting our admonishment in *Beck* not to be deceived by a plaintiff's attempt to disguise an unfair labor practice claim as a fair representation claim, *Communications Workers* v. *Beck*, 487 U. S., at 743, the court held that petitioner's claim was not a fair representation claim. According to the court, the statutory question presented by petitioner's challenge to the grace period provision was the central issue for resolution, and under these circumstances, the claim fell within the exclusive jurisdiction of the NLRB. 124 F. 3d, at 1039–1041.

We granted certiorari to resolve the conflict over the facial validity of a union security clause that tracks the language of § 8(a)(3), and to clarify the standards for defining the primary jurisdiction of the NLRB. 523 U. S. 1019 (1998).

## II

### A

This case presents a narrow question: Does a union breach its duty of fair representation merely by negotiating a union security clause that tracks the language of § 8(a)(3)? To understand why this is a narrow question, it is helpful to keep in mind what issues we are *not* resolving in this case. First, we are not deciding whether SAG illegally enforced the union security clause to require petitioner to become a member of the union or to require her to pay dues for noncollective bargaining activities. Petitioner's complaint includes a claim that the union breached the duty of fair representation by enforcing the clause illegally, but that claim is not before us. The Court of Appeals held that there were factual disputes that precluded the grant of summary

judgment on this issue, and so this claim was remanded to the District Court for further proceedings. 124 F. 3d, at 1041–1042. Second, we are not deciding whether SAG breached its duty of fair representation by failing to adequately notify petitioner of her rights under *Beck* and *General Motors*. The Board has held (and SAG concedes, see Brief for Respondent Screen Actors Guild 35–36) that unions have an obligation to notify employees of their *Beck* rights. See *United Paperworkers Int'l Union (Weyerhaeuser Paper)*, 320 N. L. R. B. 349 (1995), rev'd on other grounds *sub nom. Buzenius* v. *NLRB*, *supra; California Saw and Knife Works*, 320 N. L. R. B. 224 (1995), enf'd *sub nom. International Association of Machinists & Aerospace Workers* v. *NLRB*, 133 F. 3d 1012 (CA7), cert. denied *sub nom. Strang* v. *NLRB*, *post*, p. 813. See also *Nielsen* v. *International Assn. of Machinists & Aerospace Workers*, *supra*, at 1114–1115 (recognizing such a duty on part of union); *Abrams* v. *Communications Workers of America*, 59 F. 3d 1373, 1378–1380 (CADC 1995) (same). The Board is currently in the process of defining the content of the notification right to give guidance to unions about what they must do to notify employees about their rights under *Beck* and *General Motors*. *California Saw and Knife Works*, *supra; United Paperworkers Int'l Union*, *supra*. Petitioner's suit alleges that SAG failed to notify her of her *Beck* and *General Motors* rights, but this claim, too, is not before us. The Court of Appeals remanded this claim to the District Court for reconsideration. 124 F. 3d, at 1042–1043.

With this background, the question we are resolving comes into sharper focus. There is no disagreement about the substance of the union's obligations: If a union negotiates a union security clause, it must notify workers that they may satisfy the membership requirement by paying fees to support the union's representational activities, and it must enforce the clause in conformity with this notification. The only question presented by this case is whether a union breaches the

duty of fair representation merely by negotiating a union security clause that uses the statutory language without expressly explaining, in the agreement, the refinements introduced by our decisions in *General Motors* and *Beck*. To rephrase the question slightly, petitioner's claim is that even if the union has an exemplary notification procedure and even if the union enforces the union security clause in perfect conformity with federal law, the mere negotiation of a union security clause that tracks the language of the NLRA breaches the duty of fair representation. We hold that it does not.

B

When a labor organization has been selected as the exclusive representative of the employees in a bargaining unit, it has a duty, implied from its status under § 9(a) of the NLRA as the exclusive representative of the employees in the unit, to represent all members fairly. See, *e. g.*, *Ford Motor Co.* v. *Huffman*, 345 U. S. 330, 337 (1953); *Vaca* v. *Sipes*, 386 U. S. 171, 177 (1967). As we described this duty in *Vaca* v. *Sipes*, the duty of fair representation requires a union "to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." *Ibid.* In other words, a union breaches the duty of fair representation when its conduct toward a member of the bargaining unit is arbitrary, discriminatory, or in bad faith. *Id.*, at 190. See also *Air Line Pilots* v. *O'Neill*, 499 U. S. 65, 67 (1991) (reaffirming this tripartite standard). In this case, petitioner does not argue that SAG's negotiation of the union security clause was discriminatory, so we only consider whether SAG's conduct was arbitrary or in bad faith.

Petitioner argues that in *Beck*, we redefined the standard for evaluating when a union's conduct is "arbitrary." Petitioner reads our decision in *Beck* to hold that the union's conduct was arbitrary *merely* because its actions violated the statute. According to petitioner, because we did not

elaborate on our conclusion that the union's statutory violation was a breach of the duty of fair representation, we must have concluded that it was "arbitrary." Brief for Petitioner 12. Under this reading, the "arbitrary" prong of the duty of fair representation standard is equated with "statutory violation." This is an inaccurate reading of our decision in *Beck*. It is true that the focus of our attention in *Beck* was whether the union's conduct was consistent with § 8(a)(3) and that once we found that it was inconsistent with the statute, we did not tarry to explain how this conduct breached the duty of fair representation. But we did not hold that the finding of a mere statutory violation was sufficient to support a conclusion that the union breached its duty. In *Beck*, the union collected fees and dues from bargaining unit employees under its statutory grant of authority to serve as the exclusive bargaining representative. But then it used that money for purposes wholly unrelated to the grant of authority that gave it the right to collect that money, and in ways that were antithetical to the interests of some of the workers that it was required to serve. 487 U. S., at 743–744. It was this latter aspect of the union's conduct, and not just the fact that the conduct violated the statute, that made the union's actions a breach of the duty of fair representation.

That our holding in *Beck* did not alter the standard for finding conduct "arbitrary" is confirmed by our decision in *Air Line Pilots*. In that case, decided three years after *Beck*, we specifically considered the appropriate standard for evaluating conduct under the "arbitrary" prong of the duty of fair representation. We held that under the "arbitrary" prong, a union's actions breach the duty of fair representation "only if [the union's conduct] can be fairly characterized as so far outside a 'wide range of reasonableness' that it is wholly 'irrational' or 'arbitrary.'" 499 U. S., at 78 (quoting *Ford Motor Co.* v. *Huffman*, *supra*, at 338). This "wide range of reasonableness" gives the union room to make discretionary decisions and choices, even if those judgments are

ultimately wrong. In *Air Line Pilots*, for example, the union had negotiated a settlement agreement with the employer, which in retrospect proved to be a bad deal for the employees. The fact that the union had not negotiated the best agreement for its workers, however, was insufficient to support a holding that the union's conduct was arbitrary. 499 U. S., at 78–81. A union's conduct can be classified as arbitrary only when it is irrational, when it is without a rational basis or explanation. *Ibid.*

Under this standard, SAG's negotiation of a union security clause with language derived from the NLRA section authorizing such a clause is far from arbitrary. Petitioner argues that it is irrational to negotiate a clause that cannot be enforced as written. But this clause *can* be enforced as written, because by tracking the statutory language, the clause incorporates all of the refinements that have become associated with that language. When we interpreted § 8(a)(3) in *General Motors* and *Beck*, we held that the section, fairly read, included the rights that we found. To the extent that these interpretations are not obvious, the relevant provisions of § 8(a)(3) have become terms of art; the words and phrasing of the subsection now encompass the rights that we announced in *General Motors* and *Beck*. After we stated that the statutory language incorporates an employee's right not to "join" the union (except by paying fees and dues) and an employee's right to pay for only representational activities, we cannot fault SAG for using this very language to convey these very concepts.

Petitioner also invites us to conclude that the union's conduct in negotiating the union security clause breached the duty of fair representation because it was done in bad faith. She argues that the negotiation of this clause was in bad faith because the union had no reason to use the statutory language except to mislead employees about their rights under *Beck* and *General Motors*. This argument has two components: that the union intended to mislead workers, and

that the union had no other purpose but to mislead. Both claims are unpersuasive. To understand why her first claim is unconvincing, it is again helpful to recall the nature of the claim being asserted here. Petitioner's argument is not that SAG chose to use this language in the collective bargaining agreement after determining that the use of this language in the contract would deceive a large number of workers. Her argument is more ambitious. According to petitioner, even if the union always informs workers of their rights and even if it enforces the union security clause in conformity with federal law, it is bad faith for a union to use the statutory language in the collective bargaining agreement because such use can only mislead employees. Petitioner's argument fails because it is so broad. It is difficult to conclude that a union acts in bad faith by notifying workers of their rights through more effective means of communication and by using a term of art to describe those rights in a contract workers are unlikely to read. Under these circumstances, there is no intent to mislead, so the first part of petitioner's "bad faith" argument fails.

The second part of petitioner's bad faith argument—that there was no other reason for the union's choice of the statutory language—also fails. The statutory language, which we have said incorporates all of the refinements associated with the language, is a shorthand description of workers' legal rights. A union might choose to use this shorthand precisely *because* it incorporates all of the refinements. Petitioner argues that this reason for failing to explain all of the intricate rights and duties associated with a legal term of art is bad faith. The logic of petitioner's argument has no stopping point; it would require unions (and all other contract drafters) to spell out all the intricacies of *every* term used in a contract. Contracts would become massive and unwieldy treatises, yet there would be no discernible benefit from the increased mass. Because there is no stopping point to the logic of petitioner's argument, we find it unper-

suasive. Contrary to petitioner's claim, we conclude that it may be perfectly reasonable for a union to use terms of art in a contract.

Petitioner proposed one stopping point at oral argument: the union security clause. Petitioner suggested that a union is only required to explain the union security clause in intricate detail because that is the only part of the contract where the union's and the workers' interests diverge. Tr. of Oral Arg. 16. The union security clause, however, is not the only part of the contract where the union's interests diverge from the interests of the employees. To take a simple example, the union's duty of fair representation is implied from its status as the exclusive bargaining representative of the bargaining unit workers. Under petitioner's logic, the union would have to incorporate into the collective bargaining agreement a section detailing the union's obligations under this duty. Presumably, this section would have to include discussions of judicial and NLRB interpretations of each prong of the duty of fair representation and how those prongs limit union conduct toward employees. Moreover, petitioner's rights under *Beck* and *General Motors* are not the only limits on a union's power under a union security clause. For example, the NLRA provides that workers with religious objections to supporting unions cannot be forced to pay *any* fees to a union, 29 U. S. C. § 169, and it also provides that the workers cannot be forced to pay fees that are discriminatory or excessive, § 158(b)(5). In other words, petitioner's proposed stopping point is no stopping point at all. A union's decision to avoid this slippery slope is not *a fortiori* a decision made in bad faith.

In sum, on this record, the union's conduct in negotiating a union security clause that tracked the statutory language cannot be said to have been either arbitrary or in bad faith. The Court of Appeals correctly rejected petitioner's argument that, by negotiating this clause, the union breached its duty of fair representation.

## III

The Court of Appeals also correctly refused to exercise jurisdiction over petitioner's challenge to the 30-day grace period provision of the union security clause. Petitioner argues that all duty of fair representation claims are cognizable in federal court, and that because she couched her claim as a breach of the duty of fair representation, her claim by definition can be heard in federal court. Brief for Petitioner 24–25. For this proposition, petitioner relies on *Breininger* v. *Sheet Metal Workers*, 493 U. S. 67 (1989). Petitioner's starting point correctly describes the law. When a plaintiff challenges an action that is "arguably subject to § 7 or § 8 of the [NLRA]," this challenge is within the primary jurisdiction of the NLRB. *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236, 245 (1959). These claims are within the primary jurisdiction of the NLRB in part to promote the uniform interpretation of the NLRA. *Id.*, at 242–243. But when a plaintiff alleges a breach of the duty of fair representation, this claim is cognizable in the first instance in federal court. *Vaca* v. *Sipes*, 386 U. S., at 177–183; *Breininger* v. *Sheet Metal Workers*, *supra*, at 73–84. In *Breininger*, we rejected the invitation to create exceptions to this rule based on the expertise of the NLRB, the subject matter of the complaint, or the presence of any other factor. 493 U. S., at 75–77. Thus, petitioner is on solid ground to argue that if her challenge to the grace period provision is a duty of fair representation claim, the lower courts erred in refusing to exercise jurisdiction over that claim.

The qualification—*if* her challenge is a duty of fair representation claim—is important. The ritualistic incantation of the phrase "duty of fair representation" is insufficient to invoke the primary jurisdiction of federal courts. As we noted in *Beck*, "[e]mployees . . . may not circumvent the primary jurisdiction of the NLRB simply by casting statutory claims as violations of the union's duty of fair representation." 487 U. S., at 743. When a plaintiff's only claim is

that the union violated the NLRA, the plaintiff cannot avoid the jurisdiction of the NLRB by characterizing this alleged statutory violation as a breach of the duty of fair representation. To invoke federal jurisdiction when the claim is based in part on a violation of the NLRA, there must be something *more* than just a claim that the union violated the statute. The plaintiff must adduce facts suggesting that the union's violation of the statute was arbitrary, discriminatory, or in bad faith.

This does not mean that federal courts cannot resolve statutory issues under the NLRA in the first instance. Although federal district courts cannot resolve pure statutory claims under the NLRA, they can resolve statutory issues to the extent that the resolution of these issues is necessary for a decision on the plaintiff's duty of fair representation claim. *Ibid.* (quoting *Connell Constr. Co.* v. *Plumbers*, 421 U. S. 616, 626 (1975)). Thus in *Beck*, we resolved the statutory question because it was collateral to the duty of fair representation claim, and that claim was independently within the jurisdiction of the federal courts. 487 U. S., at 743–744. The power of federal courts to resolve statutory issues under the NLRA when they arise as collateral matters in a duty of fair representation suit does not open the door for federal court first instance resolution of all statutory claims. Federal courts can only resolve § 7 and § 8 claims that are collateral to a duty of fair representation claim.

Applying these principles in this case, petitioner's challenge to SAG's grace period provision falls squarely within the primary jurisdiction of the NLRB. Her claim is that SAG employed a term in the collective bargaining agreement that was inconsistent with the NLRA. This allegation, although framed by the recitation that this act breached the duty of fair representation, is at base a claim that SAG's conduct violated § 8(a)(3). This claim is not collateral to any independent basis for federal jurisdiction; there are no facts alleged suggesting that this violation was arbitrary, discrimi-

natory, or in bad faith. Petitioner argues that the term is misleading because it misrepresents the employee's obligations as stated in the NLRA, but this transparent attempt to avoid the jurisdiction of the NLRB is unconvincing. This term is not misleading; the only question is whether the term is consistent with federal law. Because petitioner's only argument is that the term is inconsistent with § 8(a)(3), her claim falls within the primary jurisdiction of the NLRB.

Petitioner attempts to avoid this conclusion by arguing that her challenge to the grace period provision is structurally identical to the duty of fair representation claim considered in *Beck* and to the duty of fair representation claim considered in the first part of this opinion. Brief for Petitioner 24–25. Thus, according to petitioner, because these claims were cognizable in federal trial court, so is her challenge to the grace period provision. But in *Beck* it was the union that relied on § 8(a)(3) as a defense to the plaintiffs' claim that it breached the duty of fair representation. When a claim that a union has breached its duty of fair representation is based in part on an alleged violation of the NLRA, it must be independently supported by some allegations describing arbitrary, discriminatory, or bad faith union conduct. Thus, as we described above, in *Beck*, the duty of fair representation claim was not premised on the mere unlawfulness of the union's conduct. The basis for the fair representation claim was that the union's conduct was arbitrary and possibly in bad faith. Petitioner's challenge to the membership and fees requirements of the union security clause is similarly distinguishable from her challenge to the grace period provision. The claim we considered in the first part of the opinion was that the union's negotiation of the union security clause breached the duty of fair representation because it was arbitrary and in bad faith for the union to negotiate a clause that might mislead employees. This claim, like the claim considered in *Beck*, is not solely about the interpretation of the statute. Petitioner's challenge to

the grace period provision, by contrast, is at most an allegation that the union violated the statute. This claim is quintessentially an issue for resolution by the NLRB, and the Court of Appeals correctly refused to uphold District Court jurisdiction over it.

Accordingly, the judgment of the United States Court of Appeals for the Ninth Circuit is affirmed.

*It is so ordered.*

JUSTICE KENNEDY, with whom JUSTICE THOMAS joins, concurring.

I join the opinion of the Court and offer these further observations.

First, the opinion does not address circumstances in which there is evidence that a security clause such as this one was used or intended to deceive or injure employees. Our sole conclusion is that mere recitation of the statutory language within a security clause does not, without more, violate the duty of fair representation. The Court of Appeals in this case understood that the record, on further development at trial, might support a finding that the union misinformed the petitioner of her membership obligations. The wording of the clause might well have some bearing on that determination. The Court of Appeals' remand for trial on the union's conduct toward the petitioner is not before us. As the issue is not addressed, our opinion is not inconsistent with the Court of Appeals' ruling. There is also a suggestion in the record, see, *e. g.,* App. 34–35, that the security clause in this case may have been used or intended to mislead a potential employer to the petitioner's detriment. If further developed, evidence to this effect would likely be relevant to the claim that remains for trial; our opinion should not be misunderstood to suggest otherwise.

The security clause at issue required, as conditions of employment, "member[ship] in good standing," *id.*, at 28, and payment of "the periodic dues and the initiation fee uni-

formly required as a condition of acquiring or retaining membership in the Union," *id.*, at 29. As recognized by other courts and by members of the National Labor Relations Board, language like this can facilitate deception. See, *e. g.*, *Bloom* v. *NLRB*, 153 F. 3d 844, 850–851 (CA8 1998) ("As Bloom can well attest, when an employee who is approached regarding union membership expresses reluctance, a union frequently will produce or invoke the collective bargaining agreement . . . . The employee, unschooled in semantic legal fictions, cannot possibly discern his rights from a document that has been designed by the union to conceal them. In such a context, 'member' is not a term of 'art,' . . . but one of deception"); *Wegscheid* v. *Local 2911, Int'l Union, United Automobile, Aerospace and Agricultural Implement Workers*, 117 F. 3d 986, 990 (CA7 1997) ("[T]he only realistic explanation for the retention of the statutory language in collective bargaining agreements . . . is to mislead employees about their right not to join the union"); *Monson Trucking, Inc.*, 324 N. L. R. B. No. 149, pp. 6–8 (Chairman Gould, concurring) ("[A] collective-bargaining agreement that speaks in terms of 'membership' or 'membership in good standing' without further definition misleads employees into believing that they can be terminated if they do not become formal, full-fledged union members"). As I understand the Court's opinion, there is no basis in our holding today for an inference that inclusion of the statutory language is somehow a defense when a violation of the fair-representation duty has been alleged and facts in addition to the bare language of the contract have been adduced to show the violation. Rather, our holding reflects only the conclusion that the negotiation of a security clause containing such language does not necessarily, or in all circumstances, violate this duty.

Furthermore, we do not have before us the question whether use of this language, in some circumstances, might be an unfair labor practice, even though, without more, it is not a breach of the duty of fair representation. As the

Court's opinion makes clear, a claim for breach of the duty of fair representation in circumstances such as those presented here, unlike an unfair-labor-practice claim, must be predicated on more than a simple violation of the National Labor Relations Act.

These issues are matters yet to be determined.

Syllabus

# PFAFF *v.* WELLS ELECTRONICS, INC.

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

No. 97–1130. Argued October 6, 1998—Decided November 10, 1998

Under § 102(b) of the Patent Act of 1952, no one can patent an "invention" that has been "on sale" more than one year before filing a patent application. In early 1981, petitioner Pfaff designed a new computer chip socket and sent detailed engineering drawings of the socket to a manufacturer. He also showed a sketch of his concept to representatives of Texas Instruments, which placed an order for the new sockets prior to April 8, 1981. In accord with his normal practice, Pfaff did not make and test a prototype before offering to sell the socket in commercial quantities. He filled the order in July 1981, and thus the evidence indicates that he first reduced his invention to practice that summer. He applied for a patent on April 19, 1982, making April 19, 1981, the critical date for § 102(b)'s on-sale bar. After the patent issued, he lost an infringement action he filed against respondent, Wells Electronics, Inc. Subsequently, he brought this suit, alleging that a modified version of Wells' socket infringed six of his patent's claims. The District Court held, *inter alia*, that three of the claims were infringed, rejecting Wells' § 102(b) defense on the ground that Pfaff had filed the patent application less than a year after reducing the invention to practice. In reversing, the Court of Appeals concluded, among other things, that § 102(b)'s 1-year period began to run when the invention was offered for sale commercially, not when it was reduced to practice.

*Held:* Pfaff's patent is invalid because the invention had been on sale for more than one year in this country before he filed his patent application. Pp. 60–69.

(a) The primary meaning of "invention" in the Patent Act unquestionably refers to the inventor's conception rather than to a physical embodiment of that idea. The statute contains no express "reduction to practice" requirement, see §§ 100, 101, 102(g), and it is well settled that an invention may be patented before it is reduced to practice. In *The Telephone Cases*, 126 U. S. 1, 535–536, this Court upheld a patent issued to Alexander Graham Bell even though he had filed his application before constructing a working telephone. Applying the reasoning of *The Telephone Cases* to the facts of this case, it is evident that Pfaff could have obtained a patent when he accepted Texas Instruments' order, for at that time he provided the manufacturer with a description

and drawings of "sufficient clearness and precision to enable those skilled in the matter" to produce the device, *id.*, at 536. Pp. 60–63.

(b) Pfaff's nontextual argument—that longstanding precedent, buttressed by the interest in providing inventors with a clear standard identifying the onset of the 1-year period, justifies a special interpretation of "invention" in § 102(b)—is rejected. While reduction to practice provides sufficient evidence that an invention is complete, the facts of *The Telephone Cases* and this case show that such proof is not necessary in every case. Pp. 63–66.

(c) The on-sale bar applies when two conditions are satisfied before the critical date. First, the product must be the subject of a commercial offer for sale. Here, the acceptance of the purchase order prior to April 8, 1981, makes it clear that such an offer had been made, and there is no question that the sale was commercial. Second, the invention must be ready for patenting. That condition may be satisfied in at least two ways: by proof of reduction to practice before the critical date; or by proof that prior to the critical date the inventor had prepared drawings or other descriptions of the invention that were sufficiently specific to enable a person skilled in the art to practice the invention. This condition is satisfied here because the drawings sent to the manufacturer before the critical date fully disclosed the invention. Pp. 67–69.

124 F. 3d 1429, affirmed.

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

*Jerry R. Selinger* argued the cause for petitioner. With him on the briefs were *Susan E. Powley* and *Jack A. Kanz.*

*C. Randall Bain* argued the cause for respondent. With him on the brief were *Alan H. Blankenheimer*, *Patricia A. Hubbard*, *C. Mark Kittredge*, and *James D. Hall.*

*Jeffrey P. Minear* argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Waxman*, *Assistant Attorneys General Hunger* and *Klein*, *Deputy Solicitor General Wallace*, *William Kanter*, *Alfred Mollin*, *David Siedman*, *Mark S. Popofsky*, *Nancy J. Linck*, and *Albin F. Drost.**

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*Briefs of *amici curiae* urging reversal were filed for Global Gaming Technology, Inc., by *Joseph M. Vanek;* for the American Intellectual Prop-

JUSTICE STEVENS delivered the opinion of the Court.

Section 102(b) of the Patent Act of 1952 provides that no person is entitled to patent an "invention" that has been "on sale" more than one year before filing a patent application.[1] We granted certiorari to determine whether the commercial marketing of a newly invented product may mark the beginning of the 1-year period even though the invention has not yet been reduced to practice.[2]

## I

On April 19, 1982, petitioner, Wayne Pfaff, filed an application for a patent on a computer chip socket. Therefore, April 19, 1981, constitutes the critical date for purposes of the on-sale bar of 35 U. S. C. § 102(b); if the 1-year period

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erty Law Association by *Robert H. Fischer, Gary L. Griswold, Robert L. Baechtold,* and *J. Michael Jakes;* for the Federal Circuit Bar Association by *George E. Hutchinson, Denise W. DeFranco,* and *James F. McKeown.*

Briefs of *amici curiae* urging affirmance were filed for View Engineering, Inc., by *Ernie L. Brooks* and *Frank A. Angileri;* for the Dallas-Fort Worth Intellectual Property Law Association by *D. Scott Hemingway* and *Louis Touton;* for the Mas-Hamilton Group by *David E. Schmit;* and for the Patent, Trademark & Copyright Section of the Bar Association of the District of Columbia by *Bruce T. Wieder.*

[1] "A person shall be entitled to a patent unless—

. . . . . .

"(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or . . . ." 35 U. S. C. § 102.

[2] "A process is reduced to practice when it is successfully performed. A machine is reduced to practice when it is assembled, adjusted and used. A manufacture is reduced to practice when it is completely manufactured. A composition of matter is reduced to practice when it is completely composed." *Corona Cord Tire Co.* v. *Dovan Chemical Corp.,* 276 U. S. 358, 383 (1928).

began to run before that date, Pfaff lost his right to patent his invention.

Pfaff commenced work on the socket in November 1980, when representatives of Texas Instruments asked him to develop a new device for mounting and removing semiconductor chip carriers. In response to this request, he prepared detailed engineering drawings that described the design, the dimensions, and the materials to be used in making the socket. Pfaff sent those drawings to a manufacturer in February or March 1981.

Prior to March 17, 1981, Pfaff showed a sketch of his concept to representatives of Texas Instruments. On April 8, 1981, they provided Pfaff with a written confirmation of a previously placed oral purchase order for 30,100 of his new sockets for a total price of $91,155. In accord with his normal practice, Pfaff did not make and test a prototype of the new device before offering to sell it in commercial quantities.[3]

The manufacturer took several months to develop the customized tooling necessary to produce the device, and Pfaff did not fill the order until July 1981. The evidence therefore indicates that Pfaff first reduced his invention to practice in the summer of 1981. The socket achieved substantial com-

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[3] At his deposition, respondent's counsel engaged in the following colloquy with Pfaff:

"Q. Now, at this time [late 1980 or early 1981] did we *[sic]* have any prototypes developed or anything of that nature, working embodiment?

"A. No.

"Q. It was in a drawing. Is that correct?

"A. Strictly in a drawing. Went from the drawing to the hard tooling. That's the way I do my business.

"Q. 'Boom-boom'?

"A. You got it.

"Q. You are satisfied, obviously, when you come up with some drawings that it is going to go—'it works'?

"A. I know what I'm doing, yes, most of the time." App. 96–97.

mercial success before Patent No. 4,491,377 ('377 patent) issued to Pfaff on January 1, 1985.[4]

After the patent issued, petitioner brought an infringement action against respondent, Wells Electronics, Inc., the manufacturer of a competing socket. Wells prevailed on the basis of a finding of no infringement.[5] When respondent began to market a modified device, petitioner brought this suit, alleging that the modifications infringed six of the claims in the '377 patent.

After a full evidentiary hearing before a Special Master,[6] the District Court held that two of those claims (1 and 6) were invalid because they had been anticipated in the prior art. Nevertheless, the court concluded that four other claims (7, 10, 11, and 19) were valid and three (7, 10, and 11) were infringed by various models of respondent's sockets. App. to Pet. for Cert. 21a–22a. Adopting the Special Master's findings, the District Court rejected respondent's § 102(b) defense because Pfaff had filed the application for the '377 patent less than a year after reducing the invention to practice.

The Court of Appeals reversed, finding all six claims invalid. 124 F. 3d 1429 (CA Fed. 1997). Four of the claims (1, 6, 7, and 10) described the socket that Pfaff had sold to Texas Instruments prior to April 8, 1981. Because that device had been offered for sale on a commercial basis more than one

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[4] Initial sales of the patented device were:

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|---|---|
| 1981 | $ 350,000 |
| 1982 | $ 937,000 |
| 1983 | $2,800,000 |
| 1984 | $3,430,000 |

App. to Pet. for Cert. 223a.

[5] *Pfaff* v. *Wells Electronics, Inc.*, 9 USPQ 2d 1366 (ND Ind. 1988). The court found that the Wells device did not literally infringe on Pfaff's '377 patent based on the physical location of the sockets' conductive pins.

[6] Initially the District Court entered summary judgment in favor of respondent, but the Court of Appeals reversed and remanded for trial because issues of fact were in dispute. See 5 F. 3d 514 (CA Fed. 1993).

year before the patent application was filed on April 19, 1982, the court concluded that those claims were invalid under § 102(b). That conclusion rested on the court's view that as long as the invention was "substantially complete at the time of sale," the 1-year period began to run, even though the invention had not yet been reduced to practice. *Id.*, at 1434. The other two claims (11 and 19) described a feature that had not been included in Pfaff's initial design, but the Court of Appeals concluded as a matter of law that the additional feature was not itself patentable because it was an obvious addition to the prior art.[7] Given the court's § 102(b) holding, the prior art included Pfaff's first four claims.

Because other courts have held or assumed that an invention cannot be "on sale" within the meaning of § 102(b) unless and until it has been reduced to practice, see, *e. g.*, *Timely Products Corp.* v. *Arron*, 523 F. 2d 288, 299–302 (CA2 1975); *Dart Industries, Inc.* v. *E. I. Du Pont de Nemours & Co.*, 489 F. 2d 1359, 1365, n. 11 (CA7 1973), cert. denied, 417 U. S. 933 (1974), and because the text of § 102(b) makes no reference to "substantial completion" of an invention, we granted certiorari. 523 U. S. 1003 (1998).

## II

The primary meaning of the word "invention" in the Patent Act unquestionably refers to the inventor's conception rather than to a physical embodiment of that idea. The statute does not contain any express requirement that an invention must be reduced to practice before it can be patented.

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[7] Title 35 U. S. C. § 103 provides: "A patent may not be obtained though the invention is not identically disclosed or described . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains."

Neither the statutory definition of the term in § 100[8] nor the basic conditions for obtaining a patent set forth in § 101[9] make any mention of "reduction to practice." The statute's only specific reference to that term is found in § 102(g), which sets forth the standard for resolving priority contests between two competing claimants to a patent. That subsection provides:

> "In determining priority of invention there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other."

Thus, assuming diligence on the part of the applicant, it is normally the first inventor to conceive, rather than the first to reduce to practice, who establishes the right to the patent.

It is well settled that an invention may be patented before it is reduced to practice. In 1888, this Court upheld a patent issued to Alexander Graham Bell even though he had filed his application before constructing a working telephone. Chief Justice Waite's reasoning in that case merits quoting at length:

> "It is quite true that when Bell applied for his patent he had never actually transmitted telegraphically spoken words so that they could be distinctly heard and understood at the receiving end of his line, but in his specification he did describe accurately and with admirable clearness his process, that is to say, the exact

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[8] Title 35 U. S. C. § 100, "Definitions," states:

"When used in this title unless the context otherwise indicates—

"(a) The term 'invention' means invention or discovery. . . ."

[9] Section 101, "Inventions patentable," provides: "Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title."

> electrical condition that must be created to accomplish his purpose, and he also described, with sufficient precision to enable one of ordinary skill in such matters to make it, a form of apparatus which, if used in the way pointed out, would produce the required effect, receive the words, and carry them to and deliver them at the appointed place. The particular instrument which he had, and which he used in his experiments, did not, under the circumstances in which it was tried, reproduce the words spoken, so that they could be clearly understood, but the proof is abundant and of the most convincing character, that other instruments, carefully constructed and made exactly in accordance with the specification, without any additions whatever, have operated and will operate successfully. A good mechanic of proper skill in matters of the kind can take the patent and, by following the specification strictly, can, without more, construct an apparatus which, when used in the way pointed out, will do all that it is claimed the method or process will do . . . .
>
> "The law does not require that a discoverer or inventor, in order to get a patent for a process, must have succeeded in bringing his art to the highest degree of perfection. It is enough if he describes his method with sufficient clearness and precision to enable those skilled in the matter to understand what the process is, and if he points out some practicable way of putting it into operation." *The Telephone Cases*, 126 U. S. 1, 535–536 (1888).[10]

When we apply the reasoning of *The Telephone Cases* to the facts of the case before us today, it is evident that Pfaff

[10] This Court has also held a patent invalid because the invention had previously been disclosed in a prior patent application, although that application did not claim the invention and the first invention apparently had not been reduced to practice. *Alexander Milburn Co.* v. *Davis-Bournonville Co.*, 270 U. S. 390, 401–402 (1926).

could have obtained a patent on his novel socket when he accepted the purchase order from Texas Instruments for 30,100 units. At that time he provided the manufacturer with a description and drawings that had "sufficient clearness and precision to enable those skilled in the matter" to produce the device. *Id.*, at 536. The parties agree that the sockets manufactured to fill that order embody Pfaff's conception as set forth in claims 1, 6, 7, and 10 of the '377 patent. We can find no basis in the text of § 102(b) or in the facts of this case for concluding that Pfaff's invention was not "on sale" within the meaning of the statute until after it had been reduced to practice.

## III

Pfaff nevertheless argues that longstanding precedent, buttressed by the strong interest in providing inventors with a clear standard identifying the onset of the 1-year period, justifies a special interpretation of the word "invention" as used in § 102(b). We are persuaded that this nontextual argument should be rejected.

As we have often explained, most recently in *Bonito Boats, Inc.* v. *Thunder Craft Boats, Inc.*, 489 U. S. 141, 151 (1989), the patent system represents a carefully crafted bargain that encourages both the creation and the public disclosure of new and useful advances in technology, in return for an exclusive monopoly for a limited period of time. The balance between the interest in motivating innovation and enlightenment by rewarding invention with patent protection on the one hand, and the interest in avoiding monopolies that unnecessarily stifle competition on the other, has been a feature of the federal patent laws since their inception. As this Court explained in 1871:

> "Letters patent are not to be regarded as monopolies . . . but as public franchises granted to the inventors of new and useful improvements for the purpose of securing to them, as such inventors, for the limited term therein

> mentioned, the exclusive right and liberty to make and use and vend to others to be used their own inventions, as tending to promote the progress of science and the useful arts, and as matter of compensation to the inventors for their labor, toil, and expense in making the inventions, and reducing the same to practice for the public benefit, as contemplated by the Constitution and sanctioned by the laws of Congress." *Seymour* v. *Osborne,* 11 Wall. 516, 533–534.

Consistent with these ends, § 102 of the Patent Act serves as a limiting provision, both excluding ideas that are in the public domain from patent protection and confining the duration of the monopoly to the statutory term. See, *e. g.*, *Frantz Mfg. Co.* v. *Phenix Mfg. Co.*, 457 F. 2d 314, 320 (CA7 1972).

We originally held that an inventor loses his right to a patent if he puts his invention into public use before filing a patent application. "His voluntary act or acquiescence in the public sale and use is an abandonment of his right." *Pennock* v. *Dialogue,* 2 Pet. 1, 24 (1829) (Story, J.). A similar reluctance to allow an inventor to remove existing knowledge from public use undergirds the on-sale bar.

Nevertheless, an inventor who seeks to perfect his discovery may conduct extensive testing without losing his right to obtain a patent for his invention—even if such testing occurs in the public eye. The law has long recognized the distinction between inventions put to experimental use and products sold commercially. In 1878, we explained why patentability may turn on an inventor's use of his product.

> "It is sometimes said that an inventor acquires an undue advantage over the public by delaying to take out a patent, inasmuch as he thereby preserves the monopoly to himself for a longer period than is allowed by the policy of the law; but this cannot be said with justice when the

> delay is occasioned by a *bona fide* effort to bring his invention to perfection, or to ascertain whether it will answer the purpose intended. His monopoly only continues for the allotted period, in any event; and it is the interest of the public, as well as himself, that the invention should be perfect and properly tested, before a patent is granted for it. *Any attempt to use it for a profit, and not by way of experiment, for a longer period than two years before the application, would deprive the inventor of his right to a patent.*" *Elizabeth* v. *Pavement Co.*, 97 U. S. 126, 137 (emphasis added).

The patent laws therefore seek both to protect the public's right to retain knowledge already in the public domain and the inventor's right to control whether and when he may patent his invention. The Patent Act of 1836, 5 Stat. 117, was the first statute that expressly included an on-sale bar to the issuance of a patent. Like the earlier holding in *Pennock*, that provision precluded patentability if the invention had been placed on sale at any time before the patent application was filed. In 1839, Congress ameliorated that requirement by enacting a 2-year grace period in which the inventor could file an application. 5 Stat. 353.

In *Andrews* v. *Hovey*, 123 U. S. 267, 274 (1887), we noted that the purpose of that amendment was "to fix a period of limitation which should be certain"; it required the inventor to make sure that a patent application was filed "within two years from the completion of his invention," *ibid.* In 1939, Congress reduced the grace period from two years to one year. 53 Stat. 1212.

Petitioner correctly argues that these provisions identify an interest in providing inventors with a definite standard for determining when a patent application must be filed. A rule that makes the timeliness of an application depend on the date when an invention is "substantially complete" se-

riously undermines the interest in certainty.[11] Moreover, such a rule finds no support in the text of the statute. Thus, petitioner's argument calls into question the standard applied by the Court of Appeals, but it does not persuade us that it is necessary to engraft a reduction to practice element into the meaning of the term "invention" as used in § 102(b).

The word "invention" must refer to a concept that is complete, rather than merely one that is "substantially complete." It is true that reduction to practice ordinarily provides the best evidence that an invention is complete. But just because reduction to practice is sufficient evidence of completion, it does not follow that proof of reduction to practice is necessary in every case. Indeed, both the facts of *The Telephone Cases* and the facts of this case demonstrate that one can prove that an invention is complete and ready for patenting before it has actually been reduced to practice.[12]

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[11] The Federal Circuit has developed a multifactor, "totality of the circumstances" test to determine the trigger for the on-sale bar. See, *e. g.*, *Micro Chemical, Inc.* v. *Great Plains Chemical Co.*, 103 F. 3d 1538, 1544 (1997) (stating that, in determining whether an invention is on sale for purposes of § 102(b), "'all of the circumstances surrounding the sale or offer to sell, including the stage of development of the invention and the nature of the invention, must be considered and weighed against the policies underlying section 102(b)'"); see also *UMC Electronics Co.* v. *United States*, 816 F. 2d 647, 656 (1987) (stating the on-sale bar "does not lend itself to formulation into a set of precise requirements"). As the Federal Circuit itself has noted, this test "has been criticized as unnecessarily vague." *Seal-Flex, Inc.* v. *Athletic Track & Court Construction*, 98 F. 3d 1318, 1323, n. 2 (1996).

[12] Several of this Court's early decisions stating that an invention is not complete until it has been reduced to practice are best understood as indicating that the invention's reduction to practice demonstrated that the concept was no longer in an experimental phase. See, *e. g.*, *Seymour* v. *Osborne*, 11 Wall. 516, 552 (1871) ("Crude and imperfect experiments are not sufficient to confer a right to a patent; but in order to constitute an invention, the party must have proceeded so far as to have reduced his idea to practice, and embodied it in some distinct form"); *Clark Thread*

We conclude, therefore, that the on-sale bar applies when two conditions are satisfied before the critical date.

First, the product must be the subject of a commercial offer for sale. An inventor can both understand and control the timing of the first commercial marketing of his invention. The experimental use doctrine, for example, has not generated concerns about indefiniteness,[13] and we perceive no reason why unmanageable uncertainty should attend a rule that measures the application of the on-sale bar of § 102(b) against the date when an invention that is ready for patenting is first marketed commercially. In this case the acceptance of the purchase order prior to April 8, 1981, makes it clear that such an offer had been made, and there is no question that the sale was commercial rather than experimental in character.

Second, the invention must be ready for patenting. That condition may be satisfied in at least two ways: by proof of reduction to practice before the critical date; or by proof that prior to the critical date the inventor had prepared drawings or other descriptions of the invention that were sufficiently specific to enable a person skilled in the art to

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*Co.* v. *Willimantic Linen Co.*, 140 U. S. 481, 489 (1891) (describing how inventor continued to alter his thread winding machine until July 1858, when "he put it in visible form in the shape of a machine. . . . It is evident that the invention was not completed until the construction of the machine"); *Corona Cord Tire Co.* v. *Dovan Chemical Corp.*, 276 U. S., at 382–383 (stating that an invention did not need to be subsequently commercialized to constitute prior art after the inventor had finished his experimentation. "It was the fact that it would work with great activity as an accelerator that was the discovery, and that was all, and the necessary reduction to use is shown by instances making clear that it did so work, and was a completed discovery").

[13] See, *e. g.*, Rooklidge & Jensen, Common Sense, Simplicity and Experimental Use Negation of the Public Use and On Sale Bars to Patentability, 29 John Marshall L. Rev. 1, 29 (1995) (stating that "whether a particular activity is experimental is often clear").

practice the invention.[14] In this case the second condition of the on-sale bar is satisfied because the drawings Pfaff sent to the manufacturer before the critical date fully disclosed the invention.

The evidence in this case thus fulfills the two essential conditions of the on-sale bar. As succinctly stated by Learned Hand:

> "[I]t is a condition upon an inventor's right to a patent that he shall not exploit his discovery competitively after it is ready for patenting; he must content himself with either secrecy, or legal monopoly." *Metallizing Engineering Co.* v. *Kenyon Bearing & Auto Parts Co.*, 153 F. 2d 516, 520 (CA2 1946).

The judgment of the Court of Appeals finds support not only in the text of the statute but also in the basic policies underlying the statutory scheme, including § 102(b). When Pfaff accepted the purchase order for his new sockets prior to April 8, 1981, his invention was ready for patenting. The fact that the manufacturer was able to produce the socket using his detailed drawings and specifications demonstrates this fact. Furthermore, those sockets contained all the elements of the invention claimed in the '377 patent. Therefore, Pfaff's '377 patent is invalid because the invention had

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[14] The Solicitor General has argued that the rule governing the on-sale bar should be phrased somewhat differently. In his opinion, "if the sale or offer in question embodies the invention for which a patent is later sought, a sale or offer to sell that is primarily for commercial purposes and that occurs more than one year before the application renders the invention unpatentable. *Seal-Flex, Inc.* v. *Athletic Track and Court Constr.*, 98 F. 3d 1318, 1325 (Fed. Cir. 1996) (Bryson, J., concurring in part and concurring in the result)." Brief for United States as *Amicus Curiae* 10–11 (internal quotation marks omitted). It is true that evidence satisfying this test might be sufficient to prove that the invention was ready for patenting at the time of the sale if it is clear that no aspect of the invention was developed after the critical date. However, the possibility of additional development after the offer for sale in these circumstances counsels against adoption of the rule proposed by the Solicitor General.

been on sale for more than one year in this country before he filed his patent application. Accordingly, the judgment of the Court of Appeals is affirmed.

*It is so ordered.*

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# WRIGHT *v.* UNIVERSAL MARITIME SERVICE CORP. ET AL.

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

No. 97–889. Argued October 7, 1998—Decided November 16, 1998

Petitioner Wright, a longshoreman, was subject to a collective-bargaining agreement (CBA) and a Longshore Seniority Plan, both of which contained an arbitration clause. When respondents refused to employ him following his settlement of a claim for permanent disability benefits for job-related injuries, Wright filed this suit, alleging discrimination in violation of the Americans with Disabilities Act of 1990 (ADA). The District Court dismissed the case without prejudice because Wright had failed to pursue the arbitration procedure provided by the CBA. The Fourth Circuit affirmed.

*Held:* The CBA's general arbitration clause does not require Wright to use the arbitration procedure for alleged violation of the ADA. Pp. 75–82.

(a) The Fourth Circuit's conclusions that the CBA arbitration clause encompassed a statutory claim under the ADA and was enforceable bring into focus the tension between two lines of this Court's case law. Compare, *e. g.*, *Alexander* v. *Gardner-Denver Co.*, 415 U. S. 36, 49–51, with, *e. g.*, *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20, 26. However, it is unnecessary to resolve the question of the validity of a union-negotiated waiver of employees' statutory rights to a federal forum, since it is apparent, on the facts and arguments presented here, that no such waiver has occurred. Pp. 75–77.

(b) Petitioner's ADA claim is not subject to the presumption of arbitrability this Court has found in § 301 of the Labor Management Relations Act, 1947. That presumption does not extend beyond the reach of the principal rationale that justifies it, *i. e.*, that arbitrators are in a better position than courts to interpret the terms of a CBA. See, *e. g.*, *AT&T Technologies, Inc.* v. *Communications Workers*, 475 U. S. 643, 650. The dispute here ultimately concerns not the application or interpretation of any CBA, but the meaning of a federal statute, the ADA. Although ordinary textual analysis of a CBA may show that matters beyond the interpretation and application of contract terms are subject to arbitration, they will not be *presumed* to be so. Pp. 77–79.

(c) In order for a union to waive employees' rights to a federal judicial forum for statutory antidiscrimination claims, the agreement to arbitrate such claims must be clear and unmistakable. Cf., *e. g.*, *Metropoli-*

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*tan Edison Co.* v. *NLRB*, 460 U. S. 693, 708. The CBA's arbitration clause is very general, providing only for arbitration of "[m]atters under dispute," and the remainder of the contract contains no explicit incorporation of statutory antidiscrimination requirements. For similar reasons, there is no clear and unmistakable waiver in the Longshore Seniority Plan. This Court does not reach the question whether such a waiver would be enforceable. Pp. 79–82.

121 F. 3d 702, vacated and remanded.

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

*Ray P. McClain* argued the cause for petitioner. With him on the briefs were *Elaine R. Jones*, *Theodore M. Shaw*, *Norman J. Chachkin*, and *Charles Stephen Ralston*.

*Deputy Solicitor General Underwood* argued the cause for the United States et al. as *amici curiae* urging reversal. With her on the brief were *Solicitor General Waxman*, *Acting Assistant Attorney General Hodgkiss*, *James A. Feldman*, *C. Gregory Stewart*, *Philip B. Sklover*, *Lorraine C. Davis*, and *Robert J. Gregory*.

*Charles A. Edwards* argued the cause and filed a brief for respondents.*

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*Briefs of *amici curiae* urging reversal were filed for the Commonwealth of Massachusetts et al. by *Scott Harshbarger*, Attorney General of Massachusetts, *Richard Wayne Cole* and *Catherine C. Ziehl*, Assistant Attorneys General, *Grant Woods*, Attorney General of Arizona, *Judy Drickey-Prohow*, Assistant Attorney General, *Darrell V. McGraw*, Attorney General of West Virginia, *Mary C. Buchmelter*, Assistant Attorney General, and by the Attorneys General for their respective States as follows: *Winston Bryant* of Arkansas, *Richard Blumenthal* of Connecticut, *Alan G. Lance* of Idaho, *Thomas J. Miller* of Iowa, *Frank J. Kelley* of Michigan, *Hubert H. Humphrey III* of Minnesota, *Dennis C. Vacco* of New York, *Hardy Myers* of Oregon, *William Sorrell* of Vermont, and *Mark L. Early* of Virginia; for the American Civil Liberties Union et al. by *Louis M. Bograd*, *David S. Schwartz*, and *Steven R. Shapiro;* for the American Federation of Labor and Congress of Industrial Organizations et al. by *Laurence Gold*, *Jonathan P. Hiatt*, *James B. Coppess*, *Marsha S. Berzon*, *Thomas W. Gleason*, *Herzl S. Eisenstadt*, *James R. Watson*, and *Armand Derfner;* for the Lawyers' Committee for Civil Rights under Law et al. by *Paul W. Mollica*, *Thomas R. Meites*, *Barbara R. Arnwine*, *Thomas*

JUSTICE SCALIA delivered the opinion of the Court.

This case presents the question whether a general arbitration clause in a collective-bargaining agreement (CBA) requires an employee to use the arbitration procedure for an alleged violation of the Americans with Disabilities Act of 1990 (ADA), 104 Stat. 327, 42 U. S. C. § 12101 *et seq.*

## I

In 1970, petitioner Ceasar Wright began working as a longshoreman in Charleston, South Carolina. He was a member of Local 1422 of the International Longshoremen's Association, AFL–CIO (Union), which uses a hiring hall to supply workers to several stevedore companies represented by the South Carolina Stevedores Association (SCSA). Clause 15(B) of the CBA between the Union and the SCSA provides in part as follows: "Matters under dispute which cannot be promptly settled between the Local and an individual Employer shall, no later than 48 hours after such discussion, be referred in writing covering the entire grievance to a Port Grievance Committee . . . ." App. 43a. If the Port Grievance Committee, which is evenly divided between representatives of labor and management, cannot reach an

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*J. Henderson*, *Richard T. Seymour*, *Teresa A. Ferrante*, *Cathy Ventrell-Monsees*, and *Sally Dunaway;* for the National Academy of Arbitrators by *David E. Feller;* and for the National Employment Lawyers Association et al. by *Cliff Palefsky* and *Paula A. Brantner.*

Briefs of *amici curiae* urging affirmance were filed for the Equal Employment Advisory Council et al. by *Robert E. Williams*, *Ann Elizabeth Reesman*, and *Daniel V. Yager;* for the National Association of Manufacturers by *Clifford M. Sloan*, *Samuel D. Walker*, *Jan S. Amundson*, and *Quentin Riegel;* and for the National Association of Waterfront Employers by *Charles T. Carroll, Jr.*, and *F. Edwin Froelich.*

Briefs of *amici curiae* were filed for the Chamber of Commerce of the United States by *Steven B. Berlin*, *Mark A. de Bernardo*, *Garry G. Mathiason*, *Stephen A. Bokat*, *Robin S. Conrad*, and *Sussan Mahallati Kysela;* and for the Securities Industry Association by *Michael Delikat*, *Gary Siniscalco*, *Lisa K. McClelland*, and *Stuart J. Kaswell.*

agreement within five days of receiving the complaint, then the dispute must be referred to a District Grievance Committee, which is also evenly divided between the two sides. The CBA provides that a majority decision of the District Grievance Committee "shall be final and binding." *Id.*, at 44a. If the District Grievance Committee cannot reach a majority decision within 72 hours after meeting, then the committee must employ a professional arbitrator.

Clause 15(F) of the CBA provides as follows:

> "The Union agrees that this Agreement is intended to cover all matters affecting wages, hours, and other terms and conditions of employment and that during the term of this Agreement the Employers will not be required to negotiate on any further matters affecting these or other subjects not specifically set forth in this Agreement. Anything not contained in this Agreement shall not be construed as being part of this Agreement. All past port practices being observed may be reduced to writing in each port." *Id.*, at 45a–46a.

Finally, Clause 17 of the CBA states: "It is the intention and purpose of all parties hereto that no provision or part of this Agreement shall be violative of any Federal or State Law." *Id.*, at 47a.

Wright was also subject to the Longshore Seniority Plan, which contained its own grievance provision, reading as follows: "Any dispute concerning or arising out of the terms and/or conditions of this Agreement, or dispute involving the interpretation or application of this Agreement, or dispute arising out of any rule adopted for its implementation, shall be referred to the Seniority Board." *Id.*, at 48a. The Seniority Board is equally divided between labor and management representatives. If the board reaches agreement by majority vote, then that determination is final and binding. If the board cannot resolve the dispute, then the Union and

the SCSA each choose a person, and this "Committee of two" makes a final determination.

On February 18, 1992, while Wright was working for respondent Stevens Shipping and Terminal Company (Stevens), he injured his right heel and his back. He sought compensation from Stevens for permanent disability under the Longshore and Harbor Workers' Compensation Act, 44 Stat. 1424, as amended, 33 U. S. C. § 901 *et seq.*, and ultimately settled the claim for $250,000 and $10,000 in attorney's fees. Wright was also awarded Social Security disability benefits.

In January 1995, Wright returned to the Union hiring hall and asked to be referred for work. (At some point he obtained a written note from his doctor approving such activity.) Between January 2 and January 11, Wright worked for four stevedoring companies, none of which complained about his performance. When, however, the stevedoring companies realized that Wright had previously settled a claim for permanent disability, they informed the Union that they would not accept Wright for employment, because a person certified as permanently disabled (which they regarded Wright to be) is not qualified to perform longshore work under the CBA. The Union responded that the employers had misconstrued the CBA, suggested that the ADA entitled Wright to return to work if he could perform his duties, and asserted that refusing Wright employment would constitute a "lock-out" in violation of the CBA.

When Wright found out that the stevedoring companies would no longer accept him for employment, he contacted the Union to ask how he could get back to work. Wright claims that instead of suggesting the filing of a grievance, the Union told him to obtain counsel and file a claim under the ADA. Wright hired an attorney and eventually filed charges of discrimination with the Equal Employment Opportunity Commission (EEOC) and the South Carolina State Human Affairs Commission, alleging that the stevedoring

companies and the SCSA had violated the ADA by refusing him work. In October 1995, Wright received a right-to-sue letter from the EEOC.

In January 1996, Wright filed a complaint against the SCSA and six individual stevedoring companies in the United States District Court for the District of South Carolina. Respondents' answer asserted various affirmative defenses, including Wright's failure to exhaust his remedies under the CBA and the Seniority Plan. After discovery, respondents moved for summary judgment and Wright moved for partial summary judgment with respect to some of respondents' defenses. A Magistrate Judge recommended that the District Court dismiss the case without prejudice because Wright had failed to pursue the grievance procedure provided by the CBA. The District Court adopted the report and recommendation and subsequently rejected Wright's motion for reconsideration. The United States Court of Appeals for the Fourth Circuit affirmed, see No. 96–2850 (July 29, 1997), judgt. order reported at 121 F. 3d 702, relying upon its earlier decision in *Austin* v. *Owens-Brockway Glass Container, Inc.*, 78 F. 3d 875, cert. denied, 519 U. S. 980 (1996), which in turn had relied upon our decision in *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20 (1991). We granted certiorari, 522 U. S. 1146 (1998).

## II

In this case, the Fourth Circuit concluded that the general arbitration provision in the CBA governing Wright's employment was sufficiently broad to encompass a statutory claim arising under the ADA, and that such a provision was enforceable. The latter conclusion brings into question two lines of our case law. The first is represented by *Alexander* v. *Gardner-Denver Co.*, 415 U. S. 36 (1974), which held that an employee does not forfeit his right to a judicial forum for claimed discriminatory discharge in violation of Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42

U. S. C. § 2000e *et seq.*, if "he first pursues his grievance to final arbitration under the nondiscrimination clause of a collective-bargaining agreement." 415 U. S., at 49. In rejecting the argument that the doctrine of election of remedies barred the Title VII lawsuit, we reasoned that a grievance is designed to vindicate a "contractual right" under a CBA, while a lawsuit under Title VII asserts "independent statutory rights accorded by Congress." *Id.*, at 49–50. The statutory cause of action was not waived by the union's agreement to the arbitration provision of the CBA, since "there can be no prospective waiver of an employee's rights under Title VII." *Id.*, at 51. We have followed the holding of *Gardner-Denver* in deciding the effect of CBA arbitration upon employee claims under other statutes. See *McDonald* v. *West Branch*, 466 U. S. 284 (1984) (claim under Rev. Stat. § 1979, 42 U. S. C. § 1983); *Barrentine* v. *Arkansas-Best Freight System, Inc.*, 450 U. S. 728 (1981) (claim under Fair Labor Standards Act of 1938, 29 U. S. C. § 201 *et seq.*).

The second line of cases implicated here is represented by *Gilmer* v. *Interstate/Johnson Lane Corp.*, *supra*, which held that a claim brought under the Age Discrimination in Employment Act of 1967 (ADEA), 81 Stat. 602, as amended, 29 U. S. C. § 621 *et seq.*, could be subject to compulsory arbitration pursuant to an arbitration provision in a securities registration form. Relying upon the federal policy favoring arbitration embodied in the Federal Arbitration Act (FAA), 9 U. S. C. § 1 *et seq.*, we said that "statutory claims may be the subject of an arbitration agreement, enforceable pursuant to the FAA." 500 U. S., at 26 (citing *Rodriguez de Quijas* v. *Shearson/American Express, Inc.*, 490 U. S. 477 (1989); *Shearson/American Express Inc.* v. *McMahon*, 482 U. S. 220 (1987); *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614 (1985)).

There is obviously some tension between these two lines of cases. Whereas *Gardner-Denver* stated that "an employee's

rights under Title VII are not susceptible of prospective waiver," 415 U. S., at 51–52, *Gilmer* held that the right to a federal judicial forum for an ADEA claim could be waived. Petitioner and the United States as *amicus* would have us reconcile the lines of authority by maintaining that federal forum rights cannot be waived in union-negotiated CBAs even if they can be waived in individually executed contracts—a distinction that assuredly finds support in the text of *Gilmer*, see 500 U. S., at 26, 35. Respondents and their *amici*, on the other hand, contend that the real difference between *Gardner-Denver* and *Gilmer* is the radical change, over two decades, in the Court's receptivity to arbitration, leading *Gilmer* to affirm that "questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration," 500 U. S., at 26 (internal quotation marks and citation omitted); *Gilmer*, they argue, has sufficiently undermined *Gardner-Denver* that a union *can* waive employees' rights to a judicial forum. Although, as will appear, we find *Gardner-Denver* and *Gilmer* relevant for various purposes to the case before us, we find it unnecessary to resolve the question of the validity of a union-negotiated waiver, since it is apparent to us, on the facts and arguments presented here, that no such waiver has occurred.

## III

In asserting the existence of an agreement to arbitrate the ADA claim, respondents rely upon the presumption of arbitrability this Court has found in § 301 of the Labor Management Relations Act, 1947 (LMRA), 61 Stat. 156, 29 U. S. C. § 185.[1] See generally *Steelworkers* v. *Enterprise*

[1] We have also discerned a presumption of arbitrability under the FAA, 9 U. S. C. § 1 *et seq.* See *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614, 626 (1985). Petitioner argued that the FAA

*Wheel & Car Corp.*, 363 U. S. 593 (1960); *Steelworkers* v. *American Mfg. Co.*, 363 U. S. 564 (1960); *Steelworkers* v. *Warrior & Gulf Nav. Co.*, 363 U. S. 574 (1960). In collective-bargaining agreements, we have said, "there is a presumption of arbitrability in the sense that '[a]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.'" *AT&T Technologies, Inc.* v. *Communications Workers*, 475 U. S. 643, 650 (1986) (quoting *Warrior & Gulf, supra,* at 582–583).

That presumption, however, does not extend beyond the reach of the principal rationale that justifies it, which is that arbitrators are in a better position than courts *to interpret the terms of a CBA.* See *AT&T Technologies, supra,* at 650; *Warrior & Gulf, supra,* at 581–582. This rationale finds support in the very text of the LMRA, which announces that "[f]inal adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising *over the application or interpretation of an existing collective-bargaining agreement.*" 29 U. S. C. § 173(d) (emphasis added). The dispute in the present case, however, ultimately concerns not the application or

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does not apply to this case, see Brief for Petitioner 43–44, and asserted that respondents "have not argued at any stage of this case that the F. A. A. applies," *id.*, at 43. Respondents did not dispute the latter assertion, nor did they argue the applicability of the FAA before us; rather, they contended that it makes no difference whether the FAA applies, since the FAA presumption and the LMRA presumption are the same, see Brief for Respondents 12; Tr. of Oral Arg. 42–43. Finally, the Fourth Circuit, while it cited an FAA case, *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U. S. 1, 24–25 (1983), did not explicitly rely upon the FAA—presumably because it has held elsewhere that the FAA does not apply to CBAs, see *Austin* v. *Owens-Brockway Glass Container, Inc.*, 78 F. 3d 875, 879 (CA4), cert. denied, 519 U. S. 980 (1996). In these circumstances, we decline to consider the applicability of the FAA to the present case.

interpretation of any CBA, but the meaning of a federal statute. The cause of action Wright asserts arises not out of contract, but out of the ADA, and is distinct from any right conferred by the collective-bargaining agreement. See *Gilmer*, *supra*, at 34; *Barrentine*, 450 U. S., at 737; *Gardner-Denver*, *supra*, at 49–50. To be sure, respondents argue that Wright is not qualified for his position as the CBA requires, but even if that were true he would *still* prevail if the refusal to hire violated the ADA.

Nor is the statutory (as opposed to contractual) focus of the claim altered by the fact that Clause 17 of the CBA recites it to be "the intention and purpose of all parties hereto that no provision or part of this Agreement shall be violative of any Federal or State Law." App. 47a. As we discuss below in Part IV, this does not incorporate the ADA by reference. Even if it did so, however—thereby creating a contractual right that is coextensive with the federal statutory right—the ultimate question for the arbitrator would be not what the parties have agreed to, but what federal law requires; and that is not a question which should be *presumed* to be included within the arbitration requirement. Application of that principle is unaffected by the fact that the CBA in this case, unlike the one in *Gardner-Denver*, does not expressly limit the arbitrator to interpreting and applying the contract. The *presumption* only extends that far, whether or not the text of the agreement is similarly limited. It may well be that ordinary textual analysis of a CBA will show that matters which go beyond the interpretation and application of contract terms are subject to arbitration; but they will not be *presumed* to be so.

## IV

Not only is petitioner's statutory claim not subject to a presumption of arbitrability; we think any CBA requirement to arbitrate it must be particularly clear. In *Metropolitan Edison Co.* v. *NLRB*, 460 U. S. 693 (1983), we stated that a

union could waive its officers' statutory right under § 8(a)(3) of the National Labor Relations Act, 29 U. S. C. § 158(a)(3), to be free of antiunion discrimination, but we held that such a waiver must be clear and unmistakable. "[W]e will not infer from a general contractual provision that the parties intended to waive a statutorily protected right unless the undertaking is 'explicitly stated.' More succinctly, the waiver must be clear and unmistakable." 460 U. S., at 708; see also *Livadas* v. *Bradshaw*, 512 U. S. 107, 125 (1994) (dictum); *Lingle* v. *Norge Div. of Magic Chef, Inc.*, 486 U. S. 399, 409, n. 9 (1988) (dictum); cf. *Mastro Plastics Corp.* v. *NLRB*, 350 U. S. 270, 283 (1956).

We think the same standard applicable to a union-negotiated waiver of employees' statutory right to a judicial forum for claims of employment discrimination. Although that is not a substantive right, see *Gilmer*, 500 U. S., at 26, and whether or not *Gardner-Denver*'s seemingly absolute prohibition of union waiver of employees' federal forum rights survives *Gilmer, Gardner-Denver* at least stands for the proposition that the right to a federal judicial forum is of sufficient importance to be protected against less-than-explicit union waiver in a CBA. The CBA in this case does not meet that standard. Its arbitration clause is very general, providing for arbitration of "[m]atters under dispute," App. 43a—which could be understood to mean matters in dispute under the contract. And the remainder of the contract contains no explicit incorporation of statutory antidiscrimination requirements. (Indeed, it does not even contain, as did the CBAs in *Austin* and *Gardner-Denver*, its own specific antidiscrimination provision.) The Fourth Circuit relied upon the fact that the equivalently broad arbitration clause in *Gilmer*—applying to "any dispute, claim or controversy"—was held to embrace federal statutory claims. But *Gilmer* involved an individual's waiver of his own rights, rather than a union's waiver of the rights of represented em-

ployees—and hence the "clear and unmistakable" standard was not applicable.

Respondents rely upon Clause 15(F) of the CBA, which states that "this Agreement is intended to cover all matters affecting wages, hours, and other terms and conditions of employment." App. 45a–46a. But even if this could, in isolation, be considered a clear and unmistakable incorporation of employment-discrimination laws (which is doubtful), it is surely deprived of that effect by the provision, later in the same paragraph, that "[a]nything not contained in this Agreement shall not be construed as being part of this Agreement." *Id.*, at 46a. Respondents also rely upon Clause 17 of the CBA, which states that "[i]t is the intention and purpose of all parties hereto that no provision or part of this Agreement shall be violative of any Federal or State Law." *Id.*, at 47a. They argue that this requires the arbitrator to "apply legal definitions derived from the ADA" in determining whether Wright is "qualified" for employment within the meaning of the CBA. Brief for Respondents 39. Perhaps so, but that is not the same as making compliance with the ADA a contractual commitment that would be subject to the arbitration clause. This becomes crystal clear when one contrasts Clause 17 with the provision of the CBA which states that "[t]he requirements of the Occupations *[sic]* Safety and Health Administration shall be binding on both Parties." App. 46a. (Under respondents' interpretation of Clause 17, this OSHA provision would be superfluous.) Clause 17 seems to us nothing more than a recitation of the canon of construction which would in any event have been applied to the CBA—that an agreement should be interpreted in such fashion as to preserve, rather than destroy, its validity *(ut res magis valeat quam pereat)*.

Finally, we do not find a clear and unmistakable waiver in the Longshore Seniority Plan. Like the CBA itself, the plan contains no antidiscrimination provision; and it specifi-

cally limits its grievance procedure to disputes related to the agreement.[2]

* * *

We hold that the collective-bargaining agreement in this case does not contain a clear and unmistakable waiver of the covered employees' rights to a judicial forum for federal claims of employment discrimination. We do not reach the question whether such a waiver would be enforceable. The judgment of the Fourth Circuit is vacated, and the case is remanded for further proceedings consistent with this opinion.

*It is so ordered.*

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[2] Respondents and some of their *amici* rely upon the provision in the ADA which states that "[w]here appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including . . . arbitration, is encouraged to resolve disputes arising under this chapter." 42 U. S. C. § 12212. They rely upon it principally in connection with the question whether, under *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20 (1991), a predispute agreement in a CBA to arbitrate employment-discrimination claims is enforceable—a question we do not reach. Our conclusion that a union waiver of employee rights to a federal judicial forum for employment-discrimination claims must be clear and unmistakable means that, absent a clear waiver, it is not "appropriate," within the meaning of this provision of the ADA, to find an agreement to arbitrate. We take no position, however, on the effect of this provision in cases where a CBA clearly encompasses employment-discrimination claims, or in areas outside collective bargaining.

Syllabus

# MINNESOTA *v.* CARTER

## CERTIORARI TO THE SUPREME COURT OF MINNESOTA

No. 97–1147. Argued October 6, 1998—Decided December 1, 1998*

A police officer looked in an apartment window through a gap in the closed blind and observed respondents Carter and Johns and the apartment's lessee bagging cocaine. After respondents were arrested, they moved to suppress, *inter alia*, cocaine and other evidence obtained from the apartment and their car, arguing that the officer's initial observation was an unreasonable search in violation of the Fourth Amendment. Respondents were convicted of state drug offenses. The Minnesota trial court held that since they were not overnight social guests, they were not entitled to Fourth Amendment protection, and that the officer's observation was not a search under the Amendment. The State Court of Appeals held that Carter did not have "standing" to object to the officer's actions because the evidence indicated that he used the apartment for a business purpose—to package drugs—and, separately, affirmed Johns' conviction without addressing the "standing" issue. In reversing, the State Supreme Court held that respondents had "standing" to claim Fourth Amendment protection because they had a legitimate expectation of privacy in the invaded place, and that the officer's observation constituted an unreasonable search.

*Held:* Any search that may have occurred did not violate respondents' Fourth Amendment rights. The state courts' analysis of respondents' expectation of privacy under the rubric of "standing" doctrine was expressly rejected in *Rakas* v. *Illinois*, 439 U. S. 128, 140. Rather, to claim Fourth Amendment protection, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable. *Id.*, at 143–144, n. 12. The Fourth Amendment protects persons against unreasonable searches of "their persons [and] houses," and thus indicates that it is a personal right that must be invoked by an individual. But the extent to which the Amendment protects people may depend upon where those people are. While an overnight guest may have a legitimate expectation of privacy in someone else's home, see *Minnesota* v. *Olson*, 495 U. S. 91, 98–99, one who is merely present with the consent of the householder may not, see *Jones* v. *United States*, 362 U. S. 257, 259. And an expecta-

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*Together with *Minnesota* v. *Johns*, also on certiorari to the same court (see this Court's Rule 12.4).

Syllabus

tion of privacy in commercial property is different from, and less than, a similar expectation in a home. *New York* v. *Burger*, 482 U. S. 691, 700. Here, the purely commercial nature of the transaction, the relatively short period of time that respondents were on the premises, and the lack of any previous connection between them and the householder all lead to the conclusion that their situation is closer to that of one simply permitted on the premises. Any search which may have occurred did not violate their Fourth Amendment rights. Because respondents had no legitimate expectation of privacy, the Court need not decide whether the officer's observation constituted a "search." Pp. 87–91.

569 N. W. 2d 169 (first judgment) and 180 (second judgment), reversed and remanded.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. SCALIA, J., filed a concurring opinion, in which THOMAS, J., joined, *post*, p. 91. KENNEDY, J., filed a concurring opinion, *post*, p. 99. BREYER, J., filed an opinion concurring in the judgment, *post*, p. 103. GINSBURG, J., filed a dissenting opinion, in which STEVENS and SOUTER, JJ., joined, *post*, p. 106.

*James C. Backstrom* argued the cause for petitioner. With him on the briefs were *Hubert H. Humphrey III*, Attorney General of Minnesota, and *Phillip D. Prokopowicz*.

*Jeffrey A. Lamken* 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 Keeney*, and *Deputy Solicitor General Dreeben*.

*Bradford Colbert* argued the cause for respondents. With him on the brief were *John M. Stuart*, *Lawrence Hammerling*, *Marie L. Wolf*, and *Scott G. Swanson*.†

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†A brief of *amici curiae* urging reversal was filed for the State of Maryland et al. by *J. Joseph Curran, Jr.*, Attorney General of Maryland, *Annabelle L. Lisic*, Assistant Attorney General, *Alan G. Lance*, Attorney General of Idaho, and *Myrna A. I. Stahman*, Deputy Attorney General, joined by the Attorneys General for their respective States as follows: *Bill Pryor* of Alabama, *Bruce M. Botelho* of Alaska, *Grant Woods* of Arizona, *Daniel E. Lungren* of California, *M. Jane Brady* of Delaware, *Thurbert E. Baker* of Georgia, *Margery S. Bronster* of Hawaii, *Jeffrey A. Modisett* of Indiana,

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

Respondents and the lessee of an apartment were sitting in one of its rooms, bagging cocaine. While so engaged they were observed by a police officer, who looked through a drawn window blind. The Supreme Court of Minnesota held that the officer's viewing was a search that violated respondents' Fourth Amendment rights. We hold that no such violation occurred.

James Thielen, a police officer in the Twin Cities' suburb of Eagan, Minnesota, went to an apartment building to investigate a tip from a confidential informant. The informant said that he had walked by the window of a ground-floor apartment and had seen people putting a white powder into bags. The officer looked in the same window through a gap in the closed blind and observed the bagging operation for several minutes. He then notified headquarters, which began preparing affidavits for a search warrant while he returned to the apartment building. When two men left the building in a previously identified Cadillac, the police stopped the car. Inside were respondents Carter and Johns. As the police opened the door of the car to let Johns out, they observed a black, zippered pouch and a handgun, later determined to be loaded, on the vehicle's floor. Carter and Johns were arrested, and a later police search of the vehicle the next day discovered pagers, a scale, and 47 grams of cocaine in plastic sandwich bags.

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*Carla J. Stovall* of Kansas, *Richard P. Ieyoub* of Louisiana, *Scott Harshbarger* of Massachusetts, *Frank J. Kelley* of Michigan, *Joseph P. Mazurek* of Montana, *Don Stenberg* of Nebraska, *Frankie Sue Del Papa* of Nevada, *Peter Verniero* of New Jersey, *Dennis C. Vacco* of New York, *Heidi Heitkamp* of North Dakota, *W. A. Drew Edmondson* of Oklahoma, *Jeffrey B. Pine* of Rhode Island, *Charles M. Condon* of South Carolina, *Jan Graham* of Utah, *William H. Sorrell* of Vermont, and *Mark L. Earley* of Virginia.

*Tracey Maclin*, *Steven R. Shapiro*, and *Lisa B. Kemler* filed a brief for the American Civil Liberties Union et al. as *amici curiae* urging affirmance.

After seizing the car, the police returned to apartment 103 and arrested the occupant, Kimberly Thompson, who is not a party to this appeal. A search of the apartment pursuant to a warrant revealed cocaine residue on the kitchen table and plastic baggies similar to those found in the Cadillac. Thielen identified Carter, Johns, and Thompson as the three people he had observed placing the powder into baggies. The police later learned that while Thompson was the lessee of the apartment, Carter and Johns lived in Chicago and had come to the apartment for the sole purpose of packaging the cocaine. Carter and Johns had never been to the apartment before and were only in the apartment for approximately 2½ hours. In return for the use of the apartment, Carter and Johns had given Thompson one-eighth of an ounce of the cocaine.

Carter and Johns were charged with conspiracy to commit a controlled substance crime in the first degree and aiding and abetting in a controlled substance crime in the first degree, in violation of Minn. Stat. §§ 152.021, subds. 1(1), 3(a), 609.05 (1996). They moved to suppress all evidence obtained from the apartment and the Cadillac, as well as to suppress several postarrest incriminating statements they had made. They argued that Thielen's initial observation of their drug packaging activities was an unreasonable search in violation of the Fourth Amendment and that all evidence obtained as a result of this unreasonable search was inadmissible as fruit of the poisonous tree. The Minnesota trial court held that since, unlike the defendant in *Minnesota* v. *Olson*, 495 U. S. 91 (1990), Carter and Johns were not overnight social guests but temporary out-of-state visitors, they were not entitled to claim the protection of the Fourth Amendment against the government intrusion into the apartment. The trial court also concluded that Thielen's observation was not a search within the meaning of the Fourth Amendment. After a trial, Carter and Johns were each convicted of both offenses. The Minnesota Court of Appeals

held that respondent Carter did not have "standing" to object to Thielen's actions because his claim that he was predominantly a social guest was "inconsistent with the only evidence concerning his stay in the apartment, which indicates that he used it for a business purpose—to package drugs." 545 N. W. 2d 695, 698 (1996). In a separate appeal, the Court of Appeals also affirmed Johns' conviction, without addressing what it termed the "standing" issue. *State* v. *Johns*, No. C9–95–1765 (June 11, 1996), App. D–1, D–3 (unpublished).

A divided Minnesota Supreme Court reversed, holding that respondents had "standing" to claim the protection of the Fourth Amendment because they had "'a legitimate expectation of privacy in the invaded place.'" 569 N. W. 2d 169, 174 (1997) (quoting *Rakas* v. *Illinois*, 439 U. S. 128, 143 (1978)). The court noted that even though "society does not recognize as valuable the task of bagging cocaine, we conclude that society does recognize as valuable the right of property owners or leaseholders to invite persons into the privacy of their homes to conduct a common task, be it legal or illegal activity. We, therefore, hold that [respondents] had standing to bring [their] motion to suppress the evidence gathered as a result of Thielen's observations." 569 N. W. 2d, at 176; see also 569 N. W. 2d 180, 181 (1997). Based upon its conclusion that respondents had "standing" to raise their Fourth Amendment claims, the court went on to hold that Thielen's observation constituted a search of the apartment under the Fourth Amendment, and that the search was unreasonable. *Id.*, at 176–179. We granted certiorari, 523 U. S. 1003 (1998), and now reverse.

The Minnesota courts analyzed whether respondents had a legitimate expectation of privacy under the rubric of "standing" doctrine, an analysis that this Court expressly rejected 20 years ago in *Rakas*. 439 U. S., at 139–140. In that case, we held that automobile passengers could not assert the protection of the Fourth Amendment against the

seizure of incriminating evidence from a vehicle where they owned neither the vehicle nor the evidence. *Ibid.* Central to our analysis was the idea that in determining whether a defendant is able to show the violation of his (and not someone else's) Fourth Amendment rights, the "definition of those rights is more properly placed within the purview of substantive Fourth Amendment law than within that of standing." *Id.*, at 140. Thus, we held that in order to claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable; *i. e.*, one that has "a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society." *Id.*, at 143–144, and n. 12. See also *Smith* v. *Maryland*, 442 U. S. 735, 740–741 (1979).

The Fourth Amendment guarantees: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The Amendment protects persons against unreasonable searches of "their persons [and] houses" and thus indicates that the Fourth Amendment is a personal right that must be invoked by an individual. See *Katz* v. *United States*, 389 U. S. 347, 351 (1967) ("[T]he Fourth Amendment protects people, not places"). But the extent to which the Fourth Amendment protects people may depend upon where those people are. We have held that "capacity to claim the protection of the Fourth Amendment depends . . . upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place." *Rakas*, *supra*, at 143. See also *Rawlings* v. *Kentucky*, 448 U. S. 98, 106 (1980).

The text of the Amendment suggests that its protections extend only to people in "their" houses. But we have held that in some circumstances a person may have a legitimate expectation of privacy in the house of someone else. In *Minnesota* v. *Olson*, 495 U. S. 91 (1990), for example, we decided that an overnight guest in a house had the sort of expectation of privacy that the Fourth Amendment protects. We said:

> "To hold that an overnight guest has a legitimate expectation of privacy in his host's home merely recognizes the every day expectations of privacy that we all share. Staying overnight in another's home is a longstanding social custom that serves functions recognized as valuable by society. We stay in others' homes when we travel to a strange city for business or pleasure, when we visit our parents, children, or more distant relatives out of town, when we are in between jobs or homes, or when we house-sit for a friend. . . .
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> "From the overnight guest's perspective, he seeks shelter in another's home precisely because it provides him with privacy, a place where he and his possessions will not be disturbed by anyone but his host and those his host allows inside. We are at our most vulnerable when we are asleep because we cannot monitor our own safety or the security of our belongings. It is for this reason that, although we may spend all day in public places, when we cannot sleep in our own home we seek out another private place to sleep, whether it be a hotel room, or the home of a friend." *Id.*, at 98–99.

In *Jones* v. *United States*, 362 U. S. 257, 259 (1960), the defendant seeking to exclude evidence resulting from a search of an apartment had been given the use of the apartment by a friend. He had clothing in the apartment, had slept there "'maybe a night,'" and at the time was the sole occupant of the apartment. But while the holding of *Jones*—that a search of the apartment violated the defend-

ant's Fourth Amendment rights—is still valid, its statement that "anyone legitimately on the premises where a search occurs may challenge its legality," *id.*, at 267, was expressly repudiated in *Rakas* v. *Illinois*, 439 U. S. 128 (1978). Thus, an overnight guest in a home may claim the protection of the Fourth Amendment, but one who is merely present with the consent of the householder may not.

Respondents here were obviously not overnight guests, but were essentially present for a business transaction and were only in the home a matter of hours. There is no suggestion that they had a previous relationship with Thompson, or that there was any other purpose to their visit. Nor was there anything similar to the overnight guest relationship in *Olson* to suggest a degree of acceptance into the household.* While the apartment was a dwelling place for Thompson, it was for these respondents simply a place to do business.

Property used for commercial purposes is treated differently for Fourth Amendment purposes from residential property. "An expectation of privacy in commercial premises, however, is different from, and indeed less than, a similar expectation in an individual's home." *New York* v. *Burger*, 482 U. S. 691, 700 (1987). And while it was a "home" in which respondents were present, it was not their home. Similarly, the Court has held that in some circumstances a worker can claim Fourth Amendment protection over his

*JUSTICE GINSBURG's dissent, *post*, at 108–109, would render the operative language in *Minnesota* v. *Olson*, 495 U. S. 91 (1990), almost entirely superfluous. There, we explained the justification for extending Fourth Amendment protection to the overnight visitor: "Staying overnight in another's home is a longstanding social custom that serves functions recognized as valuable by society. . . . We are at our most vulnerable when we are asleep because we cannot monitor our own safety or the security of our belongings." *Id.*, at 98–99. If any short-term business visit by a stranger entitles the visitor to share the Fourth Amendment protection of the leaseholder's home, the Court's explanation of its holding in *Olson* was quite unnecessary.

own workplace. See, *e. g.*, *O'Connor* v. *Ortega*, 480 U. S. 709 (1987). But there is no indication that respondents in this case had nearly as significant a connection to Thompson's apartment as the worker in *O'Connor* had to his own private office. See *id.*, at 716–717.

If we regard the overnight guest in *Minnesota* v. *Olson* as typifying those who may claim the protection of the Fourth Amendment in the home of another, and one merely "legitimately on the premises" as typifying those who may not do so, the present case is obviously somewhere in between. But the purely commercial nature of the transaction engaged in here, the relatively short period of time on the premises, and the lack of any previous connection between respondents and the householder, all lead us to conclude that respondents' situation is closer to that of one simply permitted on the premises. We therefore hold that any search which may have occurred did not violate their Fourth Amendment rights.

Because we conclude that respondents had no legitimate expectation of privacy in the apartment, we need not decide whether the police officer's observation constituted a "search." The judgments of the Supreme Court of Minnesota are accordingly reversed, and the cause is remanded for proceedings not inconsistent with this opinion.

*It is so ordered.*

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, concurring.

I join the opinion of the Court because I believe it accurately applies our recent case law, including *Minnesota* v. *Olson*, 495 U. S. 91 (1990). I write separately to express my view that that case law—like the submissions of the parties in this case—gives short shrift to the text of the Fourth Amendment, and to the well and long understood meaning of that text. Specifically, it leaps to apply the fuzzy standard of "legitimate expectation of privacy"—a consideration that

is often relevant to whether a search or seizure covered by the Fourth Amendment is "unreasonable"—to the threshold question whether a search or seizure covered by the Fourth Amendment *has occurred.* If that latter question is addressed first and analyzed under the text of the Constitution as traditionally understood, the present case is not remotely difficult.

The Fourth Amendment protects "[t]he right of the people to be secure in *their* persons, houses, papers, and effects, against unreasonable searches and seizures . . . ." U. S. Const., Amdt. 4 (emphasis added). It must be acknowledged that the phrase "their . . . houses" in this provision is, in isolation, ambiguous. It could mean "their respective houses," so that the protection extends to each person only in his *own* house. But it could also mean "their respective and each other's houses," so that each person would be protected even when visiting the house of someone else. As today's opinion for the Court suggests, however, *ante,* at 88–90, it is not linguistically possible to give the provision the latter, expansive interpretation with respect to "houses" without giving it the same interpretation with respect to the nouns that are parallel to "houses"—"persons, . . . papers, and effects"—which would give me a constitutional right not to have your person unreasonably searched. This is so absurd that it has to my knowledge never been contemplated. The obvious meaning of the provision is that *each* person has the right to be secure against unreasonable searches and seizures in *his own* person, house, papers, and effects.

The founding-era materials that I have examined confirm that this was the understood meaning. (Strangely, these materials went unmentioned by the State and its *amici*—unmentioned even in the State's reply brief, even though respondents had thrown down the gauntlet: "In briefs totaling over 100 pages, the State of Minnesota, the amici 26 attorneys general, and the Solicitor General of the United States of America have not mentioned one word about the history

and purposes of the Fourth Amendment or the intent of the framers of that amendment." Brief for Respondents 12, n. 4.) Like most of the provisions of the Bill of Rights, the Fourth Amendment was derived from provisions already existing in state constitutions. Of the four of those provisions that contained language similar to that of the Fourth Amendment,[1] two used the same ambiguous "their" terminology. See Pa. Const., Art. X (1776) ("That the people have a right to hold themselves, their houses, papers, and possessions free from search and seizure . . ."); Vt. Const., ch. I, § XI (1777) ("That the people have a right to hold themselves, their houses, papers, and possessions free from search or seizure . . ."). The other two, however, avoided the ambiguity by using the singular instead of the plural. See Mass. Const., pt. I, Art. XIV (1780) ("Every subject has a right to be secure from all unreasonable searches, and seizures of his person, his houses, his papers, and all his possessions"); N. H. Const., § XIX (1784) ("Every subject hath a right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions"). The New York Convention that ratified the Constitution proposed an amendment that would have given every freeman "a right to be secure from all unreasonable searches and seizures of *his* person *his* papers or *his* property," 4 B. Schwartz, The Roots of the Bill of Rights 913 (1980) (reproducing New York proposed amendments, 1778) (emphases added), and the Declaration of Rights that the North Carolina Convention demanded prior to its ratification contained a similar provision protecting a freeman's right against "unreasonable searches and seizures of *his* person, *his* papers and property," *id.*, at 968 (reproducing North Carolina proposed Declaration of Rights, 1778) (emphases added). There is no indication anyone be-

[1] Four others contained provisions proscribing general warrants, but unspecific as to the objects of the protection. See Va. Const. § 10 (1776); Del. Const., Art. I, § 6 (1776); Md. Const., Art. XXIII (1776); N. C. Const., Art. XI (1776).

lieved that the Massachusetts, New Hampshire, New York, and North Carolina texts, by using the word "his" rather than "their," narrowed the protections contained in the Pennsylvania and Vermont Constitutions.

That "their . . . houses" was understood to mean "their respective houses" would have been clear to anyone who knew the English and early American law of arrest and trespass that underlay the Fourth Amendment. The people's protection against unreasonable search and seizure in their "houses" was drawn from the English common-law maxim, "A man's home is *his* castle." As far back as *Semayne's Case* of 1604, the leading English case for that proposition (and a case cited by Coke in his discussion of the proposition that Magna Carta outlawed general warrants based on mere surmise, 4 E. Coke, Institutes 176–177 (1797)), the King's Bench proclaimed that "the house of any one is not a castle or privilege but for himself, and shall not extend to protect any person who flies to his house." 5 Co. Rep. 91a, 93a, 77 Eng. Rep. 194, 198 (K. B.). Thus Cooley, in discussing Blackstone's statement that a bailiff could not break into a house to conduct an arrest because "every man's house is looked upon by the law to be his castle," 3 W. Blackstone, Commentaries on the Laws of England 288 (1768), added the explanation: "[I]t is the defendant's own dwelling which by law is said to be his castle; for if he be in the house of another, the bailiff or sheriff may break and enter it to effect his purpose . . . ." 3 W. Blackstone, Commentaries on the Laws of England 287, n. 5 (T. Cooley 2d rev. ed. 1872). See also *Johnson* v. *Leigh*, 6 Taunt. 246, 248, 128 Eng. Rep. 1029, 1030 (C. P. 1815) ("[I]n many cases the door of a third person may be broken where that of the Defendant himself cannot; for though every man's house is his own castle, it is not the castle of another man").[2]

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[2] JUSTICE KENNEDY seeks to cast doubt upon this historical evidence by the carefully generalized assertion that "scholars dispute [the] proper interpretation" of "the English authorities." *Post*, at 99–100 (concurring opinion). In support of this, he cites only a passage from *Payton* v. *New*

Of course this is not to say that the Fourth Amendment protects only the Lord of the Manor who holds his estate in fee simple. People call a house "their" home when legal title

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*York*, 445 U. S. 573 (1980), which noted "a deep divergence among scholars" as to whether *Semayne's Case* accurately described one aspect of the common law of arrest. 445 U. S., at 592. Unfortunately for purposes of its relevance here, that aspect had nothing whatever to do with whether one man's house was another man's castle, but pertained to whether "a constable had the authority to make [a] warrantless [arrest] in the home on mere suspicion of a felony." *Ibid.* The "deep divergence" is a red herring.

JUSTICE KENNEDY also attempts to distinguish *Semayne's Case* on the ground that it arose in "the context of civil process," and so may be "of limited application to enforcement of the criminal law." *Post*, at 100. But of course the distinction cuts in precisely the opposite direction from the one that would support JUSTICE KENNEDY's case: If one man's house is not another man's castle for purposes of serving civil process, it is *a fortiori* not so for purposes of resisting the government's agents in pursuit of crime. *Semayne's Case* itself makes clear that the King's rights are greater: "And all the said books, which prove, that when the process concerns the King, that the Sheriff may break the house, imply that at the suit of the party, the house may not be broken: otherwise the addition (at the suit of the King) would be frivolous." 5 Co. Rep. 92b, 77 Eng. Rep., at 198. See also *id.*, at 92a, 77 Eng. Rep., at 197 ("In every felony the King has interest, and where the King has interest the writ is *non omittas propter aliquam libertatem;* and so the liberty or privilege of a house doth not hold against the King"); *id.*, at 91b, 77 Eng. Rep., at 196 ("J. beats R. so as he is in danger of death, J. flies, and thereupon hue and cry is made, J. retreats into the house of T. they who pursue him, if the house be kept and defended with force . . . may lawfully break the house of T. for it is at the [King's] suit").

Finally, JUSTICE KENNEDY suggests that, whatever the Fourth Amendment meant at the time it was adopted, it does not matter, since "[t]he axiom that a man's home is his castle . . . has acquired over time a power and an independent significance justifying a more general assurance of personal security in one's home, an assurance which has become part of our constitutional tradition." *Post*, at 100. The issue in this case, however, is not "personal security in one's home," but personal security in someone else's home, as to which JUSTICE KENNEDY fails to identify *any* "constitutional tradition" other than the one I have described—leaving us with nothing but his personal assurance that some degree of protection higher than that (and higher than what the people have chosen to provide by law) is "justif[ied]."

is in the bank, when they rent it, and even when they merely occupy it rent free—*so long as they actually live there.* That this is the criterion of the people's protection against government intrusion into "their" houses is established by the leading American case of *Oystead* v. *Shed*, 13 Mass. 520 (1816), which held it a trespass for the sheriff to break into a dwelling to capture a boarder who lived there. The court reasoned that the "inviolability of dwelling-houses" described by Foster, Hale, and Coke extends to "the occupier or any of his family . . . who have their domicile or ordinary residence there," including "a boarder or a servant" "who have made the house *their* home." *Id.*, at 523 (emphasis added). But, it added, "the house shall not be made a sanctuary" for one such as "a stranger, or perhaps a visitor," who "upon a pursuit, take[s] refuge in the house of another," for "the house is not *his* castle; and the officer may break open the doors or windows in order to execute his process." *Ibid.* (emphasis in original).

Thus, in deciding the question presented today we write upon a slate that is far from clean. The text of the Fourth Amendment, the common-law background against which it was adopted, and the understandings consistently displayed after its adoption make the answer clear. We were right to hold in *Chapman* v. *United States*, 365 U. S. 610 (1961), that the Fourth Amendment protects an apartment tenant against an unreasonable search of his dwelling, even though he is only a leaseholder. And we were right to hold in *Bumper* v. *North Carolina*, 391 U. S. 543 (1968), that an unreasonable search of a grandmother's house violated her resident grandson's Fourth Amendment rights because the area searched "was *his* home," *id.*, at 548, n. 11 (emphasis added). We went to the absolute limit of what text and tradition permit in *Minnesota* v. *Olson*, 495 U. S. 91 (1990), when we protected a mere overnight guest against an unreasonable

search of his hosts' apartment. But whereas it is plausible to regard a person's overnight lodging as at least his "temporary" residence, it is entirely impossible to give that characterization to an apartment that he uses to package cocaine. Respondents here were not searched in "their . . . hous[e]" under any interpretation of the phrase that bears the remotest relationship to the well-understood meaning of the Fourth Amendment.

The dissent believes that "[o]ur obligation to produce coherent results" requires that we ignore this clear text and 4-century-old tradition, and apply instead the notoriously unhelpful test adopted in a "benchmar[k]" decision that is 31 years old. *Post,* at 110, citing *Katz* v. *United States,* 389 U. S. 347 (1967). In my view, the only thing the past three decades have established about the *Katz* test (which has come to mean the test enunciated by Justice Harlan's separate concurrence in *Katz,* see *id.,* at 360) is that, unsurprisingly, those "actual (subjective) expectation[s] of privacy" "that society is prepared to recognize as 'reasonable,'" *id.,* at 361, bear an uncanny resemblance to those expectations of privacy that this Court considers reasonable. When that self-indulgent test is employed (as the dissent would employ it here) to determine whether a "search or seizure" within the meaning of the Constitution has *occurred* (as opposed to whether that "search or seizure" is an "unreasonable" one), it has no plausible foundation in the text of the Fourth Amendment. That provision did not guarantee some generalized "right of privacy" and leave it to this Court to determine which particular manifestations of the value of privacy "society is prepared to recognize as 'reasonable.'" *Ibid.* Rather, it enumerated ("persons, houses, papers, and effects") the objects of privacy protection to which the *Constitution* would extend, leaving further expansion to the good

judgment, not of this Court, but of the people through their representatives in the legislature.[3]

The dissent may be correct that a person invited into someone else's house to engage in a common business (even common monkey business, so to speak) *ought* to be protected against government searches of the room in which that business is conducted; and that persons invited in to deliver milk or pizza (whom the dissent dismisses as "classroom hypotheticals," *post*, at 107, as opposed, presumably, to flesh-and-blood hypotheticals) ought *not* to be protected against government searches of the rooms that they occupy. I am not sure of the answer to those policy questions. But I am sure that the answer is not remotely contained in the Constitution, which means that it is left—as *many*, indeed *most*, important questions are left—to the judgment of state and federal legislators. We go beyond our proper role as judges in a democratic society when we restrict the people's power to

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[3] The dissent asserts that I "undervalu[e]" the *Katz* Court's observation that "the Fourth Amendment protects people, not places." *Post*, at 111, n. 3, citing 389 U. S., at 351. That catchy slogan would be a devastating response to someone who maintained that *a location* could claim protection of the Fourth Amendment—someone who asserted, perhaps, that "primeval forests have rights, too." Cf. Stone, Should Trees Have Standing?—Toward Legal Rights for Natural Objects, 45 S. Cal. L. Rev. 450 (1972). The issue here, however, is the less druidical one of whether respondents (who are people) have suffered a violation of *their* right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U. S. Const., Amdt. 4. That the Fourth Amendment does not protect places is simply unresponsive to the question whether the Fourth Amendment protects people in other people's homes. In saying this, I do not, as the dissent claims, clash with "the *leitmotif* of Justice Harlan's concurring opinion" in *Katz*, *post*, at 111, n. 3; *au contraire* (or, to be more Wagnerian, *im Gegenteil*), in this regard I am entirely in harmony with that opinion, and it is the dissent that sings from another opera. See 389 U. S., at 361 (Harlan, J., concurring): "As the Court's opinion states, 'the Fourth Amendment protects people, not places.' The question, however, is what protection it affords to those people. Generally, as here, the answer to that question requires reference to a 'place.'"

govern themselves over the full range of policy choices that the Constitution has left available to them.

JUSTICE KENNEDY, concurring.

I join the Court's opinion, for its reasoning is consistent with my view that almost all social guests have a legitimate expectation of privacy, and hence protection against unreasonable searches, in their host's home.

The Fourth Amendment protects "[t]he right of the people to be secure in their . . . houses," and it is beyond dispute that the home is entitled to special protection as the center of the private lives of our people. Security of the home must be guarded by the law in a world where privacy is diminished by enhanced surveillance and sophisticated communication systems. As is well established, however, Fourth Amendment protection, though dependent upon spatial definition, is in essence a personal right. Thus, as the Court held in *Rakas* v. *Illinois*, 439 U. S. 128 (1978), there are limits on who may assert it.

The dissent, as I interpret it, does not question *Rakas* or the principle that not all persons in the company of the property owner have the owner's right to assert the spatial protection. *Rakas*, it is true, involved automobiles, where the necessities of law enforcement permit more latitude to the police than ought to be extended to houses. The analysis in *Rakas* was not conceived, however, as a utilitarian exception to accommodate the needs of law enforcement. The Court's premise was a more fundamental one. Fourth Amendment rights are personal, and when a person objects to the search of a place and invokes the exclusionary rule, he or she must have the requisite connection to that place. The analysis in *Rakas* must be respected with reference to dwellings unless that precedent is to be overruled or so limited to its facts that its underlying principle is, in the end, repudiated.

As to the English authorities that were the historical basis for the Fourth Amendment, the Court has observed that

scholars dispute their proper interpretation. See, *e. g.*, *Payton* v. *New York*, 445 U. S. 573, 592 (1980). *Semayne's Case*, 5 Co. Rep. 91a, 77 Eng. Rep. 194 (K. B. 1604), says that "the house of every one is to him as his castle and fortress" and the home is privileged for the homeowner, "his family," and "his own proper goods." *Id.*, at 91b, 93a, 77 Eng. Rep., at 195, 198. Read narrowly, the protections recognized in *Semayne's Case* might have been confined to the context of civil process, and so be of limited application to enforcement of the criminal law. Even if, at the time of *Semayne's Case*, a man's home was not his castle with respect to incursion by the King in a criminal matter, that would not be dispositive of the question before us. The axiom that a man's home is his castle, or the statement attributed to Pitt that the King cannot enter and all his force dares not cross the threshold, see *Miller* v. *United States*, 357 U. S. 301, 307 (1958), has acquired over time a power and an independent significance justifying a more general assurance of personal security in one's home, an assurance which has become part of our constitutional tradition.

It is now settled, for example, that for a routine felony arrest and absent exigent circumstances, the police must obtain a warrant before entering a home to arrest the homeowner. *Payton* v. *New York*, *supra*, at 576. So, too, the Court held in *Steagald* v. *United States*, 451 U. S. 204 (1981), that, absent exigent circumstances or consent, the police cannot search for the subject of an arrest warrant in the home of a third party, without first obtaining a search warrant directing entry.

These cases strengthen and protect the right of the homeowner to privacy in his own home. They do not speak, however, to the right to claim such a privacy interest in the home of another. See, *e. g.*, *id.*, at 218–219 (noting that the issue in *Steagald* was the homeowner's right to privacy in his own home, and not the right to "claim sanctuary from arrest in the home of a third party"). *Steagald* itself affirmed that,

in accordance with the common law, our Fourth Amendment precedents "recogniz[e] . . . that rights such as those conferred by the Fourth Amendment are personal in nature, and cannot bestow vicarious protection on those who do not have a reasonable expectation of privacy in the place to be searched." *Id.*, at 219.

The homeowner's right to privacy is not at issue in this case. The Court does not reach the question whether the officer's unaided observations of Thompson's apartment constituted a search. If there was in fact a search, however, then Thompson had the right to object to the unlawful police surveillance of her apartment and the right to suppress any evidence disclosed by the search. Similarly, if the police had entered her home without a search warrant to arrest respondents, Thompson's own privacy interests would be violated and she could presumably bring an action under Rev. Stat. § 1979, 42 U. S. C. § 1983, or an action for trespass. Our cases establish, however, that respondents have no independent privacy right, the violation of which results in exclusion of evidence against them, unless they can establish a meaningful connection to Thompson's apartment.

The settled rule is that the requisite connection is an expectation of privacy that society recognizes as reasonable. *Katz* v. *United States*, 389 U. S. 347, 361 (1967) (Harlan, J., concurring). The application of that rule involves consideration of the kind of place in which the individual claims the privacy interest and what expectations of privacy are traditional and well recognized. *Ibid.* I would expect that most, if not all, social guests legitimately expect that, in accordance with social custom, the homeowner will exercise her discretion to include or exclude others for the guests' benefit. As we recognized in *Minnesota* v. *Olson*, 495 U. S. 91 (1990), where these social expectations exist—as in the case of an overnight guest—they are sufficient to create a legitimate expectation of privacy, even in the absence of any property right to exclude others. In this respect, the dis-

sent must be correct that reasonable expectations of the owner are shared, to some extent, by the guest. This analysis suggests that, as a general rule, social guests will have an expectation of privacy in their host's home. That is not the case before us, however.

In this case respondents have established nothing more than a fleeting and insubstantial connection with Thompson's home. For all that appears in the record, respondents used Thompson's house simply as a convenient processing station, their purpose involving nothing more than the mechanical act of chopping and packing a substance for distribution. There is no suggestion that respondents engaged in confidential communications with Thompson about their transaction. Respondents had not been to Thompson's apartment before, and they left it even before their arrest. The Minnesota Supreme Court, which overturned respondents' convictions, acknowledged that respondents could not be fairly characterized as Thompson's "guests." 569 N. W. 2d 169, 175–176 (1997); see also 545 N. W. 2d 695, 698 (Minn. Ct. App. 1996) (noting that Carter's only evidence—that he was there to package cocaine—was inconsistent with his claim that "he was predominantly a social guest" in Thompson's apartment).

If respondents here had been visiting 20 homes, each for a minute or two, to drop off a bag of cocaine and were apprehended by a policeman wrongfully present in the 19th home; or if they had left the goods at a home where they were not staying and the police had seized the goods in their absence, we would have said that *Rakas* compels rejection of any privacy interest respondents might assert. So it does here, given that respondents have established no meaningful tie or connection to the owner, the owner's home, or the owner's expectation of privacy.

We cannot remain faithful to the underlying principle in *Rakas* without reversing in this case, and I am not persuaded that we need depart from it to protect the homeown-

er's own privacy interests. Respondents have made no persuasive argument that we need to fashion a *per se* rule of home protection, with an automatic right for all in the home to invoke the exclusionary rule, in order to protect homeowners and their guests from unlawful police intrusion. With these observations, I join the Court's opinion.

JUSTICE BREYER, concurring in the judgment.

I agree with JUSTICE GINSBURG that respondents can claim the Fourth Amendment's protection. Petitioner, however, raises a second question, whether under the circumstances Officer Thielen's observation made "from a public area outside the curtilage of the residence" violated respondents' Fourth Amendment rights. See Pet. for Cert. i. In my view, it did not.

I would answer the question on the basis of the following factual assumptions, derived from the evidentiary record presented here: (1) On the evening of May 15, 1994, an anonymous individual approached Officer Thielen, telling him that he had just walked by a nearby apartment window through which he had seen some people bagging drugs; (2) the apartment in question was a garden apartment that was partly below ground level; (3) families frequently used the grassy area just outside the apartment's window for walking or for playing; (4) members of the public also used the area just outside the apartment's window to store bicycles; (5) in an effort to verify the tipster's information, Officer Thielen walked to a position about 1 to 1½ feet in front of the window; (6) Officer Thielen stood there for about 15 minutes looking down through a set of venetian blinds; (7) what he saw, namely, people putting white powder in bags, verified the account he had heard; and (8) he then used that information to help obtain a search warrant. See App. E–1 to E–3, E–9 to E–12, G–8 to G–9, G–12 to G–14, G–26, G–29 to G–30, G–32, G–39 to G–40, G–67 to G–71, I–2 to I–3.

The trial court concluded that persons then within Ms. Thompson's kitchen "did not have an expectation of privacy from the location where Officer Thielen made his observations . . . ," No. K9–94–0985 (Minn. Dist. Ct., Dec. 16, 1994), App. E–10 (unpublished), because Officer Thielen stood outside the apartment's "curtilage" when he made his observations, *id.*, at E–10 to E–12. And the Minnesota Supreme Court, while finding that Officer Thielen had violated the Fourth Amendment, did not challenge the trial court's curtilage determination; indeed, it assumed that Officer Thielen stood outside the apartment's curtilage. 569 N. W. 2d 169, 177, and n. 10 (1997) (stating "it is plausible that Thielen's presence just outside the apartment window was legitimate").

Officer Thielen, then, stood at a place used by the public and from which one could see through the window into the kitchen. The precautions that the apartment's dwellers took to maintain their privacy would have failed in respect to an ordinary passerby standing in that place. Given this Court's well-established case law, I cannot say that the officer engaged in what the Constitution forbids, namely, an "unreasonable search." See, *e. g.*, *Florida* v. *Riley*, 488 U. S. 445, 448 (1989) (finding observation of greenhouse from helicopters in public airspace permissible, even though owners had enclosed greenhouse on two sides, relied on bushes blocking ground-level observations through remaining two sides, and covered 90% of roof); *California* v. *Ciraolo*, 476 U. S. 207, 209 (1986) (finding observation of backyard from plane in public airspace permissible despite 6-foot outer fence and 10-foot inner fence around backyard); cf. *Katz* v. *United States*, 389 U. S. 347, 351 (1967).

The Minnesota Supreme Court reached a different conclusion in part because it believed that Officer Thielen had engaged in unusual activity, that he "climbed over some bushes, crouched down and placed his face 12 to 18 inches from the window," and in part because he saw into the apartment

through "a small gap" in blinds that were drawn. 569 N. W. 2d, at 177–178. But I would not here determine whether the crouching and climbing or "plac[ing] his face" makes a constitutional difference because the record before us does not contain support for those factual conclusions. That record indicates that Officer Thielen would not have needed to, and did not, climb over bushes or crouch. See App. G–12 to G–13, G–27 to G–30, G–43 to G–46 (Officer Thielen's testimony); *id.*, at I–3 (photograph of apartment building). And even though the primary evidence consists of Officer Thielen's own testimony, who else could have known? Given the importance of factual nuance in this area of constitutional law, I would not determine the constitutional significance of factual assertions that the record denies. Cf. *Walters* v. *National Assn. of Radiation Survivors*, 473 U. S. 305, 342 (1985) (Brennan, J., dissenting) (citing *Brown* v. *Chote*, 411 U. S. 452, 457 (1973)).

Neither can the matter turn upon "gaps" in drawn blinds. Whether there were holes in the blinds or they were simply pulled the "wrong way" makes no difference. One who lives in a basement apartment that fronts a publicly traveled street, or similar space, ordinarily understands the need for care lest a member of the public simply direct his gaze downward.

Putting the specific facts of this case aside, there is a benefit to an officer's decision to confirm an informant's tip by observing the allegedly illegal activity from a public vantage point. Indeed, there are reasons why Officer Thielen stood in a public place and looked through the apartment window. He had already received information that a crime was taking place in the apartment. He intended to apply for a warrant. He needed to verify the tipster's credibility. He might have done so in other ways, say, by seeking general information about the tipster's reputation and then obtaining a warrant and searching the apartment. But his chosen method—observing the apartment from a public vantage point—would

more likely have saved an innocent apartment dweller from a physically intrusive, though warrant-based, search if the constitutionally permissible observation revealed no illegal activity.

For these reasons, while agreeing with JUSTICE GINSBURG, I also concur in the Court's judgment reversing the Minnesota Supreme Court.

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

The Court's decision undermines not only the security of short-term guests, but also the security of the home resident herself. In my view, when a homeowner or lessee personally invites a guest into her home to share in a common endeavor, whether it be for conversation, to engage in leisure activities, or for business purposes licit or illicit, that guest should share his host's shelter against unreasonable searches and seizures.

I do not here propose restoration of the "legitimately on the premises" criterion stated in *Jones* v. *United States*, 362 U. S. 257, 267 (1960), for the Court rejected that formulation in *Rakas* v. *Illinois*, 439 U. S. 128, 142 (1978), as it did the "automatic standing rule" in *United States* v. *Salvucci*, 448 U. S. 83, 95 (1980). First, the disposition I would reach in this case responds to the unique importance of the home—the most essential bastion of privacy recognized by the law. See *United States* v. *Karo*, 468 U. S. 705, 714 (1984) ("[P]rivate residences are places in which the individual normally expects privacy free of governmental intrusion not authorized by a warrant . . . . Our cases have not deviated from this basic Fourth Amendment principle."); *Payton* v. *New York*, 445 U. S. 573, 589 (1980) ("The Fourth Amendment protects the individual's privacy in a variety of settings. In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home."). Second, even within the home itself, the

position to which I would adhere would not permit "a casual visitor who has never seen, or been permitted to visit, the basement of another's house to object to a search of the basement if the visitor happened to be in the kitchen of the house at the time of the search." *Rakas*, 439 U. S., at 142. Further, I would here decide only the case of the homeowner who chooses to share the privacy of her home and her company with a guest, and would not reach classroom hypotheticals like the milkman or pizza deliverer.

My concern centers on an individual's choice to share her home and her associations there with persons she selects. Our decisions indicate that people have a reasonable expectation of privacy in their homes in part because they have the prerogative to exclude others. See *id.*, at 149 (legitimate expectation of privacy turns in large part on ability to exclude others from place searched). The power to exclude implies the power to include. See, *e. g.*, Coombs, Shared Privacy and the Fourth Amendment, or the Rights of Relationships, 75 Calif. L. Rev. 1593, 1618 (1987) ("One reason we protect the legal right to exclude others is to empower the owner to choose to share his home or other property with his intimates."); Alschuler, Interpersonal Privacy and the Fourth Amendment, 4 N. Ill. U. L. Rev. 1, 13 (1983) ("[O]ne of the main rights attaching to property is the right to share its shelter, its comfort and its privacy with others."). Our Fourth Amendment decisions should reflect these complementary prerogatives.

A homedweller places her own privacy at risk, the Court's approach indicates, when she opens her home to others, uncertain whether the duration of their stay, their purpose, and their "acceptance into the household" will earn protection. *Ante*, at 90.[1] It remains textbook law that "[s]earches and seizures inside a home without a warrant are presumptively

[1] At oral argument, counsel for petitioner informed the Court that the lessee of the apartment was charged, tried, and convicted of the same crimes as respondents. Tr. of Oral Arg. 10–11.

unreasonable absent exigent circumstances." *Karo,* 468 U. S., at 714–715. The law in practice is less secure. Human frailty suggests that today's decision will tempt police to pry into private dwellings without warrant, to find evidence incriminating guests who do not rest there through the night. See Simien, The Interrelationship of the Scope of the Fourth Amendment and Standing to Object to Unreasonable Searches, 41 Ark. L. Rev. 487, 539 (1988) ("[I]f the police have no probable cause, they have everything to gain and nothing to lose if they search under circumstances where they know that at least one of the potential defendants will not have standing."). *Rakas* tolerates that temptation with respect to automobile searches. See Ashdown, The Fourth Amendment and the "Legitimate Expectation of Privacy," 34 Vand. L. Rev. 1289, 1321 (1981) (criticizing *Rakas* as "present[ing] a framework in which there may be nothing to lose and something to gain by the illegal search of a car that carries more than one occupant"); see also *Rakas,* 439 U. S., at 169 (White, J., dissenting) ("After this decision, police will have little to lose by unreasonably searching vehicles occupied by more than one person."). I see no impelling reason to extend this risk into the home. See *Silverman* v. *United States,* 365 U. S. 505, 511 (1961) ("At the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion."). As I see it, people are not genuinely "secure in their . . . houses . . . against unreasonable searches and seizures," U. S. Const., Amdt. 4, if their invitations to others increase the risk of unwarranted governmental peering and prying into their dwelling places.

Through the host's invitation, the guest gains a reasonable expectation of privacy in the home. *Minnesota* v. *Olson,* 495 U. S. 91 (1990), so held with respect to an overnight guest. The logic of that decision extends to shorter term guests as well. See 5 W. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 11.3(b), p. 137 (3d ed.

1996) ("[I]t is fair to say that the *Olson* decision lends considerable support to the claim that shorter-term guests also have standing."). Visiting the home of a friend, relative, or business associate, whatever the time of day, "serves functions recognized as valuable by society." *Olson*, 495 U. S., at 98. One need not remain overnight to anticipate privacy in another's home, "a place where [the guest] and his possessions will not be disturbed by anyone but his host and those his host allows inside." *Id.*, at 99. In sum, when a homeowner chooses to share the privacy of her home and her company with a short-term guest, the twofold requirement "emerg[ing] from prior decisions" has been satisfied: Both host and guest "have exhibited an actual (subjective) expectation of privacy"; that "expectation [is] one [our] society is prepared to recognize as 'reasonable.'" *Katz* v. *United States*, 389 U. S. 347, 361 (1967) (Harlan, J., concurring).[2]

As the Solicitor General acknowledged, the illegality of the host-guest conduct, the fact that they were partners in crime, would not alter the analysis. See Tr. of Oral Arg.

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[2] In his concurring opinion, JUSTICE KENNEDY maintains that respondents here lacked "an expectation of privacy that society recognizes as reasonable," *ante*, at 101, because they "established nothing more than a fleeting and insubstantial connection" with the host's home, *ante*, at 102. As the Minnesota Supreme Court reported, however, the stipulated facts showed that respondents were inside the apartment with the host's permission, remained inside for at least 2½ hours, and, during that time, engaged in concert with the host in a collaborative venture. See 569 N. W. 2d 169, 175–176 (1997). These stipulated facts—which scarcely resemble a stop of a minute or two at the 19th of 20 homes to drop off a packet, see *ante*, at 102—securely demonstrate that the host intended to share her privacy with respondents, and that respondents, therefore, had entered into the homeland of Fourth Amendment protection. While I agree with the Minnesota Supreme Court that, under the rule settled since *Katz*, the reasonableness of the expectation of privacy controls, not the visitor's status as social guest, invitee, licensee, or business partner, 569 N. W. 2d, at 176, I think it noteworthy that five Members of the Court would place under the Fourth Amendment's shield, at least, "almost all social guests," *ante*, at 99 (KENNEDY, J., concurring).

22–23. In *Olson*, for example, the guest whose security this Court's decision shielded stayed overnight while the police searched for him. 495 U. S., at 93–94. The Court held that the guest had Fourth Amendment protection against a warrantless arrest in his host's home despite the guest's involvement in grave crimes (first-degree murder, armed robbery, and assault). Other decisions have similarly sustained Fourth Amendment pleas despite the criminality of the defendants' activities. See, *e. g.*, *Payton*, 445 U. S., at 583–603 (murder and armed robbery); *Katz*, 389 U. S., at 348–359 (telephoning across state lines to place illegal wagers); *Silverman*, 365 U. S., at 508–512 (gambling offenses). Indeed, it must be this way. If the illegality of the activity made constitutional an otherwise unconstitutional search, such Fourth Amendment protection, reserved for the innocent only, would have little force in regulating police behavior toward either the innocent or the guilty.

Our leading decision in *Katz* is key to my view of this case. There, we ruled that the Government violated the petitioner's Fourth Amendment rights when it electronically recorded him transmitting wagering information while he was inside a public telephone booth. 389 U. S., at 353. We were mindful that "the Fourth Amendment protects people, not places," *id.*, at 351, and held that this electronic monitoring of a business call "violated the privacy upon which [the caller] justifiably relied while using the telephone booth," *id.*, at 353. Our obligation to produce coherent results in this often visited area of the law requires us to inform our current expositions by benchmarks already established. As Justice Harlan explained in his dissent in *Poe* v. *Ullman*, 367 U. S. 497, 544 (1961):

> "Each new claim to Constitutional protection must be considered against a background of Constitutional purposes, as they have been rationally perceived and historically developed. Though we exercise limited and

> sharply restrained judgment, yet there is no 'mechanical yardstick,' no 'mechanical answer.' The decision of an apparently novel claim must depend on grounds which follow closely on well-accepted principles and criteria. The new decision must take 'its place in relation to what went before and further [cut] a channel for what is to come.'" *Ibid.* (quoting *Irvine* v. *California*, 347 U. S. 128, 147 (1954) (Frankfurter, J., dissenting)).

The Court's decision in this case veers sharply from the path marked in *Katz*. I do not agree that we have a more reasonable expectation of privacy when we place a business call to a person's home from a public telephone booth on the side of the street, see *Katz*, 389 U. S., at 353, than when we actually enter that person's premises to engage in a common endeavor.[3]

[3] JUSTICE SCALIA's lively concurring opinion deplores our adherence to *Katz*. In suggesting that we have elevated Justice Harlan's concurring opinion in *Katz* to first place, see *ante*, at 97, JUSTICE SCALIA undervalues the clear opinion of the Court that "the Fourth Amendment protects people, not places," 389 U. S., at 351. That core understanding is the *leitmotif* of Justice Harlan's concurring opinion. One cannot avoid a strong sense of *déjà vu* on reading JUSTICE SCALIA's elaboration. It so vividly recalls the opinion of Justice Black *in dissent* in *Katz*. See 389 U. S., at 365 (Black, J., dissenting) ("While I realize that an argument based on the meaning of words lacks the scope, and no doubt the appeal, of broad policy discussions and philosophical discourses . . . , for me the language of the Amendment is the crucial place to look."); *id.*, at 373 ("[B]y arbitrarily substituting the Court's language . . . for the Constitution's language the Court has made the Fourth Amendment its vehicle for holding all laws violative of the Constitution which offend the Court's broadest concept of privacy."); *ibid.* ("I will not distort the words of the Amendment in order to 'keep the Constitution up to date' or 'to bring it into harmony with the times.'"). JUSTICE SCALIA relies on what he deems "clear text," *ante*, at 97, to argue that the Fourth Amendment protects people from searches only in the places where they live, *ante*, at 96. Again, as Justice Stewart emphasized in the majority opinion in *Katz*, which *stare decisis* and reason require us to follow, "the Fourth Amendment protects people, not places." 389 U. S., at 351.

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For the reasons stated, I dissent from the Court's judgment, and would retain judicial surveillance over the warrantless searches today's decision allows.

Syllabus

# KNOWLES *v.* IOWA

## CERTIORARI TO THE SUPREME COURT OF IOWA

No. 97–7597. Argued November 3, 1998—Decided December 8, 1998

An Iowa policeman stopped petitioner Knowles for speeding and issued him a citation rather than arresting him. The officer then conducted a full search of the car, without either Knowles' consent or probable cause, found marijuana and a "pot pipe," and arrested Knowles. Before his trial on state drug charges, Knowles moved to suppress the evidence, arguing that because he had not been arrested, the search could not be sustained under the "search incident to arrest" exception recognized in *United States* v. *Robinson*, 414 U. S. 218. The trial court denied the motion and found Knowles guilty, based on state law giving officers authority to conduct a full-blown search of an automobile and driver where they issue a citation instead of making a custodial arrest. In affirming, the State Supreme Court applied its bright-line "search incident to citation" exception to the Fourth Amendment's warrant requirement, reasoning that so long as the officer had probable cause to make a custodial arrest, there need not in fact have been an arrest.

*Held:* The search at issue, authorized as it was by state law, nonetheless violates the Fourth Amendment. Neither of the two historical exceptions for the "search incident to arrest" exception, see *Robinson*, *supra*, at 234, is sufficient to justify the search in the present case. First, the threat to officer safety from issuing a traffic citation is a good deal less than in the case of a custodial arrest. While concern for safety during a routine traffic stop may justify the "minimal" additional intrusion of ordering a driver and passengers out of the car, it does not by itself justify the often considerably greater intrusion attending a full field-type search. Even without the search authority Iowa urges, officers have other, independent bases to search for weapons and protect themselves from danger. Second, the need to discover and preserve evidence does not exist in a traffic stop, for once Knowles was stopped for speeding and issued a citation, all evidence necessary to prosecute that offense had been obtained. Iowa's argument that a "search incident to citation" is justified because a suspect may try to hide evidence of his identity or of other crimes is unpersuasive. An officer may arrest a driver if he is not satisfied with the identification furnished, and the possibility that an officer would stumble onto evidence of an unrelated offense seems remote. Pp. 116–119.

569 N. W. 2d 601, reversed and remanded.

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

*Paul Rosenberg* argued the cause for petitioner. With him on the briefs was *Maria Ruhtenberg.*

*Bridget A. Chambers*, Assistant Attorney General of Iowa, argued the cause for respondent. With her on the brief were *Thomas J. Miller*, Attorney General, and *Elizabeth M. Osenbaugh*, Solicitor General.*

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

An Iowa police officer stopped petitioner Knowles for speeding, but issued him a citation rather than arresting him. The question presented is whether such a procedure authorizes the officer, consistently with the Fourth Amendment, to conduct a full search of the car. We answer this question "no."

Knowles was stopped in Newton, Iowa, after having been clocked driving 43 miles per hour on a road where the speed limit was 25 miles per hour. The police officer issued a citation to Knowles, although under Iowa law he might have arrested him. The officer then conducted a full search of the car, and under the driver's seat he found a bag of marijuana and a "pot pipe." Knowles was then arrested and charged with violation of state laws dealing with controlled substances.

Before trial, Knowles moved to suppress the evidence so obtained. He argued that the search could not be sustained under the "search incident to arrest" exception recognized in *United States* v. *Robinson*, 414 U. S. 218 (1973), because he had not been placed under arrest. At the hearing on the motion to suppress, the police officer conceded that he had

**James J. Tomkovicz, Steven R. Shapiro, Susan N. Herman*, and *Lisa B. Kemler* filed a brief for the American Civil Liberties Union et al. as *amici curiae* urging reversal.

*Stephen R. McSpadden* filed a brief for the National Association of Police Organizations, Inc., as *amicus curiae* urging affirmance.

neither Knowles' consent nor probable cause to conduct the search. He relied on Iowa law dealing with such searches.

Iowa Code Ann. § 321.485(1)(a) (West 1997) provides that Iowa peace officers having cause to believe that a person has violated any traffic or motor vehicle equipment law may arrest the person and immediately take the person before a magistrate. Iowa law also authorizes the far more usual practice of issuing a citation in lieu of arrest or in lieu of continued custody after an initial arrest.[1] See Iowa Code Ann. § 805.1(1) (West Supp. 1997). Section 805.1(4) provides that the issuance of a citation in lieu of an arrest "does not affect the officer's authority to conduct an otherwise lawful search." The Iowa Supreme Court has interpreted this provision as providing authority to officers to conduct a full-blown search of an automobile and driver in those cases where police elect not to make a custodial arrest and instead issue a citation—that is, a search incident to citation. See *State* v. *Meyer*, 543 N. W. 2d 876, 879 (1996); *State* v. *Becker*, 458 N. W. 2d 604, 607 (1990).

Based on this authority, the trial court denied the motion to suppress and found Knowles guilty. The Supreme Court of Iowa, sitting en banc, affirmed by a divided vote. 569 N. W. 2d 601 (1997). Relying on its earlier opinion in *State* v. *Doran*, 563 N. W. 2d 620 (1997), the Iowa Supreme Court upheld the constitutionality of the search under a bright-line "search incident to citation" exception to the Fourth Amendment's warrant requirement, reasoning that so long as the

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[1] Iowa law permits the issuance of a citation in lieu of arrest for most offenses for which an accused person would be "eligible for bail." See Iowa Code Ann. § 805.1(1) (West Supp. 1997). In addition to traffic and motor vehicle equipment violations, this would permit the issuance of a citation in lieu of arrest for such serious felonies as second-degree burglary, § 713.5 (West Supp. 1997), and first-degree theft, § 714.2(1) (West 1993), both bailable offenses under Iowa law. See § 811.1 (West Supp. 1997) (listing all nonbailable offenses). The practice in Iowa of permitting citation in lieu of arrest is consistent with law reform efforts. See 3 W. LaFave, Search and Seizure § 5.2(h), p. 99, and n. 151 (3d ed. 1996).

arresting officer had probable cause to make a custodial arrest, there need not in fact have been a custodial arrest. We granted certiorari, 523 U. S. 1019 (1998), and we now reverse.

The State contends that Knowles has challenged Iowa Code's § 805.1(4) only "on its face" and not "as applied," in which case, the argument continues, his challenge would run afoul of *Sibron* v. *New York*, 392 U. S. 40 (1968). But in his motion to suppress, Knowles argued that "[b]ecause the officer had no probable cause and no search warrant, and the search cannot otherwise be justified under the Fourth Amendment, the search of the car was unconstitutional." App. 7. Knowles did not argue below, and does not argue here, that the statute could never be lawfully applied. The question we therefore address is whether the search at issue, authorized as it was by state law, nonetheless violates the Fourth Amendment.[2]

In *Robinson*, *supra*, we noted the two historical rationales for the "search incident to arrest" exception: (1) the need to disarm the suspect in order to take him into custody, and (2) the need to preserve evidence for later use at trial. 414 U. S., at 234. See also *United States* v. *Edwards*, 415 U. S. 800, 802–803 (1974); *Chimel* v. *California*, 395 U. S. 752, 762–763 (1969); *Preston* v. *United States*, 376 U. S. 364, 367 (1964);

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[2] Iowa also contends that Knowles' challenge is precluded because he failed to seek review of a separate decision of the Iowa Supreme Court, which affirmed his conviction for possession of drug paraphernalia in violation of a city ordinance. That decision, Iowa argues, resulted from the same search at issue here, rejected the same Fourth Amendment challenge Knowles now makes, and, under principles of res judicata, bars his present challenge. Even if Knowles' failure to seek certiorari review of this decision could preclude his present challenge, Iowa waived this argument by failing to raise it in its brief in opposition to the petition for certiorari. See this Court's Rule 15.2; *Oklahoma City* v. *Tuttle*, 471 U. S. 808, 816 (1985) ("Nonjurisdictional defects of this sort should be brought to our attention *no later* than in respondent's brief in opposition to the petition for certiorari; if not, we consider it within our discretion to deem the defect waived").

*Agnello* v. *United States*, 269 U. S. 20, 30 (1925); *Weeks* v. *United States*, 232 U. S. 383, 392 (1914). But neither of these underlying rationales for the search incident to arrest exception is sufficient to justify the search in the present case.

We have recognized that the first rationale—officer safety—is "'both legitimate and weighty,'" *Maryland* v. *Wilson*, 519 U. S. 408, 412 (1997) (quoting *Pennsylvania* v. *Mimms*, 434 U. S. 106, 110 (1977) *(per curiam)*). The threat to officer safety from issuing a traffic citation, however, is a good deal less than in the case of a custodial arrest. In *Robinson*, we stated that a custodial arrest involves "danger to an officer" because of "the extended exposure which follows the taking of a suspect into custody and transporting him to the police station." 414 U. S., at 234–235. We recognized that "[t]he danger to the police officer flows from the fact of the arrest, and its attendant proximity, stress, and uncertainty, and not from the grounds for arrest." *Id.*, at 234, n. 5. A routine traffic stop, on the other hand, is a relatively brief encounter and "is more analogous to a so-called '*Terry* stop' . . . than to a formal arrest." *Berkemer* v. *McCarty*, 468 U. S. 420, 439 (1984). See also *Cupp* v. *Murphy*, 412 U. S. 291, 296 (1973) ("Where there is no formal arrest . . . a person might well be less hostile to the police and less likely to take conspicuous, immediate steps to destroy incriminating evidence").

This is not to say that the concern for officer safety is absent in the case of a routine traffic stop. It plainly is not. See *Mimms*, *supra*, at 110; *Wilson*, *supra*, at 413–414. But while the concern for officer safety in this context may justify the "minimal" additional intrusion of ordering a driver and passengers out of the car, it does not by itself justify the often considerably greater intrusion attending a full field-type search. Even without the search authority Iowa urges, officers have other, independent bases to search for weapons and protect themselves from danger. For example, they

may order out of a vehicle both the driver, *Mimms*, *supra*, at 111, and any passengers, *Wilson*, *supra*, at 414; perform a "patdown" of a driver and any passengers upon reasonable suspicion that they may be armed and dangerous, *Terry* v. *Ohio*, 392 U. S. 1 (1968); conduct a "*Terry* patdown" of the passenger compartment of a vehicle upon reasonable suspicion that an occupant is dangerous and may gain immediate control of a weapon, *Michigan* v. *Long*, 463 U. S. 1032, 1049 (1983); and even conduct a full search of the passenger compartment, including any containers therein, pursuant to a custodial arrest, *New York* v. *Belton*, 453 U. S. 454, 460 (1981).

Nor has Iowa shown the second justification for the authority to search incident to arrest—the need to discover and preserve evidence. Once Knowles was stopped for speeding and issued a citation, all the evidence necessary to prosecute that offense had been obtained. No further evidence of excessive speed was going to be found either on the person of the offender or in the passenger compartment of the car.

Iowa nevertheless argues that a "search incident to citation" is justified because a suspect who is subject to a routine traffic stop may attempt to hide or destroy evidence related to his identity (*e. g.*, a driver's license or vehicle registration), or destroy evidence of another, as yet undetected crime. As for the destruction of evidence relating to identity, if a police officer is not satisfied with the identification furnished by the driver, this may be a basis for arresting him rather than merely issuing a citation. As for destroying evidence of other crimes, the possibility that an officer would stumble onto evidence wholly unrelated to the speeding offense seems remote.

In *Robinson*, we held that the authority to conduct a full field search as incident to an arrest was a "bright-line rule," which was based on the concern for officer safety and destruction or loss of evidence, but which did not depend in every case upon the existence of either concern. Here we

are asked to extend that "bright-line rule" to a situation where the concern for officer safety is not present to the same extent and the concern for destruction or loss of evidence is not present at all. We decline to do so. The judgment of the Supreme Court of Iowa is reversed, and the cause is remanded for further proceedings not inconsistent with this opinion.

*It is so ordered.*

Per Curiam

# MOSLEY *v.* UNITED STATES

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

No. 97–7213. Argued October 14, 1998—Decided December 8, 1998

Order granting certiorari vacated, and certiorari dismissed. Reported below: 126 F. 3d 200.

*Donald J. McCauley* argued the cause for petitioner. With him on the briefs were *Richard Coughlin*, *Jeffrey T. Green*, and *Joseph S. Miller*.

*David C. Frederick* argued the cause for the United States. With him on the brief were *Solicitor General Waxman*, *Assistant Attorney General Robinson*, *Deputy Solicitor General Dreeben*, and *Thomas E. Booth*.*

PER CURIAM.

The Court is advised that the petitioner died in Springfield, Missouri, on November 16, 1998. The Court's order granting the writ of certiorari, see 523 U. S. 1019 (1998), therefore is vacated, and the petition for certiorari is dismissed. See *United States* v. *Green*, 507 U. S. 545 (1993) *(per curiam)*.

*It is so ordered.*

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*Briefs of *amici curiae* urging reversal were filed for the Association of Criminal Defense Lawyers in New Jersey by *Chester M. Keller;* and for the National Association of Criminal Defense Lawyers by *Alan L. Zegas* and *David M. Porter*.

Syllabus

# HADDLE *v.* GARRISON ET AL.

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

No. 97–1472. Argued November 10, 1998—Decided December 14, 1998

Petitioner, an at-will employee, filed this action for damages against respondents alleging, *inter alia*, that they conspired to have him fired in retaliation for obeying a federal grand jury subpoena and to deter him from testifying at their upcoming criminal trial for Medicare fraud, and that their acts had "injured [him] in his person or property" in violation of 42 U. S. C. § 1985(2). In dismissing the suit for failure to state a claim, the District Court relied on Circuit precedent holding that an at-will employee discharged pursuant to a conspiracy proscribed by § 1985(2) has suffered no actual injury because he has no constitutionally protected interest in continued employment. The Eleventh Circuit affirmed.

*Held:* The sort of the harm alleged by petitioner—essentially third-party interference with at-will employment relationships—states a claim for damages under § 1985(2). In relevant part, the statute proscribes conspiracies to "deter, by force, intimidation, or threat, any . . . witness in any [federal] court . . . from attending such court, or from testifying to any matter pending therein, . . . or to injure [him] in his person or property on account of his having so attended or testified," § 1985(2), and provides that if conspirators "do . . . any act in furtherance of . . . such conspiracy, whereby another is injured in his person or property, . . . the party so injured . . . may" recover damages, § 1985(3). The Eleventh Circuit erred in concluding that petitioner must suffer an injury to a "constitutionally protected property interest" to state a claim. Nothing in the language or purpose of the proscriptions in the first clause of § 1985(2), nor in its attendant remedial provisions, establishes such a requirement. The gist of the wrong at which § 1985(2) is directed is not deprivation of property, but intimidation or retaliation against witnesses in federal-court proceedings. The terms "injured in his person or property" define the harm that the victim may suffer as a result of the conspiracy to intimidate or retaliate. Thus, the fact that employment at will is not "property" for purposes of the Due Process Clause, see *Bishop* v. *Wood*, 426 U. S. 341, 345–347, does not mean that loss of at-will employment may not "injur[e] [petitioner] in his person or property" for § 1985(2)'s purposes. Such harm has long been, and remains, a compensable injury under tort law, and there is no reason to

ignore this tradition here. To the extent that the terms "injured in his person or property" refer to such tort principles, there is ample support for the Court's holding. Pp. 124–127.

132 F. 3d 46, reversed and remanded.

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

*Charles C. Stebbins III* argued the cause and filed briefs for petitioner.

*Matthew D. Roberts* 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 Lee*, *Deputy Solicitor General Underwood*, *David K. Flynn*, and *Timothy J. Moran.*

*Phillip A. Bradley* argued the cause for respondents. With him on the briefs for respondents Garrison et al. were *Barry J. Armstrong* and *David E. Hudson. J. Patrick Claiborne* and *Terrance P. Leiden* filed a brief for respondent Molloy.*

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner Michael A. Haddle, an at-will employee, alleges that respondents conspired to have him fired from his job in retaliation for obeying a federal grand jury subpoena and to deter him from testifying at a federal criminal trial. We hold that such interference with at-will employment may give rise to a claim for damages under the Civil Rights Act of 1871, Rev. Stat. § 1980, 42 U. S. C. § 1985(2).

According to petitioner's complaint, a federal grand jury indictment in March 1995 charged petitioner's employer,

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*Briefs of *amici curiae* urging reversal were filed for the Lawyers' Committee for Civil Rights Under Law by *George W. Jones, Jr.*, *Jacqueline Gerson Cooper*, *Daniel F. Kolb*, *Norman Redlich*, *Barbara R. Arnwine*, *Thomas J. Henderson*, *Richard T. Seymour*, and *Teresa A. Ferrante;* for the National Employment Lawyers Association et al. by *Mark Allen Kleiman* and *Paula A. Brantner;* and for the National Whistleblower Center by *Stephen M. Kohn.*

Healthmaster, Inc., and respondents Jeanette Garrison and Dennis Kelly, officers of Healthmaster, with Medicare fraud. Petitioner cooperated with the federal agents in the investigation that preceded the indictment. He also appeared to testify before the grand jury pursuant to a subpoena, but did not testify due to the press of time. Petitioner was also expected to appear as a witness in the criminal trial resulting from the indictment.

Although Garrison and Kelly were barred by the Bankruptcy Court from participating in the affairs of Healthmaster, they conspired with G. Peter Molloy, Jr., one of the remaining officers of Healthmaster, to bring about petitioner's termination. They did this both to intimidate petitioner and to retaliate against him for his attendance at the federal-court proceedings.

Petitioner sued for damages in the United States District Court for the Southern District of Georgia, asserting a federal claim under 42 U. S. C. § 1985(2) and various state-law claims. Petitioner stated two grounds for relief under § 1985(2): one for conspiracy to deter him from testifying in the upcoming criminal trial and one for conspiracy to retaliate against him for attending the grand jury proceedings. As § 1985 demands, he also alleged that he had been "injured in his person or property" by the acts of respondents in violation of § 1985(2) and that he was entitled to recover his damages occasioned by such injury against respondents jointly and severally.

Respondents moved to dismiss for failure to state a claim upon which relief can be granted. Because petitioner conceded that he was an at-will employee, the District Court granted the motion on the authority of *Morast* v. *Lance*, 807 F. 2d 926 (1987). In *Morast*, the Eleventh Circuit held that an at-will employee who is dismissed pursuant to a conspiracy proscribed by § 1985(2) has no cause of action. The *Morast* court explained: "[T]o make out a cause of action under § 1985(2) the plaintiff must have suffered an actual in-

jury. Because Morast was an at will employee, . . . he had no constitutionally protected interest in continued employment. Therefore, Morast's discharge did not constitute an actual injury under this statute." *Id.*, at 930. Relying on its decision in *Morast*, the Court of Appeals affirmed. Judgt. order reported at 132 F. 3d 46 (1997).

The Eleventh Circuit's rule in *Morast* conflicts with the holdings of the First and Ninth Circuits. See *Irizarry* v. *Quiros*, 722 F. 2d 869, 871 (CA1 1983), and *Portman* v. *County of Santa Clara*, 995 F. 2d 898, 909–910 (CA9 1993). We therefore granted certiorari, 523 U. S. 1136 (1998), to decide whether petitioner was "injured in his property or person" when respondents induced his employer to terminate petitioner's at-will employment as part of a conspiracy prohibited by § 1985(2).

Section 1985(2), in relevant part, proscribes conspiracies to "deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified."[1] The statute provides that if one

[1] Section 1985(2) proscribes the following conspiracies: "If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws."

or more persons engaged in such a conspiracy "do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, . . . the party so injured . . . may have an action for the recovery of damages occasioned by such injury . . . against any one or more of the conspirators." § 1985(3).[2]

Petitioner's action was dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) because, in the Eleventh Circuit's view, he had not suffered an injury that could give rise to a claim for damages under § 1985(2). We must, of course, assume that the facts as alleged in petitioner's complaint are true and that respondents engaged in a conspiracy prohibited by § 1985(2). Our review in this case is accordingly confined to one question: Can petitioner state a claim for damages by alleging that a conspiracy proscribed by § 1985(2) induced his employer to terminate his at-will employment?[3]

We disagree with the Eleventh Circuit's conclusion that petitioner must suffer an injury to a "constitutionally protected property interest" to state a claim for damages under § 1985(2). Nothing in the language or purpose of the proscriptions in the first clause of § 1985(2), nor in its attendant remedial provisions, establishes such a requirement. The gist of the wrong at which § 1985(2) is directed is not deprivation of property, but intimidation or retaliation against witnesses in federal-court proceedings. The terms "injured in his person or property" define the harm that the victim may suffer as a result of the conspiracy to intimidate or retaliate. Thus, the fact that employment at will is not "prop-

[2] Section 1985(3) contains the remedial provision granting a cause of action for damages to those harmed by any of the conspiracies prohibited in § 1985. See *Kush* v. *Rutledge*, 460 U. S. 719, 724–725 (1983) (listing the various conspiracies that § 1985 prohibits).

[3] We express no opinion regarding respondents' argument that intimidation claims under § 1985(2) are limited to conduct involving force or threat of force, or their argument that only litigants, and not witnesses, may bring § 1985(2) claims. We leave those issues for the courts below to resolve on remand.

erty" for purposes of the Due Process Clause, see *Bishop* v. *Wood*, 426 U. S. 341, 345–347 (1976), does not mean that loss of at-will employment may not "injur[e] [petitioner] in his person or property" for purposes of § 1985(2).

We hold that the sort of harm alleged by petitioner here—essentially third-party interference with at-will employment relationships—states a claim for relief under § 1985(2). Such harm has long been a compensable injury under tort law, and we see no reason to ignore this tradition in this case. As Thomas Cooley recognized:

> "One who maliciously and without justifiable cause, induces an employer to discharge an employee, by means of false statements, threats or putting in fear, or perhaps by means of malevolent advice and persuasion, is liable in an action of tort to the employee for the damages thereby sustained. *And it makes no difference whether the employment was for a fixed term not yet expired or is terminable at the will of the employer.*" 2 Law of Torts 589–591 (3d ed. 1906) (emphasis added).

This Court also recognized in *Truax* v. *Raich*, 239 U. S. 33 (1915):

> "The fact that the employment is at the will of the parties, respectively, does not make it one at the will of others. The employé has manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion and, by the weight of authority, the unjustified interference of third persons is actionable although the employment is at will." *Id.*, at 38 (citing cases).

The kind of interference with at-will employment relations alleged here is merely a species of the traditional torts of intentional interference with contractual relations and intentional interference with prospective contractual relations. See Restatement (Second) of Torts § 766, Com-

ment *g*, pp. 10–11 (1977); see also *id.*, § 766B, Comment *c*, at 22. This protection against third-party interference with at-will employment relations is still afforded by state law today. See W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keaton on Law of Torts § 129, pp. 995–996, and n. 83 (5th ed. 1984) (citing cases). For example, the State of Georgia, where the acts underlying the complaint in this case took place, provides a cause of action against third parties for wrongful interference with employment relations. See *Georgia Power Co.* v. *Busbin*, 242 Ga. 612, 613, 250 S. E. 2d 442, 444 (1978) ("[E]ven though a person's employment contract is at will, he has a valuable contract right which may not be unlawfully interfered with by a third person"); see also *Troy* v. *Interfinancial, Inc.*, 171 Ga. App. 763, 766–769, 320 S. E. 2d 872, 877–879 (1984) (directed verdict inappropriate against defendant who procured plaintiff's termination for failure to lie at a deposition hearing).[4] Thus, to the extent that the terms "injured in his person or property" in § 1985 refer to principles of tort law, see 3 W. Blackstone, Commentaries on the Laws of England 118 (1768) (describing the universe of common-law torts as "all private wrongs, or civil injuries, which may be offered to the rights of either a man's person or his property"), we find ample support for our holding that the harm occasioned by the conspiracy here may give rise to a claim for damages under § 1985(2).

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.*

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[4] Petitioner did bring a claim for tortious interference with his employment relation against respondents in Georgia state court, but that claim was dismissed on summary judgment and the dismissal affirmed on appeal. The ultimate course of petitioner's state-law claim, however, has no bearing on whether he can state a claim for damages under § 1985(2) in federal court.

Syllabus

# NYNEX CORP. ET AL. *v.* DISCON, INC.

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

No. 96–1570. Argued October 5, 1998—Decided December 14, 1998

Respondent Discon, Inc., sold "removal services"—*i. e.*, the removal of obsolete telephone equipment—through petitioner Materiel Enterprises Company, a subsidiary of petitioner NYNEX Corporation, for the use of petitioner New York Telephone Company, another NYNEX subsidiary. After Materiel Enterprises began buying such services from AT&T Technologies, rather than from Discon, Discon filed this suit, alleging that petitioners and others had engaged in unfair, improper, and anticompetitive activities. The District Court dismissed the complaint for failure to state a claim. The Second Circuit affirmed with an exception, holding that certain of Discon's allegations—that Materiel Enterprises paid AT&T Technologies more than Discon would have charged because it could pass the higher prices on to New York Telephone, which could then pass them on to telephone consumers through higher regulatory-agency-approved service charges; that Materiel Enterprises would receive a year-end rebate from AT&T Technologies and share it with NYNEX; that Materiel Enterprises would not buy from Discon because it refused to participate in this fraudulent scheme; and that Discon therefore went out of business—stated a claim under § 1 of the Sherman Act. Noting that the ordinary procompetitive rationale for discriminating in favor of one supplier over another was lacking in this case, and that, in fact, the complaint alleged that Materiel Enterprises' buying decision was anticompetitive, the court held that Discon may have alleged a cause of action under, *inter alia*, the antitrust rule set forth in *Klor's, Inc.* v. *Broadway-Hale Stores, Inc.*, 359 U. S. 207, 212, that group boycotts are illegal *per se*. For somewhat similar reasons the court believed the complaint stated a valid conspiracy to monopolize claim under § 2 of the Act.

*Held:* The *per se* group boycott rule does not apply to a single buyer's decision to buy from one seller rather than another. Pp. 133–140.

(a) Precedent limits the *per se* rule in the boycott context to cases involving horizontal agreements among direct competitors. See, *e. g.*, *Business Electronics Corp.* v. *Sharp Electronics Corp.*, 485 U. S. 717, 734. The *per se* rule is inapplicable here because this case concerns only a vertical agreement and a vertical restraint, in the form of depriving a supplier of a potential customer. Nor is there a special fea-

ture that could distinguish this case from such precedent. Although petitioners' behavior hurt consumers by raising telephone service rates, that consumer injury naturally flowed not so much from a less competitive market for removal services, as from the exercise of market power lawfully in the hands of a monopolist, New York Telephone, combined with a deception worked upon the regulatory agency that prevented the agency from controlling the exercise of monopoly power. Applying the *per se* rule here would transform cases involving business behavior that is improper for various reasons into treble-damages antitrust cases and would discourage firms from changing suppliers—even where the competitive process itself does not suffer harm. Moreover, special anticompetitive motive cannot be found in Discon's claim that Materiel Enterprises hoped to drive Discon from the market lest Discon reveal its behavior to New York Telephone or to the relevant regulatory agency. That motive does not turn Materiel Enterprises' actions into a "boycott" under this Court's precedents, and Discon's reasons why the motive's presence should lead to the application of the *per se* rule are unconvincing. Finally, Discon's allegations that New York Telephone (through Materiel Enterprises) was the largest buyer of removal services in the State, and that only AT&T Technologies competed for New York Telephone's business, are not sufficient to warrant application of a *per se* presumption of consequent harm to the competitive process itself, absent a horizontal agreement. Discon's complaint suggests that other actual or potential competitors might have provided roughly similar checks upon "equipment removal" prices and services with or without Discon, which argues against the likelihood of anticompetitive harm. Pp. 133–139.

(b) Unless petitioners' purchasing practices harmed the competitive process, they did not amount to a conspiracy to monopolize in violation of § 2, and Discon cannot succeed on this claim without prevailing on its § 1 claim. Pp. 139–140.

(c) Petitioners' argument that Discon's complaint should be dismissed because it fails to allege that petitioners' purchasing decisions harmed the competitive process itself lies outside the questions presented for certiorari, which were limited to the application of the *per se* rule, and cannot be raised in this Court. P. 140.

93 F. 3d 1055, vacated and remanded.

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

*James R. Young* argued the cause for petitioners. With him on the briefs were *John Thorne*, *Richard G. Taranto*, *Guy Miller Struve*, *James D. Liss*, and *Vincent T. Chang.*

*Deputy Solicitor General Wallace* argued the cause for the United States as *amicus curiae.* With him on the brief were *Solicitor General Waxman*, *Assistant Attorney General Klein*, *Deputy Assistant Attorney General Melamed*, *Barbara McDowell*, *Catherine G. O'Sullivan*, *Mark S. Popofsky*, and *Debra A. Valentine.*

*Lawrence C. Brown* argued the cause for respondent. With him on the brief was *John H. Ring III.**

JUSTICE BREYER delivered the opinion of the Court.

In this case we ask whether the antitrust rule that group boycotts are illegal *per se* as set forth in *Klor's, Inc.* v. *Broadway-Hale Stores, Inc.*, 359 U. S. 207, 212 (1959), applies to a buyer's decision to buy from one seller rather than another, when that decision cannot be justified in terms of ordinary competitive objectives. We hold that the *per se* group boycott rule does not apply.

## I

Before 1984 American Telephone and Telegraph Company (AT&T) supplied most of the Nation's telephone service and, through wholly owned subsidiaries such as Western Electric, it also supplied much of the Nation's telephone equipment. In 1984 an antitrust consent decree took AT&T out of the *local* telephone service business and left AT&T a *long-distance* telephone service provider, competing with such firms as MCI and Sprint. See M. Kellogg, J. Thorne, & P. Huber, Federal Telecommunications Law § 4.6, p. 221

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*Briefs of *amici curiae* urging reversal were filed for the American Automobile Manufacturers Association by *Stephen M. Shapiro, Roy T. Englert, Jr., Donald M. Falk,* and *Mark Slywynsky;* for the Business Roundtable by *Thomas B. Leary* and *Robert C. Weinbaum;* for GTE Corporation by *Christopher Landau, Paul T. Cappuccio, William P. Barr,* and *M. Edward Whelan III;* and for the Association of the Bar of the City of New York by *Richard M. Steuer.*

*Mark R. Patterson* and *Stephen F. Ross* filed a brief for Law Professors as *amici curiae* urging affirmance.

(1992). The decree transformed AT&T's formerly owned local telephone companies into independent firms. At the same time, the decree insisted that those local firms help assure competitive long-distance service by guaranteeing long-distance companies physical access to their systems and to their local customers. See *United States* v. *American Telephone & Telegraph Co.*, 552 F. Supp. 131, 225, 227 (DC 1982), aff'd *sub nom. Maryland* v. *United States*, 460 U. S. 1001 (1983). To guarantee that physical access, some local telephone firms had to install new call-switching equipment; and to install new call-switching equipment, they often had to remove old call-switching equipment. This case involves the business of removing that old switching equipment (and other obsolete telephone equipment)—a business called *"removal services."*

Discon, Inc., the respondent, sold removal services used by New York Telephone Company, a firm supplying local telephone service in much of New York State and parts of Connecticut. New York Telephone is a subsidiary of NYNEX Corporation. NYNEX also owns Materiel Enterprises Company, a purchasing entity that bought removal services for New York Telephone. Discon, in a lengthy detailed complaint, alleged that the NYNEX defendants (namely, NYNEX, New York Telephone, Materiel Enterprises, and several NYNEX related individuals) engaged in unfair, improper, and anticompetitive activities in order to hurt Discon and to benefit Discon's removal services competitor, AT&T Technologies, a lineal descendant of Western Electric. The Federal District Court dismissed Discon's complaint for failure to state a claim. The Court of Appeals for the Second Circuit affirmed that dismissal with an exception, and that exception is before us for consideration.

The Second Circuit focused on one of Discon's specific claims, a claim that Materiel Enterprises had switched its purchases from Discon to Discon's competitor, AT&T Tech-

nologies, as part of an attempt to defraud local telephone service customers by hoodwinking regulators. According to Discon, Materiel Enterprises would pay AT&T Technologies more than Discon would have charged for similar removal services. It did so because it could pass the higher prices on to New York Telephone, which in turn could pass those prices on to telephone consumers in the form of higher regulatory-agency-approved telephone service charges. At the end of the year, Materiel Enterprises would receive a special rebate from AT&T Technologies, which Materiel Enterprises would share with its parent, NYNEX. Discon added that it refused to participate in this fraudulent scheme, with the result that Materiel Enterprises would not buy from Discon, and Discon went out of business.

These allegations, the Second Circuit said, state a cause of action under § 1 of the Sherman Act, though under a "different legal theory" from the one articulated by Discon. 93 F. 3d 1055, 1060 (1996). The Second Circuit conceded that ordinarily "the decision to discriminate in favor of one supplier over another will have a pro-competitive intent and effect." *Id.*, at 1061. But, it added, in this case, "no such pro-competitive rationale appears on the face of the complaint." *Ibid.* Rather, the complaint alleges Materiel Enterprises' decision to buy from AT&T Technologies, rather than from Discon, was intended to be, and was, "anti-competitive." *Ibid.* Hence, "Discon has alleged a cause of action under, at least, the rule of reason, and possibly under the *per se* rule applied to group boycotts in *Klor's*, if the restraint of trade '"has no purpose except stifling competition."'" *Ibid.* (quoting *Oreck Corp.* v. *Whirlpool Corp.*, 579 F. 2d 126, 131 (CA2) (en banc) (in turn quoting *White Motor Co.* v. *United States*, 372 U. S. 253, 263 (1963)), cert. denied, 439 U. S. 946 (1978)). For somewhat similar reasons the Second Circuit believed the complaint stated a valid claim of conspiracy to monopolize under § 2 of the Sherman Act. See 93 F. 3d, at 1061–1062.

The Second Circuit noted that the Courts of Appeals are uncertain as to whether, or when, the *per se* group boycott rule applies to a decision by a purchaser to favor one supplier over another (which the Second Circuit called a "two-firm group boycott"). Compare *Com-Tel, Inc.* v. *DuKane Corp.*, 669 F. 2d 404, 411–413, and nn. 13, 16 (CA6 1982); *Cascade Cabinet Co.* v. *Western Cabinet & Millwork Inc.*, 710 F. 2d 1366, 1370–1371 (CA9 1983), with *Construction Aggregate Transport, Inc.* v. *Florida Rock Industries, Inc.*, 710 F. 2d 752, 776–778 (CA11 1983). We granted certiorari in order to consider the applicability of the *per se* group boycott rule where a single buyer favors one seller over another, albeit for an improper reason.

## II

As this Court has made clear, the Sherman Act's prohibition of "[e]very" agreement in "restraint of trade," 26 Stat. 209, as amended, 15 U. S. C. § 1, prohibits only agreements that *unreasonably* restrain trade. See *Business Electronics Corp.* v. *Sharp Electronics Corp.*, 485 U. S. 717, 723 (1988) (citing *National Collegiate Athletic Assn.* v. *Board of Regents of Univ. of Okla.*, 468 U. S. 85, 98 (1984)); *Standard Oil Co. of N. J.* v. *United States*, 221 U. S. 1, 59–62 (1911); 2 P. Areeda & H. Hovenkamp, Antitrust Law ¶ 320b, p. 49 (1995). Yet certain kinds of agreements will so often prove so harmful to competition and so rarely prove justified that the antitrust laws do not require proof that an agreement of that kind is, in fact, anticompetitive in the particular circumstances. See *State Oil Co.* v. *Khan*, 522 U. S. 3, 10 (1997); *Northwest Wholesale Stationers, Inc.* v. *Pacific Stationery & Printing Co.*, 472 U. S. 284, 289–290 (1985); 2 Areeda & Hovenkamp, *supra*, ¶ 320b, at 49–52. An agreement of such a kind is unlawful *per se*. See, *e. g.*, *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 218 (1940) (finding horizontal price-fixing agreement *per se* illegal); *Dr. Miles Medical Co.* v. *John D. Park & Sons Co.*, 220 U. S. 373, 408 (1911) (finding vertical price-fixing agreement *per se* illegal);

*Palmer* v. *BRG of Ga., Inc.*, 498 U. S. 46, 49–50 (1990) *(per curiam)* (finding horizontal market division *per se* illegal).

The Court has found the *per se* rule applicable in certain group boycott cases. Thus, in *Fashion Originators' Guild of America, Inc.* v. *FTC,* 312 U. S. 457 (1941), this Court considered a group boycott created by an agreement among a group of clothing designers, manufacturers, suppliers, and retailers. The defendant designers, manufacturers, and suppliers had promised not to sell their clothes to retailers who bought clothes from competing manufacturers and suppliers. The defendants wanted to present evidence that would show their agreement was justified because the boycotted competitors used "pira[ted]" fashion designs. *Id.*, at 467. But the Court wrote that "it was not error to refuse to hear the evidence offered"—evidence that the agreement was reasonable and necessary to "protect . . . against the devastating evils" of design pirating—for that evidence "is no more material than would be the reasonableness of the prices fixed" by a price-fixing agreement. *Id.*, at 467–468.

In *Klor's* the Court also applied the *per se* rule. The Court considered a boycott created when a retail store, Broadway-Hale, and 10 household appliance manufacturers and their distributors agreed that the distributors would not sell, or would sell only at discriminatory prices, household appliances to Broadway-Hale's small, nearby competitor, namely, Klor's. 359 U. S., at 208–209. The defendants had submitted undisputed evidence that their agreement hurt only one competitor (Klor's) and that so many other nearby appliance-selling competitors remained that competition in the marketplace continued to thrive. *Id.*, at 209–210. The Court held that this evidence was beside the point. The conspiracy was "not to be tolerated merely because the victim is just one merchant." *Id.*, at 213. The Court thereby inferred injury to the competitive process itself from the nature of the boycott agreement. And it forbade, as a matter

of law, a defense based upon a claim that only one small firm, not competition itself, had suffered injury.

The case before us involves *Klor's.* The Second Circuit did not forbid the defendants to introduce evidence of "justification." To the contrary, it invited the defendants to do so, for it said that the "*per se* rule" would apply only if no "pro-competitive justification" were to be found. 93 F. 3d, at 1061; cf. 7 P. Areeda & H. Hovenkamp, Antitrust Law ¶ 1510, p. 416 (1986) ("Boycotts are said to be unlawful per se but justifications are routinely considered in defining the forbidden category"). Thus, the specific legal question before us is whether an antitrust court considering an agreement by a buyer to purchase goods or services from one supplier rather than another should (after examining the buyer's reasons or justifications) apply the *per se* rule if it finds no legitimate business reason for that purchasing decision. We conclude no boycott-related *per se* rule applies and that the plaintiff here must allege and prove harm, not just to a single competitor, but to the competitive process, *i. e.*, to competition itself.

Our conclusion rests in large part upon precedent, for precedent limits the *per se* rule in the boycott context to cases involving horizontal agreements among direct competitors. The agreement in *Fashion Originators' Guild* involved what may be called a group boycott in the strongest sense: A group of competitors threatened to withhold business from third parties unless those third parties would help them injure their directly competing rivals. Although *Klor's* involved a threat made by a *single* powerful firm, it also involved a horizontal agreement among those threatened, namely, the appliance suppliers, to hurt a competitor of the retailer who made the threat. See 359 U. S., at 208–209; see also P. Areeda & L. Kaplow, Antitrust Analysis: Problems, Text, and Cases 333 (5th ed. 1997) (defining paradigmatic boycott as "collective action among a group of com-

petitors that may inhibit the competitive vitality of rivals"); 11 H. Hovenkamp, Antitrust Law ¶ 1901e, pp. 189–190 (1998). This Court emphasized in *Klor's* that the agreement at issue was

> "not a case of a single trader refusing to deal with another, nor even of a manufacturer and a dealer agreeing to an exclusive distributorship. Alleged in this complaint is a wide combination consisting of manufacturers, distributors and a retailer." 359 U. S., at 212–213 (footnote omitted).

This Court subsequently pointed out specifically that *Klor's* was a case involving not simply a "vertical" agreement between supplier and customer, but a case that also involved a "horizontal" agreement among competitors. See *Business Electronics*, 485 U. S., at 734. And in doing so, the Court held that a "vertical restraint is not illegal *per se* unless it includes some agreement on price or price levels." *Id.*, at 735–736. This precedent makes the *per se* rule inapplicable, for the case before us concerns only a vertical agreement and a vertical restraint, a restraint that takes the form of depriving a supplier of a potential customer. See 11 Hovenkamp, *supra*, ¶ 1902d, at 198.

We have not found any special feature of this case that could distinguish it from the precedent we have just discussed. We concede Discon's claim that the petitioners' behavior hurt consumers by raising telephone service rates. But that consumer injury naturally flowed not so much from a less competitive market for removal services, as from the exercise of market power that is *lawfully* in the hands of a monopolist, namely, New York Telephone, combined with a deception worked upon the regulatory agency that prevented the agency from controlling New York Telephone's exercise of its monopoly power.

To apply the *per se* rule here—where the buyer's decision, though not made for competitive reasons, composes

part of a regulatory fraud—would transform cases involving business behavior that is improper for various reasons, say, cases involving nepotism or personal pique, into treble-damages antitrust cases. And that *per se* rule would discourage firms from changing suppliers—even where the competitive process itself does not suffer harm. Cf. *Poller* v. *Columbia Broadcasting System, Inc.*, 368 U. S. 464, 484 (1962) (Harlan, J., dissenting) (citing *Packard Motor Car Co.* v. *Webster Motor Car Co.*, 243 F. 2d 418, 421 (CADC 1957)).

The freedom to switch suppliers lies close to the heart of the competitive process that the antitrust laws seek to encourage. Cf. *Standard Oil*, 221 U. S., at 62 (noting "the freedom of the individual right to contract when not unduly or improperly exercised [is] the most efficient means for the prevention of monopoly"). At the same time, other laws, for example, "unfair competition" laws, business tort laws, or regulatory laws, provide remedies for various "competitive practices thought to be offensive to proper standards of business morality." 3 P. Areeda & H. Hovenkamp, Antitrust Law ¶ 651d, p. 78 (1996). Thus, this Court has refused to apply *per se* reasoning in cases involving that kind of activity. See *Brooke Group Ltd.* v. *Brown & Williamson Tobacco Corp.*, 509 U. S. 209, 225 (1993) ("Even an act of pure malice by one business competitor against another does not, without more, state a claim under the federal antitrust laws"); 3 Areeda & Hovenkamp, *supra*, ¶ 651d, at 80 ("[I]n the presence of substantial market power, some kinds of tortious behavior could anticompetitively create or sustain a monopoly, [but] it is wrong categorically to condemn such practices . . . or categorically to excuse them").

Discon points to another special feature of its complaint, namely, its claim that Materiel Enterprises hoped to drive Discon from the market lest Discon reveal its behavior to New York Telephone or to the relevant regulatory agency. That hope, says Discon, amounts to a special anticompetitive motive.

We do not see how the presence of this special motive, however, could make a significant difference. That motive does not turn Materiel Enterprises' actions into a "boycott" within the meaning of this Court's precedents. See *supra*, at 135–136. Nor, for that matter, do we understand how Discon believes the motive affected Materiel Enterprises' behavior. Why would Discon's demise have made Discon's employees less likely, rather than more likely, to report the overcharge/rebate scheme to telephone regulators? Regardless, a *per se* rule that would turn upon a showing that a defendant not only knew about but also hoped for a firm's demise would create a legal distinction—between corporate knowledge and corporate motive—that does not necessarily correspond to behavioral differences and which would be difficult to prove, making the resolution of already complex antitrust cases yet more difficult. We cannot find a convincing reason why the presence of this special motive should lead to the application of the *per se* rule.

Finally, we shall consider an argument that is related tangentially to Discon's *per se* claims. The complaint alleges that New York Telephone (through Materiel Enterprises) was the largest buyer of removal services in New York State, see Amended Complaint ¶¶ 2, 29, 99, App. 75, 83, 110, and that only AT&T Technologies competed for New York Telephone's business, see ¶¶ 2, 26, 29, *id.*, at 75, 82–83. One might ask whether these accompanying allegations are sufficient to warrant application of a *Klor's*-type presumption of consequent harm to the competitive process itself.

We believe that these allegations do not do so, for, as we have said, see *supra*, at 135–136, antitrust law does not permit the application of the *per se* rule in the boycott context in the absence of a horizontal agreement, though in other contexts, say, vertical price fixing, conduct may fall within the scope of a *per se* rule not at issue here, see, *e. g.*, *Dr. Miles Medical Co.*, 220 U. S., at 408. The complaint

itself explains why any such presumption would be particularly inappropriate here, for it suggests the presence of other potential or actual competitors, which fact, in the circumstances, could argue against the likelihood of anticompetitive harm. The complaint says, for example, that New York Telephone itself was a potential competitor in that New York Telephone considered removing its equipment by itself, and in fact did perform a few jobs itself. See ¶ 27, App. 83. The complaint also suggests that other nearby small local telephone companies needing removal services must have worked out some way to supply them. See ¶ 53, *id.*, at 91. The complaint's description of the removal business suggests that entry was easy, perhaps to the point where other firms, employing workers who knew how to remove a switch and sell it for scrap, might have entered that business almost at will. Cf. ¶ 27, *id.*, at 83. To that extent, the complaint suggests other actual or potential competitors might have provided roughly similar checks upon "equipment removal" prices and services with or without Discon. At the least, the complaint provides no sound basis for assuming the contrary. Its simple allegation of harm to Discon does not automatically show injury to competition.

## III

The Court of Appeals also upheld the complaint's charge of a conspiracy to monopolize in violation of § 2 of the Sherman Act. It did so, however, on the understanding that the conspiracy in question consisted of the very same purchasing practices that we have previously discussed. Unless those agreements harmed the competitive process, they did not amount to a conspiracy to monopolize. We do not see, on the basis of the facts alleged, how Discon could succeed on this claim without prevailing on its § 1 claim. See 3 Areeda & Hovenkamp, *supra*, ¶ 651e, at 81–82. Given our conclusion that Discon has not alleged a § 1 *per se* violation, we think it prudent to vacate this portion of the Court

of Appeals' decision and allow the court to reconsider its finding of a § 2 claim.

IV

Petitioners ask us to reach beyond the "*per se*" issues and to hold that Discon's complaint does not allege anywhere that their purchasing decisions harmed the competitive process itself and, for this reason, it should be dismissed. They note that Discon has not pointed to any paragraph of the complaint that alleges harm to the competitive process. This matter, however, lies outside the questions presented for certiorari. Those questions were limited to the application of the *per se* rule. For that reason, we believe petitioners cannot raise that argument in this Court.

V

For these reasons, the judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

*It is so ordered.*

Per Curiam

# CALDERON, WARDEN *v.* COLEMAN

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

No. 98–437. Decided December 14, 1998

Respondent Coleman was convicted in a California court of, *inter alia*, murder. At the trial's penalty phase, the judge gave a so-called Briggs instruction, then required by state law, which informed the jury of the Governor's power to commute a life sentence without the possibility of parole to a lesser sentence that might include the possibility of parole. The State Supreme Court affirmed on direct appeal. The Federal District Court granted Coleman's subsequent habeas petition, finding that the Briggs instruction violated the Eighth and Fourteenth Amendments because it did not mention a limitation on the Governor's power to commute Coleman's sentence. In affirming, the Ninth Circuit rejected the State's argument that the instruction, even if unconstitutional, did not have a substantial and injurious effect or influence on the jury's verdict, as required by *Brecht* v. *Abrahamson*, 507 U. S. 619, 637. It applied instead the rule of *Boyde* v. *California*, 494 U. S. 370, 380, finding that there was a reasonable likelihood that the jury applied the instruction in a way that prevented it from considering constitutionally relevant evidence.

*Held:* The Ninth Circuit erred by failing to apply *Brecht*'s harmless-error analysis. *Brecht*'s standard reflects the presumption of finality and legality that attaches to a conviction at the conclusion of direct review. It protects the State's sovereign interest in punishing offenders and its good-faith attempts to honor constitutional rights, while ensuring that the extraordinary remedy of habeas corpus is available to those whom society has grievously wronged. This balance is upset when a federal court sets aside a state-court conviction or sentence without first determining that the error had a substantial and injurious effect on the jury's verdict. The *Boyde* test is not a harmless-error test at all. It merely asks whether a constitutional error has occurred and does not inquire into the error's actual effect on the jury's verdict.

Certiorari granted; 150 F. 3d 1105, reversed and remanded.

PER CURIAM.

After a jury trial in a state court in California, respondent Russell Coleman was convicted of the September 5, 1979,

rape, sodomy, and murder of Shirley Hill. The jury's two special circumstances findings of rape and sodomy made Coleman death-penalty eligible under California law. See *People* v. *Coleman*, 46 Cal. 3d 749, 756–757, 759 P. 2d 1260, 1264 (1988).

At the penalty phase of Coleman's trial, the trial judge gave the jury a so-called Briggs instruction, then required by California law, which informed the jury of the Governor's power to commute a sentence of life without possibility of parole to some lesser sentence that might include the possibility of parole. After giving the standard Briggs instruction, the state trial court instructed the jury that it was not to consider the Governor's commutation power in reaching its verdict. Thus, the full jury instruction on commutation was as follows:

> "You are instructed that under the State Constitution, a Governor is empowered to grant a reprieve, pardon or commutation of a sentence following conviction of the crime.
>
> "Under this power, a Governor may in the future commute or modify a sentence of life imprisonment without the possibility of parole to a lesser sentence that would include the possibility of parole.
>
> "So that you will have no misunderstandings relating to a sentence of life without possibility of parole, you have been informed generally as to the Governor's commutation modification power. You are now instructed, however, that the matter of a Governor's commutation power is not to be considered by you in determining the punishment for this defendant.
>
> "You may not speculate as to if or when a Governor would commute the sentence to a lesser one which includes the possibility of parole.
>
> "I instruct you again that you are to consider only those aggravating and mitigating factors which I have already

> read to you in determining which punishment shall be imposed on this defendant." Respondent's Opposition to Motion to Amend Petition for Writ of Habeas Corpus in No. C89–1906 (ND Cal.), p. 7, Record, Doc. No. 267, quoting Tr. 1059–1060.

In an unrelated case, we had upheld the Briggs instruction against a federal constitutional challenge. *California* v. *Ramos*, 463 U. S. 992 (1983). On direct appeal, however, Coleman argued that giving the Briggs instruction in his case was reversible error under the California Supreme Court's decision in *California* v. *Ramos*, 37 Cal. 3d 136, 689 P. 2d 430 (1984). There the California Supreme Court held, on remand from this Court, that the Briggs instruction violates the California Constitution because, in the California Supreme Court's view, it is misleading, invites the jury to consider irrelevant and speculative matters, and diverts the jury from its proper function.

The California Supreme Court rejected Coleman's argument and upheld his death sentence. *People* v. *Coleman*, *supra*. While the court found that the giving of the Briggs instruction was error under California law, it held the error was not prejudicial because the additional instruction told the jury it should not consider the possibility of commutation in determining Coleman's sentence. *Id.*, at 780–781, 759 P. 2d, at 1281–1282.

Coleman then sought a federal writ of habeas corpus. Although the District Court acknowledged this Court's holding that giving the Briggs instruction does not violate the Federal Constitution and does not mislead or inappropriately divert the jury, the court nonetheless granted the writ as to Coleman's death sentence. No. C89–1906 (ND Cal., Mar. 28, 1997), App. to Pet. for Cert. A–146, A–151. Relying on recent Ninth Circuit precedent, the District Court found the Briggs instruction was inaccurate as applied to Coleman because it did not mention a limitation on the Governor's power to commute Coleman's sentence. *Id.*, at A–

147. Under the California Constitution, the Governor may not commute the sentence of a prisoner who, like Coleman, is a twice-convicted felon without the approval of four judges of the California Supreme Court. Art. 5, § 8.

The District Court found that, because the Briggs instruction did not mention this limitation on the Governor's commutation power, it violated the Eighth and Fourteenth Amendments by "g[iving] the jury inaccurate information and potentially divert[ing] its attention from the mitigation evidence presented." No. C89–1906, *supra*, at A–151. The court also found that, in the context of the case—particularly, the prosecutor's arguments of future dangerousness, "the commutation instruction would likely have prevented the jury from giving due effect to Coleman's mitigating evidence." *Id.*, at A–149. The court did not in express terms consider the effect of the additional instruction, which instructed the jury not to consider commutation, but it noted that the Ninth Circuit had held in a similar case, *Hamilton* v. *Vasquez*, 17 F. 3d 1149 (1994), "that the trial court did not cure the error by instructing the jury not to consider commutation." No. C89–1906, *supra*, at A–148.

The Court of Appeals for the Ninth Circuit affirmed the District Court's grant of the writ as to Coleman's sentence. 150 F. 3d 1105 (1998). The Court of Appeals agreed with the District Court's finding that the instruction, as applied to Coleman, gave the jury inaccurate information about the Governor's commutation power. *Id.*, at 1118. And, in a sweeping pronouncement, the court declared, "[a] commutation instruction is unconstitutional when it is inaccurate." *Ibid.* The instruction at issue was fatally flawed, the court held, because it "dramatically overstate[d] the possibility of commuting the life sentence of a person such as Coleman" (by creating "the false impression that the Governor, acting alone," could commute the sentence) and thus prevented the jurors from "understand[ing] the choice they [we]re asked to make" and "'invited [them] to speculate' that Cole-

man could be effectively isolated from the community only through a sentence of death." *Id.*, at 1119.

Having concluded that the giving of the instruction was constitutional error, the Court of Appeals then took up the State's argument that, even if the instruction was unconstitutional, it "did not have a 'substantial and injurious effect or influence' on the jury's sentence of death," *ibid.*, as required by *Brecht* v. *Abrahamson*, 507 U. S. 619, 637 (1993). The court explained:

> "To decide this question, we look to *Boyde v. California*, 494 U. S. 370 (1990). When the inaccuracy undermines the jury's understanding of sentencing options, 'there is a reasonable likelihood that the jury has applied the challenged instruction in a way that prevents the consideration of constitutionally relevant evidence.' *Boyde*, 494 U. S. at 380.
>
> "We conclude the district court did not err in holding that Coleman was denied due process by the state trial court's inaccurate commutation instruction." 150 F. 3d, at 1119 (citations omitted).

Though the Court of Appeals' constitutional analysis of the jury instruction, and the Circuit precedent on which it relied, have not been approved by this Court, we do not consider the validity of that analysis here because the State has not asked us to do so. We will simply assume at this stage that the instruction did not meet constitutional standards. The State does contend, however, that the Court of Appeals erred by failing to apply the harmless-error analysis of *Brecht*. We agree.

We held in *Brecht* that a federal court may grant habeas relief based on trial error only when that error "'had substantial and injurious effect or influence in determining the jury's verdict.'" 507 U. S., at 637 (quoting *Kotteakos* v. *United States*, 328 U. S. 750, 776 (1946)). This standard reflects the "presumption of finality and legality" that attaches

to a conviction at the conclusion of direct review. 507 U. S., at 633. It protects the State's sovereign interest in punishing offenders and its "good-faith attempts to honor constitutional rights," *id.*, at 635, while ensuring that the extraordinary remedy of habeas corpus is available to those "'whom society has grievously wronged,'" *id.*, at 634 (quoting *Fay* v. *Noia*, 372 U. S. 391, 440–441 (1963)).

A federal court upsets this careful balance when it sets aside a state-court conviction or sentence without first determining that the error had a substantial and injurious effect on the jury's verdict. The social costs of retrial or resentencing are significant, and the attendant difficulties are acute in cases such as this one, where the original sentencing hearing took place in November 1981, some 17 years ago. No. C89–1906, App. to Pet. for Cert. A–101, n. 45. The State is not to be put to this arduous task based on mere speculation that the defendant was prejudiced by trial error; the court must find that the defendant was actually prejudiced by the error. *Brecht*, *supra*, at 637. As a consequence, once the Court of Appeals determined that the giving of the Briggs instruction was constitutional error, it was bound to apply the harmless-error analysis mandated by *Brecht*.

The *Boyde* test that the Court of Appeals applied instead is not a harmless-error test at all. It is, rather, the test for determining, in the first instance, whether constitutional error occurred when the jury was given an ambiguous instruction that it might have interpreted to prevent consideration of constitutionally relevant evidence. *Boyde* v. *California*, 494 U. S. 370, 377, 380 (1990). In such cases, constitutional error exists only if "there is a reasonable likelihood" that the jury so interpreted the instruction.

Although the *Boyde* test for constitutional error, like the *Brecht* harmless-error test, furthers the "strong policy against retrials years after the first trial where the claimed error amounts to no more than speculation," 494 U. S., at 380, it is not a substitute for the *Brecht* harmless-error test.

The *Boyde* analysis does not inquire into the actual effect of the error on the jury's verdict; it merely asks whether constitutional error has occurred. If the Court of Appeals had viewed the jury instruction as ambiguous on the issue whether the Governor had the power alone to commute defendant's sentence, it might have inquired—as in *Boyde*—whether there was a reasonable likelihood that the jury understood the instruction as stating the Governor had that power. If the court found that possibility to be a reasonable one, it would determine then whether the instruction, so understood, was unconstitutional as applied to the defendant. Even if the court found a constitutional violation, however, it could not grant the writ without further inquiry. As the Court has recognized on numerous occasions, some constitutional errors do not entitle the defendant to relief, particularly habeas relief. See, *e. g.*, *Brecht*, *supra*, at 637–638; *O'Neal* v. *McAninch*, 513 U. S. 432, 435–436 (1995) (applying harmless-error review to an instruction that "violated the Federal Constitution by misleading the jury"). The court must find that the error, in the whole context of the particular case, had a substantial and injurious effect or influence on the jury's verdict.

The motion of respondent for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted, the judgment of the Court of Appeals for the Ninth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

*It is so ordered.*

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

Busy appellate judges sometimes write imperfect opinions. The failure adequately to explain the resolution of one issue in an opinion that answers several questions is not a matter of serious consequence if the decision is correct. In this case, there might have been a slight flaw in the Court of

Appeals' brief explanation of why the invalid instruction given to the jury was not harmless, but, as I shall explain, the court's ruling was unquestionably correct.

The State does not challenge the conclusion that the jury was given an unconstitutional instruction. It merely argues that this trial error should not "command automatic reversal . . . without application of the harmless error test of *Brecht v. Abrahamson*, 507 U. S. 619 (1993)."[1] And respondent Coleman does not contend that *Brecht* is inapplicable. He merely argues that the Court of Appeals actually performed the *Brecht* inquiry, albeit in an expedited fashion. Thus, the only controversy before this Court is whether the Court of Appeals was faithful to *Brecht*, and sufficiently explicit in its adherence.

Three aspects of the *Brecht* test for harmless error are significant here: (1) The test requires the reviewing judge to evaluate the error in the context of the entire record; (2) it asks whether the constitutional trial error at issue had a "'substantial and injurious effect or influence in determining the jury's verdict,'" *Brecht*, 507 U. S., at 637 (quoting *Kotteakos* v. *United States*, 328 U. S. 750, 776 (1946)); and (3) if the judge has grave doubt about whether the error was harmless, the uncertain judge should conclude that the error affected the jury's deliberations and grant relief, see *O'Neal* v. *McAninch*, 513 U. S. 432 (1995).

In this case, it is undisputed that both the District Court and the Court of Appeals made a thorough examination of the entire record. The District Court's 117-page opinion carefully analyzed each of the respondent's nonfrivolous attacks on his conviction and concluded that the judgment of guilt should stand. With respect to the death penalty, however, the District Judge decided that the inaccurate and misleading instruction describing the Governor's com-

[1] Pet. for Cert. i.

mutation power was unconstitutional and "would likely have prevented the jury from giving due effect to Coleman's mitigating evidence."[2] Although the judge did not

[2] App. to Pet. for Cert. 149. The District Court concluded more fully: "Coleman was entitled, under the Eighth and Fourteenth Amendments, to a sentencing jury that could fairly review the evidence he presented to show that he should not be sentenced to death. *See e. g., Boyde* [v. *California*, 494 U. S. 370, 377–378 (1990)]; *Lockett* [v. *Ohio*, 438 U. S. 586, 605 (1978)]. Considered in light of the prosecution argument, the aggravating evidence and the record as a whole, the commutation instruction would likely have prevented the jury from giving due effect to Coleman's mitigating evidence. *See Hamilton* [v. *Vasquez*, 17 F. 3d 1149, 1163 (CA9), cert. denied, 512 U. S. 1220 (1994)]; *cf. Boyde*, 494 U. S. at 370.

"Believing that the governor could, single-handedly, render Coleman eligible for parole, for example, the jury would have found it difficult to give 'a reasoned moral response' to testimony about Coleman's temper and his history of incarceration that was introduced to explain his behavior. *See Hamilton*, 17 F. 3d at 1160. During its deliberation, the jury requested a copy of Coleman's prior felony convictions, which [suggests] that it gave them considerable weight. RT 1068–72. Yet the instruction prevented the jury from learning that Coleman's prior convictions not only weighed against him in aggravation but also made parole considerably less likely. *See* [*California* v. *Ramos*, 463 U. S. 992, 1008 (1983)] (penalty-phase jury may consider many factors in determining whether death is the appropriate punishment); *see also Penry* [v. *Lynaugh*, 492 U. S. 302, 324 (1989)] (penalty-phase instruction unconstitutionally allowed jury to give aggravating, but not mitigating, effect to evidence of petitioner's mental retardation).

"The need for accurate parole-related instructions is heightened when the prosecution argues the issue of a defendant's future dangerousness. *See Simmons* [v. *South Carolina*, 512 U. S. 154, 164 (1994)] (due process violated when trial court refused to give accurate parole-eligibility instruction to rebut prosecution's argument about future dangerousness). Here, the prosecutor built his penalty-phase case around Coleman's prior felonies and his propensity for violence, both in and out of prison. His closing argument, in particular, told the jury that Coleman 'has already demonstrated what he is capable of doing on numerous occasions to each and every one of us. . . . He is manipulative, he is dangerous to all of us.' RT 1011–12, 1029–30; *see Simmons*, [512 U. S., at 157] (prosecutor alluded to future dangerousness by arguing that death sentence would be 'a re-

use the exact words that this Court used in its opinions in *Kotteakos*, *Brecht*, and *O'Neal*, it is perfectly clear that he was convinced that the instruction had a "substantial and injurious effect" on the jury's deliberations. This conclusion is reinforced by the statement of a juror explaining how the invalid instruction had, in fact, affected the jury's deliberations.[3]

Because there is no reason to believe that the District Court's evaluation of the impact of the invalid instruction was incorrect, it is not surprising that the Court of Appeals affirmed without writing extensively about the harmless-error issue. It reasoned, in brief, that if there was a reasonable likelihood that the jury had applied an invalid instruction in a way that prevented the consideration of constitutionally relevant evidence, the error necessarily satisfied the *Brecht* test. Instead of spelling out its rea-

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sponse of society to someone who is a threat[']); *Hamilton*, 17 F. 3d at 1162 (prosecutor argued that [Hamilton] would be 'conniving and devising ways to manipulate the system and get out[']). This argument may have caused the jury to speculate about the possibility that Coleman would be released if he were not sentenced to death.

"Because the instruction, in the context of Coleman's penalty-phase proceeding, gave the jury inaccurate information and potentially diverted its attention from the mitigation evidence presented, his death sentence violates the Eighth and Fourteenth Amendments: 'The jury in this case deliberating under these instructions could not have made the constitutionally mandated reasoned and informed choice between a sentence of life imprisonment without possibility of parole and a sentence of death.' *See Hamilton*, 17 F. 3d at 1164." *Id.*, at 149–151 (footnote omitted).

[3] "[A]ccording to juror Verda New, the possibility of parole was a much discussed topic in deciding whether respondent should live or die:

'[The jurors] openly discussed that Russell Coleman would be released from prison unless we sentenced him to death. Several jurors stated that he could be paroled if we sentenced him to life in prison. . . . Many of the jurors expressed their fear that if we failed to sentence Mr. Coleman to death, the courts or the Governor could allow him to be released from prison. This was the most significant part of our discussions regarding the appropriate penalty.'" Brief in Opposition 7.

soning at length, it merely cited an earlier en banc decision of the Ninth Circuit that came to a similar conclusion. See *McDowell* v. *Calderon*, 130 F. 3d 833, 838 (1997), cert. denied, 523 U. S. 1103 (1998).[4]

Perhaps there may be cases in which a more detailed and written analysis of the harmless-error issue should precede an appellate court's decision to affirm a trial court's conclusion that an unconstitutional jury instruction in a capital sentencing proceeding was not harmless. But even if that be true, there are three good reasons for not requiring the Court of Appeals to take a second look at the issue in this case.

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[4] Although this Court's *per curiam* opinion quotes the relevant paragraph from the opinion below, see *ante*, at 145, the Court inadvertently omits the citation to *McDowell* that explained the Court of Appeals' reasoning. In *McDowell*, the en banc court stated:

"The question, then, is whether this fundamental error had any 'substantial and injurious effect or influence' on the jury's sentence of death, *Brecht* v. *Abrahamson*, 507 U. S. 619, 637 (1993) (quoting *Kotteakos* v. *United States*, 328 U. S. 750, 776 (1946)). To answer this question, we look for specific guidance to *Boyde* v. *California*, 494 U. S. 370 (1990). In *Boyde*, the Supreme Court confronted a claim that an arguably ambiguous jury instruction 'restrict[ed] impermissibly a jury's consideration of relevant [penalty phase] evidence. . . .' To evaluate such a claim, the Court fashioned a reviewing yardstick which we find appropriate here: '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 consideration of constitutionally relevant evidence.' *Id.* at 380. If the answer is 'yes,' the error necessarily satisfies the *Brecht* test for substantial and injurious error. . . . We conclude on these facts, in these circumstances, and in the light of controlling authority that the error did substantially injure and influence the jury's verdict." *McDowell* v. *Calderon*, 130 F. 3d, at 838 (footnote omitted).

Four judges dissented from *McDowell*'s conclusion that it was reasonably likely that the jury erred in their application of an instruction used in that case, see *id.*, at 841, but no judge took issue with the logic of the harmless-error analysis quoted above, see *id.*, at 842–843 (Thompson, J., dissenting); see also *id.*, at 843–845 (Kozinski, J., dissenting).

First, in the context of the entire record as analyzed by the District Court, the result here is correct. Second, a fair reading of THE CHIEF JUSTICE's opinion for the Court in *Boyde* v. *California*, 494 U. S. 370 (1990), indicates that the heightened "reasonable likelihood" standard endorsed in that case was intended to determine whether an instructional error "require[s] reversal." *Id.*, at 379, 380. There is little reason to question the soundness—at least in most applications—of the reasoning of the en banc opinion in *McDowell* on which the Court of Appeals relied in this case. Third, there is a strong interest in bringing all litigation, and especially capital cases, to a prompt conclusion. This Court's ill-conceived summary disposition will needlessly prolong this proceeding.

Whatever the shortcomings of the Court of Appeals' review, they surely are not so great as to warrant an expenditure of this Court's time and resources. This is especially so because our decision today is unlikely to change the result below. Ordinarily, we demand far more indication that a lower court has departed from settled law, or has reached an issue of some national significance, before we grant review. The purported error in this case does not satisfy that standard.

Accordingly, I would deny the petition for writ of certiorari and, therefore, respectfully dissent.

Per Curiam

# IN RE KENNEDY

## ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 98–6945. Decided January 11, 1999

*Pro se* petitioner seeks leave to proceed *in forma pauperis* on his petition for extraordinary relief. The instant petition constitutes his 12th frivolous filing with this Court.

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

Motion denied.

PER CURIAM.

*Pro se* petitioner Kennedy seeks leave to proceed *in forma pauperis* under Rule 39 of this Court. We deny this request pursuant to Rule 39.8. Kennedy is allowed until February 1, 1999, within which to pay the docketing fee required by Rule 38 and to submit his petition in compliance with this Court's Rule 33.1. We also direct the Clerk of the Court not to accept any further petitions for certiorari nor petitions for extraordinary writs from Kennedy in noncriminal matters unless he pays the docketing fee required by Rule 38 and submits his petition in compliance with Rule 33.1.

Kennedy has abused this Court's certiorari and extraordinary writ processes. In October 1998, we invoked Rule 39.8 to deny Kennedy *in forma pauperis* status. See *In re Kennedy*, *post*, p. 807. At that time, Kennedy had filed four petitions for extraordinary writs and six petitions for certiorari, all of which were both patently frivolous and had been denied without recorded dissent. The instant petition for an extraordinary writ thus constitutes Kennedy's 12th frivolous filing with this Court.

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)*. Kennedy's abuse of the writ of certiorari and of the extraordinary writ has been in noncriminal cases, and so we limit our sanction accordingly. The order therefore will not prevent Kennedy from petitioning to challenge criminal sanctions which might be imposed on him. The order, however, will allow this Court to devote its limited resources to the claims of petitioners who have not abused our process.

*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

# EL AL ISRAEL AIRLINES, LTD. *v.* TSUI YUAN TSENG

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

No. 97–475. Argued November 10, 1998—Decided January 12, 1999

Before plaintiff/respondent Tseng boarded an El Al Israel Airlines flight from New York to Tel Aviv, El Al subjected her to an intrusive security search. Tseng sued El Al for damages in a New York state court, asserting a state-law personal injury claim for, *inter alia*, assault and false imprisonment, but alleging no bodily injury. El Al removed the case to the Federal District Court, which dismissed the claim on the basis of the treaty popularly known as the Warsaw Convention. Key Convention provisions declare that the treaty "appl[ies] to all international transportation of persons, baggage, or goods performed by aircraft for hire," Ch. I, Art. 1(1); describe three areas of air carrier liability, Ch. III, Arts. 17 (bodily injuries suffered as a result of an "accident . . . on board the aircraft or in the course of any of the operations of embarking or disembarking"), 18 (baggage or goods destruction, loss, or damage), and 19 (damage caused by delay); and instruct that "cases covered by article 17" "can only be brought subject to the conditions and limits set out in th[e] [C]onvention," Art. 24. Tseng's claim was not compensable under Article 17, the District Court stated, because Tseng sustained no bodily injury as a result of the search, and the Convention does not permit recovery for solely psychic or psychosomatic injury (citing *Eastern Airlines, Inc.* v. *Floyd*, 499 U. S. 530, 552). That court further concluded that Tseng could not pursue her claim, alternately, under New York tort law because Article 24 shields the carrier from liability for personal injuries not compensable under Article 17. Reversing in relevant part, the Second Circuit concluded first that no "accident" within Article 17's compass had occurred. In that court's view, the Convention drafters did not aim to impose close to absolute liability for an individual's personal reaction to "routine operating procedures," which, although inconvenient and embarrassing, are the price passengers pay for airline safety. The court next concluded that the Convention does not shield the same routine operating procedures from assessment under the diverse laws of signatory nations (and, in the case of the United States, States within one Nation) governing assault and false imprisonment. Article 24, the court said, precludes resort to local law only where the incident is "covered" by Article 17, *i. e.*, where there has been an accident, either on the plane or in the course of embarking or disembarking,

which led to bodily injury. The court found support in the drafting history of the Convention, which it construed to indicate that national law was intended to provide the passenger's remedy where the Convention did not expressly apply. In rejecting the argument that allowance of state-law claims when the Convention does not permit recovery would contravene the treaty's goal of uniformity, the Second Circuit read *Zicherman* v. *Korean Air Lines Co.*, 516 U. S. 217, to instruct specifically that the Convention expresses no compelling interest in uniformity that would warrant supplanting an otherwise applicable body of law.

*Held:* The Warsaw Convention precludes a passenger from maintaining an action for personal injury damages under local law when her claim does not satisfy the conditions for liability under the Convention. Pp. 166–176.

(a) The Court's inquiry begins with Article 24, which provides that "cases covered by article 17"—in the governing French text, "les cas prévus à l'article 17"—may only be brought subject to the Convention's conditions and limits. The specific words of a treaty must be given a meaning consistent with the contracting parties' shared expectations. *Air France* v. *Saks*, 470 U. S. 392, 399. Moreover, the Court has traditionally considered as aids to a treaty's interpretation its negotiating and drafting history *(travaux préparatoires)* and the postratification understanding of the contracting parties. *Zicherman*, 516 U. S., at 226. El Al and the United States, as *amicus curiae*, urge that the Article 24 words, "les cas prévus à l'article 17," refer generically to all personal injury cases stemming from occurrences on board an aircraft or in embarking or disembarking, and serve to distinguish that class of cases (Article 17 cases) from cases which Articles 18 (baggage claims) and 19 (delay claims) address. So read, Article 24 precludes a passenger from asserting any air transit personal injury claims under local law, including claims that fail to satisfy Article 17's liability conditions, notably, because the injury did not result from an "accident," see *Saks*, 470 U. S., at 405, or because the "accident" did not result in physical injury or physical manifestation of injury, see *Floyd*, 499 U. S., at 552. The reasonable view of the Executive Branch concerning the meaning of an international treaty ordinarily merits respect, see *Sumitomo Shoji America, Inc.* v. *Avagliano*, 457 U. S. 176, 184–185, and in this case is most faithful to the Convention's text, purpose, and overall structure. Pp. 166–169.

(b) Recourse to local law would undermine the uniform regulation of international air carrier liability that the Convention was designed to foster. See, *e. g.*, *Floyd*, 499 U. S., at 552. The Convention's signa-

tories, in the treaty's preamble, specifically recognized the advantage of regulating carrier liability in a uniform manner. To provide the desired uniformity, Chapter III sets out an array of liability rules applicable to all international air transportation of persons, baggage, and goods. These rules delineate the three areas of carrier liability (Articles 17, 18, and 19), the conditions exempting carriers from liability (Article 20), the monetary limits of liability (Article 22), and the circumstances in which carriers may not limit liability (Articles 23 and 25). Given the Convention's comprehensive scheme of liability rules and its textual emphasis on uniformity, the Court would be hard put to conclude that the Warsaw delegates meant to subject air carriers to the distinct, nonuniform liability rules of the individual signatory nations. The Second Circuit misperceived the meaning of *Zicherman*, which acknowledged the Convention's central endeavor to foster uniformity in the law of international air travel. See 516 U. S., at 230. *Zicherman* determined that Warsaw drafters intended to resolve *whether there is liability*, but to leave to domestic law (the local law identified by the forum under its choice-of-law rules or approaches) determination of the compensatory damages available to the suitor. See *id.*, at 231.

Articles 17, 22, and 24 of the Convention are also designed as a compromise between the interests of passengers seeking recovery for personal injuries, and the interests of air carriers seeking to limit potential liability. See, *e. g.*, *Floyd*, 499 U. S., at 546. In Article 17, carriers are denied the contractual prerogative to exclude or limit their liability for personal injury. In Articles 22 and 24, passengers are limited in the amount of damages they may recover, and are restricted in the claims they may pursue by the Convention's conditions and limits. Construing the Convention, as did the Second Circuit, to allow passengers to pursue claims under local law when the Convention does not permit recovery could produce several anomalies. Carriers might be exposed to unlimited liability under diverse legal regimes, but would be prevented, under the treaty, from contracting out of such liability. Passengers injured physically in an emergency landing might be subject to the liability caps of the Convention, while those merely traumatized in the same mishap would be free to sue outside of the Convention for potentially unlimited damages. The Second Circuit's construction would encourage artful pleading by plaintiffs seeking to opt out of the Convention's liability scheme when local law promised recovery in excess of that prescribed by the treaty. Such a reading would scarcely advance the predictability that adherence to the treaty has achieved worldwide.

The Second Circuit feared that a reading of Article 17 to exclude relief outside the Convention for Tseng would deprive a passenger injured by

a malfunctioning escalator in the airline's terminal of recourse against the airline, even if the airline recklessly disregarded its duty to keep the escalator in proper repair. The Convention's preemptive effect on local law, however, extends no further than the Convention's own substantive scope. A carrier, therefore, is subject to liability under local law for passenger injuries occurring before "any of the operations of embarking or disembarking," Art. 17. Tseng raised the concern that carriers will escape liability for their intentional torts if passengers are not permitted to pursue personal injury claims outside of the Convention's terms. But this Court has already cautioned that the definition of "accident" under Article 17 is an "unusual event . . . *external to the passenger*," and that "[t]his definition should be flexibly applied." *Saks*, 470 U. S., at 405 (emphasis added). The parties chose not to pursue here the question whether an "accident" occurred, for an affirmative answer would still leave Tseng unable to recover under the treaty; she sustained no "bodily injury" and could not gain compensation under Article 17 for her solely psychic or psychosomatic injuries. Pp. 169–172.

(c) The Article 17 drafting history is consistent with this Court's understanding of the preemptive effect of the Convention. Although a preliminary draft of the Convention made carriers liable "'in the case of death, wounding, or any other bodily injury suffered by a traveler,'" *Saks*, 470 U. S., at 401, the later draft that prescribed what is now Article 17 narrowed airline liability to encompass only bodily injury caused by an "accident." It is improbable that, at the same time the drafters narrowed the conditions of liability in Article 17, they intended, in Article 24, to permit passengers to skirt those conditions by pursuing claims under local law. Inspecting the drafting history, the Second Circuit stressed a proposal by the Czechoslovak delegation to state in the treaty that, in the absence of a stipulation in the Convention itself, the provisions of laws and national rules relative to carriage in each signatory state would apply. That proposal was withdrawn upon amendment of the Convention's title to read "Convention For The Unification Of *Certain* Rules Relating To International Transportation By Air." (Emphasis added.) The British House of Lords found this drafting history inconclusive, reasoning that the inclusion of the word "certain" in the Convention's title indicated that the Convention was concerned with certain rules only, not with all the rules relating to international carriage by air; that the Convention is a partial harmonization, directed to the particular issues with which it deals, including a carrier's liability to passengers for personal injury; and that, given the Convention's overall objective to ensure uniformity, the Czechoslovak delegation may have meant only to underscore that national law controlled

chapters of law relating to international air carriage with which the Convention was not attempting to deal. In light of the Lords' exposition, the withdrawn Czechoslovak proposal will not bear the weight the Second Circuit placed on it. Pp. 172–174.

(d) Montreal Protocol No. 4, to which the United States has recently subscribed, amends Article 24 to provide, in relevant part: "In the carriage of passengers . . . , any action for damages . . . can only be brought subject to the conditions and limits set out in this Convention . . . ." Under amended Article 24, Tseng and El Al agree, the Convention's preemptive effect is clear: The treaty precludes passengers from bringing actions under local law when they cannot establish air carrier liability under the treaty. Revised Article 24 merely clarifies, it does not alter, the Convention's rule of exclusivity. Supporting the position that revised Article 24 provides for preemption not earlier established, Tseng urges that federal preemption of state law is disfavored generally, and particularly when matters of health and safety are at stake. Tseng overlooks in this regard that the nation-state, not subdivisions within one nation, is the focus of the Convention and the perspective of the treaty partners. The Court's home-centered preemption analysis, therefore, should not be applied, mechanically, in construing this country's international obligations. Decisions of the courts of other Convention signatories, including the House of Lords opinion already noted, corroborate the Court's understanding of the Convention's preemptive effect. Such decisions are entitled to considerable weight. *Saks*, 470 U. S., at 404. Pp. 174–176.

122 F. 3d 99, reversed.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, SOUTER, THOMAS, and BREYER, JJ., joined. STEVENS, J., filed a dissenting opinion, *post*, p. 177.

*Diane Westwood Wilson* argued the cause for petitioner. With her on the briefs was *Judith R. Nemsick*.

*Jonathan E. Nuechterlein* argued the cause for the United States as *amicus curiae* urging reversal. With him on the briefs were *Solicitor General Waxman*, *Assistant Attorney General Hunger*, *Deputy Solicitor General Kneedler*, *Alisa B. Klein*, *David R. Andrews*, *David S. Newman*, *Nancy E. McFadden*, *Paul M. Geier*, and *Dale C. Andrews*.

*Robert H. Silk* argued the cause and filed briefs for respondent.*

JUSTICE GINSBURG delivered the opinion of the Court.

Plaintiff-respondent Tsui Yuan Tseng was subjected to an intrusive security search at John F. Kennedy International Airport in New York before she boarded an El Al Israel Airlines May 22, 1993 flight to Tel Aviv. Tseng seeks tort damages from El Al for this occurrence. The episode-in-suit, both parties now submit, does not qualify as an "accident" within the meaning of the treaty popularly known as the Warsaw Convention, which governs air carrier liability for "all international transportation."[1] Tseng alleges psychic or psychosomatic injuries, but no "bodily injury," as that term is used in the Convention. Her case presents a question of the Convention's exclusivity: When the Convention allows no recovery for the episode-in-suit, does it correspondingly preclude the passenger from maintaining an action for damages under another source of law, in this case, New York tort law?

The exclusivity question before us has been settled prospectively in a Warsaw Convention protocol (Montreal Protocol No. 4) recently ratified by the Senate.[2] In accord with the protocol, Tseng concedes, a passenger whose injury is not compensable under the Convention (because it entails no "bodily injury" or was not the result of an "accident") will

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*Briefs of *amici curiae* urging reversal were filed for the Air Transport Association of America by *Warren L. Dean, Jr.*, and *Joseph O. Click;* and for the International Air Transport Association by *Bert W. Rein.*

[1] Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, 49 Stat. 3000, 3014, T. S. No. 876 (1934), note following 49 U. S. C. § 40105.

[2] Montreal Protocol No. 4 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage By Air, signed at Warsaw on October 12, 1929, as amended by the Protocol Done at the Hague on September 8, 1955 (hereinafter Montreal Protocol No. 4), reprinted in S. Exec. Rep. No. 105–20, pp. 21–32 (1998).

have no recourse to an alternate remedy. We conclude that the protocol, to which the United States has now subscribed, clarifies, but does not change, the Convention's exclusivity domain. We therefore hold that recovery for a personal injury suffered "on board [an] aircraft or in the course of any of the operations of embarking or disembarking," Art. 17, 49 Stat. 3018, if not allowed under the Convention, is not available at all.

The Court of Appeals for the Second Circuit ruled otherwise. In that court's view, a plaintiff who did not qualify for relief under the Convention could seek relief under local law for an injury sustained in the course of international air travel. 122 F. 3d 99 (1997). We granted certiorari, 523 U. S. 1117 (1998),[3] and now reverse the Second Circuit's judgment. Recourse to local law, we are persuaded, would undermine the uniform regulation of international air carrier liability that the Warsaw Convention was designed to foster.

## I

We have twice reserved decision on the Convention's exclusivity. In *Air France* v. *Saks*, 470 U. S. 392 (1985), we concluded that a passenger's injury was not caused by an "accident" for which the airline could be held accountable under the Convention, but expressed no view whether that passenger could maintain "a state cause of action for negli-

[3] Federal Courts of Appeals have divided on the treaty interpretation question at issue. See *Krys* v. *Lufthansa German Airlines*, 119 F. 3d 1515, 1518, n. 8 (CA11 1997) (recognizing the split). In accord with the Second Circuit, the Third Circuit has held that the Warsaw Convention does not preclude passengers, unable to recover for personal injuries under the terms of the Convention, from maintaining actions against air carriers under local law. See *Abramson* v. *Japan Airlines Co.*, 739 F. 2d 130, 134 (1984), cert. denied, 470 U. S. 1059 (1985). In contrast, the Fifth Circuit has held that the Convention creates the exclusive cause of action against international air carriers for personal injuries arising from international air travel. See *Potter* v. *Delta Air Lines, Inc.*, 98 F. 3d 881, 885 (1996).

gence." *Id.*, at 408. In *Eastern Airlines, Inc.* v. *Floyd*, 499 U. S. 530 (1991), we held that mental or psychic injuries unaccompanied by physical injuries are not compensable under Article 17 of the Convention, but declined to reach the question whether the Convention "provides the exclusive cause of action for injuries sustained during international air transportation." *Id.*, at 553. We resolve in this case the question on which we earlier reserved judgment.

At the outset, we highlight key provisions of the treaty we are interpreting. Chapter I of the Warsaw Convention, entitled "SCOPE—DEFINITIONS," declares in Article 1(1) that the "[C]onvention shall apply to all international transportation of persons, baggage, or goods performed by aircraft for hire." 49 Stat. 3014.[4] Chapter III, entitled "LIABILITY OF THE CARRIER," defines in Articles 17, 18, and 19 the three kinds of liability for which the Convention provides. Article 17 establishes the conditions of liability for personal injury to passengers:

> "The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking." 49 Stat. 3018.

Article 18 establishes the conditions of liability for damage to baggage or goods. *Id.*, at 3019.[5] Article 19 establishes

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[4] Citations in this opinion are to the official English translation of the Convention. See 49 Stat. 3014–3023. Where relevant, we set out, in addition, the Convention's governing French text. See 49 Stat. 3000–3009; *Air France* v. *Saks*, 470 U. S. 392, 397 (1985).

[5] Article 18 provides, in relevant part:

"(1) The carrier shall be liable for damage sustained in the event of the destruction or loss of, or of damage to, any checked baggage or any goods, if the occurrence which caused the damage so sustained took place during the transportation by air." 49 Stat. 3019.

the conditions of liability for damage caused by delay. *Ibid.*[6] Article 24, referring back to Articles 17, 18, and 19, instructs:

> "(1) In the cases covered by articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this convention.
>
> "(2) In the cases covered by article 17 the provisions of the preceding paragraph shall also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights." *Id.*, at 3020.[7]

## II

With the key treaty provisions as the backdrop, we next describe the episode-in-suit. On May 22, 1993, Tsui Yuan Tseng arrived at John F. Kennedy International Airport (hereinafter JFK) to board an El Al Israel Airlines flight to Tel Aviv. In conformity with standard El Al preboarding procedures, a security guard questioned Tseng about her destination and travel plans. The guard considered Tseng's responses "illogical," and ranked her as a "high risk" passenger. Tseng was taken to a private security room where her baggage and person were searched for explosives and detonating devices. She was told to remove her shoes, jacket, and sweater, and to lower her blue jeans to mid-

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[6] Article 19 provides:

"The carrier shall be liable for damage occasioned by delay in the transportation by air of passengers, baggage, or goods." *Ibid.*

[7] Chapter III of the Convention sets forth a number of other rules governing air carrier liability. Among these, Article 20 relieves a carrier of liability if it has "taken all necessary measures to avoid the damage." *Ibid.* Article 22 sets monetary limits on a carrier's liability for harm to passengers and baggage. See *ibid.* Article 23 invalidates "[a]ny [contract] provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in th[e] [C]onvention." *Id.*, at 3020. Article 25(1) renders the Convention's limits on liability inapplicable if the damage is caused by a carrier's "wilful misconduct." *Ibid.*

hip. A female security guard then searched Tseng's body outside her clothes by hand and with an electronic security wand.

After the search, which lasted 15 minutes, El Al personnel decided that Tseng did not pose a security threat and allowed her to board the flight. Tseng later testified that she "was really sick and very upset" during the flight, that she was "emotionally traumatized and disturbed" during her month-long trip in Israel, and that, upon her return, she underwent medical and psychiatric treatment for the lingering effects of the body search. 122 F. 3d 99, 101 (CA2 1997) (internal quotation marks omitted).

Tseng filed suit against El Al in 1994 in a New York state court of first instance. Her complaint alleged a state-law personal injury claim based on the May 22, 1993 episode at JFK. Tseng's pleading charged, *inter alia*, assault and false imprisonment, but alleged no bodily injury. El Al removed the case to federal court.

The District Court, after a bench trial, dismissed Tseng's personal injury claim. See 919 F. Supp. 155 (SDNY 1996). That claim, the court concluded, was governed by Article 17 of the Warsaw Convention, which creates a cause of action for personal injuries suffered as a result of an "accident . . . in the course of any of the operations of embarking or disembarking," 49 Stat. 3018. See 919 F. Supp., at 157–158. Tseng's claim was not compensable under Article 17, the District Court stated, because Tseng "sustained no bodily injury" as a result of the search, *id.*, at 158, and the Convention does not permit "recovery for psychic or psychosomatic injury unaccompanied by bodily injury," *ibid.* (citing *Floyd*, 499 U. S., at 552). The District Court further concluded that Tseng could not pursue her claim, alternately, under New York tort law; as that court read the Convention, Article 24 shields the carrier from liability for personal injuries not compensable under Article 17. See 919 F. Supp., at 158.

The Court of Appeals reversed in relevant part. See 122 F. 3d 99 (CA2 1997).[8] The Second Circuit concluded first that no "accident" within Article 17's compass had occurred; in the Court of Appeals' view, the Convention drafters did not "ai[m] to impose close to absolute liability" for an individual's "personal reaction" to "routine operating procedures," measures that, although "inconvenien[t] and embarass[ing]," are the "price passengers pay for . . . airline safety." *Id.*, at 103–104.[9] In some tension with that reasoning, the Second

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[8] The Court of Appeals affirmed, without discussion, the District Court's judgment in favor of Tseng on her claim, under the Warsaw Convention, for damage to her baggage. See 122 F. 3d, at 108. We denied El Al's petition for certiorari regarding that issue. See 523 U. S. 1117 (1998).

[9] An "accident" under Article 17 is "an unexpected or unusual event or happening that is external to the passenger." *Saks*, 470 U. S., at 405. That definition, we have cautioned, should "be flexibly applied after assessment of all the circumstances surrounding a passenger's injuries." *Ibid.*

The District Court, "[u]sing the flexible application prescribed by the Supreme Court," concluded that El Al's search of Tseng was an "accident": "[A] routine search, applied erroneously to plaintiff in the course of embarking on the aircraft, is fairly accurately characterized as an accident." 919 F. Supp. 155, 158 (SDNY 1996).

The Court of Appeals disagreed. That court described security searches as "routine" in international air travel, part of a terrorism-prevention effort that is "widely recognized and encouraged in the law," and "the price passengers pay for the degree of airline safety so far afforded them." 122 F. 3d, at 103. The court observed that passengers reasonably should be aware of "routine operating procedures" of the kind El Al conducts daily. *Ibid.* The risk of mistakes, *i. e.*, that innocent persons will be erroneously searched, is "[i]nherent in any effort to detect malefactors," the court explained. *Ibid.* Tseng thus encountered "ordinary events and procedures of air transportation," the court concluded, and not "an unexpected or unusual event." *Id.*, at 104.

It is questionable whether the Court of Appeals "flexibly applied" the definition of "accident" we set forth in *Saks*. Both parties, however, now accept the Court of Appeals' disposition of that issue. In any event, even if El Al's search of Tseng was an "accident," the core question of the Convention's exclusivity would remain. The Convention provides for compensation under Article 17 only when the passenger suffers "death, physical injury, or physical manifestation of injury," *Eastern Airlines*,

Circuit next concluded that the Convention does not shield the very same "routine operating procedures" from assessment under the diverse laws of signatory nations (and, in the case of the United States, States within one Nation) governing assault and false imprisonment. See *id.*, at 104.

Article 24 of the Convention, the Court of Appeals said, "clearly states that resort to local law is precluded only where the incident is 'covered' by Article 17, meaning where there has been an accident, either on the plane or in the course of embarking or disembarking, which led to death, wounding or other bodily injury." *Id.*, at 104–105. The court found support in the drafting history of the Convention, which it construed to "indicate that national law was intended to provide the passenger's remedy where the Convention did not expressly apply." *Id.*, at 105. The Second Circuit also rejected the argument that allowance of state-law claims when the Convention does not permit recovery would contravene the treaty's goal of uniformity. The court read our decision in *Zicherman* v. *Korean Air Lines Co.*, 516 U. S. 217 (1996), to "instruct specifically that the Convention expresses no compelling interest in uniformity that would warrant . . . supplanting an otherwise applicable body of law." 122 F. 3d, at 107.

## III

We accept it as given that El Al's search of Tseng was not an "accident" within the meaning of Article 17, for the parties do not place that Court of Appeals conclusion at issue. See *supra*, at 165 and this page, n. 9. We also accept, again only for purposes of this decision, that El Al's actions did not constitute "wilful misconduct"; accordingly, we confront no issue under Article 25 of the Convention, see *supra*, at 163,

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*Inc.* v. *Floyd*, 499 U. S. 530, 552 (1991), a condition that both the District Court and the Court of Appeals determined Tseng did not meet, see 919 F. Supp., at 158; 122 F. 3d, at 104. The question whether the Convention precludes an action under local law when a passenger's claim fails to satisfy Article 17's conditions for liability does not turn on *which* of those conditions the claim fails to satisfy.

n. 7.[10] The parties do not dispute that the episode-in-suit occurred in international transportation in the course of embarking.

Our inquiry begins with the text of Article 24, which prescribes the exclusivity of the Convention's provisions for air carrier liability. "[I]t is our responsibility to give the specific words of the treaty a meaning consistent with the shared expectations of the contracting parties." *Saks*, 470 U. S., at 399. "Because a treaty ratified by the United States is not only the law of this land, see U. S. Const., Art. II, § 2, but also an agreement among sovereign powers, we have traditionally considered as aids to its interpretation the negotiating and drafting history *(travaux préparatoires)* and the postratification understanding of the contracting parties." *Zicherman*, 516 U. S., at 226.

Article 24 provides that "cases covered by article 17"—or in the governing French text, "les cas prévus à l'article 17"[11]—may "only be brought subject to the conditions and

[10] In the lower courts, Tseng urged that Article 25 took her case outside the Convention's limits on liability. Article 25, now altered by Montreal Protocol No. 4, concerned damage caused by "wilful misconduct." 49 Stat. 3020. On that matter, the District Court found "no evidence and no basis for inferring that [the selection of Tseng to be searched] was anything more than a mistake. Even if such a mistake can be characterized as misconduct," the District Court added, "there is no basis for inferring that it was wilful." 919 F. Supp., at 158. The Court of Appeals left the District Court's finding on the absence of "wilful misconduct" undisturbed. See 122 F. 3d, at 104. Tseng's brief in opposition to certiorari did not cite Article 25. We agree with the United States, as *amicus curiae*, that Tseng has not preserved any argument putting Article 25 at issue in this Court. See Brief for United States as *Amicus Curiae* 18, n. 10.

[11] The french text of Article 24 reads:

"(1) Dans les cas prévus aux articles 18 et 19 toute action en responsabilité, à quelque titre que ce soit, ne peut être exercée que dans les conditions et limites prévues par la présente Convention.

"(2) Dans les cas prévus à l'article 17, s'appliquent également les dispositions de l'alinéa précédent, sans préjudice de la détermination des personnes qui ont le droit d'agir et de leurs droits respectifs." 49 Stat. 3006.

Literally translated, "les cas prévus à l'article 17" means "the cases anticipated by Article 17," see The New Cassell's French Dictionary 132,

limits set out in th[e] [C]onvention." 49 Stat. 3020. That prescription is not a model of the clear drafter's art. We recognize that the words lend themselves to divergent interpretation.

In Tseng's view, and in the view of the Court of Appeals, "les cas prévus à l'article 17" means those cases in which a passenger could actually maintain a claim for relief under Article 17. So read, Article 24 would permit any passenger whose personal injury suit did not satisfy the liability conditions of Article 17 to pursue the claim under local law.

In El Al's view, on the other hand, and in the view of the United States as *amicus curiae*, "les cas prévus à l'article 17" refers generically to all personal injury cases stemming from occurrences on board an aircraft or in embarking or disembarking, and simply distinguishes that class of cases (Article 17 cases) from cases involving damaged luggage or goods, or delay (which Articles 18 and 19 address). So read, Article 24 would preclude a passenger from asserting any air transit personal injury claims under local law, including claims that failed to satisfy Article 17's liability conditions, notably, because the injury did not result from an "accident," see *Saks*, 470 U. S., at 405, or because the "accident" did not result in physical injury or physical manifestation of injury, see *Floyd*, 499 U. S., at 552.

Respect is ordinarily due the reasonable views of the Executive Branch concerning the meaning of an international treaty. See *Sumitomo Shoji America, Inc.* v. *Avagliano*, 457 U. S. 176, 184–185 (1982) ("Although not conclusive, the meaning attributed to treaty provisions by the Government agencies charged with their negotiation and enforcement is entitled to great weight."). We conclude that the Govern-

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592 (D. Girard ed. 1973), or "the cases provided for by Article 17," see The Oxford-Hachette French Dictionary 645 (M. Corréard & V. Grundy eds. 1994).

ment's construction of Article 24 is most faithful to the Convention's text, purpose, and overall structure.

A

The cardinal purpose of the Warsaw Convention, we have observed, is to "achiev[e] uniformity of rules governing claims arising from international air transportation." *Floyd*, 499 U. S., at 552; see *Zicherman*, 516 U. S., at 230. The Convention signatories, in the treaty's preamble, specifically "recognized the advantage of regulating in a uniform manner the conditions of . . . the liability of the carrier." 49 Stat. 3014. To provide the desired uniformity, Chapter III of the Convention sets out an array of liability rules which, the treaty declares, "apply to all international transportation of persons, baggage, or goods performed by aircraft." *Ibid.* In that Chapter, the Convention describes and defines the three areas of air carrier liability (personal injuries in Article 17, baggage or goods loss, destruction, or damage in Article 18, and damage occasioned by delay in Article 19), the conditions exempting air carriers from liability (Article 20), the monetary limits of liability (Article 22), and the circumstances in which air carriers may not limit liability (Articles 23 and 25). See *supra*, at 162–163, and n. 7. Given the Convention's comprehensive scheme of liability rules and its textual emphasis on uniformity, we would be hard put to conclude that the delegates at Warsaw meant to subject air carriers to the distinct, nonuniform liability rules of the individual signatory nations.

The Court of Appeals looked to our precedent for guidance on this point, but it misperceived our meaning. It misread our decision in *Zicherman* to say that the Warsaw Convention expresses no compelling interest in uniformity that would warrant preempting an otherwise applicable body of law, here New York tort law. See 122 F. 3d, at 107; *supra*, at 166. *Zicherman* acknowledges that the Convention cen-

trally endeavors "to foster uniformity in the law of international air travel." 516 U. S., at 230. It further recognizes that the Convention addresses the question whether there is airline liability *vel non.* See *id.*, at 231. The *Zicherman* case itself involved auxiliary issues: who may seek recovery in lieu of passengers, and for what harms they may be compensated. See *id.*, at 221, 227. Looking to the Convention's text, negotiating and drafting history, contracting states' postratification understanding of the Convention, and scholarly commentary, the Court in *Zicherman* determined that Warsaw drafters intended to resolve *whether there is liability*, but to leave to domestic law (the local law identified by the forum under its choice-of-law rules or approaches) determination of the compensatory damages available to the suitor. See *id.*, at 231.

A complementary purpose of the Convention is to accommodate or balance the interests of passengers seeking recovery for personal injuries, and the interests of air carriers seeking to limit potential liability. Before the Warsaw accord, injured passengers could file suits for damages, subject only to the limitations of the forum's laws, including the forum's choice-of-law regime. This exposure inhibited the growth of the then-fledgling international airline industry. See *Floyd*, 499 U. S., at 546; Lowenfeld & Mendelsohn, The United States and the Warsaw Convention, 80 Harv. L. Rev. 497, 499–500 (1967). Many international air carriers at that time endeavored to require passengers, as a condition of air travel, to relieve or reduce the carrier's liability in case of injury. See Second International Conference on Private Aeronautical Law, October 4–12, 1929, Warsaw, Minutes 47 (R. Horner & D. Legrez transls. 1975) (hereinafter Minutes). The Convention drafters designed Articles 17, 22, and 24 of the Convention as a compromise between the interests of air carriers and their customers worldwide. In Article 17 of the Convention, carriers are denied the contractual prerogative to exclude or limit their liability for personal injury. In

Articles 22 and 24, passengers are limited in the amount of damages they may recover, and are restricted in the claims they may pursue by the conditions and limits set out in the Convention.

Construing the Convention, as did the Court of Appeals, to allow passengers to pursue claims under local law when the Convention does not permit recovery could produce several anomalies. Carriers might be exposed to unlimited liability under diverse legal regimes, but would be prevented, under the treaty, from contracting out of such liability. Passengers injured physically in an emergency landing might be subject to the liability caps of the Convention, while those merely traumatized in the same mishap would be free to sue outside of the Convention for potentially unlimited damages. The Court of Appeals' construction of the Convention would encourage artful pleading by plaintiffs seeking to opt out of the Convention's liability scheme when local law promised recovery in excess of that prescribed by the treaty. See *Potter* v. *Delta Air Lines, Inc.*, 98 F. 3d 881, 886 (CA5 1996). Such a reading would scarcely advance the predictability that adherence to the treaty has achieved worldwide.[12]

The Second Circuit feared that if Article 17 were read to exclude relief outside the Convention for Tseng, then a passenger injured by a malfunctioning escalator in the airline's terminal would have no recourse against the airline, even if the airline recklessly disregarded its duty to keep the escalator in proper repair. See 122 F. 3d, at 107. As the United States pointed out in its *amicus curiae* submission, however, the Convention addresses and concerns, only and exclusively,

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[12] The Court of Appeals recognized that the Convention aimed to "balance the interests of the passenger and the carrier," but concluded that, with the "increasing strength of the airline industry, the balance has properly shifted away from protecting the carrier and toward protecting the passenger." 122 F. 3d, at 107. Postratification adjustments, however, are appropriately made by the treaty's signatories. See S. Exec. Rep. No. 105–20, at 5–6.

the airline's liability for passenger injuries occurring "on board the aircraft or in the course of any of the operations of embarking or disembarking." Art. 17, 49 Stat. 3018; see Brief for United States as *Amicus Curiae* 16. "[T]he Convention's preemptive effect on local law extends no further than the Convention's own substantive scope." *Ibid.* A carrier, therefore, "is indisputably subject to liability under local law for injuries arising outside of that scope: *e. g.,* for passenger injuries occurring before 'any of the operations of embarking'" or disembarking. *Ibid.* (quoting Article 17).

Tseng raises a different concern. She argues that air carriers will escape liability for their intentional torts if passengers are not permitted to pursue personal injury claims outside of the terms of the Convention. See Brief for Respondent 15–16. But we have already cautioned that the definition of "accident" under Article 17 is an "unusual event . . . *external to the passenger*," and that "[t]his definition should be flexibly applied." *Saks*, 470 U. S., at 405 (emphasis added). In *Saks*, the Court concluded that no "accident" occurred because the injury there—a hearing loss—"indisputably result[ed] from *the passenger's own internal reaction* to the usual, normal, and expected operation of the aircraft." *Id.*, at 406 (emphasis added). As we earlier noted, see *supra*, at 165–166, n. 9, Tseng and El Al chose not to pursue in this Court the question whether an "accident" occurred, for an affirmative answer would still leave Tseng unable to recover under the treaty; she sustained no "bodily injury" and could not gain compensation under Article 17 for her solely psychic or psychosomatic injuries.

## B

The drafting history of Article 17 is consistent with our understanding of the preemptive effect of the Convention. The preliminary draft of the Convention submitted to the conference at Warsaw made air carriers liable "in the case of death, wounding, or any other bodily injury suffered by a

traveler." Minutes 264; see *Saks*, 470 U. S., at 401. In the later draft that prescribed what is now Article 17, airline liability was narrowed to encompass only bodily injury caused by an "accident." See Minutes 205. It is improbable that, at the same time the drafters narrowed the conditions of air carrier liability in Article 17, they intended, in Article 24, to permit passengers to skirt those conditions by pursuing claims under local law.[13]

Inspecting the drafting history, the Court of Appeals stressed a proposal made by the Czechoslovak delegation to state in the treaty that, in the absence of a stipulation in the Convention itself, "'the provisions of laws and national rules relative to carriage in each [signatory] State shall apply.'" 122 F. 3d, at 105 (quoting Minutes 176). That proposal was withdrawn upon amendment of the Convention's title to read: "Convention For The Unification Of *Certain* Rules Relating To International Transportation By Air." 49 Stat. 3014 (emphasis added); see 122 F. 3d, at 105. The Second Circuit saw in this history an indication "that national law was intended to provide the passenger's remedy where the Convention did not expressly apply." 122 F. 3d, at 105.

The British House of Lords, in *Sidhu* v. *British Airways plc*, [1997] 1 All E. R. 193, considered the same history, but found it inconclusive. Inclusion of the word "certain" in the Convention's title, the Lords reasoned, accurately indicated that "the [C]onvention is concerned with certain rules only, not with all the rules relating to international carriage by air." *Id.*, at 204. For example, the Convention does not say "anything . . . about the carrier's obligations of insurance, and in particular about compulsory insurance against third party risks." *Ibid.* The Convention, in other words, is "a

[13] Sir Alfred Dennis of Great Britain stated at the Warsaw Conference that Article 24 is "a very important stipulation which touches the very substance of the Convention, because [it] excludes recourse to common law." Minutes 213.

partial harmonisation, directed to the particular issues with which it deals," *ibid.*, among them, a carrier's liability to passengers for personal injury. As to those issues, the Lords concluded, "the aim of the [C]onvention is to unify." *Ibid.* Pointing to the overall understanding that the Convention's objective was to "ensure uniformity," *id.*, at 209, the Lords suggested that the Czechoslovak delegation may have meant only to underscore that national law controlled "chapters of law relating to international carriage by air with which the [C]onvention was not attempting to deal." *Ibid.* In light of the Lords' exposition, we are satisfied that the withdrawn Czechoslovak proposal will not bear the weight the Court of Appeals placed on it.

C

Montreal Protocol No. 4, ratified by the Senate on September 28, 1998,[14] amends Article 24 to read, in relevant part: "In the carriage of passengers and baggage, any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention . . . ."[15] Both parties agree that, under the amended Article 24, the

[14] See 144 Cong. Rec. S11059 (Sept. 28, 1998). The President signed the instrument of ratification for Montreal Protocol No. 4 on November 5, 1998. The Protocol will enter into force in the United States on March 4, 1999.

[15] Article 24, as amended by Montreal Protocol No. 4, provides:

"1. In the carriage of passengers and baggage, any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention, without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights.

"2. In the carriage of cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and limits of liability set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. Such limits of liability constitute maximum limits and may not be exceeded whatever the circumstances which gave rise to the liability." S. Exec. Rep. No. 105–20, at 29.

Convention's preemptive effect is clear: The treaty precludes passengers from bringing actions under local law when they cannot establish air carrier liability under the treaty. Revised Article 24, El Al urges and we agree, merely clarifies, it does not alter, the Convention's rule of exclusivity.

Supporting the position that revised Article 24 provides for preemption not earlier established, Tseng urges that federal preemption of state law is disfavored generally, and particularly when matters of health and safety are at stake. See Brief for Respondent 31–33. See also *post*, at 181 (STEVENS, J., dissenting) ("[A] treaty, like an Act of Congress, should not be construed to preempt state law unless its intent to do so is clear."). Tseng overlooks in this regard that the nation-state, not subdivisions within one nation, is the focus of the Convention and the perspective of our treaty partners. Our home-centered preemption analysis, therefore, should not be applied, mechanically, in construing our international obligations.

Decisions of the courts of other Convention signatories corroborate our understanding of the Convention's preemptive effect. In *Sidhu*, the British House of Lords considered and decided the very question we now face concerning the Convention's exclusivity when a passenger alleges psychological damages, but no physical injury, resulting from an occurrence that is not an "accident" under Article 17. See 1 All E. R., at 201, 207. Reviewing the text, structure, and drafting history of the Convention, the Lords concluded that the Convention was designed to "ensure that, in all questions relating to the carrier's liability, it is the provisions of the [C]onvention which apply and that the passenger does not have access to any other remedies, whether under the common law or otherwise, which may be available within the particular country where he chooses to raise his action." *Ibid.* Courts of other nations bound by the Convention have also recognized the treaty's encompassing preemptive ef-

fect.[16] The "opinions of our sister signatories," we have observed, are "entitled to considerable weight." *Saks*, 470 U. S., at 404 (internal quotation marks omitted). The text, drafting history, and underlying purpose of the Convention, in sum, counsel us to adhere to a view of the treaty's exclusivity shared by our treaty partners.

* * *

For the reasons stated, we hold that the Warsaw Convention precludes a passenger from maintaining an action for personal injury damages under local law when her claim does not satisfy the conditions for liability under the Convention. Accordingly, we reverse the judgment of the Second Circuit.

*It is so ordered.*

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[16] See, *e. g.*, *Gal* v. *Northern Mountain Helicopters Inc.*, Dkt. No. 3491834918, 1998 B. C. T. C. Lexis 1351, *15–*16 (July 22, 1998) (Hunter, J., in chambers) (reviewing claim for personal injuries sustained during helicopter crash, a judge of the Supreme Court of British Columbia concluded: "The Warsaw Convention remedy pursuant to Article 17 is exclusive . . . . [T]he plaintiff has no claim except for that permitted under the Warsaw Convention."); *Naval-Torres* v. *Northwest Airlines Inc.*, 159 D. L. R. (4th) 67, 73, 77 (1998) (Sharpe, J.) (considering claim of bodily injury from exposure, in flight, to second-hand smoke, a judge of the Ontario Court (General Division) rejected passenger's contention that she "is entitled in law to pursue any common law or statutory claims which exist apart from any claims she may have under the *Convention*," and concluded that "where a claim falls within the reach of the *Convention*, the *Convention* is exhaustive of the rights of the plaintiff"); *Emery Air Freight Corp.* v. *Nerine Nurseries Ltd.*, [1997] 3 N. Z. L. R. 723, 735–736, 737 (concluding that action for damage to goods "must comply with the conditions and limits set out in the [C]onventio[n]," New Zealand Court of Appeal recalled the "general purpose of the [C]onventio[n] . . . to protect carriers operating across international boundaries from the vagaries of local laws and to impose a uniform regime upon them and upon those dealing with them"); *Seagate Technology Int'l* v. *Changi Int'l Airport Servs. Pte Ltd.*, [1997] 3 S. L. R. 1, 9 (considering claim of lost goods, Singapore Court of Appeal noted: Articles 17, 18, and 19 "form the sole foundation of the carrier's liability in respect of loss or damage falling within the scope of those articles. In such cases, the party seeking satisfaction from the carrier need not and, in fact, cannot plead his case in common law or otherwise.").

JUSTICE STEVENS, dissenting.

My disagreement with the Court's holding today has limited practical significance, not just because the issue has been conclusively determined for future cases by the recent amendment to the Warsaw Convention, see *ante*, at 160, 174–175, but also because it affects only a narrow category of past cases. The decision is nevertheless significant because, in the end, it rests on the novel premise that preemption analysis should be applied differently to treaties than to other kinds of federal law, see *ante*, at 175. Because I disagree with that premise, I shall briefly explain why I believe the Court has erred.

I agree with the Court that the drafters of the Convention intended that the treaty largely supplant local law. Article 24 preempts local law in three major categories: (1) personal injury claims arising out of an accident;[1] (2) claims for lost or damaged baggage; and (3) damage occasioned by transportation delays.[2] Those categories surely comprise the

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[1] As we have already held, Article 17 only covers accidents, which we defined as "an unexpected or unusual event or happening that is external to the passenger." *Air France* v. *Saks*, 470 U. S. 392, 405 (1985). Thus, I believe Article 24(2)'s reference to Article 17 does not include nonaccidents.

As a leading treatise states with regard to Article 17: "If the passenger's lawyer does not want the Convention's limits to be applicable, he must either: a) prove the Convention does not apply because his client was not a passenger in international transportation as defined in Article 1; or b) if the Convention is applicable, that the limits are unavailable because the carrier failed to deliver a ticket as provided by Article 3; or c) the carrier was guilty of wilful misconduct (Article 25) or d) *there was no 'accident'*." L. Goldhirsch, The Warsaw Convention Annotated: A Legal Handbook 55 (1988) (emphasis added).

[2] Article 24 provides:

"(1) In the cases covered by articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this convention.

"(2) In the cases covered by article 17 the provisions of the preceding paragraph shall also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights."

bulk of potential disputes between international air carriers and their passengers.

The Convention, however, does not preempt local law in cases arising out of "wilful misconduct." Article 25 expressly provides that a carrier shall not be entitled to avail itself of the provisions of the Convention that "exclude or limit" its liability if its misconduct is willful.[3] Moreover, the question whether the carrier's wrongful act "is considered to be equivalent to wilful misconduct" is determined by "the law of the court to which the case is submitted." *Ibid.* Accordingly, the vast majority of the potential claims by passengers against international air carriers are either preempted by Article 24 or unequivocally governed by local law under Article 25.

Putting these cases aside, we are left with a narrow sliver of incidents involving personal injury that arise neither from an accident nor willful misconduct.[4] Although the drafters of the treaty may not have realized that any such cases might arise, our construction of the term "accident" in *Air France* v. *Saks*, 470 U. S. 392, 405 (1985), had the effect of either recognizing or creating this narrow band of cases. Frankly, I am not persuaded that this case belongs in this interstitial niche because I believe it should have been resolved by determining that petitioner's alleged misconduct was either an

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[3] Article 25 provides:

"(1) The carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as, in accordance with the law of the court to which the case is submitted, is considered to be equivalent to wilful misconduct.

"(2) Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused under the same circumstances by any agent of the carrier acting within the scope of his employment."

[4] Article 18 (damage to goods) and Article 19 (damage occasioned by delay) are not limited to accidents; any liability under local law for damages to goods or for delay is therefore explicitly preempted by Article 24(1). See *Saks*, 470 U. S., at 398.

accident within the meaning of Article 17, or involved willfulness as a matter of local law. Be that as it may, the parties have insisted that we decide the case on the assumption that it belongs in the sliver about which the treaty is silent.

This case and *Saks* therefore differ from each of the cases that the Court has cited in footnote 16 of its opinion to emphasize the importance of respecting "the treaty's encompassing preemptive effect," as none of those cases involved personal injury resulting from a nonaccident. *Ante*, at 175–176.[5] Given the unique character of this and the few other cases in the sliver, it is clear to me that the central purposes of the Convention will not be affected, whether we treat them like accident cases, which preempt local law, or like willful cases, which do not.

The overriding interest in achieving "'uniformity of rules governing claims arising from international air transportation,'" *ante*, at 169, will be accommodated in the situations

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[5] See *Gal* v. *Northern Mountain Helicopters Inc.*, Dkt. No. 3491834918, 1998 B. C. T. C. Lexis 1351, *2–*3 (July 22, 1998) (involving a helicopter crash and noting "the plaintiff invoked the Warsaw Convention claiming for injuries and loss arising from the accident"); *Naval-Torres* v. *Northwest Airlines Inc.*, 159 D. L. R. (4th) 67, 74, 76 (1998) (stating that injury resulting from second-hand smoke constitutes an accident and expressly noting but declining to resolve the preemption issue decided today by this Court); *Emery Air Freight Corp.* v. *Nerine Nurseries Ltd.*, [1997] 3 N. Z. L. R. 723, 727, 728 (involving damage to cargo, therefore covered under Article 18, and thus explicitly preempted under Article 24(1)); *Seagate Technology Int'l* v. *Changi Int'l Airport Servs. Pte Ltd.*, [1997] 3 S. L. R. 1, 2 (same).

While the Court is correct in its assertion that the British House of Lords assumed the terrorist attack in *Sidhu* v. *British Airways plc*, [1997] 1 All E. R. 193, was not an accident, see *ante*, at 175, I am puzzled why the Lords came to this conclusion. Courts both in this country and in our sister signatories have frequently found a hijacking to be an accident within the meaning of Article 17. See *Saks*, 470 U. S., at 405; *Ayache* v. *Air-France*, 38 Rev. franç. dr. aérien 450, 451 [1984] (T. G. I. Paris, 1st ch.) (France); *Air-France* v. *Consorts Telchner*, 39 Rev. franç. dr. aérien 232, 240 [1984] (S. Ct. Israel).

explicitly covered by Article 24, regardless of how the Court decides this case. In those circumstances, the Convention's basic tradeoff between the carriers' interest in avoiding unlimited liability and the passengers' interest in obtaining compensation without proving fault will be fully achieved.

On the other hand, the interest in uniformity is disregarded in the category of cases that involve willful misconduct. Under the treaty, a reckless act or omission may constitute willful misconduct. See *Koirala* v. *Thai Airways Int'l, Ltd.*, 126 F. 3d 1205, 1209–1210 (CA9 1997); Goldhirsch, *supra*, n. 1, at 121 (stating that most civil law jurisdictions have found that gross negligence satisfies Article 25). This broad definition increases the number of cases not preempted by the Convention. In these circumstances, the delegates at Warsaw did decide "to subject air carriers to the distinct, nonuniform liability rules of the individual signatory nations." *Ante*, at 169.

Thus, the interest in uniformity would not be significantly impaired if the number of cases not preempted, like those involving willful misconduct, was slightly enlarged to encompass those relatively rare cases in which the injury resulted from neither an accident nor a willful wrong. That the interest in uniformity is accommodated in one category of cases but not the other simply raises, without resolving, the question whether the drafters of the treaty intended to treat personal injury nonaccident cases as though they involved accidents. A plaintiff in such a case, unlike those injured by an accident, receives no benefit from the treaty, and normally should not have a claim that is valid under local law preempted, unless the treaty expressly requires that result.[6]

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[6] The Convention does require such a result, for example, in the case of accidents resulting in no physical injury. I agree with the Court that, in that case, the victim's remedies under local law are preempted by Article 24. See *Eastern Airlines, Inc.* v. *Floyd*, 499 U. S. 530, 552 (1991). My interpretation does not, therefore, produce the anomaly identified *ante*, at 171. Since I believe that all personal injuries (whether physical or

Everyone agrees that the literal text of the treaty does not preempt claims of personal injury that do not arise out of an accident. It is equally clear that nothing in the drafting history requires that result. On the contrary, the amendment to the title of the Convention made in response to the proposal advanced by the Czechoslovak delegation, see *ante*, at 173, suggests that the parties assumed that local law would apply to all nonaccident cases. I agree with the Court that that inference is not strong enough, in itself, to require that the ambiguity be resolved in the plaintiff's favor. It suffices for me, however, that the history is just as ambiguous as the text. I firmly believe that a treaty, like an Act of Congress, should not be construed to preempt state law unless its intent to do so is clear. See *Medtronic, Inc.* v. *Lohr*, 518 U. S. 470, 485 (1996); *Department of Revenue of Ore.* v. *ACF Industries, Inc.*, 510 U. S. 332, 351 (1994); *CSX Transp., Inc.* v. *Easterwood*, 507 U. S. 658, 664 (1993); *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947). For this reason, I respectfully dissent.

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psychological) arising from accidents are covered by Article 17 and therefore preempted by Article 24(2), the "merely traumatized" plaintiff would not be free to sue outside the Convention.

Syllabus

# BUCKLEY, SECRETARY OF STATE OF COLORADO *v.* AMERICAN CONSTITUTIONAL LAW FOUNDATION, INC., ET AL.

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

No. 97–930. Argued October 14, 1998—Decided January 12, 1999

Colorado allows its citizens to make laws directly through initiatives placed on election ballots. The complaint in this federal action challenged six of the State's many controls on the initiative-petition process. Plaintiffs-respondents, the American Constitutional Law Foundation, Inc., and several individuals (collectively, ACLF), charged that the following prescriptions of Colorado's law governing initiative petitions violate the First Amendment's freedom of speech guarantee: (1) the requirement that petition circulators be at least 18 years old, Colo. Rev. Stat. § 1–40–112(1); (2) the further requirement that they be registered voters, *ibid.;* (3) the limitation of the petition circulation period to six months, § 1–40–108; (4) the requirement that petition circulators wear identification badges stating their names, their status as "VOLUNTEER" or "PAID," and if the latter, the name and telephone number of their employer, § 1–40–112(2); (5) the requirement that circulators attach to each petition section an affidavit containing, *inter alia,* the circulator's name and address, § 1–40–111(2); and (6) the requirements that initiative proponents disclose (a) at the time they file their petition, the name, address, and county of voter registration of all paid circulators, the amount of money proponents paid per petition signature, and the total amount paid to each circulator, and (b) on a monthly basis, the names of the proponents, the name and address of each paid circulator, the name of the proposed ballot measure, and the amount of money paid and owed to each circulator during the month, § 1–40–121. The District Court struck down the badge requirement and portions of the disclosure requirements, but upheld the age, affidavit, and registration requirements, and the six-month limit on petition circulation. The Tenth Circuit affirmed in part and reversed in part. That court properly sought guidance from this Court's recent decisions on ballot access, see, *e. g.*, *Timmons* v. *Twin Cities Area New Party,* 520 U. S. 351, and on handbill distribution, see, *e. g.*, *McIntyre* v. *Ohio Elections Comm'n,* 514 U. S. 334. The Tenth Circuit upheld, as reasonable regulations of the ballot-initiative process, the age restriction, the six-month limit on petition circulation, and the affidavit requirement. The court struck down the

requirement that petition circulators be registered voters, and also held portions of the badge and disclosure requirements invalid as trenching unnecessarily and improperly on political expression. This Court agreed to review the Court of Appeals dispositions concerning the registration, badge, and disclosure requirements. See 522 U. S. 1107.

Precedent guides this review. In *Meyer* v. *Grant*, 486 U. S. 414, this Court struck down Colorado's prohibition of payment for the circulation of ballot-initiative petitions, concluding that petition circulation is "core political speech" for which First Amendment protection is "at its zenith." *Id.*, at 422, 425. This Court has also recognized, however, that "there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order . . . is to accompany the democratic processes." *Storer* v. *Brown*, 415 U. S. 724, 730; see *Timmons*, 520 U. S., at 358; *Anderson* v. *Celebrezze*, 460 U. S. 780, 788.

*Held:* The Tenth Circuit correctly separated necessary or proper ballot-access controls from restrictions that unjustifiably inhibit the circulation of ballot-initiative petitions. Pp. 191–205.

(a) States have considerable leeway to protect the integrity and reliability of the ballot-initiative process, as they have with respect to election processes generally. "[N]o litmus-paper test" will separate valid ballot-access provisions from invalid interactive speech restrictions, and this Court has come upon "no substitute for the hard judgments that must be made." *Storer*, 415 U. S., at 730. But the First Amendment requires vigilance in making those judgments, to guard against undue hindrances to political conversations and the exchange of ideas. See *Meyer*, 486 U. S., at 421. The Court is satisfied that, as in *Meyer*, the restrictions in question significantly inhibit communication with voters about proposed political change, and are not warranted by the state interests (administrative efficiency, fraud detection, informing voters) alleged to justify those restrictions. This judgment is informed by other means Colorado employs to accomplish its regulatory purposes. Pp. 191–192.

(b) Beyond question, Colorado's registration requirement drastically reduces the number of persons, both volunteer and paid, available to circulate petitions. That requirement produces a speech diminution of the very kind produced by the ban on paid circulators at issue in *Meyer*. Both provisions "limi[t] the number of voices who will convey [the initiative proponents'] message" and, consequently, cut down "the size of the audience [proponents] can reach." *Meyer*, 486 U. S., at 422, 423.

The ease with which qualified voters may register to vote does not lift the burden on speech at petition circulation time. There are individuals for whom, as the trial record shows, the choice not to register

implicates political thought and expression. The State's strong interest in policing lawbreakers among petition circulators by ensuring that circulators will be amenable to the Secretary of State's subpoena power is served by the requirement, upheld below, that each circulator submit an affidavit setting out, among several particulars, his or her address. ACLF did not challenge Colorado's right to require that all circulators be residents, a requirement that more precisely achieves the State's subpoena service objective. Assuming that a residence requirement would be upheld as a needful integrity-policing measure—a question that this Court, like the Tenth Circuit, has no occasion to decide because the parties have not placed the matter of residence at issue—the added registration requirement is not warranted. Pp. 192–197.

(c) The Tenth Circuit held the badge requirement invalid insofar as it requires circulators to display their names. The District Court found from evidence ACLF presented that compelling circulators to wear identification badges inhibits participation in the petitioning process. Colorado's interest in enabling the public to identify, and the State to apprehend, petition circulators who engage in misconduct is addressed by the requirement that circulators disclose their names and addresses on affidavits submitted with each petition section. Unlike a name badge worn at the time a circulator is soliciting signatures, the affidavit is separated from the moment the circulator speaks, when reaction to the message is immediate and may be the most intense, emotional, and unreasoned. Because the badge requirement compels personal name identification at the precise moment when the circulator's interest in anonymity is greatest, it does not qualify for inclusion among "the more limited [election process] identification requirement[s]" to which this Court alluded in *McIntyre,* 514 U. S., at 353. Like the Tenth Circuit, this Court expresses no opinion on the constitutionality of the additional requirements that the badge disclose whether the circulator is paid or volunteer, and if paid, by whom. Pp. 197–200.

(d) The Tenth Circuit invalidated the requirement that ballot-initiative proponents file a final report when the initiative petition is submitted insofar as that requirement compels disclosure of each paid circulator by name and address, and the total amount paid to each circulator. That court also rejected compelled disclosure in monthly reports of the name and address of each paid circulator, and the amount of money paid and owed to each circulator during the month in question. In ruling on these disclosure requirements, the Court of Appeals looked primarily to this Court's decision in *Buckley* v. *Valeo,* 424 U. S. 1. In *Buckley,* the Court stated that "exacting scrutiny" is necessary when compelled disclosure of campaign-related payments is at issue, but nevertheless upheld, as substantially related to important governmental

interests, the reporting and disclosure provisions of the Federal Election Campaign Act of 1971. Mindful of *Buckley*, the Tenth Circuit did not upset Colorado's disclosure requirements as a whole. Notably, the Court of Appeals upheld the State's requirements for disclosure of *payors*, in particular, proponents' names and the total amount they have spent to collect signatures for their petitions. Disclosure of the names of initiative sponsors, and the amounts they have spent to gather support for their initiatives, responds to Colorado's substantial interest in controlling domination of the initiative process by affluent special interest groups. The added benefit of revealing the names of paid circulators and amounts paid to each circulator, the lower courts fairly determined from the record as a whole, has not been demonstrated. This Court expresses no opinion whether other monthly report prescriptions regarding which the Tenth Circuit identified no infirmity would, standing alone, survive review. Pp. 201–204.

(e) Through less problematic measures, Colorado can and does meet the State's substantial interest in regulating the ballot-initiative process. To deter fraud and diminish corruption, Colorado retains an arsenal of safeguards. To inform the public about the source of funding for ballot initiatives, the State legitimately requires sponsors of ballot initiatives to disclose who pays petition circulators, and how much. To ensure grass roots support, Colorado conditions placement of an initiative proposal on the ballot on the proponent's submission of valid signatures representing five percent of the total votes cast for all candidates for Secretary of State at the previous general election. Furthermore, in aid of efficiency, veracity, or clarity, Colorado has provided for an array of process measures not contested here by ACLF. Pp. 204–205.

120 F. 3d 1092, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which STEVENS, SCALIA, KENNEDY, and SOUTER, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment, *post*, p. 206. O'CONNOR, J., filed an opinion concurring in the judgment in part and dissenting in part, in which BREYER, J., joined, *post*, p. 215. REHNQUIST, C. J., filed a dissenting opinion, *post*, p. 226.

*Gale A. Norton*, Attorney General of Colorado, argued the cause for petitioner. With her on the briefs were *Richard A. Westfall*, Solicitor General, and *Maurice G. Knaizer*, Deputy Attorney General.

*Neil D. O'Toole* argued the cause for respondents. With him on the brief for respondents American Constitutional

Law Foundation, Inc., et al. was *John A. Sbarbaro.* *Kerry S. Hada* filed a brief for respondents David Aitken et al. *Bill Orr*, respondent, *pro se*, and *Mr. O'Toole* filed a brief.*

JUSTICE GINSBURG delivered the opinion of the Court.

Colorado allows its citizens to make laws directly through initiatives placed on election ballots. See Colo. Const., Art. V, §§ 1(1), (2); Colo. Rev. Stat. §§ 1–40–101 to 1–40–133 (1998). We review in this case three conditions Colorado places on the ballot-initiative process: (1) the requirement that initiative-petition circulators be registered voters, Colo. Rev. Stat. § 1–40–112(1) (1998); (2) the requirement that they wear an identification badge bearing the circulator's name, § 1–40–112(2); and (3) the requirement that proponents of an initiative report the names and addresses of all paid circulators and the amount paid to each circulator, § 1–40–121.

Precedent guides our review. In *Meyer* v. *Grant*, 486 U. S. 414 (1988), we struck down Colorado's prohibition of payment for the circulation of ballot-initiative petitions. Petition circulation, we held, is "core political speech," because it involves "interactive communication concerning political change." *Id.*, at 422 (internal quotation marks omitted).

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*Briefs of *amici curiae* urging reversal were filed for the State of Washington et al. by *Christine O. Gregoire*, Attorney General of Washington, and *Jean M. Wilkinson* and *William Berggren Collins*, Assistant Attorneys General, and by the Attorneys General for their respective States as follows: *Bruce M. Botelho* of Alaska, *Grant Woods* of Arizona, *Daniel E. Lungren* of California, *Alan G. Lance* of Idaho, *Thomas J. Miller* of Iowa, *Carla J. Stovall* of Kansas, *Andrew Ketterer* of Maine, *Mike Moore* of Mississippi, *W. A. Drew Edmondson* of Oklahoma, *Betty D. Montgomery* of Ohio, *Hardy Myers* of Oregon, and *Mark Barnett* of South Dakota; and for the Council of State Governments et al. by *Richard Ruda* and *Ronald D. Maines.*

Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *David C. Warren*, *Steven R. Shapiro*, and *Mark Silverstein;* and for the Initiative & Referendum Institute by *Stephen J. Safranek.*

*Barnaby W. Zall* filed a brief for National Voter Outreach, Inc., as *amicus curiae.*

First Amendment protection for such interaction, we agreed, is "at its zenith." *Id.*, at 425 (internal quotation marks omitted). We have also recognized, however, that "there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Storer* v. *Brown*, 415 U. S. 724, 730 (1974); see *Timmons* v. *Twin Cities Area New Party*, 520 U. S. 351, 358 (1997); *Anderson* v. *Celebrezze*, 460 U. S. 780, 788 (1983). Taking careful account of these guides, the Court of Appeals for the Tenth Circuit upheld some of the State's regulations, but found the three controls at issue excessively restrictive of political speech, and therefore declared them invalid. *American Constitutional Law Foundation, Inc.* v. *Meyer*, 120 F. 3d 1092 (1997). We granted certiorari, 522 U. S. 1107 (1998), and now affirm that judgment.

## I

The complaint in this action was filed in 1993 in the United States District Court for the District of Colorado pursuant to 42 U. S. C. § 1983; it challenged six of Colorado's many controls on the initiative-petition process. Plaintiffs, now respondents, included American Constitutional Law Foundation, Inc., a nonprofit, public interest organization that supports direct democracy, and several individual participants in Colorado's initiative process. In this opinion we refer to plaintiffs-respondents, collectively, as ACLF.[1]

[1] Individual plaintiffs included: David Aitken, who, as chairman of the Colorado Libertarian Party, had organized the circulation of several initiative petitions; Jon Baraga, statewide petition coordinator for the Colorado Hemp Initiative; Craig Eley and Jack Hawkins, circulators of petitions for the Safe Workplace Initiative and Worker's Choice of Care Initiative; Lonnie Haynes, an initiative-supporting member of ACLF; Alden Kautz, a circulator of numerous initiative petitions; Bill Orr, executive director of ACLF and a qualified but unregistered voter, who regularly participated in the petition process and wanted to circulate petitions; and William David Orr, a minor who wanted to circulate petitions. See *American Constitutional Law Foundation, Inc.* v. *Meyer*, 120 F. 3d 1092, 1096–1097 (CA10 1997); Brief for Respondents David Aitken et al. 2, 3, 5, 6.

ACLF charged that the following prescriptions of Colorado's law governing initiative petitions violate the First Amendment's freedom of speech guarantee: (1) the requirement that petition circulators be at least 18 years old, Colo. Rev. Stat. § 1–40–112(1) (1998);[2] (2) the further requirement that they be registered voters, *ibid.*;[3] (3) the limitation of the petition circulation period to six months, § 1–40–108;[4] (4) the requirement that petition circulators wear identification badges stating their names, their status as "VOLUNTEER" or "PAID," and if the latter, the name and telephone number of their employer, § 1–40–112(2);[5] (5) the requirement that circulators attach to each petition section[6] an affidavit con-

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[2] Section 1–40–112(1) provides:

"No section of a petition for any initiative or referendum measure shall be circulated by any person who is not a registered elector and at least eighteen years of age at the time the section is circulated."

[3] To be a registered voter, one must reside in Colorado. See § 1–2–101(1)(b). ACLF did not challenge the residency requirement in this action.

[4] Section 1–40–108(1) provides in relevant part:

"No petition for any ballot issue shall be of any effect unless filed with the secretary of state within six months from the date that the titles, submission clause, and summary have been fixed and determined pursuant to the provisions of sections 1–40–106 and 1–40–107 . . . ."

[5] Section 1–40–112(2) provides:

"(a) All circulators who are not to be paid for circulating petitions concerning ballot issues shall display an identification badge that includes the words 'VOLUNTEER CIRCULATOR' in bold-faced type which is clearly legible and the circulator's name.

"(b) All circulators who are to be paid for circulating petitions concerning ballot issues shall display an identification badge that includes the words 'PAID CIRCULATOR' in bold-faced type which is clearly legible, the circulator's name, and the name and telephone number of the individual employing the circulator."

[6] A petition section is a "bound compilation of initiative forms . . . which . . . include . . . a copy of the proposed [ballot] measure; . . . ruled lines numbered consecutively for registered electors' signatures; and a final page that contains the affidavit required by section 1–40–111(2)." § 1–40–102(6).

taining, *inter alia,* the circulator's name and address and a statement that "he or she has read and understands the laws governing the circulation of petitions," § 1–40–111(2);[7] and (6) the requirements that initiative proponents disclose (a) at the time they file their petition, the name, address, and county of voter registration of all paid circulators, the amount of money proponents paid per petition signature, and the total amount paid to each circulator, and (b) on a monthly basis, the names of the proponents, the name and address of each paid circulator, the name of the proposed ballot measure, and the amount of money paid and owed to each circulator during the month, § 1–40–121.[8]

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[7] Section 1–40–111(2) provides:

"To each petition section shall be attached a signed, notarized, and dated affidavit executed by the registered elector who circulated the petition section, which shall include his or her printed name, the address at which he or she resides, including the street name and number, the city or town, the county, and the date he or she signed the affidavit; that he or she has read and understands the laws governing the circulation of petitions; that he or she was a registered elector at the time the section of the petition was circulated and signed by the listed electors; that he or she circulated the section of the petition; that each signature thereon was affixed in the circulator's presence; that each signature thereon is the signature of the person whose name it purports to be; that to the best of the circulator's knowledge and belief each of the persons signing the petition section was, at the time of signing, a registered elector; and that he or she has not paid or will not in the future pay and that he or she believes that no other person has paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix his or her signature to the petition. The secretary of state shall not accept for filing any section of a petition that does not have attached thereto the notarized affidavit required by this section. Any signature added to a section of a petition after the affidavit has been executed shall be invalid."

[8] Section 1–40–121 provides in relevant part:

"(1) The proponents of the petition shall file . . . the name, address, and county of voter registration of all circulators who were paid to circulate any section of the petition, the amount paid per signature, and the total

The District Court, after a bench trial,[9] struck down the badge requirement and portions of the disclosure requirements, but upheld the age and affidavit requirements and the six-month limit on petition circulation. See *American Constitutional Law Foundation, Inc.* v. *Meyer*, 870 F. Supp. 995, 1001–1004 (Colo. 1994). The District Court also found that the registration requirement "limits the number of persons available to circulate . . . and, accordingly, restricts core political speech." *Id.*, at 1002. Nevertheless, that court upheld the registration requirement. In 1980, the District Court noted, the registration requirement had been adopted by Colorado's voters as a constitutional amendment. See *ibid.* For that reason, the District Court believed, the restriction was "not subject to any level of scrutiny." *Ibid.*

The Court of Appeals affirmed in part and reversed in part. See 120 F. 3d 1092 (CA10 1997). That court properly sought guidance from our recent decisions on ballot access, see, *e. g.*, *Timmons* v. *Twin Cities Area New Party*, 520 U. S. 351 (1997), and on handbill distribution, see *McIntyre* v. *Ohio Elections Comm'n*, 514 U. S. 334 (1995). See 120 F. 3d, at 1097, 1103. Initiative-petition circulators, the Tenth Circuit recognized, resemble handbill distributors, in that both seek

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amount paid to each circulator. The filing shall be made at the same time the petition is filed with the secretary of state. . . .

"(2) The proponents of the petition shall sign and file monthly reports with the secretary of state, due ten days after the last day of each month in which petitions are circulated on behalf of the proponents by paid circulators. Monthly reports shall set forth the following:

"(a) The names of the proponents;

"(b) The name and the residential and business addresses of each of the paid circulators;

"(c) The name of the proposed ballot measure for which petitions are being circulated by paid circulators; and

"(d) The amount of money paid and owed to each paid circulator for petition circulation during the month in question."

[9] The record included evidence submitted in support of cross-motions for summary judgment and at a bench trial. See *American Constitutional Law Foundation, Inc.* v. *Meyer*, 870 F. Supp. 995, 997 (Colo. 1994).

to promote public support for a particular issue or position. See *id.*, at 1103. Initiative-petition circulators also resemble candidate-petition signature gatherers, however, for both seek ballot access. In common with the District Court, the Tenth Circuit upheld, as reasonable regulations of the ballot-initiative process, the age restriction, the six-month limit on petition circulation, and the affidavit requirement. See *id.*, at 1098–1100, 1101.[10] The Court of Appeals struck down the requirement that petition circulators be registered voters, and also held portions of the badge and disclosure requirements invalid as trenching unnecessarily and improperly on political expression. See *id.*, at 1100, 1101–1105.

## II

As the Tenth Circuit recognized in upholding the age restriction, the six-month limit on circulation, and the affidavit requirement, States allowing ballot initiatives have considerable leeway to protect the integrity and reliability of the initiative process, as they have with respect to election processes generally. See *Biddulph* v. *Mortham*, 89 F. 3d 1491,

[10] The Tenth Circuit recognized that "age commonly is used as a proxy for maturity," and that "maturity is reasonably related to Colorado's interest in preserving the integrity of ballot issue elections." 120 F. 3d, at 1101. Such a restriction, the Court of Appeals said, need not satisfy "[e]xacting scrutiny," for it is both "neutral" and "temporary"; it "merely postpones the opportunity to circulate." *Ibid.* As to the six-month limit, the Court of Appeals observed that an orderly process requires time lines; again without demanding "[e]laborate . . . verification," the court found six months a "reasonable window," a sensible, "nondiscriminatory ballot access regulation." *Id.*, at 1099 (internal quotation marks omitted). Finally, the court explained that the affidavit requirement properly responded to the State's need to "'ensure that circulators, who possess various degrees of interest in a particular initiative, exercise special care to prevent mistake, fraud, or abuse in the process of obtaining thousands of signatures of only registered electors throughout the state.'" *Id.*, at 1099–1100 (quoting *Loonan* v. *Woodley*, 882 P. 2d 1380, 1388–1389 (Colo. 1994) (en banc)). We denied ACLF's cross-petition regarding these issues. See 522 U. S. 1113 (1998).

1494, 1500–1501 (CA11 1996) (upholding single subject and unambiguous title requirements for initiative proposals to amend Florida's Constitution), cert. denied, 519 U. S. 1151 (1997); *Taxpayers United For Assessment Cuts* v. *Austin*, 994 F. 2d 291, 293–294, 296–297 (CA6 1993) (upholding Michigan procedures for checking voters' signatures on initiative petitions).[11] We have several times said "no litmus-paper test" will separate valid ballot-access provisions from invalid interactive speech restrictions; we have come upon "no substitute for the hard judgments that must be made." *Storer*, 415 U. S., at 730; see *Timmons*, 520 U. S., at 359; *Anderson*, 460 U. S., at 789–790. But the First Amendment requires us to be vigilant in making those judgments, to guard against undue hindrances to political conversations and the exchange of ideas. See *Meyer*, 486 U. S., at 421. We therefore detail why we are satisfied that, as in *Meyer*, the restrictions in question significantly inhibit communication with voters about proposed political change, and are not warranted by the state interests (administrative efficiency, fraud detection, informing voters) alleged to justify those restrictions.[12] Our judgment is informed by other means Colorado employs to accomplish its regulatory purposes.

## III

By constitutional amendment in 1980, see Colo. Const., Art. V, § 1(6), and corresponding statutory change the next

[11] Nothing in this opinion should be read to suggest that initiative-petition circulators are agents of the State. Although circulators are subject to state regulation and are accountable to the State for compliance with legitimate controls, see, *e. g.*, Colo. Rev. Stat. §§ 1–40–111, 1–40–130 (1998), circulators act on behalf of themselves or the proponents of ballot initiatives.

[12] Our decision is entirely in keeping with the "now-settled approach" that state regulations "impos[ing] 'severe burdens' on speech . . . [must] be narrowly tailored to serve a compelling state interest." See *post*, at 206 (THOMAS, J., concurring in judgment).

year, see 1981 Colo. Sess. Laws, ch. 56, § 4, Colorado added to the requirement that petition circulators be residents, the further requirement that they be registered voters.[13] Registration, Colorado's Attorney General explained at oral argument, demonstrates "commit[ment] to the Colorado law-making process," Tr. of Oral Arg. 10, and facilitates verification of the circulator's residence, see *id.*, at 10, 14. Beyond question, Colorado's registration requirement drastically reduces the number of persons, both volunteer and paid, available to circulate petitions. We must therefore inquire whether the State's concerns warrant the reduction. See *Timmons*, 520 U. S., at 358.

When this case was before the District Court, registered voters in Colorado numbered approximately 1.9 million. At least 400,000 persons eligible to vote were not registered. See 2 Tr. 159 (testimony of Donetta Davidson, elections official in the Colorado Secretary of State's office);[14] 120 F. 3d, at 1100 ("Colorado acknowledges there are at least 400,000 qualified but unregistered voters in the state.").[15]

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[13] Colorado law similarly provides that only registered voters may circulate petitions to place candidates on the ballot. See Colo. Rev. Stat. § 1–4–905(1) (1998) (only "eligible elector" may circulate candidate petitions); § 1–1–104(16) ("eligible elector" defined as "registered elector").

[14] Volume 1 of the trial transcript is reprinted in Pro-Se Plaintiff's App. I in No. 94–1576 (CA10), and is cited hereinafter as 1 Tr. Volume 2 of the trial transcript is reprinted in Pro-Se Plaintiff's App. II in No. 94–1576 (CA10), and is cited hereinafter as 2 Tr.

[15] In fact, the number of unregistered but voter-eligible residents in Colorado at the time of the trial may have been closer to 620,000. See U. S. Dept. of Commerce, Bureau of Census, Statistical Abstract of the United States 282 (1993) (Table 453).

More recent statistics show that less than 65 percent of the voting-age population was registered to vote in Colorado in 1997. See U. S. Dept. of Commerce, Bureau of Census, Statistical Abstract of the United States 289 (1997) (Table 463). Using those more recent numbers, Colorado's registration requirement would exclude approximately 964,000 unregistered but voter-eligible residents from circulating petitions. The proportion of

Trial testimony complemented the statistical picture. Typical of the submissions, initiative proponent Paul Grant testified: "Trying to circulate an initiative petition, you're drawing on people who are not involved in normal partisan politics for the most part. . . . [L]arge numbers of these people, our natural support, are not registered voters." 1 Tr. 128.

As earlier noted, see *supra*, at 190, the District Court found from the statistical and testimonial evidence: "The record does show that the requirement of registration limits the number of persons available to circulate and sign [initiative] petitions and, accordingly, restricts core political speech." 870 F. Supp., at 1002. Because the requirement's source was a referendum approved by the people of Colorado, however, the District Court deemed the prescription "not subject to any level of [judicial] scrutiny." *Ibid.* That misjudgment was corrected by the Tenth Circuit: "The voters may no more violate the United States Constitution by enacting a ballot issue than the general assembly may by enacting legislation." 120 F. 3d, at 1100.

The Tenth Circuit reasoned that the registration requirement placed on Colorado's voter-eligible population produces a speech diminution of the very kind produced by the ban on paid circulators at issue in *Meyer*. See 120 F. 3d, at 1100. We agree. The requirement that circulators be not merely voter eligible, but registered voters, it is scarcely debatable given the uncontested numbers, see *supra*, at 193, and n. 15, decreases the pool of potential circulators as certainly as that pool is decreased by the prohibition of payment to circulators.[16] Both provisions "limi[t] the number of voices who

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voter-eligible but unregistered residents to registered residents in Colorado is not extraordinary in comparison to those proportions in other States. See generally *ibid.*

[16] Persons eligible to vote, we note, would not include "convicted drug felons who have been denied the franchise as part of their punishment," see *post*, at 229 (REHNQUIST, C. J., dissenting), and could similarly be

will convey [the initiative proponents'] message" and, consequently, cut down "the size of the audience [proponents] can reach." *Meyer*, 486 U. S., at 422, 423; see *Bernbeck* v. *Moore*, 126 F. 3d 1114, 1116 (CA8 1997) (quoting *Meyer*); see also *Meyer*, 486 U. S., at 423 (stating, further, that the challenged restriction reduced the chances that initiative proponents would gather signatures sufficient in number to qualify for the ballot, and thus limited proponents' "ability to make the matter the focus of statewide discussion"). In this case, as in *Meyer*, the requirement "imposes a burden on political expression that the State has failed to justify." *Id.*, at 428.

Colorado acknowledges that the registration requirement limits speech, but not severely, the State asserts, because "it is exceptionally easy to register to vote." Reply Brief 5, 6; see Brief for Petitioner 30–31. The ease with which qualified voters may register to vote, however, does not lift the burden on speech at petition circulation time. Of course there are individuals who fail to register out of ignorance or apathy. See *post*, at 219–220 (O'CONNOR, J., concurring in judgment in part and dissenting in part). But there are also individuals for whom, as the trial record shows, the choice not to register implicates political thought and expression. See 1 Tr. 14 (testimony of ballot-initiative organizer Jack

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barred from circulating petitions. The dissent's concern that hordes of "convicted drug dealers," *post*, at 230, will swell the ranks of petition circulators, unstoppable by legitimate state regulation, is therefore undue. Even more imaginary is the dissent's suggestion that if the merely voter eligible are included among petition circulators, children and citizens of foreign lands will not be far behind. See *post*, at 231–232. This familiar parade of dreadfuls calls to mind wise counsel: "Judges and lawyers live on the slippery slope of analogies; they are not supposed to ski it to the bottom." R. Bork, The Tempting of America: The Political Seduction of the Law 169 (1990). That same counsel applies to JUSTICE O'CONNOR's floodgate fears concerning today's decision, which, like *Meyer*, separates petition circulators from the proponents and financial backers of ballot initiatives. See *post*, at 226 (opinion concurring in judgment in part and dissenting in part).

Hawkins). A lead plaintiff in this case, long active in ballot-initiative support—a party no doubt "'able and willing' to convey a political message," cf. *post*, at 219 (O'CONNOR, J., concurring in judgment in part and dissenting in part)—testified that his refusal to register is a "form of . . . private and public protest." 1 Tr. 223 (testimony of William Orr, executive director of ACLF). Another initiative proponent similarly stated that some circulators refuse to register because "they don't believe that the political process is responsive to their needs." *Id.*, at 58 (testimony of Jon Baraga). For these voter-eligible circulators, the ease of registration misses the point.[17]

The State's dominant justification appears to be its strong interest in policing lawbreakers among petition circulators. Colorado seeks to ensure that circulators will be amenable to the Secretary of State's subpoena power, which in these matters does not extend beyond the State's borders. See Brief for Petitioner 32. The interest in reaching law violators, however, is served by the requirement, upheld below, that each circulator submit an affidavit setting out, among several particulars, the "address at which he or she resides, including the street name and number, the city or town, [and] the county." Colo. Rev. Stat. § 1–40–111(2) (1998); see *supra*, at 189, n. 7. This address attestation, we note, has an immediacy, and corresponding reliability, that a voter's registration may lack. The attestation is made at the time a petition section is submitted; a voter's registration may lack that currency.

[17] JUSTICE O'CONNOR correctly observes that registration requirements for primary election voters and candidates for political office are "classic" examples of permissible regulation. See *post*, at 217 (opinion concurring in judgment in part and dissenting in part). But the hired signature collector, as this Court recognized in *Meyer*, is in a notably different category. When the Court unanimously struck down a ban on paying persons to circulate petitions, it surely did not imply that the State must therefore tolerate a private sponsor's hourly or piecework payment of persons in exchange for their vote or political candidacy.

ACLF did not challenge Colorado's right to require that all circulators be residents, a requirement that, the Tenth Circuit said, "more precisely achieved" the State's subpoena service objective. 120 F. 3d, at 1100. Nor was any eligible-to-vote qualification in contest in this lawsuit. Colorado maintains that it is more difficult to determine who is a state resident than it is to determine who is a registered voter. See Tr. of Oral Arg. 10, 14. The force of that argument is diminished, however, by the affidavit attesting to residence that each circulator must submit with each petition section.

In sum, assuming that a residence requirement would be upheld as a needful integrity-policing measure—a question we, like the Tenth Circuit, see 120 F. 3d, at 1100, have no occasion to decide because the parties have not placed the matter of residence at issue—the added registration requirement is not warranted. That requirement cuts down the number of message carriers in the ballot-access arena without impelling cause.

## IV

Colorado enacted the provision requiring initiative-petition circulators to wear identification badges in 1993, five years after our decision in *Meyer*. 1993 Colo. Sess. Laws, ch. 183, § 1.[18] The Tenth Circuit held the badge requirement invalid insofar as it requires circulators to display their names. See 120 F. 3d, at 1104. The Court of Appeals did not rule on the constitutionality of other elements of the badge provision, namely, the "requirements that the badge disclose whether the circulator is paid or a volunteer, and if paid, by whom." *Ibid.* Nor do we.

Evidence presented to the District Court, that court found, "demonstrated that compelling circulators to wear iden-

[18] Colorado does not require identification badges for persons who gather signatures to place candidates on the ballot. See generally Colo. Rev. Stat. § 1–4–905 (1998) (regulations governing candidate-petition circulators).

tification badges inhibits participation in the petitioning process." 870 F. Supp., at 1001. The badge requirement, a veteran ballot-initiative-petition organizer stated, "very definitely limited the number of people willing to work for us and the degree to which those who were willing to work would go out in public." 1 Tr. 127 (testimony of Paul Grant).[19] Another witness told of harassment he personally experienced as circulator of a hemp initiative petition. See 870 F. Supp., at 1001. He also testified to the reluctance of potential circulators to face the recrimination and retaliation that bearers of petitions on "volatile" issues sometimes encounter: "[W]ith their name on a badge, it makes them afraid." 1 Tr. 60 (testimony of Jon Baraga). Other petition advocates similarly reported that "potential circulators were not willing to wear personal identification badges." 870 F. Supp., at 1001–1002.

Colorado urges that the badge enables the public to identify, and the State to apprehend, petition circulators who engage in misconduct. See Brief for Petitioner 36–37; Reply Brief 17. Here again, the affidavit requirement, unsuccessfully challenged below, see *supra*, at 191, and n. 10, is responsive to the State's concern; as earlier noted, see *supra*, at 188–189, and n. 7, each petition section must contain, along with the collected signatures of voters, the circulator's name, address, and signature. This notarized submission, available to law enforcers, renders less needful the State's provision for personal names on identification badges.

While the affidavit reveals the name of the petition circulator and is a public record, it is tuned to the speaker's interest as well as the State's. Unlike a name badge worn at the time a circulator is soliciting signatures, the affidavit is separated from the moment the circulator speaks. As the Tenth Circuit explained, the name badge requirement "forces circu-

[19] See 1 Tr. 133 (testimony of Paul Grant) ("I would not circulate because I don't want to go to jail. And, I won't wear the badge because I don't think it's right.").

lators to reveal their identities at the same time they deliver their political message," 120 F. 3d, at 1102; it operates when reaction to the circulator's message is immediate and "may be the most intense, emotional, and unreasoned," *ibid.* The affidavit, in contrast, does not expose the circulator to the risk of "heat of the moment" harassment. Cf. 870 F. Supp., at 1004 (observing that affidavits are not instantly accessible, and are therefore less likely to be used "for such purposes as retaliation or harassment").

Our decision in *McIntyre* v. *Ohio Elections Comm'n*, 514 U. S. 334 (1995), is instructive here. The complainant in *McIntyre* challenged an Ohio law that prohibited the distribution of anonymous campaign literature. The writing in question was a handbill urging voters to defeat a ballot issue. Applying "exacting scrutiny" to Ohio's fraud prevention justifications, we held that the ban on anonymous speech violated the First Amendment. See *id.*, at 347, 357. "Circulating a petition is akin to distributing a handbill," the Tenth Circuit observed in the decision now before us. 120 F. 3d, at 1103. Both involve a one-on-one communication. But the restraint on speech in this case is more severe than was the restraint in *McIntyre*. Petition circulation is the less fleeting encounter, for the circulator must endeavor to persuade electors to sign the petition. See Tr. of Oral Arg. 21, 25–26. That endeavor, we observed in *Meyer*, "of necessity involves both the expression of a desire for political change and a discussion of the merits of the proposed change." 486 U. S., at 421.

The injury to speech is heightened for the petition circulator because the badge requirement compels personal name identification at the precise moment when the circulator's interest in anonymity is greatest. See 120 F. 3d, at 1102. For this very reason, the name badge requirement does not qualify for inclusion among the "more limited [election process] identification requirement[s]" to which we alluded in *McIntyre*. 514 U. S., at 353 ("We recognize that a State's enforce-

ment interest might justify a more limited identification requirement, but Ohio has shown scant cause for inhibiting the leafletting at issue here."); see *id.*, at 358 (GINSBURG, J., concurring). In contrast, the affidavit requirement upheld by the District Court and Court of Appeals, which must be met only after circulators have completed their conversations with electors, exemplifies the type of regulation for which *McIntyre* left room.[20]

In sum, we conclude, as did the Court of Appeals, that Colorado's current badge requirement discourages participation in the petition circulation process by forcing name identification without sufficient cause. We reiterate this qualification: In its final observation, the Court of Appeals noted that ACLF's "arguments and evidence focus[ed] entirely on [the circulator identification] requirement"; therefore, that court expressed no opinion whether the additional requirements—that the badge disclose the circulator's paid or volunteer status, and if paid, by whom—"would pass constitutional muster standing alone." 120 F. 3d, at 1104. We similarly confine our decision.

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[20] As the Tenth Circuit observed, see 120 F. 3d, at 1101, neither *Riley* v. *National Federation of Blind of N. C., Inc.*, 487 U. S. 781 (1988), nor *Martin* v. *City of Struthers*, 319 U. S. 141 (1943), supports the name identification Colorado requires petition circulators to wear. *Riley* invalidated a North Carolina law restricting solicitation of charitable contributions by professional fundraisers. *Martin* invalidated a city ordinance prohibiting knocking on the door or ringing the doorbell of any residence for the purpose of distributing literature. The Court observed in *Riley* that an unchallenged portion of the disclosure law required professional fundraisers to disclose their *professional status, i. e.*, their *employer's* name and address, to potential donors. 487 U. S., at 799, and n. 11. In dictum in *Martin*, the Court noted that "a stranger in the community" could be required to establish his identity and authority to act for the cause he purports to represent. 319 U. S., at 148, n. 14 (internal quotation marks omitted). Neither case involved a name badge requirement or any other specification that the solicitor's personal name be revealed. Nor was there in either case a counterpart to the affidavit, which puts each petition circulator's name and address on a public record.

V

Like the badge requirement, Colorado's disclosure provisions were enacted post-*Meyer* in 1993. See 1993 Colo. Sess. Laws, ch. 183, § 1.[21] The Tenth Circuit trimmed these provisions. Colorado requires ballot-initiative proponents who pay circulators to file both a final report when the initiative petition is submitted to the Secretary of State, and monthly reports during the circulation period. Colo. Rev. Stat. § 1–40–121 (1998), set out *supra*, at 189–190, n. 8. The Tenth Circuit invalidated the final report provision only insofar as it compels disclosure of information specific to each paid circulator, in particular, the circulators' names and addresses and the total amount paid to each circulator. See 120 F. 3d, at 1104–1105. As modified by the Court of Appeals decision, the final report will reveal the amount paid per petition signature, and thus, effectively, the total amount paid to petition circulators. See *ibid.*

The Court of Appeals next addressed Colorado's provision demanding "detailed monthly disclosures." 120 F. 3d, at 1105. In a concise paragraph, the court rejected compelled disclosure of the name and addresses (residential and business) of each paid circulator, and the amount of money paid and owed to each circulator, during the month in question. See Colo. Rev. Stat. §§ 1–40–121(2)(b), (d) (1998). The Court of Appeals identified no infirmity in the required reporting of petition proponents' names, or in the call for disclosure of proposed ballot measures for which paid circulators were engaged. See §§ 1–40–121(2)(a), (c). We express no opinion whether these monthly report prescriptions, standing alone, would survive review.

In ruling on Colorado's disclosure requirements for paid circulations, the Court of Appeals looked primarily to our

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[21] Colorado does not require similar disclosures for persons who gather signatures to place candidates on the ballot. See generally Colo. Rev. Stat. § 1–4–905 (1998) (regulations governing candidate-petition circulators).

decision in *Buckley* v. *Valeo*, 424 U. S. 1 (1976) *(per curiam)*. In that decision, we stated that "exacting scrutiny" is necessary when compelled disclosure of campaign-related payments is at issue. See *id.*, at 64–65. We nevertheless upheld, as substantially related to important governmental interests, the recordkeeping, reporting, and disclosure provisions of the Federal Election Campaign Act of 1971, 86 Stat. 3, as amended, 88 Stat. 1263, 2 U. S. C. § 431 *et seq.* (1970 ed., Supp. IV). See 424 U. S., at 66–68, 84. We explained in *Buckley* that disclosure provides the electorate with information "as to where political campaign money comes from and how it is spent," thereby aiding electors in evaluating those who seek their vote. *Id.*, at 66 (internal quotation marks omitted). We further observed that disclosure requirements "deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity." *Id.*, at 67; see also *Grosjean* v. *American Press Co.*, 297 U. S. 233, 250 (1936) (observing that an "informed public opinion is the most potent of all restraints upon misgovernment").

Mindful of *Buckley*, the Tenth Circuit did not upset Colorado's disclosure requirements "as a whole." But see *post*, at 233 (REHNQUIST, C. J., dissenting). Notably, the Court of Appeals upheld the State's requirements for disclosure of *payors*, in particular, proponents' names and the total amount they have spent to collect signatures for their petitions. See 120 F. 3d, at 1104–1105. In this regard, the State and supporting *amici* stress the importance of disclosure as a control or check on domination of the initiative process by affluent special interest groups. See Reply Brief 15 ("[T]here are increasingly more initiatives that are the product of large monied interests."); Brief for Council of State Governments et al. as *Amici Curiae* 3 ("Today the initiative and referendum process is dominated by money and professional firms."). Disclosure of the names of initiative sponsors, and of the amounts they have spent gathering

support for their initiatives, responds to that substantial state interest. See 870 F. Supp., at 1003 ("What is of interest is the payor, not the payees."); cf. this Court's Rule 37.6 (requiring disclosure of "every person or entity . . . who made a monetary contribution to the preparation or submission of the brief").

Through the disclosure requirements that remain in place, voters are informed of the source and amount of money spent by proponents to get a measure on the ballot; in other words, voters will be told "who has proposed [a measure]," and "who has provided funds for its circulation." See *post*, at 224 (O'CONNOR, J., concurring in judgment in part and dissenting in part). The added benefit of revealing the names of paid circulators and amounts paid to each circulator, the lower courts fairly determined from the record as a whole, is hardly apparent and has not been demonstrated.[22]

We note, furthermore, that ballot initiatives do not involve the risk of "*quid pro quo*" corruption present when money is paid to, or for, candidates. See *Meyer*, 486 U. S., at 427–428 (citing *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 790 (1978) ("The risk of corruption perceived in cases involving candidate elections . . . simply is not present in a popular vote on a public issue.")); *McIntyre*, 514 U. S., at 352, n. 15. In addition, as we stated in *Meyer*, "the risk of fraud or corruption, or the appearance thereof, is more remote at the petition stage of an initiative than at the time of balloting." 486 U. S., at 427. Finally, absent evidence to the contrary, "we are not prepared to assume that a professional circulator—whose qualifications for similar future assignments may

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[22] JUSTICE O'CONNOR states that "[k]nowing the names of paid circulators and the amounts paid to them [will] allo[w] members of the public to evaluate the sincerity or, alternatively, the potential bias of any circulator that approaches them." *Post*, at 224 (opinion concurring in judgment in part and dissenting in part). It is not apparent why or how this is so, for the reports containing the names of paid circulators would be filed with the Secretary of State and would not be at hand at the moment the circulators "approac[h]."

well depend on a reputation for competence and integrity—is any more likely to accept false signatures than a volunteer who is motivated entirely by an interest in having the proposition placed on the ballot." *Id.*, at 426.[23]

In sum, we agree with the Court of Appeals appraisal: Listing paid circulators and their income from circulation "forc[es] paid circulators to surrender the anonymity enjoyed by their volunteer counterparts," 120 F. 3d, at 1105;[24] no more than tenuously related to the substantial interests disclosure serves, Colorado's reporting requirements, to the extent that they target paid circulators, "fai[l] exacting scrutiny," *ibid.*

## VI

Through less problematic measures, Colorado can and does meet the State's substantial interests in regulating the ballot-initiative process. Colorado aims to protect the integrity of the initiative process, specifically, to deter fraud

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[23] While testimony in the record suggests that "occasional fraud in Colorado's petitioning process" involved paid circulators, it does not follow like the night the day that "paid circulators are more likely to commit fraud and gather false signatures than other circulators." See *post*, at 225 (O'CONNOR, J., concurring in judgment in part and dissenting in part). Far from making any ultimate finding to that effect, the District Court determined that neither the State's interest in preventing fraud, nor its interest in informing the public concerning the "financial resources . . . available to [initiative proponents]" or the "special interests" supporting a ballot measure, is "significantly advanced by disclosure of the names and addresses of each person paid to circulate any section of [a] petition." 870 F. Supp., at 1003. Such disclosure in proponents' reports, the District Court also observed, risked exposing the paid circulators "to intimidation, harassment and retribution in the same manner as the badge requirement." *Ibid.*

[24] Because the disclosure provisions target only paid circulators and require disclosure of the income from circulation each receives, the disclosure reports are of course "[d]istinguishable from the affidavit," *post*, at 221 (O'CONNOR, J., concurring in judgment in part and dissenting in part), which must be completed by both paid and volunteer circulators, and does not require disclosure of the amount paid individually to a circulator.

and diminish corruption. See Brief for Petitioner 24, 42, 45; Reply Brief 13, 14, 17. To serve that important interest, as we observed in *Meyer*, Colorado retains an arsenal of safeguards. See 486 U. S., at 426–427; 120 F. 3d, at 1103, 1105; see, *e. g.*, Colo. Rev. Stat. § 1–40–130(1)(b) (1998) (making it criminal to forge initiative-petition signatures); § 1–40–132(1) (initiative-petition section deemed void if circulator has violated any provision of the laws governing circulation). To inform the public "where [the] money comes from," *Buckley*, 424 U. S., at 66 (internal quotation marks omitted), we reiterate, the State legitimately requires sponsors of ballot initiatives to disclose who pays petition circulators, and how much. See *supra*, at 202–203.

To ensure grass roots support, Colorado conditions placement of an initiative proposal on the ballot on the proponent's submission of valid signatures representing five percent of the total votes cast for all candidates for Secretary of State at the previous general election. Colo. Const., Art. V, § 1(2); Colo. Rev. Stat. § 1–40–109(1) (1998); see *Meyer*, 486 U. S., at 425–426; 120 F. 3d, at 1105. Furthermore, in aid of efficiency, veracity, or clarity, Colorado has provided for an array of process measures not contested here by ACLF. These measures prescribe, *inter alia*, a single subject per initiative limitation, Colo. Rev. Stat. § 1–40–106.5(1)(a) (1998), a signature verification method, § 1–40–116, a large, plain-English notice alerting potential signers of petitions to the law's requirements, § 1–40–110(1), and the text of the affidavit to which all circulators must subscribe, § 1–40–111(2).

* * *

For the reasons stated, we conclude that the Tenth Circuit correctly separated necessary or proper ballot-access controls from restrictions that unjustifiably inhibit the circulation of ballot-initiative petitions. Therefore, the judgment of the Court of Appeals is

*Affirmed.*

JUSTICE THOMAS, concurring in the judgment.

When considering the constitutionality of a state election regulation that restricts core political speech or imposes "severe burdens" on speech or association, we have generally required that the law be narrowly tailored to serve a compelling state interest. But if the law imposes "lesser burdens," we have said that the State's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions. The Court today appears to depart from this now-settled approach. In my view, Colorado's badge, registration, and reporting requirements each must be evaluated under strict scrutiny. Judged by that exacting standard, I agree with the majority that each of the challenged regulations violates the First and Fourteenth Amendments, and accordingly concur only in the judgment.

## I

States, of course, must regulate their elections to ensure that they are conducted in a fair and orderly fashion. See, *e. g.*, *Timmons* v. *Twin Cities Area New Party*, 520 U. S. 351, 358 (1997); *Burdick* v. *Takushi*, 504 U. S. 428, 433 (1992). But such regulations often will directly restrict or otherwise burden core political speech and associational rights. To require that every voting, ballot, and campaign regulation be narrowly tailored to serve a compelling interest "would tie the hands of States seeking to assure that elections are operated equitably and efficiently." *Ibid.* Consequently, we have developed (although only recently) a framework for assessing the constitutionality, under the First and Fourteenth Amendments, of state election laws. When a State's rule imposes severe burdens on speech or association, it must be narrowly tailored to serve a compelling interest; lesser burdens trigger less exacting review, and a State's important regulatory interests are typically enough to justify reasonable restrictions. *Timmons*, *supra*, at 358–359; *Burdick*,

*supra*, at 434; *Anderson* v. *Celebrezze*, 460 U. S. 780, 788–790 (1983).

Predictability of decisions in this area is certainly important, but unfortunately there is no bright line separating severe from lesser burdens. When a State's election law directly regulates core political speech, we have always subjected the challenged restriction to strict scrutiny and required that the legislation be narrowly tailored to serve a compelling governmental interest. See, *e. g.*, *Burson* v. *Freeman*, 504 U. S. 191, 198 (1992) (Tennessee law prohibiting solicitation of voters and distribution of campaign literature within 100 feet of the entrance of a polling place); *Brown* v. *Hartlage*, 456 U. S. 45, 53–54 (1982) (Kentucky's regulation of candidate campaign promises); *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 786 (1978) (Massachusetts law prohibiting certain business entities from making expenditures for the purpose of affecting referendum votes).

Even where a State's law does not directly regulate core political speech, we have applied strict scrutiny. For example, in *Meyer* v. *Grant*, 486 U. S. 414 (1988), we considered a challenge to Colorado's law making it a felony to pay initiative petition circulators. We applied strict scrutiny because we determined that initiative petition circulation "of necessity involves both the expression of a desire for political change and a discussion of the merits of the proposed change." *Id.*, at 421. In *Citizens Against Rent Control/Coalition for Fair Housing* v. *Berkeley*, 454 U. S. 290 (1981), we subjected to strict scrutiny a city ordinance limiting contributions to committees formed to oppose ballot initiatives because it impermissibly burdened association and expression. *Id.*, at 294.

When core political speech is at issue, we have ordinarily applied strict scrutiny without first determining that the State's law severely burdens speech. Indeed, in *McIntyre* v. *Ohio Elections Comm'n*, 514 U. S. 334 (1995), the Court suggested that we only resort to our severe/lesser burden

framework if a challenged election law regulates "the mechanics of the electoral process," not speech. *Id.*, at 345; but see *Eu* v. *San Francisco County Democratic Central Comm.*, 489 U. S. 214, 222–223 (1989) (first determining that California's prohibition on primary endorsements by the official governing bodies of political parties burdened speech and association and then applying strict scrutiny). I suspect that when regulations of core political speech are at issue it makes little difference whether we determine burden first because restrictions on core political speech so plainly impose a "severe burden."

When an election law burdens voting and associational interests, our cases are much harder to predict, and I am not at all sure that a coherent distinction between severe and lesser burdens can be culled from them. For example, we have subjected to strict scrutiny Connecticut's requirement that voters in any party primary be registered members of that party because it burdened the "associational rights of the Party and its members." *Tashjian* v. *Republican Party of Conn.*, 479 U. S. 208, 217 (1986). We similarly treated California's laws dictating the organization and composition of official governing bodies of political parties, limiting the term of office of a party chair, and requiring that the chair rotate between residents of northern and southern California because they "burden[ed] the associational rights of political parties and their members," *Eu*, *supra*, at 231. In *Storer* v. *Brown*, 415 U. S. 724 (1974), we applied strict scrutiny to California's law denying a ballot position to independent candidates who had a registered affiliation with a qualified political party within a year of the preceding primary election, apparently because it "substantially" burdened the rights to vote and associate. *Id.*, at 729, 736.[1] And in *Nor-*

[1] Although we did not explicitly apply strict scrutiny in *Storer*, we said that the State's interest was "not only permissible, but compelling," and that the device the State chose was "an essential part of its overall mechanism." 415 U. S., at 736.

*man* v. *Reed*, 502 U. S. 279 (1992), we determined that Illinois' regulation of the use of party names and its law establishing signature requirements for nominating petitions severely burdened association by limiting new parties' access to the ballot, and held both challenged laws, as construed by the State Supreme Court, unconstitutional because they were not narrowly tailored. *Id.*, at 288–290, 294. By contrast, we determined that Minnesota's law preventing a candidate from appearing on the ballot as the choice of more than one party burdened a party's access to the ballot and its associational rights, but not severely, and upheld the ban under lesser scrutiny. *Timmons*, 520 U. S., at 363. We likewise upheld Hawaii's prohibition on write-in voting, which imposed, at most, a "very limited" burden on voters' freedom of choice and association. *Burdick*, 504 U. S., at 437.

## II

Colorado argues that its badge, registration, and reporting requirements impose "lesser" burdens, and consequently, each ought to be upheld as serving important state interests. I cannot agree.

### A

The challenged badge requirement, Colo. Rev. Stat. § 1–40–112(2) (1998), directly regulates the content of speech. The State requires that all petition circulators disclose, at the time they deliver their political message, their names and whether they were paid or unpaid. Therefore, the regulation must be evaluated under strict scrutiny. Moreover, the category of burdened speech is defined by its content—Colorado's badge requirement does not apply to those who circulate candidate petitions, only to those who circulate initiative or referendum proposals. See generally § 1–4–905 (candidate petition circulation requirements). Content-based regulation of speech typically must be narrowly tailored to a compelling state interest. See, *e. g.*, *Boos* v.

*Barry*, 485 U. S. 312, 321 (1988). The State's dominant justification for its badge requirement is that it helps the public to identify, and the State to apprehend, petition circulators who perpetrate fraud. Even assuming that this is a compelling interest, plainly, this requirement is not narrowly tailored. It burdens all circulators, whether they are responsible for committing fraud or not. In any event, the State has failed to satisfy its burden of demonstrating that fraud is a real, rather than a conjectural, problem. See *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622, 664 (1994); *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n*, 518 U. S. 604, 647 (1996) (THOMAS, J., concurring in judgment and dissenting in part).[2]

B

Although Colorado's registration requirement, Colo. Rev. Stat. § 1–40–112(1) (1998), does not *directly* regulate speech, it operates in the same fashion that Colorado's prohibition on paid circulators did in *Meyer*—the requirement reduces the voices available to convey political messages. We unanimously concluded in *Meyer* that initiative petition circulation was core political speech. 486 U. S., at 421–422. Colorado's law making it a felony to pay petition circulators burdened that political expression, we said, because it reduced the number of potential speakers. That reduction limited the size of the audience that initiative proponents and circulators might reach, which in turn made it less likely that initiative proposals would garner the signatures necessary to qualify

[2] The majority is correct to note, *ante*, at 200, that the Tenth Circuit declined to address whether Colorado's requirement that the badge disclose whether a circulator is paid or a volunteer, and if paid, the name and telephone number of the payer, would be constitutionally permissible standing *alone*. Nevertheless, the District Court invalidated § 1–40–112(2) in its entirety, *American Constitutional Law Foundation, Inc.* v. *Meyer*, 870 F. Supp. 995, 1005 (Colo. 1994), and the Court of Appeals affirmed that decision in full. *American Constitutional Law Foundation, Inc.* v. *Meyer*, 120 F. 3d 1092, 1096 (CA10 1997).

for the ballot. *Id.*, at 422–423. I see no reason to revisit our earlier conclusion. The aim of a petition is to secure political change, and the First Amendment, by way of the Fourteenth Amendment, guards against the State's efforts to restrict free discussions about matters of public concern.[3]

Colorado primarily defends its registration requirement on the ground that it ensures that petition circulators are residents, which permits the State to more effectively enforce its election laws against those who violate them.[4] The Tenth Circuit assumed, and so do I, that the State has a compelling interest in ensuring that all circulators are residents. Even so, it is clear, as the Court of Appeals decided, that the registration requirement is not narrowly tailored. A large number of Colorado's residents are not registered voters, as the majority points out, *ante*, at 193, and the State's asserted interest could be more precisely achieved through a residency requirement.[5]

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[3] There is anecdotal evidence in the briefs that circulators do not discuss the merits of a proposed change by initiative in any great depth. Indeed, National Voter Outreach, Inc., an *amicus curiae* in support of respondents and, according to its statement of interest, the largest organizer of paid petition circulation drives in the United States, describes most conversations between circulator and prospective petition signer as "brief." Brief for National Voter Outreach, Inc., as *Amicus Curiae* 21. It gives an example of the typical conversation: "'Here, sign this. It will really [tick off California Governor] Pete Wilson.'" *Id.*, at 21, n. 17. In my view, the level of scrutiny cannot turn on the content or sophistication of a political message. Cf. *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n*, 518 U. S. 604, 640 (1996) ("Even a pure message of support, unadorned with reasons, is valuable to the democratic process").

[4] Colorado's law requires that petition circulators be registered electors, Colo. Rev. Stat. § 1–40–112(1) (1998), and while one must reside in Colorado in order to be a registered voter, § 1–2–101(1)(b), Colorado does not have a separate residency requirement for petition circulators at this time.

[5] Whatever the merit of the views expressed by THE CHIEF JUSTICE, *post*, at 227, 230 (dissenting opinion), the State did little more than mention in passing that it had an interest in having its own voters decide what issues should go on the ballot. See Brief for Petitioner 31.

C

The District Court and the Court of Appeals both suggested that by forcing proponents to identify paid circulators by name, the reports made it less likely that persons would want to circulate petitions. Therefore, both concluded, the reporting requirement had a chilling effect on core political speech similar to the one we recognized in *Meyer*. *American Constitutional Law Foundation, Inc.* v. *Meyer*, 120 F. 3d 1092, 1096 (CA10 1997); *American Constitutional Law Foundation, Inc.* v. *Meyer*, 870 F. Supp. 995, 1003 (Colo. 1994). The District Court additionally determined that preparation of the required monthly reports was burdensome for and involved additional expense to those supporting an initiative petition. *Ibid.*

In my view, the burdens that the reporting requirement imposes on circulation are too attenuated to constitute a "severe burden" on core political speech. However, "compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Buckley* v. *Valeo*, 424 U. S. 1, 64 (1976) *(per curiam)*. In *Buckley*, because the disclosure requirements of the Federal Election Campaign Act of 1971 encroached on associational rights, we required that they pass a "strict test." *Id.*, at 66. The same associational interests are burdened by the State's reporting requirements here, and they must be evaluated under strict scrutiny.

Colorado argues that the "essential purpose" of the reports is to identify circulators. Brief for Petitioner 44. It also claims that its required reports are designed to provide "the press and the voters of Colorado a more complete picture of how money is being spent to get a measure on the ballot." *Ibid.* Even assuming that Colorado has a compelling interest in identifying circulators, its law does not serve that interest. The State requires that proponents identify only the names of *paid* circulators, not *all* circulators. The interest in requiring a report as to the money paid to each

circulator by name, as the majority points out, *ante*, at 201, has not been demonstrated.

The State contends that its asserted interest in providing the press and the electorate with information as to how much money is spent by initiative proponents to advance a particular measure is similar to the governmental interests in providing the electorate with information about how money is spent by a candidate and where it comes from, and in deterring actual corruption and avoiding the appearance of corruption that we recognized in *Buckley*, *supra*, at 66–67. However, we have suggested that ballot initiatives and candidate elections involve different considerations. *Bellotti*, 435 U. S., at 791–792 ("[T]he people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments. . . . [I]f there be any danger that the people cannot evaluate the information and arguments advanced by [one source], it is a danger contemplated by the Framers of the First Amendment"); see also *Citizens Against Rent Control*, 454 U. S., at 296–298. Indeed, we recognized in *Meyer* that "the risk of improper conduct . . . is more remote at the petition stage of an initiative." 486 U. S., at 427. Similarly, I would think, at the very least, the State's interest in informing the public of the financial interests behind an initiative proposal is not compelling during the petitioning stage.

As it stands after the lower court decisions, proponents must disclose the amount paid per petition signature and the total amount paid to each circulator, without identifying each circulator, at the time the petition is filed. Monthly disclosures are no longer required.[6] Because the respondents did

[6] The Court of Appeals did not specifically identify any constitutional problem with the monthly reports to the extent that they require disclosure of proponents' names and proposed ballot measures for which persons were paid to circulate petitions. But the District Court invalidated the entire monthly reporting requirement, 870 F. Supp., at 1005, and the Court of Appeals affirmed its decision in full. See 120 F. 3d, at 1096.

not sufficiently brief the question, I am willing to assume, for purposes of this opinion, that Colorado's interest in having this information made available to the press and its voters—before the initiative is voted upon, but not during circulation—is compelling. The reporting provision as modified by the courts below ensures that the public receives information demonstrating the financial support behind an initiative proposal before voting.

I recognize that in *Buckley*, although the Court purported to apply strict scrutiny, its formulation of that test was more forgiving than the traditional understanding of that exacting standard. The Court merely required that the disclosure provisions have a "substantial relation," 424 U. S., at 64, to a "substantial" government interest, *id.*, at 68.[7] (The majority appears to dilute *Buckley*'s formulation even further, stating that Colorado's reporting requirement must be "substantially related to important governmental interests." *Ante*, at 202.) To the extent that *Buckley* suggests that we should apply a relaxed standard of scrutiny, it is inconsistent with our state election law cases that require the application of traditional strict scrutiny whenever a state law "severely burdens" association, and I would not adhere to it. I would nevertheless decide that the challenged portions of Colorado's disclosure law are unconstitutional as evaluated under the *Buckley* standard.

* * *

To conclude, I would apply strict scrutiny to each of the challenged restrictions, and would affirm the judgment of

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[7] I have previously noted that the Court in *Buckley* seemed more forgiving in its review of the contribution provisions than it was with respect to the expenditure rules at issue, even though we purported to strictly scrutinize both. *Colorado Republican*, 518 U. S., at 640, n. 7 (THOMAS, J., concurring in judgment and dissenting in part).

the Court of Appeals as to each of the three provisions before us. As the majority would apply different reasoning, I concur only in the Court's judgment.

Justice O'Connor, with whom Justice Breyer joins, concurring in the judgment in part and dissenting in part.

Petition circulation undoubtedly has a significant political speech component. When an initiative petition circulator approaches a person and asks that person to sign the petition, the circulator is engaging in "interactive communication concerning political change." *Meyer* v. *Grant*, 486 U. S. 414, 422 (1988). It was the imposition of a direct and substantial burden on this one-on-one communication that concerned us in *Meyer* v. *Grant*. To address this concern, we held in that case that regulations directly burdening the one-on-one, communicative aspect of petition circulation are subject to strict scrutiny. *Id.*, at 420.

Not all circulation-related regulations target this aspect of petition circulation, however. Some regulations govern the electoral process by directing the manner in which an initiative proposal qualifies for placement on the ballot. These latter regulations may indirectly burden speech but are a step removed from the communicative aspect of petitioning and are necessary to maintain an orderly electoral process. Accordingly, these regulations should be subject to a less exacting standard of review.

In this respect, regulating petition circulation is similar to regulating candidate elections. Regulations that govern a candidate election invariably burden to some degree one's right to vote and one's right to associate for political purposes. Such restrictions are necessary, however, "if [elections] are to be fair and honest." *Storer* v. *Brown*, 415 U. S. 724, 730 (1974). To allow for regulations of this nature without overly burdening these rights, we have developed a flexible standard to review regulations of the electoral process.

The Court succinctly described this standard in *Burdick* v. *Takushi*, 504 U. S. 428 (1992):

> "[W]hen [First and Fourteenth Amendment] rights are subjected to severe restrictions, the regulation must be narrowly drawn to advance a state interest of compelling importance. But when a state election law provision imposes only reasonable, nondiscriminatory restrictions upon the First and Fourteenth Amendment rights of voters, the State's important regulatory interests are generally sufficient to justify the restrictions." *Id.*, at 434 (internal quotation marks and citations omitted).

Applying this test, in *Burdick*, we upheld as reasonable Hawaii's prohibition on write-in voting, holding that it imposed only a limited burden upon the constitutional rights of voters. See *id.*, at 433–441. See also *Timmons* v. *Twin Cities Area New Party*, 520 U. S. 351, 362–370 (1997) (upholding Minnesota law that banned fusion candidacies on the ground that the State had asserted a "sufficiently weighty" interest). The application of this flexible standard was not without precedent. Prior to *Burdick*, the Court applied a test akin to rational review to regulations that governed only the administrative aspects of elections. See *Rosario* v. *Rockefeller*, 410 U. S. 752, 756–762 (1973) (upholding requirement that voters enroll as members of a political party prior to voting in a primary election on the ground that the regulation did not impose an onerous burden and advanced a legitimate state interest).

Under the *Burdick* approach, the threshold inquiry is whether Colorado's regulations directly and substantially burden the one-on-one, communicative aspect of petition circulation or whether they primarily target the electoral process, imposing only indirect and less substantial burdens on communication. If the former, the regulation should be subject to strict scrutiny. If the latter, the regulation should be subject to review for reasonableness.

I

I agree with the Court that requiring petition circulators to wear identification badges, specifically name badges, see Colo. Rev. Stat. § 1–40–112(2)(b) (1998), should be subject to, and fails, strict scrutiny. Requiring petition circulators to reveal their names while circulating a petition directly regulates the core political speech of petition circulation. The identification badge introduces into the one-on-one dialogue of petition circulation a message the circulator might otherwise refrain from delivering, and the evidence shows that it deters some initiative petition circulators from disseminating their messages. Under the logic of *Meyer*, the regulation is subject to more exacting scrutiny. As explained by the Court, see *ante*, at 198–200, Colorado's identification badge requirement cannot survive this more demanding standard of review because the requirement is not narrowly tailored to satisfy Colorado's interest in identifying and apprehending petition circulators who engage in misconduct. I also agree that whether Colorado's other badge requirement—that the badges identify initiative petition circulators as paid or volunteer—is constitutional is a question that the court below did not resolve, and this issue is not properly before us. See *ante*, at 197. Accordingly, like the Court, I do not address it.

II

Unlike the majority, however, I believe that the requirement that initiative petition circulators be registered voters, see Colo. Rev. Stat. § 1–40–112(1) (1998), is a permissible regulation of the electoral process. It is indeed a classic example of this type of regulation. We have upheld analogous restrictions on qualifications to vote in a primary election and on candidate eligibility as reasonable regulations of the electoral process. See *Rosario* v. *Rockefeller*, *supra*, at 756–762 (upholding qualifications to vote in primary); *Storer* v. *Brown*, *supra*, at 728–737 (upholding candidate eligibility

requirement). As THE CHIEF JUSTICE observes, Colorado's registration requirement parallels the requirements in place in at least 19 States and the District of Columbia that candidate petition circulators be electors, see *post,* at 232, and the requirement of many States that candidates certify that they are registered voters.* Like these regulations, the registration requirement is a neutral qualification for participation in the petitioning process.

When one views the registration requirement as a neutral qualification, it becomes apparent that the requirement only indirectly and incidentally burdens the communicative aspects of petition circulation. By its terms, the requirement does not directly prohibit otherwise qualified initiative petition circulators from circulating petitions. Cf. *Rosario* v. *Rockefeller, supra,* at 758 (holding that time limits on enrollment in political parties did not violate the right of association because individuals were not prohibited from enrolling in parties). Moreover, as THE CHIEF JUSTICE illustrates in his dissent, this requirement can be satisfied quite easily. See *post,* at 228. The requirement, indeed, has been in effect in Colorado since 1980, see *American Constitutional Law Foundation, Inc.* v. *Meyer,* 870 F. Supp. 995, 999 (Colo. 1994), with no apparent impact on the ability of groups to circulate petitions, see 2 Tr. 159 (testimony of Donetta Davidson that the number of initiative proposals placed on the ballot has increased over the past few years).

In this way, the registration requirement differs from the statute held unconstitutional in *Meyer.* There, we reviewed a statute that made it unlawful to pay petition circulators, see *Meyer* v. *Grant,* 486 U. S., at 417, and held that the statute directly regulated and substantially burdened speech by

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*See, *e. g.,* Va. Const., Art. V, § 3; Cal. Elec. Code Ann. § 201 (West Special Pamphlet 1996); Ind. Stat. Ann. § 3–8–5–14 (1998); Mass. Gen. Laws Ann., ch. 53, § 9 (West Supp. 1998); Nev. Rev. Stat. Ann. § 293.180 (1997); N. H. Rev. Stat. Ann. § 655:28 (1996); N. J. Stat. Ann. § 40:45–8 (West 1991); N. C. Gen. Stat. § 163–323 (Supp. 1997); Okla. Stat., Tit. 26, § 5–111 (1997).

excluding from petition circulation a class of actual circulators that were necessary "to obtain the required number of signatures within the allotted time." *Ibid.* That is, the statute directly silenced voices that were necessary, and "able and willing" to convey a political message. *Id.*, at 422–423, and n. 6. In contrast, the registration requirement does not effect a ban on an existing class of circulators or, by its terms, silence those who are "able and willing" to circulate ballot initiative petitions. Indeed, it does not appear that the parties to this litigation needed unregistered but voter-eligible individuals to disseminate their political messages. Cf. *id.*, at 417.

The respondents have offered only slight evidence to suggest that the registration requirement negatively affects the one-on-one, communicative aspect of petition circulation. In particular, the respondents argue that the registration requirement burdens political speech because some otherwise-qualified circulators do not register to vote as a form of political protest. See *ante*, at 195–196. Yet the existence and severity of this burden is not as clearly established in the record as the respondents, or the Court, suggests.

For example, witness Jack Hawkins, whose testimony the Court cites for the proposition that "the choice not to register implicates political thought and expression," see *ante*, at 195, did not testify that anyone failed to register to vote as a political statement. He responded "[y]es, that's true" to the leading question "are there individuals who would circulate your petition who are non-registered voters because of their political choice?" 1 Tr. 14. But he went on to explain this "political choice" as follows:

> "They have interesting views of why they don't want to register to vote. *They're under a misconception that they won't be called for jury duty if they're not registered to vote and they're really concerned about being a jurist,* but in Colorado you can be a jurist if you drive a car or pay taxes or anything else. So, they're under a

misconception, but I can't turn them around on that." *Id.*, at 15–16 (emphasis added).

Likewise, witness Jon Baraga, who testified that some potential circulators are not registered to vote because they feel the political process is not responsive to their needs, see *ante*, at 196, went on to testify that many of the same people would register to vote if an initiative they supported were placed on the ballot. See 1 Tr. 58. Considered as a whole, this testimony does not establish that the registration requirement substantially burdens alternative forms of political expression.

Because the registration requirement indirectly and incidentally burdens the one-on-one, communicative aspect of petition circulation, *Burdick* requires that it advance a legitimate state interest to be a reasonable regulation of the electoral process. Colorado maintains that the registration requirement is necessary to enforce its laws prohibiting circulation fraud and to guarantee the State's ability to exercise its subpoena power over those who violate these laws, see *ante*, at 196, two patently legitimate interests. See, *e. g.*, *Timmons* v. *Twin Cities Area New Party*, 520 U. S., at 366–367; *Schaumburg* v. *Citizens for a Better Environment*, 444 U. S. 620, 636–637 (1980). In the past, Colorado has had difficulty enforcing its prohibition on circulation fraud, in particular its law against forging petition signatures, because violators fled the State. See 2 Tr. 115 (testimony of Donetta Davidson). Colorado has shown that the registration requirement is an easy and a verifiable way to ensure that petition circulators fall under the State's subpoena power. See Tr. of Oral Arg. 14; see also Appellee's Supplemental App. in Nos. 94–1576 and 94–1581 (CA10), p. 268 (describing requirement that signatories be registered voters as necessary for verification of signatures). For these reasons, I would uphold the requirement as a reasonable regulation of Colorado's electoral process.

## III

Most disturbing is the Court's holding that Colorado's disclosure provisions are partially unconstitutional. Colorado requires that ballot-initiative proponents file two types of reports: monthly reports during the period of circulation and a final report when the initiative petition is submitted. See Colo. Rev. Stat. § 1–40–121 (1998). The monthly reports must include the names of paid circulators, their business and residential addresses, and the amount of money paid and owed to each paid circulator during the relevant month. See § 1–40–121(2). The final report also must include the paid circulators' names and addresses, as well as the total amount paid to each circulator. See § 1–40–121(1). The Tenth Circuit invalidated the reports to the extent they revealed this information. See *ante*, at 201. The Court affirms this decision, without expressing an opinion on the validity of the reports to the extent they reveal other information, on the ground that forcing the proponents of ballot initiatives to reveal the identities of their paid circulators is tenuously related to the interests disclosure serves and impermissibly targets paid circulators. See *ante*, at 202–203. I, however, would reverse the Tenth Circuit on the ground that Colorado's disclosure provision is a reasonable regulation of the electoral process.

Colorado's disclosure provision is a step removed from the one-on-one, communicative aspects of petition circulation, and it burdens this communication in only an incidental manner. Like the mandatory affidavit that must accompany every set of signed petitions, the required disclosure reports "revea[l] the name of the petition circulator and [are] public record[s] . . . [, but are] separated from the moment the circulator speaks," see *ante*, at 198. This characteristic indeed makes the disclosure reports virtually indistinguishable from the affidavit requirement, which the Court suggests is a permissible regulation of the electoral process, see *ante*, at 200, and similarly lessens any chilling effect the reports might

have on speech, see *ante*, at 198–199 (observing that injury to speech is heightened when disclosure is made at the moment of speech). If anything, the disclosure reports burden speech less directly than the affidavits because the latter are completed by the petition circulator, while the former are completed by the initiative proponent and thus are a step removed from petition circulation. In fact, the Court does not suggest that there is any record evidence tending to show that such remote disclosure will deter the circulation of initiative petitions. To the extent the disclosure requirements burden speech, the burden must be viewed as incremental and insubstantial in light of the affidavit requirement, which also reveals the identity of initiative petition circulators.

As a regulation of the electoral process with an indirect and insignificant effect on speech, the disclosure provision should be upheld so long as it advances a legitimate government interest. Colorado's asserted interests in combating fraud and providing the public with information about petition circulation are surely sufficient to survive this level of review. These are among the interests we found to be substantial in *Buckley* v. *Valeo*. See 424 U. S. 1, 67, 68 (1976) *(per curiam)* (holding that the Government has a substantial interest in requiring candidates to disclose the sources of campaign contributions to provide the electorate with information about "the interests to which a candidate is most likely to be responsive," to "deter actual corruption and avoid the appearance of corruption," and "to detect violations of the contribution limitations"). Moreover, it is scarcely debatable that, as a general matter, financial disclosure effectively combats fraud and provides valuable information to the public. We have recognized that financial disclosure requirements tend to discourage those who are subject to them from engaging in improper conduct, and that "[a] public armed with information . . . is better able to detect" wrongdoing. See *id.*, at 67; see also *Grosjean* v. *Amer-*

*ican Press Co.*, 297 U. S. 233, 250 (1936) (observing that an "informed public opinion is the most potent of all restraints upon misgovernment"). "'Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.'" *Buckley* v. *Valeo*, *supra*, at 67, and n. 80 (quoting L. Brandeis, Other People's Money 62 (1933)). "[I]n the United States, for half a century compulsory publicity of political accounts has been the cornerstone of legal regulation. Publicity is advocated as an automatic regulator, inducing self-discipline among political contenders and arming the electorate with important information." H. Alexander & B. Haggerty, The Federal Election Campaign Act: After a Decade of Political Reform 37 (1981). "'[T]otal disclosure'" has been recognized as the "'essential cornerstone'" to effective campaign finance reform, *id.*, at 39, and "fundamental to the political system," H. Alexander, Financing Politics: Money, Elections, and Political Reform 164 (4th ed. 1992).

In light of these many and substantial benefits of disclosure, we have upheld regulations requiring disclosure and reporting of amounts spent by candidates for election, amounts contributed to candidates, and the names of contributors, see *Buckley* v. *Valeo*, 424 U. S., at 60–84, while holding that the First Amendment protects the right of the political speaker to spend his money to amplify his speech, see *id.*, at 44–59. Indeed, laws requiring the disclosure of the names of contributors and the amounts of their contributions are common to all States and the Federal Government. See *id.*, at 62–64 (describing disclosure provisions of Federal Election Campaign Act of 1971); Alexander, Financing Politics, *supra*, at 135 ("All fifty states have some disclosure requirements, and all except two [South Carolina and Wyoming] call for both pre- and post-election reporting of contributions and expenditures"). Federal disclosure laws were first enacted in 1910, and early laws, like Colorado's current provision, required the disclosure of the names of contributors and the

recipients of expenditures. See *Buckley* v. *Valeo*, 424 U. S., at 61. Such public disclosure of the amounts and sources of political contributions and expenditures assists voters in making intelligent and knowing choices in the election process and helps to combat fraud.

The recognized benefits of financial disclosure are equally applicable in the context of petition circulation. Disclosure deters circulation fraud and abuse by encouraging petition circulators to be truthful and self-disciplined. See generally *id.*, at 67. The disclosure required here advances Colorado's interest in law enforcement by enabling the State to detect and to identify on a timely basis abusive or fraudulent circulators. Moreover, like election finance reporting generally, Colorado's disclosure reports provide facts useful to voters who are weighing their options. Members of the public deciding whether to sign a petition or how to vote on a measure can discover who has proposed it, who has provided funds for its circulation, and to whom these funds have been provided. Knowing the names of paid circulators and the amounts paid to them also allows members of the public to evaluate the sincerity or, alternatively, the potential bias of any circulator that approaches them. In other words, if one knows a particular circulator is well paid, one may be less likely to believe the sincerity of the circulator's statements about the initiative proposal. The monthly disclosure reports are public records available to the press and public, see Brief for Petitioner 44, are "contemporaneous with circulation," *American Constitutional Law Foundation, Inc.* v. *Meyer*, 120 F. 3d 1092, 1105 (CA10 1997), and are more accessible than the other "masses of papers filed with the petitions," see 870 F. Supp., at 1004.

It is apparent from the preceding discussion that, to combat fraud and to inform potential signatories in a timely manner, disclosure must be made at the time people are being asked to sign petitions and before any subsequent vote on a measure that qualifies for the ballot. It is, indeed, during

this period that the need to deter fraud and to inform the public of the forces motivating initiative petitions "is likely to be at its peak . . . ; [this] is the time when improper influences are most likely to be brought to light." *Buckley* v. *Valeo*, *supra*, at 68, n. 82. Accordingly, the monthly reports, which are disseminated during the circulation period and are available to the press, see Brief for Petitioner 44, uniquely advance Colorado's interests. The affidavit requirement is not an effective substitute because the affidavits are not completed until after all signatures have been collected and thus after the time that the information is needed. See Colo. Rev. Stat. § 1–40–111(2) (1998) ("Any signature added to a section of a petition after the affidavit has been executed shall be invalid"). In addition, the public's access to the affidavits is generally more restricted than its access to monthly disclosure reports, for as the District Court found, the public will have "greater difficulty in finding [the] names and addresses [of petition circulators] in the masses of papers filed with the petitions as compared with the monthly reports." 870 F. Supp., at 1004.

To be sure, Colorado requires disclosure of financial information about only paid circulators. But, contrary to the Court's assumption, see *ante*, at 203–204, this targeted disclosure is permissible because the record suggests that paid circulators are more likely to commit fraud and gather false signatures than other circulators. The existence of occasional fraud in Colorado's petitioning process is documented in the record. See 2 Tr. 197–198 (testimony of retired FBI agent Theodore P. Rosack); *id.*, at 102, 104–116 (testimony of Donetta Davidson). An elections officer for the State of Colorado testified that only paid circulators have been involved in recent fraudulent activity, see *id.*, at 150–151 and 161 (testimony of Donetta Davidson); see also *id.*, at 197–198 (testimony of Theodore P. Rosack) (describing recent investigation of fraud in which only paid circulators were implicated). Likewise, respondent William C. Orr, the executive

director of the American Constitutional Law Foundation, Inc., while examining a witness, explained to the trial court that "volunteer organizations, they're self-policing and there's not much likelihood of fraud. . . . Paid circulators are perhaps different." *Id.*, at 208–209.

Because the legitimate interests asserted by Colorado are advanced by the disclosure provision and outweigh the incidental and indirect burden that disclosure places on political speech, I would uphold the provision as a reasonable regulation of the electoral process. Colorado's interests are more than legitimate, however. We have previously held that they are substantial. See *Buckley* v. *Valeo*, *supra*, at 67, 68. Therefore, even if I thought more exacting scrutiny were required, I would uphold the disclosure requirements.

Because I feel the Court's decision invalidates permissible regulations that are vitally important to the integrity of the political process, and because the decision threatens the enforceability of other important and permissible regulations, I concur in the judgment only in part and dissent in part.

CHIEF JUSTICE REHNQUIST, dissenting.

The Court today invalidates a number of state laws designed to prevent fraud in the circulation of candidate petitions and to ensure that local issues of state law are decided by local voters, rather than by out-of-state interests. Because I believe that Colorado can constitutionally require that those who circulate initiative petitions *to* registered voters actually *be* registered voters themselves, and because I believe that the Court's contrary holding has wide-reaching implication for state regulation of elections generally, I dissent.

I

Ballot initiatives of the sort involved in this case were a central part of the Progressive movement's agenda for reform at the turn of the 20th century, and were advanced as a means of limiting the control of wealthy special inter-

ests and restoring electoral power to the voters. See, *e. g.*, H. Croly, Progressive Democracy 236–237, 248–249, 254–255 (Transaction ed. 1998); H. Commager, The American Mind 338 (1950); Persily, The Peculiar Geography of Direct Democracy, 2 Mich. L. & Pol'y Rev. 11, 23 (1997). However, in recent years, the initiative and referendum process has come to be more and more influenced by out-of-state interests which employ professional firms doing a nationwide business. See, *e. g.*, Lowenstein & Stern, The First Amendment and Paid Initiative Petition Circulators, 17 Hastings Const. L. Q. 175, 176 (1989); Broder, Ballot Battle, Washington Post, Apr. 12, 1998, pp. A1, A6; Slind-Flor, Election Result: Litigation over Propositions, National Law Journal, Nov. 16, 1998, pp. A1, A8. The state laws that the Court strikes down today would restore some of this initial purpose by limiting the influence that such out-of-state interests may have on the in-state initiative process. The ironic effect of today's opinion is that, in the name of the First Amendment, it strikes down the attempt of a State to allow its own voters (rather than out-of-state persons and political dropouts) to decide what issues should go on the ballot to be decided by the State's registered voters.

The basis of the Court's holding is that because the state laws in question both (1) decrease the pool of potential circulators and (2) reduce the chances that a measure would gather signatures sufficient to qualify for the ballot, the measure is unconstitutional under our decision in *Meyer* v. *Grant*, 486 U. S. 414 (1988). See *ante*, at 194–195. *Meyer*, which also dealt with Colorado's initiative regulations, struck down a criminal ban on *all* paid petition circulators. 486 U. S., at 428. But *Meyer* did not decide that a State cannot impose reasonable regulations on such circulation. Indeed, before today's decision, it appeared that under our case law a State could have imposed reasonable regulations on the circulation of initiative petitions, so that some order could be established over the inherently chaotic nature of

democratic processes. Cf. *Timmons* v. *Twin Cities Area New Party*, 520 U. S. 351, 358 (1997); *Burdick* v. *Takushi*, 504 U. S. 428, 433 (1992); *Storer* v. *Brown*, 415 U. S. 724, 730 (1974). Today's opinion, however, calls into question the validity of *any* regulation of petition circulation which runs afoul of the highly abstract and mechanical test of diminishing the pool of petition circulators or making a proposal less likely to appear on the ballot. See *ante*, at 194–195. It squarely holds that a State may not limit circulators to registered voters, and maintains a sphinx-like silence as to whether it may even limit circulators to state residents.

## II

Section 1–40–112(1) of Colorado's initiative petition law provides that "[n]o section of a petition for any initiative or referendum measure shall be circulated by any person who is not a registered elector and at least eighteen years of age at the time the section is circulated." Colo. Rev. Stat. § 1–40–112(1) (1998). This requirement is obviously intended to ensure that the people involved in getting a measure placed on the ballot are the same people who will ultimately vote on that measure—the electors of the State. Indeed, it is difficult to envision why the State cannot do this, but for the unfortunate dicta in *Meyer*. The parties agree that for purposes of this appeal there are 1.9 million registered voters in Colorado, and that 400,000 persons eligible to vote are not registered. See *ante*, at 193. But registering to vote in Colorado is easy—the only requirements are that a person be 18 years of age or older on the date of the next election, a citizen of the United States, and a resident of the precinct in which the person will vote 30 days immediately prior to the election. See Colo. Rev. Stat. § 1–2–101 (1998). The elector requirement mirrors Colorado's regulation of candidate elections, for which all delegates to county and state assemblies must be registered electors, § 1–4–602(5), and

where candidates cannot be nominated for a primary election unless they are registered electors, § 1–4–601(4)(a).

The Court, however, reasons that the restriction of circulation to electors fails to pass scrutiny under the First Amendment because the decision not to register to vote "implicates political thought and expression." *Ante*, at 195. Surely this can be true of only a very few of the many residents who do not register to vote, but even in the case of the few it should not invalidate the Colorado requirement. Refusing to read current newspapers or to watch television may have "First Amendment implications," but this does not mean that a state university might not refuse to hire such a person to teach a course in "today's media." The examples of unregistered people who wish to circulate initiative petitions presented by the respondents (and relied upon by the Court) are twofold [1]—people who refuse to participate in the political process as a means of protest, and convicted drug felons who have been denied the franchise as part of their punishment. For example, respondent Bill Orr, apparently the mastermind of this litigation, argued before the District Court that "It's my form of . . . private and public protest. I don't believe that representative organs of Government are doing what they're supposed to be doing." 1 Tr. 223. And respondent Jon Baraga, a person affiliated with the "Colorado Hemp Initiative," which seeks to legalize marijuana in Colorado, testified that "there are a great many folks who are refused to participate as registered voters in the political

[1] The respondents also presented the example of children who wished to circulate petitions. Indeed, one of the respondents in this case—William David Orr—was a minor when this suit was filed and was apparently included in the action to give it standing to challenge the age restriction element of Colo. Rev. Stat. § 1–40–112(1) (1998). Because the Court of Appeals held that the age restriction on petition circulation was constitutional, it is unnecessary to point out the absurdity of the respondents' minority argument.

process who would like to see our measure gain ballot status and would like to help us do that." *Id.*, at 57.

Thus, the Court today holds that a State cannot require that those who circulate the petitions to get initiatives on the ballot be electors, and that a State is constitutionally required to instead allow those who make no effort to register to vote—political dropouts—and convicted drug dealers to engage in this electoral activity. Although the Court argues that only those eligible to vote may now circulate candidate petitions, there is no Colorado law to this effect. Such a law would also be even harder to administer than one which limited circulation to residents, because eligible Colorado voters are that subset of Colorado residents who have fulfilled the requirements for registration, and have not committed a felony or been otherwise disqualified from the franchise. A State would thus have to perform a background check on circulators to determine if they are not felons. And one of the reasons the State wished to limit petition circulation to electors in the first place was that it is far easier to determine who is an elector from who is a resident, much less who is "voter eligible."[2]

In addition, the Court does not adequately explain what "voter eligible" means. If it means "eligible to vote in the State for which the petitions are circulating" (Colorado, in this case), then it necessarily follows from today's holding that a State may limit petition circulation to its own residents. I would not quarrel with this holding. On the other hand, "voter eligible" could mean "any person eligible to vote in any of the United States or its territories." In this case,

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[2] The Court dismisses this state interest as "diminished," by noting that the affidavit requirement identifies residents. *Ante*, at 197. Yet even if the interest is diminished, it surely is not eliminated, and it is curious that the Court relies on the affidavit requirement to strike down the elector requirement, but does not use it to preserve that part of the disclosure requirements that also contain information duplicated by the affidavits. Cf. Part V, *ante*.

a State would not merely have to run a background check on out-of-state circulators, but would also have to examine whether the unregistered circulator had satisfied whatever are the criteria for voter eligibility in his place of residence, be it Georgia or Guam, Peoria or Puerto Rico.

State ballot initiatives are a matter of state concern, and a State should be able to limit the ability to circulate initiative petitions to those people who can ultimately vote on those initiatives at the polls. If eligible voters make the conscious decision not to register to vote on the grounds that they reject the democratic process, they should have no right to complain that they cannot circulate initiative petitions to people who *are* registered voters. And the idea that convicted drug felons who have lost the right to vote under state law nonetheless have a constitutional right to circulate initiative petitions scarcely passes the "laugh test."

But the implications of today's holding are even more stark than its immediate effect. Under the Court's interpretation of *Meyer*, any ballot initiative regulation is unconstitutional if it either diminishes the pool of people who can circulate petitions or makes it more difficult for a given issue to ultimately appear on the ballot. See *ante*, at 194–195. Thus, while today's judgment is ostensibly circumscribed in scope, it threatens to invalidate a whole host of historically established state regulations of the electoral process in general. Indeed, while the Court is silent with respect to whether a State can limit initiative petition circulation to state residents, the implication of its reading of *Meyer*—that being unable to hire out-of-state circulators would "limi[t] the number of voices who will convey [the initiative proponents'] message," *ante*, at 194–195 (bracketing in original)—is that under today's decision, a State cannot limit the ability to circulate issues of local concern to its own residents.

May a State prohibit children or foreigners from circulating petitions, where such restrictions would also limit the number of voices who could carry the proponents' message

and thus cut down on the size of the audience the initiative proponents could reach? Cf. *Meyer*, 486 U. S., at 422–423. And if initiative petition circulation cannot be limited to electors, it would seem that a State can no longer impose an elector or residency requirement on those who circulate petitions to place candidates on ballots, either. At least 19 States plus the District of Columbia explicitly require that candidate petition circulators be electors,[3] and at least one other State requires that its petition circulators be state residents.[4] Today's decision appears to place each of these laws in serious constitutional jeopardy.

## III

As to the other two laws struck down by the Court, I agree that the badge requirement for petition circulators is unconstitutional. *McIntyre* v. *Ohio Elections Comm'n*, 514 U. S. 334 (1995). I also find instructive, as the Court notes, *ante*, at 197, n. 18, that Colorado does not require such badges for those who circulate candidate petitions. See generally Colo. Rev. Stat. § 1–4–905 (1998).

I disagree, however, that the First Amendment renders the disclosure requirements unconstitutional. The Court affirms the Court of Appeals' invalidation of only the portion of the law that requires final reports to disclose information

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[3] See Ariz. Rev. Stat. Ann. § 16–315 (1996); Cal. Elec. Code Ann. § 8106(b)(4) (West 1996); Colo. Rev. Stat. § 1–4–905 (1998); Conn. Gen. Stat. § 9–410 (Supp. 1998); D. C. Code Ann. § 1–1312(b)(2) (1992); Idaho Code §§ 34–626, 34–1807 (Supp. 1998); Ill. Comp. Stat., ch. 10, §§ 5/7–10, 5/8–8, 5/10–4 (Supp. 1998); Kan. Stat. Ann. § 25–205(d) (1993); Mich. Comp. Laws § 168.544c(3) (Supp. 1998); Mo. Rev. Stat. § 115.325(2) (1997); Neb. Rev. Stat. § 32–630 (Supp. 1997); N. Y. Elec. Law §§ 6–132, 6–140, 6–204, 6–206 (McKinney 1998); Ohio Rev. Code Ann. § 3503.06 (1996); 25 Pa. Cons. Stat. § 2869 (1994); R. I. Gen. Laws § 17–23–12 (1996); S. D. Comp. Laws Ann. § 12–1–3 (1995); Va. Code Ann. § 24.2–521 (Supp. 1998); W. Va. Code § 3–5–23 (1994); Wis. Stat. § 8.40 (1996); Wyo. Stat. § 22–5–304 (1992).

[4] See Ga. Code Ann. §§ 21–2–132(g)(3)(A), 21–2–170(d)(1) (1993 and Supp. 1997).

specific to each paid circulator—the name, address, and amount paid to each. Important to the Court's decision is the idea that there is no risk of "*quid pro quo*" corruption when money is paid to ballot initiative circulators, and that paid circulators should not have to surrender the anonymity enjoyed by their volunteer counterparts. I disagree with this analysis because, under Colorado law, *all* petition circulators must surrender their anonymity under the affidavit requirement. Colorado law requires that each circulator must submit an affidavit which must include the circulator's "name, the address at which he or she resides, including the street name and number, the city or town, [and] the county." Colo. Rev. Stat. § 1–40–111(2) (1998). This affidavit requirement was upheld by the Tenth Circuit as not significantly burdening political expression, *American Constitutional Law Foundation* v. *Meyer*, 120 F. 3d 1092, 1099 (1997), and is relied upon by the Court in holding that the registered voter requirement is unconstitutional. See *ante*, at 196. The only additional piece of information for which the disclosure requirement asks is thus the amount paid to each circulator. Since even after today's decision the identity of the circulators as well as the total amount of money paid to circulators will be a matter of public record, see *ante*, at 201, I do not believe that this additional requirement is sufficient to invalidate the disclosure requirements as a whole. They serve substantial interests and are sufficiently narrowly tailored to satisfy the First Amendment.

## IV

Because the Court's holding invalidates what I believe to be legitimate restrictions placed by Colorado on the petition circulation process, and because its reasoning calls into question a host of other regulations of both the candidate nomination and petition circulation process, I dissent.

Syllabus

# CITY OF WEST COVINA *v.* PERKINS ET AL.

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

No. 97–1230. Argued November 3, 1998—Decided January 13, 1999

Petitioner City's police officers lawfully seized respondents' personal property from their home, leaving a notice form specifying the fact of the search, its date, the searching agency, the warrant's date, the issuing judge and his court, and the persons to be contacted for information, and an itemized list of the property seized. The officers did not leave the search warrant number, but the warrant's issuance was recorded by respondents' address and the warrant number in a public index. After attempts to obtain return of the seized property failed, respondents filed this suit, and the Federal District Court ultimately granted the City summary judgment. In reversing, the Ninth Circuit held, by analogy to *Memphis Light, Gas & Water Div.* v. *Craft*, 436 U. S. 1, that the Due Process Clause required that respondents be provided, in addition to the information set forth in the City's form, detailed notice of the state procedures for return of seized property and the information necessary to invoke those procedures, including the search warrant number or a method for obtaining it.

*Held:* When police seize property for a criminal investigation, the Due Process Clause does not require them to provide the owner with notice of state-law remedies for the property's return. The Ninth Circuit's expansive notice requirement lacks support in this Court's precedent. Individualized notice that officers have taken property is necessary in a case such as this one because the owner has no other reasonable means of ascertaining who is responsible for his loss. However, no similar rationale justifies requiring notice of state-law remedies which, like those at issue here, are established by published, generally available state statutes and case law. Cf., *e. g.*, *Reetz* v. *Michigan*, 188 U. S. 505, 509. *Memphis*, *supra*, is not to the contrary. See *id.*, at 14, n. 14. To sustain the Ninth Circuit's holding, this Court would have to find that due process requires notice that not one State or the Federal Government has seen fit to require, in the context of law enforcement practices that have existed for centuries. Respondents' alternative argument that the notice given them was inadequate because it did not provide the vital search warrant number is undermined by the District Court's explicit finding that they failed to establish they needed the number to file a motion for return of their property. Pp. 240–244.

113 F. 3d 1004, reversed and remanded.

Syllabus

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, SOUTER, GINSBURG, and BREYER, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment, in which SCALIA, J., joined, *post*, p. 246.

*David D. Lawrence* argued the cause for petitioner. With him on the briefs was *Cindy S. Lee.*

*Jeffrey S. Sutton*, State Solicitor of Ohio, argued the cause for the State of Ohio et al. as *amici curiae* urging reversal. With him on the brief were *Betty D. Montgomery*, Attorney General of Ohio, *Elise W. Porter* and *Jeffrey B. Hartranft*, Assistant Attorneys General, and the Attorneys General for their respective jurisdictions as follows: *Bill Pryor* of Alabama, *Bruce M. Botelho* of Alaska, *Grant Woods* of Arizona, *Winston Bryant* of Arkansas, *M. Jane Brady* of Delaware, *Robert A. Butterworth* of Florida, *Gus F. Diaz* of Guam, *Margery S. Bronster* of Hawaii, *Jeffrey A. Modisett* of Indiana, *Thomas J. Miller* of Iowa, *Carla J. Stovall* of Kansas, *Richard P. Ieyoub* of Louisiana, *J. Joseph Curran, Jr.*, of Maryland, *Frank J. Kelley* of Michigan, *Hubert H. Humphrey III* of Minnesota, *Joseph P. Mazurek* of Montana, *Don Stenberg* of Nebraska, *Frankie Sue Del Papa* of Nevada, *Peter Verniero* of New Jersey, *Dennis C. Vacco* of New York, *Michael F. Easley* of North Carolina, *Heidi Heitkamp* of North Dakota, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *Charles M. Condon* of South Carolina, *Mark W. Barnett* of South Dakota, *Jan Graham* of Utah, *Mark L. Earley* of Virginia, and *Christine O. Gregoire* of Washington.

*Patrick S. Smith* argued the cause and filed a brief for respondents.*

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*Briefs of *amici curiae* urging reversal were filed for the United States by *Solicitor General Waxman, Deputy Solicitor General Dreeben,* and *Irving L. Gornstein;* for 62 named California Cities, Counties and Towns by *Julia Hayward Biggs* and *Rufus C. Young, Jr.;* and for the National League of Cities et al. by *Richard Ruda* and *Clifford M. Sloan.*

JUSTICE KENNEDY delivered the opinion of the Court.

We granted certiorari, 523 U. S. 1105 (1998), to consider in this case whether the Constitution requires a State or its local entities to give detailed and specific instructions or advice to owners who seek return of property lawfully seized but no longer needed for police investigation or criminal prosecution. Interpreting the Due Process Clause of the Fourteenth Amendment, the Court of Appeals for the Ninth Circuit imposed a series of specific notice requirements on the city responsible for the seizure. We conclude these requirements are not mandated by the Due Process Clause, and we reverse.

I

The case began when police officers of petitioner, the city of West Covina, California (City), acting in accordance with law and pursuant to a valid search warrant, seized personal property. The property belonged to the owner of the searched home, respondent Lawrence Perkins, and to his family. The suspect in the crime was neither Perkins nor anyone in his family, but one Marcus Marsh. Marsh had been a boarder in the Perkins' home. After leaving their home, and unknown to them, he became the subject of a homicide investigation.

During the search of respondents' home for evidence incriminating Marsh, the police seized a number of items, including photos of Marsh, an address book, a 12-gauge shotgun, a starter pistol, ammunition, and $2,629 in cash. 113 F. 3d 1004, 1006 (CA9 1997). At the conclusion of the search, the officers left respondents a form entitled "Search Warrant: Notice of Service," which stated:

> "TO WHOM IT MAY CONCERN:
>
> "1. THESE PREMISES HAVE BEEN SEARCHED BY PEACE OFFICERS OF THE (name of searching agency) *West Covina Police* DEPARTMENT PURSUANT TO A SEARCH WARRANT ISSUED ON (date)

> *5–20–93*, BY THE HONORABLE (name of magistrate) *Dan Oki*, JUDGE OF THE SUPERIOR/MUNICIPAL COURT, *Citrus* JUDICIAL DISTRICT.
>
> "2. THE SEARCH WAS CONDUCTED ON (date) *5–21–93*. A LIST OF THE PROPERTY SEIZED PURSUANT TO THE SEARCH WARRANT IS ATTACHED.
>
> "3. IF YOU WISH FURTHER INFORMATION, YOU MAY CONTACT:
> (name of investigator) *Det. Ferrari or Det. Melnyk* AT [telephone number].
>
> "LT. SCHIMANSKI [telephone number]." App. 76–77 (italicized characters represent those portions of the original document which were handwritten on the form).

In accordance with the notice, the officers also left respondents an itemized list of the property seized. 113 F. 3d, at 1011–1012. The officers did not leave the search warrant number because the warrant was under seal to avoid compromising the ongoing investigation. *Id.*, at 1007. In a public index maintained by the court clerk, however, the issuance of the warrant was recorded by the address of the home searched and the search warrant number. *Ibid.*

Not long after the search, Perkins called Ferrari, one of the detectives listed on the notice, and inquired about return of the seized property. No. CV 93–7084 SVW (CD Cal., July 8, 1996), App. to Pet. for Cert. E3. One of the detectives told Perkins he needed to obtain a court order authorizing the property's return. *Ibid.*

About a month after the search, Perkins went to the Citrus Municipal Court to see Judge Oki, who had issued the warrant. He learned Judge Oki was on vacation. *Ibid.* He tried to have another judge release his property but was told the court had nothing under Perkins' name. *Ibid.*

Rather than continuing to pursue a court order releasing the property by filing a written motion with the court, mak-

ing other inquiries, or returning to the courthouse at some later date, *ibid.*, respondents filed suit in United States District Court against the City and the officers who conducted the search. They alleged the officers had violated their Fourth Amendment rights by conducting a search without probable cause and exceeding the scope of the warrant. App. 7–9. They further alleged that the City had a policy of permitting unlawful searches. *Id.*, at 10.

The District Court granted summary judgment for the City and its officers. App. to Pet. for Cert. B1–B11. The court, however, invited supplemental briefing on an issue respondents had not raised: whether available remedies for the return of seized property were adequate to satisfy due process. *Id.*, at B7. The parties submitted briefs on the issue, but the court did not rule on it. Respondents appealed the District Court's holding on their Fourth Amendment claims, but the Court of Appeals remanded the case to the District Court for resolution of the due process question. No. 94–56365 (CA9, Apr. 30, 1996), App. to Pet. for Cert. D1–D3.

The District Court held on remand that the remedies provided by California law for return of the seized property satisfied due process, and it granted summary judgment for the City. No. CV 93–7084 SVW, *supra*, App. to Pet. for Cert. E2. In particular, the court rejected respondents' claim that the procedure for return of their property was unavailable to them because the City did not give them adequate notice of the remedy and the information needed to invoke it. *Id.*, at E6.

On appeal, the Court of Appeals reversed the grant of summary judgment for the City. 113 F. 3d, at 1006. As an initial matter, the court noted that, under *Fuentes* v. *Shevin*, 407 U. S. 67 (1972), respondents were entitled only to an adequate postdeprivation remedy, and not to a predeprivation hearing prior to the seizure. 113 F. 3d, at 1010. The Court

of Appeals also agreed with the District Court that the post-deprivation remedies for return of property established by California statute and case law satisfied the requirements of due process. *Id.*, at 1011.

Nevertheless, the court held, by analogy to this Court's decision in *Memphis Light, Gas & Water Div.* v. *Craft*, 436 U. S. 1 (1978), that the City was required to give respondents notice of the state procedures for return of seized property and the information necessary to invoke those procedures (including the search warrant number or a method for obtaining the number). 113 F. 3d, at 1012. While acknowledging that it was not the court's place "to specify the exact phrasing of an adequate notice," the court proceeded to explicate, in some detail, the content of the required notice:

> "In cases where property is taken under California law . . . the notice should include the following: as on the present notice, the fact of the search, its date, and the searching agency; the date of the warrant, the issuing judge, and the court in which he or she serves; and the persons to be contacted for further information. In addition, the notice must inform the recipient of the procedure for contesting the seizure or retention of the property taken, along with any additional information required for initiating that procedure in the appropriate court. In circumstances such as those presented by this record, the notice must include the search warrant number or, if it is not available or the record is sealed, the means of identifying the court file. It also must explain the need for a written motion or request to the court stating why the property should be returned." *Id.*, at 1013.

This expansive requirement lacks support in our case law and mandates notice not now prescribed by the Federal Government or by any one of the 50 States.

## II

At this stage, no one contests the right of the State to have seized the property in the first instance or its ultimate obligation to return it. So rules restricting the substantive power of the State to take property are not implicated by this case. What is at issue is the obligation of the State to provide fair procedures to ensure return of the property when the State no longer has a lawful right to retain it.

Respondents acknowledge, as they must, that the City notified them of the initial seizure and gave them an inventory of the property taken. Accordingly, we need not decide how detailed the notice of the seizure must be or when the notice must be given. They also raise no independent challenge to the Court of Appeals' conclusion that California law provides adequate remedies for return of their property, including a motion under Cal. Penal Code Ann. § 1536 (West 1982) or a motion under § 1540. See 113 F. 3d, at 1011. Rather, they contend the City deprived them of due process by failing to provide them notice of their remedies and the factual information necessary to invoke the remedies under California law. When the police seize property for a criminal investigation, however, due process does not require them to provide the owner with notice of state-law remedies.

A primary purpose of the notice required by the Due Process Clause is to ensure that the opportunity for a hearing is meaningful. See *Mullane* v. *Central Hanover Bank & Trust Co.,* 339 U. S. 306, 314 (1950) ("Th[e] right to be heard has little reality or worth unless one is informed that the matter [affecting one's property rights] is pending and can choose for himself whether to appear or default, acquiesce or contest"). It follows that when law enforcement agents seize property pursuant to warrant, due process requires them to take reasonable steps to give notice that the property has been taken so the owner can pursue available remedies for its return. Cf. *Schroeder* v. *City of New York*, 371 U. S. 208, 214 (1962) (requiring a city to provide adequate

notice of the deprivation—the city's condemnation of certain water rights—which created the property owner's right to pursue damages claims and triggered the statute of limitations on those claims). Individualized notice that the officers have taken the property is necessary in a case such as the one before us because the property owner would have no other reasonable means of ascertaining who was responsible for his loss.

No similar rationale justifies requiring individualized notice of state-law remedies which, like those at issue here, are established by published, generally available state statutes and case law. Once the property owner is informed that his property has been seized, he can turn to these public sources to learn about the remedial procedures available to him. The City need not take other steps to inform him of his options. Cf. *Reetz* v. *Michigan*, 188 U. S. 505, 509 (1903) (holding that a statute fixing the time and place of meetings of a medical licensing board provided license applicants adequate notice of the procedure for obtaining a hearing on their applications because: "When a statute fixes the time and place of meeting of any board or tribunal, no special notice to parties interested is required. The statute is itself sufficient notice"); *Atkins* v. *Parker*, 472 U. S. 115, 131 (1985) (noting that "[t]he entire structure of our democratic government rests on the premise that the individual citizen is capable of informing himself about the particular policies that affect his destiny"). In prior cases in which we have held that post-deprivation state-law remedies were sufficient to satisfy the demands of due process and the laws were public and available, we have not concluded that the State must provide further information about those procedures. See, *e. g.*, *Hudson* v. *Palmer*, 468 U. S. 517 (1984).

*Memphis Light*, the case on which the Court of Appeals relied, is not to the contrary. In *Memphis Light*, the Court held that a public utility must make available to its customers the opportunity to discuss a billing dispute with a utility

employee who has authority to resolve the matter before terminating utility service for nonpayment. 436 U. S., at 16–17. The Court also held that due process required the utility to inform the customer not only of the planned termination, but also of the availability and general contours of the internal administrative procedure for resolving the accounting dispute. *Id.*, at 13–15. In requiring notice of the administrative procedures, however, we relied not on any general principle that the government must provide notice of the procedures for protecting one's property interests but on the fact that the administrative procedures at issue were not described in any publicly available document. A customer who was informed that the utility planned to terminate his service could not reasonably be expected to educate himself about the procedures available to protect his interests:

> "[T]here is no indication in the record that a written account of [the utility's dispute resolution] procedure was accessible to customers who had complaints about their bills. [The plaintiff's] case reveals that the opportunity to invoke that procedure, if it existed at all, depended on the vagaries of 'word of mouth referral.'" *Id.*, at 14, n. 14.

While *Memphis Light* demonstrates that notice of the procedures for protecting one's property interests may be required when those procedures are arcane and are not set forth in documents accessible to the public, it does not support a general rule that notice of remedies and procedures is required.

The Court of Appeals' far-reaching notice requirement not only lacks support in our precedent but also conflicts with the well-established practice of the States and the Federal Government. The notice required by the Court of Appeals far exceeds that which the States and the Federal Government have traditionally required their law enforcement agencies to provide. Indeed, neither the Federal Govern-

ment nor any State requires officers to provide individualized notice of the procedures for seeking return of seized property. See Appendix, *infra*, p. 244.

Federal Rule of Criminal Procedure 41(d), for example, requires federal agents seizing property pursuant to a warrant to "give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or [to] leave the copy and receipt at the place from which the property was taken." The Rule makes no provision for notifying property owners of the procedures for seeking return of their property. The Court of Appeals' analysis would render the notice required by this Federal Rule—and by every analogous state statute—inadequate as a constitutional matter. In the shadow of this unwavering state and federal tradition, the Court of Appeals' holding is all the more untenable; to sustain it, we would be required to find that due process requires notice that not one State or the Federal Government has seen fit to require, in the context of law enforcement practices that have existed for centuries.

Respondents urge that if we cannot uphold the Court of Appeals' broad notice requirement, we should, at least, affirm the Court of Appeals' judgment on the narrower ground that the notice provided respondents was inadequate because it did not provide them with the factual information—specifically, the search warrant number—they needed to invoke their judicial remedies. The District Court, however, made an explicit factual finding that respondents failed to establish that they needed the search warrant number to file a court motion seeking return of their property:

> "Perkins argues that this [court] procedure was not available to him because he did not know the number of the warrant pursuant to which his property was seized. Unfortunately for Perkins, there is no evidence either way about whether one must have the warrant number in order to obtain a court order releasing seized prop-

> erty. Defendants assert that it is not necessary, that as long as the claimant can sufficiently identify the property he seeks (*i. e.*, by providing the date of the warrant, the name of the seizing agency and officer, and the identity of the issuing court and judge, all of which information was in Perkins' possession), the court will release it. Plaintiffs want the Court simply to assume that if Perkins had filed a request with the court, it would have been denied because he did not have the warrant number. But there is no evidence to support that speculation." No. CV 93–7084 SVW, App. to Pet. for Cert. E6.

This finding undermines the factual predicate for respondents' alternative argument, and we need not discuss it further.

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.*

## APPENDIX TO OPINION OF THE COURT

### Federal and State Laws Governing Execution of Search Warrants and Procedures for Return of Seized Property

Fed. Rule Crim. Proc. 41(d); Ala. Code § 15–5–11 (1995); Ala. Rule Crim. Proc. 3.11 (1996); Alaska Stat. Ann. § 12.35.025 (1996); Alaska Rule Crim. Proc. 37 (1998); Ariz. Rev. Stat. Ann. §§ 13–3919 to 13–3922 (1989); Ark. Rule Crim. Proc. 13.3 (1998); Cal. Penal Code Ann. § 1535 (West 1982); Colo. Rev. Stat. § 16–3–305 (1997); Colo. Rule Crim. Proc. 41 (1997); Conn. Gen. Stat. Ann. §§ 54–33c, 54–36f (West Supp. 1998); Del. Ct. Common Pleas Rule Crim. Proc. 41 (1997); Del. Super. Ct. Rule Crim. Proc. 41 (1997); D. C. Code Ann. § 23–524 (1996); D. C. Super. Ct. Rule Crim. Proc. 41 (1998); Fla. Stat. Ann. § 933.11 (West Supp. 1998); Ga. Code Ann. §§ 17–5–25, 17–5–29 (1990); Haw. Rule Penal Proc.

41 (1997); Idaho Code §§ 19–4413, 19–4415, 19–4416 (1997); Idaho Rule Crim. Proc. 41 (1998); Ill. Comp. Stat. Ann., ch. 725, §§ 5/108–6, 5/108–10 (West 1992); Ind. Code Ann. §§ 35–33–5–2 to 35–33–5–7 (West 1998); Iowa Code Ann. § 808.8 (West 1994); Kan. Stat. Ann. §§ 22–2506, 22–2512 (1988 and Supp. 1997); Ky. Rule Crim. Proc. 13.10 (1993); La. Code Crim. Proc. Ann., Art. 166 (West 1991); Me. Rule Crim. Proc. 41 (1998); Md. Rule Crim. Proc. 4–601 (1997); Mass. Ann. Laws, ch. 276, §§ 1 to 4 (Law Co-op. 1992 ed. and Supp. 1998); Mich. Comp. Laws Ann. § 780.655 (West 1998); Minn. Stat. Ann. §§ 626.16, 626.17 (West Supp. 1998); Miss. Code Ann. § 41–29–157(a)(3) (1981), § 99–27–15 (1994); Mo. Ann. Stat. § 542.291 (Vernon Supp. 1998); Mont. Code Ann. §§ 46–5–227, 46–5–301 (1997); Neb. Rev. Stat. § 29–815 (1995); Nev. Rev. Stat. Ann. § 179.075 (Michie 1997); N. H. Rev. Stat. Ann. § 595–A:5 (1986); N. J. Stat. Ann. § 33:1–61 (West 1994); N. J. Rule Crim. Prac. 3:5–5 (1998); N. M. Dist. Ct. Rule Crim. Proc. § 5–211 (1996); N. M. Magis. Ct. Rule Crim. Proc. § 6.208 (1996); N. Y. Crim. Proc. Law § 690.50 (McKinney 1995); N. C. Gen. Stat. §§ 15A–252, 15A–254 (1997); N. D. Rule Crim. Proc. 41 (Supp. 1987); Ohio Rev. Code Ann. § 2933.241 (1997); Ohio Rule Crim. Proc. 41 (1994); Okla. Stat. Ann., Tit. 22, §§ 1232 to 1234 (West 1986 ed. and Supp. 1998); Ore. Rev. Stat. §§ 133.575, 133.595 (1991); Pa. Rules Crim. Proc. 2008, 2009 (1998); R. I. Super. Ct. Rule Crim. Proc. 41 (1998); S. C. Code Ann. § 17–13–150 (1985); S. D. Codified Laws § 23A–35–10 (Rule 41(d)) (1998); Tenn. Rule Crim. Proc. 41 (1998); Tex. Code Crim. Proc. Ann. § 18.06 (Vernon 1977 ed. and Supp. 1997); Utah Code Ann. § 77–23–206 (1995); Vt. Rule Crim. Proc. 41 (1993 and Supp. 1998); Va. Code Ann. § 19.2–57 (Michie 1995); Wash. Super. Ct. Rule Crim. Proc. 2.3 (1996); W. Va. Code § 62–1A–4 (1997); W. Va. Rule Crim. Proc. 41 (1997); Wis. Stat. Ann. § 968.17 (West 1985); Wyo. Stat. Ann. § 7–7–102 (Michie 1997); Wyo. Rule Crim. Proc. 41 (1998).

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, concurring in the judgment.

I agree with the holding of the majority's opinion, *ante*, at 240, that the Due Process Clause does not compel the city to provide respondents with detailed notice of state-law post-deprivation remedies. I write separately, however, because I cannot endorse the suggestion, in dicta, that "when law enforcement agents seize property pursuant to warrant, due process requires them to take reasonable steps to give notice that the property has been taken so the owner can pursue available remedies for its return." *Ibid.* In my view, the majority's conclusion represents an unwarranted extension of procedural due process principles developed in civil cases into an area of law that has heretofore been governed exclusively by the Fourth Amendment.

As far as I am aware, we have never before suggested that procedural due process governs the execution of a criminal search warrant. Indeed, we have assumed that "[t]he Fourth Amendment was tailored explicitly for the criminal justice system, and its balance between individual and public interests always has been thought to define the 'process that is due' for seizures of person or property in criminal cases . . . ." *Gerstein* v. *Pugh*, 420 U. S. 103, 125, n. 27 (1975). In my view, if the Constitution imposes a "notice" requirement on officers executing a search warrant, it does so because the failure to provide such notice renders an otherwise-lawful search "unreasonable" under the Fourth Amendment.[1]

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[1] Although we have never addressed the issue, there is near unanimous agreement among the lower courts that the notice requirements imposed by Federal Rule of Criminal Procedure 41(d) and the state statutes cited in the Appendix to the majority's opinion, *ante*, at 244–245, are not required by the Fourth Amendment. See W. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 4.12 (3d ed. 1996).

We have previously suggested that the procedure for executing the common-law warrant for stolen goods "furnished the model for a 'reasonable' search under the Fourth Amendment." *Id.*, at 116, n. 17. At common law, officers executing a warrant for stolen goods were required to furnish an inventory of property seized. T. Taylor, Two Studies in Constitutional Interpretation 82 (1969); see also 2 W. Hawkins, Pleas of the Crown 137 (6th ed. 1787) ("The officer executing such warrant, if required, shall shew the same to the person whose goods and chattels are distrained, and shall suffer a copy thereof to be taken"). Furthermore, the failure to adhere to this procedure was denounced in *Wilkes* v. *Wood*, Lofft 1, 98 Eng. Rep. 489 (K. B. 1763), and *Entick* v. *Carrington*, 19 How. St. Tr. 1029 (C. P. 1765), two celebrated cases that profoundly influenced the Founders' view of what a "reasonable" search entailed.[2] In both cases, Lord Camden criticized the fact that the officers executing the general warrants were not constrained by the safeguards built up around the warrant for stolen goods. He specifically complained that the officers did not provide an inventory of the property seized.[3]

In light of this historical evidence, I would be open to considering, in an appropriate case, whether the Fourth Amend-

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[2] See, *e. g.*, T. Taylor, Two Studies in Constitutional Interpretation 39–41 (1969); Amar, Fourth Amendment First Principles, 107 Harv. L. Rev. 757, 775 (1994); Stuntz, Substantive Origins of Criminal Procedure, 105 Yale L. J. 393, 400 (1995).

[3] See *Entick*, 19 How. St. Tr., at 1067 ("[T]he same law which has with so much circumspection guarded the case of stolen goods from mischief, would likewise in this case protect the subject, by adding proper checks; . . . would require him to take an exact inventory, and deliver a copy . . . . [W]ant of [these safeguards] is an undeniable argument against the legality of the thing"); *Wilkes*, Lofft, at 19, 98 Eng. Rep., at 499 ("As to the proof of what papers were taken away, the plaintiff could have no account of them; and those who were able to have given an account . . . have produced none").

ment mandates the notice requirement adopted by the majority today. See *Wilson* v. *Arkansas*, 514 U. S. 927 (1995) (relying on common-law antecedents to define a "reasonable search"). I am unwilling, however, to endorse the majority's ahistorical reliance on procedural due process as the source of the requirement. I therefore concur in the judgment.

Syllabus

# ROBERTS, GUARDIAN FOR JOHNSON *v.* GALEN OF VIRGINIA, INC., FORMERLY DBA HUMANA HOSPITAL-UNIVERSITY OF LOUISVILLE, DBA UNIVERSITY OF LOUISVILLE HOSPITAL

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

No. 97–53. Argued December 1, 1998—Decided January 13, 1999

The Emergency Medical Treatment and Active Labor Act (EMTALA) places screening and stabilization obligations upon hospitals and emergency rooms that receive patients suffering from an emergency medical condition. Among other things, the statute requires a hospital with an emergency department to provide "an appropriate medical screening examination" for an emergency room patient, 42 U. S. C. § 1395dd(a); requires the hospital to provide either medical examination and treatment to stabilize the patient, or for transfer to another medical facility, § 1395dd(b); and authorizes civil fines and a private cause of action for violations of the statute, § 1395dd(d). A severely injured Wanda Johnson was rushed to respondent's hospital and remained there, in a volatile state of health, for about six weeks. She was then transferred to another facility, where her condition deteriorated significantly. Petitioner Roberts, her guardian, filed a § 1395dd(d) action, alleging § 1395dd(b) violations. The District Court granted respondent summary judgment on the grounds that petitioner had failed to show that either the medical opinion that Johnson was stable or the decision to transfer her was caused by an improper motive. The Sixth Circuit affirmed, holding that § 1395dd(b) requires proof of an improper motive.

*Held:* Section 1395dd(b) does not require proof that a hospital acted with an improper motive in failing to stabilize a patient. The Sixth Circuit's holding extended earlier Circuit precedent deciding that § 1395dd(a)'s "appropriate medical screening" duty also required proof of an improper motive. See *Cleland* v. *Bronson Health Care Group, Inc.*, 917 F. 2d 266. There, the court was concerned that the term "appropriate" might be interpreted incorrectly to permit federal liability under EMTALA for any violation covered by state malpractice law. *Id.*, at 271. However, § 1395dd(b)'s text contains no appropriateness requirement, nor can it reasonably be read to require an improper motive. The Court declines to address, at this stage of the litigation, respondent's two alternative grounds for affirming the decision below.

111 F. 3d 405, reversed and remanded.

*Joseph H. Mattingly III* argued the cause and filed briefs for petitioner.

*James A. Feldman* argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Waxman*, *Assistant Attorney General Hunger*, *Deputy Solicitor General Kneedler*, and *Barbara C. Biddle.*

*Carter G. Phillips* argued the cause for respondent. With him on the brief were *Jacqueline Gerson Cooper* and *Thomas S. Calder.**

PER CURIAM.

The Emergency Medical Treatment and Active Labor Act (EMTALA), as added by § 9121(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985, 100 Stat. 164, and as amended, 42 U. S. C. § 1395dd, places obligations of screening and stabilization upon hospitals and emergency rooms that receive patients suffering from an "emergency medical condition." The Court of Appeals held that in order to recover in a suit alleging a violation of § 1395dd(b), a plaintiff must prove that the hospital acted with an improper motive in failing to stabilize her. Finding no support for such a requirement in the text of the statute, we reverse.

Section 1395dd(a) imposes a "[m]edical screening requirement" upon hospitals with emergency departments: "[I]f any individual . . . comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department." 42 U. S. C. § 1395dd(a). Section 1395dd(b), entitled "Necessary

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**Martha F. Davis* filed a brief for the NOW Legal Defense and Education Fund et al. as *amici curiae* urging reversal.

*Thomas W. Merrill*, *Michael L. Ile*, *Leonard A. Nelson*, and *Robert M. Portman* filed a brief for the American Hospital Association et al. as *amici curiae* urging affirmance.

stabilizing treatment for emergency medical conditions and labor," provides in relevant part as follows:

> "(1) In general
>
> "If any individual (whether or not eligible for benefits under this subchapter) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either—
>
> "(A) within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition, or
>
> "(B) for transfer of the individual to another medical facility in accordance with subsection (c) of this section. . . ."

Section 1395dd(c) generally restricts transfers of unstabilized patients, and § 1395dd(d) authorizes both civil fines and a private cause of action for violations of the statute.

Wanda Johnson was run over by a truck in May 1992, and was rushed to respondent's hospital, the Humana Hospital-University of Louisville, in Louisville, Kentucky (Humana). Johnson had been severely injured and had suffered serious injuries to her brain, spine, right leg, and pelvis. After about six weeks' stay at Humana, during which time Johnson's health remained in a volatile state, respondent's agents arranged for her transfer to the Crestview Health Care Facility, across the river in Indiana. Johnson was transferred to Crestview on July 24, 1992, but upon arrival at that facility, her condition deteriorated significantly. Johnson was taken to the Midwest Medical Center, also in Indiana, where she remained for many months and incurred substantial medical expenses as a result of her deterioration. Johnson applied for financial assistance under Indiana's Medicaid program, but her application was rejected on the ground that she had failed to satisfy Indiana's residency requirements. Petitioner Jane Roberts, Johnson's guardian, then filed this

federal action under § 1395dd(d) as codified, alleging violations of § 1395dd(b).

The District Court granted summary judgment for respondent on the grounds that petitioner had failed to show that "'either the medical opinion that Johnson was stable or the decision to authorize her transfer was caused by an improper motive.'" 111 F. 3d 405, 407 (CA6 1997). The Court of Appeals affirmed, holding that in order to state a claim in an EMTALA suit alleging a violation of § 1395dd(b)'s stabilization requirement, a plaintiff must show that the hospital's inappropriate stabilization resulted from an improper motive such as one involving the indigency, race, or sex of the patient. *Id.*, at 411. In order to decide whether subsection (b) imposes such a requirement, we granted certiorari, 524 U. S. 915 (1998), and now reverse.

The Court of Appeals' holding—that proof of improper motive was necessary for recovery under § 1395dd(b)'s stabilization requirement—extended earlier Circuit precedent deciding that the "appropriate medical screening" duty under § 1395dd(a) also required proof of an improper motive. See *Cleland* v. *Bronson Health Care Group, Inc.*, 917 F. 2d 266 (CA6 1990). The Court of Appeals in *Cleland* was concerned that Congress' use of the word "appropriate" in § 1395dd(a) might be interpreted incorrectly to permit federal liability under EMTALA for any violation covered by state malpractice law. *Id.*, at 271. Accordingly, rather than interpret EMTALA so as to cover "at a minimum, the full panoply of state malpractice law, and at a maximum, . . . a guarantee of a successful result" in medical treatment, *ibid.*, the Court of Appeals read § 1395dd(a)'s "appropriate medical screening" duty as requiring a plaintiff to show an improper reason why he or she received "less than standard attention [upon arrival] . . . at the emergency room," *id.*, at 272.

Unlike the provision of EMTALA at issue in *Cleland*, § 1395dd(a), the provision at issue in this case, § 1395dd(b), contains no requirement of appropriateness. Subsection

(b)(1)(A) requires instead the provision of "such further medical examination and such treatment as may be required to stabilize the medical condition." 42 U. S. C. § 1395dd(b)(1)(A). The question of the correctness of the *Cleland* court's reading of § 1395dd(a)'s "appropriate medical screening" requirement is not before us, and we express no opinion on it here.[1] But there is no question that the text of § 1395dd(b) does not require an "appropriate" stabilization, nor can it reasonably be read to require an improper motive. This fact is conceded by respondent, which notes in its brief that "the 'motive' test adopted by the court below . . . lacks support in any of the traditional sources of statutory construction." Brief for Respondent 17. Although the concession of a point on appeal by respondent is by no means dispositive of a legal issue, we take it as further indication of the correctness of our decision today, and hold that § 1395dd(b) contains no express or implied "improper motive" requirement.

Although respondent presents two alternative grounds for the affirmance of the decision below,[2] we decline to address these claims at this stage in the litigation. The Court granted certiorari on only the EMTALA issue, and these claims do not appear to have been sufficiently developed

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[1] We note, however, that *Cleland*'s interpretation of subsection (a) is in conflict with the law of other Circuits which do not read subsection (a) as imposing an improper motive requirement. See *Summers* v. *Baptist Med. Center Arkadelphia*, 91 F. 3d 1132, 1137–1138 (CA8 1996) (en banc); *Correa* v. *Hospital San Francisco*, 69 F. 3d 1184, 1193–1194 (CA1 1995); *Repp* v. *Anadarko Munic. Hospital*, 43 F. 3d 519, 522 (CA10 1994); *Power* v. *Arlington Hospital Assn.*, 42 F. 3d 851, 857 (CA4 1994); *Gatewood* v. *Washington Healthcare Corp.*, 933 F. 2d 1037, 1041 (CADC 1991).

[2] Respondent argues that the record demonstrates that it did not have actual knowledge of the patient's condition, and that the hospital properly screened Johnson, which terminated its duty under EMTALA. We express no opinion as to the factual correctness or legal dispositiveness of these claims, and leave their resolution to the courts below on remand.

below for us to assess them in any event. Accordingly, we reverse the Court of Appeals' holding that the District Court's grant of summary judgment was proper and remand the case for further proceedings consistent with this opinion.

*It is so ordered.*

Syllabus

# DEPARTMENT OF THE ARMY *v.* BLUE FOX, INC.

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

No. 97–1642. Argued December 1, 1998—Decided January 20, 1999

Verdan Technology, Inc., an insolvent prime contractor, failed to pay respondent Blue Fox, Inc., a subcontractor, for work the latter completed on a construction project for petitioner, the Department of the Army. Because the Army did not require Verdan to post Miller Act bonds, Blue Fox sued the Army directly, asserting an equitable lien on certain funds held by the Army. Holding that the waiver of sovereign immunity in § 10(a) of the Administrative Procedure Act (APA), 5 U. S. C. § 702, did not apply to Blue Fox's claim, the District Court concluded that it lacked jurisdiction and granted the Army summary judgment. The Ninth Circuit reversed in relevant part, holding that under *Bowen* v. *Massachusetts*, 487 U. S. 879, and this Court's cases examining a surety's right of subrogation, the APA waives immunity for equitable actions, thus compelling allowance of Blue Fox's equitable lien.

*Held:* Section 702 does not nullify the long settled rule that, unless waived by Congress, sovereign immunity bars creditors from enforcing liens on Government property. Although § 702 waives the Government's immunity from actions seeking relief "other than money damages," the waiver must be strictly construed, in terms of its scope, in the sovereign's favor and must be "unequivocally expressed" in the statutory text. See *Lane* v. *Peña*, 518 U. S. 187, 192. Blue Fox's claim does not meet this high standard. *Bowen*'s analysis of § 702 did not turn on whether a particular claim for relief is "equitable" (a term not found in § 702), but on whether the claim is for "money damages," *i. e.*, a sum used as compensatory relief to substitute for a suffered loss, as opposed to a specific remedy that attempts to give the plaintiff the very thing to which he was entitled. See 487 U. S., at 895, 897, 900. The sort of equitable lien Blue Fox sought here constitutes a "money damages" claim within § 702's meaning; its goal is to seize or attach money in the Government's hands as compensation for the loss resulting from Verdan's default. As a form of substitute and not specific relief, Blue Fox's action to enforce an equitable lien falls outside the scope of § 702's immunity waiver. This holding accords with the Court's precedent establishing that sovereign immunity bars creditors from attaching or garnishing funds in the Treasury, see *Buchanan* v. *Alexander*, 4 How. 20, and enforcing liens against property owned by the United States,

see, *e. g.*, *United States* v. *Ansonia Brass & Copper Co.*, 218 U. S. 452, 471. Respondent points to nothing in § 702's text or history that suggests that Congress intended to overrule this precedent, let alone anything that "unequivocally express[es]" such an intent. *Lane*, *supra*, at 192. Instead, recognizing that sovereign immunity left subcontractors and suppliers without a remedy against the Government when the general contractor became insolvent, Congress enacted the Miller Act, which by its terms only gives subcontractors the right to sue on the prime contractor's surety bond, not the right to recover its losses directly from the Government. The cases examining a surety's right of equitable subrogation, see, *e. g.*, *Pearlman* v. *Reliance Ins. Co.*, 371 U. S. 132, 141, do not suggest that subcontractors can seek compensation directly against the Government, since none of them involved a sovereign immunity question or a subcontractor directly asserting a claim against the Government. Pp. 260–265.

121 F. 3d 1357, reversed and remanded.

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

*Jeffrey A. Lamken* argued the cause for petitioner. With him on the briefs were *Solicitor General Waxman*, *Assistant Attorney General Hunger*, *Deputy Solicitor General Kneedler*, and *Barbara C. Biddle.*

*Thomas F. Spaulding* argued the cause for respondent. With him on the brief was *David A. Webster.**

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

An insolvent prime contractor failed to pay a subcontractor for work the latter completed on a construction project for the Department of the Army. The Department of the Army having required no Miller Act bond from the prime

*Briefs of *amici curiae* urging affirmance were filed for the American Subcontractors Association by *David R. Hendrick* and *Joel S. Rubinstein;* and for the Chamber of Commerce of the United States by *Herbert L. Fenster*, *Tami Lyn Azorsky*, and *Robin S. Conrad.*

*Edward G. Gallagher* filed a brief for the Surety Association of America as *amicus curiae.*

contractor, the subcontractor sought to collect directly from the Army by asserting an equitable lien on certain funds held by the Army. The Court of Appeals for the Ninth Circuit held that § 10(a) of the Administrative Procedure Act (APA), 5 U. S. C. § 702, waived the Government's immunity for the subcontractor's claim. We hold that § 702 did not nullify the long settled rule that sovereign immunity bars creditors from enforcing liens on Government property.

Participating in a business development program for socially and economically disadvantaged firms run by the Small Business Administration (SBA), the Department of the Army contracted with Verdan Technology, Inc., in September 1993, to install a telephone switching system at an Army depot in Umatilla, Oregon. Verdan, in turn, employed respondent Blue Fox, Inc., as a subcontractor on the project to construct a concrete block building to house the telephone system and to install certain safety and support systems.

Under the Miller Act, 40 U. S. C. §§ 270a–270d, a contractor that performs "construction, alteration, or repair of any public building or public work of the United States" generally must post two types of bonds. § 270a(a). First, the contractor must post a "performance bond . . . for the protection of the United States" against defaults by the contractor. § 270a(a)(1). Second, the contractor must post a "payment bond . . . for the protection of all persons supplying labor and material." § 270a(a)(2). The Miller Act gives the subcontractors and other suppliers "the right to sue on such payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action to final execution and judgment for the sum or sums justly due him." § 270b(a). Although the Army's original solicitation in this case required the contractor to furnish payment and performance bonds if the contract price exceeded $25,000, the Army later amended the solicitation, treated the contract as a "services contract," and deleted

the bond requirements. Verdan therefore did not post any Miller Act bonds.

Blue Fox performed its obligations, but Verdan failed to pay it the $46,586.14 that remained due on the subcontract. After receiving notices from Blue Fox that it had not been fully paid, the Army nonetheless disbursed a total of $86,132.33 to Verdan as payment for all work that Verdan had completed. In January 1995, the Army terminated its contract with Verdan for various defaults and another contractor completed the Umatilla project. Blue Fox obtained a default judgment in tribal court against Verdan. Seeing that it could not collect from Verdan or its officers, it sued the Army for the balance due on its contract with Verdan in Federal District Court.[1]

Predicating jurisdiction on 28 U. S. C. § 1331 and the APA, Blue Fox sought an "equitable lien" on any funds from the Verdan contract not paid to Verdan, or any funds available or appropriated for completion of the Umatilla project, and an order directing payment of those funds to it. Blue Fox also sought an injunction preventing the Army from paying any more money on the Verdan contract or on the follow-on contract until Blue Fox was paid. By the time of the suit, however, the Army had paid all amounts due on the Verdan contract, Blue Fox failed to obtain any preliminary relief, and the Army subsequently paid the replacement contractor the funds remaining on the Verdan contract plus additional funds.[2]

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[1] Although Blue Fox also named the SBA as a defendant, the District Court granted summary judgment in the SBA's favor, the Court of Appeals affirmed that decision, and Blue Fox has not challenged that ruling.

[2] The Army paid the replacement contractor, in part, with the funds from the undisbursed balance on the Verdan contract (approximately $85,000) which had been designated for certain work that Verdan failed to complete. No funds due to Verdan for work actually performed had been held back or retained by the Army. The Army paid the replacement contractor in July 1995, two months after Blue Fox filed its action against the Army in the District Court.

On cross-motions for summary judgment, the District Court held that the waiver of sovereign immunity provided by the APA did not apply to respondent's claim against the Army. The District Court thus concluded that it did not have jurisdiction over respondent's claim and accordingly granted the Army's motion for summary judgment. In a split decision, the Court of Appeals for the Ninth Circuit reversed in relevant part. See *Blue Fox Inc.* v. *Small Business Admin.*, 121 F. 3d 1357 (1997). The majority held that under this Court's decision in *Bowen* v. *Massachusetts*, 487 U. S. 879 (1988), the APA waives immunity for equitable actions. Based in part on its analysis of several of our cases examining a surety's right of subrogation, the majority held that the APA had waived the Army's immunity from Blue Fox's suit to recover the amount withheld by the Army. The majority concluded that the lien attached to funds retained by the Army but owed to Verdan at the time the Army received Blue Fox's notice that Verdan had failed to pay. The majority stated that "[t]he Army cannot escape Blue Fox's equitable lien by wrongly paying out funds to the prime contractor when it had notice of Blue Fox's unpaid claims." 121 F. 3d, at 1363.

The dissenting judge stated that "no matter how you slice Blue Fox's claim, it seeks funds from the treasury to compensate for the Army's failure to require Verdan to post a bond." *Id.*, at 1364 (opinion of Rymer, J.). In her view, Congress chose to protect subcontractors like Blue Fox through the bond requirements of the Miller Act, not by waiving immunity in the APA to permit subcontractors to sue the United States directly for amounts owed to them by the prime contractor. Because this rule has been "conventional wisdom for at least fifty years," she did not agree that Congress had waived the Army's sovereign immunity from Blue Fox's suit. *Ibid.* The Government petitioned for review, and we granted certiorari to decide whether the APA has

waived the Government's immunity from suits to enforce an equitable lien. 524 U. S. 951 (1998).

"Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit." *FDIC* v. *Meyer*, 510 U. S. 471, 475 (1994). Congress, of course, has waived its immunity for a wide range of suits, including those that seek traditional money damages. Examples are the Federal Tort Claims Act, 28 U. S. C. § 2671 *et seq.*, and the Tucker Act, 28 U. S. C. § 1491.[3] They are not involved here. Respondent sued the Army under § 10(a) of the APA, which provides in relevant part:

> "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief *other than money damages* and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party." 5 U. S. C. § 702 (emphasis added).

Respondent asks us to hold, as did the court below, that this provision, which waives the Government's immunity from

[3] The Federal Tort Claims Act provides that, subject to certain exceptions, "[t]he United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances." 28 U. S. C. § 2674. The Tucker Act grants the Court of Claims jurisdiction "to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." 28 U. S. C. § 1491(a)(1). The Tucker Act also gives federal district courts concurrent jurisdiction over claims founded upon the same substantive grounds for relief but not exceeding $10,000 in damages. See § 1346(a)(2).

actions seeking relief "other than money damages," allows subcontractors to place liens on funds held by the United States Government for work completed on a prime contract. We have frequently held, however, that a waiver of sovereign immunity is to be strictly construed, in terms of its scope, in favor of the sovereign. See, *e. g.*, *Lane* v. *Peña*, 518 U. S. 187, 192 (1996) (citing cases); *Library of Congress* v. *Shaw*, 478 U. S. 310, 318 (1986). Such a waiver must also be "unequivocally expressed" in the statutory text. See *Lane*, *supra*, at 192. Respondent's claim must therefore meet this high standard.

Respondent argues, and the court below held, that our analysis of § 702 in *Bowen* compels the allowance of respondent's lien. We disagree. In *Bowen*, we examined the text and legislative history of § 702 to determine whether the Commonwealth of Massachusetts could sue the Secretary of Health and Human Services to enforce a provision of the Medicaid Act that required the payment of certain amounts to the State for Medicaid services. We held that the State's complaint in *Bowen* was not barred by the APA's prohibition on suits for money damages. The Court of Appeals below read our decision in *Bowen* as interpreting § 702's reference to "other than money damages" as waiving immunity from all actions that are equitable in nature. See 121 F. 3d, at 1361 ("Since the APA waives immunity for equitable actions, the district court had jurisdiction under the APA").

*Bowen*'s analysis of § 702, however, did not turn on distinctions between "equitable" actions and other actions, nor could such a distinction have driven the Court's analysis in light of § 702's language. As *Bowen* recognized, the crucial question under § 702 is not whether a particular claim for relief is "equitable" (a term found nowhere in § 702), but rather what Congress meant by "other than money damages" (the precise terms of § 702). *Bowen* held that Congress employed this language to distinguish between specific relief and compensatory, or substitute, relief. The Court stated:

> "'We begin with the ordinary meaning of the words Congress employed. The term "money damages," 5 U. S. C. § 702, we think, normally refers to a sum of money used as compensatory relief. Damages are given to the plaintiff to *substitute* for a suffered loss, whereas specific remedies "are not substitute remedies at all, but attempt to give the plaintiff the very thing to which he was entitled."'" 487 U. S., at 895 (quoting *Maryland Dept. of Human Resources* v. *Department of Health and Human Services*, 763 F. 2d 1441, 1446 (CADC 1985) (citation omitted)).

*Bowen* also concluded from its analysis of relevant legislative history that "the drafters had in mind the time-honored distinction between damages and specific relief." 487 U. S., at 897. *Bowen*'s interpretation of § 702 thus hinged on the distinction between specific relief and substitute relief, not between equitable and nonequitable categories of remedies.

We accordingly applied this interpretation of § 702 to the State's suit to overturn a decision by the Secretary disallowing reimbursement under the Medicaid Act. We held that the State's suit was not one "seeking money in *compensation* for the damage sustained by the failure of the Federal Government to pay as mandated; rather, it [was] a suit seeking to enforce the statutory mandate itself, which happens to be one for the payment of money." *Id.*, at 900. The Court therefore concluded that the substance of the State's suit was one for specific relief, not money damages, and hence the suit fell within § 702's waiver of immunity.

It is clear from *Bowen* that the equitable nature of the lien sought by respondent here does not mean that its ultimate claim was not one for "money damages" within the meaning of § 702. Liens, whether equitable or legal, are merely a means to the end of satisfying a claim for the recovery of money. Indeed, equitable liens by their nature constitute substitute or compensatory relief rather than specific relief. An equitable lien does not "give the plaintiff the very thing

to which he was entitled," *id.*, at 895 (citations and internal quotation marks omitted); instead, it merely grants a plaintiff "a security interest in the property, which [the plaintiff] can then use to satisfy a money claim," usually a claim for unjust enrichment, 1 D. Dobbs, Law of Remedies § 4.3(3), p. 601 (2d ed. 1993); see also Laycock, The Scope and Significance of Restitution, 67 Texas L. Rev. 1277, 1290 (1989) ("The equitable lien is a hybrid, granting a money judgment and securing its collection with a lien on the specific thing"). Commentators have warned not to view equitable liens as anything more than substitute relief:

> "[T]he *form* of the remedy requires that [a] lien or charge should be established, and then enforced, and the amount due obtained by a sale total or partial of the fund, or by a sequestration of its rents, profits, and proceeds. These preliminary steps may, on a casual view, be misleading as to the nature of the remedy, and may cause it to appear to be something more than compensatory; but a closer view shows that all these steps are merely auxiliary, and that the *real* remedy, the final object of the proceeding, is the pecuniary recovery." 1 J. Pomeroy, Equity Jurisprudence § 112, p. 148 (5th ed. 1941).

See also Dobbs, *supra*, at 601 (equitable lien foreclosure "results in only a monetary payment to the plaintiff and obviously does not carry with it the advantages of recovering specific property").

We accordingly hold that the sort of equitable lien sought by respondent here constitutes a claim for "money damages"; its goal is to seize or attach money in the hands of the Government as compensation for the loss resulting from the default of the prime contractor. As a form of substitute and not specific relief, respondent's action to enforce an equitable lien falls outside of § 702's waiver of sovereign immunity.

Our holding today is in accord with our precedent establishing that sovereign immunity bars creditors from attaching or garnishing funds in the Treasury, see *Buchanan* v. *Alexander*, 4 How. 20 (1845), or enforcing liens against property owned by the United States, see *United States* v. *Ansonia Brass & Copper Co.*, 218 U. S. 452, 471 (1910); *United States ex rel. Hill* v. *American Surety Co. of N. Y.*, 200 U. S. 197, 203 (1906) ("As against the United States, no lien can be provided upon its public buildings or grounds"). Respondent points to nothing in the text or history of § 702 that suggests that Congress intended to overrule this precedent, let alone anything that "'unequivocally express[es]'" such an intent. *Lane*, 518 U. S., at 192.

Instead, recognizing that sovereign immunity left subcontractors and suppliers without a remedy against the Government when the general contractor became insolvent, Congress enacted the Miller Act (and its predecessor the Heard Act) to protect these workers. See *United States* v. *Munsey Trust Co.*, 332 U. S. 234, 241 (1947); *Ansonia Brass & Copper Co.*, *supra*, at 471. But the Miller Act by its terms only gives subcontractors the right to sue on the surety bond posted by the prime contractor, not the right to recover their losses directly from the Government.

Respondent contends that in several cases examining a surety's right of equitable subrogation, this Court suggested that subcontractors and suppliers can seek compensation directly against the Government. See, *e. g.*, *Prairie State Bank* v. *United States*, 164 U. S. 227 (1896); *Henningsen* v. *United States Fidelity & Guaranty Co. of Baltimore*, 208 U. S. 404, 410 (1908); *Pearlman* v. *Reliance Ins. Co.*, 371 U. S. 132, 141 (1962) (stating that "the laborers and materialmen had a right to be paid out of the fund [retained by the Government]" and hence a surety was subrogated to this right); but see *Munsey Trust Co.*, *supra*, at 241 ("[N]othing is more clear than that laborers and materialmen do not have enforceable rights against the United States for their com-

pensation"). None of the cases relied upon by respondent involved a question of sovereign immunity, and, in fact, none involved a subcontractor directly asserting a claim against the Government. Instead, these cases dealt with disputes between private parties over priority to funds which had been transferred out of the Treasury and as to which the Government had disclaimed any ownership. They do not in any way disturb the established rule that, unless waived by Congress, sovereign immunity bars subcontractors and other creditors from enforcing liens on Government property or funds to recoup their losses.

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

# LOPEZ ET AL. *v.* MONTEREY COUNTY ET AL.

## APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. 97–1396. Argued November 2, 1998—Decided January 20, 1999

Section 5 of the Voting Rights Act of 1965 requires designated States and political subdivisions to obtain federal preclearance—either from the Attorney General or from the District Court for the District of Columbia—before giving effect to changes in their voting laws. Monterey County (County), a jurisdiction that is "covered" by § 5, enacted a series of ordinances effecting changes in the method for electing County judges. Appellants, Hispanic voters residing in the County, filed suit, alleging that the County had failed to fulfill its § 5 obligation to preclear these changes. See *Lopez* v. *Monterey County*, 519 U. S. 9. The three-judge District Court ultimately dismissed the complaint on the ground that California, which is not covered by § 5, had also passed legislation requiring the very voting changes challenged by appellants. The County need not seek federal approval before giving effect to these changes, the court reasoned, because California is not subject to § 5 and the County was merely implementing a California law without exercising any independent discretion.

*Held:* The Act's preclearance requirements apply to measures mandated by a noncovered State to the extent that these measures will effect a voting change in a covered county. Accordingly, Monterey County is obligated to seek preclearance under § 5 before giving effect to voting changes required by California law. Pp. 277–287.

(a) Section 5's plain language requiring federal preclearance "whenever a [covered jurisdiction] shall enact or seek to administer any voting" change provides the most compelling support for the conclusion that the preclearance requirement applies to a covered county's nondiscretionary efforts to implement a voting change required by state law, notwithstanding the fact that the State is not itself a covered jurisdiction. The "seek[s] to administer" phrase provides no indication that Congress intended to limit preclearance obligations to covered jurisdictions' discretionary actions. To the contrary, dictionaries consistently define "administer" in purely nondiscretionary terms. The State's view that "administer" is intended to capture a covered jurisdiction's nonlegislative, executive initiatives poses no barrier to the view that "administer" also encompasses nondiscretionary acts by covered jurisdictions endeavoring to comply with their States' superior law. Nor does

§ 5's use of "seek" require an act of discretion by the covered jurisdiction. In this context, "seek" is more readily understood as creating a temporal distinction; a covered jurisdiction need not seek preclearance before *enacting* legislation that would effect a voting change but must seek preclearance before actually *administering* such a change. The Court's reading is supported by its prior assumption that preclearance is required where a noncovered State effects voting changes in covered counties, see, *e. g., United Jewish Organizations of Williamsburgh, Inc.* v. *Carey,* 430 U. S. 144, 148–149, 162, and by numerous preclearance submissions received by the Justice Department and cases before the lower federal courts in which interested parties have labored under such an assumption, see, *e. g., Shaw* v. *Reno,* 509 U. S. 630, 634. Finally, it is especially relevant that the Attorney General has consistently construed § 5 as does this Court. Her interpretation is entitled to substantial deference in light of her central role in implementing § 5. Pp. 277–282.

(b) This interpretation does not unconstitutionally tread on rights reserved to the States. Although recognizing that the Act imposes substantial "federalism costs," *Miller* v. *Johnson,* 515 U. S. 900, 926, this Court has likewise acknowledged that the Reconstruction Amendments—which include the Fifteenth Amendment under which the Act was passed—by their nature contemplate some intrusion into areas traditionally reserved to the States. Legislation that deters or remedies constitutional violations can fall within the sweep of Congress' enforcement power even if it prohibits conduct that is not itself unconstitutional and intrudes into such areas. *City of Boerne* v. *Flores,* 521 U. S. 507, 518. Moreover, the Court has specifically upheld the constitutionality of § 5 against a challenge that this provision usurps powers reserved to the States. See, *e. g., South Carolina* v. *Katzenbach,* 383 U. S. 301, 327–335. Nor does *Katzenbach* require a different result where, as here, § 5 is held to cover acts initiated by noncovered States. The Court there recognized that, once a jurisdiction has been designated as covered, the Act may guard against both discriminatory animus and the potentially harmful *effect* of neutral laws in that jurisdiction. *Id.,* at 333–334. This is precisely what § 5's text requires when it provides that the District Court for the District of Columbia may preclear a proposed voting change only if the court concludes that the change "does not have the purpose *and will not have the effect* of denying . . . the right to vote" on account of an impermissible classification (emphasis added). The Attorney General employs the same standard in deciding whether to object to a proposed voting change. Thus, there is no merit to California's claim that Congress lacks Fifteenth Amendment authority to require federal approval before the implementation of a state law that may have a discriminatory effect in a covered county. Moreover,

even if California were correct that a partially covered State, like itself, cannot seek a § 4(a) exemption from the Act's coverage on behalf of its covered counties, this would not advance the State's constitutional claim, since there is no question that the County may avail itself of § 4(a)'s "bailout" provision. The State also errs in asserting that certain of this Court's prior decisions require a covered jurisdiction to exercise some discretion or policy choice in order to trigger § 5's preclearance requirements. *Young* v. *Fordice*, 520 U. S. 273, 284, and *City of Monroe* v. *United States*, 522 U. S. 34, distinguished. Nor can the State benefit here from the exception to the preclearance requirement that this Court has recognized for voting changes crafted by federal district courts. *Connor* v. *Johnson*, 402 U. S. 690, 691, and *McDaniel* v. *Sanchez*, 452 U. S. 130, 153, distinguished. Pp. 282–287.

Reversed and remanded.

O'Connor, J., delivered the opinion of the Court, in which Stevens, Scalia, Souter, Ginsburg, and Breyer, JJ., joined. Kennedy, J., filed an opinion concurring in the judgment, in which Rehnquist, C. J., joined, *post*, p. 288. Thomas, J., filed a dissenting opinion, *post*, p. 289.

*Joaquin G. Avila* argued the cause for appellants. With him on the briefs were *Denise Hulett* and *Robert Rubin*.

*Paul R. Q. Wolfson* argued the cause for the United States as *amicus curiae* urging reversal. With him on the briefs were *Solicitor General Waxman*, *Acting Assistant Attorney General Hodgkiss*, *Deputy Solicitor General Underwood*, *Mark L. Gross*, *Rebecca K. Troth*, and *Louis E. Peraertz*.

*Daniel G. Stone*, Deputy Attorney General of California, argued the cause for the state appellee. With him on the brief were *Daniel E. Lungren*, Attorney General, *Linda A. Cabatic*, Senior Assistant Attorney General, and *Marsha A. Bedwell*, Supervising Deputy Attorney General. *Douglas C. Holland* filed a brief for appellee Monterey County.*

Justice O'Connor delivered the opinion of the Court.

Under the Voting Rights Act of 1965 (Act or Voting Rights Act), 79 Stat. 437, as amended, 42 U. S. C. § 1973 *et seq.*, des-

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**Deborah J. La Fetra* filed a brief for the Pacific Legal Foundation as *amicus curiae* urging affirmance.

ignated States and political subdivisions are required to obtain federal preclearance before giving effect to changes in their voting laws. See § 1973c. Here, the State of California (California or State), which is not subject to the Act's preclearance requirements, has passed legislation altering the scheme for electing judges in Monterey County, California (Monterey County or County), a "covered" jurisdiction required to preclear its voting changes. In this appeal, we review the conclusion of a three-judge District Court that Monterey County need not seek approval of these changes before giving them effect. The District Court reasoned, specifically, that California is not subject to the preclearance requirement and that Monterey County merely implemented a California law without exercising any independent discretion. We hold that the Act's preclearance requirements apply to measures mandated by a noncovered State to the extent that these measures will effect a voting change in a covered county. Accordingly, we reverse the decision of the District Court.

## I

The instant appeal marks the second occasion on which this Court has addressed issues arising in the course of litigation over the method for electing judges in Monterey County, and we assume familiarity with our previous decision in this case. See *Lopez* v. *Monterey County*, 519 U. S. 9 (1996).

### A

Congress enacted the Voting Rights Act under its authority to enforce the Fifteenth Amendment's proscription against voting discrimination. The Act contains generally applicable voting rights protections, but it also places special restrictions on voting activity within designated, or "covered," jurisdictions. Jurisdictions—States or political subdivisions—are selected for coverage if they meet specified criteria suggesting the presence of voting discrimination in

the jurisdiction. The criteria pertinent to this case were established by a 1970 amendment to the Act that extended coverage to any jurisdiction that "(i) the Attorney General determines maintained on November 1, 1968, any test or device [as a prerequisite to voting], and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968." 84 Stat. 315, 42 U. S. C. § 1973b(b).

The Act subjects covered jurisdictions to special restrictions on their voting laws. Section 4(a) suspends use of a "test or device" in any jurisdiction designated for coverage. § 1973b(a)(1). In addition, § 5 of the Act provides that covered jurisdictions must obtain federal approval for any measure that departs from the voting scheme in place in the jurisdiction on a specified date. The portion of § 5 applicable in this case provides, specifically, that federal preclearance is required "whenever a [covered] State or political subdivision . . . shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968." § 1973c.

A covered jurisdiction has two avenues available to seek the federal preclearance required under § 5. The jurisdiction may submit the proposed voting change to the Attorney General. If the Attorney General affirmatively approves the change or fails to object to it within 60 days, the change is deemed precleared and the jurisdiction may put it into effect. *Ibid.* Alternatively, either in the first instance or following an objection from the Attorney General, a covered jurisdiction may seek preclearance for a voting change by filing a declaratory judgment action in the United States District Court for the District of Columbia. *Ibid.* The change is precleared if the court declares that the proposed

"qualification, prerequisite, standard, practice, or procedure 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, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title [proscribing voting restrictions based on membership in a language minority group]." § 1973c.

In 1971, Monterey County was designated a covered jurisdiction based on findings that, as of November 1, 1968, the County maintained California's statewide literacy test as a prerequisite to voting and less than 50 percent of the County's voting age population participated in the November 1968 Presidential election. 35 Fed. Reg. 12354 (1970); 36 Fed. Reg. 5809 (1971); see also 42 U. S. C. § 1973b(b). Accordingly, the County must obtain federal preclearance for any departure from the voting scheme in place on November 1, 1968.

In fact, over the last 30 years, there have been numerous changes in the structure of the County's trial court system and the scheme for electing judges. On November 1, 1968, Monterey County had nine judicial districts: two municipal court and seven justice court districts. As we observed in our earlier opinion, see *Lopez* v. *Monterey County*, *supra*, at 12, municipal court districts encompassed larger populations than their justice court counterparts, and the former districts had two judges whereas the latter had one. Moreover, justice courts were not courts of record, and their judges frequently worked part time. Each of the nine districts in place in 1968 was wholly independent, and its judges were elected at large by voters in the district in which they served.

Since 1972, however, the County's judicial system has undergone substantial change resulting in what is today a single, countywide municipal court served by 10 judges. Four County ordinances adopted between 1972 and 1976 reduced the number of justice court districts in the County

from seven to three.* Subsequently, a 1977 state law transformed a justice court district into a municipal court district, raising the total number of municipal districts to three. 1977 Cal. Stats., ch. 995.

The next noteworthy change in the County's judicial election scheme occurred in 1979, with the consolidation of the County's three municipal court districts. On June 5, 1979, the County passed Ordinance No. 2524, which provided that the Monterey Peninsula Judicial District, North Monterey County Judicial District, and the Salinas Judicial District would be combined to form the Monterey County Municipal Court District. App. to Juris. Statement 75. The same year, the State enacted a law, apparently at the County's request, requiring the same merger of the municipal court districts and mapping out some of the mechanics of the new, consolidated district. 1979 Cal. Stats., ch. 694; see also § 4 (noting that "this act is in accordance with the request of a local governmental entity or entities which desired legislative authority to carry out the program specified in this act"). The state Act provides, in pertinent part, that "[t]here is in the County of Monterey, on and after the effective date of this section, a single municipal court district which embraces the former Salinas Judicial District, Monterey Peninsula Judicial District and North Monterey County Judicial District." § 2. The 1979 changes thus left the County with one municipal court district and two justice court districts.

The final step toward a single, countywide district occurred in 1983. County Ordinance No. 2930, passed by Monterey County's Board of Supervisors on August 2, 1983,

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*County Ordinance No. 1917, adopted on October 3, 1972, consolidated two justice court districts. App. to Juris. Statement 56–57. On November 13, 1973, County Ordinance No. 1999 consolidated another two justice court districts. *Id.*, at 58–59. County Ordinance No. 2139, adopted on January 13, 1976, merged three justice court districts with other judicial districts. *Id.*, at 62–64. Finally, County Ordinance No. 2212, adopted on September 7, 1976, added a new justice court district. *Id.*, at 68–70.

merged the remaining two justice court districts into the municipal court district formed by the 1979 consolidation. App. to Juris. Statement 77–80. The merger became effective on January 1, 1984, and the resulting district was countywide. The State, again apparently at the County's request, enacted legislation in September 1983, increasing the number of judges in the County's municipal court district from seven to nine contingent upon the merger of the justice court districts already provided for by the County ordinance. 1983 Cal. Stats., ch. 1249, §§3, 16. The State subsequently recognized that the merger had taken effect and provided for the additional judgeships. 1985 Cal. Stats., ch. 659, §1. Moreover, pursuant to state authorization, the County ultimately increased the number of sitting judges from 9 to the current 10. 1987 Cal. Stats., ch. 1211, §30; App. to Juris. Statement 81–82. Judicial elections took place under an at-large, countywide plan in 1986, 1988, and 1990.

The County, although covered by §5 of the Act, failed to seek federal preclearance for any of its six consolidation ordinances. Nor did the State preclear its 1979 law that, like the County ordinance adopted the same year, directed the consolidation of the three municipal court districts. The State did seek the Attorney General's approval, however, for the 1983 state law authorizing additional judgeships upon the final merger of the justice courts into a single, countywide municipal court district. In the process, the State provided the Department of Justice with a copy of the County's 1983 consolidation ordinance. The Attorney General did not oppose the State's 1983 submission, and we have thus observed that this "submission may well have served to preclear the 1983 county ordinance." *Lopez* v. *Monterey County*, 519 U. S., at 15. We noted, however, that preclearance of the County's 1983 ordinance probably failed to satisfy the need to preclear the preceding consolidation ordinances, *ibid.* ("Thus, under our precedent, these previous consolidation ordinances do not appear to have received federal preclear-

ance approval"), and the State does not challenge this conclusion here, see Brief for Appellee State of California 13, n. 10.

B

Appellants, Hispanic voters who reside in Monterey County, filed suit in the United States District Court for the Northern District of California on September 6, 1991, claiming that the County had failed to fulfill its § 5 obligation to preclear any of the consolidation ordinances passed between 1972 and 1983. A three-judge District Court concluded that the ordinances were voting changes requiring preclearance under § 5 and that the ordinances were unenforceable until they were precleared.

Accordingly, the County initiated proceedings before the United States District Court for the District of Columbia in an effort to preclear the ordinances. Ultimately, however, the County agreed to dismiss the suit without prejudice and to stipulate that its "'Board of Supervisors is unable to establish that the [consolidation ordinances] adopted by the County between 1968 and 1983 did not have the effect of denying the right to vote to Latinos in Monterey County due to the retrogressive effect several of these ordinances had on Latino voting strength in Monterey County.'" *Lopez* v. *Monterey County*, 871 F. Supp. 1254, 1256 (ND Cal. 1995) (quoting Monterey County Resolution 94–107 (Mar. 15, 1994)).

Back before the three-judge District Court in the Northern District of California, appellants and the County, working together, submitted alternatives to the districtwide voting scheme. Meanwhile, the State was allowed to intervene in the proceedings, and it opposed the proposed plans on the ground that they violated aspects of the California Constitution governing judicial elections. By late 1994, after unsuccessful attempts by the County to secure an amendment to the California Constitution, appellants and the County remained unable to formulate a judicial election

plan that they felt would comport with the requirements of the Voting Rights Act and that did not violate some aspect of state law. Under these circumstances, the District Court opted to put a voting scheme in place for purposes of a single election. See 871 F. Supp., at 1255–1256. The temporary plan, under which judges were elected from districts but served countywide, violated California constitutional provisions requiring that jurisdiction be coextensive with a judge's electoral base and prohibiting the division of cities among two or more municipal courts. See Cal. Const., Art. VI, § 16(b); Art. VI, § 5(a). The District Court concluded, however, that the single election would interfere only minimally with state interests. See 871 F. Supp., at 1259–1260.

The Attorney General precleared the court's interim plan in March 1995, and judges were selected in a 1995 special election to serve until January 1997. Following the election, however, this Court decided *Miller* v. *Johnson*, 515 U. S. 900 (1995), which, in the District Court's view, cast doubt on the legality of the interim plan. Having determined that other options were not feasible, the court thus ordered a new judicial election to be held in March 1996 under a countywide voting scheme, the very scheme that the County had effected through its consolidation ordinances and that appellants had challenged in their original complaint.

This Court granted appellants' emergency stay application and enjoined the proposed, countywide election. 516 U. S. 1104 (1996). We subsequently noted probable jurisdiction over the appeal, 517 U. S. 1118 (1996), and we reversed, *Lopez* v. *Monterey County*, 519 U. S. 9 (1996). The District Court had erred, we concluded, in directing an election to take place under a scheme that had not been precleared as required under § 5. Accordingly, we remanded the matter to the District Court and directed that "[t]he requirement of federal scrutiny should be satisfied without further delay." *Id.*, at 25. In so doing, we expressly declined to pass on

the merits of a claim raised by the State that the current, countywide election scheme is not subject to § 5 preclearance because the scheme is now required by a combination of precleared law and *California* law. *Id.*, at 19–20. State law, under this view, does not require preclearance because it is not the product of a covered jurisdiction.

On remand, the State moved to dismiss appellants' complaint on this theory, among others, and the District Court agreed that preclearance was unnecessary because the countywide scheme was now mandated by California law. No. C–91–20559–RMW (ND Cal., Dec. 19, 1997), App. to Juris. Statement 1, 4–9. Among the other grounds for dismissal raised in its motion, the State also alleged that appellants' claims are barred by laches, that it was constitutional error to designate the County as a covered jurisdiction under § 5, and that the consolidation ordinances did not alter a voting "standard, practice, or procedure" subject to preclearance under § 5. The District Court did not address these alternative bases to dismiss appellants' complaint, however, and we do not reach them here. The State also moved to vacate a September 25, 1996, order extending the terms of the judges elected under the 1995 interim plan. The District Court granted this request along with the State's motion to dismiss.

In granting the motion to dismiss, the District Court reasoned that § 5, by its own terms, creates a preclearance obligation only for covered jurisdictions. Noncovered entities, like the State, bear no responsibility to preclear voting changes that they "enact or seek to administer." See *id.*, at 5. "[T]he purpose of § 5 appears to be to target only those enactments by jurisdictions suspected of abridging the right to vote and not those put in force by a non-covered, superior jurisdiction." *Ibid.*

Here, the District Court concluded, the 1979 state law had consolidated the three existing municipal courts and mandated that there be one municipal court district in the

County. This Act, in the court's view, did not require preclearance because it was the product of the State, a noncovered jurisdiction. The only additional change—effected by the County's 1983 ordinance merging the remaining justice court districts with the municipal court district—had been precleared. Moreover, the court reasoned, even if the 1983 ordinance had not received preclearance, an amendment to the California Constitution effective January 1, 1995, eliminated justice courts, and thus the remaining two justice court districts would have merged with the municipal court district as a matter of course. See Cal. Const., Art. VI, § 5(b). The justice court districts would have been unable to become municipal court districts themselves, the District Court reasoned, in light of a state constitutional provision requiring a minimum of 40,000 residents in a municipal court district. App. to Juris. Statement 8; see Cal. Const., Art. VI, § 5(a). In reaching its conclusion, the court expressly rejected appellants' claim that even voting changes effected by California law require preclearance before the County may "seek to administer" them. Relying on our decision in *Young* v. *Fordice*, 520 U. S. 273 (1997), the District Court concluded that a jurisdiction "'seek[s] to administer'" a voting change, as that language is used in § 5, only where the jurisdiction exercises some element of discretion or policy choice in the matter. App. to Juris. Statement 8–9. Here, the court found, the County had no choice but to implement the countywide voting scheme.

We noted probable jurisdiction over the appeal from the order dismissing appellants' complaint, 523 U. S. 1093 (1998), and we reverse.

## II

### A

Appellants and the County together contend that the County must obtain preclearance for changes leading to the countywide voting scheme before giving effect to this

scheme. The State urges, in response, that § 5 expressly limits its preclearance requirements to covered jurisdictions. "Partially covered" jurisdictions like California, the State insists, are under no obligation to comply with § 5. Appellants do not argue, however, that the State is obligated to seek preclearance for voting changes that it effects. Rather, appellants claim that the County, which is unquestionably subject to § 5, must pursue preclearance for state-sponsored voting changes that it "seek[s] to administer." That the nonprecleared aspects of the countywide voting plan may now be required by state law, in appellants' view, is irrelevant to the § 5 analysis because it is the County that "seek[s] to administer" the scheme. Accordingly, the question before this Court is whether a covered jurisdiction "seek[s] to administer" a voting change when, without exercising any independent discretion, the jurisdiction implements a change required by the superior law of a noncovered State. Because we agree with appellants that a covered jurisdiction "seek[s] to administer" a voting change even where the jurisdiction exercises no discretion in giving effect to a state-mandated change, we conclude that the County is required to seek preclearance before implementing California laws that effect voting changes in the County.

The face of the Act itself provides the most compelling support for appellants' claim. The phrase "seek to administer" provides no indication that Congress intended to limit § 5's preclearance obligations to the discretionary actions of covered jurisdictions. To the contrary, "administer" is consistently defined in purely nondiscretionary terms. See, *e. g.*, Webster's Third New International Dictionary 27 (1961) ("to manage the affairs of," "to direct or superintend the execution, use, or conduct of"); Random House Dictionary of the English Language 26 (2d ed. 1987) ("to manage (affairs, a government, etc.); have executive charge of"); Black's Law Dictionary 44 (6th ed. 1990) ("To manage or conduct"). The State's view that "administer" is intended to capture a cov-

ered jurisdiction's nonlegislative, executive initiatives is not to the contrary. Such a reading poses no barrier to the view that "administer" also encompasses nondiscretionary acts by covered jurisdictions endeavoring to comply with the superior law of the State.

Nor are we persuaded that Congress' use of the word "seek" is intended to require an act of discretion by the covered jurisdiction in order to trigger the preclearance requirement. The word "seek" in this context is more readily understood as creating a temporal distinction. The Government has indicated that a covered jurisdiction need not seek preclearance before *enacting* legislation that would effect a voting change. See 28 CFR § 51.22(a) (1997) (listing "[a]ny proposal for a change affecting voting submitted prior to final enactment" among "premature submissions" that Attorney General will not consider); see also Tr. of Oral Arg. 20. Preclearance is required before actually *administering* a change, however, and use of the word "seek" in § 5 makes this distinction clear.

We note, too, that this Court has elsewhere assumed that legislation from a partially covered State must be precleared to the extent that it affects covered counties. In *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey*, 430 U. S. 144 (1977), we rejected a constitutional challenge brought by Hasidic residents of Kings County, New York, to a redistricting plan enacted by the state legislature. We assumed in that case that the state plan was subject to the Act's preclearance requirements, even though the State was not a covered jurisdiction, because Kings and other counties were themselves covered by the Act. We observed that, after the State's efforts to exempt its counties from the Act's coverage proved unsuccessful, see *New York ex rel. New York County* v. *United States*, 419 U. S. 888 (1974), "it became necessary for New York [State] to secure the approval of the Attorney General or of the United States District Court for the District of Columbia for its 1972 reapportion-

ment statute insofar as that statute concerned [the covered] Counties," 430 U. S., at 148–149. Moreover, the decision's constitutional analysis relies on the fact that the redistricting effort was meant to fulfill the State's obligations under the Act. *Id.*, at 162 ("[P]etitioners have not shown, or offered to prove, that New York did more than the Attorney General was authorized to require it to do . . ."); see also *Shaw* v. *Hunt*, 517 U. S. 899, 911–913 (1996) (evaluating whether partially covered State's § 5 obligations justified race-based districting without any consideration that State may not have been subject to preclearance requirement). These decisions reveal a clear assumption by this Court that § 5 preclearance is required where a noncovered State effects voting changes in covered counties.

Nor have we been alone in this assumption. The Department of Justice claims to have received more than 1,300 submissions seeking to preclear state laws from the seven States that are currently partially covered: California, Florida, Michigan, New Hampshire, New York, North Carolina, and South Dakota. Brief for United States as *Amicus Curiae* in Support of Juris. Statement 13, n. 3; see also 28 CFR pt. 51, App. (1997) (identifying partially covered States); see generally *Perkins* v. *Matthews*, 400 U. S. 379, 392 (1971) (noting that a particular interpretation of § 5 "was accepted by at least some affected States and political subdivisions, which had submitted such changes for the Attorney General's approval"). In fact, cases before this and other federal courts reveal numerous instances in which interested parties have labored under the assumption that laws enacted by partially covered States require preclearance before they take effect in covered jurisdictions. See, *e. g.*, *Shaw* v. *Reno*, 509 U. S. 630, 634 (1993) ("Because the [North Carolina] General Assembly's reapportionment plan affected the covered counties, the parties agree that § 5 applied"); *Johnson* v. *De Grandy*, 512 U. S. 997, 1001, n. 2 (1994) (Florida submitted statewide redistricting law for preclearance because five

counties are covered); *Haith* v. *Martin*, 618 F. Supp. 410 (EDNC 1985) (suit over need to preclear North Carolina laws affecting covered jurisdictions without any claim by State that, as a noncovered jurisdiction, its laws are not subject to § 5), summarily aff'd, 477 U. S. 901 (1986); *United States* v. *Onslow County*, 683 F. Supp. 1021, 1024 (EDNC 1988) (covered North Carolina county submitted changes for preclearance, including change required by state statute, and court concluded that change required § 5 preclearance). While this Court is not bound by its prior assumptions, see, *e. g.*, *Brecht* v. *Abrahamson*, 507 U. S. 619, 630–631 (1993), the fact that courts and parties alike have routinely assumed a need for preclearance under the circumstances presented here supports our reading of § 5.

Finally, we find it especially relevant that the Attorney General also reads § 5 as we do. According to the Government: "The Attorney General has consistently construed Section 5 to require preclearance when a covered political subdivision 'seek[s] to administer' an enactment of a partially covered State." Brief for United States as *Amicus Curiae* 19; see also S. Rep. No. 97–417, pp. 11–12 (1982) (describing Attorney General's objections to laws enacted by North Carolina and South Dakota, both partially covered States). Subject to certain limitations not implicated here, see, *e. g.*, *Presley* v. *Etowah County Comm'n*, 502 U. S. 491, 508–509 (1992), we traditionally afford substantial deference to the Attorney General's interpretation of § 5 in light of her "central role . . . in formulating and implementing" that section. *Dougherty County Bd. of Ed.* v. *White*, 439 U. S. 32, 39 (1978); see, *e. g.*, *NAACP* v. *Hampton County Election Comm'n*, 470 U. S. 166, 178–179 (1985) ("Any doubt that these changes are covered by § 5 is resolved by the construction placed upon the Act by the Attorney General, which is entitled to considerable deference"); *Perkins* v. *Matthews*, *supra*, at 390–391 ("Our conclusion that both the location of the polling places and municipal boundary changes come

within § 5 draws further support from the interpretation followed by the Attorney General in his administration of the statute"). The Attorney General's interpretation thus provides significant additional support for our reading of § 5.

In light of the section's plain language and the Attorney General's interpretation to the same effect, we conclude that § 5's preclearance requirement applies to a covered county's nondiscretionary efforts to implement a voting change required by state law, notwithstanding the fact that the State is not itself a covered jurisdiction. Accordingly, we need not reach appellants' alternative claim that the countywide district is in fact the product of the County's discretion.

## B

The State also urges that requiring preclearance here would tread on rights constitutionally reserved to the States. The State contends, specifically, that § 5 could not withstand constitutional scrutiny if it were interpreted to apply to voting measures enacted by States that have not been designated as historical wrongdoers in the voting rights sphere. In the State's view, because California has not been designated as a covered jurisdiction, its laws are not subject to § 5 preclearance.

We have recognized that the Act, which authorizes federal intrusion into sensitive areas of state and local policymaking, imposes substantial "federalism costs." *Miller* v. *Johnson*, 515 U. S., at 926. The Act was passed pursuant to Congress' authority under the Fifteenth Amendment, however, and we have likewise acknowledged that the Reconstruction Amendments by their nature contemplate some intrusion into areas traditionally reserved to the States. *City of Rome* v. *United States*, 446 U. S. 156, 179 (1980). As the Court recently observed with respect to Congress' power to legislate under the Fourteenth Amendment, "[l]egislation which deters or remedies constitutional violations can fall within the sweep of Congress' enforcement power even if in

the process it prohibits conduct which is not itself unconstitutional and intrudes into legislative spheres of autonomy previously reserved to the States." *City of Boerne* v. *Flores*, 521 U. S. 507, 518 (1997) (internal quotation marks and citation omitted).

Moreover, we have specifically upheld the constitutionality of § 5 of the Act against a challenge that this provision usurps powers reserved to the States. See *South Carolina* v. *Katzenbach*, 383 U. S. 301, 334–335 (1966); see also *City of Rome* v. *United States*, *supra*, at 178–183. Nor does *Katzenbach* require a different result where, as here, § 5 is held to cover acts initiated by noncovered States. The Court in *Katzenbach* recognized that, once a jurisdiction has been designated, the Act may guard against both discriminatory animus and the potentially harmful *effect* of neutral laws in that jurisdiction. 383 U. S., at 333–334. In *City of Rome*, we thus expressly reaffirmed that, "under the Fifteenth Amendment, Congress may prohibit voting practices that have only a discriminatory effect." 446 U. S., at 175; see also *id.*, at 178–180 (upholding preclearance requirement against federalism challenge).

This is, moreover, precisely what the text of § 5 requires. The United States District Court for the District of Columbia may preclear a proposed voting change only if the court concludes that the change "does not have the purpose *and will not have the effect* of denying or abridging the right to vote" on the basis of an impermissible classification. 42 U. S. C. § 1973c (emphasis added). The Attorney General employs the same standard in deciding whether to object to a proposed voting change. See 28 CFR § 51.52(a) (1997).

Recognizing that Congress has the constitutional authority to designate covered jurisdictions and to guard against changes that give rise to a discriminatory effect in those jurisdictions, we find no merit in the claim that Congress lacks Fifteenth Amendment authority to require federal approval before the implementation of a state law that may

have just such an effect in a covered county. Section 5, as we interpret it today, burdens state law only to the extent that that law affects voting in jurisdictions properly designated for coverage. With respect to literacy tests, in fact, the Act already allows for the very action that the State claims would be unconstitutional here. At least until a 1970 amendment to the Act barring literacy tests nationwide, see 42 U. S. C. § 1973aa, § 4 had been used to ban these tests in covered jurisdictions even where the tests had been enacted by a noncovered State. See *Gaston County* v. *United States*, 395 U. S. 285, 287 (1969) (although State was not covered, "[u]se of the State's literacy test within the county was . . . suspended" when the county was designated a covered jurisdiction). Moreover, under § 4(b), a state-imposed literacy test may, as it did here, provide grounds for designating a county as a covered jurisdiction, notwithstanding the fact that the State as a whole is not covered.

The State seeks to bolster its constitutional argument by noting that partially covered States, like California, have no statutory ability to seek an exemption from the Act's coverage. Section 4(a) permits a covered jurisdiction to seek declaratory relief exempting the jurisdiction from further coverage if it meets certain criteria. 42 U. S. C. § 1973b(a). Even if California were unable to use this "bailout" provision on behalf of its covered counties, but see *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey*, 430 U. S., at 148–149, n. 3 (noting that New York State sought exemptions on behalf of covered counties), this would not advance the State's constitutional claim. Partially covered States facing suspension of their literacy tests in covered counties would have faced the same dilemma. In any event, there is no question that the County may avail itself of § 4(a)'s bailout procedures.

In short, the Voting Rights Act, by its nature, intrudes on state sovereignty. The Fifteenth Amendment permits this

intrusion, however, and our holding today adds nothing of constitutional moment to the burdens that the Act imposes.

The State also urges that certain of our prior decisions require a covered jurisdiction to exercise some discretion or policy choice in order to trigger § 5's preclearance requirements. In particular, the State relies on *Young* v. *Fordice*, 520 U. S. 273 (1997), and *City of Monroe* v. *United States*, 522 U. S. 34 (1997) *(per curiam)*. The State, however, seeks to place more weight on these cases than they will bear. The State relies foremost upon *Young*, which involved a § 5 challenge to a covered State's efforts to comply with voting changes mandated by the National Voters' Registration Act. We concluded that changes brought about by efforts at compliance were themselves the result of discretionary decisions by the State, and these changes required § 5 preclearance: "This Court has made clear that minor, as well as major, changes require preclearance. This is true even where, as here, the changes are made in an effort to comply with federal law, so long as those changes reflect policy choices made by state or local officials." 520 U. S., at 284 (citations omitted). Like the District Court, the State seeks to invoke *Young* for the proposition that only the "policy choices" of *covered jurisdictions* are subject to the preclearance requirements. *Young*, however, involved an effort to comply with an Act of Congress, the very body that enacted the Voting Rights Act. Congress retains the authority to curtail the Act's protections with subsequent legislation; alternatively, Congress may be assumed to have accounted for the policies underlying the Act in rendering new law. Accordingly, the requirement that only "policy choices . . . by state and local officials" would trigger the § 5 requirements in *Young* served merely to isolate for preclearance those changes that are not wholly creatures of *Congress*.

The State also seeks to rely on *City of Monroe*, in which we held that preclearance of a voting change included in a statewide law empowered a municipality to implement that

change, notwithstanding the city's failure to preclear a change in its charter to the same effect. It is true that, in *City of Monroe*, the municipality was permitted to give effect to the statewide law without any need to preclear its effect at the city level. A second preclearance would have been wholly unnecessary, however. The Attorney General had already approved the change. 522 U. S., at 37 ("Since the Attorney General precleared [the statewide law], Monroe may implement it"). Accordingly, *City of Monroe* does not stand for the proposition that covered jurisdictions are generally permitted to engage in the discretionless implementation of state laws without seeking preclearance. The very change that the city of Monroe wished to enforce had already been precleared.

Finally, we note that this Court has created an exception to the preclearance requirement in certain cases involving federally court-ordered voting changes. As a general rule, voting changes crafted wholly by a federal district court in the first instance do not require preclearance. See *Connor* v. *Johnson*, 402 U. S. 690, 691 (1971) *(per curiam)*. Thus, in *Connor*, the Court rejected a claim that § 5 required preclearance of an electoral apportionment scheme developed and ordered by a Federal District Court in the course of litigation over the constitutionality of a Mississippi voting plan. *Ibid.* This narrow exception to the preclearance requirement, however, is not grounded in the fact that a voting change is mandated by a noncovered entity, without room for discretion on the part of a covered jurisdiction. Rather, the exception grows largely from separation-of-powers concerns arising where a voting measure is the product of a federal court, specifically. As Justice Black noted in his dissent in *Connor:*

> "Needless to say I completely agree with the holding of the majority that a reapportionment plan formulated and ordered by a federal district court need

> not be approved by the United States Attorney General or the United States District Court for the District of Columbia. Under our constitutional system it would be strange indeed to construe § 5 . . . to require that actions of a federal court be stayed and reviewed by the Attorney General or the United States District Court for the District of Columbia." *Id.*, at 695.

We have since recognized limitations on the *Connor* exception. In *McDaniel* v. *Sanchez*, 452 U. S. 130 (1981), the District Court had sustained a constitutional challenge to a county apportionment scheme and had ordered the implementation of a new plan that the county had submitted to the court. In holding that the new plan should have been precleared before the District Court took any action on it, we noted that § 5 "requires that whenever a covered jurisdiction submits [to a district court] a proposal reflecting the policy choices of the elected representatives of the people . . . the preclearance requirement of the Voting Rights Act is applicable." *Id.*, at 153. Nor does this requirement that there be some "policy choic[e]" by the local jurisdiction represent a general rule that a covered jurisdiction must exercise discretion to trigger the § 5 preclearance obligations. *McDaniel* may best be read merely as an effort to isolate and protect wholly court-developed plans from preclearance. In any event, *McDaniel* applies only to voting changes embodied in federal-court orders, and we need not further define the scope of its exception to the *Connor* rule here.

We hold that the County is obligated to seek preclearance under § 5 before giving effect to voting changes required by state law. Accordingly, the judgment of the United States District Court for the Northern District of California is reversed, and the case is remanded for further proceedings consistent with this opinion.

*It is so ordered.*

JUSTICE KENNEDY, with whom THE CHIEF JUSTICE joins, concurring in the judgment.

I would not decide in this case whether "§ 5's preclearance requirement applies to a covered county's nondiscretionary efforts to implement a voting change required by state law, notwithstanding the fact that the State is not itself a covered jurisdiction." *Ante*, at 282. I think it quite possible, particularly in light of the constitutional concerns identified by JUSTICE THOMAS, that the phrase "seek to administer" in the statute requires that the covered jurisdiction exercise discretion or pursue its own policy aims before the obligation to preclear a voting change arises. See 14 Oxford English Dictionary 877 (2d ed. 1989) (defining "seek," *inter alia*, as "[t]o make it one's aim, to try or attempt *to* (do something)"). That interpretation draws some support from our decisions in *Connor* v. *Johnson*, 402 U. S. 690 (1971) *(per curiam)*, and *Young* v. *Fordice*, 520 U. S. 273 (1997), which suggest that covered jurisdictions need not seek preclearance when a noncovered entity requires them to implement specific voting changes. See *Connor* v. *Johnson*, *supra*, at 691 (holding that covered jurisdictions need not preclear voting changes ordered by a federal court); *Young* v. *Fordice*, *supra*, at 290 (noting that a State's adoption of the National Voter Registration Act's registration system "is not, by itself, a change for the purposes of § 5, for the State has no choice but to do so").

I concur in the majority's disposition of this case, however, because it is clear that the state enactments requiring the voting changes at issue in fact embodied the policy preferences and determinations of the county itself. See *McDaniel* v. *Sanchez*, 452 U. S. 130, 148–151 (1981) (voting changes contained in federal-court order require preclearance if they were proposed by the covered jurisdiction); *Young* v. *Fordice*, *supra*, at 285 (state changes made in an effort to comply with federal law require preclearance if they "reflect the

exercise of policy choice and discretion by [state] officials"). For example, the 1979 state law which codified the county's merger of its municipal court districts stated on its face that it was enacted at the county's behest. 1979 Cal. Stats., ch. 694, § 4 ("[T]his act is in accordance with the request of a local governmental entity or entities which desired legislative authority to carry out the program specified in this act"). In these circumstances, the county was required to seek preclearance of the voting changes codified by the state enactments.

JUSTICE THOMAS, dissenting.

The majority today interprets the phrase "seek to administer" as used in § 5 of the Voting Rights Act of 1965, 42 U. S. C. § 1973c, to require that a covered political subdivision seek federal approval of any law enacted by a noncovered State that effects a change with respect to voting in the covered political subdivision, so long as the covered political subdivision somehow implements the State's law. I do not think the majority's is the best reading of the statute; moreover, I think the majority's interpretation is constitutionally doubtful. I would read § 5 to require preclearance only of those voting changes that are the direct product of a covered jurisdiction's policy choices. Accordingly, I respectfully dissent.

I

As the majority notes, *ante*, at 269, Monterey County (County) is a covered jurisdiction under the Voting Rights Act, but the State of California is not. Section 5 of the Voting Rights Act provides that whenever a covered "State or political subdivision . . . shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" that differs from those in effect on the date that the State or subdivision became a covered jurisdiction, it must obtain

federal approval of the new voting requirement.[1] Although the County elected its municipal judges from separate districts at the time it became subject to the Act's preclearance requirement, California law now requires that the County elect its judges from a single judicial district. This appeal, then, squarely puts before us for the first time the question whether § 5 requires federal preclearance of a noncovered State's laws effecting a change with respect to voting in one of its covered political subdivisions.

The majority concludes that the County must preclear the State's laws because it "seek[s] to administer" the state districting scheme. *Ante*, at 278.[2] The Voting Rights Act does not define the phrase "seek to administer," and the majority's construction of the phrase is not plainly erroneous. "[A]dminister" can plausibly be read, in isolation, to encompass "nondiscretionary acts by covered jurisdictions endeavoring to comply with the superior law of the State." *Ante*, at 279. But I do not think that the majority's reading of the statute is the best one. "[S]eek to administer" must be read in light of its surrounding terms. Section 5 requires that a covered political subdivision obtain federal preclearance whenever it "shall enact or seek to administer" voting changes. The term "administer" is best understood when read in contrast to "enact." In my view, Congress intended "administer" to reach those changes in voting qualifications, prerequisites, standards, practices, or procedures that a covered jurisdiction imposes in a way other than formal enactment. In other words, the statute is designed to ensure that

[1] For convenience, I use the shorthand "voting change" or "change with respect to voting" throughout. But I adhere to my view that not all changes affecting voting are covered by §§ 2 and 5 of the Voting Rights Act, as those sections are properly understood. See *Holder* v. *Hall*, 512 U. S. 874, 891, 893–903 (1994) (opinion concurring in judgment).

[2] Even were I to agree with the majority's interpretation of the statute, I am not convinced that the County implements the State's districting laws simply by administering elections, as the majority apparently believes.

a covered jurisdiction cannot cleverly avoid preclearance requirements by the simple expedient of making voting changes by nonlegislative means.

The majority's interpretation appears to render superfluous the "enact" prong of the statute. A person could not be "denied the right to vote for failure to comply with" a covered jurisdiction's enactment affecting voting, as § 5 prohibits absent federal preclearance, unless the jurisdiction was administering its enacted laws. And the majority's explanation that "seek" as it modifies "to administer" is a "temporal distinction," *ante*, at 279, is unsatisfactory because it ignores that "shall" as it modifies "enact" is also a temporal limitation. Both prongs of the statute, not surprisingly, are written in terms of simple futurity, given § 5's prophylactic nature.

My interpretation of the statutory phrase also more accurately reflects the section's purpose. As we have previously recognized, § 5 was enacted as

> "'a response to a common practice in some jurisdictions of staying one step ahead of the federal courts by passing new discriminatory voting laws as soon as the old ones had been struck down. . . . Congress therefore decided . . . "to shift the advantage of time and inertia from the perpetrators of the evil to its victi[m]," . . . .'" *Beer* v. *United States*, 425 U. S. 130, 140 (1976) (quoting H. R. Rep. No. 94–196, pp. 57–58 (1970)).

See also *Reno* v. *Bossier Parish School Bd.*, 520 U. S. 471, 477 (1997) (quoting *Beer*); *Miller* v. *Johnson*, 515 U. S. 900, 926 (1995) (same). It follows that Congress intended to subject to federal preclearance only the policy decisions made by jurisdictions that it found to be the "perpetrators of the evil" by means of the § 4(b) coverage formula that the majority describes, *ante*, at 269–270. California has never been found to satisfy the coverage test and therefore is not one of the "perpetrators" that § 5 is designed to thwart. I therefore

see no reason to believe that Congress intended § 5 to require federal approval of the State's policy choices.[3]

The Government, as *amicus curiae* supporting appellants, suggests that the State enacted its district consolidation legislation at the County's suggestion, implying that the state judicial district consolidation statutes are the product of the County's policy choices. Brief for United States as *Amicus Curiae* 22–25. I recognize that in *McDaniel* v. *Sanchez*, 452 U. S. 130 (1981), we required preclearance of a court-ordered voting change in a covered jurisdiction because the plan that the court had ordered was submitted by, and reflected the policy choices of, that covered jurisdiction, even though we had decided, in *Connor* v. *Johnson*, 402 U. S. 690 (1971) *(per curiam)*, that federal court-ordered voting changes need not be precleared. 452 U. S., at 147, 153. We stated that "[a]s we construe the congressional mandate, it requires that whenever a covered jurisdiction submits a proposal reflecting the policy choices of the elected representatives of the people . . . the preclearance requirement of the Voting

[3] I recognize that we have interpreted § 5 to reach entities that did not obviously fall within the definition of covered "State or political subdivision" in prior cases. For example, in *United States* v. *Sheffield Bd. of Comm'rs*, 435 U. S. 110 (1978), we held that although the city of Sheffield, Alabama, was not a "political subdivision" under the Act, it was nevertheless subject to § 5's preclearance requirements because it was a "political unit" of the covered State. *Id.*, at 127–128. Whether *Sheffield* was correct as an original matter, the "top-down" approach to coverage that it announced is simply not implicated in this case; appellants argue for a "bottom-up" approach to coverage questions that I do not believe the reasoning of *Sheffield* supports. And in *Morse* v. *Republican Party of Va.*, 517 U. S. 186 (1996), the judgment of the Court was that § 5 could be extended to reach the activities of political parties in covered States. I adhere to the views that I expressed in dissent, but at most, that case stands for the proposition that for purposes of § 5 preclearance, "State" in some (but not all) instances is "coextensive with the constitutional doctrine of state action." *Id.*, at 265 (THOMAS, J., dissenting). Of course, this case requires us to interpret the phrase "seek to administer," not § 5's "State or political subdivision" language.

Rights Act is applicable." *Id.*, at 153. Although our holding in *McDaniel* is not obviously consistent with the text of § 5 as I would interpret it, it at least appears to be consistent with the policy that we have said underlies § 5. See *Beer*, *supra*, at 140. Regardless of whether the legislative product of a noncovered jurisdiction would ever be subject to the preclearance requirement if it could be demonstrated that a state law is a product of collusion between state and local governments, the record in this case does not support such a claim. And appellants did not make this argument, either in their complaint filed in the District Court[4] or in their briefs before this Court.

## II

Moreover, my reading of § 5 avoids the majority's constitutionally doubtful interpretation. "[W]here a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter." *United States ex rel. Attorney General* v. *Delaware & Hudson Co.*, 213 U. S. 366, 408 (1909); see also *Feltner* v. *Columbia Pictures Television, Inc.*, 523 U. S. 340, 355, 356–359 (1998) (SCALIA, J., concurring in judgment).

Section 5 is a unique requirement that exacts significant federalism costs, as we have recognized on more than one occasion. See *Bossier Parish*, *supra*, at 480; *Miller* v. *Johnson*, *supra*, at 926; see also *City of Rome* v. *United States*, 446 U. S. 156, 200 (1980) (Powell, J., dissenting); *United States* v. *Sheffield Bd. of Comm'rs*, 435 U. S. 110, 141 (1978)

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[4] For somewhat similar reasons, even if I agreed with the majority's interpretation of the statute, I would still affirm the District Court's dismissal of appellants' first amended complaint, which did not ask that the County be ordered to preclear the State's laws. The only coverage question the complaint raised was whether the County's antecedent consolidation ordinances needed to be precleared. App. to Juris. Statement 83–104.

(STEVENS, J., dissenting); *South Carolina* v. *Katzenbach*, 383 U. S. 301, 358–360 (1966) (Black, J., concurring and dissenting). The section's interference with state sovereignty is quite drastic—covered States and political subdivisions may not give effect to their policy choices affecting voting without first obtaining the Federal Government's approval. As Justice Powell wrote in *City of Rome*, the section's "encroachment is especially troubling because it destroys local control of the means of self-government, one of the central values of our polity." 446 U. S., at 201.

Despite these serious and undeniable costs, we have twice upheld the preclearance requirement as a constitutional exercise of Congress' Fifteenth Amendment enforcement power,[5] first in *Katzenbach* and again in *City of Rome*. In those cases, we compared Congress' Fifteenth Amendment enforcement power to its broad authority under the Necessary and Proper Clause. See *City of Rome*, *supra*, at 175; *Katzenbach*, *supra*, at 326. But we have taken great care to emphasize that Congress' enforcement power is remedial in nature. See *City of Boerne* v. *Flores*, 521 U. S. 507, 516–529 (1997); *Katzenbach*, *supra*, at 327–328.[6]

There can be no remedy without a wrong. Essential to our holdings in *Katzenbach* and *City of Rome* was our conclusion that Congress was remedying the effects of prior *intentional* racial discrimination. In both cases, we required Congress to have some evidence that the jurisdiction bur-

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[5] The Fifteenth Amendment provides:

"Section 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.

"Section 2. The Congress shall have power to enforce this article by appropriate legislation."

[6] Although *City of Boerne* involved the Fourteenth Amendment enforcement power, we have always treated the nature of the enforcement powers conferred by the Fourteenth and Fifteenth Amendments as coextensive. See, *e. g.*, *City of Boerne*, 521 U. S., at 518–528; *James* v. *Bowman*, 190 U. S. 127 (1903).

dened with preclearance obligations had actually engaged in such intentional discrimination. In *Katzenbach*, we recognized that Congress had "evidence of actual voting discrimination" in some jurisdictions. 383 U. S., at 330. In each of those jurisdictions, two characteristics were present—depressed voter turnout and the use of a test or device. We concluded that it was permissible for Congress to impose § 5 preclearance requirements on the States and political subdivisions for which Congress had "more fragmentary evidence" of voting discrimination, *id.*, at 329–330, where those two conditions (incorporated into the Act's coverage formula) could be found to exist, "at least in the absence of proof that [such jurisdictions] have been free of substantial voting discrimination in recent years," *id.*, at 330. We also thought it quite important that "the Act provide[d] for termination of special statutory coverage at the behest of States and political subdivisions in which the danger of substantial voting discrimination ha[d] not materialized during the preceding five years." *Id.*, at 331. In *City of Rome*, we rejected the city's argument that, because it had not employed any discriminatory practices over the relevant period, § 5 was unconstitutional as applied. We thought that "because electoral changes by jurisdictions *with a demonstrable history of intentional racial discrimination in voting* create the risk of purposeful discrimination, it was proper [for Congress] to prohibit changes that have a discriminatory impact." 446 U. S., at 177 (emphasis added; footnote omitted).

The majority "find[s] no merit in the claim that Congress lacks Fifteenth Amendment authority to require federal approval before the implementation of a state law that may have [a discriminatory] effect in a covered county." *Ante*, at 283–284. In my view, it overlooks our warning in *City of Boerne* that "[t]he appropriateness of remedial measures must be considered in light of the evil presented." 521 U. S., at 530; see also *City of Rome*, *supra*, at 211–219 (REHNQUIST, J., dissenting). There has been no legislative finding

that the State of California has ever intentionally discriminated on the basis of race, color, or ethnicity with respect to voting. Nor has the State been found to run afoul of the Act's overbroad coverage formula. We recognized in *City of Boerne* that "[p]reventive measures prohibiting certain types of laws may be appropriate when there is reason to believe that many of the laws affected by the congressional enactment have a significant likelihood of being unconstitutional." 521 U. S., at 532. But I do not see any reason to think that California's laws discriminate in any way against voting or that the State's laws will be anything but constitutional. I therefore doubt that § 5 can be extended to require preclearance of the State's enactments and remain consistent with the Constitution.

Moreover, it is plain that the majority's reading of § 5 raises to new levels the federalism costs that the statute imposes. If preclearance of a State's voting law is denied when sought by a covered political subdivision, the State will be unable to develop a consistent statewide voting policy; its laws will be enforceable in noncovered subdivisions, but not in the covered subdivision. And under the majority's reading of § 5, noncovered States are forced to rely upon their covered political subdivisions to defend their interests before the Federal Government. The subdivision may not know the State's interest, or may simply disagree with the State and therefore choose not to defend vigorously the State's policy choices before the Federal Government. Indeed, in this case, the County represented that it "concurs with the essential arguments of the Appellants that state law affecting voting, insofar as such law may affect elections within a covered jurisdiction, must be precleared . . . ." Brief for Appellee Monterey County 1.

The majority attempts to bolster its argument by suggesting that requiring the County to submit the State's laws for preclearance is no more unusual than the Act's suspension of literacy tests in covered jurisdictions. It points out that

in some instances, literacy tests were required by the laws of noncovered jurisdictions, including California. *Ante*, at 284. I do not think, however, that the suspension of tests and the preclearance remedy can be compared. The literacy test had a history as a "notorious means to deny and abridge voting rights on racial grounds." *Katzenbach*, *supra*, at 355 (Black, J., concurring and dissenting). Literacy tests were unfairly administered; whites were given easy questions, and blacks were given more difficult questions, such as "the number of bubbles in a soap bar, the news contained in a copy of the *Peking Daily*, the meaning of obscure passages in state constitutions, and the definition of terms such as *habeas corpus*." A. Thernstrom, Whose Votes Count?, Affirmative Action and Minority Voting Rights 15 (1987). When we upheld the constitutionality of the suspension provision of the Voting Rights Act in *Katzenbach*, we indicated that the tests had actually been employed to disenfranchise black voters. 383 U. S., at 333–334. Later in *Oregon* v. *Mitchell*, 400 U. S. 112 (1970), we upheld the national ban on the use of such tests—even though we recognized that they were not facially unconstitutional—as a proper means of preventing purposeful discrimination in the application of the tests and remedying prior constitutional violations by state and local governments in the education of minorities. Congress' suspension of tests, then, was a focused remedy directed at one particular prerequisite to voting. In contrast, the preclearance requirement presumes that a voting change—no matter how innocuous—is invalid, and prevents its enforcement until the Federal Government gives its approval.

* * *

I would interpret § 5 only to require preclearance of a covered jurisdiction's changes affecting voting qualifications, prerequisites, standards, practices, or procedures, whether made by formal enactment or otherwise. In my view, this

is the best interpretation of the statute and it avoids the grave constitutional concerns that the majority's contrary interpretation raises. I respectfully dissent.

Syllabus

# HUMANA INC. ET AL. *v.* FORSYTH ET AL.

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

No. 97–303. Argued November 30, 1998—Decided January 20, 1999

Between 1985 and 1988, plaintiffs-respondents, beneficiaries of group health insurance policies issued by defendant-petitioner Humana Health Insurance of Nevada, Inc. (Humana Insurance), received medical care at a hospital owned by defendant-petitioner Humana Inc. Humana Insurance agreed to pay 80% of the beneficiaries' hospital charges over a designated deductible. The beneficiaries bore responsibility for payment of the remaining 20%. But pursuant to a concealed agreement, the complaint in this action alleged, the hospital gave Humana Insurance large discounts on the insurer's portion of the hospital's charges for care provided to the beneficiaries. As a result, Humana Insurance paid significantly less than 80% of the hospital's actual charges for the care that beneficiaries received, and the beneficiaries paid significantly more than 20%. The beneficiaries brought suit in Federal District Court, alleging that Humana Insurance and Humana Inc. had violated the federal Racketeer Influenced and Corrupt Organizations Act (RICO) through a pattern of racketeering activity consisting of mail, wire, radio, and television fraud. The Humana defendants moved for summary judgment, citing § 2(b) of the McCarran-Ferguson Act, which provides: "No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance." RICO does not proscribe conduct that Nevada's laws governing insurance permit. But the federal and state remedial regimes differ. Both provide a private right of action. RICO authorizes treble damages; Nevada law permits recovery of compensatory and punitive damages. The District Court granted summary judgment for the Humana defendants. The Ninth Circuit reversed in relevant part. In its *Merchants Home* decision, handed down after the District Court rejected the beneficiaries' right to sue under RICO in this case, the Ninth Circuit adopted a "direct conflict" test for determining when a federal law "invalidate[s], impair[s], or supersede[s]" a state insurance law. As declared in *Merchants Home*, the McCarran-Ferguson Act does not preclude application of a federal statute prohibiting acts that are also prohibited under state insurance laws. Guided by *Merchants Home*, and assuming, inaccu-

rately, that Nevada law provided for administrative remedies only, the Ninth Circuit held that the McCarran-Ferguson Act did not bar the policy beneficiaries' suit under RICO.

*Held:* Because RICO advances the State's interest in combating insurance fraud, and does not frustrate any articulated Nevada policy or disturb the State's administrative regime, the McCarran-Ferguson Act does not block the respondent policy beneficiaries' recourse to RICO in this case. Pp. 306–314.

(a) The McCarran-Ferguson Act precludes application of a federal statute in face of state law "enacted . . . for the purpose of regulating the business of insurance," if the federal measure does not "specifically relat[e] to the business of insurance," and would "invalidate, impair, or supersede" the State's law. RICO is not a law that "specifically relates to the business of insurance." This case therefore turns on the question whether RICO's application to the employee beneficiaries' claims would "invalidate, impair, or supersede" Nevada's laws regulating insurance. Under the standard definitions, RICO's application in this action would neither "invalidate"—*i. e.,* render ineffective without providing a replacement rule—nor "supersede"—*i. e.,* displace while providing a substitute rule—Nevada's insurance laws. The key question, then, is whether RICO's application here would "impair" Nevada's law. The Court rejects the Humana petitioners' suggestion that the word "impair," in the McCarran-Ferguson Act context, signals Congress' intent to cede the field of insurance regulation to the States, saving only instances in which Congress expressly orders otherwise. If Congress had meant generally to preempt the field for the States, Congress could have said either that "no federal statute [that does not say so explicitly] shall be construed to *apply* to the business of insurance" or that federal legislation generally, or RICO in particular, would be "applicable to the business of insurance [only] *to the extent that* such business *is not regulated* by state law." Moreover, § 2(b)'s second prohibition, barring construction of federal statutes to "invalidate, impair, or supersede" "any [state] law . . . which imposes a fee or tax upon [the business of insurance]," belies any congressional intent to preclude federal regulation merely because the regulation imposes liability additional to, or greater than, state law. Were this not so, federal law would "impair" state insurance laws imposing fees or taxes whenever federal law imposed additional fees or greater tax liability. Under the federal system of dual taxation, however, it is scarcely in doubt that generally applicable federal fees and taxes do not "invalidate, impair, or supersede" state insurance taxes and fees within the meaning of § 2(b) where nothing precludes insurers from paying both. On the other hand, the

Court is not persuaded that Congress intended a green light for federal regulation whenever the federal law does not collide head on with state regulation. The dictionary defines "impair" as to weaken, make worse, lessen in power, diminish, relax, or otherwise affect in an injurious manner. The following formulation seems to capture that meaning and to construe, most sensibly, the text of § 2(b): When federal law does not directly conflict with state regulation, and when application of the federal law would not frustrate any declared state policy or interfere with a State's administrative regime, the McCarran-Ferguson Act does not preclude its application. *Shaw* v. *Delta Air Lines, Inc.*, 463 U. S. 85, 101–103, supports the view that to "impair" a law is to hinder its operation or "frustrate [a] goal" of that law. The Court's standard also accords with *SEC* v. *National Securities, Inc.*, 393 U. S. 453, 463, where, as here, federal law did not "directly conflict with state regulation," application of federal law did not "frustrate any declared state policy," nor did it "interfere with a State's administrative regime." Pp. 306–311.

(b) Applying the foregoing standard to the facts of this case, the Court concludes that suit under RICO by policy beneficiaries would not "impair" Nevada law and therefore is not precluded by the McCarran-Ferguson Act. Nevada provides both statutory and common-law remedies to check insurance fraud. The Nevada Unfair Insurance Practices Act is a comprehensive administrative scheme that prohibits various forms of insurance fraud and misrepresentation; gives Nevada's Insurance Commissioner the authority to issue charges if there is reason to believe the Act has been violated, to issue cease and desist orders, and to administer fees; and authorizes victims of insurance fraud to pursue private actions under Nevada law for violations of a number of unfair insurance practices, including misrepresentation of pertinent facts or insurance policy provisions relating to coverage. Moreover, the Act is not hermetically sealed; it does not exclude application of other state laws, statutory or decisional. Specifically, Nevada case law recognizes tort actions against insurers for breach of a common-law duty to negotiate with insureds in good faith and to deal with them fairly. Furthermore, aggrieved insureds may be awarded punitive damages if a jury finds clear and convincing evidence that the insurer is guilty of oppression, fraud, or malice, and those damages may exceed the treble damages available under RICO. In sum, there is no frustration of Nevada policy in the RICO litigation at issue. RICO's private right of action and treble damages provision appears to complement Nevada's statutory and common-law claims for relief. The Court notes both that Nevada filed no brief at any stage of this lawsuit urging that application of RICO would frustrate any state policy, or interfere with the State's

administrative regime, and that insurers, too, have relied on RICO when they were the fraud victims. Pp. 311–314.

114 F. 3d 1467, affirmed.

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

*James W. Colbert III* argued the cause for petitioners. With him on the briefs were *Robert N. Eccles*, *Linda J. Smith*, *Neil K. Gilman*, and *Dennis L. Kennedy.*

*G. Robert Blakey* argued the cause for respondents. With him on the brief was *J. Randall Jones.*

*Deputy Solicitor General Wallace* argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Waxman*, *Assistant Attorney General Hunger*, *Jeffrey A. Lamken*, *Anthony J. Steinmeyer*, and *Howard S. Scher.**

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns regulation of the business of insurance by the States, as secured by the McCarran-Ferguson Act, 59 Stat. 33, as amended, 15 U. S. C. § 1011 *et seq.*, and the extent to which federal legislation, specifically, the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U. S. C. § 1961 *et seq.*, is compatible with state regulation. The controversy before us stems from a scheme employed by petitioner Humana Health Insurance of Nevada, Inc. (Humana Insurance), a group health insurer, to gain discounts for hospital services which the insurer did not disclose and pass on to its policy beneficiaries. The scheme is alleged to violate both Nevada law and RICO. Under the McCarran-

**James F. Fitzpatrick* and *Nancy L. Perkins* filed a brief for the Alliance of American Insurers et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the National Association of Insurance Commissioners by *Gregory B. Stites;* for the National Fair Housing Alliance by *Stephen Mark Dane;* for Trial Lawyers for Public Justice, P. C., by *Sarah Posner;* for United Policyholders by *Eugene R. Anderson* and *John A. MacDonald;* and for Betty Cordial et al. by *Ellen G. Robinson* and *Peter G. Gallanis.*

*Franklin G. Burt* filed a brief for the Consumer Credit Insurance Association as *amicus curiae.*

Ferguson Act, the federal legislation may be applied if it does not "invalidate, impair, or supersede" the State's regulation. 15 U. S. C. § 1012(b).

The federal law at issue, RICO, does not proscribe conduct that the State's laws governing insurance permit. But the federal and state remedial regimes differ. Both provide a private right of action. RICO authorizes treble damages; Nevada law permits recovery of compensatory and punitive damages. We hold that RICO can be applied in this case in harmony with the State's regulation. When federal law is applied in aid or enhancement of state regulation, and does not frustrate any declared state policy or disturb the State's administrative regime, the McCarran-Ferguson Act does not bar the federal action.

I

Plaintiffs in the District Court, respondents in this Court, are beneficiaries of group health insurance policies issued by Humana Insurance. Between 1985 and 1988, plaintiffs-respondents received medical care from the Humana Hospital-Sunrise, an acute care facility owned by codefendant (now copetitioner) Humana Inc. Humana Insurance agreed to pay 80% of the policy beneficiaries' hospital charges over a designated deductible. The beneficiaries bore responsibility for payment of the remaining 20%. But pursuant to a concealed agreement, the complaint in this action alleged, the hospital gave Humana Insurance large discounts on the insurer's portion of the hospital's charges for care provided to the policy beneficiaries.[1] As a result,

[1] These discounts were alleged to have ranged between 40% and 96%. See 827 F. Supp. 1498, 1503 (Nev. 1993). For example, in a given case, Humana Insurance might have received a bill for only $550 on a $5,000 gross hospital charge. The beneficiary, however, would have received a bill for 20% of the undiscounted rate of $5,000, or $1,000. Humana Insurance would have paid only 35% of the total bill ($550 out of $1,550), while the beneficiary would have paid 65%. Under the 80%/20% arrangement, Humana Insurance should have paid $1,240 (80% of $1,550), while the beneficiary should have paid $310. See *id.*, at 1508; Brief for United States as *Amicus Curiae* 5–6.

Humana Insurance paid significantly less than 80% of the hospital's actual charges for the care that policy beneficiaries received, and the beneficiaries paid significantly more than 20% of those charges.[2]

The employee beneficiaries brought suit in the United States District Court for the District of Nevada,[3] alleging that Humana Insurance and Humana Inc. violated RICO through a pattern of racketeering activity consisting of mail, wire, radio, and television fraud.[4] Defendants Humana Insurance and Humana Inc. moved for summary judgment, citing § 2(b) of the McCarran-Ferguson Act, which provides:

> "No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance." 15 U. S. C. § 1012(b).

The District Court granted the motion. In that court's view, RICO's private remedies, including the federal statute's treble damages provision, 18 U. S. C. § 1964(c), so exceeded Nevada's administrative penalties for insurance fraud, see *infra*, at 311–312, that applying RICO to the alleged conduct would have been "tantamount to allowing Congress to intercede in an area expressly left to the states under

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[2] State investigation of the scheme, launched by Nevada's Attorney General, terminated when Humana Insurance and Nevada's Insurance Commissioner entered into a consent decree under which the insurer paid a fine of $50,000.

[3] The complaint separated plaintiffs into two classes, a "Co-Payor Class" comprising employee beneficiaries, and a "Premium Payor Class" comprising employers who purchased the policies. See 114 F. 3d 1467, 1472 (CA9 1997). Only the employees' claims have been placed at issue here.

[4] The complaint also presented claims under the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 829, as amended, 29 U. S. C. § 1001 *et seq.*, and § 2 of the Sherman Act, 26 Stat. 209, as amended, 15 U. S. C. § 2. The disposition of those claims is not germane to the issue on which this Court's review was sought and granted.

the McCarran-Ferguson Act," 827 F. Supp. 1498, 1521–1522 (Nev. 1993).[5]

The Ninth Circuit reversed in relevant part. See 114 F. 3d 1467, 1482 (1997). In *Merchants Home Delivery Serv., Inc.* v. *Frank B. Hall & Co.*, 50 F. 3d 1486 (1995), a decision handed down after the District Court rejected the policy beneficiaries' right to sue under RICO in this case, the Court of Appeals adopted a "direct conflict" test for determining when a federal law "invalidate[s], impair[s], or supersede[s]" a state law governing insurance. As declared in *Merchants Home*, the McCarran-Ferguson Act does not preclude "application of a federal statute prohibiting acts which are also prohibited under a state's insurance laws." *Id.*, at 1492. Guided by *Merchants Home*, and assuming that Nevada law provided for administrative remedies only, the Ninth Circuit held that the McCarran-Ferguson Act did not bar suit under RICO by the Humana Insurance policy beneficiaries. See 114 F. 3d, at 1480. Circuit courts have divided on the question presented: Does a federal law, which proscribes the same conduct as state law, but provides materially different remedies, "impair" state law under the McCarran-Ferguson Act?[6] We granted certiorari to address that question. 524 U. S. 936 (1998).

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[5] Both the District Court and the Court of Appeals inaccurately projected Nevada law as allowing for administrative remedies only. See *infra*, at 311–313.

[6] Compare *Merchants Home Delivery Serv., Inc.* v. *Frank B. Hall & Co.*, 50 F. 3d 1486, 1492 (CA9 1995), and *NAACP* v. *American Family Mut. Ins. Co.*, 978 F. 2d 287, 297 (CA7 1992) ("[S]tate and federal rules that are substantively identical but differ in penalty do not conflict with or displace each other."), with *Doe* v. *Norwest Bank Minnesota, N. A.*, 107 F. 3d 1297, 1307 (CA8 1997) ("[T]he intrusion of RICO's substantial damage provisions into a state's insurance regulatory program may so impair the state law as to bar application of RICO."), and *Kenty* v. *Bank One, Columbus, N. A.*, 92 F. 3d 384, 392 (CA6 1996) ("The different liability under Ohio law for violations, as well as different standards of proof necessary to demonstrate misrepresentations, means that RICO does impair the ability of Ohio to regulate [unfair and deceptive acts].").

## II

Prior to our decision in *United States* v. *South-Eastern Underwriters Assn.*, 322 U. S. 533 (1944), we had consistently held that the business of insurance was not commerce. See, *e. g.*, *Paul* v. *Virginia*, 8 Wall. 168, 183 (1869) ("Issuing a policy of insurance is not a transaction of commerce."); see also *South-Eastern*, 322 U. S., at 544, n. 18 (collecting cases relying on the *Paul* generalization). The business of insurance, in consequence, was largely immune from federal regulation. See *St. Paul Fire & Marine Ins. Co.* v. *Barry*, 438 U. S. 531, 539 (1978) ("[T]he States enjoyed a virtually exclusive domain over the insurance industry."). In *South-Eastern*, we held for the first time that an insurance company doing business across state lines engages in interstate commerce. See 322 U. S., at 553. In accord with that holding, we further decided that the Sherman Act applied to the business of insurance. See *id.*, at 553–562.

Concerned that our decision might undermine state efforts to regulate insurance, Congress in 1945 enacted the McCarran-Ferguson Act. Section 1 of the Act provides that "continued regulation and taxation by the several States of the business of insurance is in the public interest," and that "silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States." 15 U. S. C. § 1011. In § 2(b) of the Act—the centerpiece of this case—Congress ensured that federal statutes not identified in the Act or not yet enacted would not automatically override state insurance regulation. Section 2(b) provides that when Congress enacts a law specifically relating to the business of insurance, that law controls. See § 1012(b). The subsection further provides that federal legislation general in character shall not be "construed to invalidate, impair, or supersede any law

enacted by any State for the purpose of regulating the business of insurance." *Ibid.*[7]

The McCarran-Ferguson Act thus precludes application of a federal statute in face of state law "enacted . . . for the purpose of regulating the business of insurance," if the federal measure does not "specifically relat[e] to the business of insurance," and would "invalidate, impair, or supersede" the State's law. See *Department of Treasury* v. *Fabe*, 508 U. S. 491, 501 (1993). RICO is not a law that "specifically relates to the business of insurance." This case therefore turns on the question: Would RICO's application to the employee beneficiaries' claims at issue "invalidate, impair, or supersede" Nevada's laws regulating insurance?

The term "invalidate" ordinarily means "to render ineffective, generally without providing a replacement rule or law." Brief for United States as *Amicus Curiae* 17, n. 6 (citing *Carter* v. *Virginia*, 321 U. S. 131, 139 (1944) (Black, J., concurring)). And the term "supersede" ordinarily means "to displace (and thus render ineffective) while providing a substitute rule." Brief for United States as *Amicus Curiae* 17, n. 6 (citing *Illinois Commerce Comm'n* v. *Thomson*, 318 U. S. 675, 682 (1943)). Under these standard definitions, RICO's

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[7] Section 2(b) also provides that "after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended [15 U. S. C. 41 et seq.], shall be applicable to the business of insurance to the extent that such business is not regulated by State Law." 15 U. S. C. § 1012(b). Section 4 of the Act provides that "[n]othing contained in this chapter shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act [29 U. S. C. 151 et seq.], or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938 [29 U. S. C. 201 et seq.], or the Act of June 5, 1920, known as the Merchant Marine Act, 1920 [46 App. U. S. C. 861 et seq.]." § 1014.

application to the policy beneficiaries' complaint would neither "invalidate" nor "supersede" Nevada law.

The key question, then, is whether RICO's application to the scheme in which the Humana defendants are alleged to have collaborated, to the detriment of the plaintiff policy beneficiaries, would "impair" Nevada's law. The answer would be "no" were we to read "impair," as the policy beneficiaries suggest, to be "interchangeabl[e]" with "invalidate" and "supersede." Brief for Respondents 14; see Brief for United States as *Amicus Curiae* 17, n. 6 (describing the use of the three terms as an "instanc[e] of lawyerly iteration"). The answer would also be "no" if we understood "impair" to mean "the displacement of some portion of a statute or its preclusion in certain contexts." *Id.*, at 14. This is so because insurers can comply with both RICO and Nevada's laws governing insurance. These laws do not directly conflict. The acts the policy beneficiaries identify as unlawful under RICO are also unlawful under Nevada law. See *infra*, at 311–313.

On the other hand, the answer would be "yes" were we to agree with Humana Insurance and Humana Inc. that the word "impair," in the McCarran-Ferguson Act context, signals the federal legislators' intent "to withdraw Congress from the field [of insurance] absent an express congressional statement to the contrary." Brief for Petitioners 10. Under that reading, "impair" would convey "a very broad proscription against applying federal law where a state has regulated, *or chosen not to regulate*, in the insurance industry." *Merchants Home*, 50 F. 3d, at 1491 (emphasis in original). See also Reply Brief 4 (McCarran-Ferguson Act "precludes federal law that is at material variance with state insurance law—as to substantive prohibitions, procedures or remedies.").

We reject any suggestion that Congress intended to cede the field of insurance regulation to the States, saving only instances in which Congress expressly orders otherwise. If

Congress had meant generally to preempt the field for the States, Congress could have said, as the Ninth Circuit noted: "No federal statute [that does not say so explicitly] shall be construed to *apply* to the business of insurance." *Merchants Home*, 50 F. 3d, at 1492 (emphasis in original) (internal quotation marks omitted); see Brief for United States as *Amicus Curiae* 24 ("The Act does not declare that 'No Act of Congress shall apply to the business of insurance unless such Act specifically relates thereto.' "). Alternatively, Congress could have provided, as it did with respect to the Sherman, Clayton, and Federal Trade Commission Acts, see 15 U. S. C. § 1012(b), that federal legislation generally, or RICO in particular, would be "applicable to the business of insurance [only] *to the extent that* such business *is not regulated* by State Law," *ibid.* (emphasis added).

Moreover, § 2(b)'s second prohibition bears attention in this regard. That proscription, barring construction of federal statutes to "invalidate, impair, or supersede" "any [state] law . . . which imposes a fee or tax upon [the business of insurance]," belies any congressional intent to preclude federal regulation merely because the regulation imposes liability additional to, or greater than, state law. Were this not so, federal law would "impair" state insurance laws imposing fees or taxes whenever federal law imposed additional fees or greater tax liability. Under our federal system of dual taxation, however, it is scarcely in doubt that "generally applicable federal fees and taxes do not 'invalidate, impair, or supersede' state insurance taxes and fees within the meaning of Section 2(b) where nothing precludes insurers from paying both." Brief for United States as *Amicus Curiae* 26.

While we reject any sort of field preemption, we also reject the polar opposite of that view, *i. e.*, that Congress intended a green light for federal regulation whenever the federal law does not collide head on with state regulation. The dictionary definition of "impair" is "[t]o weaken, to make

worse, to lessen in power, diminish, or relax, or otherwise affect in an injurious manner." Black's Law Dictionary 752 (6th ed. 1990). The following formulation seems to us to capture that meaning and to construe, most sensibly, the text of § 2(b): When federal law does not directly conflict with state regulation, and when application of the federal law would not frustrate any declared state policy or interfere with a State's administrative regime, the McCarran-Ferguson Act does not preclude its application. See Brief for National Association of Insurance Commissioners as *Amicus Curiae* 6–7.

Our decision in *Shaw* v. *Delta Air Lines, Inc.*, 463 U. S. 85 (1983), is similar in tenor. In that case, we considered whether a New York law forbidding discrimination in employee benefit plans on the basis of pregnancy was preempted by ERISA. State agencies and officials, appellants in *Shaw*, argued that the State's law was not preempted; they relied on ERISA § 514(d), which provides that ERISA's preemption clause shall not be "construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States." 29 U. S. C. § 1144(d). The state agencies and officials maintained that preempting the state law would impair the administration of Title VII of the Civil Rights Act of 1964, 78 Stat. 253, 42 U. S. C. § 2000e *et seq.*, as amended in 1978 by the Pregnancy Discrimination Act, 92 Stat. 2076, 42 U. S. C. § 2000e(k), for under the enforcement scheme Title VII accommodates, state remedies serve to promote compliance with federal antidiscrimination prescriptions. See 463 U. S., at 101–102.

We held in *Shaw* that the New York law was preempted only to the extent it prohibited practices lawful under Title VII. See *id.*, at 103. To the extent the New York law prohibited practices also prohibited under federal law, we explained, the New York law was not preempted; the blanket preemption urged by the employer appellees in *Shaw*, we pointed out, would "impair" Title VII by "frustrat[ing] the

goal of encouraging joint state/federal enforcement of [that federal measure]." *Id.*, at 102. *Shaw* thus supports the view that to "impair" a law is to hinder its operation or "frustrate [a] goal" of that law.

Our standard accords with *SEC* v. *National Securities, Inc.*, 393 U. S. 453 (1969). In that case, we upheld, in face of a McCarran-Ferguson Act challenge, the Securities and Exchange Commission's authority to unwind an insurance company merger that the Arizona Director of Insurance had approved. Our opinion pointed to the absence of any "direct conflict": "Arizona has not commanded something which the Federal Government seeks to prohibit. It has permitted respondents to consummate the merger; it did not order them to do so." *Id.*, at 463. But that statement did not stand alone. We also observed that "any 'impairment' in [that] case [was] a most indirect one." *Ibid.* And we concluded: "The paramount federal interest in protecting shareholders [was] perfectly compatible with the paramount state interest in protecting policyholders." *Ibid.* There, as here, federal law did not "directly conflict with state regulation," application of federal law did not "frustrate any declared state policy," nor did it "interfere with a State's administrative regime." *Supra*, at 310.

Applying the standard just announced to the facts of this case, we conclude that suit under RICO by policy beneficiaries would not "impair" Nevada law and therefore is not precluded by the McCarran-Ferguson Act. Nevada provides both statutory and common-law remedies to check insurance fraud. The Nevada Unfair Insurance Practices Act, Nev. Rev. Stat. § 686A.010 *et seq.* (1996), patterned substantially on the National Association of Insurance Commissioners' model Unfair Trade Practices Act,[8] is a comprehensive administrative scheme that prohibits various forms of insur-

[8] See 4 National Association of Insurance Commissioners, Model Laws, Regulations and Guidelines 880–1 (1995).

ance fraud and misrepresentation.[9] Under this legislation, Nevada's Insurance Commissioner has the authority to issue charges if there is reason to believe the Act has been violated, see § 686A.160, and may issue cease and desist orders and administer fees, see § 686A.183.

Victims of insurance fraud may also pursue private actions under Nevada law. The Unfair Insurance Practices Act authorizes a private right of action for violations of a number of unfair insurance practices, including "[m]isrepresenting to insureds or claimants pertinent facts or insurance policy provisions relating to any coverage," § 686A.310(1)(a). See § 686A.310(2) ("In addition to any rights or remedies available to the commissioner, an insurer is liable to its insured for any damages sustained by the insured as a result of the commission of any act set forth in subsection 1 as an unfair practice."). Moreover, the Act is not hermetically sealed; it does not exclude application of other state laws, statutory or decisional. Specifically, Nevada law provides that an insurer is under a common-law duty "to negotiate with its insureds in good faith and to deal with them fairly." *Ainsworth* v. *Combined Ins. Co. of Am.*, 104 Nev. 587, 592, 763 P. 2d 673, 676 (1988); see *United States Fidelity & Guaranty Co.* v. *Peterson*, 91 Nev. 617, 620, 540 P. 2d 1070, 1071 (1975) (recognizing tort action against insurance company for breach of implied covenant of good faith and fair dealing).[10]

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[9] See, *e. g.*, Nev. Rev. Stat. § 686A.030 (1996) (misrepresentation and false advertising); § 686A.040 (publication of false information); § 686A.070 (falsification of records and financial statements); §§ 686A.281–686A.289 (fraudulent claims); § 686A.291 (insurance fraud).

[10] The existence of private rights of action under state law dilutes the force of the assertion, made in an *amicus* brief, that a decision affirming the Ninth Circuit's judgment would cause insurers to be reluctant to settle with state commissioners to avoid compromising defenses in RICO litigation. See Brief for Consumer Credit Insurance Association as *Amicus Curiae* 5. Presumably, insurers would be equally reluctant to settle with state commissioners to avoid compromising defenses in state litigation.

Furthermore, aggrieved insured parties may be awarded punitive damages if a jury finds clear and convincing evidence that the insurer is guilty of "oppression, fraud or malice." Nev. Rev. Stat. § 42.005(1) (1995). Nevada's punitive damages statute places certain limits on those damages—three times the amount of compensatory damages if they are more than $100,000, and $300,000 if compensatories are less than $100,000. See §§ 42.005(1)(a), (b). But the same law adds that these limits do not apply to claims against "[a]n insurer who acts in bad faith regarding its obligations to provide insurance coverage." § 42.005(2)(b).[11] Accordingly, plaintiffs seeking relief under Nevada law may be eligible for damages exceeding the treble damages available under RICO.[12]

In sum, we see no frustration of state policy in the RICO litigation at issue here. RICO's private right of action and treble damages provision appears to complement Nevada's statutory and common-law claims for relief. In this regard, we note that Nevada filed no brief at any stage of this lawsuit urging that application of RICO to the alleged conduct would frustrate any state policy, or interfere with the State's administrative regime. Cf. *NAACP* v. *American Family*

[11] See also Nev. Rev. Stat. § 42.007(2) (1996) (limiting punitive damages liability by employers for wrongful acts of employees except in "an action brought against an insurer who acts in bad faith regarding its obligations to provide insurance coverage").

[12] At oral argument, counsel for petitioners Humana Insurance and Humana Inc. suggested that application of RICO would impair state law, even though that law provided for punitive damages, because under Nevada law, punitive damages may not be imposed when doing so would threaten the solvency of the defendant. Tr. of Oral Arg. 5–6. While Nevada law does appear to prohibit punitive damages that would render a defendant insolvent, see *Nevada Cement Co.* v. *Lemler*, 89 Nev. 447, 452, 514 P. 2d 1180, 1183 (1973) (noting that "[i]deally the punitive allowance should be in an amount that would promote the public interest without financially annihilating the defendant" and that "the wrongdoer may be punished, but not destroyed"), the record contains no evidence of insolvency here. See Tr. of Oral Arg. 21.

*Mut. Ins. Co.*, 978 F. 2d 287, 297 (CA7 1992) ("No official of Wisconsin has appeared in this litigation to say that a federal remedy under the Fair Housing Act would frustrate any state policy."). We further note that insurers, too, have relied on the statute when they were the fraud victims. See, *e. g.*, *Aetna Casualty Surety Co.* v. *P & B Autobody*, 43 F. 3d 1546, 1551 (CA1 1994); see also Brief for United Policyholders as *Amicus Curiae* 19–21.

* * *

Because RICO advances the State's interest in combating insurance fraud, and does not frustrate any articulated Nevada policy, we hold that the McCarran-Ferguson Act does not block the respondent policy beneficiaries' recourse to RICO in this case. Accordingly, for the reasons stated in this opinion, the judgment of the Court of Appeals for the Ninth Circuit is

*Affirmed.*

# CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM ET AL. *v.* FELZEN ET AL.

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

No. 97–1732. Argued January 11, 1999—Decided January 20, 1999

134 F. 3d 873, affirmed by an equally divided Court.

*Michael K. Kellogg* argued the cause for petitioners. With him on the briefs were *Mark C. Hansen*, *Neil M. Gorsuch*, and *Sean A. Lev.*

*David C. Frederick* argued the cause for the United States et al. as *amici curiae* urging reversal. With him on the brief were *Solicitor General Waxman*, *Deputy Solicitor General Kneedler*, *Harvey J. Goldschmid*, *David M. Becker*, *Paul Gonson*, *Jacob H. Stillman*, and *Eric Summergrad.*

*John G. Kester* argued the cause for respondents and filed a brief for respondent Archer Daniels Midland Co. With him on the brief was *George A. Borden. Thom W. Moss* filed a brief for respondent Directors of Archer Daniels Midland Co. *Terry Rose Saunders*, *Robert M. Roseman*, and *Henry P. Monaghan* filed a brief for respondent Paul Felzen et al.*

PER CURIAM.

The judgment is affirmed by an equally divided Court.

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

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*Briefs of *amici curiae* urging reversal were filed for Barclays Global Investors, N. A., et al. by *Andrew N. Vollmer*, *Andrew B. Weissman*, and *Joseph A. Grundfest;* for the Council of Institutional Investors by *Carter G. Phillips*, *Bradford A. Berenson*, and *David W. Jones;* and for Public Citizen, Inc., et al. by *Leslie Brueckner*, *Brian Wolfman*, and *Alan B. Morrison.*

*Daniel J. Popeo* filed a brief for the Washington Legal Foundation as *amicus curiae* urging affirmance.

*Leonard N. Sosnov* filed a brief for Lawrence A. Hamermesh et al. as *amici curiae.*

Syllabus

# DEPARTMENT OF COMMERCE ET AL. *v.* UNITED STATES HOUSE OF REPRESENTATIVES ET AL.

## APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 98–404. Argued November 30, 1998—Decided January 25, 1999*

The Constitution's Census Clause authorizes Congress to direct an "actual Enumeration" of the American public every 10 years to provide a basis for apportioning congressional representation among the States. Pursuant to this authority, Congress has enacted the Census Act, 13 U. S. C. § 1 *et seq.*, delegating the authority to conduct the decennial census to the Secretary of Commerce (Secretary). The Census Bureau (Bureau), which is part of the Department of Commerce, announced a plan to use two forms of statistical sampling in the 2000 Decennial Census to address a chronic and apparently growing problem of "undercounting" of some identifiable groups, including certain minorities, children, and renters. In early 1998, two sets of plaintiffs filed separate suits challenging the legality and constitutionality of the plan. The suit in No. 98–564 was filed in the District Court for the Eastern District of Virginia by four counties and residents of 13 States. The suit in No. 98–404 was filed by the United States House of Representatives in the District Court for the District of Columbia. Each of the courts held that the plaintiffs satisfied the requirements for Article III standing, ruled that the Bureau's plan for the 2000 census violated the Census Act, granted the plaintiffs' motion for summary judgment, and permanently enjoined the planned use of statistical sampling to determine the population for congressional apportionment purposes. On direct appeal, this Court consolidated the cases for oral argument.

*Held:*

1. Appellees in No. 98–564 satisfy the requirements of Article III standing. In order to establish such standing, a plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief. *E. g.*, *Allen* v. *Wright*, 468 U. S. 737, 751. A plaintiff must establish that there exists no genuine issue of material fact as to justiciability or the merits in order to prevail on a summary judgment motion. See, *e. g.*, *Lujan* v.

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*Together with No. 98–564, *Clinton, President of the United States, et al.* v. *Glavin et al.*, on appeal from the United States District Court for the Eastern District of Virginia.

*National Wildlife Federation*, 497 U. S. 871, 884. The present controversy is justiciable because several of the appellees have met their burden of proof regarding their standing to bring this suit. In support of their summary judgment motion, appellees submitted an affidavit that demonstrates that it is a virtual certainty that Indiana, where appellee Hofmeister resides, will lose a House seat under the proposed census 2000 plan. That loss undoubtedly satisfies the injury-in-fact requirement for standing, since Indiana residents' votes will be diluted by the loss of a Representative. See, *e. g.*, *Baker* v. *Carr*, 369 U. S. 186, 208. Hofmeister also meets the second and third standing requirements: There is undoubtedly a "traceable" connection between the use of sampling in the decennial census and Indiana's expected loss of a Representative, and there is a substantial likelihood that the requested relief—a permanent injunction against the proposed uses of sampling in the census—will redress the alleged injury. Appellees have also established standing on the basis of the expected effects of the use of sampling in the 2000 census on intrastate redistricting. Appellees have demonstrated that voters in nine counties, including several of the appellees, are substantially likely to suffer intrastate vote dilution as a result of the Bureau's plan. Several of the States in which the counties are located require use of federal decennial census population numbers for their state legislative redistricting, and States use the population numbers generated by the federal decennial census for federal congressional redistricting. Appellees living in the nine counties therefore have a strong claim that they will be injured because their votes will be diluted vis-à-vis residents of counties with larger undercount rates. The expected intrastate vote dilution satisfies the injury-in-fact, causation, and redressibility requirements. Pp. 328–334.

2. The Census Act prohibits the proposed uses of statistical sampling to determine the population for congressional apportionment purposes. In 1976, the provisions here at issue took their present form. Congress revised 13 U. S. C. § 141(a), which authorizes the Secretary to "take a decennial census . . . in such form and content as he may determine, including the use of sampling procedures." This broad grant of authority is informed, however, by the narrower and more specific § 195. See *Green* v. *Bock Laundry Machine Co.*, 490 U. S. 504, 524. As amended in 1976, § 195 provides: "Except for the determination of population for purposes of [congressional] apportionment . . . , the Secretary shall, if he considers it feasible, authorize the use of . . . statistical . . . 'sampling' in carrying out the provisions of this title." Section 195 requires the Secretary to use sampling in assembling the myriad demographic data that are collected in connection with the decennial census, but it maintains the longstanding prohibition on the use of such sampling in calcu-

lating the population for congressional apportionment. Absent any historical context, the "except/shall" sentence structure in the amended § 195 might reasonably be read as either permissive or prohibitive. However, the section's interpretation depends primarily on the broader context in which that structure appears. Here, that context is provided by over 200 years during which federal census statutes have uniformly prohibited using statistical sampling for congressional apportionment. The Executive Branch accepted, and even advocated, this interpretation of the Census Act until 1994. Pp. 334–343.

3. Because the Court concludes that the Census Act prohibits the proposed uses of statistical sampling in calculating the population for purposes of apportionment, the Court need not reach the constitutional question presented. See, *e. g.*, *Spector Motor Service, Inc.* v. *McLaughlin*, 323 U. S. 101, 105. The Court's affirmance of the judgment in No. 98–564 also resolves the substantive issues presented in No. 98–404, therefore that case no longer presents a substantial federal question and the appeal therein is dismissed. Cf. *Sanks* v. *Georgia*, 401 U. S. 144, 145. Pp. 343–344.

No. 98–404, 11 F. Supp. 2d 76, appeal dismissed; No. 98–564, 19 F. Supp. 2d 543, affirmed.

O'CONNOR, J., delivered the opinion of the Court with respect to Parts I, III–A, and IV, in which REHNQUIST, C. J., and SCALIA, KENNEDY, and THOMAS, JJ., joined, the opinion of the Court with respect to Part II, in which REHNQUIST, C. J., and SCALIA, KENNEDY, THOMAS, and BREYER, JJ., joined, and an opinion with respect to Part III–B, in which REHNQUIST, C. J., and KENNEDY, J., joined. SCALIA, J., filed an opinion concurring in part, in which THOMAS, J., joined, and in which REHNQUIST, C. J., and KENNEDY, J., joined as to Part II, *post*, p. 344. BREYER, J., filed an opinion concurring in part and dissenting in part, *post*, p. 349. STEVENS, J., filed a dissenting opinion, in which SOUTER and GINSBURG, JJ., joined as to Parts I and II, and in which BREYER, J., joined as to Parts II and III, *post*, p. 357. GINSBURG, J., filed a dissenting opinion, in which SOUTER, J., joined, *post*, p. 365.

*Solicitor General Waxman* argued the cause for appellants in both cases. With him on the briefs were *Assistant Attorney General Hunger*, *Deputy Solicitor General Kneedler*, *Malcolm L. Stewart*, and *Mark B. Stern*. *Joseph Remcho*, *Kathleen J. Purcell*, and *James C. Harrison* filed briefs for the California Legislature et al. as appellees under this Court's Rule 18.2. *Brian S. Currey*, *Richard M. Jones*,

Counsel

*Thomas M. Riordan*, *Karen M. Wahle*, *Thomas J. Karr*, *Alfredo Barrios*, *James K. Hahn*, *Jessica F. Heinz*, *Lorna B. Goodman*, *David B. Goldin*, *De Witt W. Clinton*, *Mary F. Wawro*, *Donovan M. Main*, *Manuel A. Valenzuela*, *Brian L. Crow*, *Louise H. Renne*, *Burk E. Delventhal*, *Robert A. Ginsburg*, *Jack Ballas*, *Susan T. Taylor*, *Helen M. Gros*, *Daniel E. Muse*, *Stan Sharoff*, *John R. Calhoun*, *Joan Gallo*, *George Rios*, *Jayne W. Williams*, *Ann M. Ravel*, *Susan B. Swain*, *Alan K. Marks*, *William C. Katzenstein*, and *Tom Udall* filed briefs for the City of Los Angeles et al. as appellees under this Court's Rule 18.2. *Moses Silverman* and *Jeannie S. Kang* filed briefs for the National Korean American Service & Education Consortium, Inc., et al. as appellees under this Court's Rule 18.2. *Paul M. Smith*, *Donald B. Verrilli*, *Jr.*, and *J. Gerald Hebert* filed briefs for Richard A. Gephardt et al. as appellees under this Court's Rule 18.2.

*Maureen E. Mahoney* argued the cause for appellee United States House of Representatives in No. 98–404. With her on the brief were *Richard P. Bress*, *Geraldine R. Gennett*, *Kerry W. Kircher*, and *Michael L. Stern*. *Michael A. Carvin* argued the cause for appellees Matthew J. Glavin et al. in No. 98–564. With him on the brief were *David H. Thompson*, *Theodore M. Cooperstein*, *L. Lynn Hogue*, *Valle Simms Dutcher*, *Edward J. Fuhr*, and *Richard B. Harper*.†

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†Briefs of *amici curiae* urging reversal in No. 98–404 were filed for the State of Texas by *Dan Morales*, Attorney General of Texas, *Jorge Vega*, First Assistant Attorney General, and *Javier P. Guajardo* and *Daniel T. Torrez*, Special Assistant Attorneys General; for the County of Westchester by *Alan D. Scheinkman* and *Stacey Dolgin-Kmetz;* for the American Federation of State, County, and Municipal Employees et al. by *Peter J. Rubin* and *Jonathan S. Massey;* for the Brennan Center for Justice et al. by *Burt Neuborne*, *Deborah Goldberg*, *Steven R. Shapiro*, and *Louis M. Bograd;* for the Japanese American Citizens League by *Mike Traynor*, *William S. Freeman*, *Darryl M. Woo*, and *Gary H. Ritchey;* for the NAACP Legal Defense and Educational Fund, Inc., by *Elaine R. Jones*, *Theodore M. Shaw*, *Norman J. Chachkin*, and *Jacqueline A. Ber-*

JUSTICE O'CONNOR delivered the opinion of the Court, except as to Part III–B.

The Census Bureau (Bureau) has announced a plan to use two forms of statistical sampling in the 2000 Decennial Census to address a chronic and apparently growing problem of "undercounting" certain identifiable groups of individuals. Two sets of plaintiffs filed separate suits challenging the legality and constitutionality of the Bureau's plan. Convened as three-judge courts, the District Court for the Eastern District of Virginia and the District Court for the District of Columbia each held that the Bureau's plan for the 2000 census violates the Census Act, 13 U. S. C. § 1 *et seq.*, and both courts permanently enjoined the Bureau's planned use of statistical sampling to determine the population for purposes of congressional apportionment. 19 F. Supp. 2d 543 (ED Va. 1998); 11 F. Supp. 2d 76 (DC 1998). We noted probable jurisdiction in both cases, 524 U. S. 978 (1998); 525 U. S. 924 (1998), and consolidated the cases for oral argument, 525

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*rien;* for Jerome Gray et al. by *Barbara R. Arnwine*, *Thomas J. Henderson*, and *Edward Still.*

*Donald Dinan* filed a brief for the District of Columbia State Democratic Committee urging reversal in No. 98–564.

Briefs of *amici curiae* urging affirmance in No. 98–404 were filed for the State of Wisconsin et al. by *James E. Doyle*, Attorney General of Wisconsin, and *Peter C. Anderson*, Assistant Attorney General, *Mike Fisher*, Attorney General of Pennsylvania, and *Calvin R. Coons*, Senior Deputy Attorney General; and for the Washington Legal Foundation et al. by *Daniel J. Popeo* and *Richard A. Samp.*

Briefs of *amici curiae* urging affirmance in No. 98–564 were filed for the City of Omaha by *Paul D. Kratz;* and for the Landmark Legal Foundation by *Richard P. Hutchison.*

*William J. Olson*, *John S. Miles*, and *John F. Callender, Jr.*, filed a brief for the National Citizens Legal Network et al. as *amici curiae* urging affirmance in both cases.

Briefs of *amici curiae* were filed in No. 98–404 for the Foundation to Preserve the Integrity of the Census by *James B. Hamlin;* and for the National Republican Legislators Association et al. by *E. Mark Braden* and *Clark Bensen.*

U. S. 924 (1998). We now affirm the judgment of the District Court for the Eastern District of Virginia, and we dismiss the appeal from the District Court for the District of Columbia.

## I

### A

Article I, § 2, cl. 3, of the United States Constitution states that "Representatives . . . shall be apportioned among the several States . . . according to their respective Numbers." It further requires that "[t]he actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct." *Ibid.* Finally, § 2 of the Fourteenth Amendment provides that "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed."

Pursuant to this constitutional authority to direct the manner in which the "actual Enumeration" of the population shall be made, Congress enacted the Census Act (hereinafter Census Act or Act), 13 U. S. C. § 1 *et seq.*, delegating to the Secretary of Commerce (Secretary) authority to conduct the decennial census. § 4. The Act provides that the Secretary "shall, in the year 1980 and every 10 years thereafter, take a decennial census of population as of the first day of April of such year." § 141(a). It further requires that "[t]he tabulation of total population by States . . . as required for the apportionment of Representatives in Congress among the several States shall be completed within 9 months after the census date and reported by the Secretary to the President of the United States." § 141(b). Using this information, the President must then "transmit to the Congress a statement showing the whole number of persons in each State . . . and the number of Representatives to which each State

would be entitled." 2 U. S. C. § 2a(a). Within 15 days thereafter, the Clerk of the House of Representatives must "send to the executive of each State a certificate of the number of Representatives to which such State is entitled." 2 U. S. C. § 2a(b) (1994 ed., Supp. III).

The instant dispute centers on the problem of "undercount" in the decennial census. For the last few decades, the Bureau has sent census forms to every household, which it asked residents to complete and return. The Bureau followed up on the mailing by sending enumerators to personally visit all households that did not respond by mail. Despite this comprehensive effort to reach every household, the Bureau has always failed to reach—and has thus failed to count—a portion of the population. This shortfall has been labeled the census "undercount."

The Bureau has been measuring the census undercount rate since 1940, and undercount has been the subject of public debate at least since the early 1970's. See M. Anderson, The American Census: A Social History 221–222 (1988). It has been measured in one of two ways. Under one method, known as "demographic analysis," the Bureau develops an independent estimate of the population using birth, death, immigration, and emigration records. U. S. Dept. of Commerce, Bureau of the Census, Report to Congress: The Plan for Census 2000, p. 2, and n. 1 (Aug. 1997) (hereinafter Census 2000 Report). A second method, first used in 1990, involves a large sample survey, called the "Post-Enumeration Survey," that is conducted in conjunction with the decennial census. The Bureau compares the information gathered during the survey with the information obtained in the census and uses the comparison to estimate the number of unenumerated people in the census. See National Research Council, Modernizing the U. S. Census 30–31 (B. Edmonston & C. Schultze eds. 1995).

Some identifiable groups—including certain minorities, children, and renters—have historically had substantially

higher undercount rates than the population as a whole. See Census 2000 Report 3–4. Accordingly, in previous censuses, the Bureau sought to increase the number of persons from whom it obtained information. In 1990, for instance, the Bureau attempted to reach out to traditionally undercounted groups by promoting awareness of the census and its importance, providing access to Spanish language forms, and offering a toll free number for those who had questions about the forms. *Id.*, at 4. Indeed, the 1990 census was "better designed and executed than any previous census." *Id.*, at 2. Nonetheless, it was less accurate than its predecessor for the first time since the Bureau began measuring the undercount rate in 1940. *Ibid.*

In a further effort to address growing concerns about undercount in the census, Congress passed the Decennial Census Improvement Act of 1991, which instructed the Secretary to contract with the National Academy of Sciences (Academy) to study the "means by which the Government could achieve the most accurate population count possible." § 2(a)(1), 105 Stat. 635, note following 13 U. S. C. § 141. Among the issues the Academy was directed to consider was "the appropriateness of using sampling methods, in combination with basic data-collection techniques or otherwise, in the acquisition or refinement of population data." *Ibid.* Two of the three panels established by the Academy pursuant to this Act concluded that "[d]ifferential undercount cannot be reduced to acceptable levels at acceptable costs without the use of integrated coverage measurement," a statistical sampling procedure that adjusts census results to account for undercount in the initial enumeration, Census 2000 Report 7–8, and all three panels recommended including integrated coverage measurement in the 2000 census, *id.*, at 29. See National Research Council, Preparing for the 2000 Census: Interim Report II (A. White & K. Rust eds. 1997) (report of Panel to Evaluate Alternative Census Methodologies); Modernizing the U. S. Census, *supra* (report of Panel

on Census Requirements in the Year 2000 and Beyond); U. S. Dept. of Commerce, Bureau of the Census, Census 2000 Operational Plan (1997).

In light of these studies and other research, the Bureau formulated a plan for the 2000 census that uses statistical sampling to supplement data obtained through traditional census methods. The Bureau plan provides for two types of sampling that are the subject of the instant challenge.[1] First, appellees challenge the proposed use of sampling in the Nonresponse Followup program (NRFU). Under this program, the Bureau would continue to send census forms to all households, as well as make forms available in post offices and in other public places. The Bureau expects that 67 percent of households will return the forms. See Census 2000 Report 26. The Bureau then plans to divide the population into census tracts of approximately 4,000 people that have "homogenous population characteristics, economic status, and living conditions." *Id.*, at 27. The Bureau would then visit a randomly selected sample of nonresponding housing units, which would be "statistically representative of all housing units in [a] nonresponding tract." *Id.*, at 28. The rate of nonresponse followup in a tract would vary with the mail response rate to ensure that the Bureau obtains census data from at least 90 percent of the housing units in each census tract. *Ibid.* For instance, if a census tract had 1,000 housing units and 800 units responded by mail, the Bureau would survey 100 out of the 200 nonresponding units to obtain information about 90 percent of the housing units. However, if only 400 of the 1,000 housing units responded by mail, the Bureau would visit 500 of the 600 nonresponding units to achieve the same result. *Id.*, at 29. The informa-

[1] The Postal Vacancy Check program is not challenged here. See 19 F. Supp. 2d 543, 545 (ED Va. 1998) ("The Bureau's plan to use sampling in the Postal Vacancy Check is not in dispute in this lawsuit"). See also 11 F. Supp. 2d 76, 80 (DC 1998) ("The Postal Vacancy Check sampling plan is not at issue in this litigation").

tion gathered from the nonresponding housing units surveyed by the Bureau would then be used to estimate the size and characteristics of the nonresponding housing units that the Bureau did not visit. Thus, continuing with the first example, the Bureau would use information about the 100 nonresponding units it visits to estimate the characteristics of the remaining 100 nonresponding units on which the Bureau has no information. See *ibid.*

The second challenged sampling procedure—which would be implemented after the first is completed—is known as Integrated Coverage Measurement (ICM). ICM employs the statistical technique called Dual System Estimation (DSE) to adjust the census results to account for undercount in the initial enumeration. The plan requires the Bureau to begin by classifying each of the country's 7 million blocks into "strata," which are defined by the characteristics of each block, including state, racial, and ethnic composition, and the proportion of homeowners to renters, as revealed in the 1990 census. *Id.*, at 30. The Bureau then plans to select blocks at random from each stratum, for a total of 25,000 blocks, or an estimated 750,000 housing units. *Ibid.* Enumerators would then conduct interviews at each of those 750,000 units, and if discrepancies were detected between the pre-ICM response and ICM response, a followup interview would be conducted to determine the "true" situation in the home. *Ibid.* The information gathered during this stage would be used to assign each person to a poststratum—a group of people who have similar chances of being counted in the initial data collection—which would be defined by state geographic subdivision (*e. g.*, rural or urban), owner or renter, age, sex, race, and Hispanic origin. *Id.*, at 31.

In the final stage of the census, the Bureau plans to use DSE to obtain the final count and characteristics of the population. The census plan calls for the Bureau to compare the dual systems of information—that is, the data gathered on the sample blocks during the ICM and the data gathered on

those same blocks through the initial phase of the census—to produce an estimation factor for each poststratum. The estimation factors would account for the differences between the ICM numbers and the initial enumeration and would be applied to the initial enumeration to estimate the total population and housing units in each poststratum. *Id.*, at 31–32. The totals for the poststrata would then be summed to determine state and national population totals. *Id.*, at 32.

The Bureau's announcement of its plan to use statistical sampling in the 2000 census led to a flurry of legislative activity. Congress amended the Census Act to provide that, "[n]otwithstanding any other provision of law, no sampling or any other statistical procedure, including any statistical adjustment, may be used in any determination of population for purposes of the apportionment of Representatives in Congress among the several States," H. R. Conf. Rep. No. 105–119, p. 67 (1997), but President Clinton vetoed the bill, see Message to the House of Representatives Returning Without Approval Emergency Supplemental Appropriations Legislation, 33 Weekly Comp. of Pres. Doc. 846, 847 (1997). Congress then passed, and the President signed, a bill providing for the creation of a "comprehensive and detailed plan outlining [the Bureau's] proposed methodologies for conducting the 2000 Decennial Census and available methods to conduct an actual enumeration of the population," including an explanation of any statistical methodologies that may be used. 1997 Emergency Supplemental Appropriations Act for Recovery From Natural Disasters, and for Overseas Peacekeeping Efforts, Including Those in Bosnia, Tit. VIII, 111 Stat. 217. Pursuant to this directive, the Commerce Department issued the Census 2000 Report. After receiving the Report, Congress passed the 1998 Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, § 209, 111 Stat. 2482, which provides that the Census 2000 Report and the Bureau's Census 2000 Operational Plan "shall be deemed to constitute final agency

action regarding the use of statistical methods in the 2000 decennial census." The Act also permits any person aggrieved by the plan to use statistical sampling in the decennial census to bring a legal action and requires that any action brought under the Act be heard by a three-judge district court. *Ibid.* It further provides for review by appeal directly to this Court. *Ibid.*

B

The publication of the Bureau's plan for the 2000 census occasioned two separate legal challenges. The first suit, styled *Clinton* v. *Glavin*, was filed on February 12, 1998, in the District Court for the Eastern District of Virginia by four counties (Cobb County, Georgia; Bucks County, Pennsylvania; Delaware County, Pennsylvania; and DuPage County, Illinois) and residents of 13 States (Arizona, California, Connecticut, Florida, Georgia, Illinois, Indiana, Montana, Nevada, Ohio, Pennsylvania, Virginia, and Wisconsin), who claimed that the Bureau's planned use of statistical sampling to apportion Representatives among the States violates the Census Act and the Census Clause of the Constitution. They sought a declaration that the Bureau's plan is unlawful and/or unconstitutional and an injunction barring use of the NRFU and ICM sampling procedures in the 2000 census.

The District Court held that the case was ripe for review, that the plaintiffs satisfied the requirements for Article III standing, and that the Census Act prohibited use of the challenged sampling procedures to apportion Representatives. 19 F. Supp. 2d, at 547, 548–550, 553. The District Court concluded that, because the statute was clear on its face, the court did not need to reach the constitutional questions presented. *Id.*, at 553. It thus denied defendants' motion to dismiss, granted plaintiffs' motion for summary judgment, and permanently enjoined the use of the challenged sampling procedures to determine the population for purposes of congressional apportionment. *Id.*, at 545, 553. We noted probable jurisdiction on October 9, 1998. 525 U. S. 924.

The second challenge was filed by the United States House of Representatives on February 20, 1998, in the District Court for the District of Columbia. The House sought a declaration that the Bureau's proposed use of sampling to determine the population for purposes of apportioning Members of the House of Representatives among the several States violates the Census Act and the Constitution. The House also sought a permanent injunction barring use of the challenged sampling procedures in the apportionment aspect of the 2000 census.

The District Court held that the House had Article III standing, the suit was ripe for review, equitable concerns did not warrant dismissal, the suit did not violate separation of powers principles, and the Census Act does not permit the use of the challenged sampling procedures in counting the population for apportionment. 11 F. Supp. 2d, at 93, 95, 97, 104. Because it held that the Census Act does not allow for the challenged sampling procedures, it declined to reach the House's constitutional challenge under the Census Clause. *Id.*, at 104. The District Court denied the defendants' motion to dismiss, granted the plaintiffs' motion for summary judgment, and issued an injunction preventing defendants from using the challenged sampling methods in the apportionment aspect of the 2000 census. *Id.*, at 79, 104. The defendants appealed to this Court and we noted probable jurisdiction on September 10, 1998, 524 U. S. 978, and consolidated this case with *Clinton* v. *Glavin*, No. 98–564, for oral argument, 525 U. S. 924 (1998).

## II

We turn our attention first to the issues presented by *Clinton* v. *Glavin*, No. 98–564, and we begin our analysis with the threshold issue of justiciability. Congress has eliminated any prudential concerns in this case by providing that "[a]ny person aggrieved by the use of any statistical method in violation of the Constitution or any provision of law (other

than this Act), in connection with the 2000 census or any later decennial census, to determine the population for purposes of the apportionment or redistricting of Members in Congress, may in a civil action obtain declaratory, injunctive, and any other appropriate relief against the use of such method." § 209(b), 111 Stat. 2481. In addition, the District Court below correctly found that the case is ripe for review, and that determination is not challenged here. 19 F. Supp. 2d, at 547; see *Abbott Laboratories* v. *Gardner*, 387 U. S. 136, 149 (1967). Thus, the only open justiciability question in this case is whether appellees satisfy the requirements of Article III standing.

We have repeatedly noted that in order to establish Article III standing, "[a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen* v. *Wright*, 468 U. S. 737, 751 (1984). See also *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560–561 (1992); *Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.*, 454 U. S. 464, 472 (1982). To prevail on a Federal Rule of Civil Procedure 56 motion for summary judgment—as opposed to a motion to dismiss—however, mere allegations of injury are insufficient. Rather, a plaintiff must establish that there exists no genuine issue of material fact as to justiciability or the merits. See *Lujan* v. *National Wildlife Federation*, 497 U. S. 871, 884 (1990). See also *id.*, at 902 (Blackmun, J., dissenting). Here, the District Court, considering a Rule 56 motion, held that the plaintiffs-appellees, residents from 13 States, had established Article III standing to bring suit challenging the proposed method for conducting the 2000 census because they had made "[g]eneral factual allegations of injury resulting from Defendant's conduct." 19 F. Supp., at 548–550. The court did not, however, consider whether there was a genuine issue of material fact as to standing.

Nonetheless, because the record before us amply supports the conclusion that several of the appellees have met their burden of proof regarding their standing to bring this suit, we affirm the District Court's holding. See *Director, Office of Workers' Compensation Programs* v. *Perini North River Associates*, 459 U. S. 297, 303–305 (1983) (holding that presence of one party with standing assures that controversy before Court is justiciable); *Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U. S. 252, 264, and n. 9 (1977) (same). In support of their motion for summary judgment, appellees submitted the affidavit of Dr. Ronald F. Weber, a professor of government at the University of Wisconsin, which demonstrates that Indiana resident Gary A. Hofmeister has standing to challenge the proposed census 2000 plan.[2] Affidavit of Dr. Ronald F. Weber, App. in No. 98–564, pp. 56–79 (hereinafter Weber Affidavit). Utilizing data published by the Bureau, Dr. Weber projected year 2000 populations and net undercount rates for all States under the 1990 method of enumeration and under the Department's proposed plan for the 2000 census. See *id.*, at 62–63. He then determined on the basis of these projections how many Representatives would be apportioned to each State under each method and concluded that "it is a virtual certainty that Indiana will lose a seat . . . under the Department's Plan." *Id.*, at 65.

Appellants have failed to set forth any specific facts showing that there is a genuine issue of standing for trial. See

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[2] Appellants suggested at oral argument before this Court that appellees had conceded that Indiana was not likely to lose a House seat under the Bureau's sampling plan. Tr. of Oral Arg. 30. Indeed, during a motions hearing before the District Court, appellees "concede[d]," *arguendo*, that Indiana "is not going to lose a house *[sic]* seat." Tr. 85 (Aug. 7, 1998). Clearly this purported concession was made only for the sake of argument and was treated as such by the District Court. Moreover, appellants did not raise this issue until oral argument before this Court. Accordingly, we decline to view the appellees' statement as amounting to a true concession.

Fed. Rule Civ. Proc. 56(e). Appellants have submitted two affidavits that detail various deficiencies in the statistical analysis performed by Dr. Weber. See Declaration of Signe I. Wetrogan, Assistant Division Chief for Population Estimates and Projections, United States Bureau of the Census, App. in No. 98–564, pp. 92–99 (hereinafter Wetrogan Declaration); Declaration of John H. Thompson, Associate Director for the Decennial Census, United States Bureau of the Census, *id.*, at 100–110 (hereinafter Thompson Declaration). Appellants' experts do not, however, demonstrate that any alleged flaw in Dr. Weber's analysis calls into question his ultimate conclusion that Indiana is virtually certain to lose a seat. One expert, for example, claims that Dr. Weber's statement that Indiana is virtually certain to lose a seat is "of dubious credibility," but she fails to provide any specific factual support for this assertion. Wetrogan Declaration 97. She claims that Dr. Weber used outdated population numbers, but she does not demonstrate the impact that using more recent population data would have on Dr. Weber's ultimate conclusion about Indiana. *Id.*, at 97–98. Neither of the appellants' experts reestimates the populations of the States using more "accurate" or "up-to-date" data to show that this data would produce different results. Indeed, the Associate Director for the Decennial Census specifically admits in his declaration that Dr. Weber used precisely the same data that the Bureau uses "to help it estimate expected error rates for Census 2000." Thompson Declaration 106. Appellants have therefore failed to raise a genuine issue of material fact regarding Indiana's loss of a Representative.

Appellee Hofmeister's expected loss of a Representative to the United States Congress undoubtedly satisfies the injury-in-fact requirement of Article III standing. In the context of apportionment, we have held that voters have standing to challenge an apportionment statute because "[t]hey are asserting 'a plain, direct and adequate interest in

maintaining the effectiveness of their votes.'" *Baker* v. *Carr*, 369 U. S. 186, 208 (1962) (quoting *Coleman* v. *Miller*, 307 U. S. 433, 438 (1939)). The same distinct interest is at issue here: With one fewer Representative, Indiana residents' votes will be diluted. Moreover, the threat of vote dilution through the use of sampling is "concrete" and "actual or imminent, not 'conjectural' or 'hypothetical.'" *Whitmore* v. *Arkansas*, 495 U. S. 149, 155 (1990). It is clear that if the Bureau is going to alter its plan to use sampling in the 2000 census, it must begin doing so by March 1999. See Oversight of the 2000 Census: Putting the Dress Rehearsals in Perspective, Hearing before the Subcommittee on the Census of the House Committee on Government Reform and Oversight, 105th Cong., 2d Sess., 84 (1998) (statement of James F. Holmes, Acting Director of the Bureau) ("I must caution that by this time next year [*i. e.*, March 1999] the train for census 2000 has to be on one track. If the uncertainty continues, if our staff continues to have to do two jobs, . . . [the census] will truly be imperiled"). See also § 209, 111 Stat. 2480 (providing that the Bureau's plan to use statistical sampling in the 2000 census constitutes "final agency action"). And it is certainly not necessary for this Court to wait until the census has been conducted to consider the issues presented here, because such a pause would result in extreme—possibly irremediable—hardship. In addition, as Dr. Weber's affidavit demonstrates, Hofmeister meets the second and third requirements of Article III standing. There is undoubtedly a "traceable" connection between the use of sampling in the decennial census and Indiana's expected loss of a Representative, and there is a substantial likelihood that the requested relief—a permanent injunction against the proposed uses of sampling in the census—will redress the alleged injury.

Appellees have also established standing on the basis of the expected effects of the use of sampling in the 2000 census on intrastate redistricting. Dr. Weber indicated in his affi-

davit that "[i]t is substantially likely that voters in Maricopa County, Arizona, Bergen County, New Jersey, Cumberland County, Pennsylvania, LaSalle County, Illinois, Orange County, California, St. Johns County, Florida, Gallatin County, Montana, Forsyth County, Georgia, and Loudoun County, Virginia, will suffer vote dilution in state and local elections as a result of the [Bureau's] Plan." Weber Affidavit 77–78. Several of the appellees reside in these counties,[3] and several of the States in which these counties are located require use of federal decennial census population numbers for their state legislative redistricting. The New Jersey Constitution, for instance, requires that state senators be apportioned among Senate districts "as nearly as may be according to the number of their inhabitants as reported in the last preceding decennial census of the United States." Art. IV, § 1, ¶1. Similarly, the Pennsylvania Constitution requires that "[i]n each year following the year of the Federal decennial census, a Legislative Reapportionment Commission shall be constituted for the purpose of reapportioning the Commonwealth." Art. 2, § 17(a). Several of the other States cited by Dr. Weber have comparable laws.[4]

[3] The appellees that reside in the counties that Dr. Weber predicts will lose population relative to other counties if statistical sampling is used in the decennial census are Matthew Glavin (Forsyth County, Georgia), Stephen Gons (Cumberland County, Pennsylvania), James F. McLaughlin (Bergen County, New Jersey), John Taylor (Loudoun County, Virginia), Deborah Hardman (St. Johns County, Florida), Jim Lacy (Orange County, California), Helen V. England (Maricopa County, Arizona), Amie S. Carter (Gallatin County, Montana), and Michael T. James (LaSalle County, Illinois). Complaint for Declaratory and Injunctive Relief, App. in No. 98–564, pp. 9–12.

[4] See, *e. g.*, Fla. Stat. § 11.031(1) (1998) ("All acts of the Florida Legislature based upon population and all constitutional apportionments shall be based upon the last federal decennial statewide census"); Ga. Const., Art. 3, § 2 ("The apportionment of the Senate and of the House of Representatives shall be changed by the General Assembly as necessary after each United States decennial census"); Ill. Const., Art. 4, § 3(b) ("In the year following each Federal decennial census year, the General Assembly by

Moreover, States use the population numbers generated by the federal decennial census for federal congressional redistricting. See *Karcher* v. *Daggett*, 462 U. S. 725, 738 (1983) ("[B]ecause the census count represents the 'best population data available,' . . . it is the only basis for good-faith attempts to achieve population equality" (citation omitted)). Thus, the appellees who live in the aforementioned counties have a strong claim that they will be injured by the Bureau's plan because their votes will be diluted vis-à-vis residents of counties with larger "undercount" rates. Neither of appellants' experts specifically contested Dr. Weber's conclusion that the nine counties were substantially likely to lose population if statistical sampling were used in the 2000 census. See Wetrogan Declaration 92–99; Thompson Declaration 100–110. The experts' general assertions regarding Dr. Weber's methodology and data are again insufficient to create a genuine issue of material fact. For the reasons discussed above, see *supra*, at 332–333 and this page, this expected intrastate vote dilution satisfies the injury-in-fact, causation, and redressibility requirements. Accordingly, appellees have again carried their burden under Rule 56 and have established standing to pursue this case.

## III

We accordingly arrive at the dispute over the meaning of the relevant provisions of the Census Act. The District Court below examined the plain text and legislative history of the Act and concluded that the proposed use of statistical sampling to determine population for purposes of apportioning congressional seats among the States violates the Act. We agree.

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law shall redistrict the Legislative Districts and Representative Districts"); Ill. Comp. Stat., ch. 55, §2–3001c (1993) (providing that for purposes of reapportionment of county for election of county board, "'[p]opulation' means the number of inhabitants as determined by the last preceding federal decennial census").

A

An understanding of the historical background of the decennial census and the Act that governs it is essential to a proper interpretation of the Act's present text. From the very first census, the census of 1790, Congress has prohibited the use of statistical sampling in calculating the population for purposes of apportionment. The First Congress enacted legislation requiring census enumerators to swear an oath to make "a just and perfect enumeration" of every person within the division to which they were assigned. Act of Mar. 1, 1790, § 1, 1 Stat. 101. Each enumerator was required to compile a schedule of information for his district, listing by family name the number of persons in each family that fell into each of five specified categories. See *id.*, at 101–102. Congress modified this provision in 1810, adding an express statement that "the said enumeration shall be made by an actual inquiry at every dwelling-house, or of the head of every family within each district, and not otherwise," and expanding the number of specifications in the schedule of information. Act of Mar. 26, 1810, § 1, 2 Stat. 565–566. The requirement that census enumerators visit each home in person appeared in statutes governing the next 14 censuses.[5]

[5] See Act of Mar. 14, 1820, 3 Stat. 548, 549 ("And the said enumeration shall be made by an actual inquiry at every dwelling-house, or of the head of every family, and not otherwise"); Act of Mar. 23, 1830, § 1, 4 Stat. 384 ("[T]he said enumeration shall be made by an actual inquiry by such marshals or assistants, at every dwelling-house, or by personal inquiry of the head of every family"); Act of Mar. 3, 1839, § 1, 5 Stat. 332 (substantially same); Act of May 23, 1850, § 10, 9 Stat. 430 (governing censuses of 1850–1870) ("[E]ach assistant . . . shall perform the service required of him, by a personal visit to each dwelling-house, and to each family, in the subdivision assigned to him, and shall ascertain, by inquiries made of some member of each family, if any one can be found capable of giving the information, but if not, then of the agent of such family, the name of each member thereof, the age and place of birth of each, and all the other particulars specified in this act"); Act of Mar. 3, 1879, § 8, 20 Stat. 475 ("It shall be the duty of each enumerator . . . to visit personally each dwelling-house in his subdivision, and each family therein, and each individual living out of a

The current Census Act was enacted into positive law in 1954. It contained substantially the same language as did its predecessor statutes, requiring enumerators to "visit personally each dwelling house in his subdivision" in order to obtain "every item of information and all particulars required for any census or survey" conducted in connection with the census. Act of Aug. 31, 1954, § 25(c), 68 Stat. 1012, 1015. Indeed, the first departure from the requirement that the enumerators collect all census information through personal visits to every household in the Nation came in 1957 at the behest of the Secretary. The Secretary asked Congress to amend the Act to permit the Bureau to use statistical sampling in gathering some of the census information. See Amendment of Title 13, United States Code, Relating to Census: Hearing on H. R. 7911 before the House Committee on the Post Office and Civil Service, 85th Cong., 1st Sess., 4–8 (1957) (hereinafter 1957 Hearing). In response, Congress enacted § 195, which provided that, "[e]xcept for the determination of population for apportionment purposes, the Secretary may, where he deems it appropriate, authorize the use of the statistical method known as 'sampling' in carrying out the provisions of this title." 13 U. S. C. § 195 (1970 ed.). This provision allowed the Secretary to authorize the use of

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family in any place of abode, and by inquiry made of the head of such family, or of the member thereof deemed most credible and worthy of trust, or of such individual living out of a family, to obtain each and every item of information and all the particulars required by this act"); Act of Mar. 1, 1889, § 9, 25 Stat. 763 (same); Act of Mar. 3, 1899, § 12, 30 Stat. 1018 (substantially same); Act of July 2, 1909, § 12, 36 Stat. 5 (same); Act of Mar. 3, 1919, § 12, 40 Stat. 1296 (same; also introducing provision permitting enumerators to gather from neighbors information regarding households where no one is present); Act of June 18, 1929, § 5, 46 Stat. 22 (governing 1930–1950 censuses) (substantially same). See also W. Holt, The Bureau of the Census: Its History, Activities and Organization 1–94 (1929) (describing evolution of census); C. Wright, The History and Growth of the United States Census (prepared for the Senate Committee on the Census), S. Doc. No. 194, 56th Cong., 1st Sess., 7–130 (1900) (same).

sampling procedures in gathering supplemental, nonapportionment census information regarding population, unemployment, housing, and other matters collected in conjunction with the decennial census—much of which is now collected through what is known as the "long form"—but it did not authorize the use of sampling procedures in connection with apportionment of Representatives. See also 1957 Hearing 7–8 ("Experience has shown that some of the information which is desired in connection with a census could be secured efficiently through a sample survey which is conducted concurrently with the complete enumeration of other items").

In 1964, Congress repealed former § 25(c) of the Census Act, see Act of Aug. 31, 1964, 78 Stat. 737, which had required that each enumerator obtain "every item of information" by personal visit to each household, 68 Stat. 1015. The repeal of this section permitted the Bureau to replace the personal visit of the enumerator with a form delivered and returned via the Postal Service. Pursuant to this new authority, census officials conducted approximately 60 percent of the census through a new "mailout-mailback" system for the first time in 1970. See M. Anderson, The American Census: A Social History 210–211 (1988). The Bureau then conducted followup visits to homes that failed to return census forms. Thus, although the legislation permitted the Bureau to conduct a portion of the census through the mail, there was no suggestion from any quarter that this change altered the prohibition in § 195 on the use of statistical sampling in determining the population for apportionment purposes.

In 1976, the provisions of the Census Act at issue in this case took their present form. Congress revised § 141 of the Census Act, which is now entitled "Population and other census information." It amended subsection (a) to authorize the Secretary to "take a decennial census of population as of the first day of April of such year, which date shall be known as the 'decennial census date', in such form and content as

he may determine, including the use of sampling procedures and special surveys." 13 U. S. C. § 141(a). Congress also added several subsections to § 141, among them a provision specifying that the term "census of population," as used in § 141, "means a census of population, housing, and matters relating to population and housing." § 141(g). Together, these revisions provided a broad statement that in collecting a range of demographic information during the decennial census, the Bureau would be permitted to use sampling procedures and special surveys.

This broad grant of authority given in § 141(a) is informed, however, by the narrower and more specific § 195, which is revealingly entitled, "Use of Sampling." See *Green* v. *Bock Laundry Machine Co.*, 490 U. S. 504, 524 (1989). The § 141 authorization to use sampling techniques in the decennial census is not necessarily an authorization to use these techniques in collecting all of the information that is gathered during the decennial census. We look to the remainder of the law to determine what portions of the decennial census the authorization covers. When we do, we discover that, as discussed above, § 195 directly prohibits the use of sampling in the determination of population for purposes of apportionment.[6]

When Congress amended § 195 in 1976, it did not in doing so alter the longstanding prohibition on the use of sampling in matters relating to apportionment. Congress modified the section by changing "apportionment purposes" to "purposes of apportionment of Representatives in Congress among the several States" and changing the phrase "may,

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[6] Although § 195 applies to both the mid-decade census and the decennial census, the prohibition on the use of sampling in determining the population for purposes of apportionment applies only to the decennial census. See § 141(e)(2) ("Information obtained in any mid-decade census shall not be used for apportionment of Representatives in Congress among the several States, nor shall such information be used in prescribing congressional districts").

where he deems it appropriate" to "shall, if he considers it feasible." 90 Stat. 2464. The amended section thus reads: "Except for the determination of population for purposes of apportionment of Representatives in Congress among the several States, the Secretary shall, if he considers it feasible, authorize the use of the statistical method known as 'sampling' in carrying out the provisions of this title." 13 U. S. C. § 195. As amended, the section now requires the Secretary to use statistical sampling in assembling the myriad demographic data that are collected in connection with the decennial census. But the section maintains its prohibition on the use of statistical sampling in calculating population for purposes of apportionment.

Absent any historical context, the language in the amended § 195 might reasonably be read as either permissive or prohibitive with regard to the use of sampling for apportionment purposes. Indeed, appellees and appellants each cite numerous examples of the "except/shall" sentence structure that support their respective interpretations of the statute. See, *e. g.*, Brief for Appellee Glavin et al. in No. 98–564, p. 36, n. 36 (citing § 2 of the Fourteenth Amendment, which provides that "when the right to vote . . . is denied to any of the male inhabitants of such State . . . *except* for participation in rebellion, or other crime, the basis of representation therein *shall* be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State" (emphasis added)); Brief for Federal Appellant et al. in No. 98–404, p. 29, n. 15 (citing 2 U. S. C. §§ 179n(a)(1) and 384(a) and 5 U. S. C. § 555(e), which contain the "except/shall" formulation in contexts where appellants claim "the exception cannot reasonably be construed as prohibiting the excepted activity"). But these dueling examples only serve to illustrate that the interpretation of the "except/shall" structure depends primarily on the broader context in which that structure appears. Here, the context is provided by over 200

years during which federal statutes have prohibited the use of statistical sampling where apportionment is concerned. In light of this background, there is only one plausible reading of the amended § 195: It prohibits the use of sampling in calculating the population for purposes of apportionment.

In fact, the Bureau itself concluded in 1980 that the Census Act, as amended, "clearly" continued the "historical precedent of using the 'actual Enumeration' for purposes of apportionment, while eschewing estimates based on sampling or other statistical procedures, no matter how sophisticated." See 45 Fed. Reg. 69366, 69372 (1980). That same year, the Solicitor General argued before this Court that "13 U. S. C. 195 prohibits the use of statistical 'sampling methods' in determining the state-by-state population totals." Application for Stay in *Klutznick* v. *Young*, O. T. 1979, No. A–533, p. 14, n. 7. See also *Young* v. *Klutznick*, 652 F. 2d 617, 621 (CA6 1981) (noting that the Census Director and other officials explained at trial that "since 1790 the census enumeration has never been adjusted to reflect an estimated undercount and that in their opinion Congress by statute had prohibited such an adjustment in the figures used for purposes of Congressional apportionment"), cert. denied *sub nom. Young* v. *Baldrige*, 455 U. S. 939 (1982); *Philadelphia* v. *Klutznik*, 503 F. Supp. 663, 678 (ED Pa. 1980) (noting that the Bureau argued that "Congress has clearly rejected the use of an adjustment figure in the Census Act"); *Carey* v. *Klutznik*, 508 F. Supp. 404 (SDNY 1980) ("Defendants [including the Secretary of Commerce and the Director of the Bureau of the Census] [contend that the] Census Act preclude[s] utilization of statistical adjustment for the purpose of apportioning representatives"), rev'd, 653 F. 2d 732 (CA2 1981), cert. denied, 455 U. S. 999 (1982). The administration did not adopt the contrary position until 1994, when it first concluded that using statistical sampling to adjust census figures would be consistent with the Census Act. Memorandum for the Solicitor General from Assistant Attorney Gen-

eral Dellinger 1 (Oct. 7, 1994). In light of this history, appellants make no claim to deference under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), on behalf of the Secretary's interpretation of the Census Act. Reply Brief for Federal Appellant et al. in No. 98–404, p. 11, n. 10.

In holding that the 1976 amendments did not change the prohibition on the use of sampling in determining the population for apportionment purposes, we do not mean to suggest, as JUSTICE STEVENS claims in dissent, that the 1976 amendments had no purpose. See *post*, at 360–362. Rather, the amendments served a very important purpose: They changed a provision that *permitted* the use of sampling for purposes other than apportionment into one that *required* that sampling be used for such purposes if "feasible." They also added to the existing delegation of authority to the Secretary to carry out the decennial census a statement indicating that despite the move to mandatory use of sampling in collecting nonapportionment information, the Secretary retained substantial authority to determine the manner in which the decennial census is conducted.

JUSTICE STEVENS' argument reveals a rather limited conception of the extent and purpose of the decennial census. The decennial census is "the only census that is used for apportionment purposes," *post*, at 359, but the decennial census is not *only used* for apportionment purposes. Although originally established for the sole purpose of apportioning Representatives, the decennial census has grown considerably over the past 200 years. It now serves as "a linchpin of the federal statistical system by collecting data on the characteristics of individuals, households, and housing units throughout the country." National Research Council, Counting People in the Information Age 1 (D. Steffey & N. Bradburn eds. 1994). Thus, to say that the 1976 amendments required the use of sampling in collecting nonapportionment information but had no effect on the way in which the Secre-

tary could determine the population for the purposes of apportionment is to say that they had a purpose—just not the purpose that JUSTICE STEVENS imagines.

JUSTICE BREYER's interpretation of § 195 is equally unpersuasive. JUSTICE BREYER agrees with the Court that the Census Act prohibits the use of sampling as a substitute for traditional enumeration methods. But he believes that this prohibition does not apply to the use of sampling as a "supplement" to traditional enumeration methods. This distinction is not borne out by the language of the statute. The Census Act provides that sampling cannot be used "for the determination of population for purposes of apportionment of Representatives in Congress among the several States." 13 U. S. C. § 195. Whether used as a "supplement" or as a "substitute," sampling is still used in "determining"—that is, in "the act of deciding definitely and firmly." Webster's Ninth New Collegiate Dictionary 346 (1983). Under the proposed plan, the population is not "determined," not decided definitely and firmly, until the NRFU and ICM are complete. That the distinction drawn by JUSTICE BREYER is untenable is perhaps best demonstrated by his own inability to apply it consistently. He acknowledges that the NRFU uses statistical sampling "to *determine* the last 10% of the population in each census tract," *post*, at 355 (emphasis added), yet he nonetheless finds that it is a supplement to the headcount and thus permitted by the Act.

B

The conclusion that the Census Act prohibits the use of sampling for apportionment purposes finds support in the debate and discussions surrounding the 1976 revisions to the Census Act. At no point during the debates over these amendments did a single Member of Congress suggest that the amendments would so fundamentally change the manner in which the Bureau could calculate the population for purposes of apportionment. See 122 Cong. Rec. 35171–35175

(1976); *id.*, at 9792–9803, 32251–32253, 33128–33132, 33305–33307, 33815; Mid-Decade Census Legislation: Hearing on S. 3688 and H. R. 11337 before the Subcommittee on Census and Statistics of the House Committee on the Post Office and Civil Service, 94th Cong., 2d Sess. (1976). See also H. R. Rep. No. 94–944 (1976); H. R. Conf. Rep. No. 94–1719 (1976); S. Rep. No. 94–1256 (1976). This is true despite the fact that such a change would profoundly affect Congress by likely shifting the number of seats apportioned to some States and altering district lines in many others. Indeed, it tests the limits of reason to suggest that despite such silence, Members of Congress voting for those amendments intended to enact what would arguably be the single most significant change in the method of conducting the decennial census since its inception. That the 1976 changes to §§ 141 and 195 were not the focus of partisan debate, see *post*, at 360–361 (STEVENS, J., dissenting), is almost certainly due to the fact that the Members of Congress voting on the bill read the text of the statute, as do we, to prohibit the use of sampling in determining the population for apportionment purposes. Moreover, it is hard to imagine that, having explicitly prohibited the use of sampling for apportionment purposes in 1957, Congress would have decided to reverse course on such an important issue by enacting only a subtle change in phraseology.

## IV

For the reasons stated, we conclude that the Census Act prohibits the proposed uses of statistical sampling in calculating the population for purposes of apportionment. Because we so conclude, we find it unnecessary to reach the constitutional question presented. See *Spector Motor Service, Inc.* v. *McLaughlin*, 323 U. S. 101, 105 (1944) ("If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable"); *Ashwander* v. *TVA*, 297 U. S. 288,

347 (1936) (Brandeis, J., concurring) ("[I]f a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter"). Accordingly, we affirm the judgment of the District Court for the Eastern District of Virginia in *Clinton* v. *Glavin*, No. 98–564. As this decision also resolves the substantive issues presented by *Department of Commerce* v. *United States House of Representatives*, No. 98–404, that case no longer presents a substantial federal question. The appeal in that case is therefore dismissed. Cf. *Sanks* v. *Georgia*, 401 U. S. 144, 145 (1971).

*It is so ordered.*

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, and with whom THE CHIEF JUSTICE and JUSTICE KENNEDY join as to Part II, concurring in part.

I

I join the opinion of the Court, excluding, of course, the plurality's resort in Part III–B to what was said by individual legislators and committees of legislators—or more precisely (and worse yet), what was *not* said by individual legislators and committees of legislators. I write separately to respond at somewhat greater length to JUSTICE STEVENS' analysis of 13 U. S. C. § 141(a), to add several additional points of textual analysis, and to invoke the doctrine of constitutional doubt, which is a major factor in my decision.

II

Section 141(a) requires the Secretary of Commerce to conduct a "decennial census of population . . . in such form and content as he may determine, including the use of sampling procedures and special surveys." JUSTICE STEVENS reasons that a reading of § 195 that would prohibit sampling for apportionment purposes contradicts this provision. It

seems to me there is no conflict at all. The phrase "decennial census of population" in § 141(a) refers to far more than the "tabulation of total population by States . . . as required for the apportionment of Representatives in Congress among the several States . . . ." § 141(b). See U. S. Const., Art. I, § 2. It also includes "a census of population, housing, and matters relating to population and housing." § 141(g). The authorization of sampling techniques in the "decennial census of population" is not necessarily an authorization of such techniques in *all aspects* of the decennial census—any more than it is necessarily an authorization of *all sampling techniques* (for example, those that would violate the Fourth Amendment). One looks to the remainder of the law to determine what techniques, and what aspects of the decennial census, the authorization covers.

If, for example, it were utterly clear and universally agreed that the Constitution prohibits sampling in those aspects of the census related to apportionment, it would be strange to contend that, by authorizing the Secretary of Commerce to use sampling in his census work, § 141(a) "contradicts" the Constitution. The use of sampling it authorizes is *lawful* use of sampling, and if this does not include the apportionment aspect then the authorization obviously does not extend that far. I think the situation the same with regard to the legal impediment imposed by § 195. JUSTICE STEVENS would be correct that the Court is not interpreting § 195 "consistently with § 141(a)," *post*, at 358, if the latter provision specifically authorized sampling in "all aspects of the decennial census." But since it does not, the Court's interpretation is entirely harmonious.

JUSTICE STEVENS' interpretation of this statute creates a palpable absurdity within § 195 itself. The "shall" of that provision is subject to not one exception, but two. The first, which is at issue here, is introduced by "Except." The second is contained within the phrase "if he considers it feasible." The Secretary is under no *command* to authorize

sampling if he does not consider it feasible. Is it even thinkable that he *may* (though he *need not*) authorize sampling if he does *not* consider it feasible? The clear implication of "shall," as applied to this exception, is that where the exception applies he *shall not.* It would be strange to draw the different implication of "may" when the word is applied to the other exception.

And finally, JUSTICE STEVENS' interpretation creates a statute in which Congress swallows a camel and strains out a gnat. Section 181 of the statute requires the Secretary to compile annual and biennial "interim current data"—a useful but hardly indispensable function. The Secretary is authorized to use sampling in the performance of this function *only* if he determines that it will produce "current, comprehensive, and reliable data." § 181(a). The statute JUSTICE STEVENS creates is one in which Congress carefully circumscribes the Secretary's discretion to use sampling in compiling "interim current data," but leaves it entirely up to the Secretary whether he will use sampling for the purpose most important (and closest to the Congress's heart): the apportionment of Representatives.

Even if one is not entirely persuaded by the foregoing arguments, and the more substantial analysis contained in the opinion of the Court, I think it must be acknowledged that the statutory intent to permit use of sampling for apportionment purposes is *at least* not clear. In these circumstances, it is our practice to construe the text in such fashion as to avoid serious constitutional doubt. See, *e. g., Edward J. DeBartolo Corp.* v. *Florida Gulf Coast Building & Constr. Trades Council,* 485 U. S. 568, 575 (1988). It is in my view unquestionably doubtful whether the constitutional requirement of an "actual Enumeration," Art. I, § 2, cl. 3, is satisfied by statistical sampling.

Dictionaries roughly contemporaneous with the ratification of the Constitution demonstrate that an "enumeration" requires an actual counting, and not just an estimation of

number. Noah Webster's 1828 American Dictionary of the English Language defines "enumerate" as "[t]o count or tell, number by number; to reckon or mention a number of things, each separately"; and defines "enumeration" as "[t]he act of counting or telling a number, by naming each particular," and "[a]n account of a number of things, in which mention is made of every particular article." Samuel Johnson's 1773 Dictionary of the English Language 658 (4th ed.) defines "enumerate" as "[t]o reckon up singly; to count over distinctly; to number"; and "enumeration" as "[t]he act of numbering or counting over; number told out." Thomas Sheridan's 1796 Complete Dictionary of the English Language (6th ed.) defines "enumerate" as "[t]o reckon up singly; to count over distinctly"; and "enumeration" as "[t]he act of numbering or counting over." The notion of counting "singly," "separately," "number by number," "distinctly," which runs through these definitions is incompatible (or at least *arguably* incompatible, which is all that needs to be established) with gross statistical estimates.

One must also be impressed by the facts recited in the opinion of the Court, *ante*, at 335: that the Census Acts of 1790 and 1800 required a listing of persons by family name, and the Census Acts of 1810 through 1950 required census enumerators to visit each home in person. This demonstrates a longstanding tradition of Congress's forbidding the use of estimation techniques in conducting the apportionment census. Could it be that all these Congresses were unaware that (in the words of JUSTICE STEVENS' dissent) estimation techniques "will make the census more accurate than an admittedly futile attempt to count every individual by personal inspection, interview, or written interrogatory"? *Post*, at 364. There were difficult-to-reach inhabitants in the early 1800's, just as there are today—indeed, perhaps a greater proportion of them, since the society was overwhelmingly composed of farmers, and largely of frontiersmen. And though there were no professional statisticians,

it must have been known that various methods of estimating unreachable people would be more accurate than assuming that *all* unreachable people did not exist. (Thomas Jefferson's 1782 estimate of the population of Virginia based upon limited data and specific demographic assumptions is thought to have been accurate by a margin of one-to-two percent. H. Alterman, Counting People: The Census in History 168–170 (1969).) Yet such methods of estimation have not been used for over two centuries. The stronger the case the dissents make for the irrationality of that course, the more likely it seems that the early Congresses, and every Congress before the present one, thought that estimations were not permissible. See, *e. g.*, *Printz* v. *United States*, 521 U. S. 898, 905 (1997) (historical evidence that "earlier Congresses avoided use of [the] highly attractive power [to compel state executive officers to administer federal programs]" gave us "reason to believe that the power was thought not to exist").

JUSTICE STEVENS reasons from the *purpose* of the Census Clause: "The census is intended to serve the constitutional goal of equal representation. That goal is best served by the use of a 'Manner' that is most likely to be complete and accurate." *Post*, at 364 (internal quotation marks and citation omitted). That is true enough, and would prove the point if either (1) *every* estimate is more accurate than a headcount, or (2) Congress could be relied upon to permit *only* those estimates that are more accurate than headcounts. It is metaphysically certain that the first proposition is false, and morally certain that the second is. To give Congress the power, under the guise of regulating the "Manner" by which the census is taken, to select among various estimation techniques having credible (or even incredible) "expert" support is to give the party controlling Congress the power to distort representation in its own favor. In other words, genuine enumeration may not be the most accurate way of determining population, but it may be the most accurate way of determining population with minimal possi-

bility of partisan manipulation. The prospect of this Court's reviewing estimation techniques in the future, to determine which of them *so obviously* creates a distortion that it cannot be allowed, is not a happy one. (I foresee the new specialty of "Census Law.") Indeed, it is doubtful whether—separation-of-powers considerations aside—the Court would even have available the raw material to conduct such review effectively. As pointed out by the appellants in the present cases, we will *never* be able to assess the relative accuracy of the sampling system used for the 2000 census by comparing it to the results of a headcount, *for there will have been no headcount.*

For reasons of text and tradition, fully compatible with a constitutional purpose that is entirely sensible, a strong case can be made that an apportionment census conducted with the use of "sampling techniques" is not the "actual Enumeration" that the Constitution requires. (Appellant Commerce Department itself once argued that case in the courts. See, *e. g.*, *Young* v. *Klutznick*, 497 F. Supp. 1318, 1332 (ED Mich. 1980), rev'd 652 F. 2d 617 (CA6 1981).) And since that is so, the statute before us, which certainly *need not* be interpreted to permit such a census, ought not be interpreted to do so.

JUSTICE BREYER, concurring in part and dissenting in part.

I join Part II of the majority opinion concerning standing, and I join Parts II and III of JUSTICE STEVENS' dissent. I also agree with JUSTICE STEVENS' conclusion in Part I that the plan for the 2000 census presented by the Secretary of Commerce is not barred by the Census Act. In my view, however, the reason that 13 U. S. C. § 195 does not bar the statistical sampling at issue here is that § 195 focuses upon sampling used as a *substitute* for traditional enumeration methods, while the proposal at the heart of the Secretary's plan for the 2000 census (namely, Integrated Coverage Meas-

urement, or ICM) is not so intended. Rather, ICM uses statistical sampling to *supplement* traditional enumeration methods in order to achieve the very accuracy that the census seeks and the Census Act itself demands. See, *e. g.*, Decennial Census Improvement Act of 1991, § 2(a)(1), 105 Stat. 635, note following 13 U. S. C. § 141 (directing the Secretary to contract with the National Academy of Sciences to study "means by which the Government could achieve the most accurate population count possible").

The language of § 195 permits a distinction between sampling used as a substitute and sampling used as a supplement. The literal wording of its "except" clause focuses upon the use of sampling "for the *determination* of population for purposes of apportionment of Representatives in Congress among the several States." 13 U. S. C. § 195 (emphasis added). One can read those words as the majority does—applying to apportionment-connected sampling irrespective of use or kind. But one can also read them as applicable only to the use of sampling *in place of* the traditional "determination of population for purposes of apportionment." The "except" clause does not necessarily apply to every conceivable use of statistical sampling any more than, say, a statutory rule forbidding "vehicles" in the park applies to everything that could possibly be characterized as a "vehicle." See generally H. Hart, The Concept of Law 124–136 (2d ed. 1994) (discussing the "open texture of law"). Context normally informs the meaning of a general statutory phrase and often limits its scope.

The history and context of § 195 favor an interpretation that so limits the scope of that section. Cf. Brief for Appellants in No. 98–404, p. 36, n. 19; Brief for Appellees Gephardt et al. in No. 98–404, pp. 9–10, 22–23, 33–38; *Young* v. *Klutznick*, 497 F. Supp. 1318, 1335 (ED Mich. 1980) ("All that § 195 does is prohibit the use of figures derived solely by statistical techniques. It does not prohibit the use of statistics in addition to the more traditional measuring tools to arrive at a

more accurate population count"), rev'd on other grounds, 652 F. 2d 617 (CA6 1981); *Carey* v. *Klutznick*, 508 F. Supp. 404, 415 (SDNY 1980) (Census Act permits sampling in the context of apportionment as long as it is used only in addition to more traditional methods of enumeration). In the 1940's the Census Bureau began using statistical sampling in the collection of a variety of demographic information. U. S. Dept. of Commerce, Bureau of the Census, 200 Years of Census Taking: Population and Housing Questions, 1790–1990, p. 5 (Nov. 1989). Thus, during the 1940's and 1950's, each American family was asked to complete a short form containing a few information-gathering questions. In addition, the Bureau also used a long form that contained additional questions about individuals and families, but it asked only *1 family in 20* to complete this form. *Ibid.;* R. Jenkins, Procedural History of the 1940 Census of Housing and Population 13–15 (1985). The Census Bureau used those long-form answers, from 5% of the population, as a basis for extrapolating statistics and trends, about, say, unemployment or housing conditions, for the Nation as a whole.

In 1957 Congress focused upon this kind of sampling—a long form completed by only 1 American household in 20—as a model of what § 195 would authorize the Secretary to do—"[e]xcept for the determination of population for purposes of apportionment." 13 U. S. C. § 195. When explaining the need for the proposed § 195, the Secretary of Commerce spoke of a "sample enumeration or a sample census [that] might be *substituted for* a full census." Amendment of Title 13, United States Code, Relating to Census, Hearing on H. R. 7911 before the House Committee on Post Office and Civil Service, 85th Cong., 1st Sess., 7 (1957) (Statement of Purpose and Need) (emphasis added). He added that "[e]xperience has shown that some of the information which is desired in connection with a census could be secured efficiently through a sample survey . . . [and] that in some instances a portion of the universe to be included might be

efficiently covered on a sample rather than a complete enumeration basis . . . ." *Ibid.* The House Report spoke in the same terms: "The purpose of section 195 in authorizing the use of sampling procedures is *to permit the utilization of something less than a complete enumeration*, as implied by the word 'census,' when efficient and accurate coverage may be effected through a sample survey." H. R. Rep. No. 1043, 85th Cong., 1st Sess., 10 (1957) (emphasis added); accord, S. Rep. No. 94–1256, p. 1 (1976) (1976 amendments added new language "to direct the Secretary . . . to use sampling and special surveys *in lieu of total enumeration* in the collection of statistical data whenever feasible" (emphasis added)). The discussion thus linked the authorization—and hence the exception—to sampling as a substitute for a headcount.

Census Bureau practice also helps to support this limited interpretation of the section's scope. Both before and after § 195 was enacted in 1957, the census has used sampling techniques in one capacity or another in connection with its determination of population, most often as a quality check on the headcount itself. See, *e. g.*, Declaration of Margo J. Anderson ¶12, App. in No. 98–404, p. 348 (first postenumeration survey was performed following the 1950 census to check for inaccuracies).

The Census Bureau has also used a form of statistical estimation to adjust or correct its actual headcount. Since at least 1940, the Census Bureau has used an estimation process called "imputation" to fill in gaps in its headcount. U. S. Dept. of Commerce, Bureau of the Census, Report to Congress: The Plan for Census 2000, p. 23 (Aug. 1997) (hereinafter Census 2000 Report). When an enumerator believes a residence is occupied but is unable to obtain any information about how many people live there, the Census Bureau "imputes" that information based upon the demographics of nearby households. Imputation was responsible, for example, for adding 761,000 people to the Nation's total population in 1980 and 53,590 people in 1990. *Ibid.* In 1970, when the

Census Bureau discovered at the last minute that it had mistakenly assumed that a significant number of housing units were vacant, it adjusted the headcount to add 1,068,882 people, or 0.5% of the total population. *Ibid.*

Integrated Coverage Measurement would not substitute for, but rather would supplement, a traditional headcount, and it would do so to achieve the basic purpose of the statutes that authorize the headcount—namely, accuracy. The Census Bureau has learned over time that certain portions of the population—for example, children, racial and ethnic minorities, and those who rent rather than own their homes—are systematically undercounted in a traditional headcount. *Id.*, at 2–4; see also *Wisconsin* v. *City of New York*, 517 U. S. 1, 6–8 (1996). The ICM program is the Census Bureau's effort to correct for this problem. As I understand it, this proposal would use statistical sampling to check headcount results, State by State, by intensively investigating sample blocks in each State, comparing the results from that investigation with the results of the headcount, and using that information to estimate to what extent different groups of persons were undercounted during the headcount. The undercount rates—which will be calculated separately for every State in the Union—will then be used to adjust the headcount totals in an effort to correct for those inaccuracies.

I recognize that the use of statistical sampling to correct or reduce headcount inaccuracies is a complicated matter. An overall national improvement in accuracy does not necessarily tell the whole story. Apportionment demands *comparable* accuracy State by State. A count that reflected evenly distributed error (say, if the population in every State were undercounted by 20%) would produce the same congressional apportionment as a perfectly accurate count; a count that is less comparatively accurate could make matters worse. Although earlier attempts at ICM-like adjustments apparently failed to take some of these difficulties into account, the Secretary believes the present proposal does so. Census 2000

Report 30 (strata crossed state lines in 1990, but in 2000, strata will be defined on a state-by-state basis); cf. *id.*, at 29 (explaining that the ICM methodology, which was used in the past two censuses to evaluate census quality, has "undergone substantial review and improvement" and "is generally accepted as the most reliable method to improve census results"). And, as I understand it, ICM will help to uncover and to correct undercounting not only among minority but also among majority populations. Any special emphasis the Census Bureau might place on including racial and ethnic minority neighborhoods among its samples would be justified as an effort to ensure proper counts among groups that history shows have been undercounted. Although some *amici* express concerns about the possibility of error in the execution of the statistical program, the Census Bureau itself, aware of potential difficulties, has created an expert panel of statisticians and social scientists, which will guide the Census Bureau's execution of its plan for the 2000 census, particularly with respect to its use of sampling. See *id.*, at 49–51. And, of course, unadjusted headcounts are also subject to error or bias—the very fact that creates the need for a statistical supplement. See, *e. g.*, *id.*, at 3–4 (describing the problem of differential undercount under the traditional headcount method); *id.*, at 37 (without ICM, the 2000 census will be less accurate than the 1990 census).

Finally, as JUSTICE STEVENS points out, Congress has changed the statute considerably since it enacted § 195 in 1957. Each change tends to *favor* the use of statistical sampling. In 1964, for example, Congress repealed former § 25(c) of the Census Act, see Act of Aug. 31, 1964, 78 Stat. 737, which had required that each enumerator obtain "every item of information" through a personal visit to each household, 68 Stat. 1015, thereby permitting census taking by mail. In 1976, Congress amended § 141(a) ("Population and other census information") to authorize the Secretary to "take a decennial census of population . . . in such form and

content as he may determine including the use of sampling procedures and special surveys." At the same time, Congress strengthened § 195's position on sampling, providing that the Secretary "shall" use sampling for purposes other than "for the determination of population for purposes of apportionment." 13 U. S. C. § 195. Given the legal need to interpret subsections of a single statute as creating a single coherent whole, these changes strengthen the case for an interpretation that restricts the scope of § 195 to the kind and use of sampling that called it into being, placing beyond its outer limits a conceptually different (*i. e.*, supplementary) use needed to achieve that statute's basic goal—greater census accuracy.

The Secretary's further proposal, the Nonresponse Followup program, uses statistical sampling not simply to verify a headcount, but to determine the last 10% of population in each census tract. I concede that this kind of statistical "followup" is conceptually similar to the kind of sampling that was before Congress in 1957, in the sense that it involves determining a portion of the total population based upon a sample. But one can consider it supplementary for a different reason—because it simply does not have a great enough impact upon the headcount to be considered a "substitute" falling within § 195's "except" clause.

I note that the Census Bureau has never relied exclusively upon headcounts to determine population. As discussed above, for example, the Census Bureau has supplemented its headcounts with imputation to some degree for at least the last 50 years. Section 195 of the Census Act, at least in my view, could not have been intended as a prohibition so absolute as to stop the Census Bureau from imputing the existence of a living family behind the closed doors of an apparently occupied house, should that family refuse to answer the bell. Similarly, I am not convinced that the Act prevents the use of sampling to ascertain the existence of a certain

number of the families that fail to mail back their census forms.

The question, then, is what "number" of housing units will be assigned a population through sampling. Whether the Nonresponse Followup program is sufficiently like imputation in terms of its degree of impact so as to be a *supplement* to the headcount—or rather whether it is more like the way in which the Bureau uses sampling in connection with the "long form," as a *substitute* for a headcount—is here a matter of degree, not kind. Is the use of that method in the Nonresponse Followup, limited to the last 10%, sufficiently small, as a portion of the total population, and sufficiently justified, through the need to avoid disproportionately prohibitive costs, that it remains, effectively, a "supplement" to the traditional headcount?

For each census tract (made up of roughly 1,700 housing units), the Nonresponse Followup program will assign population figures to no more than 170 housing units. Census Bureau enumerators will personally visit enough of the housing units in each census tract to ensure that 90% of all housing units have been counted either by mail or in person. The Census Bureau will then use the information gathered from the housing units that the census enumerators actually visited in that tract to arrive at a number for the remaining 10%. See generally Census 2000 Report 26–29. The primary advantage of this program is financial; it is considerably cheaper than a personal search by enumerators to take account of the last few of the households that do not respond by mail. See, *e. g.*, National Research Council, Panel to Evaluate Alternative Census Methods, Counting People in the Information Age 100 (D. Steffey & N. Bradburn eds. 1994). But the Secretary also believes that this program addresses other concerns—concerns related to the immense difficulties involved in personally visiting every home that does not respond by mail—and that, overall, the Nonresponse Followup plan "will increase the accuracy of the cen-

sus as a whole." Reply Brief for Appellants in No. 98–564, p. 4; see also Census 2000 Report 27; *id.*, at 7 (quoting the National Academy of Sciences Panel on Requirements as concluding that "[i]t is fruitless to continue trying to count every last person with traditional Census methods of physical enumeration").

In answering the question whether this use of sampling remains a "supplement" because of its limited impact on the total headcount, I would give considerable weight to the views of the Secretary, to whom the Act entrusts broad discretionary authority. See 13 U. S. C. § 141(a). The Secretary's decision to draw the line at the last 10%, rather than at the last 5% or 1%, of each census tract's population may well approach the limit of his discretionary authority. But I cannot say that it exceeds that limit. Consequently, I would not set aside the Census Bureau's Nonresponse Followup proposal on this basis.

For these reasons, I respectfully dissent.

JUSTICE STEVENS, with whom JUSTICE SOUTER and JUSTICE GINSBURG join as to Parts I and II, and with whom JUSTICE BREYER joins as to Parts II and III, dissenting.

The Census Act, 13 U. S. C. § 1 *et seq.*, unambiguously authorizes the Secretary of Commerce to use sampling procedures when taking the decennial census. That this authorization is constitutional is equally clear. Moreover, because I am satisfied that at least one of the plaintiffs in each of these cases has standing, I would reverse both District Court judgments.

## I

The Census Act, as amended in 1976, contains two provisions that relate to sampling. The first is an unlimited authorization; the second is a limited mandate.

The unlimited authorization is contained in § 141(a). As its text plainly states, that section gives the Secretary of Commerce unqualified authority to use sampling procedures

when taking the decennial census, the census used to apportion the House of Representatives. It reads as follows:

> "(a) The Secretary shall, in the year 1980 and every 10 years thereafter, take a decennial census of population as of the first day of April of such year, which date shall be known as the 'decennial census date', in such form and content as he may determine, including the use of sampling procedures and special surveys." 13 U. S. C. § 141(a).

The limited mandate is contained in § 195. That section commands the Secretary to use sampling, subject to two limitations: he need not do so when determining the population for apportionment purposes, and he need not do so unless he considers it feasible. The command reads as follows:

> "Except for the determination of population for purposes of apportionment of Representatives in Congress among the several States, the Secretary shall, if he considers it feasible, authorize the use of the statistical method known as 'sampling' in carrying out the provisions of this title." 13 U. S. C. § 195.

Although § 195 does not command the Secretary to use sampling in the determination of population for apportionment purposes, neither does it prohibit such sampling. Not a word in § 195 qualifies the unlimited grant of authority in § 141(a). Even if its text were ambiguous, § 195 should be construed consistently with § 141(a). Moreover, since § 141(a) refers specifically to the decennial census, whereas § 195 refers to the use of sampling in both the mid-decade and the decennial censuses, the former more specific provision would prevail over the latter if there were any conflict between the two. See *Edmond* v. *United States*, 520 U. S. 651, 657 (1997). In my judgment, however, the text of both provisions is perfectly clear: They authorize sampling in both the decennial and the mid-decade censuses, but they only com-

mand its use when the determination is not for apportionment purposes.

A comparison of the text of these provisions with their predecessors in the 1957 Census Act further demonstrates that in 1976 Congress specifically intended to authorize the use of sampling for the purpose of apportioning the House of Representatives. Prior to 1976, the Census Act contained neither an unlimited authorization to use sampling nor a limited mandate to do so. Instead, the 1957 Act merely provided that the Secretary "may" use sampling for any purpose except apportionment. 13 U. S. C. § 195 (1958 ed.). In other words, it contained a limited authorization that was coextensive with the present limited mandate. The 1976 amendments made two changes, each of which is significant. First, Congress added § 141(a), which unambiguously told the Secretary to take the decennial census "in such form and content as he may determine, including the use of sampling procedures and special surveys." Second, Congress changed § 195 by replacing the word "may" with the word "shall." Both amendments unambiguously endorsed the use of sampling. The amendment to § 141 gave the Secretary authority that he did not previously possess, and the amendment to § 195 changed a limited authorization into a limited command.

The primary purpose of the 1976 enactment was to provide for a mid-decade census to be used for various purposes other than apportionment. Section 141(a), however, is concerned only with the decennial census. The comment in the Senate Report on the new language in § 141(a) states that this provision was intended "to encourage the use of sampling and surveys in the taking of the decennial census." S. Rep. No. 94–1256, p. 4 (1976). Given that there is only one decennial census, and that it is the only census that is used for apportionment purposes, the import of this comment in the Senate Report could not be more clear. See *ibid.* ("It is for the purpose of apportioning Representatives that the

United States Constitution establishes a decennial census of population").

Nevertheless, in an unusual *tour de force*, the Court concludes that the amendments made no change in the scope of the Secretary's authority: Both before and after 1976, he could use sampling for any census-related purpose, other than apportionment. The plurality finds an omission in the legislative history of the 1976 enactment more probative of congressional intent than either the plain text of the statute itself or the pertinent comment in the Senate Report. For the plurality, it is incredible that such an important change in the law would not be discussed in the floor debates. See *ante*, at 342–343.[1] It appears, however, that even though other provisions of the legislation were controversial,[2] no one objected to this change. That the use of sampling has since become a partisan issue sheds no light on the views of the legislators who enacted the authorization to use sampling in

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[1] To its credit, and unlike the District Court, the Court does not rely on our reference to the watchdog that did not bark in *Chisom* v. *Roemer*, 501 U. S. 380, 396, and n. 23 (1991). In that case, unlike these cases, there was neither a change in the relevant text of the statute nor a reference to the purported change in the Committee Reports. The change in these cases is clearly identified in both the statutory text and the Senate Report.

[2] The only contentious issue in the floor debates involved the penalty provisions for noncompliance. See 122 Cong. Rec. 9796, 9800 (1976); *id.*, at 35171, 33305. Indeed, the Conference Report comparing the House and Senate bills and announcing the harmonized final version confirms that substitutions were only necessary with regard to penalties for failure to answer questions and to ensure that no one would be compelled to disclose information regarding religious affiliation. See Joint Explanatory Statement of the Conference Committee, H. R. Conf. Rep. No. 94–1719, pp. 14–15 (1976); see also 122 Cong. Rec. 33305 (1976) ("The differences between the Senate and the House of Representatives on this measure . . . centered on the question of penalties for refusal or neglect to cooperate with the censuses. . . . The managers on the part of the Senate also receded in the case of a House amendment providing that a person may not be compelled to disclose information regarding his religious beliefs or membership in a religious body").

1976.[3] Indeed, the bill was reported out of the House Committee by a unanimous vote, both the House and Senate versions easily passed, and the Conference was unanimous in recommending the revised legislation.[4] Surely we must presume that the legislators who voted for the bill were familiar with its text as well as the several references to sampling in the Committee Reports.[5] Given the general agreement on the proposition that "sampling and surveys" should be encouraged because they can both save money and increase the reliability of the population count, it is not at all surprising that no one objected to what was perceived as an obviously desirable change in the law.[6]

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[3] Many did object to the use of the mid-decade census statistics for congressional apportionment and districting. See *id.*, at 9792 ("The bill presently contains a specific prohibition against the use of mid-decade statistics for purposes of apportionment or for the use in challenging any existing districting plan"). In a supplement to H. R. Rep. No. 94–944, two Republican Congressmen insisted that limits on the frequency of reapportionment were necessary to ensure stability. Supplemental Views on H. R. 11337, H. R. Rep. No. 94–944, pp. 17–18 (1976); see also 122 Cong. Rec. 9794–9796, 9799–9802 (1976).

[4] See *id.*, at 9792, 33305, 32253.

[5] Although the comment on page 4 of the Senate Report quoted *supra*, at 359, is the only specific reference to the use of sampling in the decennial census, several other statements reflect the general understanding that sampling should be used whenever possible. Consider, for example, this comment following the succinct and accurate explanation of the amendment to § 195 in the Conference Report: "The section, as amended, strengthens the congressional intent that, whenever possible, sampling shall be used." H. R. Conf. Rep. No. 94–1719, at 13; see also H. R. Rep. No. 94–944, at 6 ("Section 7 revises section 195 of title 13 which presently authorizes, but does not require, the use of sampling. This clarifies congressional intent that, wherever possible, sampling shall be used").

[6] See *id.*, at 1; 122 Cong. Rec. 35171 (1976) (statement of Rep. Schroeder) ("Support for this bill has come from virtually every sector of American society"); see also Statement by President Gerald R. Ford on Signing H. R. 11337 into Law, Oct. 18, 1976, 12 Weekly Comp. of Pres. Doc. 1535 (1976) ("[I]t will provide us with better data, of greater consistency, at a reduced cost").

What is surprising is that the Court's interpretation of the 1976 amendment to § 141 drains it of any meaning.[7] If the Court is correct, prior to 1976 the Secretary could have used sampling for any census-related purpose except apportionment, and after 1976 he retained precisely the same authority. Why, one must wonder, did Congress make this textual change in 1976?[8] The substantial revision of § 141 cannot fairly be dismissed as "only a subtle change in phraseology." *Ante*, at 343. Indeed, it "tests the limits of reason to suggest" that this change had no purpose at all. *Ibid.*

## II

Appellees have argued that the reference in Article I of the Constitution to the apportionment of Representatives and to direct taxes on the basis of an "actual Enumeration" precludes the use of sampling procedures to supplement data obtained through more traditional census methods. U. S. Const., Art. I, § 2, cl. 3. There is no merit to their argument.

In 1787, when the Constitution was being drafted, the Framers negotiated the number of Representatives allocated to each State because it was not feasible to conduct a census.[9]

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[7] In its response to this dissent, the plurality acknowledges that the "subtle change in phraseology" in § 195 transformed a provision that simply permitted sampling into one that required sampling for nonapportionment purposes. *Ante*, at 343. But it fails to acknowledge that this change removed the only textual basis for its conclusion that § 195 prohibits the use of statistical sampling for apportionment purposes. An exception from the grant of discretionary authority in the pre-1976 version of § 195 may fairly be read to prohibit sampling, but that reasoning does not apply to an exception from a mandatory provision.

[8] See *Stone* v. *INS*, 514 U. S. 386, 397 (1995) ("When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect").

[9] Article I, § 2, cl. 3, provides that "until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one,

See *Department of Commerce* v. *Montana*, 503 U. S. 442, 448, and n. 15 (1992). They provided, however, that an "actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct." U. S. Const., Art. I, § 2, cl. 3. The paramount constitutional principle codified in this Clause was the rule of periodic reapportionment by means of a decennial census. The words "actual Enumeration" require post-1787 apportionments to be based on actual population counts, rather than mere speculation or bare estimate, but they do not purport to limit the authority of Congress to direct the "Manner" in which such counts should be made.

The July 1787 debate over future reapportionment of seats in the House of Representatives did not include any dispute about proposed methods of determining the population. Rather, the key questions were whether the rule of reapportionment would be constitutionally fixed and whether subsequent allocations of seats would be based on population or property. See 1 Records of the Federal Convention of 1787, pp. 57–71, 542, 559–562, 566–570, 578–579, 579–580, 586, 594 (M. Farrand ed. 1911); see also Declaration of Jack N. Rakove, App. 387 ("What was at issue . . . were fundamental principles of representation itself . . . not the secondary matter of exactly how census data was to be compiled"); J. Rakove, Original Meanings: Politics and Ideas in the Making of the Constitution 70–74 (1996). The Committee of Style, charged with delivering a polished final version of the Constitution, added the term "actual Enumeration" to the draft reported to the Convention on September 12, 1787—five days before adjournment. 2 Records, *supra*, at 590–591. This stylistic change did not limit Congress' authority to determine the "Manner" of conducting the census.

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Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three."

The census is intended to serve "the constitutional goal of equal representation." *Franklin* v. *Massachusetts*, 505 U. S. 788, 804 (1992). That goal is best served by the use of a "Manner" that is most likely to be complete and accurate. As we repeatedly emphasized in our recent decision in *Wisconsin* v. *City of New York*, 517 U. S. 1, 3 (1996), our construction of that authorization must respect "the wide discretion bestowed by the Constitution upon Congress." Methodological improvements have been employed to ease the administrative burden of the census and increase the accuracy of the data collected. The "mailout-mailback" procedure now considered a traditional method of enumeration was itself an innovation of the 1970 census.[10] Requiring a face-to-face headcount would yield absurd results: For example, enumerators unable to gain entry to a large and clearly occupied apartment complex would be required to note zero occupants. For this reason, the 1970 census introduced the Postal Vacancy Check—a form of sampling not challenged here—which uses sample households to impute population figures that have been designated vacant but appear to be occupied.[11] Since it is perfectly clear that the use of sampling will make the census more accurate than an admittedly futile attempt to count every individual by personal inspection, interview, or written interrogatory, the proposed method is a legitimate means of making the "actual Enumeration" that the Constitution commands.

## III

I agree with the Court's discussion of the standing of the plaintiffs in No. 98–564. I am also convinced that the House of Representatives has standing to challenge the validity of the process that will determine the size of each State's con-

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[10] See M. Anderson, The American Census: A Social History 210–211 (1988).

[11] See U. S. Dept. of Commerce, Bureau of Census, Effect of Special Procedures to Improve Coverage in the 1970 Census (Dec. 1974).

gressional delegation. See *Powell* v. *McCormack*, 395 U. S. 486, 548 (1969) ("Unquestionably, Congress has an interest in preserving its institutional integrity"). As the District Court in No. 98–404 correctly held, the House has a concrete and particularized "institutional interest in preventing its unlawful composition" that satisfies the injury in fact requirement of Article III. 11 F. Supp. 2d 76, 86 (DC 1998). Accordingly, I respectfully dissent in both cases. I would reverse both judgments on the merits.

JUSTICE GINSBURG, with whom JUSTICE SOUTER joins, dissenting.

I agree with the Court that Indiana resident Hofmeister, an appellee in No. 98–564, has standing to challenge the Census 2000 plan on the ground that Indiana would lose a Representative in Congress under the Census Bureau's proposed sampling plan. I also agree with the Court's conclusion that the appeal in No. 98–404 should be dismissed. I would not decide whether other appellees in No. 98–564 have established standing on the basis of the expected effects of the sampling plan on intrastate redistricting. Respecting the merits, I join Parts I and II of JUSTICE STEVENS' dissent.

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# AT&T CORP. ET AL. *v.* IOWA UTILITIES BOARD ET AL.

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

No. 97–826. Argued October 13, 1998—Decided January 25, 1999*

The Telecommunications Act of 1996 (1996 Act) fundamentally restructures local telephone markets, ending the monopolies that States historically granted to local exchange carriers (LECs) and subjecting incumbent LECs to a host of duties intended to facilitate market entry, including the obligation under 47 U. S. C. § 251(c) to share their networks with competitors. A requesting carrier can obtain such shared access by purchasing local telephone services at wholesale rates for resale to end users, by leasing elements of the incumbent's network "on an unbundled basis," and by interconnecting its own facilities with the incumbent's network. After the Federal Communications Commission (FCC) issued regulations implementing the 1996 Act's local-competition provisions, incumbent LECs and state commissions filed numerous challenges, which were consolidated in the Eighth Circuit. Among other things, that court held that the FCC lacked jurisdiction to promulgate its rules regarding pricing, dialing parity, exemptions for rural LECs, the proper procedure for resolving local-competition disputes, and state review of pre-1996 interconnection agreements; that, in specifying the network elements available to requesting carriers under Rule 319, the FCC reasonably implemented the 1996 Act's requirement that it consider whether access to proprietary elements was "necessary" and whether lack of access to nonproprietary elements would "impair" an

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*Together with *AT&T Corp. et al.* v. *California et al.* (see this Court's Rule 12.4), No. 97–829, *MCI Telecommunications Corp.* v. *Iowa Utilities Board et al.*, *MCI Telecommunications Corp.* v. *California et al.* (see this Court's Rule 12.4), No. 97–830, *Association for Local Telecommunications Services et al.* v. *Iowa Utilities Board et al.*, No. 97–831, *Federal Communications Commission et al.* v. *Iowa Utilities Board et al.*, *Federal Communications Commission et al.* v. *California et al.* (see this Court's Rule 12.4), No. 97–1075, *Ameritech Corp. et al.* v. *Federal Communications Commission et al.*, No. 97–1087, *GTE Midwest Inc.* v. *Federal Communications Commission et al.*, No. 97–1099, *U S WEST, Inc.* v. *Federal Communications Commission et al.*, and No. 97–1141, *Southern New England Telephone Co. et al.* v. *Federal Communications Commission et al.*, also on certiorari to the same court.

entrant's ability to provide local service, see § 251(d)(2); that, in Rule 319, the FCC reasonably interpreted the statutory definition of "network element," see § 153(29); that the "all elements" rule, which effectively allows competitors to provide local phone service relying solely on the elements in an incumbent's network, is consistent with the 1996 Act; that Rule 315(b), which forbids incumbents to separate already-combined network elements before leasing them to competitors, must be vacated because it requires access to those elements on a bundled rather than an unbundled, *i. e.*, physically separated, basis; and that the FCC's "pick and choose" rule, which enables a carrier to demand access to any individual interconnection, service, or network element arrangement on the same terms and conditions the LEC has given anyone else in an approved § 252 agreement without having to accept the agreement's other provisions, must be vacated because it would deter the "voluntarily negotiated agreements" that the 1996 Act favors.

*Held:*

1. The FCC has general jurisdiction to implement the 1996 Act's local-competition provisions. Since Congress expressly directed that the 1996 Act be inserted into the Communications Act of 1934, and since the 1934 Act already provides that the FCC "may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act," 47 U. S. C. § 201(b), the FCC's rulemaking authority extends to implementation of §§ 251 and 252. Section 152(b) of the Communications Act, which provides that "nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to . . . intrastate communications service . . . ," does not change this conclusion because the 1996 Act clearly applies to intrastate matters. The Eighth Circuit erred in reaching the challenge of the incumbent LECs and state commissions to the FCC's claim that § 208 gives it authority to review agreements approved by state commissions under the local-competition provisions, because that claim is not ripe. See *Toilet Goods Assn., Inc.* v. *Gardner*, 387 U. S. 158. Pp. 377–386.

2. The FCC's rules governing unbundled access are, with the exception of Rule 319, consistent with the 1996 Act. Pp. 386–395.

(a) Given the breadth of § 153(29)'s "network element" definition—*i. e.*, "features, functions, and capabilities . . . provided by means of" a facility or equipment used in the provision of a telecommunications service—it is impossible to credit the incumbents' argument that a "network element" must be part of the physical facilities and equipment used to provide local phone service. It was therefore proper for Rule 319 to include operator services and directory assistance, operational support

systems, and vertical switching functions such as caller I. D., call forwarding, and call waiting within the features and services that must be provided to competitors. Pp. 386–387.

(b) However, since the FCC did not adequately consider the § 251(d)(2) "necessary and impair" standards when it gave requesting carriers blanket access to network elements, Rule 319 is vacated. The Rule implicitly regards the "necessary" standard as having been met regardless of whether carriers can obtain requested proprietary elements from a source other than the incumbent, and regards the "impairment" standard as having been met if an incumbent's failure to provide access to a network element would decrease the quality, or increase the cost, of the service a requesting carrier seeks to offer, compared with providing that service *over other unbundled elements in the incumbent LEC's network*. The FCC cannot, consistent with the statute, blind itself to the availability of elements outside the incumbent's network. In addition, the FCC's assumption that *any* increase in cost (or decrease in quality) imposed by denial of a network element renders access to that element "necessary," and causes the failure to provide that element to "impair" the entrant's ability to furnish its desired services, is simply not in accord with the ordinary and fair meaning of those terms. Section 251(d)(2) requires the FCC to determine on a rational basis *which* network elements must be made available, taking into account the 1996 Act's objectives and giving some substance to the "necessary" and "impair" requirements. Pp. 387–392.

(c) The FCC reasonably omitted a facilities-ownership requirement. The 1996 Act imposes no such limitation; if anything, it suggests the opposite, by requiring in § 251(c)(3) that incumbents provide access to "any" requesting carrier. Pp. 392–393.

(d) Rule 315(b), which forbids incumbents to separate already-combined network elements before leasing them to competitors, reasonably interprets § 251(c)(3), which establishes the duty to provide access to network elements on nondiscriminatory rates, terms, and conditions and in a manner that allows requesting carriers to combine such elements. That section forbids incumbents to sabotage elements that *are* provided in discrete pieces, but it does not say, or even remotely imply, that elements *must* be provided in that fashion. Pp. 393–395.

3. Because the "pick and choose" rule tracks the pertinent language in § 252(i) almost exactly, it is not only a reasonable interpretation of that section, it is the most readily apparent. Pp. 395–397.

Nos. 97–826 (first judgment), 97–829 (first judgment), 97–830, 97–831 (first judgment), 97–1075, 97–1087, 97–1099, and 97–1141, 120 F. 3d 753, reversed in part, affirmed in part, and remanded; Nos. 97–826, 97–829,

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and 97–831 (second judgments), 124 F. 3d 934, reversed in part and remanded.

SCALIA, J., delivered the opinion of the Court, Parts I, III–A, III–C, III–D, and IV of which were joined by REHNQUIST, C. J., and STEVENS, KENNEDY, SOUTER, THOMAS, GINSBURG, and BREYER, JJ., Part II of which was joined by STEVENS, KENNEDY, SOUTER, and GINSBURG, JJ., and Part III–B of which was joined by REHNQUIST, C. J., and STEVENS, KENNEDY, THOMAS, GINSBURG, and BREYER, JJ. SOUTER, J., filed an opinion concurring in part and dissenting in part, *post*, p. 397. THOMAS, J., filed an opinion concurring in part and dissenting in part, in which REHNQUIST, C. J., and BREYER, J., joined, *post*, p. 402. BREYER, J., filed an opinion concurring in part and dissenting in part, *post*, p. 412. O'CONNOR, J., took no part in the consideration or decision of these cases.

*Solicitor General Waxman* argued the cause for the federal petitioners/cross-respondents. With him on the briefs were *Assistant Attorney General Klein*, *Deputy Solicitor General Wallace*, *Jonathan E. Nuechterlein*, *Catherine G. O'Sullivan*, *Robert B. Nicholson*, *Nancy C. Garrison*, *Christopher J. Wright*, *Laurence N. Bourne*, and *James M. Carr.*

*Bruce J. Ennis, Jr.*, argued the cause for the private petitioners/cross-respondents. With him on the briefs were *Donald B. Verrilli, Jr.*, *Mark D. Schneider*, *Anthony C. Epstein*, *Thomas F. O'Neil III*, and *William Single IV. Mitchell F. Brecher*, *Richard J. Metzger*, *Albert H. Kramer*, *Daniel M. Waggoner*, *Robert G. Berger*, *Joseph Sandri*, *Daniel L. Brenner*, *Neal M. Goldberg*, and *David L. Nicoll* filed briefs for petitioners/respondents Local Telecommunications Services et al.

*Diane Munns* argued the cause for the State Commission respondents et al. With her on the brief were *Lawrence G. Malone* and *Penny Rubin. Peter Arth, Jr.*, and *Mark Fogelman* filed a brief for respondent State of California.

*Laurence H. Tribe* argued the cause for the private respondents/cross-petitioners. With him on the briefs were *Jonathan S. Massey*, *Mark L. Evans*, *Michael K. Kellogg*, *Sean A. Lev*, *Charles R. Morgan*, *William B. Barfield*, *M. Robert Sutherland*, *James R. Young*, *Michael E. Glover*,

*Patricia Diaz Dennis*, *Liam S. Coonan*, *Michael J. Zpevak*, *Stephen B. Higgins*, and *James W. Erwin*. *Kenneth S. Geller*, *Donald M. Falk*, *Stephen M. Shapiro*, *John R. Muench*, and *Gary S. Feinerman* filed briefs for respondent/cross-petitioner Ameritech Corporation. *Mark R. Kravitz*, *Jeffrey R. Babbin*, *Daniel J. Klau*, *Diane Smith*, *Carolyn C. Hill*, *Thomas E. Taylor*, *Jack B. Harrison*, *Jerry W. Amos*, *M. John Bowen, Jr.*, and *Paul J. Feldman* filed a brief for respondents/cross-petitioners Mid-Sized Local Exchange Carriers. *Gary M. Epstein*, *Maureen E. Mahoney*, and *Richard P. Bress* filed a brief for respondents United States Telephone Association et al. *Lloyd N. Cutler*, *William T. Lake*, *John H. Harwood II*, and *Robert B. McKenna* filed briefs for respondent/cross-petitioner U S WEST, Inc. Briefs in support of petitioners under this Court's Rule 12.6 were filed for respondent Competition Policy Institute by *Glen B. Manishin*, and for respondent GST Telecom, Inc., by *J. Jeffrey Mayhook*.

*William P. Barr* argued the cause for cross-petitioners/respondents GTE entities et al. With him on the briefs were *M. Edward Whelan*, *Paul T. Cappuccio*, and *Steven G. Bradbury*.

*David W. Carpenter* argued the cause for petitioners/cross-respondents AT&T et al. With him on the briefs were *Peter D. Keisler*, *Mark C. Rosenblum*, *Charles H. Helein*, *Robert M. McDowell*, *Harisha J. Bastiampillai*, *Genevieve Morelli*, *Robert J. Aamoth*, *James M. Smith*, *Leon M. Kestenbaum*, *Jay C. Keithley*, *H. Richard Juhnke*, and *Richard S. Whitt*.†

JUSTICE SCALIA delivered the opinion of the Court.

In these cases we address whether the Federal Communications Commission has authority to implement certain pricing and nonpricing provisions of the Telecommunications Act of 1996, as well as whether the Commission's rules governing

†*Jonathan Jacob Nadler* filed a brief for Covad Communications Co. as *amicus curiae* urging reversal.

unbundled access and "pick and choose" negotiation are consistent with the statute.

## I

Until the 1990's, local phone service was thought to be a natural monopoly. States typically granted an exclusive franchise in each local service area to a local exchange carrier (LEC), which owned, among other things, the local loops (wires connecting telephones to switches), the switches (equipment directing calls to their destinations), and the transport trunks (wires carrying calls between switches) that constitute a local exchange network. Technological advances, however, have made competition among multiple providers of local service seem possible, and Congress recently ended the longstanding regime of state-sanctioned monopolies.

The Telecommunications Act of 1996 (1996 Act or Act), Pub. L. 104–104, 110 Stat. 56, fundamentally restructures local telephone markets. States may no longer enforce laws that impede competition, and incumbent LECs are subject to a host of duties intended to facilitate market entry. Foremost among these duties is the LEC's obligation under 47 U. S. C. § 251(c) (1994 ed., Supp. II) to share its network with competitors. Under this provision, a requesting carrier can obtain access to an incumbent's network in three ways: It can purchase local telephone services at wholesale rates for resale to end users; it can lease elements of the incumbent's network "on an unbundled basis"; and it can interconnect its own facilities with the incumbent's network.[1] When an en-

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[1] Title 47 U. S. C. § 251(c) (1994 ed., Supp. II) provides as follows:

"Additional Obligations of Incumbent Local Exchange Carriers

"In addition to the duties contained in subsection (b) of this section, each incumbent local exchange carrier has the following duties:

"(1) Duty to Negotiate

"The duty to negotiate in good faith in accordance with section 252 of this title the particular terms and conditions of agreements to fulfill the

trant seeks access through any of these routes, the incumbent can negotiate an agreement without regard to the du-

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duties described in paragraphs (1) through (5) of subsection (b) of this section and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

"(2) Interconnection

"The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—

"(A) for the transmission and routing of telephone exchange service and exchange access;

"(B) at any technically feasible point within the carrier's network;

"(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

"(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.

"(3) Unbundled Access

"The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

"(4) Resale

"The duty—

"(A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and

"(B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

"(5) Notice of Changes

ties it would otherwise have under § 251(b)[2] or § 251(c). See § 252(a)(1). But if private negotiation fails, either party can petition the state commission that regulates local phone service to arbitrate open issues, which arbitration is subject to § 251 and the FCC regulations promulgated thereunder.

Six months after the 1996 Act was passed, the FCC issued its First Report and Order implementing the local-

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"The duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

"(6) Collocation

"The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations."

[2] Section 251(b) imposes the following duties on incumbents:

"(1) Resale

"The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

"(2) Number Portability

"The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

"(3) Dialing Parity

"The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

"(4) Access to Rights-of-Way

"The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224 of this title.

"(5) Reciprocal Compensation

"The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."

competition provisions. *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) (First Report & Order). The numerous challenges to this rulemaking, filed across the country by incumbent LECs and state utility commissions, were consolidated in the United States Court of Appeals for the Eighth Circuit.

The basic attack was jurisdictional. The LECs and state commissions insisted that primary authority to implement the local-competition provisions belonged to the States rather than to the FCC. They thus argued that many of the local-competition rules were invalid, most notably the one requiring that prices for interconnection and unbundled access be based on "Total Element Long Run Incremental Cost" (TELRIC)—a forward-looking rather than historic measure.[3] See 47 CFR §§ 51.503, 51.505 (1997). The Court of Appeals agreed, and vacated the pricing rules, and several other aspects of the order, as reaching beyond the Commission's jurisdiction. *Iowa Utilities Board* v. *FCC*, 120 F. 3d 753, 800, 804, 805–806 (1997). It held that the general rulemaking authority conferred upon the Commission by the Communications Act of 1934 extended only to interstate matters, and that the Commission therefore needed specific congressional authorization before implementing provisions of the 1996 Act addressing intrastate telecommunications. *Id.*, at 795. It found no such authorization for the Commission's rules regarding pricing, dialing parity,[4] exemptions

[3] TELRIC pricing is based upon the cost of operating a hypothetical network built with the most efficient technology available. Incumbents argued below that this method was unreasonable because it stranded their historic costs and underestimated the actual costs of providing interconnection and unbundled access. The Eighth Circuit did not reach this issue, and the merits of TELRIC are not before us.

[4] Dialing parity, which seeks to ensure that a new entrant's customers can make calls without having to dial an access code, was addressed in the Commission's Second Report and Order. See *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*,

for rural LECs, the proper procedure for resolving local-competition disputes, and state review of pre-1996 interconnection agreements. *Id.*, at 795–796, 802–806. Indeed, with respect to some of these matters, the Eighth Circuit said that the 1996 Act had affirmatively given exclusive authority to the state commissions. *Id.*, at 795, 802, 805.

The Court of Appeals found support for its holdings in 47 U. S. C. § 152(b) (§ 2(b) of the Communications Act of 1934), which, it said, creates a presumption in favor of preserving state authority over intrastate communications. 120 F. 3d, at 796. It found nothing in the 1996 Act clear enough to overcome this presumption, which it described as a fence that is "hog tight, horse high, and bull strong, preventing the FCC from intruding on the states' intrastate turf." *Id.*, at 800.

Incumbent LECs also made several challenges, only some of which are relevant here, to the rules implementing the 1996 Act's requirement of unbundled access. See 47 U. S. C. § 251(c)(3) (1994 ed., Supp. II). Rule 319, the primary unbundling rule, sets forth a minimum number of network elements that incumbents must make available to requesting carriers. See 47 CFR § 51.319 (1997). The LECs complained that, in compiling this list, the FCC had virtually ignored the 1996 Act's requirement that it consider whether access to proprietary elements was "necessary" and whether lack of access to nonproprietary elements would "impair" an entrant's ability to provide local service. See 47 U. S. C. § 251(d)(2) (1994 ed., Supp. II). In addition, the LECs thought that the list included items (like directory assistance and caller I. D.) that did not meet the statutory definition of "network element." See § 153(29). The Eighth Circuit rebuffed both arguments, holding that the Commission's in-

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11 FCC Rcd 19392 (1996). In a separate opinion that is also before us today, the Eighth Circuit vacated this rule insofar as it went beyond the FCC's jurisdiction over interstate calls. *People of California* v. *FCC*, 124 F. 3d 934, 943 (1997).

terpretations of the "necessary and impair" standard and the definition of "network element" were reasonable and hence lawful under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc. (NRDC)*, 467 U. S. 837 (1984). See 120 F. 3d, at 809–810.

When it promulgated its unbundling rules, the Commission explicitly declined to impose a requirement of facility ownership on carriers who sought to lease network elements. First Report & Order ¶¶ 328–340. Because the list of elements that Rule 319 made available was so extensive, the effect of this omission was to allow competitors to provide local phone service relying solely on the elements in an incumbent's network. The LECs argued that this "all elements" rule undermined the 1996 Act's goal of encouraging entrants to develop their own facilities. The Court of Appeals, however, deferred to the FCC's approach. Nothing in the 1996 Act itself imposed a requirement of facility ownership, and the court was of the view that the language of § 251(c)(3) indicated that "a requesting carrier may achieve the capability to provide telecommunications services completely through access to the unbundled elements of an incumbent LECs' network." 120 F. 3d, at 814.

Given the sweep of the "all elements" rule, however, the Eighth Circuit thought that the FCC went too far in its Rule 315(b), which forbids incumbents to separate network elements before leasing them to competitors. 47 CFR § 51.315(b) (1997). Taken together, the two rules allowed requesting carriers to lease the incumbent's entire, preassembled network. The Court of Appeals believed that this would render the resale provision of the statute a dead letter, because by leasing the entire network rather than purchasing and reselling service offerings, entrants could obtain the same product—finished service—at a cost-based, rather than wholesale, rate. 120 F. 3d, at 813. Apparently reasoning that the word "unbundled" in § 251(c)(3) meant "physi-

cally separated," the court vacated Rule 315(b) for requiring access to the incumbent LECs' network elements "on a bundled rather than an unbundled basis." *Ibid.*

Finally, incumbent LECs objected to the Commission's "pick and choose" rule, which governs the terms of agreements between LECs and competing carriers. Under this rule, a carrier may demand that the LEC make available to it "any individual interconnection, service, or network element arrangement" on the same terms and conditions the LEC has given anyone else in an agreement approved under § 252—without its having to accept the other provisions of the agreement. 47 CFR § 51.809 (1997); First Report & Order ¶¶ 1309–1310. The Court of Appeals vacated the rule, reasoning that it would deter the "voluntarily negotiated interconnection agreements" that the 1996 Act favored, by making incumbent LECs reluctant to grant quids for quos, so to speak, for fear that they would have to grant others the same quids without receiving quos. 120 F. 3d, at 801.

The Commission, MCI, and AT&T petitioned for review of the Eighth Circuit's holdings regarding jurisdiction, Rule 315(b), and the "pick and choose" rule; the incumbent LECs cross-petitioned for review of the Eighth Circuit's treatment of the other unbundling issues. We granted all the petitions. 522 U. S. 1089 (1998).

## II

Section 201(b), a 1938 amendment to the Communications Act of 1934, provides that "[t]he Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act." 52 Stat. 588, 47 U. S. C. § 201(b). Since Congress expressly directed that the 1996 Act, along with its local-competition provisions, be inserted into the Communications Act of 1934, 1996 Act, § 1(b), 110 Stat. 56, the Commission's rulemaking authority

would seem to extend to implementation of the local-competition provisions.[5]

The incumbent LECs and state commissions (hereinafter respondents) argue, however, that § 201(b) rulemaking authority is limited to those provisions dealing with purely *interstate and foreign* matters, because the first sentence of § 201(a) makes it "the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor . . . ." It is impossible to understand how this use of the qualifier "interstate or foreign" in § 201(a), which limits the class of common carriers with the duty of providing communication service, reaches forward into the last sentence of § 201(b) to limit the class of provisions that the Commission has authority to implement. We think that the grant in § 201(b) means what it says: The FCC has rulemaking authority to carry out the "provisions of this Act," which include §§ 251 and 252, added by the Telecommunications Act of 1996.[6]

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[5] JUSTICE BREYER says, *post*, at 420, that "Congress enacted [the] language [of § 201(b)] in 1938," and that whether it confers "general authority to make rules implementing the more specific terms of a later enacted statute depends upon what that later enacted statute contemplates." That is assuredly true. But we think that what the later statute contemplates is best determined, not by speculating about what the 1996 Act (and presumably every other amendment to the Communications Act since 1938) "foresees," *ibid.*, but by the clear fact that the 1996 Act was adopted, not as a freestanding enactment, but as an amendment to, and hence *part of*, an Act which said that "[t]he Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act." JUSTICE BREYER cannot plausibly assert that the 1996 Congress was unaware of the general grant of rulemaking authority contained within the Communications Act, since § 251(i) specifically provides that "[n]othing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201."

[6] JUSTICE BREYER appeals to our cases which say that there is a "'presumption against the pre-emption of state police power regulations,'" *post*, at 420, quoting from *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504, 518

Our view is unaffected by 47 U. S. C. § 152(b) (§ 2(b) of the 1934 enactment), which reads:

> "Except as provided in sections 223 through 227 . . . , inclusive, and section 332 . . . , and subject to the provisions of section 301 of this title . . . , nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to . . . charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service . . . ."

The local-competition provisions are not identified in § 152(b)'s "except" clause. Seizing on this omission, respondents argue that the 1996 Act does nothing to displace the presumption that the States retain their traditional authority over local phone service.

Respondents' argument on this point is (necessarily) an extremely subtle one. They do not contend that the "noth-

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(1992), and that there must be "'clear and manifest' showing of congressional intent to supplant traditional state police powers," *post*, at 420, quoting from *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947). But the question in these cases is not whether the Federal Government has taken the regulation of local telecommunications competition away from the States. With regard to the matters addressed by the 1996 Act, it unquestionably has. The question is whether the state commissions' participation in the administration of the new *federal* regime is to be guided by federal-agency regulations. If there is any "presumption" applicable to this question, it should arise from the fact that a federal program administered by 50 independent state agencies is surpassing strange.

The appeals by both JUSTICE THOMAS and JUSTICE BREYER to what might loosely be called "States' rights" are most peculiar, since there is no doubt, even under their view, that if the federal courts believe a state commission is not regulating in accordance with federal policy they may bring it to heel. This is, at bottom, a debate not about whether the States will be allowed to do their own thing, but about whether it will be the FCC or the federal courts that draw the lines to which they must hew. To be sure, the FCC's lines can be even more restrictive than those drawn by the courts—but it is hard to spark a passionate "States' rights" debate over that detail.

ing . . . shall be construed" provision prevents all "appl[ication]" of the Communications Act, as amended in 1996, to intrastate service, or even precludes all "Commission jurisdiction with respect to" such service. Such an interpretation would utterly nullify the 1996 amendments, which clearly "apply" to intrastate service, and clearly confer "Commission jurisdiction" over some matters. Respondents argue, therefore, that the effect of the "[N]othing . . . shall be construed" provision is to require an *explicit* "appl[ication]" to intrastate service, *and in addition an explicit conferral of "Commission jurisdiction" over intrastate service*, before Commission jurisdiction can be found to exist. Such explicit "appl[ication]," they acknowledge, was effected by the 1996 amendments, but "Commission jurisdiction" was explicitly conferred only as to a few matters.

The fallacy in this reasoning is that it ignores the fact that § 201(b) *explicitly* gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies. Respondents argue that avoiding this *pari passu* expansion of Commission jurisdiction with expansion of the substantive scope of the Act was the reason the "nothing shall be construed" provision was framed in the alternative: "[N]othing in this Act shall be construed to apply *or to give the Commission jurisdiction*" (emphasis added) with respect to the forbidden subjects. The italicized portion would have no operative effect, they assert, if every "application" of the Act automatically entailed Commission jurisdiction. The argument is an imaginative one, but ultimately fails. For even though "Commission jurisdiction" always follows where the Act "applies," Commission jurisdiction (so-called "ancillary" jurisdiction) *could* exist even where the Act does *not* "apply." The term "apply" limits the substantive reach of the statute (and the concomitant scope of primary FCC jurisdiction), and the phrase "or to give the Commission jurisdiction" limits, in addition, the FCC's *ancillary* jurisdiction.

The need for both limitations is exemplified by *Louisiana Pub. Serv. Comm'n* v. *FCC*, 476 U. S. 355 (1986), where the FCC claimed authority to issue rules governing depreciation methods applied by local telephone companies.[7] The Commission supported its claim with two arguments. First, that it could regulate intrastate because Congress had intended the depreciation provisions of the Communications Act to bind state commissions—*i. e.*, that the depreciation provisions "applied" to intrastate ratemaking. *Id.*, at 376–377. We observed that "[w]hile it is, no doubt, possible to find some support in the broad language of the section for respondents' position, we do not find the meaning of the section so unambiguous or straightforward as to override the command of § 152(b) . . . ." *Id.*, at 377. But the Commission also argued that, even if the statute's depreciation provisions did not apply intrastate, regulation of state depreciation methods would enable it to effectuate the federal policy of encouraging competition in interstate telecommunications. *Id.*, at 369. We rejected that argument because, even though the FCC's broad regulatory authority normally would have been enough to justify its regulation of intrastate depreciation methods that affected interstate commerce, see *id.*, at 370; cf. *Shreveport Rate Cases*, 234 U. S. 342, 358 (1914), § 152(b) prevented the Commission from taking intrastate action solely because it furthered an interstate goal. 476 U. S., at 374.[8]

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[7] We discuss the *Louisiana* case because of the light it sheds upon the meaning of § 152(b). We of course do not agree with JUSTICE BREYER's contention, *post*, at 421, that the case "raised a question almost identical to the one before us." That case involved the Commission's attempt to regulate services over which it had not explicitly been given rulemaking authority; this one involves its attempt to regulate services over which it *has* explicitly been given rulemaking authority.

[8] Because this reasoning clearly gives separate meanings to the provisions "apply" and "give the Commission jurisdiction," we do not understand why JUSTICE THOMAS asserts, *post*, at 409, that we have not given effect to every word that Congress used. Nor do we agree with JUSTICE

The parties have devoted some effort in these cases to debating whether § 251(d) serves as a jurisdictional grant to the FCC. That section provides that "[w]ithin 6 months

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THOMAS that our interpretation renders § 152(b) a nullity. See *ibid.* After the 1996 Act, § 152(b) may have less practical effect. But that is because Congress, by extending the Communications Act into local competition, has removed a significant area from the States' exclusive control. Insofar as Congress has remained silent, however, § 152(b) continues to function. The Commission could not, for example, regulate any aspect of intrastate communication *not* governed by the 1996 Act on the theory that it had an ancillary effect on matters within the Commission's primary jurisdiction.

JUSTICE THOMAS admits, as he must, that the Commission has authority to implement at least some portions of the 1996 Act. See *post*, at 406. But his interpretation of § 152(b) confers such inflexibility upon that provision that he must strain to explain where the Commission gets this authority. A number of the provisions he relies on plainly read, not like conferrals of authority, but like references to the exercise of authority conferred elsewhere (we think, of course, in § 201(b)). See, *e. g.*, § 251(b)(2) (assigning state commissions "[t]he duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission"); § 251(d)(2) (setting forth factors for the Commission to consider "[i]n determining what network elements should be made available for purposes of subsection (c)(3)"); § 251(g) (requiring that any pre-existing "regulation, order, or policy of the Commission" governing exchange access and interconnection agreements remain in effect until it is "explicitly superseded by regulations prescribed by the Commission"). Moreover, his interpretation produces a most chopped-up statute, conferring Commission jurisdiction over such curious and isolated matters as "number portability, . . . those network elements that the carrier must make available on an unbundled basis for purposes of § 251(c), . . . numbering administration, . . . exchange access and interconnection requirements in effect prior to the Act's effective date, . . . and treatment of comparable carriers as incumbents . . . ," *post,* at 406, but denying Commission jurisdiction over much more significant matters. We think it most unlikely that Congress created such a strange hodgepodge. And, of course, JUSTICE THOMAS's recognition of *any* FCC jurisdiction over intrastate matters subjects his analysis to the same criticism he levels against us, *post,* at 409: Just as it is true that Congress did not explicitly amend § 152(b) to exempt the entire 1996 Act, neither did it explicitly amend § 152(b) to exempt the five provisions he relies upon.

after [the date of enactment of the Telecommunications Act of 1996,] the Commission shall complete all actions necessary to establish regulations to implement the requirements of this section." 47 U. S. C. § 251(d) (1994 ed., Supp. II). The FCC relies on this section as an alternative source of jurisdiction, arguing that if it was necessary for Congress to include an express jurisdictional grant in the 1996 Act, § 251(d) does the job. Respondents counter that this provision functions only as a time constraint on the exercise of regulatory authority that the Commission has been given in the six subsections of § 251 that specifically mention the FCC. See §§ 251(b)(2), 251(c)(4)(B), 251(d)(2), 251(e), 251(g), 251(h)(2). Our understanding of the Commission's general authority under § 201(b) renders this debate academic.[9]

The jurisdictional objections we have addressed thus far pertain to an asserted lack of what might be called underlying FCC jurisdiction. The remaining jurisdictional argument is that certain individual provisions in the 1996 Act negate particular aspects of the Commission's implementing authority. With regard to pricing, respondents point to § 252(c), which provides:

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[9] JUSTICE THOMAS says that the grants of authority to the Commission in § 251 would have been unnecessary "[i]f Congress believed . . . that § 201(b) provided the FCC with plenary authority to promulgate regulations." *Post*, at 408. We have already explained that three of the five provisions on which JUSTICE THOMAS relies are not grants of authority at all. See n. 8, *supra*. And the remaining two do not support his argument because they are not redundant of § 201(b). Section 251(e), which provides that "[t]he Commission shall create or designate one or more impartial entities to administer telecommunications numbering," *requires* the Commission to exercise its rulemaking authority, as opposed to § 201(b), which merely authorizes the Commission to promulgate rules if it so chooses. Section 251(h)(2) says that the FCC "may, by rule, provide for the treatment of a local exchange carrier . . . as an incumbent local exchange carrier for purposes of [§ 251]" if the carrier satisfies certain requirements. This provision gives the Commission authority beyond that conferred by § 201(b); without it, the FCC certainly could not have saddled a nonincumbent carrier with the burdens of incumbent status.

> "(c) Standards for Arbitration
>
> "In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall—
>
> "(1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251;
>
> "(2) establish any rates for interconnection, services, or network elements according to subsection (d); and
>
> "(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement."

Respondents contend that the Commission's TELRIC rule is invalid because § 252(c)(2) entrusts the task of establishing rates to the state commissions. We think this attributes to that task a greater degree of autonomy than the phrase "establish any rates" necessarily implies. The FCC's prescription, through rulemaking, of a requisite pricing methodology no more prevents the States from establishing rates than do the statutory "Pricing standards" set forth in § 252(d). It is the States that will apply those standards and implement that methodology, determining the concrete result in particular circumstances. That is enough to constitute the establishment of rates.

Respondents emphasize the fact that § 252(c)(1), which requires state commissions to assure compliance with the provisions of § 251, adds "including the regulations prescribed by the Commission pursuant to section 251," whereas § 252(c)(2), which requires state commissions to assure compliance with the pricing standards in subsection (d), says nothing about Commission regulations applicable to subsection (d). There is undeniably a lack of parallelism here, but it seems to us adequately explained by the fact that § 251 specifically *requires* the Commission to promulgate regulations implementing that provision, whereas subsection (d)

of § 252 does not. It seems to us not peculiar that the mandated regulations should be specifically referenced, whereas regulations permitted pursuant to the Commission's § 201(b) authority are not. In any event, the mere lack of parallelism is surely not enough to displace that explicit authority. We hold, therefore, that the Commission has jurisdiction to design a pricing methodology.

For similar reasons, we reverse the Court of Appeals' determinations that the Commission had no jurisdiction to promulgate rules regarding state review of pre-existing interconnection agreements between incumbent LECs and other carriers, regarding rural exemptions, and regarding dialing parity. See 47 CFR §§ 51.303, 51.405, and 51.205–51.215 (1997). None of the statutory provisions that these rules interpret displaces the Commission's general rulemaking authority. While it is true that the 1996 Act entrusts state commissions with the job of approving interconnection agreements, 47 U. S. C. § 252(e) (1994 ed., Supp. II), and granting exemptions to rural LECs, § 251(f), these assignments, like the rate-establishing assignment just discussed, do not logically preclude the Commission's issuance of rules to guide the state-commission judgments. And since the provision addressing dialing parity, § 251(b)(3), does not even mention the States, it is even clearer that the Commission's § 201(b) authority is not superseded.[10]

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[10] JUSTICE THOMAS notes that it is well settled that state officers may interpret and apply federal law, see, *e. g.*, *United States* v. *Jones*, 109 U. S. 513 (1883), which leads him to conclude that there is no constitutional impediment to the interpretation that would give the States general authority, uncontrolled by the FCC's general rulemaking authority, over the matters specified in the particular sections we have just discussed. *Post*, at 411–412. But constitutional impediments aside, we are aware of no similar instances in which federal policymaking has been turned over to state administrative agencies. The arguments we have been addressing in the last three paragraphs of our text assume a scheme in which Congress has broadly extended its law into the field of intrastate telecommunications,

Finally (as to jurisdiction), respondents challenge the claim in the Commission's First Report & Order that § 208, a provision giving the Commission general authority to hear complaints arising under the Communications Act of 1934, also gives it authority to review agreements approved by state commissions under the local-competition provisions. First Report & Order ¶¶ 121–128. The Eighth Circuit held that the Commission's "perception of its authority . . . is untenable . . . in light of the language and structure of the Act and . . . operation of [§ 152(b)]." 120 F. 3d, at 803. The Court of Appeals erred in reaching this claim because it is not ripe. When, as is the case with this Commission statement, there is no immediate effect on the plaintiff's primary conduct, federal courts normally do not entertain pre-enforcement challenges to agency rules and policy statements. *Toilet Goods Assn., Inc.* v. *Gardner*, 387 U. S. 158 (1967); see also *Lujan* v. *National Wildlife Federation*, 497 U. S. 871, 891 (1990).

## III

### A

We turn next to the unbundling rules, and come first to the incumbent LECs' complaint that the FCC included within the features and services that must be provided to competitors under Rule 319 items that do not (as they must) meet the statutory definition of "network element"—namely, operator services and directory assistance, operational support systems (OSS), and vertical switching functions such as caller I. D., call forwarding, and call waiting. See 47 CFR

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but in a few specified areas (ratemaking, interconnection agreements, etc.) has left the policy implications of that extension to be determined by state commissions, which—within the broad range of lawful policymaking left open to administrative agencies—are beyond federal control. Such a scheme is decidedly novel, and the attendant legal questions, such as whether federal courts must defer to state agency interpretations of federal law, are novel as well.

§§ 51.319(f)–(g) (1997); First Report & Order ¶ 413. The statute defines "network element" as

> "a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service." 47 U. S. C. § 153(29) (1994 ed., Supp. II).

Given the breadth of this definition, it is impossible to credit the incumbents' argument that a "network element" must be part of the physical facilities and equipment used to provide local phone service. Operator services and directory assistance, whether they involve live operators or automation, are "features, functions, and capabilities . . . provided by means of" the network equipment. OSS, the incumbent's background software system, contains essential network information as well as programs to manage billing, repair ordering, and other functions. Section 153(29)'s reference to "databases . . . and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service" provides ample basis for treating this system as a "network element." And vertical switching features, such as caller I. D., are "functions . . . provided by means of" the switch, and thus fall squarely within the statutory definition. We agree with the Eighth Circuit that the Commission's application of the "network element" definition is eminently reasonable. See *Chevron* v. *NRDC,* 467 U. S., at 866.

B

We are of the view, however, that the FCC did not adequately consider the "necessary and impair" standards when it gave blanket access to these network elements, and others, in Rule 319. That Rule requires an incumbent to provide

requesting carriers with access to a minimum of seven network elements: the local loop, the network interface device, switching capability, interoffice transmission facilities, signaling networks and call-related data bases, operations support systems functions, and operator services and directory assistance. 47 CFR § 51.319 (1997). If a requesting carrier wants access to additional elements, it may petition the state commission, which can make other elements available on a case-by-case basis. § 51.317.

Section 251(d)(2) of the Act provides:

> "In determining what network elements should be made available for purposes of subsection (c)(3) of this section, the Commission shall consider, at a minimum, whether—
>
> "(A) access to such network elements as are proprietary in nature is necessary; and
>
> "(B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."

The incumbents argue that § 251(d)(2) codifies something akin to the "essential facilities" doctrine of antitrust theory, see generally 3A P. Areeda & H. Hovenkamp, Antitrust Law ¶¶ 771–773 (1996), opening up only those "bottleneck" elements unavailable elsewhere in the marketplace. We need not decide whether, as a matter of law, the 1996 Act requires the FCC to apply *that* standard; it may be that some other standard would provide an equivalent or better criterion for the limitation upon network-element availability that the statute has in mind. But we do agree with the incumbents that the Act requires the FCC to apply *some* limiting standard, rationally related to the goals of the Act, which it has simply failed to do. In the general statement of its methodology set forth in the First Report and Order, the Commission announced that it would regard the "necessary" stand-

ard as having been met regardless of whether "requesting carriers can obtain the requested proprietary element from a source other than the incumbent," since "[r]equiring new entrants to duplicate unnecessarily even a part of the incumbent's network could generate delay and higher costs for new entrants, and thereby impede entry by competing local providers and delay competition, contrary to the goals of the 1996 Act." First Report & Order ¶ 283. And it announced that it would regard the "impairment" standard as having been met if "the failure of an incumbent to provide access to a network element would decrease the quality, or increase the financial or administrative cost of the service a requesting carrier seeks to offer, compared with providing that service *over other unbundled elements in the incumbent LEC's network*," *id.*, ¶ 285 (emphasis added)—which means that comparison with self-provision, or with purchasing from another provider, is excluded. Since any entrant will request the most efficient network element that the incumbent has to offer, it is hard to imagine when the incumbent's failure to give access to the element would not constitute an "impairment" under this standard. The Commission asserts that it deliberately limited its inquiry to the incumbent's own network because no rational entrant would seek access to network elements from an incumbent if it could get better service or prices elsewhere. That may be. But that judgment allows entrants, rather than the Commission, to determine whether access to proprietary elements is necessary, and whether the failure to obtain access to nonproprietary elements would impair the ability to provide services. The Commission cannot, consistent with the statute, blind itself to the availability of elements outside the incumbent's network. That failing alone would require the Commission's rule to be set aside. In addition, however, the Commission's assumption that *any* increase in cost (or decrease in quality) imposed by denial of a network element renders access to that element "necessary," and causes the failure to provide

that element to "impair" the entrant's ability to furnish its desired services, is simply not in accord with the ordinary and fair meaning of those terms. An entrant whose anticipated annual profits from the proposed service are reduced from 100% of investment to 99% of investment has perhaps been "impaired" in its ability to amass earnings, but has not *ipso facto* been "impair[ed] . . . in its ability to provide the services it seeks to offer"; and it cannot realistically be said that the network element enabling it to raise its profits to 100% is "necessary."[11] In a world of perfect competition, in which all carriers are providing their service at marginal cost, the Commission's total equating of increased cost (or decreased quality) with "necessity" and "impairment" might be reasonable; but it has not established the existence of such an ideal world. We cannot avoid the conclusion that, if Congress had wanted to give blanket access to incumbents' networks on a basis as unrestricted as the scheme the Commission has come up with, it would not have included § 251(d)(2) in the statute at all. It would simply have said (as the Commission in effect has) that whatever requested element can be provided must be provided.

When the full record of these proceedings is examined, it appears that that is precisely what the Commission *thought*

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[11] JUSTICE SOUTER points out that one can say his ability to replace a light bulb is "impaired" by the absence of a ladder, and that a ladder is "necessary" to replace the bulb, even though one "could stand instead on a chair, a milk can, or eight volumes of Gibbon." True enough (and nicely put), but the proper analogy here, it seems to us, is not the absence of a ladder, but the presence of a ladder tall enough to enable one to do the job, but not without stretching one's arm to its full extension. A ladder one-half inch taller is not, "within an ordinary and fair meaning of the word," *post,* at 399, "necessary," nor does its absence "impair" one's ability to do the job. We similarly disagree with JUSTICE SOUTER that a business can be impaired in its *ability* to provide services—even impaired in that ability "in an ordinary, weak sense of impairment," *post,* at 400—when the business receives a handsome profit but is denied an even handsomer one.

Congress had said. The FCC was content with its expansive methodology because of its misunderstanding of § 251(c)(3), which directs an incumbent to allow a requesting carrier access to its network elements "at any technically feasible point." The Commission interpreted this to "impos[e] on an incumbent LEC *the duty to provide all network elements for which it is technically feasible to provide access*," and went on to "conclude that we have authority to establish regulations that are coextensive" with this duty. First Report & Order ¶ 278 (emphasis added). See also *id.*, ¶ 286 ("We conclude that the statute does not require us to interpret the 'impairment' standard in a way that would significantly diminish the obligation imposed by section 251(c)(3)"). As the Eighth Circuit held, that was undoubtedly wrong: Section 251(c)(3) indicates "*where* unbundled access must occur, not *which* [network] elements must be unbundled." 120 F. 3d, at 810. The Commission does not seek review of the Eighth Circuit's holding on this point, and we bring it into our discussion only because the Commission's application of § 251(d)(2) was colored by this error. The Commission began with the premise that an incumbent was obliged to turn over as much of its network as was "technically feasible," and viewed subsection (d)(2) as merely permitting it to soften that obligation by regulatory grace:

> "To give effect to both sections 251(c)(3) and 251(d)(2), we conclude that the proprietary and impairment standards in section 251(d)(2) grant us the authority to refrain from requiring incumbent LECs to provide all network elements for which it is technically feasible to provide access on an unbundled basis." First Report & Order ¶ 279.

The Commission's premise was wrong. Section 251(d)(2) does not authorize the Commission to create isolated exemptions from some underlying duty to make all network elements available. It requires the Commission to determine

on a rational basis *which* network elements must be made available, taking into account the objectives of the Act and giving some substance to the "necessary" and "impair" requirements. The latter is not achieved by disregarding entirely the availability of elements outside the network, and by regarding *any* "increased cost or decreased service quality" as establishing a "necessity" and an "impair[ment]" of the ability to "provide . . . services."

The Commission generally applied the above described methodology as it considered the various network elements *seriatim.* See *id.*, ¶¶ 388–393, 419–420, 447, 481–482, 490–491, 497–499, 521–522, 539–540. Though some of these sections contain statements suggesting that the Commission's action might be supported by a higher standard, see, *e. g.*, *id.*, ¶¶ 521–522, no other standard is consistently applied and we must assume that the Commission's expansive methodology governed throughout. Because the Commission has not interpreted the terms of the statute in a reasonable fashion, we must vacate 47 CFR § 51.319 (1997).

C

The incumbent LECs also renew their challenge to the "all elements" rule, which allows competitors to provide local phone service relying solely on the elements in an incumbent's network. See First Report & Order ¶¶ 328–340. This issue may be largely academic in light of our disposition of Rule 319. If the FCC on remand makes fewer network elements unconditionally available through the unbundling requirement, an entrant will no longer be able to lease every component of the network. But whether a requesting carrier can access the incumbent's network in whole or in part, we think that the Commission reasonably omitted a facilities-ownership requirement. The 1996 Act imposes no such limitation; if anything, it suggests the opposite, by requiring in § 251(c)(3) that incumbents provide access to "any" requesting carrier. We agree with the Court of Ap-

peals that the Commission's refusal to impose a facilities-ownership requirement was proper.

D

Rule 315(b) forbids an incumbent to separate already-combined network elements before leasing them to a competitor. As they did in the Court of Appeals, the incumbents object to the effect of this Rule when it is combined with others before us today. TELRIC allows an entrant to lease network elements based on forward-looking costs, Rule 319 subjects virtually all network elements to the unbundling requirement, and the all-elements rule allows requesting carriers to rely only on the incumbent's network in providing service. When Rule 315(b) is added to these, a competitor can lease a complete, preassembled network at (allegedly very low) cost-based rates.

The incumbents argue that this result is totally inconsistent with the 1996 Act. They say that it not only eviscerates the distinction between resale and unbundled access, but that it also amounts to Government-sanctioned regulatory arbitrage. Currently, state laws require local phone rates to include a "universal service" subsidy. Business customers, for whom the cost of service is relatively low, are charged significantly above cost to subsidize service to rural and residential customers, for whom the cost of service is relatively high. Because this universal-service subsidy is built into retail rates, it is passed on to carriers who enter the market through the resale provision. Carriers who purchase network elements at cost, however, avoid the subsidy altogether and can lure business customers away from incumbents by offering rates closer to cost. This, of course, would leave the incumbents holding the bag for universal service.

As was the case for the all-elements rule, our remand of Rule 319 may render the incumbents' concern on this score academic. Moreover, § 254 requires that universal-service

subsidies be phased out, so whatever possibility of arbitrage remains will be only temporary. In any event, we cannot say that Rule 315(b) unreasonably interprets the statute.

Section 251(c)(3) establishes:

> "The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 . . . . An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service."

Because this provision requires elements to be provided in a manner that "allows requesting carriers to combine" them, incumbents say that it contemplates the leasing of network elements in discrete pieces. It was entirely reasonable for the Commission to find that the text does not command this conclusion. It forbids incumbents to sabotage network elements that *are* provided in discrete pieces, and thus assuredly contemplates that elements *may* be requested and provided in this form (which the Commission's rules do not prohibit). But it does not say, or even remotely imply, that elements *must* be provided only in this fashion and never in combined form. Nor are we persuaded by the incumbents' insistence that the phrase "on an unbundle[d] basis" in § 251(c)(3) means "physically separated." The dictionary definition of "unbundle[d]" (and the only definition given, we might add) matches the FCC's interpretation of the word: "to give separate prices for equipment and supporting services." Webster's Ninth New Collegiate Dictionary 1283 (1988).

The reality is that § 251(c)(3) is ambiguous on whether leased network elements may or must be separated, and the rule the Commission has prescribed is entirely rational, finding its basis in § 251(c)(3)'s nondiscrimination requirement. As the Commission explains, it is aimed at preventing incumbent LECs from "disconnect[ing] previously connected elements, over the objection of the requesting carrier, not for any productive reason, but just to impose wasteful reconnection costs on new entrants." Reply Brief for Federal Petitioners and Brief for Federal Cross-Respondents 23. It is true that Rule 315(b) could allow entrants access to an entire preassembled network. In the absence of Rule 315(b), however, incumbents could impose wasteful costs on even those carriers who requested less than the whole network. It is well within the bounds of the reasonable for the Commission to opt in favor of ensuring against an anticompetitive practice.

## IV

The FCC's "pick and choose" rule provides, in relevant part:

> "An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement." 47 CFR § 51.809 (1997).

Respondents argue that this rule threatens the give-and-take of negotiations, because every concession as to an "interconnection, service, or network element arrangement" made (in exchange for some other benefit) by an incumbent LEC will automatically become available to every potential entrant into the market. A carrier who wants one term

from an existing agreement, they say, should be required to accept *all* the terms in the agreement.

Although the latter proposition seems eminently fair, it is hard to declare the FCC's rule unlawful when it tracks the pertinent statutory language almost exactly. Title 47 U. S. C. § 252(i) (1994 ed., Supp. II) provides:

> "A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

The FCC's interpretation is not only reasonable, it is the most readily apparent. Moreover, in some respects the rule is more generous to incumbent LECs than § 252(i) itself. It exempts incumbents who can prove to the state commission that providing a particular interconnection service or network element to a requesting carrier is either (1) more costly than providing it to the original carrier, or (2) technically infeasible. 47 CFR § 51.809(b) (1997). And it limits the amount of time during which negotiated agreements are open to requests under this section. § 51.809(c). The Commission has said that an incumbent LEC can require a requesting carrier to accept all terms that it can prove are "legitimately related" to the desired term. First Report & Order ¶ 1315. Section 252(i) certainly demands no more than that. And whether the Commission's approach will significantly impede negotiations (by making it impossible for favorable interconnection-service or network-element terms to be traded off against unrelated provisions) is a matter eminently within the expertise of the Commission and eminently beyond our ken. We reverse the Eighth Circuit and reinstate the rule.

* * *

It would be gross understatement to say that the 1996 Act is not a model of clarity. It is in many important respects a model of ambiguity or indeed even self-contradiction. That is most unfortunate for a piece of legislation that profoundly affects a crucial segment of the economy worth tens of billions of dollars. The 1996 Act can be read to grant (borrowing a phrase from incumbent GTE) "most promiscuous rights" to the FCC vis-à-vis the state commissions and to competing carriers vis-à-vis the incumbents—and the Commission has chosen in some instances to read it that way. But Congress is well aware that the ambiguities it chooses to produce in a statute will be resolved by the implementing agency, see *Chevron*, 467 U. S., at 842–843. We can only enforce the clear limits that the 1996 Act contains, which in the present cases invalidate only Rule 319.

For the reasons stated, the July 18, 1997, judgment of the Court of Appeals, 120 F. 3d 753, is reversed in part and affirmed in part; the August 22, 1997, judgment of the Court of Appeals, 124 F. 3d 934, is reversed in part; and the cases are remanded for proceedings consistent with this opinion.

*It is so ordered.*

JUSTICE O'CONNOR took no part in the consideration or decision of these cases.

JUSTICE SOUTER, concurring in part and dissenting in part.

I agree with the Court's holding that the Federal Communications Commission has authority to implement and interpret the disputed provisions of the Telecommunications Act of 1996, and that deference is due to the Commission's reasonable interpretation under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). I disagree with the Court's holding that the Commission was

unreasonable in its interpretation of 47 U. S. C. § 251(d)(2) (1994 ed., Supp. II), which requires it to consider whether competitors' access to network elements owned by local exchange carriers (LECs) is "necessary" and whether failure to provide access to such elements would "impair" competitors' ability to provide services. *Ante*, at 392. Because I think that, under *Chevron*, the Commission reasonably interpreted its duty to consider necessity and impairment, I respectfully dissent from Part III–B of the Court's opinion.

The statutory provision in question specifies that in determining what network elements should be made available on an unbundled basis to potential competitors of the LECs, the Commission "shall consider" whether "access to such network elements as are proprietary in nature is necessary," § 251(d)(2)(A), and whether "the failure to provide access" to network elements "would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer," § 251(d)(2)(B). The Commission interpreted "necessary" to mean "prerequisite for competition," in the sense that without access to certain proprietary network elements, competitors' "ability to compete would be significantly impaired or thwarted." *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, ¶ 282, 11 FCC Rcd 15499, 15641–15642 (1996) (First Report & Order). On this basis, it decided to require access to such elements unless the incumbent LEC could prove both that the requested network element was proprietary and that the requesting competitor could offer the same service through the use of another, nonproprietary element offered by the incumbent LEC. *Id.*, ¶ 283, at 15642.

The Commission interpreted "impair" to mean "diminished in value," and explained that a potential competitor's ability to offer services would diminish in value when the quality of those services would decline or their price rise, absent the element in question. *Id.*, ¶ 285, at 15643. The Commission chose to apply this standard "by evaluating

whether a carrier could offer a service using other unbundled elements within an incumbent LEC's network," *ibid.*, and decided that whenever it would be more expensive for a competitor to offer a service using other available network elements, or whenever the service offered using those other elements would be of lower quality, the LEC must offer the desired element to the competitor, *ibid.*

In practice, as the Court observes, *ante*, at 389, the Commission's interpretation will probably allow a competitor to obtain access to any network element that it wants; a competitor is unlikely in fact to want an element that would be economically unjustifiable, and a weak economic justification will do. Under *Chevron*, the only question before us is whether the Commission's interpretation, obviously favorable to potential competitors, falls outside the bounds of reasonableness.

As a matter of textual justification, certainly, the Commission is not to be faulted. The words "necessary" and "impair" are ambiguous in being susceptible to a fairly wide range of meanings, and doubtless can carry the meanings the Commission identified. If I want to replace a light bulb, I would be within an ordinary and fair meaning of the word "necessary" to say that a stepladder is "necessary" to install the bulb, even though I could stand instead on a chair, a milk can, or eight volumes of Gibbon. I could just as easily say that the want of a ladder would "impair" my ability to install the bulb under the same circumstances. These examples use the concepts of necessity and impairment in what might be called their weak senses, but these are unquestionably still ordinary uses of the words.

Accordingly, the Court goes too far when it says that under "the ordinary and fair meaning" of "necessary" and "impair," *ante*, at 389–390, "[a]n entrant whose anticipated annual profits from the proposed service are reduced from 100% of investment to 99% of investment . . . has not *ipso facto* been 'impair[ed] . . . in its ability to provide the services

it seeks to offer'; and it cannot realistically be said that the network element enabling it to raise profits to 100% is 'necessary,'" *ante,* at 390. A service is surely "necessary" to my business in an ordinary, weak sense of necessity when that service would allow me to realize more profits, and a business can be said to be "impaired" in delivery of services in an ordinary, weak sense of impairment when something stops the business from getting the profit it wants for those services.

Not every choice of meaning that falls within the bounds of textual ambiguity is necessarily reasonable, to be sure, but the Court's appeal to broader statutory policy comes up short in my judgment. The Court says, with some intuitive plausibility, that "the Act requires the FCC to apply *some* limiting standard, rationally related to the goals of the Act, which it has simply failed to do." *Ante,* at 388. In the Court's eyes, the trouble with the Commission's interpretation is that it "allows entrants, rather than the Commission, to determine" necessity and impairment, *ante,* at 389, and so the Court concludes that "if Congress had wanted to give blanket access to incumbents' networks on a basis as unrestricted as the scheme the Commission has come up with, it would not have included § 251(d)(2) in the statute at all," *ante,* at 390.

The Court thus judges the reasonableness of the Commission's rule for implementing § 251(d)(2) by asking how likely it is that Congress would have legislated at all if its point in adopting the criteria of necessity and impairment was to do no more than require economic rationality, and the Court answers that the Commission's notion of the congressional objective in using the ambiguous language is just too modest to be reasonable. The persuasiveness of the Court's answer to its question, however, rests on overlooking the very different question that the Commission was obviously answering when it adopted Rule 319. As the Court itself notes, *ante,*

at 388–389, the Commission explicitly addressed the consequences that would follow from requiring an entrant to satisfy the necessity and impairment criteria by showing that alternative facilities were unavailable at reasonable cost from anyone except the incumbent LEC. First Report & Order ¶ 283, 11 FCC Rcd, at 15642. To require that kind of a showing, the Commission said, would encourage duplication of facilities and personnel, with obvious systemic costs. *Ibid.* The Commission, in other words, was approaching the task of giving reasonable interpretations to "necessary" and "impair" by asking whether Congress would have mandated economic inefficiency as a limit on the objective of encouraging competition through ease of market entry. The Commission concluded, without any apparent implausibility, that the answer was no, and proceeded to implement the necessity and impairment provisions in accordance with that answer.

Before we conclude that the Commission's reading of the statute was unreasonable, therefore, we have to do more than simply ask whether Congress would probably have legislated the necessity and impairment criteria in their weak senses. We have to ask whether the Commission's further question is an irrelevant one, and (if it is not), whether the Commission's answer is reasonably defensible. If the question is sensible and the answer fair, *Chevron* deference surely requires us to respect the Commission's conclusion. This is so regardless of whether the answer to the Commission's question points in a different direction from the answer to the Court's question; there is no apparent reason why deference to the agency should not extend to the agency's choice in responding to mutually ill-fitting clues to congressional meaning. This, indeed, is surely a classic case for such deference, the statute here being infected not only with "ambiguity" but even "self-contradiction." *Ante*, at 397. I would accordingly respect the Commission's choice to give primacy to the question it chose.

JUSTICE THOMAS, with whom THE CHIEF JUSTICE and JUSTICE BREYER join, concurring in part and dissenting in part.

Since Alexander Graham Bell invented the telephone in 1876, the States have been, for all practical purposes, exclusively responsible for regulating intrastate telephone service. Although the Telecommunications Act of 1996 altered that more than century-old tradition, the majority takes the Act too far in transferring the States' regulatory authority wholesale to the Federal Communications Commission. In my view, the Act does not unambiguously indicate that Congress intended for such a transfer to occur. Indeed, it specifically reserves for the States the primary responsibility to conduct mediations and arbitrations and to approve agreements between carriers. See 47 U. S. C. §§ 252(c), (e) (1994 ed., Supp. II). I therefore respectfully dissent from Part II of the majority's opinion.[1]

I

From the time that the commercial offering of telephone service began in 1877 until the expiration of key patents in 1893 and 1894, Alexander Graham Bell's telephone company—which came to be known as the American Telephone and Telegraph Company—enjoyed a monopoly. J. Brooks, Telephone: The First Hundred Years 59, 67, 71–72 (1976). In the decades that followed, thousands of independent phone companies emerged to fill in the gaps left by the telephone giant and, in most larger markets, to build rival networks in direct competition with it. *Id.*, at 102–111. As competition developed, many municipalities began to adopt ordinances regulating telephone service. See, *e. g.*, K. Lipartito, The Bell System and Regional Business 177–186 (1989).

During the 1900's, state legislatures came under increasing pressure to centralize the regulation of telephone service.

[1] I agree with the majority's analysis of the unbundling and pick-and-choose rules, which were not challenged on jurisdictional grounds.

See, *e. g.*, *id.*, at 185–207. Although the quasi-competitive system had significant drawbacks from the consumers' standpoint—principally the refusal of competing systems to interconnect—perhaps the strongest advocate of state regulation was AT&T itself. *Ibid.* The company's arguments that telephone service was naturally monopolistic and that competition was resulting in wasteful duplication of facilities appealed to Progressive-era legislatures. Cohen, The Telephone Problem and the Road to Telephone Regulation in the United States, 3 J. Policy Hist. 42, 55–57 (1991); see generally Lipartito, *supra*, at 185–207. By 1915, most States had established public utility commissions and charged them with regulating telephone service. Brooks, *supra*, at 144. Over time, the Bell Companies' policy of buying out independent providers coupled with the state commissions' practice of prohibiting competitive entry led back to the monopoly provision of local telephone service. See R. Garnet, The Telephone Enterprise: The Evolution of the Bell System's Horizontal Structure, 1876–1909, 146–153 (1985).

Early federal telecommunications regulation, which began with the Mann-Elkins Act of 1910, did not displace the States' fledgling efforts to regulate intrastate telephone service. To the contrary, the Mann-Elkins Act extended the jurisdiction of the Interstate Commerce Commission (ICC) to cover *only* interstate and international telecommunications services.[2] As a result, state and federal agencies were required to meticulously separate the intrastate and interstate aspects of telephone services. Accordingly, in *Smith* v. *Illinois Bell Telephone Co.*, 282 U. S. 133 (1930), this Court

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[2] The Mann-Elkins Act provided, in relevant part, that "the provisions of this Act shall apply to . . . telegraph, telephone, and cable companies . . . engaged in sending messages from one State, Territory, or District of the United States, to any other State, Territory or District of the United States, or to any foreign country, who shall be considered and held to be common carriers within the meaning and purpose of this Act." Act of June 18, 1910, ch. 309, § 7, 36 Stat. 544–545.

invalidated an Illinois Commerce Commission order establishing rates for the city of Chicago because it failed to distinguish between the intrastate and interstate property and business of the telephone company. In so doing, the Court emphasized that "[t]he separation of the intrastate and interstate property, revenues and expenses of the Company is . . . essential to the appropriate recognition of the competent governmental authority in each field of regulation." *Id.*, at 148.

In the Communications Act of 1934, 48 Stat. 1064, as amended, 47 U. S. C. § 151 *et seq.*, Congress transferred authority over interstate communications from the ICC to the newly created Federal Communications Commission (FCC or Commission). As in the Mann-Elkins Act, Congress chose not to displace the States' authority over intrastate communications. Indeed, Congress took care to preserve it explicitly in § 2(b), which provides, in relevant part, that "nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to . . . charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service." 47 U. S. C. § 152(b). We have carefully guarded the historical jurisdictional division codified in § 2(b). See *Louisiana Pub. Serv. Comm'n* v. *FCC*, 476 U. S. 355 (1986). In *Louisiana*, we held that § 2(b) precluded the FCC from pre-empting state depreciation regulations. In so doing, we rejected the FCC's argument that § 220 of the Communications Act of 1934 provided it with authority to displace state regulations that were inconsistent with federal depreciation standards. We instead concluded that § 2(b) "fences off from FCC reach or regulation intrastate matters—indeed, including matters 'in connection with' intrastate service," *id.*, at 370, and we further indicated that the FCC could breach § 2(b)'s jurisdictional "fence" only when Congress used "unambiguous or straightforward" language to give it jurisdiction over intrastate communications, *id.*, at 377.

Congress enacted the Telecommunications Act of 1996 (1996 Act or Act), Pub. L. 104–104, 110 Stat. 56, against this backdrop. To be sure, the 1996 Act marked a significant change in federal telecommunications policy. Most important, Congress ended the States' longstanding practice of granting and maintaining local exchange monopolies. See 47 U. S. C. § 253(a) (1994 ed., Supp. II). It also required incumbent local exchange carriers to allow their competitors to access their facilities in three different ways. As the majority describes more completely, *ante*, at 371–373, n. 1, incumbents must: interconnect their networks with requesting carriers' facilities and equipment, § 251(c)(2); provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point, § 251(c)(3); and offer to resell at wholesale rates any telecommunications service that they provide to subscribers who are not telecommunications carriers, § 251(c)(4). The Act sets forth additional obligations applicable to all telecommunications carriers, § 251(a), and all local exchange carriers, § 251(b). To facilitate rapid transition from monopoly to competitive provision of local telephone service, Congress set forth a process to ensure that the incumbent and competing carriers fulfill these obligations in § 252.

Section 252 sets up a preference for negotiated interconnection agreements. § 252(a). To the extent that the incumbent and competing carriers cannot agree, the Act gives the state commissions primary responsibility for mediating and arbitrating agreements. Specifically, Congress directed the state commissions to mediate disputes between carriers during the voluntary negotiation period, § 252(a)(2), and—after the negotiations have run their course—to arbitrate any "open issues," § 252(b)(1). In conducting these arbitrations, state commissions are directed to ensure that open issues are resolved in accordance with the requirements of § 251, "establish . . . rates for interconnection, services, or network elements" according to the standards that Congress

set forth in § 252(d), and provide a schedule for implementing the agreement reached during arbitration. § 252(c). The state commissions are also to approve or reject any interconnection agreement, whether adopted by negotiation or arbitration, § 252(e)(1), guided by the standards set forth in § 252(e)(2). The 1996 Act permits the FCC to intervene in this process only as a last resort, when "a State commission fails to act to carry out its responsibilit[ies]." § 252(e)(5). In that event, "the Commission shall issue an order preempting the State commission's jurisdiction . . . and shall assume the responsibility of the State commission . . . and act for the State commission." *Ibid.*

To be sure, the Act directs the state commissions, in conducting arbitrations, to ensure that open issues are resolved in accordance with the "regulations prescribed by the [FCC] pursuant to section 251," § 252(c)(1), and provides that the state commissions may reject an arbitrated agreement if it does not meet the requirements of § 251, "including the regulations prescribed by the Commission pursuant to section 251," § 252(e)(2)(B). But the scope of the FCC's rulemaking authority under the Act is quite limited. Section 251(d)(1) directs the Commission to "complete all actions necessary to establish regulations to implement the requirements of this section" within a certain time period. I believe that this subsection is a time limitation upon, and a mandate for, the exercise of rulemaking authority conferred elsewhere. The source of that authority, as I describe below, is not § 201(b), but, rather, § 251 itself. Section 251 specifically identifies those subjects upon which the FCC may regulate. The FCC has authority to regulate on the subject of number portability, § 251(b)(2); those network elements that the carrier must make available on an unbundled basis for purposes of § 251(c), § 251(d)(2); numbering administration, § 251(e); exchange access and interconnection requirements in effect prior to the Act's effective date, § 251(g); and treatment of comparable carriers as incumbents, § 251(h)(2).

## II

The regulations that are the subject of the jurisdictional challenge of the respondent LECs and state commissions contravene the division of authority set forth in the 1996 Act and disregard the 100-year tradition of state authority over intrastate telecommunications. In the introduction to its First Report and Order, the FCC peremptorily declared that §§ 251 and 252 "*require* [it] to establish implementing rules to govern interconnection, resale of services, access to unbundled network elements, and other matters, and direct the states to follow the Act and those rules in arbitrating and approving arbitrated agreements under sections 251 and 252." *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15544–15545 (1996) (emphasis added). In fulfilling its perceived statutory mandate, the FCC promulgated painstakingly detailed regulations dictating to the state commissions how they must implement §§ 251 and 252. I agree with the Eighth Circuit that the FCC lacked jurisdiction to promulgate the regulations challenged on jurisdictional grounds.[3]

### A

In endorsing the FCC's claim that it has general rulemaking authority to implement the local competition provisions of the 1996 Act, the majority relies upon a general grant of authority that predates the Act, 47 U. S. C. § 201(b). The last sentence of that provision, upon which the majority so heavily relies, provides that "[t]he Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter."

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[3] I agree with the majority, *ante*, at 386, that respondents' challenge to the FCC's assertion that it has authority under 47 U. S. C. § 208 to consider complaints arising under the 1996 Act is not ripe for review. It appears to me, however, that the Court of Appeals' conclusion that the FCC lacks such authority carries considerable force.

This grant of authority, however, cannot be read in isolation. As the first Justice Harlan once observed: "It is a familiar rule in the interpretation of . . . statutes that 'a passage will be best interpreted by reference to that which precedes and follows it.'" *Neal* v. *Clark*, 95 U. S. 704, 708 (1878). Section 201(a) refers exclusively to "interstate or foreign communication by wire or radio," and the first sentence of § 201(b) refers to "charges, practices, classifications, and regulations for and in connection with such communication service." "Under the principle of *ejusdem generis*, when a general term follows a specific one, the general term should be understood as a reference to subjects akin to the one with specific enumeration." *Norfolk & Western R. Co.* v. *Train Dispatchers*, 499 U. S. 117, 129 (1991). Applying this principle here, it is clear that the last sentence of § 201(b) only gives the FCC authority to promulgate regulations governing interstate and foreign communications. By failing to read § 201(b)'s grant of rulemaking authority in light of the limitation that precedes it, the majority attributes to the provision "a meaning so broad that it is inconsistent with its accompanying words, thus giving 'unintended breadth to the Acts of Congress.'" *Gustafson* v. *Alloyd Co.*, 513 U. S. 561, 575 (1995) (quoting *Jarecki* v. *G. D. Searle & Co.*, 367 U. S. 303, 307 (1961)).

That Congress apparently understood § 201(b) to be so limited is demonstrated by the fact that the FCC is specifically charged, under the 1996 Act, with issuing regulations that implement particular portions of § 251, as I have described, *supra*, at 406. If Congress believed, as does the majority, that § 201(b) provided the FCC with plenary authority to promulgate regulations implementing all of the 1996 Act's provisions, it presumably would not have needed to make clear that the FCC had regulatory authority with respect to particular matters.

B

Moreover, I cannot see how § 201(b) represents an "unambiguous" grant of authority that is sufficient to overcome § 2(b)'s jurisdictional fence. In my view, the majority's interpretation of § 201(b) necessarily implies that Congress *sub silentio* rendered § 2(b) a nullity by extending federal law to cover intrastate telecommunications. That conclusion is simply untenable in light of the fact that § 2(b) is written in the disjunctive. Section 2(b), 47 U. S. C. § 152(b), provides that "nothing in this chapter shall be construed to apply to *or to give the Commission jurisdiction with respect to*" intrastate telecommunications service. (Emphasis added.) Contrary to the majority's suggestion, *ante*, at 380, there is nothing "subtle" or "imaginative" about the principle that "[i]n construing a statute we are obliged to give effect, if possible, to every word Congress used. Canons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings, unless the context dictates otherwise . . . ." *Reiter* v. *Sonotone Corp.*, 442 U. S. 330, 339 (1979) (citation omitted). Nor is the majority correct that *Louisiana Pub. Serv. Comm'n* v. *FCC* supports its reading of § 2(b). Indeed, the disjunctive structure of the provision led us to conclude in *Louisiana* that § 2(b) contains both "a rule of statutory construction" and a "substantive jurisdictional limitation on the FCC's power." 476 U. S., at 372–373. It follows that we should give independent legal significance to each. Thus, it is not enough for the majority simply to demonstrate that the 1996 Act "appl[ies] to" intrastate services; it must also point to "unambiguous" and "straightforward" evidence that Congress intended to eliminate § 2(b)'s "substantive jurisdictional limitation."

This they cannot do. Nothing in the 1996 Act eliminates § 2(b)'s jurisdictional fence. Congress has elsewhere demonstrated that it knows how to exempt certain provisions from

§ 2(b)'s reach; indeed, it has done so quite recently. For example, in 1992, Congress enacted legislation providing that § 2(b) shall apply "[e]xcept as provided in sections 223 through 227" of the Communications Act of 1934. Pub. L. 102–243. The following year, Congress also exempted § 301 from § 2(b)'s purview. Pub. L. 103–66. With the 1996 Act, Congress neither eliminated § 2(b) altogether nor added §§ 251 and 252 to the list of provisions exempted from its jurisdictional fence. I believe that we are obliged to honor that choice.

C

Even if the rulemaking authority granted by § 201(b) was not limited to interstate and international communications *and* the 1996 Act rendered § 2(b) a nullity, the FCC's argument would still fail with respect to its pricing rules and its rules governing the state commissions' approval of interconnection agreements. We have made it clear that "[w]here there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one." *Crawford Fitting Co.* v. *J. T. Gibbons, Inc.*, 482 U. S. 437, 445 (1987) (emphasis deleted; internal quotation marks omitted). Section 201(b) at best gives the FCC general rulemaking authority. But the 1996 Act gives the state commissions the primary responsibility for conducting mediations and arbitrations and approving interconnection agreements. Indeed, as I have described, Congress set forth specific standards that the state commissions are to adhere to in setting pricing, § 252(d), and in approving interconnection agreements, § 252(e). The majority appears to believe that Congress expected that the FCC would promulgate rules to "guide the state-commission judgments." *Ante*, at 385. I do not agree. It seems to me that Congress consciously designed a system that respected the States' historical role as the dominant authority with respect to intrastate communications. In giving the state commissions primary responsibility for conducting mediations and arbitrations and for ap-

proving interconnection agreements, I simply do not think that Congress intended to limit States' authority to mechanically apply whatever methodologies, formulas, and rules that the FCC mandated. Because Congress set forth specific provisions giving primary responsibility in certain areas to the States, and because the subsections setting forth the standards that the state commissions are to apply make no mention of FCC regulation, I believe that we are obliged to presume that Congress intended the specific grant of primary authority to the States to control.[4]

D

My interpretation, of course, would require the state commissions to interpret and implement the substantive provisions of the 1996 Act in those instances where the 1996 Act gave the state commissions primary authority. Several parties have suggested that it is inappropriate for the States to do so. One of the many petitioners in these cases goes so far as to suggest that under our decision in *Printz* v. *United States*, 521 U. S. 898 (1997), the "legitimacy of any such delegation of federal substantive authority [to the States] would be suspect." Brief for Petitioner in No. 97–829, p. 40. To be sure, we held in *Printz* that the Federal Government may not commandeer state executive agencies. But I do not know of a principle of federal law that prohibits the States from interpreting and applying federal law. Indeed, basic principles of federalism compel us to presume that States are competent to do so. As Justice Field observed over 100 years ago in a decision upholding a federal law delegating to the States the authority to determine compensation in takings cases:

[4] My conclusion applies with equal force to other FCC regulations that trump the state commissions' responsibilities, including exemptions, suspensions, and modification, § 251(f); approval of agreements predating the Act, § 252(a); and pre-emption of state access regulations that are inconsistent with FCC dictates, § 251(d)(3).

> "[I]t was the purpose of the Constitution to establish a general government independent of, and in some respects superior to, that of the State governments—one which could enforce its own laws through its own officers and tribunals . . . . Yet from the time of its establishment that government has been in the habit of using, with the consent of the States, their officers, tribunals, and institutions as its agents. Their use has not been deemed violative of any principle or as in any manner derogating from the sovereign authority of the federal government; but as a matter of convenience and as tending to a great saving of expense." *United States* v. *Jones*, 109 U. S. 513, 519–520 (1883).

When, in 1996, Congress decided to attempt to introduce competition into the market for local telephone service, it deemed it wise to take advantage of the policy expertise that the state commissions have developed in regulating such service. It is not for us—or the FCC—to second-guess its decision.

* * *

Contrary to longstanding historical practice, this Court's precedents respecting that practice, and the 1996 Act's adherence to it, the majority grants the FCC unbounded authority to regulate a matter of state concern. Because I do not believe that Congress intended such a result, I respectfully dissent from Part II of the majority's opinion.

JUSTICE BREYER, concurring in part and dissenting in part.

A statute's history and purpose can illuminate its language. When read in light of history, purpose, and precedent, the Telecommunications Act of 1996 (1996 Act or Act), Pub. L. 104–104, 110 Stat. 56, is not the "model of ambiguity" or "self-contradiction" of which the majority complains. *Ante*, at 397. Neither does it permit the Federal Communi-

cations Commission (FCC) to promulgate the pricing and unbundling rules before us.

I

The FCC's pricing rules fall outside its delegated authority because both (1) a century of regulatory history establishes state authority as the local telephone service ratemaking norm and (2) the 1996 Act nowhere changes, or creates an exception to, that norm. JUSTICE THOMAS' opinion describes the history that has created the norm. *Ante*, at 402–404. In my view, the Act's purposes, its language, relevant precedent, and the nature of the FCC's rules provide added support for his conclusion.

A

The Act's purposes help explain why its language and structure foresee not national rate uniformity, but traditional local ratemaking—FCC views to the contrary notwithstanding. See *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, ¶ 113, 11 FCC Rcd 15499, 15558 (1996) (First Report & Order). To understand those purposes, one must recall that AT&T once dominated the national telecommunications industry. It controlled virtually all long-distance telephone service, most local telephone service, and a substantial amount of all telephone equipment manufacturing. See generally *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 165 (DC 1982) (describing AT&T's "commanding position" in the Nation's telecommunications business), aff'd *sub nom. Maryland* v. *United States*, 460 U. S. 1001 (1983). In 1982, however, AT&T entered into an antitrust consent decree, which ended its industry dominance. See 552 F. Supp., at 160–170.

The decree split AT&T from its local telephone service subsidiaries. By doing so, the decree sought to encourage new competition in long-distance service by firms such as MCI and Sprint. And it also encouraged new competition in telephone equipment markets. But the decree did not

introduce new competition into the local telephone service markets. Rather, it left each local market in the hands of a single state-regulated local service supplier, such as NYNEX in New York, or Bell Atlantic in Washington, D. C. That circumstance may have reflected the belief, current at the time, that local service competition could prove wasteful, leading to the unwarranted duplication of expensive physical facilities by requiring, say, the unnecessary digging up of city streets to install unneeded wires connecting each house with a series of new but redundant local switches. See, *e. g.*, *United States* v. *Western Elec. Co.*, 673 F. Supp. 525, 537–538 (DC 1987); P. Huber, M. Kellogg, & J. Thorne, The Geodesic Network II: 1993 Report on Competition in the Telephone Industry, pp. 2.3–2.5 (1992).

At the same time, the decree forbade most such local service suppliers from entering long-distance markets. *United States* v. *American Tel. & Tel. Co.*, *supra*, at 186–188. That prohibition, by preventing entry by local firms willing and able to supply long-distance service, risked less long-distance competition. Cf. P. MacAvoy, The Failure of Antitrust and Regulation to Establish Competition in Long-Distance Telephone Services 179–183 (1996). But the decree reflected a countervailing concern. Local firms might enjoy special long-distance advantages not available to purely long-distance companies. See *United States* v. *American Tel. & Tel.*, *supra*, at 186–188. Perhaps a local service company would find it unusually easy to attract local customers to its long-distance service; perhaps it could use its control of local service to place its long-distance competitors at a disadvantage. See T. Krattenmaker, Telecommunications Law and Policy 411–412 (2d ed. 1998) (explaining rationale of the decree). And though some argued that any such special advantages were innocent, rather like those enjoyed by a transcontinental airline that dominates a local hub, others claimed they were unfair, like those that had once helped AT&T (through its control of local service) maintain long-distance

dominance. See *United States* v. *American Tel. & Tel.*, *supra*, at 165; see generally A. Kahn, Letting Go: Deregulating the Process of Deregulation, or: Temptation of the Kleptocrats and the Political Economy of Regulatory Disingenuousness 37–38, and n. 53 (1998) (discussing the debate). Whether the decree's tradeoff made sense—*i. e.*, whether the existence of some such local-firm/long-distance-service advantage warranted the decree's prohibition limiting the number of potential long-distance competitors—became a fertile source for later argument. See, *e. g.*, MacAvoy, *supra*, at 171–177 (arguing that oligopolistic conditions in long-distance markets have produced supranormal profits that would not be sustainable with increased competition); Robinson, The Titanic Remembered: AT&T and the Changing World of Telecommunications, 5 Yale J. Reg. 517, 537 (1988) (arguing that the rationale for the decree's restrictions on local service companies was "just as persuasive" as that underlying the decree).

The Act before us responds to this argument by changing the postdecree status quo in two important ways. First, it creates a legal method through which local telephone service companies may enter long-distance markets, thereby providing additional long-distance competition. See 47 U. S. C. § 271(c)(2)(B) (1994 ed., Supp. II) (listing 14 conditions that, if met, permit incumbent local firms to enter long-distance market). Second, it conditions that long-distance entry upon either (1) the introduction of competition into local markets, *or* (2) the failure of a competing carrier to request access to or interconnection with the local service supplier (or the competing carrier's failure to engage in "good faith" negotiations). §§ 271(c)(1)(A), (B). The existence of these two alternatives is important. In setting forth the first alternative, actual local competition, the statute recognizes that local service competition would diminish any special long-distance advantages that the local firm has, thereby lessening the need for the decree's long-distance-market

entry prohibition. See *supra*, at 414–415; Krattenmaker, The Telecommunications Act of 1996, 49 Fed. Com. L. J. 1, 15–16 (1996). In setting forth the second alternative, the Act recognizes that actual local competition might not prove practical; in some places, to some extent, local markets may not support more than a single firm, at least not without wasteful duplication of resources. See Note, The FCC and the Telecom Act of 1996: Necessary Steps to Achieve Substantial Deregulation, 11 Harv. J. L. & Tech. 797, 810, n. 57 (1998).

These alternatives raise a difficult empirical question. To what extent is local competition possible without wasteful duplication of facilities? The Act does not purport to answer this question. Rather, it creates a set of legal rules which, through interaction with the marketplace, aims to produce sensible answers. In particular, the Act *permits* new local entry by dismantling existing legal barriers that would otherwise inhibit it. 47 U. S. C. § 253(a) (1994 ed., Supp. II). Equally important, the Act *promotes* new local entry by requiring incumbents (1) to "interconnect" with new entrants (thereby allowing even a partial new entrant's small set of subscribers to call others within an entire local area), § 251(c)(2); (2) to sell retail services to new entrants at wholesale rates (thereby allowing newly entering firms to become "resellers," competing in retailing), § 251(c)(4); and (3) to provide new entrants "access to network elements," say, house-to-street telephone lines, "on an unbundled basis" (thereby allowing new entry in respect to *some* aspects of the local service business without requiring wasteful duplication of the *entire* business), § 251(c)(3). The last mentioned "unbundling" requirement does not specifically state which elements must be unbundled, a difficult matter that I shall discuss below. See *infra*, at 427–431. But one can understand the basic logic of "unbundling" by imagining that Congress required a sole incumbent railroad providing service between City A and City B to share certain basic facilities, say, bridges, rights-of-way, or tracks, in order to avoid waste-

ful duplication of those hard-to-duplicate resources while facilitating competition in the *remaining* aspects of A-to-B railroad service. Indeed, one might characterize the Act's basic purpose as seeking to bring about, without inordinate waste, greater local service competition both as an end in local markets and as a means toward more competition, and fair competition, in long-distance markets.

For the present cases, the most important characteristic of the Act's purposes is what those purposes do *not* require. Those purposes neither require nor suggest reading the Act's language to change radically the scope of local regulators' traditional ratesetting powers. A utility's rate structure consists of complex sets of typically interdependent individual rates, the determination of which depends upon numerous considerations, many of which are local in nature and fall outside the Act's purview. The introduction of competition into a particular locality does not diminish the importance of place-specific factors, such as local history, geography, demands, and costs. And local regulators are likely more familiar than are national regulators, for example, with a particular utility's physical plant, its cost structure, the pattern of local demand, the history of local investment, and the need for recovery of undepreciated fixed costs.

Moreover, local regulators have experience setting rates that recover both the immediate, smaller, added costs that demand for additional service imposes upon a local system and also a proper share of the often huge fixed costs (of local loops, say, or switches) and overhead needed to provide the dial tone itself. Indeed, local regulators would seem as likely, if not more likely, than national regulators to know whether, when, or the extent to which particular local charges or systems of charges will lead new entrants to abandon efforts to use a local incumbent's elements, turning instead to alternative technologies. And local regulators would seem as likely as national regulators to know whether or when use of such alternative technologies in the local cir-

cumstances will prove more beneficial than wasteful. It is the local communities, and, hence, local regulators, that will directly confront the problems and enjoy the benefits associated with local efforts to integrate new and old communications resources and communications firms. These factors, along with the fact that the relevant technology changes rapidly, argue in favor of, not against, local ratesetting control, including local ratesetting differences, for those differences can amount to the kind of "experimentation" long thought a strength of our federal system.

At most, the Act's purposes argue for a grant to the FCC of authority to set federal limitations preventing States from adopting forms of ratemaking that would interfere with the Act's basic objectives. The Act explicitly grants the FCC a particular pre-emption tool, not here invoked, which is apparently suited to that job. 47 U. S. C. § 253(d) (1994 ed., Supp. II) (permitting the FCC to pre-empt, after notice and comment, any state legal requirement that has the effect of prohibiting entry into local service). Such a grant could not help the FCC here, however, for, as I discuss below, *infra*, at 423–427, the FCC's rules do not just create an outer envelope or simply prevent the States from going too far. Rather, they effectively supplant much of a local regulator's local ratesetting work.

B

Read in light of its purposes, the Act's language more clearly foresees retention, not replacement, of the traditional allocation of state-federal ratesetting authority. *Ante*, at 405–406 (THOMAS, J., concurring in part and dissenting in part). Sections 251 and 252, which establish and provide for implementation of new local service obligations, contain the relevant language.

Section 251 lists basic obligations that the Act imposes upon local incumbents. These include obligations to interconnect, to unbundle, to sell at wholesale rates, to provide "number portability," to assure "dialing parity," to negotiate

with potential entrants in good faith, and generally to encourage local competition. Section 251 also refers to the FCC, but only in respect to *some* of these obligations. See, *e. g.*, § 251(d)(2) ("[T]he Commission shall consider" certain standards in determining which network elements must be unbundled); § 251(b)(2) (local firms have duty to provide "number portability in accordance with requirements prescribed by the Commission"); see *ante*, at 406 (THOMAS, J., concurring in part and dissenting in part). It makes no mention of a regulator in respect to other matters, *which others include ratemaking.* Thus, § 251's language leaves open the relevant question—which regulator has the authority to set rates.

Section 252, which specifically describes how § 251's obligations are to be implemented, is less ambivalent. Its implementation system consists of negotiation between incumbents and new entrants, followed by *state* regulatory commission arbitration if negotiations fail. §§ 252(a), (b). Certain of § 252's language, I concede, can be read to favor the majority—in particular its statement that the results of state arbitration must be consistent with § 251 and with "regulations prescribed by the [FCC] pursuant to section 251." § 252(c)(1). But the word "regulations" here might or might not include rate regulations. *Ante*, at 384–385. And the immediately following language indicates that it does not.

That immediately following language, beginning with the immediately subsequent subsection and including nine paragraphs, speaks separately, and specifically, of rates. §§ 252(c)(2), (d). And that language expressly says that the "*State commission[s]*" are to "establish any rates." It adds that they are to do so "according to" a further subsection, "subsection (d)." And this further subsection (d), headed by the words "Pricing standards" and focusing upon "charges," sets forth the pricing standards for use by the *state commissions.* It speaks of "[d]eterminations by a [s]tate commission of the just and reasonable rate" (which, it adds, must be

"nondiscriminatory" and "based on . . . cost"), but it says nothing about a role for the FCC. Section 252's references to the state commissions, its ratesetting detail, and its silence about the FCC's role all favor a reading of the earlier word "regulations" that excludes, rather than includes, FCC rate regulations.

Thus, § 251 is silent about local ratesetting power. Section 252 speaks of state, not federal, ratemaking. As most naturally read, the structure and language of those sections foresee the traditional allocation of ratemaking authority—an allocation that within broad limits assumes local rates are local matters for local regulators.

I recognize that the majority finds the relevant rulemaking authority not in §§ 251 and 252, but in a different section containing a general grant of rulemaking authority. *Ante,* at 377–378 (citing 47 U. S. C. § 201(b)). But Congress enacted that language in 1938, see 52 Stat. 588. The scope of the FCC's legal power to apply an explicit grant of general authority to make rules implementing the more specific terms of a later enacted statute depends upon what that later enacted statute contemplates. Cf. *Louisiana Pub. Serv. Comm'n* v. *FCC,* 476 U. S. 355, 376–377, n. 5 (1986). And here, as just explained, the 1996 Act foresees the reservation of most local ratesetting authority to local regulators.

C

The most the FCC can claim is linguistic ambiguity. But such a claim does not help the FCC, for relevant precedent makes clear that, when faced with ambiguity, we are to interpret statutes of this kind on the assumption that Congress intended to preserve local authority. See, *e. g., Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504, 518 (1992) ("presumption against the pre-emption of state police power regulations"); *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947) (requiring "clear and manifest" showing of congressional intent to supplant traditional state police powers). Moreover,

the Communications Act of 1934 itself, into which Congress inserted the provisions of the 1996 Act with which we are here concerned, comes equipped with a specific instruction that courts are *not* to "construe" the FCC's statutory grant of authority as

> "giv[ing] the Commission jurisdiction with respect to . . . charges . . . for or in connection with intrastate communication." 47 U. S. C. § 152(b).

Thus, as JUSTICE THOMAS points out, *ante*, at 409, it is not surprising to find that this Court has interpreted the Communications Act as denying the FCC authority to determine local rate-related practices in the face of statutory language far more helpful to the FCC than anything present here. *Louisiana Pub. Serv. Comm'n* v. *FCC, supra.* That precedent requires a similar result here.

*Louisiana* raised a question almost identical to the one before us: Does a statute granting the FCC authority to set certain *general* rate-related rules (there, depreciation rules) also grant the FCC authority to set *primarily local* rate-related rules (*i. e.*, local depreciation rules)? Writing for the Court, Justice Brennan stated that the basic "rule of statutory construction" contained in § 152(b) and just quoted above requires interpretations that favor the reservation of ratemaking authority to the States. *Id.*, at 373. Hence, the statute did not permit the FCC to write depreciation rules that would apply to equipment insofar as it was used for local service. *Ibid.*

Consider the similarities between *Louisiana* and the present cases. The relevant rules of statutory construction—the general and explicit presumptions favoring retention of local authority—are the same. See *id.*, at 369 (asking whether "Congress intended that federal regulation supersede state law" and citing *Rice* v. *Santa Fe Elevator Corp.*, *supra*); 476 U. S., at 371–373 (relying on § 152(b)). The subject matter is highly similar—both cases involve the way in

which local rates will be set for equipment used for both intrastate and interstate calls. Compare Opening Brief for Federal Petitioners in No. 97–831, pp. 36–38, with *Louisiana*, *supra*, at 374–376. And both cases involve intrastate charges that could affect interstate rates, here because of local competition's interstate impact, see First Report & Order ¶ 84, 11 FCC Rcd, at 15544, in *Louisiana* because more (or less) stringent local depreciation rules would affect the rate of replacement of equipment used for interstate calls, 476 U. S., at 362–363.

Consider, too, the differences. The language of the relevant statute here explicitly refers to "*State commission[s],*" which, it says, will "establish any rates." 47 U. S. C. § 252(c)(2) (1994 ed., Supp. II) (emphasis added). The language of the relevant statute in *Louisiana*, by contrast, was far more easily read as granting the FCC the authority it sought. That statute said that the FCC would "prescribe" depreciation practices for the relevant local telephone companies, and it prohibited "any depreciation charges . . . other than those prescribed by the [FCC]," § 220(b); it made it "unlawful . . . to keep any other [depreciation] accounts . . . than those so prescribed or . . . approved" by the FCC, § 220(g); it ordered the FCC to hear from state commissions before establishing its own rules, § 220(i); and it authorized the FCC to exempt state-regulated companies from its depreciation rules, § 220(h). See 476 U. S., at 366–367. These differences, of course, make the argument for local ratemaking in these cases stronger, not weaker, than in *Louisiana*.

The majority says its view is "unaffected" by § 152(b). *Ante*, at 379. But Congress' apparently was not, for when it enacted the 1996 Act, it initially considered amending § 152(b) to make it inapplicable to the provisions that we here consider, thereby facilitating an interpretation, like the majority's, that would give the FCC the local ratesetting power it now seeks to exercise. See S. 652, 104th Cong., 1st Sess., § 101(c)(2) (1995); H. R. 1555, 104th Cong., 1st Sess.,

§ 101(e)(1) (1995). The final legislation, however, rejected that proposed language. See 47 U. S. C. § 152(b). It cannot be thought that Congress "intend[ed] *sub silentio* to enact statutory language that it ha[d] earlier discarded in favor of other language." *INS* v. *Cardoza-Fonseca*, 480 U. S. 421, 442–443 (1987) (internal quotation marks and citation omitted).

D

The FCC's strongest argument, in my view, is that its rate rules do not actually supplant local ratesetting authority; they simply set forth limits, creating a kind of envelope marking the outer bounds of what would constitute a reasonable local ratesetting system. The majority may accept a version of this argument, for it says the FCC has prescribed a "requisite pricing methodology" that "no more prevents the States from establishing rates than do the statutory 'Pricing standards' set forth in § 252(d)." *Ante*, at 384. That, however, is not what the FCC has done.

The FCC's rate regulations are not at all like § 252(d)'s pricing standards. The statute sets forth those standards in general terms, using such words as "based on . . . cost," "nondiscriminatory," and "just and reasonable." Terms such as these give ratesetting commissions broad methodological leeway; they say little about the "method employed" to determine a particular rate. *FPC* v. *Hope Natural Gas Co.*, 320 U. S. 591, 602 (1944). The FCC's rules, on the other hand, are not general. The dozens of pages of text that set them forth are highly specific and highly detailed. See First Report & Order ¶¶ 672–715, *supra*, at 15844–15862. They deprive state commissions of methodological leeway. Their ratesetting instructions grant a state commission little or no freedom to choose among reasonable rate-determining methods according to the State's policy-related judgments, assessing local economic circumstance or community need. I grant the fact that the rules leave it to the state commissions to fix the actual rate, but that is rather like giving a restaurant

chef the authority to choose a menu while restricting him to one dish, an omelette, and to one single favorite recipe.

Nor can the FCC successfully argue that the Act requires the particular ratesetting system that its regulations contain. The FCC's system, which the FCC calls "forward-looking," bases the charge for the use of an unbundled element (say, a set of local wires connecting a subscriber to a local switch) upon a hypothetical set of costs—the costs of providing that service using the incumbent's actual wire center, but otherwise assuming use of the most efficient technology that the incumbent *could* use (not the equipment the incumbent actually *does* use). See First Report & Order ¶¶ 682, 685, *supra*, at 15847–15849. The FCC does not claim that the statute's language (though ruling out certain kinds of rate-of-return proceedings, 47 U. S. C. § 252(d)(1)(A)(i) (1994 ed., Supp. II)) forces use of this forward-looking cost determination system. Moreover, I have explained above why I do not believe the Act's purposes demand what its language denies, namely, a single nationwide ratesetting system. *Supra*, at 417–418; cf. First Report & Order ¶ 114, 11 FCC Rcd, at 15558–15559 (arguing that a single pricing methodology is needed to assure uniform administration of the Act).

The FCC does argue that the Act's purpose, competition, favors its system. For competition, according to the FCC, tends to produce prices that reflect forward-looking replacement costs, not actual historical costs. *E. g.*, *id.*, ¶ 672, 11 FCC Rcd, at 15844. But this argument does not show that the Act compels the use of the FCC's system over any other. How could it? The competition that the Act seeks is a process, not an end result; and a regulatory system that imposes through administrative mandate a set of prices that tries to mimic those that competition would have set does not thereby become any the less a regulatory process, nor any the more a competitive one.

Most importantly, the FCC's rules embody not an effort to circumscribe the realm of the reasonable, but rather a

policy-oriented effort to choose among several different systems, including systems based upon actual costs or price caps, which other systems the FCC's rules prohibit. A few examples, focusing upon some of the claimed weaknesses of the FCC's preferred system, will illustrate, however, how easily a regulator weighing certain policy considerations (for example, administrative considerations) differently might have chosen a different set of reasonable rules:

—Consider the FCC's decision to deny state commissions the choice of establishing rates based on actual historic, rather than hypothetical forward-looking, costs. See *id.*, ¶ 705, 11 FCC Rcd, at 15857–15858. Justice Brandeis, joined by Justice Holmes, pointed out the drawback of using a forward-looking, rather than an actual historic, cost system many years ago. He wrote that whatever the theoretical economic merits of a "reproduction cost" system (a system bearing an uncanny resemblance to the FCC's choice), the hypothetical nature of the regulatory judgments it required made such a system administratively unworkable. See *Missouri ex rel. Southwestern Bell Telephone Co.* v. *Public Serv. Comm'n of Mo.*, 262 U. S. 276, 292–296 (1923) (dissenting opinion).

The passage of time has not outdated the Brandeis and Holmes criticism. Modern critics question whether regulators can accurately determine the "efficient" cost of supplying telephone service, say, to a particular group of Manhattan office buildings, by means of hypothetically efficient up-to-date equipment connected to a hypothetically efficient New York City network built to connect with NYNEX's existing (nonhypothetical) wire center. See, *e. g.*, Kahn, Letting Go, at 93, and n. 135. The use of historic costs draws added support from one major statutory aim—expeditious introduction of competition. That is because efforts to determine hypothetical (rather than actual) costs means argument, and argument means delay, with respect to entry into both local and long-distance markets. See *supra*, at 415–416. Though

the FCC disfavors actual or historic costs, it does not satisfactorily explain why their use would be arbitrary or unreasonable.

—Consider the FCC's decision to prohibit use of an "efficient component pricing rule." See First Report & Order ¶ 708–711, *supra*, at 15859–15860. Where an incumbent supplies an element to New Entrant B that it otherwise would have provided Old Customer A, that rule, roughly speaking, permits the incumbent to charge a price measured by either (1) the element's market price, if it is sold in the marketplace, or (2), if it is not, the incumbent's actual costs (including the net revenue the incumbent loses from forgoing the sale to Old Customer A). See generally, *e. g.*, W. Baumol & J. Sidak, Toward Competition in Local Telephony 95–97 (1994). This pricing system seeks to assure the incumbent that it will obtain from B the contribution, say, to fixed costs or to overhead, that A had previously made. Many experts prefer such a system. See, *e. g.*, Sidak & Spulber, The Tragedy of the Telecommons: Government Pricing of Unbundled Network Elements Under the Telecommunications Act of 1996, 97 Colum. L. Rev. 1081, 1111–1113, and nn. 75–85 (1997); Kahn & Taylor, The Pricing of Inputs Sold to Competitors: A Comment, 11 Yale J. Reg. 225, 228–230 (1994). The FCC rejected that system, but in doing so it did not claim, nor did its reasoning support the claim, that the use of such a system would be arbitrary or unreasonable. See Sidak & Spulber, *supra*, at 1095–1098.

—Consider the FCC's decision to forbid the use of what regulators call "Ramsey pricing," see First Report & Order ¶ 696, *supra*, at 15852–15853. Ramsey pricing is a classical regulatory pricing system that assigns fixed costs in a way that helps maintain services for customers who cannot (or will not) pay higher prices. See generally, *e. g.*, 1 A. Kahn, The Economics of Regulation: Principles and Institutions 137–141 (reprint 1988). Many experts strongly prefer the use of such a system. See, *e. g.*, Sidak & Spulber, *supra*, at

1109 (arguing that the FCC's prohibition of Ramsey pricing will "minimize rather than maximize consumer welfare"). The FCC disfavors Ramsey pricing, but it does not explain why a contrary judgment would conflict with the statute or otherwise be arbitrary or unreasonable.

These examples do not show that the FCC's rules themselves are unreasonable. That question is not now before us, and I express no view on the matter. The examples simply help explain why the FCC's rules could not set forth the *only* ratesetting system consistent with the Act's objectives. The FCC's regulations do not set forth an outer envelope surrounding a set of reasonable choices; instead, they constitute the kind of detailed policy-related ratesetting that the statute in respect to local matters leaves to the States.

* * *

Two Terms ago the Court held that Congress could not constitutionally require a state sheriff to fill out a form providing background information about a buyer of a gun. *Printz* v. *United States*, 521 U. S. 898, 935 (1997). Dissenters in that case noted that the law deprived the States of a power that had little practical significance. See *id.*, at 961 (opinion of STEVENS, J.); *id.*, at 977 (opinion of BREYER, J.). Today's decision does deprive the States of practically significant power, a camel compared with *Printz*'s gnat. The language of the statute nowhere reveals any "clear and manifest purpose," *Rice*, 331 U. S., at 230, that such was Congress' intent. History, purpose, and precedent all argue to the contrary. I would hold that, in respect to local ratesetting, the FCC's reach has exceeded its legal grasp.

## II

I agree with the Court's disposition of the FCC's "unbundling" rules. As earlier explained, the Act seeks to introduce competition into local markets by removing legal barriers to new entry, by requiring interconnection, by re-

quiring incumbents to sell to potential retail competitors at wholesale rates, and by requiring the sharing, or "unbundling," of certain facilities. *Supra*, at 416; see 47 U. S. C. §§ 251(c)(2)–(4), 253(a) (1994 ed., Supp. II). The Act expresses this last-mentioned sharing requirement in general terms, reflecting congressional uncertainty about the extent to which compelled use of an incumbent's facilities will prove necessary to avoid waste. Will wireless technology or cable television lines, for example, permit the efficient provision of local telephone service without the use of existing telephone lines that now run house to house?

Despite the empirical uncertainties, the basic congressional objective is reasonably clear. The unbundling requirement seeks to facilitate the introduction of competition where practical, *i. e.*, without inordinate waste. *Supra*, at 416–417. And although the provision describing which elements must be unbundled does not explicitly refer to the analogous "essential facilities" doctrine (an antitrust doctrine that this Court has never adopted), the Act, in my view, does impose related limits upon the FCC's power to compel unbundling. In particular, I believe that, given the Act's basic purpose, it requires a convincing explanation of why facilities should be shared (or "unbundled") where a new entrant could compete effectively without the facility, or where practical alternatives to that facility are available. § 251(d)(2); see generally Areeda, Essential Facilities: An Epithet in Need of Limiting Principles, 58 Antitrust L. J. 841, 852–853 (1989).

As the majority points out, the Act's language itself suggests some such limits. *Ante*, at 387–392. The fact that compulsory sharing can have significant administrative and social costs inconsistent with the Act's purposes suggests the same. Even the simplest kind of compelled sharing, say, requiring a railroad to share bridges, tunnels, or track, means that someone must oversee the terms and conditions of that sharing. Moreover, a sharing requirement may diminish the original owner's incentive to keep up or to improve the prop-

erty by depriving the owner of the fruits of value-creating investment, research, or labor. And as one moves beyond the sharing of readily separable and administrable physical facilities, say, to the sharing of research facilities, firm management, or technical capacities, these problems can become more severe. One would not ordinarily believe it practical, for example, to require a railroad to share its locomotives, fuel, or work force. Nor can one guarantee that firms will undertake the investment necessary to produce complex technological innovations knowing that any competitive advantage deriving from those innovations will be dissipated by the sharing requirement. The more complex the facilities, the more central their relation to the firm's managerial responsibilities, the more extensive the sharing demanded, the more likely these costs will become serious. See generally 1 H. Demsetz, Ownership, Control, and the Firm: The Organization of Economic Activity 207 (1988). And the more serious they become, the more likely they will offset any economic or competitive gain that a sharing requirement might otherwise provide. The greater the administrative burden, for example, the more the need for complex proceedings, the very existence of which means delay, which in turn can impede the entry into long-distance markets that the Act foresees. See *supra*, at 415.

Nor are any added costs imposed by more extensive unbundling requirements necessarily offset by the added potential for competition. Increased sharing by itself does not automatically mean increased competition. It is in the *un*shared, not in the shared, portions of the enterprise that meaningful competition would likely emerge. Rules that force firms to share *every* resource or element of a business would create not competition, but pervasive regulation, for the regulators, not the marketplace, would set the relevant terms.

The upshot, in my view, is that the statute's unbundling requirements, read in light of the Act's basic purposes, re-

quire balance. Regulatory rules that go too far, expanding the definition of what must be shared beyond that which is essential to that which merely proves advantageous to a single competitor, risk costs that, in terms of the Act's objectives, may make the game not worth the candle.

I believe the FCC's present unbundling rules are unlawful because they do not sufficiently reflect or explore this other side of the unbundling coin. See *Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 43 (1983). They do not explain satisfactorily why, for example, an incumbent must share with new entrants "call waiting," or various operator services. Nor do they adequately explain why an incumbent should be forced to share virtually every aspect of its business. As the majority points out, *ante*, at 389–390, they seem to assume, without convincing explanation, that the more the incumbent unbundles, the better. Were that the Act's objective, however, would Congress have seen a need for a separate wholesale sales requirement (since the "unbundling" requirement would have led to a similar result)? Indeed, would Congress have so emphasized the importance of competition? A totally unbundled world—a world in which competitors share every part of an incumbent's existing system, including, say, billing, advertising, sales staff, and work force (and in which regulators set all unbundling charges)—is a world in which competitors would have little, if anything, to compete about.

I understand the difficulty of making the judgments that the statute entrusts to the FCC and the short time that it gave the FCC in which to make them. 47 U. S. C. § 251(d)(1) (1994 ed., Supp. II). I also understand that the law gives the FCC considerable leeway in the exercise of its judgment. *E. g.*, R. Pierce, S. Shapiro, & P. Verkuil, Administrative Law and Process § 7.4, p. 353 (2d ed. 1992). But, without added explanation, I must conclude that the unbundling rules before us go too far. They are inconsistent with Congress' ap-

proach. They have not been adequately justified in terms of the statute's mandate, read in light of its purposes. See 5 U. S. C. § 706(2). For this reason, as well as the reasons set forth in the majority's opinion, I agree with its conclusion that Rule 319 must be vacated.

Syllabus

# HUGHES AIRCRAFT CO. ET AL. *v.* JACOBSON ET AL.

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

No. 97–1287. Argued November 2, 1998—Decided January 25, 1999

Respondents, retired employees of petitioner Hughes Aircraft Company (Hughes) and beneficiaries of petitioner Hughes Non-Bargaining Retirement Plan (Plan), a defined benefit plan, claimed in their class action that Hughes violated the Employee Retirement Income Security Act of 1974 (ERISA) when it amended the Plan by providing for an early retirement program and creating an additional noncontributory benefit structure for new participants. According to the complaint, the Plan originally required mandatory contributions from all participating employees, in addition to Hughes' own contributions. Prior to amending the Plan, Hughes suspended its contributions because of a substantial Plan surplus, which still exists today. The District Court dismissed respondents' complaint for failure to state a claim, but the Ninth Circuit reversed, finding that the addition of the noncontributory benefit structure may have terminated the Plan and created two new plans. The court also distinguished the holding in *Lockheed Corp.* v. *Spink*, 517 U. S. 882, 891, that "amending a pension plan does not trigger ERISA's fiduciary provisions," reasoning that *Spink* concerned a plan funded solely by employer contributions while ERISA's fiduciary provisions were triggered here because the members of the contributory structure had a vested interest in the Plan's surplus. Accordingly, it concluded respondents had alleged six causes of action: Hughes violated ERISA's prohibition against using employees' vested, nonforfeitable benefits to meet its obligations, § 203, by depleting the surplus to fund the noncontributory structure; Hughes violated ERISA's anti-inurement prohibition, § 403(c)(1), by benefiting itself at the expense of the Plan's surplus; Hughes violated its fiduciary duties in three separate claims; and the Plan's alleged termination violated § 4044(d)(3)(A)'s requirement that a terminated plan's residual assets be distributed to plan beneficiaries.

*Held:* The Plan's amendments are not prohibited by ERISA. Pp. 438–448.

(a) This Court's review of respondents' claims begins with the statute's language. *Estate of Cowart* v. *Nicklos Drilling Co.*, 505 U. S. 469, 475. Where that language provides a clear answer, it ends there as well. See *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 254. P. 438.

Syllabus

(b) Respondents' vested-benefits claim fails because the addition of the noncontributory structure did not affect the rights of pre-existing Plan participants. As members of a defined benefit plan, respondents have no interest in the Plan's surplus. While a defined contribution plan member is entitled to whatever assets are dedicated to his individual account, a defined benefit plan member is generally entitled to a fixed periodic payment from an unsegregated pool of assets. The employer funding a defined benefit plan typically bears the entire investment risk and must cover any underfunding. However, the employer may also reduce or suspend his contributions to an overfunded defined benefit plan. Given the employer's obligation to make up any shortfall, no member has a claim to any particular asset that composes a part of the plan's general asset pool. Instead, members have a nonforfeitable right to "accrued benefits," which by statute cannot be reduced below a particular member's contribution amount. Thus, a plan's actual investment experience does not affect members' statutory entitlement but instead reflects the employer's risk. Since a decline in the value of a plan's assets does not alter accrued benefits, members have no entitlement to share in a plan's surplus—even if it is partially attributable to the investment growth of their contributions. Hughes never deprived respondents of their accrued benefits. Thus, ERISA's vesting provision is not implicated. Pp. 438–441.

(c) Hughes also did not violate ERISA's anti-inurement provision, § 403(c)(1), by using surplus assets from the contributory structure for the added noncontributory structure. As its language makes clear, § 403(c)(1) focuses exclusively on whether fund assets were used to pay benefits to plan participants. Respondents neither allege that Hughes used assets for a purpose other than paying plan benefits, nor deny that Hughes satisfied its Plan and ERISA obligations to assure adequate funding for the Plan. ERISA gives an employer broad authority to amend a plan, *Curtiss-Wright Corp.* v. *Schoonejongen*, 514 U. S. 73, 78, and nowhere suggests that an amendment creating a new benefit structure creates a *de facto* second plan if the obligations continue to draw from the same single, unsegregated pool or fund of assets. Pp. 441–443.

(d) Respondents' three fiduciary duty claims are directly foreclosed by *Spink*'s holding that without exception, "[p]lan sponsors who alter the terms of a plan do not fall into the category of fiduciaries." 517 U. S., at 890. *Spink*'s reasoning applies regardless of whether the plan at issue is contributory, noncontributory, or any other type, for the statute's plain language makes no such distinction when defining fiduciary. See ERISA § 404(a). Even assuming that a sham transaction may implicate a fiduciary duty, the incidental benefits Hughes received from

implementing the noncontributory structure are not impermissible under the statute. Pp. 443–446.

(e) The addition of the noncontributory benefit structure does not require that Hughes be ordered to terminate the Plan. Respondents concede that no voluntary termination has occurred within the meaning of ERISA § 4041(a)(1); and their termination claim cannot be salvaged under the common-law theory of a wasting trust, whose purposes having been accomplished, its continuation would frustrate the settlor's intent. That doctrine appears to be inconsistent with ERISA's termination provisions and thus must give way to the statute. See *Varity Corp.* v. *Howe*, 516 U. S. 489, 497. Assuming that the doctrine might apply in certain circumstances, it is by its own terms inapplicable in this case. The circumstances here—the Plan continues to accept new members and pay benefits, and has thousands of active participants in the contributory benefit structure alone—can in no way be construed to constitute an enfeebled plan whose membership has dwindled to a mere remnant that would no longer benefit from the Plan's administration. Pp. 446–448.

105 F. 3d 1288 and 128 F. 3d 1305, reversed.

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

*Paul T. Cappuccio* argued the cause for petitioners. With him on the briefs were *Kenneth W. Starr*, *Richard A. Cordray*, *Christopher Landau*, *Marcy J. K. Tiffany*, *T. Warren Jackson*, and *Robert F. Walker*.

*Lisa Schiavo Blatt* argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Solicitor General Waxman*, *Deputy Solicitor General Kneedler*, *Marvin Krislov*, *James J. Keightley*, and *Stuart L. Brown*.

*Seth Kupferberg* argued the cause for respondents. With him on the brief were *Richard Dorn* and *I. Philip Sipser*.*

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*Briefs of *amici curiae* urging reversal were filed for the ERISA Industry Committee et al. by *Michael S. Horne*, *John M. Vine*, and *Caroline M. Brown;* and for the Hughes Aircraft Retirees Association et al. by *David E. Gordon*.

Briefs of *amici curiae* urging affirmance were filed for AT&T, RCA, and Boeing Employees by *Norman Zolot* and *Kent Cprek;* and for the

JUSTICE THOMAS delivered the opinion of the Court.

Five retired beneficiaries of a defined benefit plan, subject to the terms of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 832, as amended, 29 U. S. C. § 1001 *et seq.*, filed a class action lawsuit against their former employer, Hughes Aircraft Company (Hughes), and the Hughes Non-Bargaining Retirement Plan (Plan). They claim that Hughes violated ERISA by amending the Plan to provide for an early retirement program and a noncontributory benefit structure. The Ninth Circuit held that ERISA may prohibit these amendments. We reverse.

## I

According to the complaint, Hughes has provided the Plan for its employees since 1955. Prior to 1991, the Plan required mandatory contributions from all participating employees, in addition to any contributions made by Hughes.[1] Section 3.1 of the Plan defines Hughes' funding obligations:

> "The cost of Benefits under the Plan, to the extent not provided by contributions of Participants . . . shall be provided by contributions of [Hughes] not less than in such amounts, and at such times, as the Plan Enrolled Actuary shall certify to be necessary, to fund Benefits under the Plan . . . ."

In addition, § 3.2 provides that Hughes' contributions shall not fall below the "amount necessary to maintain the quali-

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National Employment Lawyers Association by *Stephen R. Bruce*, *Jeffrey Lewis*, and *Paula A. Brantner*.

*Mary Ellen Signorille* and *Melvin Radowitz* filed a brief for the American Association of Retired Persons as *amicus curiae*.

[1] This arrangement is commonly referred to as "contributory," as compared to a plan whose members do not make contributions, which is commonly referred to as "noncontributory." See generally S. Bruce, Pension Claims 22 (2d ed. 1993). But a contributory plan should not be confused with a "defined contribution plan" as defined by ERISA § 3(34), 29 U. S. C. § 1002(34).

fied status of the Plan . . . and to comply with all applicable legal requirements." But § 6.2 of the Plan gives Hughes "the right to suspend its contributions to the Plan at any time," so long as doing so does not "create an 'accumulated funding deficiency'" under ERISA.[2]

By 1986, as a result of employer and employee contributions and investment growth, the Plan's assets exceeded the actuarial or present value of accrued benefits by almost $1 billion. In light of this Plan surplus, Hughes suspended its contributions in 1987, which it has not resumed. Pursuant to the terms of the Plan, the employee contribution requirement remains operational.

Two amendments Hughes made to the Plan are the subject of the present litigation. In 1989, Hughes established an early retirement program that provided significant additional retirement benefits to certain eligible active employees. Subsequently, Hughes again amended the Plan to provide that, effective January 1, 1991, new participants could not contribute to the Plan, and would thereby receive fewer benefits. Existing members could continue to contribute or opt to be treated as new participants. The Plan obligations created by these amendments constitute the only use of the Plan's assets other than paying the pre-existing obligations under the original contributory benefit structure. The Plan's assets substantially exceed the minimum amount needed to fund all current and future defined benefits.

In January 1992, respondents filed this class action on behalf of all Plan participants who had contributed to the Plan and who are or may become eligible to receive benefits des-

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[2] ERISA defines "accumulated funding deficiency" as

"the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which this part applies) over the total credits to such account for such years or, if less, the excess of the total charges to the alternative minimum funding standard account for such plan years over the total credits to such account for such years." § 302(a)(2), 29 U. S. C. § 1082(a)(2).

ignated for contributing participants. The District Court granted Hughes' motion to dismiss the complaint for failure to state a claim. A divided panel of the Ninth Circuit reversed. 105 F. 3d 1288 (1997), amended, 128 F. 3d 1305 (1998). The majority concluded that the 1991 amendment may have terminated the Plan and created two plans: one consisting of pre-existing members and the other consisting of new participants. Distinguishing *Lockheed Corp.* v. *Spink*, 517 U. S. 882 (1996), as concerning a plan funded solely by *employer* contributions, the majority held that the act of amending the Plan triggered ERISA's fiduciary provisions. The majority also thought that the employees who were members of the contributory structure had a vested interest in the Plan's surplus.

Accordingly, the Court of Appeals concluded that respondents had alleged six causes of action in their complaint. Specifically, respondents claimed that Hughes had violated ERISA's prohibition against using employees' vested, nonforfeitable benefits to meet its obligations by depleting the surplus to fund the noncontributory structure. § 203, 29 U. S. C. § 1053(a). They further argued that Hughes had violated ERISA's anti-inurement prohibition, § 403(c)(1), 29 U. S. C. § 1103(c)(1), by benefiting itself at the expense of the Plan's surplus. Respondents also alleged that Hughes had breached its fiduciary duties under ERISA in three ways: amending the Plan in 1989 to fund a program outside of the Plan's purposes violated § 404(a)(1)(D), 29 U. S. C. § 1104(a)(1)(D); amending the Plan in 1991 to create the noncontributory structure violated § 406(a)(1)(D), 29 U. S. C. § 1106(a)(1)(D); and using the surplus assets to fund noncontributory benefits for those who had never contributed to the Plan violated § 404, 29 U. S. C. § 1104. Finally, respondents claimed that the alleged termination of the Plan had violated § 4044(d)(3)(A), 29 U. S. C. § 1344(d)(3)(A), which requires that residual assets in a terminated plan be distributed to its beneficiaries.

The dissenting judge concluded that the District Court properly dismissed the complaint. He reasoned that an amendment to a pre-existing plan does not affect the availability of the plan's pool of assets for funding pre-existing obligations and cannot be characterized as a termination; interpreted *Spink* to stand for the proposition that the act of amending a plan does not trigger fiduciary duties; and observed that employees who contribute to a defined benefit plan do not have an interest in that plan's surplus.

The majority's decision is in tension with our decision in *Spink*, where we held that "the act of amending a pension plan does not trigger ERISA's fiduciary provisions," 517 U. S., at 891, and with other Circuits' decisions. See, *e. g.*, *Brillinger* v. *General Elec. Co.*, 130 F. 3d 61 (CA2 1997), cert. pending, No. 97–1834; *American Flint Glass Workers Union* v. *Beaumont Glass Co.*, 62 F. 3d 574 (CA3 1995); *Malia* v. *General Elec. Co.*, 23 F. 3d 828 (CA3), cert. denied, 513 U. S. 956 (1994); *Johnson* v. *Georgia-Pacific Corp.*, 19 F. 3d 1184 (CA7 1994); *Phillips* v. *Bebber*, 914 F. 2d 31 (CA4 1990) *(per curiam)*. We granted certiorari, 523 U. S. 1093 (1998), and now reverse.

## II

Our review of the six claims recognized by the Ninth Circuit requires us to interpret a number of ERISA's provisions. As in any case of statutory construction, our analysis begins with "the language of the statute." *Estate of Cowart* v. *Nicklos Drilling Co.*, 505 U. S. 469, 475 (1992). And where the statutory language provides a clear answer, it ends there as well. See *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 254 (1992).

### A

Respondents' vested-benefits and anti-inurement claims proceed on the erroneous assumption that they had an interest in the Plan's surplus, which, with respect to the anti-inurement claim, was used exclusively to benefit Hughes.

These claims fail because the 1991 amendment did not affect the rights of pre-existing Plan participants and Hughes did not use the surplus for its own benefit.

To understand why respondents have no interest in the Plan's surplus, it is essential to recognize the difference between defined contribution plans and defined benefit plans, such as Hughes'. A defined contribution plan is one where employees and employers may contribute to the plan, and "'the employer's contribution is fixed and the employee receives whatever level of benefits the amount contributed on his behalf will provide.'" *Nachman Corp.* v. *Pension Benefit Guaranty Corporation*, 446 U. S. 359, 364, n. 5 (1980) (quoting *Alabama Power Co.* v. *Davis*, 431 U. S. 581, 593, n. 18 (1977)). A defined contribution plan "provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account." ERISA § 3(34); 29 U. S. C. § 1002(34). "[U]nder such plans, by definition, there can never be an insufficiency of funds in the plan to cover promised benefits," *Nachman*, *supra*, at 364, n. 5, since each beneficiary is entitled to whatever assets are dedicated to his individual account.

A defined benefit plan, on the other hand, consists of a general pool of assets rather than individual dedicated accounts. Such a plan, "as its name implies, is one where the employee, upon retirement, is entitled to a fixed periodic payment." *Commissioner* v. *Keystone Consol. Industries, Inc.*, 508 U. S. 152, 154 (1993); see also *Mead Corp.* v. *Tilley*, 490 U. S. 714, 717 (1989); ERISA § 3(35), 29 U. S. C. § 1002(35). The asset pool may be funded by employer or employee contributions, or a combination of both. See ERISA § 204(c); 29 U. S. C. § 1054(c). But the employer typically bears the entire investment risk and—short of the consequences of plan termination—must cover any underfunding as the result of a shortfall that may occur from the plan's investments. See *Connolly* v. *Pension Benefit Guaranty Corporation*, 475 U. S. 211, 232 (1986) (O'Connor, J., concur-

ring); 2 J. Mamorsky, Employee Benefits Law § 8.04 (1998). Conversely, if the defined benefit plan is overfunded, the employer may reduce or suspend his contributions. See *Nachman*, *supra*, at 363–364, n. 5 (quoting *Alabama Power Co.*, *supra*, at 593, n. 18) (noting that "'the employer's contribution is adjusted to whatever level is necessary'" to provide the defined benefits).

The structure of a defined benefit plan reflects the risk borne by the employer. Given the employer's obligation to make up any shortfall, no plan member has a claim to any particular asset that composes a part of the plan's general asset pool. Instead, members have a right to a certain defined level of benefits, known as "accrued benefits." That term, for purposes of a defined benefit plan, is defined as "the individual's accrued benefit determined under the plan [and ordinarily is] expressed in the form of an annual benefit commencing at normal retirement age." ERISA § 3(23)(A), 29 U. S. C. § 1002(23)(A).[3] In order to prevent a subsequent downward adjustment in benefits below a member's contribution amount, a defined benefit plan participant has a nonforfeitable right to the greater of (1) the benefits provided under the plan or (2) an amount derived from the employee's accumulated contributions, determined using an interest rate fixed by statute. See § 204(c)(2)(B), 29 U. S. C. § 1054(c)(2)(B); see also § 3(23)(A), 29 U. S. C. § 1002(23)(A); § 204(c)(2)(C), 29 U. S. C. § 1054(c)(2)(C). Given this accumulated contribution floor, plan members generally have a nonforfeitable right only to their "accrued benefit," so that a plan's actual investment experience does not affect their statutory entitlement. Since a decline in the value of a plan's assets does not alter accrued benefits, members similarly have no entitlement to share in a plan's surplus—even

[3] By contrast, an "accrued benefit" for purposes of defined contribution plans means "the balance of the individual's account." ERISA § 3(23)(B), 29 U. S. C. § 1002(23)(B).

if it is partially attributable to the investment growth of their contributions.

Therefore, Hughes could not have violated ERISA's vesting requirements by using assets from the surplus attributable to the employees' contributions to fund the noncontributory structure. ERISA's vesting requirement is met "if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable," assuming that such are not limited to a certain percentage of benefits depending on the employee's years of service. §§ 203(a)(1)–(2), 29 U. S. C. §§ 1053(a)(1)–(2). The vesting provision "sets the minimum level of benefits an employee must receive after accruing specified years of service." *Teamsters* v. *Daniel*, 439 U. S. 551, 569 (1979). Otherwise, the "level of benefits" is determined by "the private parties, not the Government." *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U. S. 504, 511 (1981). Hence, this provision does not concern items such as a return on investment that fall outside of the definition of "accrued benefit." ERISA §§ 3(23)(A), 203(a); 29 U. S. C. §§ 1002(23)(A), 1053(a). Assuming that an employee's minimum accrued benefit is provided, this section is not implicated. Hughes never deprived respondents of their accrued benefits. Indeed, when it implemented the noncontributory structure, Hughes permitted the Plan's existing participants to switch into the new structure. Since respondents do not allege that Hughes has ever withdrawn accrued benefits or otherwise nonforfeitable interests from the pre-existing members, this vesting claim is meritless.

Respondents further contend that, even if they have no interest in the Plan's assets, the creation of the new contributory structure permitted Hughes to use assets from the surplus attributable to employer *and* employee contributions for its sole and exclusive benefit, in violation of ERISA's anti-inurement provision. This section provides, in relevant part:

> "[T]he assets of a plan [except as otherwise provided in the statute] shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan." § 403(c)(1); 29 U. S. C. § 1103(c)(1).

As the language makes clear, the section focuses exclusively on whether fund assets were used to pay pension benefits to plan participants, without distinguishing either between benefits for new and old employees under one or more benefit structures of the same plan, or between assets that make up a plan's surplus as opposed to those needed to fund the plan's benefits. Respondents do not dispute that Hughes used fund assets for the sole purpose of paying pension benefits to Plan participants. Furthermore, at all times, Hughes satisfied its continuing obligation under the provisions of the Plan and ERISA to assure that the Plan was adequately funded. See Plan § 6.2; ERISA § 302, 29 U. S. C. § 1082. In other words, Hughes did not act impermissibly by using surplus assets from the contributory structure to add the noncontributory structure to the Plan. The act of amending a pre-existing plan cannot as a matter of law create two *de facto* plans if the obligations (both preamendment and postamendment) continue to draw from the same single, unsegregated pool or fund of assets. ERISA provides an employer with broad authority to amend a plan, see *Curtiss-Wright Corp.* v. *Schoonejongen*, 514 U. S. 73, 78 (1995), and nowhere suggests that an amendment creating a new benefit structure also creates a second plan.[4] Because only one plan ex-

[4] Our conclusion is consistent with other Government pronouncements in this area. For example, the Internal Revenue Service has promulgated a treasury regulation that provides, for income tax purposes, a pension plan will not fail to be a "single plan" merely because the "plan has several distinct benefit structures." Treas. Reg. § 1.414(l)–1(b)(1)(i), 26 CFR

ists and respondents do not allege that Hughes used any of the assets for a purpose other than to pay its obligations to the Plan's beneficiaries, Hughes could not have violated the anti-inurement provision under ERISA § 403(c)(1).

B

Each of respondents' fiduciary duty claims must fail because ERISA's fiduciary provisions are inapplicable to the amendments. This conclusion follows from our decision in *Spink*, where we considered whether amending a plan to require the conditioning of benefit payments under an early retirement program on the participants' release of employment-related claims was a prohibited transaction under ERISA § 406(a). 517 U. S., at 885. We explained:

> "Plan sponsors who alter the terms of a plan do not fall into the category of fiduciaries. As we said with respect to the amendment of welfare benefit plans, '[e]mployers or other plan sponsors are generally free under ERISA, for any reason at any time, to adopt, modify, or terminate welfare plans.' When employers undertake those actions, they do not act as fiduciaries, but are analogous to the settlors of a trust." *Id.*, at 890 (quoting *Curtiss-Wright*, *supra*, at 78 (citations omitted)).

We made clear in *Spink* that our reasoning applied both to "pension benefit plans" and "welfare benefit plans," since "[t]he definition of fiduciary makes no distinction between persons exercising authority over" these different types of plans. 517 U. S., at 890–891. Our conclusion applies with equal force to persons exercising authority over a contribu-

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§ 1.414(l)–1(b)(1)(i) (1998). It further provides that "[a] plan is a 'single plan' if and only if, on an ongoing basis, all of the plan assets are available to pay benefits to employees who are covered by the plan." *Ibid.;* see also 29 CFR § 2520.102–4 (1998) ("[A]n employee benefit plan may provide different benefits for various classes of participants and beneficiaries").

tory plan, a noncontributory plan, or any other type of plan. Our holding did not turn, as the Court of Appeals below thought, on the type of plan being amended for the simple reason that the plain language of the statute defining fiduciary makes no distinction. See *id.*, at 891; ERISA § 404(a), 29 U. S. C. § 1104(a) (specifying duties of a "fiduciary . . . with respect to a plan"). Rather, it turned on whether the employer's act of amending its plan constituted an exercise of fiduciary duty. In *Spink*, we concluded it did not. 517 U. S., at 891.

The same act of amending here also does not constitute the action of a fiduciary, although Hughes' Plan happens to be one to which employees contribute. In general, an employer's decision to amend a pension plan concerns the composition or design of the plan itself and does not implicate the employer's fiduciary duties which consist of such actions as the administration of the plan's assets. See *id.*, at 890. ERISA's fiduciary duty requirement simply is not implicated where Hughes, acting as the Plan's settlor, makes a decision regarding the form or structure of the Plan such as who is entitled to receive Plan benefits and in what amounts, or how such benefits are calculated. See *Shaw* v. *Delta Air Lines, Inc.*, 463 U. S. 85, 91 (1983) (describing how ERISA does not mandate that "employers provide any particular benefits, and does not itself proscribe discrimination in the provision of employee benefits").[5] A settlor's powers include the ability to add a new benefit structure to an existing plan. Re-

[5] Respondents suggest that they may be regarded as cosettlors because they have contributed to the Plan's corpus. However, merely making contributions does not make one akin to a settlor who is responsible for creating the plan. See generally G. Bogert, Law of Trusts and Trustees § 1, p. 4 (rev. 2d ed. 1984) ("The settlor of a trust is the person who intentionally causes it to come into existence" (footnote omitted; emphasis deleted)). Certainly, respondents do not contend that they are responsible for the creation of the Plan.

spondents' three fiduciary duty claims are directly foreclosed by *Spink*'s holding that, without exception, "[p]lan sponsors who alter the terms of a plan do not fall into the category of fiduciaries." 517 U. S., at 890.

Respondents attempt to circumvent this conclusion by arguing that the amendments amounted to a sham transaction. Specifically, respondents argue that Hughes—by effectively increasing certain employees' wages through either providing increased retirement incentives or including those employees in the Plan's noncontributory structure—reduced its labor costs by spending down the Plan's surplus to cover its own obligations. In *Spink*, we noted in passing that if a transaction constituted "merely a sham transaction, meant to disguise an otherwise unlawful transfer of assets to a party in interest, . . . that might present a different question." *Id.,* at 895, n. 8. Even assuming that a sham transaction may implicate a fiduciary duty, the incidental benefits conferred upon Hughes when it amended the Plan are not impermissible under the statute. It is irrelevant whether Hughes received lower labor costs or other such incidental benefits from implementing the noncontributory structure under the 1991 amendment. As we noted in *Spink:*

> "[A]mong the 'incidental' and thus legitimate benefits that a plan sponsor may receive from the operation of a pension plan are attracting and retaining employees, paying deferred compensation, settling or avoiding strikes, providing increased compensation without increasing wages, increasing employee turnover, and reducing the likelihood of lawsuits by encouraging employees who would otherwise have been laid off to depart voluntarily." *Id.*, at 893–894 (citation omitted).

Receipt of these types of benefits no more constitutes a breach of fiduciary duties than they would constitute improper inurement or otherwise violate ERISA. To find that

such benefits somehow violated the statute would forestall employers' efforts to implement a pension plan. ERISA, by and large, is concerned with "ensur[ing] that employees will not be left emptyhanded once employers have guaranteed them certain benefits," *id.*, at 887, not with depriving employers of benefits incidental thereto. In sum, respondents have failed to show that Hughes labored under fiduciary duties or engaged in a sham transaction.

C

Finally, respondents allege that the 1991 amendment requires a court to order petitioners to terminate the Plan. ERISA itself plainly spells out the circumstances under which a plan terminates. In a section entitled, "[e]xclusive means of plan termination," the statute provides:

> "Except in the case of a termination for which proceedings are otherwise instituted by the [Pension Benefit Guaranty Corporation] as provided in section 1342 of this title, a single-employer plan may be terminated only in a standard termination under subsection (b) of this section or a distress termination under subsection (c) of this section." § 4041(a)(1), as set forth in 29 U. S. C. § 1341(a)(1).

Subsections (b) and (c) concern the two ways by which an employer may voluntarily terminate a plan. See 29 U. S. C. §§ 1341(b) and (c); see also *Pension Benefit Guaranty Corporation* v. *LTV Corp.*, 496 U. S. 633, 638–639 (1990). Based on the language of the statute, these means constitute the sole avenues for voluntary termination. See *Germain*, 503 U. S., at 254 (explaining that Congress "says in a statute what it means and means in a statute what it says there").

Respondents concede that no voluntary termination has occurred, but nevertheless contend that the 1991 amendment worked an effective termination based on the common-law

theory of a wasting trust. Under common law, a wasting trust is a trust whose purposes have been accomplished, such that the continuation of the trust would frustrate the settlor's intent. See generally 4 A. Scott, Law of Trusts §§ 334, 337, 337.8 (4th ed. 1989); G. Bogert, Law of Trusts and Trustees §§ 1002, 1007 (2d rev. ed. 1983). This claim also fails.

As an initial matter, because ERISA is a "comprehensive and reticulated statute," *Nachman,* 446 U. S., at 361, and is "enormously complex and detailed," *Mertens* v. *Hewitt Associates,* 508 U. S. 248, 262 (1993), it should not be supplemented by extratextual remedies, such as the common-law doctrines advocated by respondents. See *Guidry* v. *Sheet Metal Workers Nat. Pension Fund,* 493 U. S. 365, 376 (1990) (explaining that, "[a]s a general matter, courts should be loath to announce equitable exceptions to legislative requirements or prohibitions that are unqualified by the statutory text"). Although trust law may offer a "starting point" for analysis in some situations, it must give way if it is inconsistent with "the language of the statute, its structure, or its purposes." *Varity Corp.* v. *Howe,* 516 U. S. 489, 497 (1996). Application of the wasting trust doctrine in this context would appear to be inconsistent with the language of ERISA's termination provisions.

Even assuming that the wasting trust doctrine might apply in certain circumstances—an extremely doubtful proposition—it is by its own terms inapplicable here. As respondents concede, since the date of the 1991 amendment, the Plan has been accepting new members and paying all the promised benefits to eligible Plan participants. Furthermore, thousands of active participants in the contributory benefit structure continue to accrue benefits. Simply put, these circumstances can in no way be construed to constitute an enfeebled plan whose membership has dwindled to a mere remnant that would no longer benefit from the Plan's admin-

istration. Therefore, the wasting trust doctrine cannot salvage respondents' termination claim.

* * *

The judgment of the Court of Appeals is therefore reversed.

*It is so ordered.*

Syllabus

# YOUR HOME VISITING NURSE SERVICES, INC. *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES

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

No. 97–1489. Argued December 2, 1998—Decided February 23, 1999

Under the Medicare Act, a provider seeking reimbursement for covered health services from respondent Secretary of Health and Human Services submits a yearly cost report to a fiscal intermediary (generally a private insurance company), which issues a Notice of Program Reimbursement (NPR) determining the provider's reimbursement for the year. The Act gives a dissatisfied provider 180 days to appeal a reimbursement determination to the Provider Reimbursement Review Board (Board), whose decision is subject to judicial review in federal district court. 42 U. S. C. § 1395*oo*. A regulation also gives the provider three years within which to ask the intermediary to reopen a determination. 42 CFR § 405.1885. Petitioner provider did not seek administrative review of certain NPRs issued by its fiscal intermediary, but did within three years ask the intermediary to reopen the determination. The intermediary denied the request, and the Board dismissed petitioner's subsequent appeal of that denial on the ground that § 405.1885 divested it of jurisdiction to review an intermediary's refusal to reopen a reimbursement determination. In dismissing petitioner's ensuing suit, the District Court agreed with the Board's determination and rejected petitioner's alternative contention that the federal-question statute or the mandamus statute gave the court jurisdiction to review the intermediary's refusal directly. The Court of Appeals affirmed.

*Held:*

1. The Board does not have jurisdiction to review a fiscal intermediary's refusal to reopen a reimbursement determination. The regulations do not confer such jurisdiction, so petitioner must establish it on the basis of the Act. Section 1395*oo*(a)(1)(A)(i) authorizes a provider to obtain a hearing before the Board if the provider "is dissatisfied with a final determination of . . . its fiscal intermediary . . . as to the amount of total program reimbursement due the provider . . . ." The Secretary's reading of § 1395*oo*(a)(1)(A)(i)—that a refusal to reopen is not a "final determination . . . as to the amount of . . . reimbursement" but only a

refusal to make a new determination—is well within the bounds of reasonable interpretation, and hence entitled to deference under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842. The reasonableness of this construction is further confirmed by the holding in *Califano* v. *Sanders*, 430 U. S. 99, that § 205(g) of the Social Security Act does not authorize judicial review of the Secretary's decision not to reopen a previously adjudicated benefits claim. Finally, contrary to petitioner's argument, the Secretary's position is not inconsistent with § 1395x(v)(1)(A)(ii)'s requirement that the cost-reimbursement regulations "provide for . . . suitable retroactive corrective adjustments where, for a provider . . . for any fiscal period, the aggregate reimbursement produced by the methods of determining costs proves to be either inadequate or excessive." See *Good Samaritan Hospital* v. *Shalala*, 508 U. S. 402; *ICC* v. *Locomotive Engineers*, 482 U. S. 270, 282. Pp. 452–456.

2. Petitioner is not otherwise entitled to judicial review of the intermediary's reopening decision under the federal-question statute, see *Heckler* v. *Ringer*, 466 U. S. 602, 615, the mandamus statute, see *id.*, at 617; *ICC* v. *Locomotive Engineers*, *supra*, at 282, or the judicial-review provision of the Administrative Procedure Act, see *Califano* v. *Sanders*, *supra*. Pp. 456–458.

132 F. 3d 1135, affirmed.

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

*Diana L. Gustin* argued the cause and filed briefs for petitioner.

*Lisa Schiavo Blatt* argued the cause for respondent. With her on the brief were *Solicitor General Waxman*, *Assistant Attorney General Hunger*, *Deputy Solicitor General Kneedler*, *Anthony J. Steinmeyer*, *John P. Schnitker*, *Harriet S. Rabb*, *Bruce R. Granger*, and *Henry R. Goldberg.**

JUSTICE SCALIA delivered the opinion of the Court.

Under the Medicare Act, Title XVIII of the Social Security Act, 79 Stat. 290, as amended, 42 U. S. C. § 1395 *et seq.* (1994 ed. and Supp. II), the Secretary of Health and Human

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**Denise Rios Rodriguez* and *Amy Blumberg Hafey* filed a brief for the American Hospital Association et al. as *amici curiae*.

Services reimburses the providers of covered health services to Medicare beneficiaries, see §§ 1395f(b)(1), 1395h, 1395x(v)(1)(A). A provider seeking such reimbursement submits a yearly cost report to a fiscal intermediary (generally a private insurance company) that acts as the Secretary's agent. See 42 CFR § 405.1801(b) (1997). The intermediary analyzes the cost report and issues a Notice of Program Reimbursement (NPR) determining the amount of reimbursement to which the provider is entitled for the year. See § 405.1803.

As is relevant here, a dissatisfied provider has two ways to get this determination revised. First, a provision of the Medicare Act, 42 U. S. C. § 1395*oo*, allows a provider to appeal, within 180 days, to the Provider Reimbursement Review Board (Board)—an administrative review panel that has the power to conduct an evidentiary hearing and affirm, modify, or reverse the intermediary's NPR determination. The Board's decision is subject to judicial review in federal district court. § 1395*oo*(f). Second, one of the Secretary's regulations, 42 CFR § 405.1885 (1997), permits a provider to request the intermediary, within three years, to reopen the reimbursement determination.

Petitioner Your Home Visiting Nurse Services, Inc., owns and operates several entities that provide home health care services to Medicare beneficiaries. Petitioner submitted cost reports for the year 1989 to its fiscal intermediary, and did not seek administrative review of the resulting NPRs within 180 days. Within three years, however, it did ask the intermediary to reopen its 1989 reimbursement determination on the ground that "new and material" evidence demonstrated entitlement to additional compensation. The intermediary denied the request. Petitioner sought to appeal that denial to the Board, but the Board dismissed the appeal on the ground that § 405.1885 divested it of jurisdiction to review an intermediary's refusal to reopen a reimbursement determination.

Petitioner then brought the instant action in Federal District Court, seeking review of the Board's dismissal and of the intermediary's refusal to reopen. In an unpublished opinion, the District Court agreed that the Board lacked jurisdiction to review the refusal to reopen, and rejected petitioner's alternative contention that the federal-question statute, 28 U. S. C. § 1331, or the mandamus statute, § 1361, gave the District Court jurisdiction to review the intermediary's refusal directly. It accordingly dismissed the complaint. The Court of Appeals affirmed. 132 F. 3d 1135 (CA6 1997). We granted certiorari. 524 U. S. 925 (1998).

## I

The primary issue in this case is whether the Board has jurisdiction to review a fiscal intermediary's refusal to reopen a reimbursement determination. The regulation that authorizes reopening provides that "[j]urisdiction for reopening a determination . . . rests exclusively with that administrative body that rendered the last determination or decision." 42 CFR § 405.1885(c) (1997). In this litigation, the Secretary defends the position set forth in the Medicare Provider Reimbursement Manual § 2926, App. A, ¶ B.4 (Sept. 1993): "A refusal by the intermediary to grant a reopening requested by the provider is not appealable to the Board, pursuant to 42 CFR § 405.1885(c) . . . ."[1] The Secretary construes the regulation to mean that where, as here, the intermediary is the body that rendered the last determination with respect to the cost reports at issue, review by the Board of the intermediary's refusal to reopen would divest the in-

[1] The clause immediately following the quoted portion of the Medicare Provider Reimbursement Manual reads "except for providers which are located within the jurisdiction of the U. S. Ninth Circuit Court of Appeals, where such a refusal to reopen is appealable." § 2926, App. A, ¶ B.4. This exception obviously reflects, not an inconsistency in the Secretary's position, but an acknowledgment of the Ninth Circuit's rejection of that position. See *Oregon* v. *Bowen*, 854 F. 2d 346 (1988).

termediary of its "exclusiv[e]" "[j]urisdiction for reopening a determination." Petitioner, on the other hand, contends that "jurisdiction" in § 405.1885(c) refers only to original jurisdiction over the reopening question, and not to appellate jurisdiction to review the intermediary's refusal. Even if it should win on this point, however, petitioner would only establish that the Board's otherwise extant appellate jurisdiction has not been excluded; it would still have to establish that the Board's appellate jurisdiction is somewhere *conferred*. Another regulation, § 405.1889, says that an intermediary's affirmative decision to reopen and revise a reimbursement determination "shall be considered a separate and distinct determination" to which the regulations authorizing appeal to the Board are applicable; but it says nothing about appeal of a refusal to reopen. Petitioner must thus establish the Board's appellate jurisdiction on the basis of the unelaborated text of the Medicare Act itself.

Petitioner relies upon 42 U. S. C. § 1395*oo*(a)(1)(A)(i), which says that a provider may obtain a hearing before the Board with respect to a cost report if the provider "is dissatisfied with a final determination of . . . its fiscal intermediary . . . as to the amount of total program reimbursement due the provider . . . for the period covered by such report . . . ." Petitioner maintains that the refusal to reopen a reimbursement determination constitutes a separate "final determination . . . as to the amount of total program reimbursement due the provider." The Secretary, on the other hand, maintains that this phrase does not include a refusal to reopen, which is not a "final determination . . . as to the amount," but rather the *refusal* to make a new determination. The Secretary's reading of § 1395*oo*(a)(1)(A)(i) frankly seems to us the more natural—but it is in any event well within the bounds of reasonable interpretation, and hence entitled to deference under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842 (1984).

The reasonableness of the Secretary's construction of the statute is further confirmed by *Califano* v. *Sanders*, 430 U. S. 99 (1977), in which we held that § 205(g) of the Social Security Act does not authorize judicial review of the Secretary's decision not to reopen a previously adjudicated claim for benefits.[2] In reaching this conclusion we relied, in part, upon two considerations: that the opportunity to reopen a benefit adjudication was afforded only by regulation and not by the Social Security Act itself; and that judicial review of a reopening denial would frustrate the statutory purpose of imposing a 60-day limit on judicial review of the Secretary's final decision on an initial claim for benefits. *Id.*, at 108. Similar considerations apply here. The right of a provider to seek reopening exists only by grace of the Secretary, and the statutory purpose of imposing a 180-day limit on the right to seek Board review of NPRs, see 42 U. S. C. § 1395*oo*(a)(3), would be frustrated by permitting requests to reopen to be reviewed indefinitely.

Finally, we do not think that the Secretary's position is inconsistent with 42 U. S. C. § 1395x(v)(1)(A)(ii), which provides that the Secretary's cost-reimbursement regulations shall "provide for the making of suitable retroactive corrective adjustments where, for a provider of services for any fiscal period, the aggregate reimbursement produced by the methods of determining costs proves to be either inadequate or excessive." Petitioner asserts that the reopening regulations, as construed by the Secretary, do not create a "suitable" procedure for making "retroactive corrective adjustments" because an intermediary's refusal to reopen a determination is not subject to administrative review. In

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[2] The relevant portion of § 205(g), as set forth in 42 U. S. C. § 405(g) (1970 ed.), provided that "[a]ny individual, after any final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days . . . ." See *Califano* v. *Sanders*, 430 U. S., at 108.

support of this assertion, petitioner decries the "double standard" inherent in a procedure that allows the intermediary to reopen (during the 3-year period) for the purpose of recouping *over*payments, but to deny reopening when alleged *under*payments are at issue.

This argument fails for two reasons. First, and most importantly, petitioner's construction of § 1395x(v)(1)(A)(ii) is inconsistent with our decision in *Good Samaritan Hospital* v. *Shalala*, 508 U. S. 402 (1993), in which we held that the Secretary reasonably construed clause (ii) to refer to the year-end reconciliation of monthly payments to providers, see 42 U. S. C. § 1395g, with the total amount of program reimbursement determined by the intermediary. Although we did not specifically consider the procedure for reopening determinations *after* the year's books are closed, we think our conclusion there—that clause (ii) refers to the year-end book balancing—forecloses petitioner's contention that clause (ii) requires any particular procedure for reopening reimbursement determinations. And second, the procedures for obtaining reimbursement would not be "unsuitable" simply because an intermediary's refusal to reopen is not administratively reviewable. Medicare providers already have the right under § 1395*oo*(a)(3) to appeal an intermediary's reimbursement determination to the Board. Title 42 CFR § 405.1885 (1997) generously gives them a second chance to get the decision changed—this time at the hands of the intermediary itself, but without the benefit of administrative review. That is a "suitable" procedure, especially in light of the traditional rule of administrative law that an agency's refusal to reopen a closed case is generally "'committed to agency discretion by law'" and therefore exempt from judicial review. See *ICC* v. *Locomotive Engineers*, 482 U. S. 270, 282 (1987). As for the alleged "double standard," given the administrative realities we would not be shocked by a system in which underpayments could *never* be the basis for reopening. The few dozen fiscal intermediaries

often need three years within which to discover overpayments in the tens of thousands of NPRs that they issue, while each of the tens of thousands of sophisticated Medicare-provider recipients of these NPRs is generally capable of identifying an underpayment in its own NPR within the 180-day time period specified in 42 U. S. C. § 1395*oo*(a)(3). Petitioner's invocation of gross unfairness is also refuted by the Secretary's representation that fiscal intermediaries grant between 30 and 40 percent of providers' requests to reopen reimbursement determinations. Brief for Respondent 27, n. 11.

## II

We also reject petitioner's fallback argument that it is entitled to judicial review of the intermediary's refusal to reopen. First, judicial review under the federal-question statute, 28 U. S. C. § 1331, is precluded by 42 U. S. C. § 405(h), applicable to the Medicare Act by operation of § 1395ii, which provides that "[n]o action against . . . the [Secretary] or any officer or employee thereof shall be brought under section 1331 . . . of title 28 to recover on any claim arising under this subchapter." Petitioner's claim "arises under" the Medicare Act within the meaning of this provision because " 'both the standing and the substantive basis for the presentation' " of the claim are the Medicare Act. *Heckler* v. *Ringer*, 466 U. S. 602, 615 (1984).

Second, the lower courts properly declined to issue mandamus to order petitioner's fiscal intermediary to reopen its 1989 reimbursement determination. Even if mandamus were available for claims arising under the Social Security and Medicare Acts,[3] petitioner would still not be entitled to

[3] The Secretary urges us to hold that mandamus is altogether unavailable to review claims arising under the Medicare Act, in light of the second sentence of 42 U. S. C. § 405(h), which provides that "[n]o findings of fact or decision of the [Secretary] shall be reviewed by any person, tribunal, or governmental agency except as" provided in the Medicare Act it-

mandamus relief because it has not shown the existence of a "clear nondiscretionary duty," *id.*, at 616, to reopen the reimbursement determination at issue. The reopening regulations do not require reopening, but merely permit it: "A determination of an intermediary . . . *may* be reopened . . . by such intermediary . . . on the motion of the provider affected by such determination," 42 CFR § 405.1885(a) (1997) (emphasis added). To be sure, the Secretary's Medicare Reimbursement Provider Manual § 2931.2 (Feb. 1985) does provide that "[w]hether or not the intermediary will reopen a determination, otherwise final, will depend upon whether (1) new and material evidence has been submitted, or (2) a clear and obvious error was made, or (3) the determination is found to be inconsistent with the law, regulations and rulings, or general instructions." But we hardly think that this disjunctive listing of factors was meant to convert a discretionary function into a mandatory one. As to factor (1), for example, it seems to us inconceivable that the existence of new and material evidence would alone *require* reopening, no matter how unpersuasive that evidence might be. The present case, we might note, involves evidence that was already before the intermediary at the time of its decision. The holding of *ICC* v. *Locomotive Engineers*, *supra*, that the decision whether to reopen, at least where no new evidence is at issue, is "'committed to agency discretion by law'" within the meaning of the Administrative Procedure Act, and hence unreviewable, see *id.*, at 282, is squarely applicable.

The last point alone would suffice to defeat petitioner's suggestion that we grant it the relief it requests under the judicial-review provision of the Administrative Procedure Act, 5 U. S. C. § 706. In addition, however, we have long held that this provision is not an independent grant of

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self. We have avoided deciding this issue in the past, see, *e. g.*, *Heckler* v. *Ringer*, 466 U. S. 602, 616–617 (1984), and we again find it unnecessary to reach it today.

subject-matter jurisdiction. *Califano* v. *Sanders*, 430 U. S. 99 (1977).

* * *

For the foregoing reasons, the judgment of the Court of Appeals is affirmed.

*It is so ordered.*

Syllabus

# NATIONAL COLLEGIATE ATHLETIC ASSOCIATION *v.* SMITH

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

No. 98–84. Argued January 20, 1999—Decided February 23, 1999

The National Collegiate Athletic Association (NCAA) has adopted rules governing the intercollegiate athletics programs of its member colleges and universities. Among these rules is the Postbaccalaureate Bylaw, which allows a postgraduate student-athlete to participate in intercollegiate athletics only at the institution that awarded her undergraduate degree. Respondent Smith played intercollegiate volleyball for two seasons at St. Bonaventure University. After she graduated from St. Bonaventure, Smith enrolled in postgraduate programs at Hofstra University and the University of Pittsburgh. She sought to play intercollegiate volleyball at those schools, but the NCAA denied her eligibility on the basis of its postbaccalaureate restrictions. At Smith's request, Hofstra and the University of Pittsburgh petitioned the NCAA to waive the restrictions, but, each time, the NCAA refused. Smith filed this lawsuit *pro se*, alleging, among other things, that the NCAA had violated Title IX of the Education Amendments of 1972, which proscribes sex discrimination in "any education program or activity receiving Federal financial assistance," 20 U. S. C. § 1681(a). The NCAA moved to dismiss on the ground that the complaint failed to allege that the NCAA is a recipient of federal financial assistance. In opposition, Smith argued that the NCAA governs the federally funded intercollegiate athletics programs of its members, that these programs are educational, and that the NCAA benefited economically from its members' receipt of federal funds. Concluding that the alleged connections between the NCAA and federal financial assistance to member institutions were too attenuated to sustain a Title IX claim, the District Court dismissed the suit. Smith then moved for leave to amend her complaint to allege that the NCAA receives federal assistance through other recipients and operates an educational activity that benefits from such assistance. The District Court denied the motion as moot. Reversing that denial, the Third Circuit held that the NCAA's receipt of dues from federally funded member institutions would suffice to bring the NCAA within the scope of Title IX.

*Held:* Dues payments from recipients of federal funds do not suffice to subject the NCAA to suit under Title IX. Pp. 465–470.

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(a) The Third Circuit's decision is inconsistent with the governing statute, regulation, and this Court's decisions. Title IX defines "program or activity" to include "all of the operations of . . . a . . . postsecondary institution . . . any part of which is extended Federal financial assistance," § 1687(2)(A), and provides institution-wide coverage for entities "principally engaged in the business of providing education" services, § 1687(3)(A)(ii), and for entities created by two or more covered entities, § 1687(4). Thus, if any part of the NCAA received federal financial assistance, all NCAA operations would be subject to Title IX. This Court has twice considered when an entity qualifies as a recipient of federal financial assistance. In *Grove City College* v. *Bell*, 465 U. S. 555, 563–570, the Court held that a college qualifies as a recipient when it enrolls students who receive federal funds earmarked for educational expenses. The Court found "no hint" that Title IX distinguishes between direct institutional assistance and aid received by a school indirectly through its students. *Id.*, at 564. Later, in *Department of Transp.* v. *Paralyzed Veterans of America*, 477 U. S. 597, the Court held that § 504 of the Rehabilitation Act of 1973—which prohibits discrimination based on disability in substantially the same terms that Title IX uses to prohibit sex discrimination—does not apply to commercial airlines by virtue of the Government's program of financial assistance to airports. The Court concluded that § 504 covers those who receive the aid, not those who simply benefit from it. *Id.*, at 607. In declining to apply *Paralyzed Veterans'* "recipient" definition on the ground that it was inconsistent with 34 CFR § 106.2, a Title IX regulation issued by the Department of Education, the Third Circuit failed to give effect to the regulation in its entirety. Section 106.2(h) defines "recipient" to include any entity "to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance." The first part of this definition makes clear that Title IX coverage is not triggered when an entity merely benefits from federal funding. Thus, the regulation accords with the teaching of *Grove City* and *Paralyzed Veterans:* Entities that receive federal assistance, whether directly or through an intermediary, are recipients within the meaning of Title IX; entities that only benefit economically from federal assistance are not. The Third Circuit's decision is inconsistent with this precedent. Unlike the earmarked student aid in *Grove City,* there is no allegation that NCAA members paid their dues with federal funds earmarked for that purpose. While the Third Circuit dispositively and, this Court holds, erroneously relied on the NCAA's receipt of dues from its members, the Third Circuit also noted that the relationship between the NCAA and its members is qualitatively different from that between the airlines and

Syllabus

airport operators at issue in *Paralyzed Veterans*—the NCAA is created by, and composed of, schools that receive federal funds, and the NCAA governs its members with respect to athletic rules. These distinctions do not bear on the narrow question here decided: An entity that receives dues from recipients of federal funds does not thereby become a recipient itself. Pp. 465–469.

(b) The Court does not address the alternative grounds urged by respondent and the United States for bringing the NCAA under Title IX: (1) that the NCAA directly and indirectly receives federal financial assistance through the National Youth Sports Program; and (2) that, when a recipient cedes controlling authority over a federally funded program to another entity, the controlling entity is covered by Title IX regardless whether it is itself a recipient. Those issues were not decided below; their resolution in the first instance is left to the lower courts on remand. See, *e. g.*, *Roberts* v. *Galen of Va., Inc.*, *ante*, at 253–254. Pp. 469–470.

139 F. 3d 180, vacated and remanded.

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

*John G. Roberts, Jr.*, argued the cause for petitioner. With him on the briefs were *Martin Michaelson*, *Gregory G. Garre*, *John J. Kitchin*, *Robert W. McKinley*, and *Elsa Kircher Cole*.

*Carter G. Phillips* argued the cause for respondent. With him on the brief was *Virginia A. Seitz*.

*Deputy Solicitor General Kneedler* argued the cause for the United States as *amicus curiae* urging affirmance. On the brief were *Solicitor General Waxman*, *Acting Assistant Attorney General Lee*, *Deputy Solicitor General Underwood*, *Irving L. Gornstein*, and *Dennis J. Dimsey*.*

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**Richard O. Duvall*, *Robin L. Rosenberg*, *David A. Vaughan*, and *Sheldon Elliot Steinbach* filed a brief for the American Council on Education et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for Michael Bowers et al. by *Barbara E. Ransom;* for Trial Lawyers for Public Justice, P. C., et al. by *Adele P. Kimmel*, *Arthur H. Bryant*, and *J. Richard Cohen;* and for the National Women's Law Center et al. by *Marcia D. Greenberger*, *Leslie T. Annexstein*, *Lois G. Williams*, and *Dina R. Lassow*.

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the amenability of the National Collegiate Athletic Association (NCAA or Association) to a private action under Title IX of the Education Amendments of 1972. The NCAA is an unincorporated association of approximately 1,200 members, including virtually all public and private universities and four-year colleges conducting major athletic programs in the United States; the Association serves to maintain intercollegiate athletics as an integral part of its members' educational programs. Title IX proscribes sex discrimination in "any education program or activity receiving Federal financial assistance." 20 U. S. C. § 1681(a).

The complainant in this case, Renee M. Smith, sued the NCAA under Title IX alleging that the Association discriminated against her on the basis of her sex by denying her permission to play intercollegiate volleyball at federally assisted institutions. Reversing the District Court's refusal to allow Smith to amend her *pro se* complaint, the Court of Appeals for the Third Circuit held that the NCAA's receipt of dues from federally funded member institutions would suffice to bring the Association within the scope of Title IX. We reject that determination as inconsistent with the governing statute, regulation, and Court decisions. Dues payments from recipients of federal funds, we hold, do not suffice to render the dues recipient subject to Title IX. We do not address alternative grounds, urged by respondent and the United States as *amicus curiae,* in support of Title IX's application to the NCAA in this litigation, and leave resolution of those grounds to the courts below on remand.

## I

Rules adopted by the NCAA govern the intercollegiate athletics programs of its member colleges and universities; "[b]y joining the NCAA, each member agrees to abide by

and enforce [the Association's] rules." *National Collegiate Athletic Assn.* v. *Tarkanian*, 488 U. S. 179, 183 (1988); see 1993–1994 NCAA Manual, NCAA Const., Arts. 1.2(h), 1.3.2, p. 1. Among these rules is the Postbaccalaureate Bylaw, which allows a postgraduate student-athlete to participate in intercollegiate athletics only at the institution that awarded her undergraduate degree. See *id.*, Bylaw 14.1.8.2, at 123.[1]

Respondent Smith enrolled as an undergraduate at St. Bonaventure University, an NCAA member, in 1991. Smith joined the St. Bonaventure intercollegiate volleyball team in the fall of 1991 and remained on the team throughout the 1991–1992 and 1992–1993 athletic seasons. She elected not to play the following year.

Smith graduated from St. Bonaventure in 2½ years. During the 1994–1995 athletic year, she was enrolled in a postgraduate program at Hofstra University; for the 1995–1996 athletic year, she enrolled in a different postgraduate program at the University of Pittsburgh. Smith sought to play intercollegiate volleyball during these athletic years, but the NCAA denied her eligibility on the basis of its postbaccalau-

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[1] The Postbaccalaureate Bylaw is an exception to the general NCAA rule restricting participation in intercollegiate athletics to students enrolled in a full-time program of studies leading to a baccalaureate degree. See 1993–1994 NCAA Manual, Bylaw 14.1.8.1, at 123. In full, the Postbaccalaureate Bylaw provides:

"A student-athlete who is enrolled in a graduate or professional school of the institution he or she previously attended as an undergraduate (regardless of whether the individual has received a United States baccalaureate degree or its equivalent), a student-athlete who is enrolled and seeking a second baccalaureate or equivalent degree at the same institution, or a student-athlete who has graduated and is continuing as a full-time student at the same institution while taking course work that would lead to the equivalent of another major or degree as defined and documented by the institution, may participate in intercollegiate athletics, provided the student has eligibility remaining and such participation occurs within the applicable five-year or 10-semester period set forth in 14.2." Bylaw 14.1.8.2.

reate restrictions. At Smith's request, Hofstra and the University of Pittsburgh petitioned the NCAA to waive the restrictions. Each time, the NCAA refused to grant a waiver.

In August 1996, Smith filed this lawsuit *pro se*, alleging, among other things, that the NCAA's refusal to waive the Postbaccalaureate Bylaw excluded her from participating in intercollegiate athletics at Hofstra and the University of Pittsburgh on the basis of her sex, in violation of Title IX of the Education Amendments of 1972, 86 Stat. 373, as amended, 20 U. S. C. § 1681 *et seq.*[2] The complaint did not attack the Bylaw on its face, but instead alleged that the NCAA discriminates on the basis of sex by granting more waivers from eligibility restrictions to male than female postgraduate student-athletes. Complaint ¶ 26, Joint App. in Nos. 97–3346 and 97–3347 (CA3), p. 4 (hereinafter Joint App.); Amended Complaint ¶ 64, Joint App. 98.

The NCAA moved to dismiss Smith's Title IX claim on the ground that the complaint failed to allege that the NCAA is a recipient of federal financial assistance. In opposition, Smith argued that the NCAA governs the federally funded intercollegiate athletics programs of its members, that these programs are educational, and that the NCAA benefited economically from its members' receipt of federal funds. See Joint App. 55–56.

Concluding that the alleged connections between the NCAA and federal financial assistance to member institutions were "too far attenuated" to sustain a Title IX claim, the District Court dismissed the suit. 978 F. Supp. 213, 219, 220 (WD Pa. 1997). Smith then moved the District Court for leave to amend her complaint to add Hofstra and the Uni-

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[2] The complaint also stated a Sherman Act claim and a state contract law claim. The District Court dismissed the Sherman Act claim, 978 F. Supp. 213, 218 (WD Pa. 1997), and declined to retain supplemental jurisdiction over the state claim, *id.*, at 220. The Court of Appeals affirmed the dismissal of the Sherman Act claim, 139 F. 3d 180, 187 (CA3 1998), and this Court denied certiorari on that issue, see 524 U. S. 982 (1998).

versity of Pittsburgh as defendants, see Amended Complaint ¶ 63, Joint App. 97, and to allege that the NCAA "receives federal financial assistance through another recipient and operates an educational program or activity which receives or benefits from such assistance," *id.*, ¶ 65, Joint App. 98. The District Court denied the motion "as moot, the court having granted [the NCAA's] motion to dismiss." App. to Pet. for Cert. 36a.

The Court of Appeals for the Third Circuit reversed the District Court's refusal to grant leave to amend the complaint. 139 F. 3d 180, 190 (1998). The Third Circuit agreed with the District Court that Smith's original complaint failed to state a Title IX claim. *Id.*, at 189. But Smith's proposed amended complaint, the Court of Appeals said, "plainly alleges that the NCAA receives dues from member institutions, which receive federal funds." *Id.*, at 190. That allegation, the Third Circuit held, "would be sufficient to bring the NCAA within the scope of Title IX as a recipient of federal funds and would survive a motion to dismiss." *Ibid.* Under the Third Circuit's ruling, all Smith would need to prove on remand to proceed is that the NCAA receives members' dues, a fact not in dispute.

The NCAA petitioned for this Court's review, alleging that the Court of Appeals' decision conflicted with *Department of Transp.* v. *Paralyzed Veterans of America*, 477 U. S. 597 (1986). Pet. for Cert. 7–15. We granted certiorari, 524 U. S. 982 (1998), to decide whether a private organization that does not receive federal financial assistance is subject to Title IX because it receives payments from entities that do.

## II

Section 901(a) of Title IX of the Education Amendments of 1972, 20 U. S. C. § 1681(a), provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity

receiving Federal financial assistance."[3] Under the Civil Rights Restoration Act of 1987 (CRRA), 102 Stat. 28, 20 U. S. C. § 1687, a "program or activity" includes "all of the operations of . . . a college, university, or other postsecondary institution, or a public system of higher education . . . any part of which is extended Federal financial assistance." § 1687(2)(A). The CRRA also provides institution-wide coverage for entities "principally engaged in the business of providing education" services, § 1687(3)(A)(ii), and for entities created by two or more covered entities, § 1687(4).[4] Thus, if any part of the NCAA received federal assistance, all NCAA operations would be subject to Title IX.

We have twice before considered when an entity qualifies as a recipient of federal financial assistance. In *Grove City College* v. *Bell*, 465 U. S. 555, 563–570 (1984), we held that a college receives federal financial assistance when it enrolls students who receive federal funds earmarked for educational expenses. Finding "no hint" that Title IX distinguishes "between direct institutional assistance and aid received by a school through its students," we concluded that Title IX "encompass[es] *all* forms of federal aid to education,

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[3] The scope of several other federal antidiscrimination measures is defined in nearly identical terms. See § 601 of Title VI of the Civil Rights Act of 1964, 42 U. S. C. § 2000d (prohibiting race discrimination in "any program or activity receiving Federal financial assistance"); § 504 of the Rehabilitation Act of 1973, 29 U. S. C. § 794(a) (prohibiting discrimination on the basis of disability in "any program or activity receiving Federal financial assistance"); and § 303 of the Age Discrimination Act of 1975, 42 U. S. C. § 6102 (prohibiting discrimination on the basis of age in "any program or activity receiving Federal financial assistance").

[4] Congress enacted the CRRA in response to Part III of our decision in *Grove City College* v. *Bell*, 465 U. S. 555, 570–574 (1984), which concluded that Title IX, as originally enacted, covered only the specific program receiving federal funding. See *Franklin* v. *Gwinnett County Public Schools*, 503 U. S. 60, 73 (1992) (noting that Congress endeavored, in the CRRA, "to correct what it considered to be an unacceptable decision on our part in *Grove City*").

direct or indirect." *Id.*, at 564 (internal quotation marks omitted).

In *Paralyzed Veterans,* 477 U. S., at 603–612, we considered the scope of § 504 of the Rehabilitation Act of 1973, 29 U. S. C. § 794, which prohibits discrimination on the basis of disability in substantially the same terms that Title IX uses to prohibit sex discrimination. In that case, a group representing disabled veterans contended that the Department of Transportation had authority to enforce § 504 against commercial air carriers by virtue of the Government's extensive program of financial assistance to airports. We held that airlines are not recipients of federal funds received by airport operators for airport construction projects, even when the funds are used for projects especially beneficial to the airlines. Application of § 504 to all who benefited economically from federal assistance, we observed, would yield almost "limitless coverage." 477 U. S., at 608. We concluded that "[t]he statute covers those who receive the aid, but does not extend as far as those who benefit from it." *Id.*, at 607.[5]

The Court of Appeals determined "not [to] apply the *Paralyzed Veterans* Court's definition of 'recipient' to Title IX," 139 F. 3d, at 189, finding that definition inconsistent with 34 CFR § 106.2 (1997), a Title IX regulation issued by the

[5] Smith suggests that *Paralyzed Veterans* does not control the question presented here because that case involved a Government enforcement action while this is a private suit. This argument hinges on Smith's position that the private right of action available under 20 U. S. C. § 1681(a) is potentially broader than the Government's enforcement authority provided by § 1682. We reject this position. There is no express authorization for private lawsuits in Title IX; in *Cannon* v. *University of Chicago,* 441 U. S. 677, 717 (1979), we concluded that Congress had intended to authorize a private right of action even though it failed to do so expressly. We think it would be anomalous to assume that Congress intended the implied private right of action to proscribe conduct that Government enforcement may not check. See 20 U. S. C. § 1682 (authorizing federal administrative enforcement by terminating the federal funding of any noncomplying recipient, § 1682(1), or "by any other means authorized by law," § 1682(2)).

Department of Education. The Third Circuit interpreted the Department's regulation to define a "recipient" as "an entity 'which operates an educational program or activity which *receives or benefits*' from federal funds." 139 F. 3d, at 189 (quoting § 106.2(h)). The court reasoned that § 106.2(h) extends Title IX to beneficiaries of federal funding as well as recipients. Applying the more limited rule of *Paralyzed Veterans*, the appeals court concluded, would "render the regulatory definition of 'recipient' under Title IX a nullity." *Ibid.*

The Third Circuit's reading of § 106.2(h) failed to give effect to the regulation in its entirety. Section 106.2(h) defines "recipient" to include any entity "to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance." The first part of this definition makes clear that Title IX coverage is not triggered when an entity merely benefits from federal funding. Thus, the regulation accords with the teaching of *Grove City* and *Paralyzed Veterans:* Entities that receive federal assistance, whether directly or through an intermediary, are recipients within the meaning of Title IX; entities that only benefit economically from federal assistance are not.

The Third Circuit's conclusion that the NCAA would be subject to the requirements of Title IX if it received dues from its federally funded members is inconsistent with this precedent. Unlike the earmarked student aid in *Grove City*, there is no allegation that NCAA members paid their dues with federal funds earmarked for that purpose. At most, the Association's receipt of dues demonstrates that it indirectly benefits from the federal assistance afforded its members. This showing, without more, is insufficient to trigger Title IX coverage.

While the Court of Appeals dispositively relied on the NCAA's receipt of members' dues, it also noted distinctions

between *Paralyzed Veterans* and this case: The NCAA is "created by and comprised of" schools that receive federal funds, and the Association governs its members "with respect to athletic rules." 139 F. 3d, at 188. In these respects, the Third Circuit observed, the relationship between the Association and its members is "qualitatively different from that between airlines and airport operators." *Id.*, at 189. Evident as these distinctions may be, they do not bear on the narrow question we decide today—whether an entity that receives dues from recipients of federal funds is for that reason a recipient itself.

## III

Smith, joined by the United States as *amicus curiae*, presses two alternative theories for bringing the NCAA under the prescriptions of Title IX.[6] First, she asserts that the NCAA directly and indirectly receives federal financial assistance through the National Youth Sports Program NCAA administers. See Brief for Respondent 35–37, 39–41.[7] Second, Smith argues that when a recipient cedes con-

[6] Smith's brief to the Third Circuit alluded to these theories. See Brief for Appellant in Nos. 97–3346 and 97–3347 (CA3), pp. 5, 22 (arguing that the NCAA receives federal financial assistance through the National Youth Sports Program it operates); *ibid.* (arguing that an organization that assumes control over a federally funded program is thereby subject to Title IX).

[7] Two District Courts have found that the NCAA's relationship to the National Youth Sports Program creates an issue of fact regarding whether the NCAA is a recipient of federal financial assistance. See *Bowers* v. *National Collegiate Athletic Assn.*, 9 F. Supp. 2d 460, 494 (NJ 1998) (denying NCAA's motion for summary judgment in a Rehabilitation Act suit because "there are genuine questions of material fact as to whether the NCAA receives federal funds through the [National Youth Sports Program Fund]"); *Cureton* v. *National Collegiate Athletic Assn.*, No. Civ. A. 97–131, 1997 WL 634376, *2 (ED Pa., Oct. 9, 1997) (refusing NCAA's motion for summary judgment in a Title VI action). Also, the Department of Health and Human Services has issued two letter determinations that the NCAA is a recipient of federal assistance by virtue of the Department's grant to the National Youth Sports Program Fund. See Brief for

trolling authority over a federally funded program to another entity, the controlling entity is covered by Title IX regardless whether it is itself a recipient. See *id.*, at 41–46; Brief for United States as *Amicus Curiae* 20–27.

As in *Roberts* v. *Galen of Va., Inc.*, *ante*, at 253–254, and *United States* v. *Bestfoods*, 524 U. S. 51, 72–73 (1998), we do not decide in the first instance issues not decided below.

* * *

For the reasons stated, we conclude that the Court of Appeals erroneously held that dues payments from recipients of federal funds suffice to subject the NCAA to suit under Title IX. Accordingly, we vacate the judgment of the Third Circuit and remand the case for further proceedings consistent with this opinion.

*It is so ordered.*

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United States as *Amicus Curiae* 19–20. We, of course, are not positioned to make or currently review factfindings on any alternative theory urged by respondent.

Syllabus

# RENO, ATTORNEY GENERAL, ET AL. *v.* AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE ET AL.

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

No. 97–1252. Argued November 4, 1998—Decided February 24, 1999

Respondent resident aliens filed this suit, claiming that petitioners, the Attorney General and other federal parties, targeted them for deportation because of their affiliation with a politically unpopular group, in violation of their First and Fifth Amendment rights. After the District Court preliminarily enjoined the proceedings against respondents, but while an appeal by the Attorney General was pending, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which, *inter alia*, repealed the old judicial-review scheme in the Immigration and Nationality Act, 8 U. S. C. § 1105a, and instituted a new provision, 8 U. S. C. § 1252(g), which restricts judicial review of the Attorney General's "decision or action" to "commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act" "[e]xcept as provided in this section." The Attorney General filed motions in both the District Court and the Ninth Circuit, arguing that § 1252(g) deprived them of jurisdiction over respondents' selective-enforcement claim. The District Court denied the motion. The Ninth Circuit, consolidating an appeal from that denial with the pending appeal, upheld jurisdiction and affirmed the District Court's decision on the merits.

*Held:* Section 1252(g) deprives the federal courts of jurisdiction over respondents' suit. Pp. 476–492.

(a) Although IIRIRA § 309(c)(1)'s general rule is that the revised procedures for removing aliens, including § 1252's judicial-review procedures, do not apply in exclusion or deportation proceedings pending on IIRIRA's effective date, IIRIRA § 306(c)(1) directs that a single provision, § 1252(g), shall apply "without limitation to claims arising from all past, pending, or future exclusion, deportation, or removal proceedings." Section 1252(g) applies to three discrete actions that the Attorney General may take: her "decision or action" to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders." (Emphasis added.) The provision seems designed to give some measure of protection to such discretionary determinations, providing that if they are reviewable at all, they at least will not be made the bases for separate rounds of judicial intervention outside the streamlined process designed by Congress.

Respondents' challenge to the Attorney General's decision to "commence proceedings" against them falls squarely within § 1252(g), and § 1252 does not otherwise provide jurisdiction. Pp. 476–487.

(b) The doctrine of constitutional doubt does not require that § 1252(g) be interpreted in such fashion as to permit immediate review of respondents' selective-enforcement claims. An alien unlawfully in this country has no constitutional right to assert such a claim as a defense against his deportation. Pp. 487–492.

119 F. 3d 1367, vacated and remanded.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, and THOMAS, JJ., joined, and in which GINSBURG and BREYER, JJ., joined as to Parts I and II. GINSBURG, J., filed an opinion concurring in part and concurring in the judgment, in which BREYER, J., joined as to Part I, *post,* p. 492. STEVENS, J., filed an opinion concurring in the judgment, *post,* p. 498. SOUTER, J., filed a dissenting opinion, *post,* p. 501.

*Malcolm L. Stewart* argued the cause for petitioners. With him on the briefs were *Solicitor General Waxman*, *Assistant Attorney General Hunger*, *Deputy Solicitor General Kneedler*, and *Douglas N. Letter.*

*David D. Cole* argued the cause for respondents. With him on the brief were *Steven R. Shapiro*, *Lucas Guttentag*, *Marc Van Der Hout*, and *Paul L. Hoffman.**

JUSTICE SCALIA delivered the opinion of the Court.†

Respondents sued petitioners for allegedly targeting them for deportation because of their affiliation with a politically unpopular group. While their suit was pending, Congress

*Briefs of *amici curiae* urging reversal were filed for the Criminal Justice Legal Foundation by *Kent S. Scheidegger;* and for the Washington Legal Foundation et al. by *Daniel J. Popeo* and *Richard A. Samp.*

Briefs of *amici curiae* urging affirmance were filed for the American Bar Association by *Philip S. Anderson*, *Jeffrey L. Bleich*, and *Carol Wolchok;* for the American Immigration Law Foundation et al. by *Ira J. Kurzban* and *Nadine K. Wettstein;* for the Brennan Center for Justice at New York University School of Law by *Burt Neuborne;* and for the National Immigration Law Center by *Linton Joaquin* and *Gerald L. Neuman.*

†JUSTICE BREYER joins Parts I and II of this opinion.

passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), 110 Stat. 3009–546, which contains a provision restricting judicial review of the Attorney General's "decision or action" to "commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act." 8 U. S. C. § 1252(g) (1994 ed., Supp. III). The issue before us is whether, as petitioners contend, this provision deprives the federal courts of jurisdiction over respondents' suit.

## I

The Immigration and Naturalization Service (INS), a division of the Department of Justice, instituted deportation proceedings in 1987 against Bashar Amer, Aiad Barakat, Julie Mungai, Amjad Obeid, Ayman Obeid, Naim Sharif, Khader Hamide, and Michel Shehadeh, all of whom belong to the Popular Front for the Liberation of Palestine (PFLP), a group that the Government characterizes as an international terrorist and communist organization. The INS charged all eight under the McCarran-Walter Act, which, though now repealed, provided at the time for the deportation of aliens who "advocate . . . world communism." See 8 U. S. C. §§ 1251(a)(6)(D), (G)(v), and (H) (1982 ed.). In addition, the INS charged the first six, who were only temporary residents, with routine status violations such as overstaying a visa and failure to maintain student status.[1] See 8 U. S. C. §§ 1251(a)(2) and (a)(9) (1988 ed.).

Almost immediately, the aliens filed suit in District Court, challenging the constitutionality of the anticommunism provisions of the McCarran-Walter Act and seeking declaratory and injunctive relief against the Attorney General, the INS, and various immigration officials in their personal and official capacities. The INS responded by dropping the advocacy-

[1] Respondents Barakat and Sharif were subsequently granted legalization and are no longer deportable based on the original status violations. Brief for Petitioners 11, n. 5.

of-communism charges, but it retained the technical violation charges against the six temporary residents and charged Hamide and Shehadeh, who were permanent residents, under a different section of the McCarran-Walter Act, which authorized the deportation of aliens who were members of an organization advocating "the duty, necessity, or propriety of the unlawful assaulting or killing of any [government] officer or officers" and "the unlawful damage, injury, or destruction of property." See 8 U. S. C. §§ 1251(a)(6)(F)(ii)–(iii) (1982 ed.).[2] INS regional counsel William Odencrantz said at a press conference that the charges had been changed for tactical reasons but the INS was still seeking respondents' deportation because of their affiliation with the PFLP. See *American-Arab Anti-Discrimination Committee* v. *Reno*, 70 F. 3d 1045, 1053 (CA9 1995) *(AADC I)*. Respondents amended their complaint to include an allegation that the INS was selectively enforcing immigration laws against them in violation of their First and Fifth Amendment rights.[3]

Since this suit seeking to prevent the initiation of deportation proceedings was filed—in 1987, during the administration of Attorney General Edwin Meese—it has made four trips through the District Court for the Central District of California and the United States Court of Appeals for the Ninth Circuit. The first two concerned jurisdictional issues not now before us. See *Hamide* v. *United States District Court*, No. 87–7249 (CA9, Feb. 24, 1988); *American-Arab Anti-Discrimination Committee* v. *Thornburgh*, 970 F. 2d

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[2] When the McCarran-Walter Act was repealed, a new "terrorist activity" provision was added by the Immigration Act of 1990. See 8 U. S. C. § 1227(a)(4)(B) (1994 ed., Supp. III). The INS charged Hamide and Shehadeh under this, but it is unclear whether that was in addition to, or in substitution for, the old McCarran-Walter charges.

[3] The amended complaint was styled as an action for "damages and for declaratory and injunctive relief," but the only monetary relief specifically requested was "costs of suit and attorneys fees." App. 20, 51.

501 (CA9 1991). Then, in 1994, the District Court preliminarily enjoined deportation proceedings against the six temporary residents, holding that they were likely to prove that the INS did not enforce routine status requirements against immigrants who were not members of disfavored terrorist groups and that the possibility of deportation, combined with the chill to their First Amendment rights while the proceedings were pending, constituted irreparable injury. With regard to Hamide and Shehadeh's claims, however, the District Court granted summary judgment to the federal parties for reasons not pertinent here.

*AADC I*, *supra*, was the Ninth Circuit's first merits determination in this case, upholding the injunction as to the six and reversing the District Court with regard to Hamide and Shehadeh. The opinion rejected the Attorney General's argument that selective-enforcement claims are inappropriate in the immigration context, and her alternative argument that the special statutory-review provision of the Immigration and Nationality Act (INA), 8 U. S. C. § 1105a, precluded review of such a claim until a deportation order issued. See 70 F. 3d, at 1056–1057. The Ninth Circuit remanded the case to the District Court, which entered an injunction in favor of Hamide and Shehadeh and denied the Attorney General's request that the existing injunction be dissolved in light of new evidence that all respondents participated in fundraising activities of the PFLP.

While the Attorney General's appeal of this last decision was pending, Congress passed IIRIRA which, *inter alia*, repealed the old judicial-review scheme set forth in § 1105a and instituted a new (and significantly more restrictive) one in 8 U. S. C. § 1252. The Attorney General filed motions in both the District Court and Court of Appeals, arguing that § 1252(g) deprived them of jurisdiction over respondents' selective-enforcement claim. The District Court denied the motion, and the Attorney General's appeal from that denial

was consolidated with the appeal already pending in the Ninth Circuit.

It is the judgment and opinion in that appeal which is before us here: 119 F. 3d 1367 (CA9 1997). It affirmed the existence of jurisdiction under § 1252, see *id.*, at 1374, and reaching the merits of the injunctions, again affirmed the District Court, *id.*, at 1374–1376. The Attorney General's petition for rehearing en banc was denied over the dissent of three judges, 132 F. 3d 531 (CA9 1997). The Attorney General sought our review, and we granted certiorari, 524 U. S. 903 (1998).

## II

Before enactment of IIRIRA, judicial review of most administrative action under the INA was governed by 8 U. S. C. § 1105a, a special statutory-review provision directing that "the sole and exclusive procedure for . . . the judicial review of all final orders of deportation" shall be that set forth in the Hobbs Act, 28 U. S. C. § 2341 *et seq.*, which gives exclusive jurisdiction to the courts of appeals, see § 2342. Much of the Court of Appeals' analysis in *AADC I* was devoted to the question whether this pre-IIRIRA provision applied to selective-enforcement claims. Since neither the Immigration Judge nor the Board of Immigration Appeals has authority to hear such claims (a point conceded by the Attorney General in *AADC I*, see 70 F. 3d, at 1055), a challenge to a final order of deportation based upon such a claim would arrive in the court of appeals without the factual development necessary for decision. The Attorney General argued unsuccessfully below that the Hobbs Act permits a court of appeals to remand the case to the agency, see 28 U. S. C. § 2347(c), or transfer it to a district court, see § 2347(b)(3), for further factfinding. The Ninth Circuit, believing these options unavailable, concluded that an original district-court action was respondents' only means of obtaining factual development and thus judicial review of their selective-

enforcement claims. Relying on our decision in *Cheng Fan Kwok* v. *INS*, 392 U. S. 206 (1968), it held that the District Court could entertain the suit under either its general federal-question jurisdiction, see 28 U. S. C. § 1331, or the general jurisdictional provision of the INA, see 8 U. S. C. § 1329.[4]

Whether we must delve further into the details of this issue depends upon whether, after the enactment of IIRIRA, § 1105a continues to apply to this case. On the surface of things, at least, it does not. Although the general rule set forth in § 309(c)(1) of IIRIRA is that the revised procedures for removing aliens, including the judicial-review procedures of § 1252, do not apply to aliens who were already in either exclusion or deportation proceedings on IIRIRA's effective date, see note following 8 U. S. C. § 1101 (1994 ed., Supp. III),[5] § 306(c)(1) of IIRIRA directs that a single provision, § 1252(g), shall apply "without limitation to claims arising from all past, pending, or future exclusion, deportation, or removal proceedings." See note following 8 U. S. C. § 1252 (1994 ed., Supp. III). Section 1252(g) reads as follows:

> "(g) Exclusive Jurisdiction
>
> "Except as provided in this section and notwithstanding any other provision of law, no court shall have juris-

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[4] This latter provision was subsequently amended by IIRIRA to make clear that it applies only to actions brought by the United States. See 8 U. S. C. § 1329 (1994 ed., Supp. III).

[5] Section 309(c)(1) provides:

"(c) Transition for Aliens in Proceedings.—

"(1) General rule that new rules do not apply.—Subject to the succeeding provisions of this subsection [§ 309(a) carves out § 306(c) as an exception], in the case of an alien who is in exclusion or deportation proceedings as of the title III–A effective date—

"(A) the amendments made by this subtitle shall not apply, and

"(B) the proceedings (including judicial review thereof) shall continue to be conducted without regard to such amendments." 110 Stat. 3009–625.

> diction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act."

This provision seemingly governs here, depriving the federal courts of jurisdiction "[e]xcept as provided in this section." But whether it is as straightforward as that depends upon the scope of the quoted text. Here, and in the courts below, both petitioners and respondents have treated § 1252(g) as covering all or nearly all deportation claims. The Attorney General has characterized it as "a channeling provision, requiring aliens to bring all deportation-related claims in the context of a petition for review of a final order of deportation filed in the court of appeals." Supplemental Brief for Appellants in No. 96–55929 (CA9), p. 2. Respondents have described it as applying to "most of what INS does." Corrected Supplemental Brief for Appellees in No. 96–55929 (CA9), p. 7. This broad understanding of § 1252(g), combined with IIRIRA's effective-date provisions, creates an interpretive anomaly. If the jurisdiction-excluding provision of § 1252(g) eliminates other sources of jurisdiction in *all* deportation-related cases, and if the phrase in § 1252(g) "[e]xcept as provided in this section" incorporates (as one would suppose) all the other jurisdiction-related provisions of § 1252, then § 309(c)(1) would be rendered a virtual nullity. To say that there is no jurisdiction in pending INS cases "except as" § 1252 provides jurisdiction is simply to say that § 1252's jurisdictional limitations apply to pending cases as well as future cases—which seems hardly what § 309(c)(1) is about. If, on the other hand, the phrase "[e]xcept as provided in this section" were (somehow) interpreted *not* to incorporate the other jurisdictional provisions of § 1252—if § 1252(g) stood alone, so to speak—judicial review would be foreclosed for all deportation claims in all pending deportation cases, even after entry of a final order.

The Attorney General would have us avoid the horns of this dilemma by interpreting § 1252(g)'s phrase "[e]xcept as provided in this section" to mean "except as provided in § 1105a." Because § 1105a authorizes review of only final orders, respondents must, she says, wait until their administrative proceedings come to a close and then seek review in a court of appeals. (For reasons mentioned above, the Attorney General of course rejects the Ninth Circuit's position in *AADC I* that application of § 1105a would leave respondents without a judicial forum because evidence of selective prosecution cannot be introduced into the administrative record.) The obvious difficulty with the Attorney General's interpretation is that it is impossible to understand how the qualifier in § 1252(g), "[e]xcept as provided in *this* section" (emphasis added), can possibly mean "except as provided in § 1105a." And indeed the Attorney General makes no attempt to explain how this can be, except to observe that what she calls a "literal application" of the statute "would create an anomalous result." Brief for Petitioners 30, n. 15.

Respondents note this deficiency, but offer an equally implausible means of avoiding the dilemma. Section 309(c)(3) allows the Attorney General to terminate pending deportation proceedings and reinitiate them under § 1252.[6] They argue that § 1252(g) applies only to those pending cases in which the Attorney General has made that election. That way, they claim, the phrase "[e]xcept as provided in this section" can, without producing an anomalous result, be allowed to refer (as it says) to all the rest of § 1252. But this approach collides head-on with § 306(c)'s prescription that § 1252(g) shall apply "*without limitation* to claims arising from *all* past, pending, or future exclusion, deportation, or removal proceedings." See note following 8 U. S. C. § 1252 (1994 ed., Supp. III) (emphasis added). (Respondents argue

[6] It is unclear why the Attorney General has not exercised this option in this case. Respondents have taken the position that the District Court's injunction prevents her from doing so. Brief for Respondents 41, n. 38.

in the alternative, of course, that if the Attorney General is right and § 1105a does apply, *AADC I* is correct that their claims will be effectively unreviewable upon entry of a final order. For this reason, and because they say that habeas review, if still available after IIRIRA,[7] will come too late to remedy this First Amendment injury, respondents contend that we must construe § 1252(g) not to bar *constitutional* claims.)

The Ninth Circuit, for its part, accepted the parties' broad reading of § 1252(g) and concluded, reasonably enough, that on that reading Congress could not have meant § 1252(g) to stand alone:

> "Divorced from all other jurisdictional provisions of IIRIRA, subsection (g) would have a more sweeping impact on cases filed before the statute's enactment than after that date. Without incorporating any exceptions, the provision appears to cut off federal jurisdiction over all deportation decisions. We do not think that Congress intended such an absurd result." 119 F. 3d, at 1372.

It recognized, however, the existence of the other horn of the dilemma ("that retroactive application of the entire amended version of 8 U. S. C. § 1252 would threaten to render meaningless section 306(c) of IIRIRA," *ibid.*), and resolved the difficulty to its satisfaction by concluding that "at least *some* of the other provisions of section 1252" must be included in

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[7] There is disagreement on this point in the Courts of Appeals. Compare *Hose* v. *INS*, 141 F. 3d 932, 935 (CA9) (habeas not available), withdrawn and reh'g en banc granted, 161 F. 3d 1225 (1998), *Richardson* v. *Reno*, 162 F. 3d 1338 (CA11 1998) (same), and *Yang* v. *INS*, 109 F. 3d 1185, 1195 (CA7 1997) (same), with *Goncalves* v. *Reno*, 144 F. 3d 110, 122 (CA1 1998) (habeas available), and *Henderson* v. *INS*, 157 F. 3d 106, 117–122 (CA2 1998) (same). See also *Magana-Pizano* v. *INS*, 152 F. 3d 1213, 1220 (CA9 1998) (elimination of habeas unconstitutional); *Ramallo* v. *Reno*, 114 F. 3d 1210, 1214 (CADC 1997) (§ 1252(g) removes statutory habeas but leaves "constitutional" habeas intact).

subsection (g) "when it applies to pending cases." *Ibid.* (emphasis added). One of those provisions, it thought, must be subsection (f), entitled "Limit on Injunctive Relief," which reads as follows:

> "Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of chapter 4 of title II, as amended by [IIRIRA], other than with respect to the application of such provisions to an individual alien against whom proceedings under such chapter have been initiated."

The Ninth Circuit found in this an affirmative grant of jurisdiction that covered the present case. The Attorney General argued that any such grant of jurisdiction would be limited (and rendered inapplicable to this case) by § 1252(b)(9), which provides:

> "Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this chapter shall be available only in judicial review of a final order under this section."

The Ninth Circuit replied that, even if § 1252(b)(9) were one of those provisions incorporated into the transitional application of § 1252(g), it could not preclude this suit for the same reason *AADC I* had held that § 1105a could not do so—namely, the Court of Appeals' lack of access to factual findings regarding selective enforcement.

Even respondents scarcely try to defend the Ninth Circuit's reading of § 1252(f) as a jurisdictional grant. By its plain terms, and even by its title, that provision is nothing more or less than a limit on injunctive relief. It prohibits federal courts from granting classwide injunctive relief against the operation of §§ 1221–1231, but specifies that this

ban does not extend to individual cases. To find in this an affirmative grant of jurisdiction is to go beyond what the language will bear.

We think the seeming anomaly that prompted the parties' strained readings of § 1252(g)—and that at least accompanied the Court of Appeals' strained reading—is a mirage. The parties' interpretive acrobatics flow from the belief that § 306(c)(1) cannot be read to envision a straightforward application of the "[e]xcept as provided in this section" portion of § 1252(g), since that would produce in *all* pending INS cases jurisdictional restrictions identical to those that were contained in IIRIRA anyway. That belief, however, rests on the unexamined assumption that § 1252(g) covers the universe of deportation claims—that it is a sort of "zipper" clause that says "no judicial review in deportation cases unless this section provides judicial review." In fact, what § 1252(g) says is much narrower. The provision applies only to three discrete actions that the Attorney General may take: her "decision or action" to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders." (Emphasis added.) There are of course many other decisions or actions that may be part of the deportation process—such as the decisions to open an investigation, to surveil the suspected violator, to reschedule the deportation hearing, to include various provisions in the final order that is the product of the adjudication, and to refuse reconsideration of that order.

It is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings. Not because Congress is too unpoetic to use synecdoche, but because that literary device is incompatible with the need for precision in legislative drafting. We are aware of no other instance in the United States Code in which language such as this has been used to impose a general jurisdictional limitation; and that those who enacted IIRIRA were familiar with the normal manner of imposing such a limitation is dem-

onstrated by the text of § 1252(b)(9), which stands in stark contrast to § 1252(g).

It could be argued, perhaps, that § 1252(g) is redundant if it channels judicial review of only *some* decisions and actions, since § 1252(b)(9) channels judicial review of *all* of them anyway. But that is not so, since only § 1252(g), and *not* § 1252(b)(9) (except to the extent it is incorporated within § 1252(g)), applies to what § 309(c)(1) calls "transitional cases," that is, cases pending on the effective date of IIRIRA. That alone justifies its existence. It performs the function of categorically excluding from non-final-order judicial review—even as to transitional cases otherwise governed by § 1105a rather than the unmistakable "zipper" clause of § 1252(b)(9)—certain specified decisions and actions of the INS. In addition, even after all the transitional cases have passed through the system, § 1252(g) as we interpret it serves the continuing function of making it clear that those specified decisions and actions, which (as we shall discuss in detail below) some courts had held *not* to be included within the non-final-order review prohibition of § 1105a, *are* covered by the "zipper" clause of § 1252(b)(9). It is rather the Court of Appeals' and the parties' interpretation which renders § 1252(g) entirely redundant, adding to one "zipper" clause that does not apply to transitional cases, another one of equal scope that *does* apply to transitional cases. That makes it entirely inexplicable why the transitional provisions of § 306(c) refer to § 1252(g) instead of § 1252(b)(9)—and why § 1252(g) exists at all.

There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent the initiation or prosecution of various stages in the deportation process. At each stage the Executive has discretion to abandon the endeavor, and at the time IIRIRA was enacted the INS had been engaging in a

regular practice (which had come to be known as "deferred action") of exercising that discretion for humanitarian reasons or simply for its own convenience.[8] As one treatise describes it:

> "To ameliorate a harsh and unjust outcome, the INS may decline to institute proceedings, terminate proceedings, or decline to execute a final order of deportation. This commendable exercise in administrative discretion, developed without express statutory authorization, originally was known as nonpriority and is now designated as deferred action. A case may be selected for deferred action treatment at any stage of the administrative process. Approval of deferred action status means that, for the humanitarian reasons described below, no action will thereafter be taken to proceed against an apparently deportable alien, even on grounds normally regarded as aggravated." 6 C. Gordon, S. Mailman, & S. Yale-Loehr, Immigration Law and Procedure § 72.03[2][h] (1998).

See also *Johns* v. *Department of Justice*, 653 F. 2d 884, 890–892 (CA5 1981). Since no generous act goes unpunished, however, the INS's exercise of this discretion opened the door to litigation in instances where the INS chose *not* to exercise it.

> "[I]n each such instance, the determination to withhold or terminate deportation is confined to administrative

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[8] Prior to 1997, deferred-action decisions were governed by internal INS guidelines which considered, *inter alia*, such factors as the likelihood of ultimately removing the alien, the presence of sympathetic factors that could adversely affect future cases or generate bad publicity for the INS, and whether the alien had violated a provision that had been given high enforcement priority. See 16 C. Gordon, S. Mailman, & S. Yale-Loehr, Immigration Law and Procedure § 242.1 (1998). These were apparently rescinded on June 27, 1997, but there is no indication that the INS has ceased making this sort of determination on a case-by-case basis. See *ibid.*

> discretion. . . . Efforts to challenge the refusal to exercise such discretion on behalf of specific aliens sometimes have been favorably considered by the courts, upon contentions that there was selective prosecution in violation of equal protection or due process, such as improper reliance on political considerations, on racial, religious, or nationality discriminations, on arbitrary or unconstitutional criteria, or on other grounds constituting abuse of discretion." Gordon, Mailman, & Yale-Loehr, *supra*, § 72.03[2][a] (footnotes omitted).

Such litigation was possible because courts read § 1105a's prescription that the Hobbs Act shall be "the sole and exclusive procedure for the judicial review of all final orders of deportation" to be inapplicable to various decisions and actions leading up to or consequent upon final orders of deportation, and relied on other jurisdictional statutes to permit review. See, *e. g.*, *Cheng Fan Kwok* v. *INS*, 392 U. S. 206 (1968) (review of refusal to stay deportation); *Ramallo* v. *Reno*, Civ. No. 95–01851 (D. D. C., July 23, 1996) (review of execution of removal order), described in and rev'd on other grounds, 114 F. 3d 1210 (CADC 1997); *AADC I*, 70 F. 3d 1045 (CA9 1995) (review of commencement of deportation proceedings); *Lennon* v. *INS*, 527 F. 2d 187, 195 (CA2 1975) (same, dicta). Section 1252(g) seems clearly designed to give some measure of protection to "no deferred action" decisions and similar discretionary determinations, providing that if they are reviewable at all, they at least will not be made the bases for separate rounds of judicial intervention outside the streamlined process that Congress has designed.[9]

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[9] This history explains why JUSTICE SOUTER ought not find it "hard to imagine that Congress meant to bar aliens already in proceedings . . . from challenging the commencement of proceedings against them, but to permit the same aliens to challenge, say, the decision of the Attorney General to open an investigation of them or to issue a show-cause order." *Post*, at 506 (dissenting opinion). It was the acts covered by § 1252(g) that had prompted challenges to the Attorney General's exercise of prosecutorial

Of course *many* provisions of IIRIRA are aimed at protecting the Executive's discretion from the courts—indeed, that can fairly be said to be the theme of the legislation. See, *e. g.*, 8 U. S. C. § 1252(a)(2)(A) (limiting review of any claim arising from the inspection of aliens arriving in the United States); § 1252(a)(2)(B) (barring review of denials of discretionary relief authorized by various statutory provisions); § 1252(a)(2)(C) (barring review of final removal orders

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discretion. We know of no case involving a challenge to "the decision . . . to open an investigation"—perhaps because such decisions are rarely made public. And we know of no case challenging "the decision . . . to issue a show cause order" (though that might well be considered a mere specification of the decision to "commence proceedings" which some cases do challenge and which § 1252(g) covers). Section 1252(g) was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion. It does not tax the imagination to understand why it focuses upon the stages of administration where those attempts have occurred.

But in any event, any challenge to imagination posed by reading § 1252(g) as written would be small price to pay for escaping the overwhelming difficulties of JUSTICE SOUTER's theory. He makes no effort to explain why his broad, catchall reading of § 1252(g) does not render it redundant of § 1252(b)(9). And his throw-in-the-towel approach to § 306(c)(1), which reads it out of the statute because he finds it difficult to explain, see *post,* at 509, not only strains the imagination but ruptures the faculty of reason. We do not think our interpretation "parses [§ 1252(g)] too finely," *post,* at 505; but if it did, we would think that modest fault preferable to the exercise of such a novel power of nullification.

JUSTICE STEVENS, like JUSTICE SOUTER, rejects § 1252(g)'s explicit limitation to specific steps in the deportation process. He then invokes the conflict with § 306(c)(1) that this expansive interpretation creates as justification for concluding that, when § 1252(g) uses the word "section," it "can't mean what it says," *Green* v. *Bock Laundry Machine Co.*, 490 U. S. 504, 511 (1989) (internal quotation marks omitted)—empowering him to declare a "scrivener's error," *post,* at 498 (opinion concurring in judgment), and to change the word "section" to "Act." JUSTICE STEVENS' approach, like JUSTICE SOUTER's, renders § 1252(g) redundant of § 1252(b)(9). That problem *is* solved by our more conventional solution: reading *both* "commence proceedings, adjudicate cases, or execute removal orders" *and* "section" to mean precisely what they say.

against criminal aliens); § 1252(b)(4)(D) (limiting review of asylum determinations for resident aliens). It is entirely understandable, however, why Congress would want only the discretion-protecting provision of § 1252(g) applied even to pending cases: because that provision is specifically directed at the deconstruction, fragmentation, and hence prolongation of removal proceedings.

Our narrow reading of § 1252(g) makes sense of the statutory scheme as a whole, for it resolves the supposed tension between § 306(c)(1) and § 309(c)(1). In cases to which § 1252(g) applies, the rest of § 1252 is incorporated through the "[e]xcept as provided in this section" clause. This incorporation does not swallow § 309(c)(1)'s general rule that §§ 1252(a)–(f) do not apply to pending cases, for § 1252(g) applies to only a limited subset of deportation claims. Yet it is also faithful to § 306(c)(1)'s command that § 1252(g) be applied "without limitation" (*i. e.*, including the "[e]xcept as provided" clause) to "claims arising from all past, pending, or future exclusion, deportation, or removal proceedings."

Respondents' challenge to the Attorney General's decision to "commence proceedings" against them falls squarely within § 1252(g)—indeed, as we have discussed, the language seems to have been crafted with such a challenge precisely in mind—and nothing elsewhere in § 1252 provides for jurisdiction. Cf. § 1252(a)(1) (review of final orders); § 1252(e)(2) (limited habeas review for excluded aliens); § 1252(e)(3)(A) (limited review of statutes and regulations pertaining to the exclusion of aliens). As we concluded earlier, § 1252(f) plainly serves as a limit on injunctive relief rather than a jurisdictional grant.

## III

Finally, we must address respondents' contention that, since the lack of prior factual development for their claim will render the § 1252(a)(1) exception to § 1252(g) unavailing; since habeas relief will also be unavailable; and since even if

one or both were available they would come too late to prevent the "chilling effect" upon their First Amendment rights; the doctrine of constitutional doubt requires us to interpret § 1252(g) in such fashion as to permit immediate review of their selective-enforcement claims. We do not believe that the doctrine of constitutional doubt has any application here. As a general matter—and assuredly in the context of claims such as those put forward in the present case—an alien unlawfully in this country has no constitutional right to assert selective enforcement as a defense against his deportation.[10]

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[10] Instead of resolving this constitutional question, JUSTICE GINSBURG chooses to resolve the constitutional question whether Congress can exclude the courts from remedying an alleged First Amendment violation with immediate effects, pending the completion of administrative proceedings. It is not clear to us that this is easier to answer than the question we address—as is evident from the fact that in resolving it JUSTICE GINSBURG relies almost exclusively on cases dealing with the quite different question of federal-court intervention in state proceedings. (Even in that area, most of the cases she cites where we did not intervene involved no claim of present injury from the state action—and none involved what we have here: an admission by the Government that the alleged First Amendment activity was the basis for selecting the individuals for adverse action. Cf. *Dombrowski* v. *Pfister*, 380 U. S. 479, 487–488, n. 4 (1965).) The one case not involving federal-state relations in fact *overrode* a congressional requirement for completion of administrative proceedings—even though, unlike here, no immediate harm was apparent. See *Oestereich* v. *Selective Serv. System Local Bd. No. 11*, 393 U. S. 233 (1968). JUSTICE GINSBURG counts the case as one for *her* side on the basis of nothing more substantial than the Court's characterization of the agency action at issue as "blatantly lawless," *id.*, at 238. See *post*, at 494 (opinion concurring in part and concurring in judgment).

Nor is it clear that the constitutional question JUSTICE GINSBURG addresses has narrower application and effect than the one we resolve. Our holding generally deprives deportable aliens of the defense of selective prosecution. Hers allows all citizens and resident aliens to be deprived of constitutional rights (at least where the deprivation is not "blatantly lawless") pending the completion of agency proceedings.

Finally, JUSTICE GINSBURG acknowledges that her constitutional conclusion might be different if "a court of appeals reviewing final orders of

Even in the criminal-law field, a selective prosecution claim is a *rara avis.* Because such claims invade a special province of the Executive—its prosecutorial discretion—we have emphasized that the standard for proving them is particularly demanding, requiring a criminal defendant to introduce "clear evidence" displacing the presumption that a prosecutor has acted lawfully. *United States* v. *Armstrong*, 517 U. S. 456, 463–465 (1996). We have said:

> "This broad discretion [afforded the Executive] rests largely on the recognition that the decision to prosecute

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removal against respondents could not consider their selective enforcement claims." *Post,* at 495. But she never establishes that a court of appeals *can* consider their selective enforcement claims, though she expresses "confiden[ce]" (despite the Ninth Circuit's holding to the contrary) that that would be the outcome. *Post,* at 496, n. 2. How well-founded that confidence is may be assessed by considering the first and most substantial option upon which it is based, namely, "the Attorney General's position that the reviewing court of appeals may transfer a case to a district court . . . and counsel's assurance at oral argument that petitioners will adhere to that position . . . ." *Post,* at 495–496. What petitioners primarily rely upon for this concession is the provision of the Hobbs Act that authorizes remand to the agency or transfer to a district court "[w]hen the agency has not held a hearing." 28 U. S. C. § 2347(b). It is not at all clear that this should be interpreted to mean "when the agency's hearing has not addressed the particular point at issue"—especially since that situation is specifically covered by § 2347(c) (providing for remand in such circumstances), which the new amendments explicitly render inapplicable to deportation cases, see 8 U. S. C. § 1252(a)(1) (1994 ed., Supp. III). Petitioners' position is cast further in doubt by the fact that the Hobbs Act remedy for failure to hold a hearing "required by law" is not the transfer which petitioners assert, but *remand,* see 28 U. S. C. § 2347(b)(1). Of course petitioners' promise not to quibble over this transfer point is of no value, since the point goes to jurisdiction and must be raised by the District Court *sua sponte.* It is quite possible, therefore, that what JUSTICE GINSBURG's approach would ultimately accomplish in this litigation is requiring us to address *both* the constitutional issue she now addresses *and* (upon termination of the administrative proceedings) the constitutional issue we now resolve. We think it preferable to resolve only the one (and we think narrower) issue at once.

> is particularly ill-suited to judicial review. Such factors as the strength of the case, the prosecution's general deterrence value, the Government's enforcement priorities, and the case's relationship to the Government's overall enforcement plan are not readily susceptible to the kind of analysis the courts are competent to undertake. Judicial supervision in this area, moreover, entails systemic costs of particular concern. Examining the basis of a prosecution delays the criminal proceeding, threatens to chill law enforcement by subjecting the prosecutor's motives and decisionmaking to outside inquiry, and may undermine prosecutorial effectiveness by revealing the Government's enforcement policy. All of these are substantial concerns that make the courts properly hesitant to examine the decision whether to prosecute." *Wayte* v. *United States*, 470 U. S. 598, 607–608 (1985).

These concerns are greatly magnified in the deportation context. Regarding, for example, the potential for delay: Whereas in criminal proceedings the consequence of delay is merely to postpone the criminal's receipt of his just deserts, in deportation proceedings the consequence is to permit and prolong a continuing violation of United States law. Postponing justifiable deportation (in the hope that the alien's status will change—by, for example, marriage to an American citizen—or simply with the object of extending the alien's unlawful stay) is often the principal object of resistance to a deportation proceeding, and the additional obstacle of selective-enforcement suits could leave the INS hard pressed to enforce routine status requirements. And as for "chill[ing] law enforcement by subjecting the prosecutor's motives and decisionmaking to outside inquiry": What will be involved in deportation cases is not merely the disclosure of normal domestic law enforcement priorities and tech-

niques, but often the disclosure of foreign-policy objectives and (as in this case) foreign-intelligence products and techniques. The Executive should not have to disclose its "real" reasons for deeming nationals of a particular country a special threat—or indeed for simply wishing to antagonize a particular foreign country by focusing on that country's nationals—and even if it did disclose them a court would be ill equipped to determine their authenticity and utterly unable to assess their adequacy. Moreover, the consideration on the other side of the ledger in deportation cases—the interest of the target in avoiding "selective" treatment—is less compelling than in criminal prosecutions. While the consequences of deportation may assuredly be grave, they are not imposed as a punishment, see *Carlson* v. *Landon*, 342 U. S. 524, 537 (1952). In many cases (for six of the eight aliens here) deportation is sought simply because the time of permitted residence in this country has expired, or the activity for which residence was permitted has been completed. Even when deportation is sought because of some act the alien has committed, in principle the alien is not being punished for that act (criminal charges may be available for that separate purpose) but is merely being held to the terms under which he was admitted. And in all cases, deportation is necessary in order to bring to an end *an ongoing violation* of United States law. The contention that a violation must be allowed to continue because it has been improperly selected is not powerfully appealing.

To resolve the present controversy, we need not rule out the possibility of a rare case in which the alleged basis of discrimination is so outrageous that the foregoing considerations can be overcome. Whether or not there be such exceptions, the general rule certainly applies here. When an alien's continuing presence in this country is in violation of the immigration laws, the Government does not offend the

Constitution by deporting him for the additional reason that it believes him to be a member of an organization that supports terrorist activity.

* * *

Because 8 U. S. C. § 1252(g) deprives the federal courts of jurisdiction over respondents' claims, we vacate the judgment of the Ninth Circuit and remand with instructions for it to vacate the judgment of the District Court.

*It is so ordered.*

JUSTICE GINSBURG, with whom JUSTICE BREYER joins as to Part I, concurring in part and concurring in the judgment.

I agree with JUSTICE SCALIA that 8 U. S. C. § 1252(g) (1994 ed., Supp. III) applies to this case and deprives the federal courts of jurisdiction over respondents' pre-final-order suit. Under § 1252, respondents may obtain circuit court review of final orders of removal pursuant to the Hobbs Act, 28 U. S. C. § 2341 *et seq.* (1994 ed. and Supp. II). See 8 U. S. C. § 1252(a)(1) (1994 ed., Supp. III). I would not prejudge the question whether respondents may assert a selective enforcement objection when and if they pursue such review. It suffices to inquire whether the First Amendment necessitates *immediate* judicial consideration of their selective enforcement plea. I conclude that it does not.

## I

Respondents argue that they are suffering irreparable injury to their First Amendment rights and therefore require instant review of their selective enforcement claims. We have not previously determined the circumstances under which the Constitution requires immediate judicial intervention in federal administrative proceedings of this order. Respondents point to our cases addressing federal injunctions

that stop state proceedings, in order to secure constitutional rights. They feature in this regard *Dombrowski* v. *Pfister*, 380 U. S. 479 (1965), as interpreted in *Younger* v. *Harris*, 401 U. S. 37, 47–53 (1971). Respondents also refer to *Oestereich* v. *Selective Serv. System Local Bd. No. 11*, 393 U. S. 233 (1968). Those cases provide a helpful framework.

In *Younger*, this Court declared that federal restraint of state prosecutions is permissible only if the state defendant establishes "great and immediate" irreparable injury, beyond "that incidental to every criminal proceeding brought lawfully and in good faith." 401 U. S., at 46, 47 (internal quotation marks omitted). A chilling effect, the Court cautioned, does not "by itself justify federal intervention." *Id.*, at 50. *Younger* recognized, however, the prospect of extraordinary circumstances in which immediate federal injunctive relief might be obtained. The Court referred, initially, to bad faith, harassing police and prosecutorial actions pursued without "any expectation of securing valid convictions." *Id.*, at 48 (internal quotation marks omitted).[1] Further, the Court observed that there may be other "extraordinary circumstances in which the necessary irreparable injury can be shown even in the absence of the usual prerequisites of bad faith and harassment," for example, where a statute is "flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it." *Id.*, at 53–54 (internal quotation marks omitted).

[1] Specifically, the *Younger* Court noted that Dombrowski's complaint made substantial allegations that "'threats to enforce the statutes . . . [were] not made with any expectation of securing valid convictions, but rather [were] part of a plan to employ arrests, seizures, and threats of prosecution under color of the statutes to harass appellants and discourage them and their supporters from asserting and attempting to vindicate the constitutional rights of Negro citizens of Louisiana.'" 401 U. S., at 48 (quoting *Dombrowski* v. *Pfister*, 380 U. S. 479, 482 (1965)).

In *Oestereich,* the Selective Service Board had withdrawn a ministry student's statutory exemption from the draft after he engaged in an act of protest. See 393 U. S., at 234. The student brought suit to restrain his induction, and this Court allowed the suit to go forward, notwithstanding a statutory bar of preinduction judicial review. Finding the Board's action "blatantly lawless," the Court concluded that to require the student to raise his claim through habeas corpus or as a defense to a criminal prosecution would be "to construe the Act with unnecessary harshness." *Id.*, at 238.

The precedent in point suggests that interlocutory intervention in Immigration and Naturalization Service (INS) proceedings would be in order, notwithstanding a statutory bar, if the INS acts in bad faith, lawlessly, or in patent violation of constitutional rights. Resembling, but more stringent than, the evaluation made when a preliminary injunction is sought, see, *e. g.*, *Doran* v. *Salem Inn, Inc.*, 422 U. S. 922, 931 (1975) ("The traditional standard for granting a preliminary injunction requires the plaintiff to show that in the absence of its issuance he will suffer irreparable injury and also that he is likely to prevail on the merits."), this test would demand, as an essential element, demonstration of a strong likelihood of success on the merits. The merits of respondents' objection are too uncertain to establish that likelihood. The Attorney General argued in the court below and in the petition for certiorari that the INS may select for deportation aliens who it has reason to believe have carried out fundraising for a foreign terrorist organization. See App. to Pet. for Cert. 20a; Pet. for Cert. 21–25. Whether the INS may do so presents a complex question in an uncharted area of the law, which we should not rush to resolve here.

Relying on *Middlesex County Ethics Comm.* v. *Garden State Bar Assn.*, 457 U. S. 423 (1982), respondents argue that their inability to raise their selective enforcement claims

during the administrative proceedings, see *ante,* at 476, makes immediate judicial intervention necessary. As we explained in *Middlesex County, Younger* abstention is appropriate only when there is "an adequate opportunity in the state proceedings to raise constitutional challenges." 457 U. S., at 432; see *Ohio Civil Rights Comm'n* v. *Dayton Christian Schools, Inc.*, 477 U. S. 619, 629 (1986) (even if complainants could not raise their First Amendment objections in the administrative hearing, it sufficed that objections could be aired in state-court judicial review of any administrative decision). Here, Congress has established an integrated scheme for deportation proceedings, channeling judicial review to the final order, and deferring issues outside the agency's authority until that point. Given Congress' strong interest in avoiding delay of deportation proceedings, see *ante,* at 490, I find the opportunity to raise a claim during the judicial review phase sufficient.

If a court of appeals reviewing final orders of removal against respondents could not consider their selective enforcement claims, the equation would be different. See *Webster* v. *Doe*, 486 U. S. 592, 603 (1988) (a "serious constitutional question . . . would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim" (internal quotation marks omitted)). Respondents argue that that is the case, because their claims require factfinding beyond the administrative record.

Section 1252(a)(1) authorizes judicial review of "final order[s] of removal." We have previously construed such "final order" language to authorize judicial review of "all matters on which the validity of the final order is contingent, rather than only those determinations actually made at the hearing." *INS* v. *Chadha*, 462 U. S. 919, 938 (1983) (internal quotation marks omitted). Whether there is here a need for factfinding beyond the administrative record is a matter properly postponed. I note, however, the Attorney Gener-

al's position that the reviewing court of appeals may transfer a case to a district court for resolution of pertinent issues of material fact, see Brief for Petitioners 44, 48–49, and n. 23,[2] and counsel's assurance at oral argument that petitioners will adhere to that position, see Tr. of Oral Arg. 5–6.[3]

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[2] The Hobbs Act authorizes a reviewing court of appeals to transfer the proceedings to a district court for the resolution of material facts when "the agency has not held a hearing before taking the action of which review is sought," 28 U. S. C. § 2347(b), and "a hearing is not required by law," § 2347(b)(3). Sensitive to the constitutional concerns that would be presented by complete preclusion of judicial review, the Attorney General argues that "[s]ection 2347(b)(3) on its face permits transfer to a district court, in an appropriate case, for resolution of a substantial selective enforcement challenge to a final order of deportation," because the INS is not required to hold a hearing before filing deportation charges. Reply Brief 12, 14. The Attorney General also suggests that other provisions, in particular Federal Rule of Appellate Procedure 48's authorization of special masters, might be available. See Reply Brief 12–13. Finally, the Attorney General argues that, upon a finding of constitutional necessity, a court of appeals could "fashion an appropriate mechanism—most likely a procedure similar to a Section 2347(b)(3) transfer." *Id.*, at 13. While it is best left to the courts of appeals in the first instance to determine the appropriate mechanism for factfinding necessary to the resolution of a constitutional claim, I am confident that provision for such factfinding is not beyond the courts of appeals' authority.

[3] The following exchange at oral argument so confirms:

Counsel for petitioners: ". . . [I]f there were ultimately final orders of deportation entered, and the respondents raised a constitutional challenge based on selective enforcement, and if the court of appeals then concluded that fact-finding was necessary in order to resolve the constitutional issue, it would then be required to determine whether a mechanism existed under the applicable statute.

"Now, we believe 28 U. S. C. 2347(b)(3) would provide that mechanism, but—

Court: "It might provide the mechanism if the issue is properly raised, but can the issue be properly raised when it would not be based on anything in the record of the proceedings at the administrative level?"

Counsel for petitioners: ". . . [I]f the respondents claimed that execution of the deportation order would violate their constitutional rights because the charges were initiated on the basis of unconstitutional consid-

## II

The petition for certiorari asked this Court to review the merits of respondents' selective enforcement objection, but we declined to do so, granting certiorari on the jurisdictional question only. See Pet. for Cert. I, 20–30; 524 U. S. 903 (1998). We thus lack full briefing on respondents' selective enforcement plea and on the viability of such objections generally. I would therefore leave the question an open one. I note, however, that there is more to "the other side of the ledger," *ante,* at 491, than the Court allows.

It is well settled that "[f]reedom of speech and of press is accorded aliens residing in this country." *Bridges* v. *Wixon,* 326 U. S. 135, 148 (1945). Under our selective prosecution doctrine, "the decision to prosecute may not be deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification, including the exercise of protected statutory and constitutional rights." *Wayte* v. *United States,* 470 U. S. 598, 608 (1985) (internal citations and quotation marks omitted). I am not persuaded that selective enforcement of deportation laws should be exempt from that prescription. If the Government decides to deport an alien "for reasons forbidden by the Constitution," *United States* v. *Armstrong,* 517 U. S. 456, 463 (1996), it does not seem to me that redress for the constitutional violation should turn on the gravity of the governmental sanction. Deportation, in any event, is a grave sanction. As this Court has long recognized, "[t]hat deportation is a penalty—at times a most serious one—cannot be doubted." *Bridges,* 326 U. S., at 154; see also *ibid.* (Deportation places "the lib-

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erations, I think that is a claim that would properly be before the court of appeals."

Court: "So is that the Government's position, that we may rely on that representation that you have just made about the legal position that the Government would take in those circumstances?"

Counsel for petitioners: "That is correct." Tr. of Oral Arg. 5–6.

erty of an individual . . . at stake. . . . Though deportation is not technically a criminal proceeding, it visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom."); G. Neuman, Strangers to the Constitution: Immigrants, Borders, and Fundamental Law 162 (1996) ("Deportation has a far harsher impact on most resident aliens than many conceded 'punishment[s]' . . . . Uprooting the alien from home, friends, family, and work would be severe regardless of the country to which the alien was being returned; breaking these attachments inflicts more pain than preventing them from being made.").

* * *

In sum, were respondents to demonstrate strong likelihood of ultimate success on the merits and a chilling effect on current speech, and were we to find the agency's action flagrantly improper, precedent and sense would counsel immediate judicial intervention. But respondents have made no such demonstration. Further, were respondents to assert a colorable First Amendment claim as a now or never matter—were that claim not cognizable upon judicial review of a final order—again precedent and sense would counsel immediate resort to a judicial forum. In common with the Attorney General, however, I conclude that in the final judicial episode, factfinding, to the extent necessary to fairly address respondents' claims, is not beyond the federal judiciary's ken.

For the reasons stated, I join in Parts I and II of the Court's opinion and concur in the judgment.

JUSTICE STEVENS, concurring in the judgment.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA or Act) is a part of an omnibus enactment that occupies 750 pages in the Statutes at Large. Pub. L. 104–208, 110 Stat. 3009–546. It is not surprising that it contains a scrivener's error. See *Green* v. *Bock*

*Laundry Machine Co.*, 490 U. S. 504, 511 (1989). Despite that error, Congress' intended disposition of cases like this is plain. It must be dismissed.

The textual difficulty that is debated by my colleagues concerns the impact of IIRIRA on proceedings that were pending on the effective date of the Act. Putting those cases to one side for the moment, the meaning of 8 U. S. C. §§ 1252(b)(9) and (g) (1994 ed., Supp. III) is perfectly clear. The former postpones judicial review of removal proceedings until the entry of a final order[1] and the latter deprives federal courts of jurisdiction over collateral challenges to ongoing administrative proceedings.[2] Thus, if § 1252 applies to these respondents, the deportation proceedings pending before the Immigration and Naturalization Service (INS) are not yet ripe for review, and this collateral attack on those proceedings must be dismissed.

If we substitute the word "Act" for the word "section" in the introductory clause of § 1252(g), the impact of this provision on pending proceedings is equally clear. That substitution would remove any obstacle to giving effect to the plain meaning of IIRIRA §§ 306(c)(1) and 309(c)(1). The former defines the effective date of the Act and makes § 1252(g)'s

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[1] Section 1252(b)(9) provides:

"CONSOLIDATION OF QUESTIONS FOR JUDICIAL REVIEW.—Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this title shall be available only in judicial review of a final order under this section." 110 Stat. 3009–610.

[2] Section 1252(g) provides:

"EXCLUSIVE JURISDICTION.—Except as provided in this section and notwithstanding any other provision of law, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act." *Id.*, at 3009–612.

prohibition against collateral attacks effective immediately;[3] the latter makes the new rules inapplicable to aliens in exclusion or deportation proceedings pending before the INS on the effective date of the Act.[4] Judicial review of those administrative proceedings remains available in the courts of appeal under the old statutory regime. See 8 U. S. C. § 1105a.

Admittedly, there is a slight ambiguity in the text of § 309 because it refers to the "case of an alien who is in exclusion or deportation proceedings" before the effective date of the new Act. Respondents are such aliens, and therefore the word "case" arguably could be read to include their present collateral attack on the INS proceedings as well as to an eventual challenge to the final order of deportation. Because that reading would be inconsistent with § 306, however, it is clear that Congress intended § 309 to apply only to the INS "exclusion or deportation" proceedings that it expressly mentions.

To summarize, I think a fair reading of all relevant provisions in the statute makes it clear that Congress intended its prohibition of collateral attacks on ongoing INS proceedings

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[3] Section 306(c)(1) provides:

"EFFECTIVE DATE.—

"(1) IN GENERAL.—Subject to paragraph (2), the amendments made by subsections (a) and (b) shall apply [as provided under section 309, except that] subsection (g) of section 242 of the Immigration and Nationality Act (as added by subsection (a)), shall apply without limitation to claims arising from all past, pending, or future exclusion, deportation, or removal proceedings under such Act." *Ibid.*

[4] Section 309(c)(1) provides:

"TRANSITION FOR ALIENS IN PROCEEDINGS.—

"(1) GENERAL RULE THAT NEW RULES DO NOT APPLY.—Subject to the succeeding provisions of this subsection, in the case of an alien who is in exclusion or deportation proceedings as of the title III–A effective date—

"(A) the amendments made by this subtitle shall not apply, and

"(B) the proceedings (including judicial review thereof) shall continue to be conducted without regard to such amendments." *Id.*, at 3009–625.

to become effective immediately while providing that pending administrative proceedings should be completed under the scheme of judicial review in effect when they were commenced.

I should add that I agree with JUSTICE SOUTER's explanation of why § 1252(g) applies broadly to removal proceedings rather than to only three discrete parts of such proceedings. See *post*, at 505–507 (dissenting opinion). I do not, however, share his constitutional doubt concerning the prohibition of collateral proceedings such as this one. Of course, Congress could not authorize punishment of innocent persons because they happen to be members of an organization that engaged in terrorism. For the reasons stated in Part III of the Court's opinion, however, I have no doubt that the Attorney General may give priority to the removal of deportable aliens who are members of such an organization. See *ante*, at 487–492. Accordingly, I agree that the judgment of the District Court must be vacated.

JUSTICE SOUTER, dissenting.

The unhappy history of the provisions at issue in this case reveals that Congress, apparently unintentionally, enacted legislation that simultaneously grants and denies the right of judicial review to certain aliens who were in deportation proceedings before April 1, 1997. Finding no trump in the two mutually exclusive statutory provisions, I would invoke the principle of constitutional doubt and apply the provision that avoids a potential constitutional difficulty. Because the Court today instead purports to resolve the contradiction with a reading that strains the meaning of the text beyond what I think it can bear, I respectfully dissent.

## I

The first of the contradictory provisions is put in play by § 306(c)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), 110 Stat. 3009–612, as

amended by § 2 of the Act of Oct. 11, 1996, 110 Stat. 3657, which makes new 8 U. S. C. § 1252(g) (1994 ed., Supp. III) immediately applicable as of the date of its enactment (*i. e.*, October 11, 1996) to "claims arising from all past, pending, or future" removal proceedings. Subsection (g), for its part, bars review in any court of "the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien," except as provided in § 1252. The exception, however, is cold comfort to applicants for review of proceedings pending when IIRIRA took effect, because the rest of § 1252 is inapplicable to "an alien who is in exclusion or deportation proceedings" on the effective date of IIRIRA, April 1, 1997. Section 309(c)(1)(A) of IIRIRA, 110 Stat. 3009–625, as amended by § 2 of the Act of Oct. 11, 1996, 110 Stat. 3657. Hence, by operation of § 306(c)(1), it would appear that aliens who did not obtain judicial review as of the enactment date of October 11, 1996, and who were in proceedings as of IIRIRA's effective date of April 1, 1997, can never obtain judicial review of "the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien" in any forum. In short, § 306(c)(1) appears to bar members of this class of aliens from any review of any aspect of their claims.

Yet § 306(c)(1) is not the only statutory provision applicable to aliens in proceedings before April 1, 1997. Section 309(c)(1)(B) provides that, in the case of aliens in proceedings before the effective date, "the proceedings (including judicial review thereof) shall continue to be conducted without regard to [new § 1252]." The parenthetical expression in this section specifically provides that the judicial review available to aliens before the April 1, 1997, effective date of § 1252 continues to be available even after the effective date to aliens who were already in proceedings before the effective date. In other words, the terms of § 309(c)(1)(B) preserve

pre-existing judicial review for the self-same class of aliens to whom § 306(c)(1) bars review.

We do not have to dwell on how this contradiction arose.[1] What matters for our purposes is that §§ 306(c)(1)

[1] Section 306(c)(1) was originally enacted on September 30, 1996. As it then read, it first provided that new 8 U. S. C. § 1252 (1994 ed., Supp. III) would apply "to all final orders of deportation or removal and motions to reopen filed on or after the date of the enactment of this Act," 110 Stat. 3009–612, and then provided that subsection (g) would apply without limitation. Under this transitional arrangement, no review was available to an alien in proceedings after September 30, 1996, until such time as a final order was issued against the alien. When a final order issued, the alien would be entitled to any judicial review available under new § 1252. The intent of this provision was thus presumably to preclude judicial review of nonfinal steps in the removal procedure in the interim before IIRIRA's effective date of April 1, 1997. This arrangement, however, conflicted with the different transitional provision set out in § 309(c)(4). This section, entitled "Transitional Changes in Judicial Review," provides that where a final order was "entered more than 30 days after the date of enactment of this Act," subsection (b) of the old 8 U. S. C. § 1105a does not apply. This subsection provides for habeas corpus proceedings for "any alien against whom a final order of exclusion has been made." In other words, § 309(c)(4) expressly contemplates that old § 1105a, less its habeas provision, applies to cases where a final order is issued more than 30 days after September 30, 1996, whereas the original § 306(c)(1) as enacted contemplated that when a final order was issued on or after September 30, 1996, the new § 1252 would apply.

It appears that Congress noticed this discrepancy. On October 4, 1996, Representative Lamar Smith of Texas explained on the floor of the House that he had "become aware of an apparent technical error in two provisions" of IIRIRA. 142 Cong. Rec. H12293. He explained that "[i]t was the clear intent of the conferees that, as a general matter, the full package of changes made by [new 8 U. S. C. § 1252] effect *[sic]* those cases filed in court after the enactment of the new law, leaving cases already pending before the courts to continue under existing law." *Ibid.* By "before the courts," Representative Smith seems to have meant the immigration courts. He went on to explain § 309(c)(4): "The conferees also intended, however, to accelerate the implementation of certain of the reforms [in new § 1252]. This intent is clearly spelled out in section 309 of the act. Specifically, section 309(c)(4) calls for accelerated implementation of some of the reforms made in section 306 regarding judicial review, but does not

and 309(c)(1) cannot be reconciled. Either aliens in proceedings on April 1, 1997, have no access to judicial review or else they have the access available under the law that applied before § 1252 came into effect.[2]

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call for immediate implementation of all of these reforms." *Ibid.* Representative Smith then proposed the first technical change, which does not concern us. He then added that "there is a need to clarify the scope of section 306(c) to ensure that it does not conflict with section 309(c)(4)," and introduced an amendment to § 306(c)(1). *Ibid.* That amendment, enacted October 11, 1996, eliminated the part of the original § 306(c)(1) that applied new § 1252 to final orders filed on or after the date of enactment, but left untouched the immediate application of subsection (g). 110 Stat. 3657. The result of this amendment was that § 306(c)(1) no longer qualified its preclusion of judicial review for aliens from the date of enactment with the application of the new judicial review provisions of § 1252 to those aliens once final orders were issued against them. Instead, the amended language of § 306(c)(1) now simply barred judicial review altogether. Thus the anomaly appears to have resulted from incomplete technical amendment.

[2] Although the parties have not so argued, it might at first blush be thought that because § 1252(g) includes the language "notwithstanding any other provision of law," it carves an exception out of the general rule of § 309(c)(1). The two problems with this notion are, first, that such an exception would swallow the rule, and, second, that § 309(c)(1)(A) makes "the amendments made by this subtitle," including § 1252(g) itself, inapplicable to aliens in proceedings as of April 1, 1997. If § 1252(g) is not applicable to such aliens, then the words "notwithstanding any other provision of law" cannot have any special force regarding such aliens.

It might also be thought that, because § 309(a) announces that IIRIRA shall take effect on April 1, 1997, except as provided in various sections, including § 306(c), and § 309(c)(1) is enacted "[s]ubject to the succeeding provisions of this subsection," somehow § 309(c)(1) does not apply to § 306(c). *Ante,* at 477, n. 5. This cannot be so, of course, because the "subsection" in question is § 309(c), not § 309(a). The exception in § 309(a) means only to acknowledge that § 306(c) is effective immediately upon enactment, not on April 1, 1997.

Finally, neither § 306(c) nor § 309(c) may be said to be enacted later than the other for purposes of implicit repeal. Both were enacted on September 30, 1996, and both were amended by the removal or alteration of some language on October 11, 1996. Because of this simultaneous enactment,

The Court acknowledges the existence of an "interpretive anomaly," *ante*, at 478, and attempts to avoid the contradiction by a creative interpretation of § 1252(g). It reads the § 1252(g) bar to review of "the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien" to "appl[y] only to three discrete actions that the Attorney General may take." *Ante*, at 482. The Court claims that a bar to review of commencement of proceedings, adjudication of cases, and execution of removal orders does not bar review of every sort of claim, because "many other decisions or actions that may be part of the deportation process," *ibid.*, remain unaffected by the limitation of § 1252(g). On this reading, the Court says, review of some aspects of the Attorney General's possible actions regarding aliens in proceedings before April 1, 1997, is preserved, even though the rest of § 1252 does not apply. The actions that still may be reviewed when challenged by aliens already in proceedings before the effective date of IIRIRA include, the Court tells us, "decisions to open an investigation, to surveil the suspected violator, to reschedule the deportation hearing, to include various provisions in the final order that is the product of the adjudication, and to refuse reconsideration of that order." *Ibid.*

The Court's interpretation, it seems to me, parses the language of subsection (g) too finely for the business at hand. The chronological march from commencing proceedings, through adjudicating cases, to executing removal orders, surely gives a reasonable first impression of speaking exhaustively. While it is grammatically possible to read the series without total inclusion, *ibid.*, the implausibility of doing this appears the moment one asks why Congress would have wanted to preserve interim review of the particular set of decisions by the Attorney General to which the Court

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to give primary influence to the "notwithstanding" clause would simply beg the question of legislative intent.

adverts. It is hard to imagine that Congress meant to bar aliens already in proceedings before the effective date from challenging the commencement of proceedings against them, but to permit the same aliens to challenge, say, the decision of the Attorney General to open an investigation of them or to issue a show-cause order. Nor is there a plausible explanation of why the exclusivity provisions of subsection (g) should not apply after the effective date to review of decisions to open investigations or invite cause to be shown.

The Court offers two arguments in support of its ingenious reading, neither of which suffices to convince me of its plausibility. First, the Court suggests that Congress could not have intended the words "commence proceedings, adjudicate cases, and execute removal orders" to refer to all deportation-related claims, because this would require these parts of deportation proceedings to stand for the whole of the process, and such a use of language "is incompatible with the need for precision in legislative drafting." *Ibid.* But without delving into the wisdom of using rhetorical figures in statutory drafting, one can still conclude naturally that Congress employed three subject headings to bar review of all those stages in the deportation process to which challenges might conceivably be brought. Indeed, each one of the Court's examples of reviewable actions of the Attorney General falls comfortably into one or another of the three phases of the deportation process captured under the headings of commencement, adjudication, and removal. The decisions to open an investigation or subject an alien to surveillance belong to the commencement of proceedings (which presumably differs from adjudication, separately mentioned); issuing an order to show cause, composing the final order, and refusing reconsideration all easily belong to an adjudication. Far from employing synecdoche, Congress used familiar, general terms to refer to the familiar stages of the exclusion process, and the acceptability of interpreting the three

items to exclude others requires considerable determination to indulge in such a reading.

Second, the Court explains that Congress had "good reason," *ante*, at 483, to focus on commencement, adjudication, and execution, because these are distinct stages of the deportation process at which the Executive was in the habit of exercising its discretion to defer action. To show the existence of this practice, the Court quotes a passage from a treatise on immigration law, which says descriptively that "'the INS may decline to institute proceedings, terminate proceedings, or decline to execute a final order of deportation,'" *ante*, at 484 (quoting 6 C. Gordon, S. Mailman, & S. Yale-Loehr, Immigration Law and Procedure § 72.03[2][h] (1998)). The treatise also says that the courts have sometimes entertained efforts to challenge the refusal to exercise discretion, *ante*, at 485. The Court notes, perfectly plausibly, that the purpose of § 1252(g) may well have been to bar such challenges. But this is hardly a smoking gun. The passage in question uses the notions of instituting and terminating proceedings, and declining to execute final removal orders, in the very same inclusive sense that § 1252(g) does. The treatise says that "'[a] case may be selected for deferred action treatment at any stage of the administrative process,'" *ante*, at 484, by which its authors evidently meant to say simply that from time to time the Executive exercises discretion at various points in the process, and that some courts have considered challenges to the failure to exercise discretion. This is no support for the Court's argument that Congress meant to bar review only of the "discrete" actions of commencement, adjudication, or execution.

Because I cannot subscribe to the Court's attempt to render the inclusive series incomplete, I have to confront the irreconcilable contradiction between § 306(c)(1) and § 309(c)(1). Both context and principle point me to the conclusion that the latter provision must prevail over the former. First, it seems highly improbable that Congress actu-

ally intended to raise a permanent barrier to judicial review for aliens in proceedings ongoing on April 1, 1997. Judicial review was available under old 8 U. S. C. § 1105a to those aliens whose proceedings concluded before the enactment of the amended § 306(c)(1) on October 11, 1996, and judicial review of a different scope is also available under new 8 U. S. C. § 1252 (1994 ed., Supp. III) to those whose proceedings commenced after the effective date of IIRIRA, April 1, 1997. There is no reason whatever to believe that Congress intentionally singled out for especially harsh treatment the hapless aliens who were in proceedings during the interim. This point is underscored by transitional § 309(c)(4)(A), which expressly applies subsections (a) and (c) of old 8 U. S. C. § 1105a (but not subsection (b) thereof) to judicial review of final orders of deportation or exclusion filed more than 30 days after the date of enactment. Section 309(c)(4)(A), in other words, contemplates judicial review of final orders of exclusion against aliens who were in proceedings as of the date of enactment.

Second, complete preclusion of judicial review of any kind for claims brought by aliens subject to proceedings for removal would raise the serious constitutional question whether Congress may block every remedy for enforcing a constitutional right. See *Bowen* v. *Michigan Academy of Family Physicians*, 476 U. S. 667, 681, n. 12 (1986). The principle of constitutional doubt counsels against adopting the interpretation that raises this question. "[W]here a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter." *United States ex rel. Attorney General* v. *Delaware & Hudson Co.*, 213 U. S. 366, 408 (1909); see also *United States* v. *Jin Fuey Moy*, 241 U. S. 394, 401 (1916). Here, constitutional doubt lends considerable weight to the view that § 309(c)(1) ought to prevail over § 306(c)(1) and preserve judicial review under the law as it was before the en-

actment of IIRIRA for aliens in proceedings before April 1, 1997. While I do not lightly reach the conclusion that § 306(c)(1) is essentially without force, my respect for Congress's intent in enacting § 309(c)(1) is necessarily balanced by respect for Congress's intent in enacting § 306(c)(1). No canon of statutory construction familiar to me specifically addresses the situation in which two simultaneously enacted provisions of the same statute flatly contradict one another.[3] We are, of course, bound to avoid such a dilemma if we can, by glimpsing some uncontradicted meaning for each provision. But the attempt to salvage an application for each must have some stopping place, and the Court's attempt here seems to me to go beyond that point. In this anomalous situation where the two statutory provisions are fundamentally at odds, constitutional doubt will have to serve as the best guide to breaking the tie.

Because I think that § 309(c)(1) applies to aliens in proceedings before April 1, 1997, I think it applies to respondents in this case. The law governing their proceedings and subsequent judicial review should therefore be the law prevailing before IIRIRA. That law, in my view, afforded respondents an opportunity to litigate their claims before the District Court. Former 8 U. S. C. § 1105a(a) governed "judicial review of all final orders of deportation." For actions that fell outside the scope of this provision, an "alien's remedies would, of course, ordinarily lie first in an action brought in an appropriate district court." *Cheng Fan Kwok* v. *INS*, 392 U. S. 206, 210 (1968). In *McNary* v. *Haitian Refugee Center, Inc.*, 498 U. S. 479 (1991), we applied this principle in

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[3] In such a situation, one court held some 70 years ago that "[i]t being conceded that the two acts are contradictory and irreconcilable, and being unable to determine that either became effective, in point of time, before the other, it results that both are invalid." *Maddux* v. *Nashville*, 158 Tenn. 307, 312, 13 S. W. 2d 319, 321 (1929). In our case, invalidating §§ 306(c)(1) and 309(c)(1) would enable us to apply the law in place before the enactment of IIRIRA, as we ought to do on the other grounds here.

finding a right of action before the district court in a constitutional challenge to procedures of the Immigration and Naturalization Service. Respondents' challenge to the constitutionality of their prosecution was filed prior to the entry of a final order of deportation, and so district court jurisdiction was appropriate here.[4]

## II

The approach I would take in this case avoids a troubling problem that the Court chooses to address despite the fact that it was not briefed before the Court: whether selective prosecution claims have vitality in the immigration context. Of course, in principle, the Court's approach itself obviates the need to address that issue: if respondents' suit is barred by § 1252(g), the Court need not address the merits of their claims. Yet the Court goes on, in what I take as dictum,[5] to argue that the alien's interest in avoiding selective treatment in the deportation context "is less compelling than in criminal prosecutions," *ante*, at 491, either because the alien is not

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[4] Respondents' challenge fell outside the scope of § 1105a, and was not subject to the requirement of exhaustion contained therein in the former § 1105a(c). As in *McNary*, the waiver of sovereign immunity is to be found in 5 U. S. C. § 702, which waives the immunity of the United States in actions for relief other than money damages. This waiver of immunity is not restricted by the requirement of final agency action that applies to suits under the Administrative Procedure Act. See *The Presbyterian Church (U. S. A.)* v. *United States*, 870 F. 2d 518, 523–526 (CA9 1989).

[5] The Court says it "must address" respondents' various contentions, *ante*, at 487, and on that basis it takes up the selective prosecution issue. Notwithstanding the usefulness of addressing the parties' arguments, a line of argument unnecessary to the decision of the case remains dictum. See *United States* v. *Dixon*, 509 U. S. 688, 706 (1993) (quoting with approval *United States Nat. Bank of Ore.* v. *Independent Ins. Agents of America, Inc.*, 508 U. S. 439, 463, n. 11 (1993), on "'the need to distinguish an opinion's holding from its dicta'"). Respondents' contention that their speech has been impermissibly chilled cannot require the Court to say that no action for selective prosecution may lie in this case; a claim of chilled speech cannot place the selective prosecution claim within the statutory jurisdiction that § 1252(g) forecloses on the Court's view.

being punished for an act he has committed, or because the presence of an alien in the United States is, unlike a past crime, "an ongoing violation of United States law," *ibid.* (emphasis deleted). While the distinctions are clear, the difference is not. The interest in avoiding selective enforcement of the criminal law, shared by the government and the accused, is that prosecutorial discretion not be exercised to violate constitutionally prescribed guaranties of equality or liberty. See *United States* v. *Armstrong*, 517 U. S. 456, 464–465 (1996); *Wayte* v. *United States*, 470 U. S. 598, 608 (1985). This interest applies to the like degree in immigration litigation, and is not attenuated because the deportation is not a penalty for a criminal act or because the violation is ongoing. If authorities prosecute only those tax evaders against whom they bear some prejudice or whose protected liberties they wish to curtail, the ongoing nature of the nonpayers' violation does not obviate the interest against selective prosecution.

No doubt more could be said with regard to the theory of selective prosecution in the immigration context, and I do not assume that the Government would lose the argument. That this is so underscores the danger of addressing an unbriefed issue that does not call for resolution even on the Court's own logic. Because I am unconvinced by the Court's statutory interpretation, and because I do not think the Court should reach the selective prosecution issue, I respectfully dissent.

## Reporter's Note

The next page is purposely numbered 801. The numbers between 511 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 5, 1998, THROUGH MARCH 1, 1999

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OCTOBER 5, 1998

*Dismissal Under Rule 46*

No. 98–346. STROHMEYER *v.* NEVADA. Sup. Ct. Nev. Certiorari dismissed under this Court's Rule 46. Reported below: 114 Nev. 1749, 988 P. 2d 868.

*Certiorari Granted—Vacated and Remanded*

No. 97–1623. UNITED STATES *v.* FOSTER. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Muscarello* v. *United States*, 524 U. S. 125 (1998). Reported below: 133 F. 3d 704.

No. 97–1656. SLOAN *v.* SHARP, COMPTROLLER OF PUBLIC ACCOUNTS OF TEXAS, ET AL. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Faragher* v. *Boca Raton*, 524 U. S. 775 (1998), and *Burlington Industries, Inc.* v. *Ellerth*, 524 U. S. 742 (1998). Reported below: 136 F. 3d 136.

No. 97–1751. PFAU *v.* REED, DIRECTOR, DEFENSE CONTRACT AUDIT AGENCY. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Faragher* v. *Boca Raton*, 524 U. S. 775 (1998), and *Burlington Industries, Inc.* v. *Ellerth*, 524 U. S. 742 (1998). Reported below: 125 F. 3d 927.

No. 97–1969. WILSON *v.* CITY OF PLANO. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Faragher* v. *Boca Raton*, 524 U. S. 775 (1998), and *Burlington Industries, Inc.* v. *Ellerth*, 524 U. S. 742 (1998). Reported below: 139 F. 3d 899.

No. 97–2018. KIOWA TRIBE OF OKLAHOMA *v.* HOOVER. Sup. Ct. Okla. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Kiowa Tribe of*

*Okla.* v. *Manufacturing Technologies, Inc.*, 523 U. S. 751 (1998). Reported below: 957 P. 2d 81.

No. 97–8284. SCHWENINGER *v.* MINNESOTA. Ct. App. Minn. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Kansas* v. *Hendricks*, 521 U. S. 346 (1997).

No. 97–8592. PIERCE *v.* KING, ASSISTANT SUPERINTENDENT, TILLERY CORRECTIONAL CENTER, 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 *Pennsylvania Dept. of Corrections* v. *Yeskey*, 524 U. S. 206 (1998). Reported below: 131 F. 3d 136.

No. 97–8906. FLOYD ET AL. *v.* WAITERS ET AL. C. A. 11th Cir. Motion of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Gebser* v. *Lago Vista Independent School Dist.*, 524 U. S. 274 (1998). Reported below: 133 F. 3d 786.

No. 98–155. TODD *v.* ORTHO BIOTECH, INC. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Faragher* v. *Boca Raton*, 524 U. S. 775 (1998), and *Burlington Industries, Inc.* v. *Ellerth*, 524 U. S. 742 (1998). Reported below: 138 F. 3d 733.

*Miscellaneous Orders*

No. D–1952. IN RE DISBARMENT OF STEWART. Disbarment entered. [For earlier order herein, see 523 U. S. 1115.]

No. D–1954. IN RE DISBARMENT OF WILLIAMS. Disbarment entered. [For earlier order herein, see 523 U. S. 1115.]

No. D–1956. IN RE DISBARMENT OF BLEECKER. Motion to defer consideration granted. [For earlier order herein, see 524 U. S. 902.]

No. D–1958. IN RE DISBARMENT OF BERG. Disbarment entered. [For earlier order herein, see 524 U. S. 902.]

No. D–1960. IN RE DISBARMENT OF MEISLER. Disbarment entered. [For earlier order herein, see 524 U. S. 902.]

No. D–1962. IN RE DISBARMENT OF NEILL. Motion to defer consideration denied. Disbarment entered. [For earlier order herein, see 524 U. S. 914.]

No. D–1966. IN RE DISBARMENT OF TAYLOR. Disbarment entered. [For earlier order herein, see 524 U. S. 925.]

No. D–1968. IN RE DISBARMENT OF HERZOG. Disbarment entered. [For earlier order herein, see 524 U. S. 935.]

No. D–1975. IN RE DISBARMENT OF ROSE. Disbarment entered. [For earlier order herein, see 524 U. S. 966.]

No. D–1978. IN RE DISBARMENT OF BRIDGE. Disbarment entered. [For earlier order herein, see 524 U. S. 967.]

No. D–1979. IN RE DISBARMENT OF POST. Disbarment entered. [For earlier order herein, see 524 U. S. 967.]

No. D–1981. IN RE DISBARMENT OF UTTERBACK. Disbarment entered. [For earlier order herein, see 524 U. S. 967.]

No. D–1982. IN RE DISBARMENT OF MOORE. Disbarment entered. [For earlier order herein, see 524 U. S. 967.]

No. D–1983. IN RE DISBARMENT OF PLATO. Disbarment entered. [For earlier order herein, see 524 U. S. 968.]

No. D–1989. IN RE DISBARMENT OF WOLFROM. Carl Thompson Wolfrom, of Columbus, 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–1990. IN RE DISBARMENT OF TAYLOR. Wyatt Nowlin Taylor, of Shelbyville, Tenn., 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–1991. IN RE DISBARMENT OF BECKER. Herbert Arnold Becker, of Sterling, 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–1992. IN RE DISBARMENT OF CHRISTY. Perry Thomas Christy, of Plymouth, Mich., 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–1993. IN RE DISBARMENT OF RICHARDSON. Thomas Scott Richardson, Jr., of St. Louis, Mo., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1994. IN RE DISBARMENT OF KRASNOVE. Keith Martin Krasnove, of Coral Springs, 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–1995. IN RE DISBARMENT OF STEVENSON. John B. Stevenson, Jr., of Blanco, 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. M–71 (O. T. 1997). IN RE DOE. Motion to unseal petition for writ of certiorari lodged under seal denied.

No. M–86 (O. T. 1997). CARLIER *v.* RAY ET AL.;

No. M–1. JACKSON *v.* GOLDEN STATE FOODS CORP.;

No. M–2. REAVES *v.* MARION COUNTY, SOUTH CAROLINA, ET AL.;

No. M–4. PHONOMETRICS, INC. *v.* SIEMENS INFORMATION SYSTEMS;

No. M–5. SHIPPING FINANCIAL SERVICES *v.* DRAKOS ET AL.;

No. M–7. WIEDEMER *v.* MARR, SUPERINTENDENT, ARKANSAS VALLEY CORRECTIONAL FACILITY, ET AL.;

No. M–10. ARDOIN *v.* SAVOY ET AL.;

No. M–11. GOLIS *v.* COMMISSIONER OF SOCIAL SECURITY;

No. M–12. EVANS *v.* BAYTOWN POLICE DEPARTMENT ET AL.;

No. M–13. FORE *v.* DENNY'S INC. ET AL.;

No. M–14. SCHLESINGER *v.* SCHLESINGER;

No. M–15. VILLAGE OF AIRMONT, NEW YORK, ET AL. *v.* LEBLANC-STERNBERG ET AL.;

No. M–16. KARIMI *v.* UNITED STATES; and

No. M–17. BARAN *v.* FEDERAL NATIONAL MORTGAGE ASSOCIATION. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. M–3. LOE *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari under seal denied without prejudice to filing a redacted petition for writ of certiorari within 30 days.

No. M–8. BYRD *v.* CONNELLY ET AL.; and

No. M–9. SANKAR *v.* ELLIS ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time under this Court's Rule 14.5 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 $4,054.58 for the period April 1 through June 30, 1998, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 524 U. S. 925.]

No. 126, Orig. KANSAS *v.* NEBRASKA ET AL.;

No. 97–1943. SUTTON ET AL. *v.* UNITED AIR LINES, INC. C. A. 10th Cir.;

No. 97–1992. MURPHY *v.* UNITED PARCEL SERVICE, INC. C. A. 10th Cir.;

No. 98–127. CAMPOS ET AL. *v.* TICKETMASTER CORP. C. A. 8th Cir.; and

No. 98–5070. SLEKIS *v.* THOMAS, COMMISSIONER, CONNECTICUT DEPARTMENT OF SOCIAL SERVICES. C. A. 2d Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 96–1793. CEDAR RAPIDS COMMUNITY SCHOOL DISTRICT *v.* GARRET F., A MINOR, BY HIS MOTHER AND NEXT FRIEND, CHARLENE F. C. A. 8th Cir. [Certiorari granted, 523 U. S. 1117.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 97–1287. HUGHES AIRCRAFT CO. ET AL. *v.* JACOBSON ET AL. C. A. 9th Cir. [Certiorari granted, 523 U. S. 1093.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 97–1536. ARIZONA DEPARTMENT OF REVENUE *v.* BLAZE CONSTRUCTION CO., INC. Ct. App. Ariz. [Certiorari granted,

523 U. S. 1117.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 97–1709. KUMHO TIRE CO., LTD., ET AL. *v.* CARMICHAEL ET AL. C. A. 11th Cir. [Certiorari granted, 524 U. S. 936.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 97–1139. UNITED STATES *v.* RODRIGUEZ-MORENO. C. A. 3d Cir. [Certiorari granted, 524 U. S. 915.] Motion for appointment of counsel granted, and it is ordered that John P. McDonald, Esq., of Somerville, N. J., be appointed to serve as counsel for respondent in this case.

No. 97–1472. HADDLE *v.* GARRISON ET AL. C. A. 11th Cir. [Certiorari granted, 523 U. S. 1136.] Motion of National Whistle-Blower Center for leave to file a brief as *amicus curiae* granted.

No. 97–7164. HOLLOWAY, AKA ALI *v.* UNITED STATES. C. A. 2d Cir. [Certiorari granted, 523 U. S. 1093.] Motion for appointment of counsel granted, and it is ordered that Kevin J. Keating, Esq., of Garden City, N. Y., be appointed to serve as counsel for petitioner in this case.

No. 97–7541. MITCHELL *v.* UNITED STATES. C. A. 3d Cir. [Certiorari granted, 524 U. S. 925.] Motion for appointment of counsel granted, and it is ordered that Steven A. Morley, Esq., of Philadelphia, Pa., be appointed to serve as counsel for petitioner in this case.

No. 97–8978. RUSSELL *v.* VBR. C. A. 4th Cir. Motion of petitioner Katherine L. Russell for reconsideration of order denying leave to proceed *in forma pauperis* [524 U. S. 925] denied.

No. 98–413. LEGISLATURE OF CALIFORNIA ET AL. *v.* UNITED STATES HOUSE OF REPRESENTATIVES ET AL. Appeal from D. C. D. C. Motion of appellants to expedite consideration of jurisdictional statement and to consolidate with No. 98–404, *Department of Commerce et al.* v. *United States House of Representatives et al.* [probable jurisdiction noted, 524 U. S. 978], denied.

No. 98–5350. BURGER *v.* MASTERS, MATES & PILOTS UNION ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until October

26, 1998, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 98–5707. IN RE KENNEDY. Motion of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until October 26, 1998, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 98–5215. IN RE BENDER ET AL. Sup. Ct. N. D. Petition for writ of common-law certiorari denied.

No. 97–9475. IN RE ARREOLA;
No. 97–9554. IN RE WAPNICK;
No. 97–9617. IN RE WILSON;
No. 97–9630. IN RE THOMPSON;
No. 97–9676. IN RE HENDERSON;
No. 98–5074. IN RE BLAIR;
No. 98–5130. IN RE JENKINS;
No. 98–5148. IN RE WOLF;
No. 98–5152. IN RE SWANSON;
No. 98–5356. IN RE DELESPINE;
No. 98–5470. IN RE TOTH;
No. 98–5522. IN RE WILLIAMS;
No. 98–5523. IN RE CANNON;
No. 98–5599. IN RE SIGGERS;
No. 98–5671. IN RE TOWNSEND;
No. 98–5789. IN RE LINCOLN;
No. 98–5807. IN RE SCHULTZ;
No. 98–5896. IN RE GHOLSTON; and
No. 98–5897. IN RE HERRINGTON. Petitions for writs of habeas corpus denied.

No. 97–2038. IN RE CROWELL;
No. 97–9079. IN RE FLETCHER;
No. 97–9090. IN RE SEATON;
No. 97–9120. IN RE ROBINSON;
No. 97–9132. IN RE RUDD;
No. 97–9133. IN RE RODRIGUEZ CRUZ;
No. 97–9256. IN RE FARRELL;
No. 97–9283. IN RE SCOTT;
No. 97–9352. IN RE LOWE;

No. 97–9426. IN RE FULLER;
No. 97–9429. IN RE LOWE;
No. 97–9441. IN RE TASBY;
No. 97–9655. IN RE TODD;
No. 97–9661. IN RE LOWE;
No. 98–259. IN RE STANTON;
No. 98–5042. IN RE ZANKICH;
No. 98–5105. IN RE LOWE;
No. 98–5197. IN RE LOWE;
No. 98–5216. IN RE WESTINE;
No. 98–5282. IN RE LOWE;
No. 98–5445. IN RE HARSTON; and
No. 98–5548. IN RE VARELA. Petitions for writs of mandamus denied.

No. 97–1933. IN RE BANK OF SAIPAN, EXECUTOR OF THE ESTATE OF HILLBLOM;
No. 97–8930. IN RE CAMPBELL;
No. 97–9233. IN RE SALEEM;
No. 97–9341. IN RE DEVLIN;
No. 97–9644. IN RE CAMP;
No. 97–9645. IN RE CAMP;
No. 98–17. IN RE VEY;
No. 98–42. IN RE WOOTEN;
No. 98–76. IN RE DORNFRIED; and
No. 98–242. IN RE LAUSLEGA. Petitions for writs of mandamus and/or prohibition denied.

No. 98–330. IN RE ATKINSON. Petition for writ of prohibition denied.

*Certiorari Granted*

No. 97–1754. IMMIGRATION AND NATURALIZATION SERVICE *v.* AGUIRRE-AGUIRRE. C. A. 9th Cir. Certiorari granted. Reported below: 121 F. 3d 521.

No. 97–1008. CLEVELAND *v.* POLICY MANAGEMENT SYSTEMS CORP. ET AL. C. A. 5th Cir. Certiorari granted limited to the following questions: "1. Whether the application for, or receipt of, disability insurance benefits under the Social Security Act, 42 U. S. C. § 423, creates a rebuttable presumption that the applicant or recipient is judicially estopped from asserting that she is a

'qualified individual with a disability' under the Americans with Disabilities Act of 1990 (ADA), 42 U. S. C. § 12101 *et seq.* 2. If it does not create such a presumption, what weight, if any, should be given to the application for, or receipt of, disability insurance benefits when a person asserts she is a 'qualified individual with a disability' under the ADA?" Reported below: 120 F. 3d 513.

No. 97–1802. CONN ET AL. *v.* GABBERT. C. A. 9th Cir. Certiorari granted limited to the following questions: "1. Does a prosecutor violate an attorney's rights under the Fourteenth Amendment by causing the attorney to be searched at the time his client is testifying before a grand jury? 2. If the answer to the first question is 'yes,' was such a right on the part of the attorney clearly established in March 1994?" Reported below: 131 F. 3d 793.

No. 97–8629. RICHARDSON *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 the District Court committed reversible error in failing to instruct the jury that it must agree unanimously on which particular drug violations constituted the 'series of violations' required for conviction for conducting a continuing criminal enterprise in violation of 21 U. S. C. § 848?" Reported below: 130 F. 3d 765.

No. 97–9361. JONES *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to the following questions: "1. Whether petitioner was entitled to a jury instruction that the jury's failure to agree on a sentencing recommendation automatically would result in a court-imposed sentence of life imprisonment without possibility of release? 2. Whether there is a reasonable likelihood that the jury instructions led the jury to believe that deadlock on the penalty recommendation would automatically result in a court-imposed sentence less severe than life imprisonment? 3. Whether the Court of Appeals correctly held that the submission of invalid nonstatutory aggravating factors was harmless beyond a reasonable doubt?" Reported below: 132 F. 3d 232.

No. 98–5864. STRICKLER *v.* GREENE, WARDEN. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to the following questions:

"1. Whether the State violated *Brady* v. *Maryland*, 373 U. S. 83 (1963), and its progeny? 2. If so, whether the State's nondisclosure of exculpatory evidence and the State's representation that its open file contained all *Brady* material establishes the requisite 'cause' for failing to raise a *Brady* claim in state proceedings? 3. Whether petitioner was prejudiced by nondisclosure?" Reported below: 149 F. 3d 1170.

*Certiorari Denied*

No. 97–1061. MORROW *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 952 S. W. 2d 530.

No. 97–1254. PRACTICE MANAGEMENT INFORMATION CORP. *v.* AMERICAN MEDICAL ASSN. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 516 and 133 F. 3d 1140.

No. 97–1549. FROST *v.* UNITED STATES;
No. 97–8295. TURNER *v.* UNITED STATES;
No. 97–8305. POTTER *v.* UNITED STATES;
No. 97–8328. CONGO *v.* UNITED STATES; and
No. 97–8374. FAULKNER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 125 F. 3d 346.

No. 97–1575. MURDOCK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 132 F. 3d 534.

No. 97–1638. RENDEL ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 129 F. 3d 127.

No. 97–1652. NORTHWESTERN INDIANA TELEPHONE CO. ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied. Reported below: 127 F. 3d 643.

No. 97–1668. MILETI *v.* COLE, REPRESENTATIVE OF THE ESTATE OF COLE, DECEASED. C. A. 6th Cir. Certiorari denied. Reported below: 133 F. 3d 433.

No. 97–1679. UNUM CORP. ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 130 F. 3d 501.

No. 97–1685. HOWELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 133 F. 3d 933.

No. 97–1690. LOBUE ET AL. *v.* DILEONARDI, UNITED STATES MARSHAL FOR THE NORTHERN DISTRICT OF ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 125 F. 3d 1110.

No. 97–1702. SANCHEZ-VELASCO *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 702 So. 2d 224.

No. 97–1717. BENNETT ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 131 F. 3d 130.

No. 97–1721. ADAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 97–1733. SPEARS ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 131 F. 3d 131.

No. 97–1734. STICHTING PENSIOENFONDS VOOR DE GEZONDHEID, GEESTELIJKE EN MAATSCHAPPELIJKE BELANGEN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 129 F. 3d 195.

No. 97–1739. RODRIGUEZ ET AL. *v.* FAIR, A MINOR, BY AND THROUGH HIS MOTHER AND NEXT FRIEND, FOY. C. A. 2d Cir. Certiorari denied.

No. 97–1740. WILSON ET AL. *v.* NUTT, SHERIFF OF WAYNE COUNTY. C. A. 6th Cir. Certiorari denied. Reported below: 134 F. 3d 373.

No. 97–1744. CHRISTIANS, TRUSTEE *v.* CRYSTAL EVANGELICAL FREE CHURCH. C. A. 8th Cir. Certiorari denied. Reported below: 141 F. 3d 854.

No. 97–1748. RASO ET AL. *v.* LAGO ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 135 F. 3d 11.

No. 97–1759. RESEARCH TRIANGLE INSTITUTE *v.* BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 132 F. 3d 985.

No. 97–1768. MERRILL LYNCH, PIERCE, FENNER & SMITH INC. ET AL. *v.* KRAVITZ ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 135 F. 3d 266.

No. 97–1774. MINH DAT DINH DO *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 97–1783. SCHIMMEL ET AL. *v.* INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO,

ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 128 F. 3d 689.

No. 97–1786. BLASKE *v.* UNUM LIFE INSURANCE COMPANY OF AMERICA. C. A. 8th Cir. Certiorari denied. Reported below: 131 F. 3d 763.

No. 97–1792. PIERCE, AKA SEALED DEFT. 2, AKA MARTIN *v.* UNITED STATES; and

No. 97–8964. PIERCE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 130 F. 3d 547.

No. 97–1796. EPSTEIN *v.* SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, DBA KAISER PERMANENTE MEDICAL GROUP, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1175.

No. 97–1807. CLEAN ET AL. *v.* CITY OF SPOKANE ET AL. Sup. Ct. Wash. Certiorari denied. Reported below: 133 Wash. 2d 455, 947 P. 2d 1169.

No. 97–1808. BELLESFIELD *v.* VERNIERO, ATTORNEY GENERAL OF NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 142 F. 3d 427.

No. 97–1812. TERLECKY, TRUSTEE *v.* HURD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 133 F. 3d 377.

No. 97–1816. NEAL *v.* DISTRICT OF COLUMBIA ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 131 F. 3d 172.

No. 97–1817. SMILAND PAINT CO. ET AL. *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1070.

No. 97–1818. GISCH *v.* EXTENDACARE HEALTH SYSTEMS, INC., ET AL. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 97–1820. ALTIPENTA, INC. *v.* SECURITY INSURANCE COMPANY OF HARTFORD. C. A. 3d Cir. Certiorari denied. Reported below: 142 F. 3d 429.

No. 97–1824. CRIPPEN *v.* KUHLMANN, WARDEN. C. A. 2d Cir. Certiorari denied.

No. 97–1828. OMEGA ENVIRONMENTAL, INC., ET AL. *v.* GILBARCO, INC. C. A. 9th Cir. Certiorari denied. Reported below: 127 F. 3d 1157.

No. 97–1829. WEST, IN HER INDIVIDUAL CAPACITY AND AS A NORTH CAROLINA REVENUE ENFORCEMENT OFFICER, ET AL. *v.* LYNN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 134 F. 3d 582.

No. 97–1830. METROPOLITAN GOVERNMENT OF NASHVILLE ET AL. *v.* DOE, BY AND THROUGH HIS PARENTS AND NEXT FRIENDS, DOE ET UX. C. A. 6th Cir. Certiorari denied. Reported below: 133 F. 3d 384.

No. 97–1832. STRANG ET AL. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 7th Cir. Certiorari denied. Reported below: 133 F. 3d 1012.

No. 97–1835. BORING *v.* BUNCOMBE COUNTY BOARD OF EDUCATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 136 F. 3d 364.

No. 97–1836. LU *v.* RAVIDA ET AL. C. A. 1st Cir. Certiorari denied.

No. 97–1837. CHAPARRAL STEEL CO. *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 97–1838. NORTHEAST CELLULAR TELEPHONE CO. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 133 F. 3d 25.

No. 97–1839. SANTEE SIOUX TRIBE OF NEBRASKA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 135 F. 3d 558.

No. 97–1840. NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, LOS ANGELES BRANCH, ET AL. *v.* JONES, CALIFORNIA SECRETARY OF STATE, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 131 F. 3d 1317.

No. 97–1844. BERNOFSKY *v.* TULANE UNIVERSITY SCHOOL OF MEDICINE, ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND. C. A. 5th Cir. Certiorari denied. Reported below: 136 F. 3d 137.

No. 97–1846. ANTI-MONOPOLY, INC. *v.* HASBRO, INC. C. A. 2d Cir. Certiorari denied. Reported below: 130 F. 3d 1101.

No. 97–1847. MAESTAS *v.* BOARD OF SUPERVISORS OF NAVAJO COUNTY ET AL. Ct. App. Ariz. Certiorari denied.

No. 97–1848. JOOS *v.* JOOS. Ct. App. Utah. Certiorari denied.

No. 97–1850. DEES, DBA DAVID DEES ILLUSTRATION *v.* SABAN ENTERTAINMENT, INC. C. A. 9th Cir. Certiorari denied. Reported below: 131 F. 3d 146.

No. 97–1851. GYADU *v.* WORKERS' COMPENSATION COMMISSION OF CONNECTICUT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 129 F. 3d 113.

No. 97–1853. OHIO *v.* HOLT. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 97–1855. ROUTH *v.* WYOMING WORKERS' COMPENSATION DIVISION. Sup. Ct. Wyo. Certiorari denied. Reported below: 952 P. 2d 1108.

No. 97–1856. PARNAR *v.* LAW OFFICES OF JOHN A. CHANIN. Sup. Ct. Haw. Certiorari denied. Reported below: 87 Haw. 35, 950 P. 2d 1235.

No. 97–1857. VELASCO ET AL. *v.* FAIRALL. C. A. 4th Cir. Certiorari denied. Reported below: 134 F. 3d 365.

No. 97–1859. HULMES *v.* HONDA MOTOR CO., LTD., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 141 F. 3d 1154.

No. 97–1862. DELA ROSA *v.* SCOTTSDALE MEMORIAL HEALTH SYSTEMS, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 132 F. 3d 38.

No. 97–1863. BEARDEN *v.* QUORUM HEALTH GROUP, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 134 F. 3d 386.

No. 97–1864. CANTOR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 141 F. 3d 1152.

No. 97–1865. SNYDER *v.* RINGGOLD. C. A. 4th Cir. Certiorari denied. Reported below: 133 F. 3d 917.

No. 97–1866. INTERSTATE INDEPENDENT CORP. *v.* BOARD OF ZONING APPEALS FOR FAYETTE COUNTY AND THE VILLAGE OF

OCTA. Ct. App. Ohio, Fayette County. Certiorari denied. Reported below: 123 Ohio App. 3d 511, 704 N. E. 2d 611.

No. 97–1869. DOLE OCEAN LINER EXPRESS *v.* GEORGIA VEGETABLE CO. C. A. 5th Cir. Certiorari denied. Reported below: 136 F. 3d 136.

No. 97–1870. ESTATE OF MAURO, BY AND THROUGH ITS INDEPENDENT PERSONAL REPRESENTATIVE, MAURO *v.* BORGESS MEDICAL CENTER. C. A. 6th Cir. Certiorari denied. Reported below: 137 F. 3d 398.

No. 97–1873. STUMPF *v.* GREATER NEW ORLEANS EXPRESSWAY COMMISSION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 138 F. 3d 952.

No. 97–1874. HOLT CARGO SYSTEMS, INC. *v.* KEIFER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 142 F. 3d 428.

No. 97–1875. WREN ET AL. *v.* TOWE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 130 F. 3d 1154.

No. 97–1876. EL VOCERO DE PUERTO RICO (CARIBBEAN INTERNATIONAL NEWS CORP.) ET AL. *v.* PUERTO RICO ET AL. Ct. App. P. R. Certiorari denied.

No. 97–1878. VICARI CONTRACTORS, INC. *v.* PARISH OF JEFFERSON. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 701 So. 2d 250.

No. 97–1879. MAC PANEL CO. *v.* VIRGINIA PANEL CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 133 F. 3d 860.

No. 97–1880. ST. MATTHEW'S SLOVAK ROMAN CATHOLIC CONGREGATION OF ST. MATHIAS CHURCH ET AL. *v.* WUERL, BISHOP, ROMAN CATHOLIC DIOCESE OF PITTSBURGH. Super. Ct. Pa. Certiorari denied. Reported below: 704 A. 2d 1128.

No. 97–1881. LLOYD WEBBER ET AL. *v.* REPP ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 132 F. 3d 882.

No. 97–1882. LEJANO ET UX. *v.* K. S. BANDAK ASSURANCEFORENINGEN GARD ET AL. Sup. Ct. La. Certiorari denied. Reported below: 705 So. 2d 158.

No. 97–1883. DANIELS ET AL. *v.* SIX L'S PACKING CO., INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 132 F. 3d 1460.

No. 97–1886. MEADE *v.* USAA LIFE INSURANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 136 F. 3d 1328.

No. 97–1888. DIKAR, S. COOP. LTDA *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY (HAYMAKER, REAL PARTY IN INTEREST). C. A. 6th Cir. Certiorari denied.

No. 97–1889. BYUNG WHA AN ET AL. *v.* DOO-HWAN CHUN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 134 F. 3d 376.

No. 97–1890. KERBY *v.* SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 135 F. 3d 770.

No. 97–1891. BABICZ ET AL. *v.* SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 135 F. 3d 1420.

No. 97–1893. STUDENT LOAN FUND OF IDAHO, INC. *v.* DUERNER. Sup. Ct. Idaho. Certiorari denied. Reported below: 131 Idaho 45, 951 P. 2d 1272.

No. 97–1896. SEALE *v.* JASPER HOSPITAL DISTRICT. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 97–1897. VISTA PAINT CORP. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 129 F. 3d 129.

No. 97–1898. WILLIAMS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 704 A. 2d 696.

No. 97–1899. NATIONSBANK OF GEORGIA, N. A., ET AL. *v.* HERMAN, SECRETARY OF LABOR. C. A. 11th Cir. Certiorari denied. Reported below: 126 F. 3d 1354.

No. 97–1900. BUZZETTI, DBA COZY CABIN, ET AL. *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 140 F. 3d 134.

No. 97–1902. DEMARIA ET AL. *v.* WASHINGTON COUNTY, IDAHO, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 129 F. 3d 125.

No. 97–1904. MOLL *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 705 So. 2d 604.

No. 97–1905. CITY OF ROSEBURG *v.* ROHDE. C. A. 9th Cir. Certiorari denied. Reported below: 137 F. 3d 1142.

No. 97–1906. WADE *v.* COLLEGE. C. A. 5th Cir. Certiorari denied. Reported below: 136 F. 3d 138.

No. 97–1910. ZIEMKE ET AL. *v.* ALMOG ET AL. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 298 N. J. Super. 145, 689 A. 2d 158.

No. 97–1911. WEAVER ET AL. *v.* PRUDENTIAL INSURANCE COMPANY OF AMERICA. C. A. 3d Cir. Certiorari denied. Reported below: 133 F. 3d 225.

No. 97–1912. WIRTZ, EXECUTRIX OF THE ESTATE OF WHITLEY, ET AL. *v.* SWITZER. Sup. Ct. Miss. Certiorari denied. Reported below: 703 So. 2d 861.

No. 97–1915. FRAHM ET AL. *v.* EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 137 F. 3d 955.

No. 97–1916. HARPER *v.* UNION PACIFIC RAILROAD CO. ET AL. Sup. Ct. Mo. Certiorari denied. Reported below: 961 S. W. 2d 816.

No. 97–1917. BUCHBINDER ET UX. *v.* FRANCHISE TAX BOARD OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–1918. FROMSON *v.* ANITEC PRINTING PLATES, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 132 F. 3d 1437.

No. 97–1919. BECKHAM ET AL. *v.* UNION PACIFIC RAILROAD CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 138 F. 3d 325.

No. 97–1920. KILLIAN *v.* PROVIDENT LIFE & ACCIDENT INSURANCE CO. C. A. 11th Cir. Certiorari denied. Reported below: 135 F. 3d 145.

No. 97–1921. CUEVAS-SEGARRA ET AL. *v.* CONTRERAS. C. A. 1st Cir. Certiorari denied. Reported below: 134 F. 3d 458.

No. 97–1922. PORT AUTHORITY TRANS-HUDSON CORPORATION *v.* FEDERAL RAILROAD ADMINISTRATION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 132 F. 3d 1482.

No. 97–1923. MEISNER, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF WEATHERLY, DECEASED *v.* POTLATCH CORP. ET AL. Sup. Ct. Idaho. Certiorari denied. Reported below: 131 Idaho 258, 954 P. 2d 676.

No. 97–1925. SUTTON *v.* SELTZER ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 97–1926. SUTTON *v.* ESTATE OF SUTTON ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 97–1928. EMERY *v.* AMERICAN GENERAL FINANCE, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 134 F. 3d 1321.

No. 97–1930. CESSNA AIRCRAFT CO. *v.* DALTON, SECRETARY OF THE NAVY. C. A. Fed. Cir. Certiorari denied. Reported below: 126 F. 3d 1442.

No. 97–1931. VANNER *v.* OUR LADY OF THE LAKE HOSPITAL ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 669 So. 2d 463.

No. 97–1934. BRIENT *v.* PETRO PSC, LP. C. A. 6th Cir. Certiorari denied. Reported below: 134 F. 3d 370.

No. 97–1935. CAL-ALMOND, INC., ET AL. *v.* DEPARTMENT OF AGRICULTURE. C. A. 9th Cir. Certiorari denied.

No. 97–1936. BENEFIEL *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied. Reported below: 131 Idaho 226, 953 P. 2d 976.

No. 97–1937. CITY OF ATLANTIC CITY *v.* PEVNER. C. A. 3d Cir. Certiorari denied. Reported below: 142 F. 3d 429.

No. 97–1938. BIAGI ET UX. *v.* UNITED STATES FOREST SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1173.

No. 97–1939. TAYLOR *v.* HAM, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS CHIEF OF POLICE, PONCA CITY POLICE

DEPARTMENT, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 133 F. 3d 933.

No. 97–1941. COOLBAUGH *v.* LOUISIANA. C. A. 5th Cir. Certiorari denied. Reported below: 136 F. 3d 430.

No. 97–1944. JERRON WEST, INC., ET AL. *v.* CALIFORNIA STATE BOARD OF EQUALIZATION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 129 F. 3d 1334.

No. 97–1945. BENEDICT *v.* EAU CLAIRE PUBLIC SCHOOLS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 139 F. 3d 901.

No. 97–1946. KIDD *v.* KIDD. Ct. Civ. App. Ala. Certiorari denied. Reported below: 723 So. 2d 112.

No. 97–1948. HOSKINS *v.* WASHINGTON COUNTY. C. A. 5th Cir. Certiorari denied. Reported below: 132 F. 3d 1457.

No. 97–1950. POPE, SHERIFF, SHASTA COUNTY, ET AL. *v.* HENRY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 132 F. 3d 512 and 137 F. 3d 1372.

No. 97–1951. GROGAN ET UX. *v.* MARONEY, UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 97–1953. JORDAN *v.* FENDON. Ct. App. Ariz. Certiorari denied.

No. 97–1954. JOHNSON *v.* WEST, SECRETARY OF VETERANS AFFAIRS. C. A. 9th Cir. Certiorari denied. Reported below: 133 F. 3d 927.

No. 97–1955. GRIGLEY *v.* CITY OF ATLANTA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 136 F. 3d 752.

No. 97–1956. DON KING PRODUCTIONS, INC. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 134 F. 3d 1173.

No. 97–1957. K & K CONSTRUCTION, INC., ET AL. *v.* MICHIGAN DEPARTMENT OF NATURAL RESOURCES ET AL. Sup. Ct. Mich. Certiorari denied. Reported below: 456 Mich. 570, 575 N. W. 2d 531.

No. 97–1959. DOW JONES & CO., INC., ET AL. *v.* CLINTON, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 142 F. 3d 496.

No. 97–1960. LAFAYETTE FEDERAL CREDIT UNION ET AL. *v.* NATIONAL CREDIT UNION ADMINISTRATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 133 F. 3d 915.

No. 97–1961. CASTELLANO ET AL. *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 142 F. 3d 58.

No. 97–1962. SOUTHLAKE PROPERTY ASSOCIATES, LTD. *v.* CITY OF MORROW. C. A. 11th Cir. Certiorari denied. Reported below: 112 F. 3d 1114.

No. 97–1963. CONERLY *v.* HENDERSON, POSTMASTER GENERAL, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1070.

No. 97–1964. CONRAD, LEGAL REPRESENTATIVE OF CONRAD, DECEASED *v.* SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. Fed. Cir. Certiorari denied.

No. 97–1965. OLMOS-FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 133 F. 3d 930.

No. 97–1966. BAXTER ET AL. *v.* REED ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 134 F. 3d 351.

No. 97–1967. BRATTON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 451 Pa. Super. 646, 679 A. 2d 842.

No. 97–1968. BALDWIN *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 426 Mass. 105, 686 N. E. 2d 1001.

No. 97–1970. MILLS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 127 F. 3d 1102.

No. 97–1971. BILTMORE FOREST RADIO, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; BILTMORE FOREST RADIO, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and WILLSYR COMMUNICATIONS *v.* FEDERAL COMMUNICATIONS COMMISSION

ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 131 F. 3d 176 (first judgment).

No. 97–1972. LANDBERG ET AL. *v.* DUFFY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 133 F. 3d 1120.

No. 97–1973. CHRISTOPHER *v.* ADAM'S MARK HOTELS, A DIVISION OF HBF CORP. C. A. 8th Cir. Certiorari denied. Reported below: 137 F. 3d 1069.

No. 97–1974. WRIGHT *v.* FREDERIKSEN. Ct. App. Colo. Certiorari denied.

No. 97–1975. SPRING *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 85 Wash. App. 1049.

No. 97–1976. SPRECHER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 162 F. 3d 1148.

No. 97–1977. YWCA OF OKLAHOMA CITY ET AL. *v.* SELF INSURERS' MANAGEMENT GROUP; and COLBERT NURSING HOME, INC., DBA SOUTHERN POINTE LIVING CENTER, ET AL. *v.* OKLAHOMA EMPLOYERS SAFETY GROUP, S. I. A. Sup. Ct. Okla. Certiorari denied. Reported below: 954 P. 2d 115 (first judgment) and 120 (second judgment).

No. 97–1978. FALCON DRILLING CO., INC., ET AL. *v.* VIATOR. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 701 So. 2d 487.

No. 97–1979. ABRAMS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 137 F. 3d 704.

No. 97–1980. WILLIAMS *v.* CITY OF LOS ANGELES. C. A. 9th Cir. Certiorari denied. Reported below: 133 F. 3d 931.

No. 97–1981. WEST VIRGINIA BOARD OF PUBLIC WORKS ET AL. *v.* CSX TRANSPORTATION, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 138 F. 3d 537.

No. 97–1982. IN RE GERACI. C. A. 7th Cir. Certiorari denied. Reported below: 138 F. 3d 314.

No. 97–1983. WALKER *v.* INSTITUTE FOR ECONOMETRIC RESEARCH. C. A. 11th Cir. Certiorari denied. Reported below: 130 F. 3d 443.

No. 97–1986. WEINSTEIN *v.* FIDELITY BROKERAGE SERVICES, INC. C. A. 1st Cir. Certiorari denied.

No. 97–1987. HUDSON *v.* RENO, ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 130 F. 3d 1193.

No. 97–1989. KUHL ET AL. *v.* BOARD OF ADJUSTMENT OF THE TOWNSHIP OF MONTCLAIR ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 97–1990. BELIN *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 6th Cir. Certiorari denied.

No. 97–1995. MILLER *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 48 M. J. 49.

No. 97–1996. CAMPBELL ET AL. *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 138 F. 3d 772.

No. 97–1997. BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSN. *v.* MARQUES. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 59 Cal. App. 4th 356, 69 Cal. Rptr. 2d 154.

No. 97–1998. GOSU *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 443.

No. 97–2001. RANDOLPH, AS CONSERVATOR OF RANDOLPH *v.* CERVANTES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 130 F. 3d 727.

No. 97–2002. COLEMAN ET AL. *v.* SANTA CLARA COUNTY OPEN SPACE AUTHORITY. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 97–2003. ARMENIS *v.* AGUIRRE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 139 F. 3d 911.

No. 97–2004. NATIONAL COLLEGIATE ATHLETIC ASSN. *v.* LAW ET AL. (two judgments). C. A. 10th Cir. Certiorari denied. Reported below: 134 F. 3d 1010 (first judgment) and 1025 (second judgment).

No. 97–2005. PHONOMETRICS, INC. *v.* TADIRAN ELECTRONIC INDUSTRIES, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 135 F. 3d 777.

No. 97–2006. WARD *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 964 S. W. 2d 617.

No. 97–2007. MSW INVESTMENTS *v.* CHEVRON U. S. A. INC. C. A. 5th Cir. Certiorari denied. Reported below: 140 F. 3d 1038.

No. 97–2008. WEN-CHOUH LIN *v.* LIN. Ct. App. N. C. Certiorari denied. Reported below: 128 N. C. App. 533, 496 S. E. 2d 849.

No. 97–2009. MONSKY *v.* MORAGHAN, CONNECTICUT SUPERIOR COURT JUDGE. C. A. 2d Cir. Certiorari denied. Reported below: 127 F. 3d 243.

No. 97–2010. ARCURI ET AL. *v.* LOCAL 54 OF THE HOTEL EMPLOYEES AND RESTAURANT EMPLOYEES INTERNATIONAL UNION ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 137 F. 3d 139.

No. 97–2011. IN RE HILLIARD. Sup. Ct. Tex. Certiorari denied. Reported below: 960 S. W. 2d 35.

No. 97–2012. RANKIN ET UX. *v.* EVANS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 133 F. 3d 1425.

No. 97–2013. WATSON *v.* SZCZEPANIAK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 124 F. 3d 215.

No. 97–2014. WARNER, A MINOR, BY AND THROUGH WARNER, HIS MOTHER *v.* ST. PAUL INDEPENDENT SCHOOL DISTRICT NO. 625. C. A. 8th Cir. Certiorari denied. Reported below: 134 F. 3d 1333.

No. 97–2015. MONUS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 128 F. 3d 376.

No. 97–2016. ARIADNE FINANCIAL SERVICES PTY. LTD. ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 133 F. 3d 874.

No. 97–2017. HOOTERS OF AMERICA, INC. *v.* CAROLINA WINGS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 135 F. 3d 143.

No. 97–2019. HORSLEY, SHERIFF, SAN MATEO COUNTY *v.* SANTAMARIA; and

No. 97–9296. SANTAMARIA *v.* HORSLEY, SHERIFF, SAN MATEO COUNTY, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 133 F. 3d 1242.

No. 97–2020. METROPOLITAN TRANSPORTATION AUTHORITY *v.* NEW YORK MAGAZINE. C. A. 2d Cir. Certiorari denied. Reported below: 136 F. 3d 123.

No. 97–2021. TODD ET UX., ON THEIR OWN BEHALF AND AS NEXT FRIENDS FOR THEIR SON, TODD, ET AL. *v.* RUSH COUNTY SCHOOLS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 133 F. 3d 984.

No. 97–2022. PUTNAM *v.* PROULX ET AL. Sup. Jud. Ct. Me. Certiorari denied.

No. 97–2023. NEIRA *v.* BANDERA COUNTY FRESH WATER SUPPLY DISTRICT NO. 1. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 97–2025. VORHEES, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF BRACH, A PERSON PRESUMED DEAD *v.* BROWN, SECRETARY, ILLINOIS DEPARTMENT OF TRANSPORTATION, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 134 F. 3d 375.

No. 97–2026. ARIZONA *v.* BRANHAM. Ct. App. Ariz. Certiorari denied. Reported below: 191 Ariz. 94, 952 P. 2d 332.

No. 97–2027. JACOBSEN *v.* SOUTH DAKOTA. Sup. Ct. S. D. Certiorari denied. Reported below: 577 N. W. 2d 333.

No. 97–2028. TRAVELERS INDEMNITY COMPANY OF ILLINOIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 131 F. 3d 148.

No. 97–2030. SCHOOL DISTRICT OF PHILADELPHIA *v.* SULLIVAN ET AL.; and

No. 98–161. BUTLER, SECRETARY, PENNSYLVANIA DEPARTMENT OF LABOR AND INDUSTRY, ET AL. *v.* SULLIVAN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 139 F. 3d 158.

No. 97–2031. TDK CORP. *v.* WARREN/SHERER REFRIGERATION CO. ET AL. Ct. App. La., 1st Cir. Certiorari denied.

No. 97–2033. GRIMES *v.* MCANULTY, JUDGE, JEFFERSON CIRCUIT COURT OF KENTUCKY (KENTUCKY, REAL PARTY IN IN-

TEREST). Sup. Ct. Ky. Certiorari denied. Reported below: 957 S. W. 2d 223.

No. 97–2034. WATTS *v.* CALDERA, SECRETARY OF THE ARMY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 1433.

No. 97–2035. CAROLYN PROPERTIES I ET AL. *v.* MITSUI TRUST & BANKING CO., LTD., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 136 F. 3d 140.

No. 97–2036. ANDRESEN *v.* MINKOFF CO., INC. Ct. App. Md. Certiorari denied. Reported below: 348 Md. 333, 703 A. 2d 1264.

No. 97–2037. HOEFLER ET AL. *v.* BABBITT, SECRETARY OF THE INTERIOR, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 726.

No. 97–2039. HAVIGHURST ET AL. *v.* FIRST NATIONAL BANK OF SOUTHWESTERN OHIO, EXECUTOR OF THE ESTATE OF HAVIGHURST, ET AL. Ct. App. Ohio, Butler County. Certiorari denied. Reported below: 121 Ohio App. 3d 170, 699 N. E. 2d 523.

No. 97–2040. GRINNELL CORP. *v.* ROAD SPRINKLER FITTERS LOCAL UNION NO. 669 ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 133 F. 3d 914.

No. 97–2041. ASCARRUNZ *v.* BECHTEL POWER CORP. C. A. 9th Cir. Certiorari denied.

No. 97–2042. WALKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 F. 3d 1042.

No. 97–2043. JOHNSON *v.* JOHNSON ET AL. C. A. 6th Cir. Certiorari denied.

No. 97–2046. SUPERVALU INC. ET AL. *v.* DISCOUNT FOODS, INC. Sup. Ct. Ala. Certiorari denied. Reported below: 711 So. 2d 992.

No. 97–2047. SELINGER *v.* SCHLAGE LOCK CO. ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 97–2049. CONDOR INSURANCE CO. *v.* ERIKSEN. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–2051. GRAFF *v.* V & M ERECTORS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 132 F. 3d 1461.

No. 97–2052. PETROLEUM HELICOPTERS, INC. *v.* BURAS. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 705 So. 2d 766.

No. 97–2053. WOLKOWITZ, TRUSTEE, ET AL. *v.* SHEARSON LEHMAN BROTHERS, INC. C. A. 9th Cir. Certiorari denied. Reported below: 136 F. 3d 655.

No. 97–2054. PALM BEACH SOIL AND WATER CONSERVATION DISTRICT *v.* BLEDSOE. C. A. 11th Cir. Certiorari denied. Reported below: 133 F. 3d 816.

No. 97–2055. BARKER *v.* BANK ONE, LEXINGTON, N. A., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 431.

No. 97–2056. SATTERFIELD *v.* WAL-MART STORES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 135 F. 3d 973.

No. 97–2058. CONGRESS OF CALIFORNIA SENIORS ET AL. *v.* QUACKENBUSH, INSURANCE COMMISSIONER OF CALIFORNIA, ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 60 Cal. App. 4th 454, 70 Cal. Rptr. 2d 271.

No. 97–2059. NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, MINNEAPOLIS BRANCH, ET AL. *v.* METROPOLITAN COUNCIL. C. A. 8th Cir. Certiorari denied. Reported below: 144 F. 3d 1168.

No. 97–2060. GADDIS *v.* GADDIS. Ct. App. Ariz. Certiorari denied. Reported below: 191 Ariz. 467, 957 P. 2d 1010.

No. 97–2061. BELL, TRUSTEE FOR BELL LAND TRUST *v.* CITY OF VIRGINIA BEACH. Sup. Ct. Va. Certiorari denied. Reported below: 255 Va. 395, 498 S. E. 2d 414.

No. 97–2062. IMPRESSA PEROSA, S. R. L. *v.* BUTI ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 139 F. 3d 98.

No. 97–2064. TEXTILE PRODUCTIONS, INC. *v.* MEAD CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 134 F. 3d 1481.

No. 97–2065. CARROLL *v.* BLACK ET AL. Ct. App. Tex., 10th Dist. Certiorari denied. Reported below: 938 S. W. 2d 134.

No. 97–2066. YADEGAR *v.* YADEGAR ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–2067. OLIVER *v.* HYDRO-VAC SERVICES, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 165 F. 3d 28.

No. 97–2068. THERM-O-DISC, INC. *v.* MARYLAND CASUALTY CO., AS SUBROGEE OF GITELSON, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 137 F. 3d 780.

No. 97–2069. NIELSEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 127 F. 3d 1107.

No. 97–2070. SKARA *v.* MESTCHYAN ET UX. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–2071. MILLER ET AL. *v.* FLUME ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 139 F. 3d 1130.

No. 97–2072. TURBOMECA, S. A., ET AL. *v.* BARNETT, INDIVIDUALLY AND AS GUARDIAN AD LITEM AND NEXT FRIEND OF BARNETT, ET AL. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 963 S. W. 2d 639.

No. 97–2073. BARJON ET AL. *v.* DALTON, SECRETARY OF THE NAVY. C. A. 9th Cir. Certiorari denied. Reported below: 132 F. 3d 496.

No. 97–2074. DEMAREST ET UX. *v.* RAINIER TITLE INSURANCE CO. C. A. 9th Cir. Certiorari denied. Reported below: 124 F. 3d 211.

No. 97–2075. GREEN ET AL. *v.* CITY OF BOSTON ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 132 F. 3d 30.

No. 97–2076. WYNN *v.* UNITED STATES; and
No. 98–5654. HADDY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 134 F. 3d 542.

No. 97–2077. HIBBLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 133 F. 3d 915.

No. 97–2078. WATSON *v.* UNIVERSITY MEDICAL CENTER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 133 F. 3d 931.

No. 97–2080. J & E SALVAGE CO. ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 152 F. 3d 945.

No. 97–2082. THRASH, INDIVIDUALLY AND AS PIERCE COUNTY DEPUTY SHERIFF *v.* GULLIFORD. C. A. 9th Cir. Certiorari denied. Reported below: 136 F. 3d 1345.

No. 97–2083. RICE ET AL. *v.* BOROVICKA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 133 F. 3d 923.

No. 97–2084. LOCKERBY *v.* DUGAL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 129 F. 3d 126.

No. 97–2085. S. A. LUDSIN & CO. *v.* SMALL BUSINESS ADMINISTRATION. C. A. 2d Cir. Certiorari denied. Reported below: 162 F. 3d 1148.

No. 97–8122. TODD *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 178 Ill. 2d 297, 687 N. E. 2d 998.

No. 97–8191. TORAIN *v.* SIEMENS ROLM COMMUNICATIONS, INC. C. A. 7th Cir. Certiorari denied. Reported below: 132 F. 3d 37.

No. 97–8229. DODD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 128 F. 3d 732.

No. 97–8230. HOWERY *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 178 Ill. 2d 1, 687 N. E. 2d 836.

No. 97–8383. UNDERWOOD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 131 F. 3d 153.

No. 97–8416. PAGE ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 131 F. 3d 1173.

No. 97–8425. ALVARADO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 122 F. 3d 1077.

No. 97–8460. BURNS *v.* UNITED STATES; and
No. 97–9155. TURNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 130 F. 3d 442.

No. 97–8515. FRANKLIN *v.* JONES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 97–8551. EMBREY *v.* HERSHBERGER, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 131 F. 3d 739.

No. 97–8558. JOHNSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 130 F. 3d 1420.

No. 97–8586. LEE *v.* UNITED STATES;
No. 97–8634. HALL *v.* UNITED STATES;
No. 97–8636. PALMER *v.* UNITED STATES; and
No. 97–8638. CURRY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 130 F. 3d 765.

No. 97–8593. R. D. *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 706 So. 2d 770.

No. 97–8620. ESCOBAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 132 F. 3d 1456.

No. 97–8626. WITHERS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 128 F. 3d 1167.

No. 97–8641. ESCOBAR DE JESUS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 125 F. 3d 842.

No. 97–8654. GRUBBS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 134 F. 3d 371.

No. 97–8670. GONZALEZ BATH *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied. Reported below: 951 S. W. 2d 11.

No. 97–8677. DEE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1074.

No. 97–8678. DUNCAN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 97–8681. HOLLAND *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 705 So. 2d 307.

No. 97–8701. KOKORALEIS *v.* GILMORE, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 131 F. 3d 692.

No. 97–8740. WILKENS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 97–8745. NAHNKEN *v.* UNITED STATES ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 116 F. 3d 1496.

No. 97–8767. RASON *v.* WEST, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied.

No. 97–8771. STRAHAN *v.* COXE, SECRETARY OF MASSACHUSETTS EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 127 F. 3d 155.

No. 97–8774. LISLE *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 113 Nev. 679, 941 P. 2d 459.

No. 97–8776. MASSIE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 132 F. 3d 44.

No. 97–8805. HAYNES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 97–8828. BUNNER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 134 F. 3d 1000.

No. 97–8830. DAMARLANE *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 135 F. 3d 773.

No. 97–8853. WILLIAMS *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 113 Nev. 1008, 945 P. 2d 438.

No. 97–8871. GRIFFIN *v.* PENROD, SHERIFF, SAN BERNARDINO COUNTY, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 905.

No. 97–8880. HENLEY *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 960 S. W. 2d 572.

No. 97–8884. PARKS *v.* ANDERSEN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 136 F. 3d 1331.

No. 97–8887. SOBASZKIEWICZ *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 97–8888. GREEN *v.* VACCO, ATTORNEY GENERAL OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 97–8889. DANIEL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 134 F. 3d 1259.

No. 97–8895. DAVIS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–8896. GAMBINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 106 F. 3d 398.

No. 97–8897. FARABAUGH *v.* MARKOVITZ. C. A. 3d Cir. Certiorari denied. Reported below: 133 F. 3d 909.

No. 97–8898. CURRY *v.* OHIO. Ct. App. Ohio, Scioto County. Certiorari denied.

No. 97–8901. SCOTT *v.* DORSEY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 134 F. 3d 383.

No. 97–8902. REED *v.* CHAMPION, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 134 F. 3d 383.

No. 97–8903. STANFIELD *v.* OSBORNE INDUSTRIES, INC., ET AL. Sup. Ct. Kan. Certiorari denied. Reported below: 263 Kan. 388, 949 P. 2d 602.

No. 97–8910. MENDEZ, AKA QUINTANILLA *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 97–8913. SAYLOR *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 686 N. E. 2d 80.

No. 97–8914. RAHMAN *v.* HUBBARD ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 137 F. 3d 1350.

No. 97–8918. BALDWIN *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 705 So. 2d 1076.

No. 97–8919. AVILA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 58 Cal. App. 4th 1069, 68 Cal. Rptr. 2d 432.

No. 97–8925. MCGUIRE *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 80 Ohio St. 3d 390, 686 N. E. 2d 1112.

No. 97–8927. STEPHENS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 347 N. C. 352, 493 S. E. 2d 435.

No. 97–8934. BROWN *v.* WHITE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 97–8937. CLAY *v.* STEGALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–8939. BANKS *v.* MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 97–8941. DARDEN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–8942. HOWARD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 133 F. 3d 506.

No. 97–8946. GREEN *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 136 F. 3d 139.

No. 97–8947. POPE *v.* JARVIS, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 131 F. 3d 136.

No. 97–8949. PHIM *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 97–8952. DUMAS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 97–8954. LEVENTHAL *v.* SURFACE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 119 F. 3d 9 and 11.

No. 97–8960. LOWE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 97–8963. PRENTICE *v.* INFORMATION RESOURCES, INC. C. A. 7th Cir. Certiorari denied. Reported below: 139 F. 3d 902.

No. 97–8965. WALP *v.* BOZARTH. C. A. 5th Cir. Certiorari denied. Reported below: 138 F. 3d 951.

No. 97–8966. TERRY *v.* CIRCUIT COURT OF MISSISSIPPI, SUNFLOWER COUNTY. Sup. Ct. Miss. Certiorari denied.

No. 97–8967. ORTIZ *v.* FLORIDA ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 705 So. 2d 902.

No. 97–8968. RILEY *v.* SEATTLE UNIVERSITY ET AL. Ct. App. Wash. Certiorari denied.

No. 97–8976. FERGUSON *v.* WILLIAMS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 139 F. 3d 911.

No. 97–8977. TRUJILLO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 136 F. 3d 1388.

No. 97–8979. NORRIS *v.* WEST VALLEY CITY, UTAH. Ct. App. Utah. Certiorari denied.

No. 97–8983. BYRD *v.* CLEMENTS. C. A. 5th Cir. Certiorari denied. Reported below: 137 F. 3d 1351.

No. 97–8984. BRADFORD *v.* THOMPSON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 97–8985. STEWART *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 97–8986. SNELLING *v.* MISSOURI ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 133 F. 3d 923.

No. 97–8988. ANTONELLI *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 291 Ill. App. 3d 1112, 716 N. E. 2d 875.

No. 97–8990. BROWN *v.* TOOMBS, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 139 F. 3d 1102.

No. 97–8992. FARRIS *v.* SHULER. C. A. 10th Cir. Certiorari denied.

No. 97–8993. FARRELL *v.* PATAKI, GOVERNOR OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 97–8997. TAYLOR *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 947 P. 2d 681.

No. 97–8999. CASS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 551 Pa. 25, 709 A. 2d 350.

No. 97–9003. ARTHUR *v.* STOCK ET AL. C. A. 11th Cir. Certiorari denied.

No. 97–9005. BURGE *v.* COLORADO ET AL. Dist. Ct. Colo., Jefferson County. Certiorari denied.

No. 97–9009. NEAL *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 179 Ill. 2d 541, 689 N. E. 2d 1040.

No. 97–9013. COX *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 133 F. 3d 565.

No. 97–9014. ALLISON *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 294 Ill. App. 3d 1130, 721 N. E. 2d 865.

No. 97–9016. STATEN *v.* PRUITT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 611.

No. 97–9019. REZAQ *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 134 F. 3d 1121.

No. 97–9021. BREWER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 133 F. 3d 923.

No. 97–9025. JONES *v.* WEST, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 136 F. 3d 1296.

No. 97–9027. SOLIS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–9028. SHAWLEY *v.* KYLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND DIAGNOSTIC/CLASSIFICATION CENTER AT CAMP HILL, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 135 F. 3d 766.

No. 97–9029. BUCCI *v.* PLANNED PARENTHOOD FEDERATION OF AMERICA, INC. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 920.

No. 97–9030. SANTIAGO *v.* MASSACHUSETTS. C. A. 1st Cir. Certiorari denied.

No. 97–9031. PARK *v.* COUNTY OF SAN MATEO ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 97–9036. ZANKICH *v.* PHOENIX CARDIOLOGISTS ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–9037. BAEZ *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA. C. A. 11th Cir. Certiorari denied.

No. 97–9038. ABDULHASEEB *v.* HARGETT, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 141 F. 3d 1184.

No. 97–9039. HUDSON *v.* OKALOOSA COUNTY BOARD OF COUNTY COMMISSIONERS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 127 F. 3d 38.

No. 97–9046. HORPENKO *v.* BLISS. Super. Ct. N. J., App. Div. Certiorari denied.

No. 97–9049. KING *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 97–9051. ROBINSON *v.* SANDERS, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–9052. SMITH *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 291 Ill. App. 3d 1123, 716 N. E. 2d 880.

No. 97–9053. RAINES *v.* GHEE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 132 F. 3d 33.

No. 97–9055. HARRIS *v.* MORGAN, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 129 F. 3d 1267.

No. 97–9056. COLLINS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 549 Pa. 593, 702 A. 2d 540.

No. 97–9059. HARDY *v.* HAMLIN ET AL. C. A. 11th Cir. Certiorari denied.

No. 97–9062. CASTALDI *v.* TOWNSHIP OF RADNOR ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 696 A. 2d 937.

No. 97–9064. WILKERSON *v.* NIELSEN, CHAIRMAN, CALIFORNIA BOARD OF PRISON TERMS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 133 F. 3d 931.

No. 97–9065. WALDEN *v.* LUNGREN, ATTORNEY GENERAL OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 97–9068. MORGAN *v.* KIMBROUGH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 133 F. 3d 928.

No. 97–9069. LEON *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–9071. KADO *v.* ADAMS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–9078. DOE *v.* A. M. E. ZION CHURCH ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 124 F. 3d 1300.

No. 97–9081. ESCAMILLA *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 244 App. Div. 2d 805, 666 N. Y. S. 2d 278.

No. 97–9083. EPPS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 97–9084. PARADISE *v.* WARDEN, CONNECTICUT CORRECTIONAL INSTITUTE. C. A. 2d Cir. Certiorari denied. Reported below: 136 F. 3d 331.

No. 97–9088. HIGGINS *v.* ANDERSON, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Miss. Certiorari denied.

No. 97–9095. RISHER *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 97–9096. HOOD *v.* MURPHY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 133 F. 3d 915.

No. 97–9097. CUTHBERT *v.* CRAWFORD, CLERK, CIRCUIT COURT OF FLORIDA, BREVARD COUNTY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 132 F. 3d 46.

No. 97–9098. BUFFKIN *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 97–9100. WILLIAMS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 707 So. 2d 1128.

No. 97–9103. PARKS *v.* MADISON COUNTY, INDIANA, ET AL. C. A. 7th Cir. Certiorari denied.

No. 97–9104. PEREZ *v.* CALIFORNIA (two judgments). Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–9106. MORETTI *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY. C. A. 3d Cir. Certiorari denied.

No. 97–9109. KERSH *v.* COOK ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 124 F. 3d 1309.

No. 97–9112. SMITH ET UX. *v.* HAYNES ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 287 Mont. 505, 951 P. 2d 1394.

No. 97–9114. STONE *v.* GALAZA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–9118. BLANCO *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 706 So. 2d 7.

No. 97–9119. SCHOFIELD *v.* BROWN ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 134 F. 3d 361.

No. 97–9121. SADOWSKI *v.* TECHNICAL CAREER INSTITUTES, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 162 F. 3d 1148.

No. 97–9122. PALMER *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 80 Ohio St. 3d 543, 687 N. E. 2d 685.

No. 97–9123. ROY *v.* GENERAL DYNAMICS CORP., ELECTRIC BOAT DIVISION, ET AL. App. Ct. Conn. Certiorari denied. Reported below: 47 Conn. App. 924, 703 A. 2d 1198.

No. 97–9124. POOLE *v.* HELMAN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 97–9126. BORRIE *v.* MAKOWSKI, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 134 F. 3d 370.

No. 97–9127. SELLERS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 717 So. 2d 537.

No. 97–9128. SAVEDRA *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 97–9129. POULAKIDAS *v.* UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT. C. A. 7th Cir. Certiorari denied. Reported below: 139 F. 3d 902.

No. 97–9130. RUDD *v.* ROBINSON ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–9131. RUSSELL *v.* SIKES, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 97–9134. RICHARDS *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–9135. KERSH *v.* MARTIN & MEHAFFY ET AL. C. A. 10th Cir. Certiorari denied.

No. 97–9137. JOHNSON *v.* BURTON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 129 F. 3d 126.

No. 97–9138. KARIM-PANAHI *v.* WILSON, GOVERNOR OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 131 F. 3d 147.

No. 97–9139. PURSER *v.* TEXAS. Ct. App. Tex., 8th Dist. Certiorari denied. Reported below: 902 S. W. 2d 641.

No. 97–9141. VAN'T HOF *v.* METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–9143. GAMES *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 690 N. E. 2d 211.

No. 97–9144. DOMINQUE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 97–9145. EARICK *v.* EARICK. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 97–9146. FULLER ET AL. *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 97–9150. LAWRENCE *v.* MISSOURI DEPARTMENT OF CORRECTIONS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 133 F. 3d 922.

No. 97–9154. WILLIAMS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 708 So. 2d 703.

No. 97–9157. RIENHARDT *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 190 Ariz. 579, 951 P. 2d 454.

No. 97–9158. WILLS *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 97–9160. VICKSON *v.* ALFORD, SUPERINTENDENT, GULF CORRECTIONAL INSTITUTION. Sup. Ct. Fla. Certiorari denied. Reported below: 707 So. 2d 1128.

No. 97–9161. SCARPELLO *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 244 App. Div. 2d 856, 665 N. Y. S. 2d 227.

No. 97–9163. DUNCAN *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 97–9166. KNIGHT *v.* IVESTER ET AL. Ct. App. S. C. Certiorari denied.

No. 97–9167. MACIEL *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–9168. MCCOY *v.* SMITH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 134 F. 3d 363.

No. 97–9169. MAYBERRY *v.* GABRY. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 435.

No. 97–9171. TUERK *v.* FLORIDA BOARD OF BAR EXAMINERS. Sup. Ct. Fla. Certiorari denied.

No. 97–9172. WHITE *v.* RIGSBY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 124 F. 3d 1298.

No. 97–9175. SIRIPONGS *v.* CALDERON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 133 F. 3d 732.

No. 97–9176. TATUM *v.* LANHAM, COMMISSIONER, MARYLAND DIVISION OF CORRECTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 131 F. 3d 136.

No. 97–9177. TUDOROV *v.* COLAZO. C. A. 2d Cir. Certiorari denied.

No. 97–9178. MENDOZA *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 700 So. 2d 670.

No. 97–9179. ALBERTS ET UX. *v.* GRAY. Ct. App. Mich. Certiorari denied.

No. 97–9185. DUNNUGAN *v.* KEANE, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 137 F. 3d 117.

No. 97–9188. LISLE *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 113 Nev. 540, 937 P. 2d 473.

No. 97–9189. MALONE *v.* SHAPIRO. Ct. App. D. C. Certiorari denied.

No. 97–9190. MASON *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 97–9192. BLOUNT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 F. 3d 1041.

No. 97–9193. JOHNSON *v.* MELTZER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 134 F. 3d 1393.

No. 97–9195. HESS *v.* RYAN, WARDEN, ET AL. Ct. App. Ariz. Certiorari denied.

No. 97–9196. GREGORY *v.* OHIO. Ct. App. Ohio, Lucas County. Certiorari denied.

No. 97–9197. EWING *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 97–9198. GLEATON *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL.; and
No. 97–9264. GILBERT *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 134 F. 3d 642.

No. 97–9201. WHITFIELD *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 706 So. 2d 1.

No. 97–9202. ZAMPARDI *v.* UNITED STATES; and
No. 97–9488. CASSANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 132 F. 3d 646.

No. 97–9205. JOHNSON *v.* WATERS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 97–9206. CHARLTON *v.* DUNCAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 129 F. 3d 124.

No. 97–9207. SWOFFORD *v.* SCILLIA, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 137 F. 3d 442.

No. 97–9210. RIPPO *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 113 Nev. 1239, 946 P. 2d 1017.

No. 97–9211. ROSELLE *v.* DEPARTMENT OF THE INTERIOR. C. A. 9th Cir. Certiorari denied. Reported below: 133 F. 3d 928.

No. 97–9212. O'ROURKE *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 696 So. 2d 387.

No. 97–9215. PROWELL *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 687 N. E. 2d 563.

No. 97–9216. PINCKNEY *v.* STINSON, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 164 F. 3d 618.

No. 97–9219. WEATHERSPOON *v.* HERMAN, SECRETARY OF LABOR. C. A. 7th Cir. Certiorari denied. Reported below: 134 F. 3d 375.

No. 97–9222. SOWERS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 136 F. 3d 24.

No. 97–9224. VARNADO *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–9225. BALTIN ET UX. *v.* ALARON TRADING CORP. C. A. 11th Cir. Certiorari denied. Reported below: 128 F. 3d 1466.

No. 97–9226. RALEIGH *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 705 So. 2d 1324.

No. 97–9227. SAN MARTIN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 705 So. 2d 1337.

No. 97–9228. MURRAY *v.* ALFORD, WARDEN. Sup. Ct. Fla. Certiorari denied. Reported below: 707 So. 2d 1126.

No. 97–9229. MILLER-JACKSON *v.* MEAD CORP. ET AL.;
No. 97–9318. SMITH *v.* MEAD CORP. ET AL.; and
No. 97–9346. HOLCOMB *v.* MEAD CORP. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 891.

No. 97–9230. JACOBS *v.* JACOBS ET AL. Ct. App. Minn. Certiorari denied.

No. 97–9232. MARTIN *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 97–9234. PIKITUS *v.* BOROUGH OF SHENANDOAH SEWAGE DEPARTMENT. C. A. 3d Cir. Certiorari denied.

No. 97–9235. BRANCATO *v.* FISCHER ET AL. C. A. 8th Cir. Certiorari denied.

No. 97–9238. LIMEHOUSE *v.* RED LOBSTER, INC. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 955.

No. 97–9239. KINSLOW *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 136 F. 3d 1399.

No. 97–9240. KING *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 97–9241. SPAULDING *v.* LEE, ADMINISTRATOR, CALEDONIA CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 892.

No. 97–9244. MURRAY *v.* ALFORD, WARDEN. Sup. Ct. Fla. Certiorari denied. Reported below: 707 So. 2d 1126.

No. 97–9245. MCCLUSTER *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 717 So. 2d 535.

No. 97–9248. JONES *v.* ALABAMA ET AL. C. A. 11th Cir. Certiorari denied.

No. 97–9251. BAST *v.* GLASBERG ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 129 F. 3d 1258.

No. 97–9255. HENDERSON *v.* UNIVERSITY OF COLORADO AT BOULDER. C. A. 10th Cir. Certiorari denied. Reported below: 139 F. 3d 912.

No. 97–9259. HIRT *v.* GIRARD, MINNESOTA COMMISSIONER OF REVENUE. Ct. App. Minn. Certiorari denied.

No. 97–9262. HILLSMAN *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 97–9263. HOWARD *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 131 F. 3d 399.

No. 97–9273. WHITE *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 97–9274. WEAVER *v.* GEORGE ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 696 A. 2d 939.

No. 97–9275. HENDERSON *v.* IOWA ET AL. C. A. 8th Cir. Certiorari denied.

No. 97–9276. GILLIAM *v.* SIMMS, SECRETARY, MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 133 F. 3d 914.

No. 97–9280. ADAMS *v.* LOCKHEED MARTIN. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 701 So. 2d 869.

No. 97–9281. SONNIER *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 97–9282. PALMER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 97–9284. SHAW *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 97–9287. RUSSO *v.* SAN FRANCISCO COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–9289. MORKE *v.* GARRAGHTY, WARDEN (four judgments). Sup. Ct. Va. Certiorari denied.

No. 97–9290. MCEVOY *v.* HOAG. Ct. App. Ariz. Certiorari denied.

No. 97–9292. RICHMOND *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 347 N. C. 412, 495 S. E. 2d 677.

No. 97–9293. TUCKER *v.* BARTON ET AL. C. A. 10th Cir. Certiorari denied.

No. 97–9295. COCHRAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 135 F. 3d 770.

No. 97–9297. BARRETT *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 97–9298. ROCHE *v.* UNITED STATES; and
No. 97–9367. RIVERA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 97–9299. SWEATT *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 130 F. 3d 451.

No. 97–9300. SANCHEZ PALACIOS *v.* THOMPSON, SUPERINTENDENT, OREGON STATE PENITENTIARY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 907.

No. 97–9303. COLWELL *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 807, 919 P. 2d 403.

No. 97–9306. WHITLEY *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 97–9307. VIDAL *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 97–9308. WILSON *v.* KINKELA ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1335.

No. 97–9309. DIAZ, AKA THOMAS *v.* BRADY. C. A. 8th Cir. Certiorari denied.

No. 97–9310. WALTON *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 8th Cir. Certiorari denied.

No. 97–9311. MORETTI *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 135 F. 3d 778.

No. 97–9312. KEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1327.

No. 97–9315. MINERD *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 698 A. 2d 1347.

No. 97–9317. RAMSEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 97–9320. SAMPANG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 125 F. 3d 859.

No. 97–9321. WATSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–9322. WOLPER *v.* MCGRAW-HILL, INC. C. A. 2d Cir. Certiorari denied. Reported below: 162 F. 3d 1149.

No. 97–9323. RAMPEY *v.* BALDWIN, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1178.

No. 97–9324. ROLEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 97–9325. BORDEN *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 711 So. 2d 506.

No. 97–9327. PEREZ *v.* PRUNTY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 907.

No. 97–9328. SMITH *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 347 N. C. 453, 496 S. E. 2d 357.

No. 97–9330. TURNER *v.* JOHNSON. C. A. 8th Cir. Certiorari denied.

No. 97–9331. PRICE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 134 F. 3d 340.

No. 97–9334. OCHOA-FLORES *v.* TOMBONE, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 145 F. 3d 359.

No. 97–9337. AIKENS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 132 F. 3d 452.

No. 97–9338. DAVIS *v.* CITY OF PITTSBURGH. C. A. 3d Cir. Certiorari denied.

No. 97–9339. ERVIN *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 97–9340. HAWKINS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 139 F. 3d 902.

No. 97–9342. HART *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied. Reported below: 135 F. 3d 764.

No. 97–9344. DAVIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1180.

No. 97–9345. FRETWELL *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 133 F. 3d 621.

No. 97–9347. GHOLSTON *v.* HOOKS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 97–9348. SMITH *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 97–9349. ROBINSON *v.* RATNARAJAH ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–9350. SAMMONS *v.* NELSON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 139 F. 3d 912.

No. 97–9351. SATTERWHITE *v.* SMALL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 136 F. 3d 137.

No. 97–9353. MCCOY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 97–9354. BOYD *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 959 S. W. 2d 557.

No. 97–9355. COBBS *v.* UNITED STATES;
No. 97–9369. LATSON *v.* UNITED STATES; and
No. 97–9562. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 896.

No. 97–9356. CALLAWAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 132 F. 3d 1459.

No. 97–9357. COLEMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 132 F. 3d 440.

No. 97–9359. BREECH *v.* ALABAMA POWER CO. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 140 F. 3d 1043.

No. 97–9360. PERRY *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 135 F. 3d 775.

No. 97–9363. CUMMINGS *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 132 F. 3d 38.

No. 97–9364. COATES *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 133 F. 3d 914.

No. 97–9365. PADILLA-FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1182.

No. 97–9366. PHILLIPS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 968 S. W. 2d 874.

No. 97–9368. QUINONES-RUIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 909.

No. 97–9370. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 895.

No. 97–9371. LYONS *v.* SILLS. Sup. Ct. Ariz. Certiorari denied.

No. 97–9372. MISIRLI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 134 F. 3d 380.

No. 97–9373. BLOCH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 137 F. 3d 252.

No. 97–9374. AGHAJI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 445.

No. 97–9375. SMITH *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 548 Pa. 65, 694 A. 2d 1086.

No. 97–9376. PETERSON *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 8th Cir. Certiorari denied.

No. 97–9377. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 955.

No. 97–9378. CARTER *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 97–9379. POOLER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 704 So. 2d 1375.

No. 97–9380. ROSENBERG *v.* DEPARTMENT OF THE AIR FORCE ET AL. C. A. D. C. Cir. Certiorari denied.

No. 97–9381. POPE *v.* BOARD OF SCHOOL COMMISSIONERS OF BALTIMORE CITY ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 116 Md. App. 744.

No. 97–9382. BEYDLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1180.

No. 97–9383. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 893.

No. 97–9384. BRESSI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 149 F. 3d 1165.

No. 97–9385. HARRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 137 F. 3d 1058.

No. 97–9386. FRETWELL *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 97–9387. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 894.

No. 97–9389. FLEMING *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 131 F. 3d 134.

No. 97–9390. CARTER *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 97–9391. RASHED *v.* DORSEY ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–9392. STEWART *v.* HECHINGER STORES CO. Ct. Sp. App. Md. Certiorari denied. Reported below: 118 Md. App. 354, 702 A. 2d 946.

No. 97–9393. PANETTI *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 97–9394. BISZALIK *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 97–9395. LARA-GUEVARA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 130 F. 3d 442.

No. 97–9396. NELSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 141 F. 3d 1171.

No. 97–9397. KIRKLAND *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 959.

No. 97–9398. LEUVANO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 141 F. 3d 1186.

No. 97–9399. MARTINEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 136 F. 3d 972.

No. 97–9400. KIRKSEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 138 F. 3d 120.

No. 97–9401. LOPEZ-ELIZONDO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 133 F. 3d 908.

No. 97–9402. LIEBERMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 156 F. 3d 1226.

No. 97–9403. SPEARS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1182.

No. 97–9404. OWEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 134 F. 3d 380.

No. 97–9405. POWERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 139 F. 3d 899.

No. 97–9406. BAIRD *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 688 N. E. 2d 911.

No. 97–9407. CHIPPEWA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1180.

No. 97–9408. ALLISON *v.* UNITED STATES; and
No. 97–9555. STAFFORD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 136 F. 3d 1109.

No. 97–9409. ZARATE-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 133 F. 3d 1194.

No. 97–9410. WRIGHT *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 717 So. 2d 543.

No. 97–9411. URBAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 140 F. 3d 229.

No. 97–9412. WOLLESEN *v.* SACASA. Ct. Sp. App. Md. Certiorari denied. Reported below: 118 Md. App. 722.

No. 97–9413. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 87 F. 3d 249.

No. 97–9415. HOY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 137 F. 3d 726.

No. 97–9416. GRIMMOND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 137 F. 3d 823.

No. 97–9417. GELLERT *v.* COMMISSIONER OF INTERNAL REVENUE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 124 F. 3d 1299.

No. 97–9418. GRANT *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 97–9419. HECHINGER *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 707 A. 2d 766.

No. 97–9420. HART *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 707 So. 2d 1124.

No. 97–9421. DANIELS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 717 So. 2d 530.

No. 97–9422. HOUSTON *v.* ANDERSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 129 F. 3d 1264.

No. 97–9424. HESTER *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 47 M. J. 461.

No. 97–9425. FLY *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 229 Ga. App. 374, 494 S. E. 2d 95.

No. 97–9427. DAWSON ET AL. *v.* DISTRICT OF COLUMBIA. C. A. D. C. Cir. Certiorari denied. Reported below: 139 F. 3d 940.

No. 97–9428. NOLAND *v.* FRENCH, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 134 F. 3d 208.

No. 97–9430. WATSON *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 97–9431. JACKSON *v.* CASPARI, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 97–9432. MOREJON *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 698 So. 2d 613.

No. 97–9433. BUENO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 97–9434. PATTERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 956.

No. 97–9435. EINFELDT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 138 F. 3d 373.

No. 97–9436. BAILEY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 709 A. 2d 708.

No. 97–9437. BLACK *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 97–9438. BROWN *v.* WHITE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–9439. BRUCCHERI *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 97–9440. TROBAUGH *v.* IOWA. C. A. 8th Cir. Certiorari denied. Reported below: 141 F. 3d 1170.

No. 97–9443. TAYLOR *v.* SHARP. C. A. 5th Cir. Certiorari denied. Reported below: 140 F. 3d 1037.

No. 97–9444. WILKIE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–9445. WHITSEL *v.* HUNDLEY, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 97–9446. ANTONELLI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 97–9447. AULTMAN *v.* ALFORD, WARDEN. Sup. Ct. Fla. Certiorari denied. Reported below: 707 So. 2d 1123.

No. 97–9448. TUAN ANH NGUYEN *v.* REYNOLDS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 131 F. 3d 1340.

No. 97–9449. LINK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 141 F. 3d 1171.

No. 97–9450. ANDERSON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 725 So. 2d 1082.

No. 97–9451. CAPUTO *v.* CLARK, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 132 F. 3d 36.

No. 97–9452. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 437.

No. 97–9453. BROWN *v.* FRAZIER. C. A. 4th Cir. Certiorari denied. Reported below: 135 F. 3d 769.

No. 97–9456. POWELL *v.* BATTLE, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 97–9457. SAYADI-TAKHTEHKAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 139 F. 3d 899.

No. 97–9458. RUTHERFORD *v.* ROE, WARDEN, ET AL. C. A. 9th Cir.

No. 97–9459. SPAGNOULO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 130 F. 3d 443.

No. 97–9460. O'BRIEN *v.* GENERAL MOTORS CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 444.

No. 97–9461. ROBERSON *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 97–9462. BENSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 97–9464. WILLIAMS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 97–9465. BRABSON *v.* TENNESSEE; DAVIS *v.* TENNESSEE; and WILLIAMSON *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 97–9466. LAGOYE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1075.

No. 97–9467. JORDAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 134 F. 3d 361.

No. 97–9468. MCDONNELL, AKA JUSTICE *v.* CLINTON, PRESIDENT OF THE UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 132 F. 3d 1481.

No. 97–9469. LANCASTER *v.* GRIFFIN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 134 F. 3d 378.

No. 97–9470. OWENS *v.* LUNGREN, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1178.

No. 97–9471. SOTO-CERVANTES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 138 F. 3d 1319.

No. 97–9472. ROGERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 139 F. 3d 899.

No. 97–9473. ALEGRE *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 97–9474. CLAREY *v.* GREGG, UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 138 F. 3d 764.

No. 97–9476. ASBURY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 956.

No. 97–9477. MICKEY *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 347 N. C. 508, 495 S. E. 2d 669.

No. 97–9478. LAZO-ORTIZ, AKA LAZA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 136 F. 3d 1282.

No. 97–9479. MATHIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 139 F. 3d 899.

No. 97–9480. MARSH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 149 F. 3d 1166.

No. 97–9481. MENDOZA *v.* HAWAII. Sup. Ct. Haw. Certiorari denied.

No. 97–9482. IOANE *v.* COWARD. C. A. 9th Cir. Certiorari denied. Reported below: 127 F. 3d 1105.

No. 97–9483. LIESS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 149 F. 3d 1166.

No. 97–9484. PENNELLATORE *v.* DUBOIS, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION. C. A. 1st Cir. Certiorari denied.

No. 97–9485. CARTA *v.* UNITED STATES;
No. 98–5109. GILMORE *v.* UNITED STATES;
No. 98–5131. MCALEER *v.* UNITED STATES; and
No. 98–5132. MCALEER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 138 F. 3d 852.

No. 97–9487. COX *v.* SARGENT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 136 F. 3d 349.

No. 97–9489. BOWLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 117 F. 3d 1416.

No. 97–9490. CRELEY *v.* LEMASTER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 139 F. 3d 911.

No. 97–9491. BENDER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 129 F. 3d 1265.

No. 97–9492. SITTMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 97–9493. PEYTON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 709 A. 2d 65.

No. 97–9494. PORTORREAL-QUEZADA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 97–9495. RIOJAS *v.* RICE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–9496. MILLER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 145 F. 3d 1347.

No. 97–9497. MOORE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1182.

No. 97–9498. MONTERO-MORLOTTI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1182.

No. 97–9499. MARA *v.* HAWAII. Sup. Ct. Haw. Certiorari denied. Reported below: 85 Haw. 320, 944 P. 2d 693.

No. 97–9500. HARING ET UX. *v.* IR FEDERAL CREDIT UNION. Sup. Ct. Va. Certiorari denied.

No. 97–9501. HARRISON *v.* HAWAII. Sup. Ct. Haw. Certiorari denied.

No. 97–9502. BRODNAX *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 142 F. 3d 427.

No. 97–9503. MATHIS *v.* ODEN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 134 F. 3d 378.

No. 97–9505. MCKENZIE *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–9506. LENDER *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 43 Mass. App. 1115, 685 N. E. 2d 490.

No. 97–9507. PEREZ BUSTILLO *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 97–9508. COLEMAN *v.* JACOBS ET AL. C. A. 2d Cir. Certiorari denied.

No. 97–9509. ALEXANDER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 135 F. 3d 470.

No. 97–9510. COLIDA *v.* SONY CORPORATION OF AMERICA. C. A. Fed. Cir. Certiorari denied. Reported below: 152 F. 3d 940.

No. 97–9511. CLEWELL *v.* UNITED CHURCH OF CHRIST ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 132 F. 3d 32.

No. 97–9512. STEWART *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1182.

No. 97–9513. PAPPAS *v.* PAPPAS. Sup. Ct. Del. Certiorari denied. Reported below: 707 A. 2d 766.

No. 97–9514. SOLOMON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 159 F. 3d 1349.

No. 97–9515. HARRIS *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 132 F. 3d 54.

No. 97–9516. GALLO *v.* KERNAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1175.

No. 97–9518. HARPER *v.* CRABTREE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 127 F. 3d 1105.

No. 97–9519. GOBLE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 97–9520. EDWARDS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 709 So. 2d 766.

No. 97–9521. GLOVER *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 717 So. 2d 531.

No. 97–9522. GLOVER *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 129 F. 3d 1259.

No. 97–9523. HINSON *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 97–9524. DAVENPORT *v.* OWENS ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–9526. BUCKNER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 108 F. 3d 331.

No. 97–9527. ALLEN *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 97–9528. BURG *v.* RAVEN, KIRSCHNER & NORELL, P. C. Ct. App. Ariz. Certiorari denied.

No. 97–9529. ASHIEGBU *v.* KIM ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1329.

No. 97–9530. CHITTY *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 253 Neb. 753, 571 N. W. 2d 794.

No. 97–9531. CLARK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1180.

No. 97–9532. SWINTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 151 F. 3d 1027.

No. 97–9533. JOYNER *v.* TAYLOR, DEPUTY SHERIFF, SHELBY COUNTY, TENNESSEE, ET AL. Ct. App. Tenn. Certiorari denied. Reported below: 968 S. W. 2d 847.

No. 97–9534. BOWES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 139 F. 3d 900.

No. 97–9535. CORNEJO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1180.

No. 97–9536. BONEV *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 149 F. 3d 1165.

No. 97–9537. MOCKS *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 426 Mass. 1018, 690 N. E. 2d 435.

No. 97–9538. LYLES *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 243 App. Div. 2d 729, 665 N. Y. S. 2d 316.

No. 97–9539. MYERS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 704 A. 2d 694.

No. 97–9540. ROBINSON *v.* HENDERSON ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–9541. PENDER *v.* UNION COUNTY, NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–9542. SPENCER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 896.

No. 97–9543. WARD *v.* GENERAL MOTORS NATIONAL RETIREMENT SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 518.

No. 97–9544. TOTH *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 97–9545. ZUTHER *v.* MOON, JUDGE, SUPERIOR COURT OF ARIZONA, MOHAVE COUNTY. Ct. App. Ariz. Certiorari denied.

No. 97–9546. WILLIAMS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–9547. VILORIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1182.

No. 97–9548. VELASQUEZ-TELLO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 133 F. 3d 933.

No. 97–9549. VALLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1182.

No. 97–9550. WALKER *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 701 So. 2d 1258.

No. 97–9551. TONUBBEE *v.* RIVER PARISHES GUIDE ET AL. Sup. Ct. La. Certiorari denied. Reported below: 709 So. 2d 747.

No. 97–9552. ASHIEGBU *v.* HERRON, OHIO BUREAU OF EMPLOYMENT SERVICES, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1329.

No. 97–9556. KING *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 138 F. 3d 951.

No. 97–9557. LUCKETT *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–9558. VAUGHN *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 159 F. 3d 1349.

No. 97–9559. THOMAS *v.* MISSOURI ET AL. C. A. 8th Cir. Certiorari denied.

No. 97–9560. YOUNG *v.* DENNIS ET AL. C. A. 11th Cir. Certiorari denied.

No. 97–9561. ZERLA *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 97–9563. STORY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 137 F. 3d 518.

No. 97–9564. PAREDES-BATISTA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 140 F. 3d 367.

No. 97–9565. CRAWFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 133 F. 3d 917.

No. 97–9566. BETANCOURT *v.* WHITE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–9567. WILLIAMS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 125 F. 3d 269.

No. 97–9568. BOWMAN *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 97–9569. CARTER *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1336.

No. 97–9572. HUGHES *v.* MITCHELL, SUPERINTENDENT, EASTERN CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 97–9573. HARRISON *v.* HELMAN, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 142 F. 3d 439.

No. 97–9574. FREEMAN *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 291 Ill. App. 3d 1142, 716 N. E. 2d 888.

No. 97–9575. HALL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 127 F. 3d 1107.

No. 97–9576. GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1180.

No. 97–9578. GARCIA *v.* THOMAS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 141 F. 3d 1184.

No. 97–9579. DALLAS *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 711 So. 2d 1114.

No. 97–9580. HILL *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 331 Ark. 312, 962 S. W. 2d 762.

No. 97–9581. GUILMAIN *v.* WASHINGTON FAMILY COURT. Sup. Ct. Vt. Certiorari denied. Reported below: 167 Vt. 647, 708 A. 2d 200.

No. 97–9582. BELO *v.* CITY OF HIGH POINT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 887.

No. 97–9583. ARNOUS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 437.

No. 97–9584. MATTHEWS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 97–9585. KNOTTNERUS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 139 F. 3d 558.

No. 97–9586. LEE *v.* CUSHMAN, INC. C. A. 4th Cir. Certiorari denied. Reported below: 129 F. 3d 1259.

No. 97–9587. METZ *v.* OHIO. Ct. App. Ohio, Washington County. Certiorari denied.

No. 97–9588. STEWART *v.* ANGLIKER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 892.

No. 97–9590. LESLIE *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 114 Nev. 8, 952 P. 2d 966.

No. 97–9591. KEENAN *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 81 Ohio St. 3d 133, 689 N. E. 2d 929.

No. 97–9592. WILLIAMS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 159 F. 3d 638.

No. 97–9593. TURNER *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 151 F. 3d 1030.

No. 97–9594. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 139 F. 3d 899.

No. 97–9595. WILSON *v.* WASHINGTON, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied. Reported below: 138 F. 3d 647.

No. 97–9596. CRENSHAW *v.* KANSAS (two judgments). Ct. App. Kan. Certiorari denied. Reported below: 24 Kan. App. 2d xxvii, 951 P. 2d 1322 (first judgment); 24 Kan. App. 2d xxvii, 951 P. 2d 1323 (second judgment).

No. 97–9597. BRYANT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 893.

No. 97–9598. FULTON *v.* WHITLEY CIRCUIT COURT ET AL. C. A. 6th Cir. Certiorari denied.

No. 97–9599. GUAY *v.* STEGALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–9600. FRANKLIN *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 97–9601. FAIRBANK *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 16 Cal. 4th 1223, 947 P. 2d 1321.

No. 97–9602. HAWKINS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 97–9603. WHALEY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–9604. TOBIAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 F. 3d 1041.

No. 97–9605. WRINKLES *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 690 N. E. 2d 1156.

No. 97–9606. HIGGINS *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 97–9607. DAVIS *v.* CAMPBELL, COMMISSIONER, TENNESSEE DEPARTMENT OF CORRECTION. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1330.

No. 97–9608. GEITZ *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 287 Ill. App. 3d 1139, 710 N. E. 2d 580.

No. 97–9609. DIAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 97–9610. DANNALS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1180.

No. 97–9611. FARABAUGH *v.* ALLEGHENY VALLEY HOSPITAL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 149 F. 3d 1164.

No. 97–9612. ROSS *v.* RICE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 133 F. 3d 928.

No. 97–9613. SCHACKART *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 190 Ariz. 238, 947 P. 2d 315.

No. 97–9614. SNAVELY *v.* CITY OF PALO ALTO. C. A. 9th Cir. Certiorari denied.

No. 97–9616. WILLIAMS *v.* EDGAR, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1335.

No. 97–9618. BRELOVE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 144 F. 3d 54.

No. 97–9619. CANATELLA *v.* RENNE ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 97–9620. HUNT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 97–9621. HARRISON *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 97–9622. HUFF, AKA THOMPSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 97–9623. DEBLASIO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 134 F. 3d 364.

No. 97–9624. BIXLER *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 97–9625. KENNEDY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 131 F. 3d 1371.

No. 97–9627. CLAVETTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 135 F. 3d 1308.

No. 97–9628. BOXLEY *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 201 W. Va. 292, 496 S. E. 2d 242.

No. 97–9629. TIZER *v.* MONTGOMERY COUNTY ORPHANS' COURT. Sup. Ct. Pa. Certiorari denied.

No. 97–9631. UCHIMURA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 125 F. 3d 1282.

No. 97–9632. STADTFELD *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 293 Ill. App. 3d 1135, 718 N. E. 2d 1089.

No. 97–9633. EPLEY *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 97–9634. PARKUS *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 135 F. 3d 1232.

No. 97–9635. RASH *v.* RAINS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–9636. SHAFFER *v.* WORKERS' COMPENSATION DIVISION ET AL. Sup. Ct. App. W. Va. Certiorari denied.

No. 97–9637. MARTIN *v.* DAVIS, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 97–9638. JUDD *v.* UNIVERSITY OF NEW MEXICO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 134 F. 3d 367.

No. 97–9639. KING *v.* BABBITT, SECRETARY OF THE INTERIOR. C. A. 8th Cir. Certiorari denied. Reported below: 129 F. 3d 121.

No. 97–9640. ARRON C. *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 59 Cal. App. 4th 1365, 69 Cal. Rptr. 2d 852.

No. 97–9641. BENNETT *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 97–9642. LUNDGREN *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–9643. MALONE *v.* CHAN. Ct. App. D. C. Certiorari denied.

No. 97–9646. BALDWIN *v.* EASLEY, ATTORNEY GENERAL OF NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1323.

No. 97–9647. OLIVER *v.* ERVIN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 891.

No. 97–9648. CAMACHO *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 153 N. J. 54, 701 A. 2d 455.

No. 97–9649. BELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 F. 3d 1041.

No. 97–9650. SMITH *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 709 A. 2d 78.

No. 97–9651. SHLEIFER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1182.

No. 97–9652. WOOD *v.* PIERCE, SUPERINTENDENT, CASWELL CORRECTIONAL CENTER, ET AL. Sup. Ct. N. C. Certiorari denied.

No. 97–9653. RANDALL *v.* MANGELS ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 97–9654. WALCZAK *v.* MASSACHUSETTS STATE RETIREMENT BOARD. C. A. 1st Cir. Certiorari denied. Reported below: 141 F. 3d 1150.

No. 97–9656. ROBINSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–9657. NELSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 129 F. 3d 1266.

No. 97–9658. KING *v.* FREEDMAN ET AL. Super. Ct. N. H., Rockingham County. Certiorari denied.

No. 97–9659. BONGIORNO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 139 F. 3d 640.

No. 97–9660. JONATHAN B. *v.* NEW MEXICO. Sup. Ct. N. M. Certiorari denied. Reported below: 124 N. M. 620, 954 P. 2d 52.

No. 97–9663. LAWRENCE *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 97–9664. KIRK *v.* KNIGHT ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 141 F. 3d 1190.

No. 97–9665. BROWN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–9666. BARNETT *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 97–9667. ANDERSON *v.* GARNER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 97–9668. BOLTON *v.* WOOD, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 97–9669. BAZROWX *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 136 F. 3d 1053.

No. 97–9670. HOWE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 97–9671. HUBBARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 97–9672. HARRIS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 717 So. 2d 532.

No. 97–9673. DUVIGNEAUD *v.* MORROW, ACTING SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1175.

No. 97–9674. HUMMEL *v.* BACA, JUDGE, DISTRICT COURT OF TEXAS, EL PASO COUNTY. Ct. App. Tex., 8th Dist. Certiorari denied.

No. 97–9675. GOINGS *v.* WHITE, SUPERINTENDENT, ALGOA CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 97–9677. GALLOWAY *v.* SPEROS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1071.

No. 97–9678. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 896.

No. 97–9679. OMOIKE *v.* LOUISIANA. C. A. 5th Cir. Certiorari denied.

No. 97–9680. GRAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 137 F. 3d 765.

No. 97–9681. ANGULO FELIX *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–9682. KING *v.* SUPERIOR COURT OF NEW HAMPSHIRE, ROCKINGHAM COUNTY. Sup. Ct. N. H. Certiorari denied.

No. 97–9683. VINH HUNG LAM *v.* INTERIM SERVICES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 905.

No. 97–9684. KING *v.* ELSER. C. A. 5th Cir. Certiorari denied.

No. 97–9685. COUTERMARSH *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 139 F. 3d 291.

No. 97–9687. DURHAM *v.* UNITED STATES; and
No. 98–5065. EVANS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 139 F. 3d 1325.

No. 97–9688. PEREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 136 F. 3d 140.

No. 97–9689. ROSENBERG *v.* MONTGOMERY COUNTY, MARYLAND, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 97–9690. CASAS, AKA CASAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 F. 3d 359.

No. 97–9691. BRITO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 F. 3d 397.

No. 97–9692. BARTEL *v.* EASTERN AIRLINES. C. A. 2d Cir. Certiorari denied. Reported below: 133 F. 3d 906.

No. 97–9693. BROWN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–9694. CAMPBELL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 98–1. LONG ET AL. *v.* FIRSTRUST CORP. C. A. 5th Cir. Certiorari denied. Reported below: 134 F. 3d 312.

No. 98–3. MASTRONARDI *v.* OHIO. Ct. App. Ohio, Erie County. Certiorari denied.

No. 98–5. KIMBOKO *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied.

No. 98–7. GRIMES *v.* VITALINK COMMUNICATIONS CORP. Sup. Ct. Del. Certiorari denied. Reported below: 708 A. 2d 630.

No. 98–8. FELDMAN ET AL. *v.* MORGAN. C. A. 5th Cir. Certiorari denied. Reported below: 134 F. 3d 367.

No. 98–9. EMANUEL ET AL., DBA SALVATION DISPOSAL & CONSTRUCTION CO. *v.* J. M. CONTAINER CORP. Sup. Ct. N. H. Certiorari denied. Reported below: 142 N. H. xxvi.

No. 98–12. ZIMMER *v.* NAUMANN, PARISH COUNCIL CHAIRPERSON, ET AL. Ct. App. Minn. Certiorari denied.

No. 98–13. WAGNER *v.* TRW, INC. C. A. 5th Cir. Certiorari denied. Reported below: 139 F. 3d 898.

No. 98–14. CLEVELAND ET AL. *v.* WILKEN, CLERK, CIRCUIT COURT, FIFTEENTH JUDICIAL CIRCUIT, PALM BEACH COUNTY,

FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 131 F. 3d 154.

No. 98–15. ASTAIRE *v.* BEST FILM & VIDEO CORP. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 1297 and 136 F. 3d 1208.

No. 98–16. BAUCUM *v.* SANDERS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 134 F. 3d 331.

No. 98–20. OGLESBY, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF OGLESBY, DECEASED *v.* BROWN & WILLIAMSON TOBACCO CORP., INDIVIDUALLY AND AS SUCCESSOR BY MERGER TO AMERICAN TOBACCO CO., ET AL.;

No. 98–31. WHIRLEY *v.* BROWN & WILLIAMSON TOBACCO CORP., INDIVIDUALLY AND AS SUCCESSOR BY MERGER TO AMERICAN TOBACCO CO., ET AL.; and

No. 98–71. HULSEY *v.* BROWN & WILLIAMSON TOBACCO CORP., INDIVIDUALLY AND AS SUCCESSOR BY MERGER TO AMERICAN TOBACCO CO., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 139 F. 3d 898.

No. 98–23. ALEMAN *v.* CIRCUIT COURT OF COOK COUNTY, ILLINOIS, CRIMINAL DIVISION, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 138 F. 3d 302.

No. 98–25. ALEXANDER *v.* BAKER, ATTORNEY GENERAL OF GEORGIA, ET AL. Sup. Ct. Ga. Certiorari denied. Reported below: 269 Ga. 340, 498 S. E. 2d 728.

No. 98–26. NICULESCU *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied.

No. 98–27. BLANKENSHIP *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 292 Ill. App. 3d 1114, 717 N. E. 2d 857.

No. 98–29. Z. J. GIFTS D–2, L. L. C., DBA CHRISTIE'S *v.* CITY OF AURORA. C. A. 10th Cir. Certiorari denied. Reported below: 136 F. 3d 683.

No. 98–30. LECHUZA VILLAS WEST *v.* CALIFORNIA COASTAL COMMISSION ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 60 Cal. App. 4th 218, 70 Cal. Rptr. 2d 399.

No. 98–32. ROUMELIOTIS *v.* POPA. C. A. 1st Cir. Certiorari denied. Reported below: 140 F. 3d 317.

No. 98–33. CHRISTENSON *v.* TURPIN, WARDEN. Sup. Ct. Ga. Certiorari denied. Reported below: 269 Ga. 226, 497 S. E. 2d 216.

No. 98–34. FERNANDES *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 142 F. 3d 428.

No. 98–35. ATWATER *v.* FEDERAL EXPRESS CORP. C. A. 8th Cir. Certiorari denied.

No. 98–36. PRESTON *v.* GEORGIA POWER CO. Ct. App. Ga. Certiorari denied. Reported below: 227 Ga. App. 449, 489 S. E. 2d 573.

No. 98–37. TALANDA *v.* KFC NATIONAL MANAGEMENT CO., DBA KFC, AKA KENTUCKY FRIED CHICKEN. C. A. 7th Cir. Certiorari denied. Reported below: 140 F. 3d 1090.

No. 98–39. KLECAN ET AL. *v.* NEW MEXICO RIGHT TO CHOOSE/NARAL ET AL. Sup. Ct. N. M. Certiorari denied.

No. 98–40. LAFONTAINE *v.* COMMISSIONER OF CORRECTIONAL SERVICES OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 162 F. 3d 1148.

No. 98–41. VERA CRUZ *v.* CITY OF ESCONDIDO. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 659.

No. 98–44. GEE *v.* HUMPHRIES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 141 F. 3d 1189.

No. 98–45. COATS *v.* SMITH, SUPERINTENDENT, EASTERN CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 888.

No. 98–46. BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY CO. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 138 F. 3d 635.

No. 98–47. WOOD *v.* CITY COUNCIL OF MANASSAS ET AL. Cir. Ct. Prince William County, Va. Certiorari denied.

No. 98–48. LUKACS *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 133 F. 3d 916.

No. 98–49. GRINN *v.* VILLAGE OF NORTH PALM BEACH ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 136 F. 3d 141.

No. 98–51. BASCH ET AL. *v.* THE GROUND ROUND, INC. C. A. 1st Cir. Certiorari denied. Reported below: 139 F. 3d 6.

No. 98–52. DUBIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 133 F. 3d 929.

No. 98–53. GOLD *v.* CITY OF MIAMI ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 121 F. 3d 1442.

No. 98–56. HARWICK *v.* ANDERSON, INDIVIDUALLY AND AS SHERIFF OF MCCLAIN COUNTY, OKLAHOMA, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 145 F. 3d 1345.

No. 98–57. D'AURIZIO *v.* BOROUGH OF PALISADES PARK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 151 F. 3d 1024.

No. 98–58. IN RE BRUMLEY. C. A. 8th Cir. Certiorari denied.

No. 98–59. JACKSON *v.* CSX TRANSPORTATION, INC., ET AL. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 712 So. 2d 514.

No. 98–60. BUCK *v.* FRIES & FRIES, INC., ET AL., DBA TASTEMAKER. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 432.

No. 98–61. BROOME *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 134 F. 3d 386.

No. 98–63. FASONE *v.* CLINTON TOWNSHIP ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 433.

No. 98–64. JONES, EXECUTRIX OF THE ESTATE OF JONES, DECEASED *v.* CONSOLIDATED RAIL CORPORATION. C. A. 6th Cir. Certiorari denied. Reported below: 134 F. 3d 371.

No. 98–65. DILLON *v.* BEELER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–66. KENNEDY *v.* SCHOENBERG, FISHER & NEWMAN, LTD., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 140 F. 3d 716.

No. 98–67. BRANDT *v.* MALENG ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1336.

No. 98–70. BUCKLEY *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 98–73. PRICE ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 130 F. 3d 443.

No. 98–75. THOMAS *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 326 Ore. 397, 952 P. 2d 542.

No. 98–78. CITY AND COUNTY OF HONOLULU *v.* SMALL LANDOWNERS OF OAHU ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 124 F. 3d 1150.

No. 98–79. SELLERS, BY HIS PARENTS, SELLERS ET UX., ET AL. *v.* SCHOOL BOARD OF THE CITY OF MANASSAS, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 524.

No. 98–80. JORDAN *v.* SMITHKLINE BEECHAM, INC. C. A. 3d Cir. Certiorari denied. Reported below: 142 F. 3d 428.

No. 98–81. SCHULZ ET AL. *v.* NEW YORK STATE EXECUTIVE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 162 F. 3d 1148.

No. 98–82. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 18 *v.* VENCL. C. A. 6th Cir. Certiorari denied. Reported below: 137 F. 3d 420.

No. 98–87. MARTIN *v.* LAMAR ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 435.

No. 98–89. J. A. CROSON CO. *v.* J. A. GUY, INC., ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 81 Ohio St. 3d 346, 691 N. E. 2d 655.

No. 98–90. BOLT *v.* DAYTONA COMMUNITY HOSPITAL ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 130 F. 3d 442.

No. 98–92. GLASCOE *v.* SHOPPERS FOOD WAREHOUSE MD CORP. Ct. Sp. App. Md. Certiorari denied. Reported below: 119 Md. App. 815.

No. 98–95. KEY BANK NATIONAL ASSN., FKA KEY BANK OF NEW YORK *v.* MILHAM ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 141 F. 3d 420.

No. 98–96. ELLIOTT'S ENTERPRISES, INC. *v.* FLYING J, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1158.

No. 98–99. JADAIR, INC. *v.* ALLIED COLLOIDS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 887.

No. 98–100. FAIRFULL *v.* LEE, MAJOR, COMMANDER, TROOP D, FLORIDA HIGHWAY PATROL, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 130 F. 3d 444.

No. 98–104. SANCHEZ ET UX. *v.* SWYDEN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 139 F. 3d 464.

No. 98–106. SASSOWER *v.* MANGANO, PRESIDING JUSTICE OF THE APPELLATE DIVISION, SECOND DEPARTMENT, SUPREME COURT OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 122 F. 3d 1057.

No. 98–107. SMITH *v.* NATIONAL COLLEGIATE ATHLETIC ASSN. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 139 F. 3d l80.

No. 98–108. DAVIS ET AL. *v.* SHAVERS. Sup. Ct. Ga. Certiorari denied. Reported below: 269 Ga. 75, 495 S. E. 2d 23.

No. 98–109. PARRA ET AL. *v.* CITY OF CHINO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1178.

No. 98–110. KORNFELD *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 10th Cir. Certiorari denied. Reported below: 137 F. 3d 1231.

No. 98–111. MILDEN ET UX. *v.* STATE OF THE ART, INC., ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 98–112. BRYANT ET AL. *v.* GENERAL DYNAMICS CORP. C. A. 5th Cir. Certiorari denied. Reported below: 137 F. 3d 333.

No. 98–113. SENCHENKO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 133 F. 3d 1153.

No. 98–114. A. R. ET AL. *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 427 Mass. 221, 692 N. E. 2d 56.

No. 98–115. MITCHELL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–116. WILKINSON ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 137 F. 3d 214.

No. 98–117. RUPP, TRUSTEE *v.* TAYLOR. C. A. 10th Cir. Certiorari denied. Reported below: 133 F. 3d 1336.

No. 98–118. WISCONSIN RIGHT TO LIFE, INC. *v.* PARADISE, CHAIRMAN, WISCONSIN STATE ELECTIONS BOARD, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 138 F. 3d 1183.

No. 98–119. MAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 141 F. 3d 1169.

No. 98–120. RECKLIESS ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 138 F. 3d 952.

No. 98–121. WALKER ET AL. *v.* FEDERAL HOME LOAN MORTGAGE CORPORATION. C. A. 5th Cir. Certiorari denied. Reported below: 134 F. 3d 369.

No. 98–122. CAMPBELL *v.* HATCHER ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–123. RATCLIFF ET AL. *v.* CAPITAL CITIES/ABC, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 141 F. 3d 1405.

No. 98–124. BURBANK-GLENDALE-PASADENA AIRPORT AUTHORITY *v.* CITY OF BURBANK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 136 F. 3d 1360.

No. 98–125. GOODWIN, INDIVIDUALLY AND AS NEXT FRIEND OF GOODWIN, A MINOR *v.* HALL. Sup. Ct. Wyo. Certiorari denied. Reported below: 957 P. 2d 1299.

No. 98–129. PROCOPIO, A MINOR, BY AND THROUGH HER NEXT FRIEND AND MOTHER, PROCOPIO *v.* UNIVERSITY SCHOOL OF NOVA SOUTHEASTERN UNIVERSITY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 957.

No. 98–132. WESTERN RESOURCES, INC., RECEIVER OF THE ASSETS OF THE VICTOR MUSCAT TESTAMENTARY TRUSTS *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 138 F. 3d 784.

No. 98–133. UNNAMED ATTORNEY *v.* MARYLAND ATTORNEY GRIEVANCE COMMISSION. Ct. App. Md. Certiorari denied. Reported below: 349 Md. 391, 708 A. 2d 667.

No. 98–134. LEVINE *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 2d Cir. Certiorari denied.

No. 98–136. ORENA *v.* UNITED STATES; and AMATO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 98–138. TURQUITT, ADMINISTRATRIX OF THE ESTATE OF TURQUITT *v.* JEFFERSON COUNTY. C. A. 11th Cir. Certiorari denied. Reported below: 137 F. 3d 1285.

No. 98–139. FERNANDEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 119 F. 3d 217.

No. 98–140. FENT ET UX. *v.* OKLAHOMA CAPITOL IMPROVEMENT AUTHORITY. Sup. Ct. Okla. Certiorari denied. Reported below: 958 P. 2d 759.

No. 98–141. DELUCA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 137 F. 3d 24.

No. 98–142. SHONG-CHING TONG *v.* GARCIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 443.

No. 98–143. KAHN *v.* SMITH BARNEY, HARRIS UPHAM & CO., INC. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 245 App. Div. 2d 17, 665 N. Y. S. 2d 74.

No. 98–144. IN RE KLAYMAN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 138 F. 3d 33.

No. 98–146. SNYDER *v.* MORGAN. Sup. Ct. Pa. Certiorari denied.

No. 98–147. TPI INTERNATIONAL AIRWAYS, INC. *v.* WIDNALL, SECRETARY OF THE AIR FORCE. C. A. Fed. Cir. Certiorari denied. Reported below: 135 F. 3d 776.

No. 98–148. AUBIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 F. 3d 137.

No. 98–150. ADAPTIVE POWER SOLUTIONS, LLC *v.* HUGHES MISSILE SYSTEMS CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 947.

No. 98–151. RAGAN *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 135 F. 3d 329.

No. 98–152. HOCKENBARGER *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 24 Kan. App. 2d xxxi, 951 P. 2d 1325.

No. 98–156. MORRIS *v.* COOPER STEVEDORING CO. ET AL. C. A. 5th Cir. Certiorari denied.

No. 98–157. ADSANI *v.* MILLER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 139 F. 3d 67.

No. 98–159. BERG *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 98–160. SKINNER *v.* UNITED STATES RAILROAD RETIREMENT BOARD. C. A. 11th Cir. Certiorari denied. Reported below: 136 F. 3d 1331.

No. 98–164. BRANDT *v.* KING COUNTY DISTRICT COURT, SHORELINE DIVISION. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1336.

No. 98–165. CAIN, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATES OF THOMPSON ET AL., DECEASED *v.* CITY OF TACOMA ET AL. Ct. App. Wash. Certiorari denied. Reported below: 87 Wash. App. 1094.

No. 98–166. MICHAELS *v.* WASHINGTON COUNTY CHILDREN SERVICES BOARD. Ct. App. Ohio, Washington County. Certiorari denied.

No. 98–168. KAHN *v.* GENERAL MOTORS CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 135 F. 3d 1472.

No. 98–169. FROST ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 139 F. 3d 856.

No. 98–170. KEYSTONE COCA-COLA BOTTLING CO. *v.* PENNSYLVANIA UNEMPLOYMENT COMPENSATION BOARD OF REVIEW. Commw. Ct. Pa. Certiorari denied. Reported below: 693 A. 2d 637.

No. 98–171. GUPTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 443.

No. 98–174. SILVERMAN, INDEPENDENT FIDUCIARY OF THE UNITRON GRAPHICS, INC., PROFIT SHARING TRUST *v.* MUTUAL BENEFIT LIFE INSURANCE CO. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 138 F. 3d 98.

No. 98–175. U. S. SUPPLY CO., INC. *v.* APEX PLUMBING SUPPLY, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 142 F. 3d 188.

No. 98–176. FRED E. YOUNG, INC. *v.* BRUSH MOUNTAIN SPORTSMEN'S ASSN. Super. Ct. Pa. Certiorari denied. Reported below: 697 A. 2d 984.

No. 98–177. PRZYBYLSKI *v.* MICHIGAN ET AL. Ct. App. Mich. Certiorari denied.

No. 98–178. NOBELPHARMA AB ET AL. *v.* IMPLANT INNOVATIONS, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 141 F. 3d 1059.

No. 98–180. SHERMAN *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 98–182. RODRIGUEZ *v.* UNITED STATES POSTAL SERVICE. C. A. 2d Cir. Certiorari denied. Reported below: 141 F. 3d 1152.

No. 98–183. LANDGATE, INC. *v.* CALIFORNIA COASTAL COMMISSION. Sup. Ct. Cal. Certiorari denied. Reported below: 17 Cal. 4th 1006, 953 P. 2d 1188.

No. 98–185. RYAN *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 48 Conn. App. 148, 709 A. 2d 21.

No. 98–187. PELTIER *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 708 So. 2d 401.

No. 98–191. DRAGO DAIC INTERESTS, INC. *v.* NAURU PHOSPHATE ROYALTIES (TEXAS), INC. C. A. 5th Cir. Certiorari denied. Reported below: 138 F. 3d 160.

No. 98–195. SMITH ET UX. *v.* HUNTON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 145 F. 3d 1346.

No. 98–196. PARRETTI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 143 F. 3d 508.

No. 98–202. GROOM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1161.

No. 98–205. HOSCH *v.* BANDAG, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 133 F. 3d 915.

No. 98–206. MESSINA *v.* JOHN LABATT, LTD., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 134 F. 3d 374.

No. 98–207. PREMRATANANONT *v.* SOUTH SUBURBAN PARK AND RECREATION DISTRICT. C. A. 10th Cir. Certiorari denied. Reported below: 149 F. 3d 1191.

No. 98–210. SPETH *v.* CAPITOL INDEMNITY CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 139 F. 3d 902.

No. 98–213. UPSHAW *v.* BOND ET AL. C. A. 3d Cir. Certiorari denied.

No. 98–214. KEIRSEY ET AL. *v.* DIAMOND ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 145 F. 3d 1345.

No. 98–216. HENDERSON *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 143 F. 3d 497.

No. 98–218. BINGMAN LABORATORIES, INC. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1335.

No. 98–220. SCHILLER *v.* DEPARTMENT OF STATE. C. A. 4th Cir. Certiorari denied. Reported below: 133 F. 3d 916.

No. 98–221. LUBRIZOL CORP. *v.* EXXON CHEMICAL PATENTS, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 137 F. 3d 1475.

No. 98–226. SHONG-CHING TONG *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–233. PENNSYLVANIA *v.* HUNTER. Super. Ct. Pa. Certiorari denied. Reported below: 704 A. 2d 1118.

No. 98–234. GARCIA-ABREGO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 F. 3d 142.

No. 98–236. GRABER *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied.

No. 98–240. POLYAK *v.* UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT. C. A. 6th Cir. Certiorari denied.

No. 98–246. CRUZ *v.* COHEN, SECRETARY OF DEFENSE. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 442.

No. 98–247. DAVIDSON *v.* COHEN, SECRETARY OF DEFENSE. C. A. 4th Cir. Certiorari denied. Reported below: 133 F. 3d 914.

No. 98–248. BENKO *v.* JUDGES' RETIREMENT SYSTEM ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1329.

No. 98–250. GRANGER *v.* OFFICE OF ATTORNEY ETHICS OF NEW JERSEY ET AL. Sup. Ct. N. J. Certiorari denied.

No. 98–252. HENGLE ET AL. *v.* WARD. Ct. App. Ohio, Summit County. Certiorari denied. Reported below: 124 Ohio App. 3d 396, 706 N. E. 2d 392.

No. 98–257. MARCANTI *v.* ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION. Sup. Ct. Ill. Certiorari denied.

No. 98–258. FOTI *v.* ARLINGTON COUNTY BOARD OF SUPERVISORS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 889.

No. 98–264. STRIBLING *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 142 F. 3d 440.

No. 98–268. TOM ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 134 F. 3d 364.

No. 98–270. RUSKIN, AKA RUFKIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 F. 3d 360.

No. 98–277. ARMSTRONG *v.* SCHOOL DISTRICT OF PHILADELPHIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 98–283. NEVIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 98–288. WEBSTER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 151 F. 3d 1034.

No. 98–299. BASSO *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 903.

No. 98–300. HOLGATE ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 905.

No. 98–301. PENNIX *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1327.

No. 98–304. ROBERTSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 145 F. 3d 1346.

No. 98–305. GREY *v.* CARRIER/UNITED TECHNOLOGIES CORP. C. A. 2d Cir. Certiorari denied.

No. 98–306. DOWTY *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 48 M. J. 102.

No. 98–328. ALLISON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 132 F. 3d 38.

No. 98–332. LENIUS *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 293 Ill. App. 3d 519, 688 N. E. 2d 705.

No. 98–342. FOSTER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1071.

No. 98–344. GROSSI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 143 F. 3d 348.

No. 98–349. MANGLITZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1161.

No. 98–365. DREYER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 141 F. 3d 784.

No. 98–373. YICK MAN MUI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 159 F. 3d 1349.

No. 98–379. THRASHER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 294 Ill. App. 3d 1104, 721 N. E. 2d 853.

No. 98–393. WRIGHT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 140 F. 3d 596.

No. 98–395. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1173.

No. 98–398. DEFEDE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 98–5002. RAINEY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–5003. PHILLIPS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 705 So. 2d 1320.

No. 98–5004. DE LA BECKWITH *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 707 So. 2d 547.

No. 98–5005. PENOYER *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–5006. ROJAS *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 152 F. 3d 940.

No. 98–5007. SWANSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 896.

No. 98–5008. PHILLIPS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 98–5009. PHILLIPS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 98–5010. ABDUL *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 244 App. Div. 2d 237, 665 N. Y. S. 2d 406.

No. 98–5011. AMER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 162 F. 3d 1149.

No. 98–5012. WITT *v.* ROADWAY EXPRESS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 136 F. 3d 1424.

No. 98–5013. MURILLO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 437.

No. 98–5014. LOVE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 139 F. 3d 902.

No. 98–5015. JENNINGS *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 98–5016. MORLEY *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 707 So. 2d 1126.

No. 98–5017. JOHNSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 134 F. 3d 369.

No. 98–5018. KRUEGER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 141 F. 3d 1186.

No. 98–5019. SERRANO *v.* LINDSEY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–5020. O'BRYANT *v.* MISSISSIPPI. C. A. 5th Cir. Certiorari denied.

No. 98–5022. POWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 132 F. 3d 45.

No. 98–5023. ROBERTSON *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied. Reported below: 140 F. 3d 707.

No. 98–5024. SCHUBERT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 909.

No. 98–5025. PIGGOTT *v.* UNITED STATES; and

No. 98–5171. MOYE ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: No. 98–5025, 141 F. 3d 394; No. 98–5171, 131 F. 3d 132 and 141 F. 3d 394.

No. 98–5026. ROBERTSON *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 712 So. 2d 8.

No. 98–5027. BRUCE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 437.

No. 98–5028. BUTLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 137 F. 3d 1371.

No. 98–5029. CORTEZ *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 181 Ill. 2d 249, 692 N. E. 2d 1129.

No. 98–5030. COOLMAN *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied.

No. 98–5031. CRAIGHEAD *v.* UNITED STATES; and
No. 98–5137. CRAIGHEAD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 893.

No. 98–5032. ATKINS *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 887.

No. 98–5033. OWSLEY *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 959 S. W. 2d 789.

No. 98–5034. JACKSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–5035. LIVINGSTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 131 F. 3d 155.

No. 98–5036. JONES *v.* EASLEY, ATTORNEY GENERAL OF NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 890.

No. 98–5037. WILLIAMS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 181 Ill. 2d 297, 692 N. E. 2d 1109.

No. 98–5038. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 563.

No. 98–5039. ZELCH ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 909.

No. 98–5040. WALKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 447.

No. 98–5041. BRISON *v.* SCOTT, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 135 F. 3d 144.

No. 98–5043. TREVINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 612.

No. 98–5044. BILES *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–5045. CLAYTON *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 98–5046. BIRDS *v.* NUGENT ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–5047. PUGH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 438.

No. 98–5048. ROMINES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 895.

No. 98–5049. OWENS *v.* UNITED STATES; and
No. 98–5377. JOHNSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 134 F. 3d 383.

No. 98–5050. SERRANO *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–5051. SMITH *v.* UNITED FEDERATION OF TEACHERS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 162 F. 3d 1148.

No. 98–5052. RIDDICK *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 98–5054. ROBERTS *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 98–5056. JOHNSON, AKA IDRISSI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 134 F. 3d 365.

No. 98–5057. JOHNSON *v.* FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 140 F. 3d 1042.

No. 98–5058. AVERY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1160.

No. 98–5059. HARDING *v.* CALIFORNIA. App. Dept., Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 98–5060. HERNANDEZ-PAUTURI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–5061. GONZALES *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 152 F. 3d 943.

No. 98–5062. GUMM *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 98–5063. HAYES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 141 F. 3d 1188.

No. 98–5064. DOUGLAS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 951 P. 2d 651.

No. 98–5066. HIGGINS *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 98–5067. HOLMES, AKA RICHARDS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–5068. GANDY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 137 F. 3d 1349.

No. 98–5069. CHISHOLM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 F. 3d 1042.

No. 98–5071. KENNEDY *v.* DISTRICT COURT OF TEXAS, ANDERSON COUNTY. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 98–5072. WHEELER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 98–5073. LEVY *v.* CITY OF ALEXANDRIA, VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 890.

No. 98–5075. COLE *v.* OBREGON ET AL. C. A. 5th Cir. Certiorari denied.

No. 98–5076. BARNETT *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 159 F. 3d 637.

No. 98–5077. LOWE *v.* MONARD. Ct. Civ. App. Okla. Certiorari denied.

No. 98–5078. KELLEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 135 F. 3d 1178.

No. 98–5079. MAHLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 141 F. 3d 811.

No. 98–5080. NWACHUKWU *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 137 F. 3d 1350.

No. 98–5082. BRUMMITT *v.* CHANDLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–5083. WILHELM *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 98–5084. OBERLE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 136 F. 3d 1414.

No. 98–5085. TRENT *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 688 N. E. 2d 426.

No. 98–5086. PACK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 124 F. 3d 221.

No. 98–5087. PIHLBLAD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 437.

No. 98–5088. SMITH *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 292 Ill. App. 3d 1119, 717 N. E. 2d 859.

No. 98–5089. JOYNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 135 F. 3d 771.

No. 98–5090. JONES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 131 F. 3d 149.

No. 98–5091. JOHNSON *v.* OHIO ET AL. C. A. 6th Cir. Certiorari denied.

No. 98–5092. KHALI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 132 F. 3d 41.

No. 98–5093. MCCONICO *v.* BOOKER ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–5095. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 136 F. 3d 141.

No. 98–5096. SMITH *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 137 F. 3d 808.

No. 98–5097. SLAUGHTER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 950 P. 2d 839.

No. 98–5098. RAMIREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 141 F. 3d 1189.

No. 98–5099. SONNER *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1328, 930 P. 2d 707 and 955 P. 2d 673.

No. 98–5100. LEWINE *v.* BUTTERWORTH, ATTORNEY GENERAL OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 98–5101. MOORE *v.* JACKSON ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–5102. MEDRANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 98–5103. KEARNEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 98–5104. MEJIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 141 F. 3d 1188.

No. 98–5106. HARRIS *v.* UNITED STATES; and
No. 98–5450. ATKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1335.

No. 98–5107. FARBER *v.* FARBER. Ct. Sp. App. Md. Certiorari denied. Reported below: 118 Md. App. 713.

No. 98–5108. ERWIN *v.* KEY WEST CITIZEN ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 717 So. 2d 530.

No. 98–5110. GIPPERICH *v.* PEARSON. C. A. 7th Cir. Certiorari denied.

No. 98–5111. FICI *v.* LANSING, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 141 F. 3d 1153.

No. 98–5112. SPRINGFIELD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 141 F. 3d 1188.

No. 98–5115. PENSE *v.* SHANKS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 139 F. 3d 912.

No. 98–5118. ESPINAL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1160.

No. 98–5119. HUBERT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 912.

No. 98–5120. HATFIELD *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 128 N. C. App. 294, 495 S. E. 2d 163.

No. 98–5121. ENJADY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 134 F. 3d 1427.

No. 98–5122. HOREK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 137 F. 3d 1226.

No. 98–5123. SHERRON *v.* MIDDLETOWN RANCHERIA OF POMO INDIANS, DBA TWIN PINE CASINO. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 60 Cal. App. 4th 1340, 71 Cal. Rptr. 2d 105.

No. 98–5124. SAFOUANE ET UX. *v.* WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES. Ct. App. Wash. Certiorari denied. Reported below: 87 Wash. App. 1005.

No. 98–5125. SCOTT *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 98–5126. SMITH *v.* ROGERS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–5127. REEVES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 141 F. 3d 1188.

No. 98–5128. STEPHENS *v.* FREEDMAN ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–5129. KIERSTEAD *v.* SUTER, CLERK, SUPREME COURT OF THE UNITED STATES, ET AL. (two judgments). C. A. 3d Cir. Certiorari denied.

No. 98–5133. MEASE *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 98–5135. ASHLEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 141 F. 3d 63.

No. 98–5136. BRUMMITT *v.* CHANDLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–5138. CANTU *v.* UNITED STATES; and
No. 98–5277. LANDAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 137 F. 3d 252.

No. 98–5140. AHMED *v.* REESE HOSPITAL AND MEDICAL CENTER. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 98–5141. BOOTH, AKA BOOTH-EL *v.* MARYLAND. Cir. Ct. Baltimore City, Md. Certiorari denied.

No. 98–5142. CURD *v.* ODOM, SHERIFF, WHITE COUNTY, ARKANSAS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 141 F. 3d 839.

No. 98–5143. CHRISPEN *v.* TAYLOR, JUDGE, CIRCUIT COURT OF FLORIDA, BROWARD COUNTY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 131 F. 3d 155.

No. 98–5145. BROWN *v.* NORTH CAROLINA. Super. Ct. N. C., Martin County. Certiorari denied.

No. 98–5147. WEISWASSER *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–5149. ZIEBARTH *v.* AGRIBANK, FCB. C. A. 8th Cir. Certiorari denied. Reported below: 133 F. 3d 924.

No. 98–5150. PESEK *v.* WITSCHEBER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 132 F. 3d 36.

No. 98–5153. SHAUGHNESSY *v.* MCKEEVER ET AL. Super. Ct. N. H., Belknap County. Certiorari denied.

No. 98–5154. STEVENS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 141 F. 3d 1188.

No. 98–5155. TUMLIN *v.* GOODYEAR TIRE & RUBBER CO. ET AL. Sup. Ct. Va. Certiorari denied.

No. 98–5156. WILLIAMS *v.* WASHINGTON, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 289 Ill. App. 3d 1158, 713 N. E. 2d 841.

No. 98–5157. WILLIS *v.* LINAHAN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 98–5158. PATTERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 437.

No. 98–5159. MCKINNON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1327.

No. 98–5160. NIGEL N., A JUVENILE *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 44 Mass. App. 1114, 691 N. E. 2d 250.

No. 98–5161. WATSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 98–5162. WALKER *v.* KLINGER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 141 F. 3d 1187.

No. 98–5163. THOMPSON *v.* SPRIGGS ET AL. C. A. 5th Cir. Certiorari denied.

No. 98–5164. GOMEZ-GUTIERREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 140 F. 3d 1287.

No. 98–5165. HOWARD *v.* HOUSE PARTS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 130 F. 3d 444.

No. 98–5166. GILLIES *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1176.

No. 98–5168. GILBERT *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 951 P. 2d 98.

No. 98–5169. PADILLA *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 98–5170. LOGAN *v.* WHITE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 162 F. 3d 1151.

No. 98–5172. MOLINA-MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 F. 3d 1164.

No. 98–5173. JOHNSON *v.* SUPREME COURT OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 98–5174. TALBERT *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 98–5175. WHITETHORNE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 141 F. 3d 1186.

No. 98–5176. URIAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 146 F. 3d 867.

No. 98–5177. WILLIAMSON *v.* JEANNETTE CITY POLICE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 149 F. 3d 1166.

No. 98–5178. CAPPS *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 98–5179. BRAND *v.* THOMPSON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 98–5180. CORDOVA *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 98–5181. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 151 F. 3d 1031.

No. 98–5182. BOLDUC *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 134 F. 3d 374.

No. 98–5183. SHORTER *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–5184. RANGEN *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 9th Cir. Certiorari denied.

No. 98–5185. PORTNOY *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 152 F. 3d 942.

No. 98–5186. SHINGLER *v.* UNITED STATES (two judgments). C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1172 (first judgment); 145 F. 3d 1327 (second judgment).

No. 98–5187. PETERS *v.* LEMASTER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 139 F. 3d 912.

No. 98–5188. LATTAKER *v.* LATTAKER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 133 F. 3d 910.

No. 98–5189. LEWIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 142 F. 3d 1278.

No. 98–5190. KELLY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–5192. KIMBROUGH *v.* SUPERIOR COURT OF CALIFORNIA, KERN COUNTY. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 98–5193. MOORE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–5194. KIMBERLIN *v.* DEPARTMENT OF JUSTICE. C. A. D. C. Cir. Certiorari denied. Reported below: 139 F. 3d 944.

No. 98–5195. MILLER *v.* MARR, SUPERINTENDENT, ARKANSAS VALLEY CORRECTIONAL FACILITY, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 141 F. 3d 976.

No. 98–5196. KEYS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 133 F. 3d 1282.

No. 98–5198. WARNER *v.* KEYSTONE JUNIOR COLLEGE ET AL. Commw. Ct. Pa. Certiorari denied.

No. 98–5199. WILSON *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 114 Nev. 1761, 988 P. 2d 880.

No. 98–5200. CAPERS *v.* TCI OF NORTHERN NEW JERSEY, INC. C. A. 3d Cir. Certiorari denied. Reported below: 142 F. 3d 427.

No. 98–5204. BOYD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 131 F. 3d 951.

No. 98–5205. CERVANTES DE GORTARI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 98–5206. DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 1410.

No. 98–5207. GARAY-BURGOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 134 F. 3d 380.

No. 98–5208. HENDERSON *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 98–5210. GORE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 706 So. 2d 1328.

No. 98–5211. DABNEY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 98–5213. HOLLAND *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 956.

No. 98–5214. HART/CROSS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1331.

No. 98–5217. WELBECK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 145 F. 3d 493.

No. 98–5218. WATKINS *v.* CHALAT & CO., P. C., ET AL. C. A. 10th Cir. Certiorari denied.

No. 98–5219. VARGAS *v.* KEOWN ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–5220. NELSON *v.* PRUNTY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 129 F. 3d 126.

No. 98–5221. STONE *v.* HAWAII. Sup. Ct. Haw. Certiorari denied. Reported below: 86 Haw. 20, 946 P. 2d 974.

No. 98–5222. SCOTT *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 98–5223. JOHNSON *v.* CORLEY ET AL. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 98–5224. LAWHORN *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied.

No. 98–5225. MICHAU *v.* MILLER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 134 F. 3d 363.

No. 98–5226. CRESSEY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 141 F. 3d 1150.

No. 98–5227. CUNNINGHAM *v.* KENT ET AL. C. A. 5th Cir. Certiorari denied.

No. 98–5228. MAYES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 137 F. 3d 1350.

No. 98–5229. MANLEY *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 709 A. 2d 643.

No. 98–5230. ANDERSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 98–5231. COTTON *v.* FORDICE, GOVERNOR OF MISSISSIPPI, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 136 F. 3d 1329.

No. 98–5232. BYRD, AKA LAESSIG *v.* ROBISON ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 149 F. 3d 1163.

No. 98–5233. BAGLEY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 137 F. 3d 1350.

No. 98–5234. BOLLING *v.* RUSSELL COUNTY DEPARTMENT OF SOCIAL SERVICES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 135 F. 3d 769.

No. 98–5235. DAVIS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 127 F. 3d 68.

No. 98–5236. HUGHES *v.* CORNELL ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 133 F. 3d 922.

No. 98–5237. FRANTZ *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 707 So. 2d 1124.

No. 98–5238. DUKES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 139 F. 3d 469.

No. 98–5239. GLOSTER *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–5240. GORDON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 144 F. 3d 55.

No. 98–5241. FOX *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 98–5242. HENSLER *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied.

No. 98–5243. WILSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 134 F. 3d 855.

No. 98–5244. WILSON *v.* STEPHENS, ASSISTANT WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 141 F. 3d 1163.

No. 98–5245. ATMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1333.

No. 98–5246. BUTLER *v.* GAMMICK, DISTRICT ATTORNEY, WASHOE COUNTY, NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 114 Nev. 1687, 988 P. 2d 806.

No. 98–5247. JEFFERY *v.* EVERETT. C. A. 5th Cir. Certiorari denied.

No. 98–5249. WRIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 133 F. 3d 1412.

No. 98–5250. BOZELLA *v.* GREINER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 98–5251. ASHWORTH *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–5252. COUSINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 144 F. 3d 56.

No. 98–5253. BAILEY *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 159 F. 3d 637.

No. 98–5254. CUNNINGHAM *v.* BALDWIN, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 98–5255. O'DONNELL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 920.

No. 98–5256. ROTHEL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–5257. ROLLER *v.* SIKES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–5259. PEAK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 139 F. 3d 898.

No. 98–5260. SMITH *v.* WORTHINGTON ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–5261. IWEGBU *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–5262. NIELSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1161.

No. 98–5263. IRICK *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 973 S. W. 2d 643.

No. 98–5264. JACOB *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 253 Neb. 950, 574 N. W. 2d 117.

No. 98–5265. ADAMS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 140 F. 3d 895.

No. 98–5266. AVILLA *v.* HAWAII DEPARTMENT OF HUMAN SERVICES. Sup. Ct. Haw. Certiorari denied. Reported below: 87 Haw. 472, 959 P. 2d 842.

No. 98–5267. AYERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 138 F. 3d 360.

No. 98–5268. WALKER *v.* UNITED STATES; and
No. 98–5325. DIAZ, AKA ROGERS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 142 F. 3d 103.

No. 98–5270. CORTES-RAMIREZ ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 142 F. 3d 1282.

No. 98–5271. BULLIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 893.

No. 98–5272. PIERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 139 F. 3d 501.

No. 98–5273. PRADE ET AL. *v.* JACKSON AND KELLY. C. A. 4th Cir. Certiorari denied. Reported below: 135 F. 3d 770.

No. 98–5274. REED *v.* WILKINSON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 141 F. 3d 1165.

No. 98–5276. AILSWORTH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 138 F. 3d 843.

No. 98–5278. JONES *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 98–5279. KLAIMON *v.* CIGNA COS. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 138 F. 3d 952.

No. 98–5280. LEWIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1334.

No. 98–5281. ALLEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 142 F. 3d 1279.

No. 98–5283. MCKOY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 895.

No. 98–5285. MCLEAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 1398.

No. 98–5287. MORROW *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 968 S. W. 2d 100.

No. 98–5288. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 133 F. 3d 918.

No. 98–5289. NICHOLS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 98–5290. BARLEY-COOKE *v.* EDISON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 431.

No. 98–5291. MANN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 145 F. 3d 1347.

No. 98–5292. KIRKLAND, AKA KEMP, AKA WEBB *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1160.

No. 98–5293. ARONOVSKY *v.* NGUYEN ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 98–5294. YAZZIE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 909.

No. 98–5295. YOUNG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 896.

No. 98–5296. VELASQUEZ *v.* UNITED STATES; and
No. 98–5332. VELASQUEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 141 F. 3d 1280.

No. 98–5298. VALMOND *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 711 So. 2d 553.

No. 98–5299. JOHNSON *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 890.

No. 98–5300. BYRD *v.* CITY OF ERIE POLICE DEPARTMENT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 142 F. 3d 427.

No. 98–5301. BENIGNI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 141 F. 3d 1167.

No. 98–5303. REYNOLDS *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 98–5304. MARTINEZ *v.* UNITED STATES; and
No. 98–5799. CHAVEZ VILLEGAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 142 F. 3d 242.

No. 98–5305. LINWOOD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 142 F. 3d 418.

No. 98–5306. JONES *v.* ANDERSON, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL. C. A. 5th Cir. Certiorari denied.

No. 98–5307. LEBLANC *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–5308. MATHIS *v.* JOHN MORDEN BUICK, INC. C. A. 7th Cir. Certiorari denied. Reported below: 136 F. 3d 1153.

No. 98–5309. GRIGONIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1328.

No. 98–5310. HARDIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 139 F. 3d 813.

No. 98–5311. DIAZ *v.* ANDERSON, INTERIM DIRECTOR, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 443.

No. 98–5312. GRANT *v.* TOSCO REFINING CO. C. A. 9th Cir. Certiorari denied. Reported below: 129 F. 3d 125.

No. 98–5314. HILL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 305.

No. 98–5315. DURHAM *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 159 F. 3d 1348.

No. 98–5317. HOMMRICH *v.* SCHNEIDER. Ct. App. Wis. Certiorari denied. Reported below: 217 Wis. 2d 290, 577 N. W. 2d 387.

No. 98–5319. OZMEN *v.* NEW MEXICO. Dist. Ct. N. M., Bernalillo County. Certiorari denied.

No. 98–5320. SPIVEY *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 81 Ohio St. 3d 405, 692 N. E. 2d 151.

No. 98–5321. MOHD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1181.

No. 98–5322. JONES *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 98–5323. MITCHELL *v.* ELZIE ET AL. C. A. D. C. Cir. Certiorari denied.

No. 98–5324. NIEVES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 122 F. 3d 1077.

No. 98–5326. HEFLIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 132 F. 3d 41.

No. 98–5327. FARAHKHAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 135 F. 3d 140.

No. 98–5328. TWIDDY *v.* CITY OF HEALDSBURG, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 104 F. 3d 366.

No. 98–5329. FRIDDELL *v.* UNITED STATES; and
No. 98–5463. CLARK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 139 F. 3d 485.

No. 98–5330. CARTER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 98–5334. LYLE *v.* BURKE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–5335. MORALES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1334.

No. 98–5336. LUSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 159 F. 3d 1347.

No. 98–5337. VALERIO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 134 F. 3d 361.

No. 98–5338. TAFTSIOU *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 144 F. 3d 287.

No. 98–5339. TILLMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 957.

No. 98–5340. COLEMAN ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 148 F. 3d 897.

No. 98–5342. BROWN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 134 F. 3d 379.

No. 98–5343. ASHIEGBU *v.* DAMSCHRODER. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1329.

No. 98–5344. BARBOUR *v.* MICHIGAN DEPARTMENT OF SOCIAL SERVICES. Ct. App. Mich. Certiorari denied.

No. 98–5345. CANINO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 151 F. 3d 1027.

No. 98–5346. COOKE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1160.

No. 98–5347. VALDERRAMA-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 447.

No. 98–5348. WILLIAMS *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 98–5349. BILLUPS *v.* TRAXLER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1329.

No. 98–5351. BYRD *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 137 F. 3d 1351.

No. 98–5352. BARKLEY *v.* PITCHER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–5353. DROTAR *v.* BOARD OF COMMISSIONERS ON JUDICIAL STANDARDS ET AL. Sup. Ct. S. C. Certiorari denied.

No. 98–5354. GUTIERREZ-HERMOSILLO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 142 F. 3d 1225.

No. 98–5355. DOUGLAS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 704 A. 2d 1126.

No. 98–5357. HOLLINS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 135 F. 3d 143.

No. 98–5358. DOYLE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–5359. DEAN *v.* CAMPBELL, COMMISSIONER, TENNESSEE DEPARTMENT OF CORRECTION, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1330.

No. 98–5360. HUFFMAN *v.* FLIPPO ET AL. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 98–5361. GREEN *v.* STOVAL. C. A. 6th Cir. Certiorari denied.

No. 98–5362. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 98–5363. SEHORN *v.* UNITED STATES;
No. 98–5381. LOTT *v.* UNITED STATES; and
No. 98–5875. NELSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 137 F. 3d 1094.

No. 98–5364. ROWE *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 98–5365. PARIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1334.

No. 98–5366. SERRANO *v.* LINDSEY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–5367. ROBINSON *v.* MAENTANIS, DEPUTY SHERIFF, COOK COUNTY, ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 139 F. 3d 902.

No. 98–5368. ROSSER *v.* NEWLAND, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 98–5369. SINGLETON *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 98–5370. SANCHEZ *v.* STIENEKE, DIRECTOR, NORTH CAROLINA DIVISION OF PRISONS. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1159.

No. 98–5371. ROBERTSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1161.

No. 98–5373. COOMBS *v.* SOBINA, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. (two judgments). C. A. 3d Cir. Certiorari denied.

No. 98–5375. VALDES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 98–5376. MARTIN *v.* OHIO. Ct. App. Ohio, Mahoning County. Certiorari denied.

No. 98–5378. MOORING ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 137 F. 3d 595.

No. 98–5379. MAXWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 131 F. 3d 137.

No. 98–5382. MINCEY *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 98–5383. BAYRAMOGLU *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–5384. CLEMMONS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 432.

No. 98–5385. RIEARA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 107 F. 3d 23.

No. 98–5386. SCOTT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–5387. SMITH *v.* SAPP, COMMISSIONER, KENTUCKY DEPARTMENT OF CORRECTIONS, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 156 F. 3d 1232.

No. 98–5388. PROSSER *v.* WEEKS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 141 F. 3d 1170.

No. 98–5389. GREEN *v.* TASKER ET AL. C. A. 2d Cir. Certiorari denied.

No. 98–5390. HALL *v.* IEYOUB, ATTORNEY GENERAL OF LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied.

No. 98–5391. GLOSTER *v.* KEANE, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 98–5392. GORDON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 142 F. 3d 429.

No. 98–5393. DEHLER *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–5394. HARVEY *v.* NEWLAND, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 443.

No. 98–5396. GANTHER *v.* WOODS, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 139 F. 3d 898.

No. 98–5397. DAY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 704 A. 2d 690.

No. 98–5398. HARRELL *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 709 So. 2d 1364.

No. 98–5399. DANIELS *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–5400. O'CONNELL *v.* BACA, JUDGE, DISTRICT COURT OF NEW MEXICO, BERNALILLO COUNTY, ET AL. Sup. Ct. N. M. Certiorari denied.

No. 98–5401. RICHARDS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied.

No. 98–5402. SAUCY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1182.

No. 98–5403. PENA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 143 F. 3d 1363.

No. 98–5404. MACIEL *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Certiorari denied.

No. 98–5407. HYMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1161.

No. 98–5408. MALEPEAI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 446.

No. 98–5409. LOPEZ *v.* HADA. C. A. 9th Cir. Certiorari denied.

No. 98–5411. GERLAUGH *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 129 F. 3d 1027.

No. 98–5413. TWEED *v.* WILKINSON, DIRECTOR, OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1333.

No. 98–5414. JACKSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1181.

No. 98–5415. MONTGOMERY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 129 F. 3d 120.

No. 98–5416. BROWN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 134 F. 3d 380.

No. 98–5417. SAELEE *v.* WHITE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 98–5418. TIEN SIN JIANG, AKA ZHEN ZING CHEN *v.* UNITED STATES;

No. 98–5573. CHING LIN *v.* UNITED STATES; and

No. 98–5613. LIN XUE FEI ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: Nos. 98–5418 and 98–5613, 139 F. 3d 1303 and 141 F. 3d 1180; No. 98–5573, 141 F. 3d 1180.

No. 98–5419. MOLIN *v.* THE TRENTONIAN ET AL. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 297 N. J. Super. 153, 687 A. 2d 1022.

No. 98–5421. CHAMPION *v.* BOARD OF PRISON TERMS ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–5422. FOREMANYE *v.* UNIVERSITY OF PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 151 F. 3d 1025.

No. 98–5423. HUTCHISON *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 98–5425. HAMILTON *v.* SOUTH CAROLINA. Ct. App. S. C. Certiorari denied. Reported below: 327 S. C. 440, 486 S. E. 2d 512.

No. 98–5426. GOLDSMITH *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 293 Ill. App. 3d 1128, 718 N. E. 2d 1086.

No. 98–5427. QUINTERO GOMEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 447.

No. 98–5428. HEXAMER *v.* FORENESS ET AL. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 971 S. W. 2d 525.

No. 98–5429. GENEREUX *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 446.

No. 98–5430. GILBERT *v.* WRIGHT, JUDGE, LETCHER CIRCUIT COURT, ET AL. Sup. Ct. Ky. Certiorari denied.

No. 98–5432. SMITH *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 98–5434. PATTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 149 F. 3d 1189.

No. 98–5435. SLAGEL *v.* SHELL OIL CO. ET AL. C. A. 7th Cir. Certiorari denied.

No. 98–5436. RAY *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 330 S. C. 184, 498 S. E. 2d 640.

No. 98–5437. RICHARDS *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 98–5438. MAZURAK *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 98–5440. JONES *v.* PRUNTY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–5441. BUTLER *v.* RENWICK ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–5442. BARTELHO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 129 F. 3d 663.

No. 98–5443. ERVIN *v.* FISHERMAN'S RESTAURANT. C. A. 9th Cir. Certiorari denied.

No. 98–5446. GREEN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–5447. ALVAREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 142 F. 3d 1243.

No. 98–5448. CRUZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 144 F. 3d 54.

No. 98–5449. BUCHSBAUM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1341.

No. 98–5451. SANFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 144 F. 3d 50.

No. 98–5452. OLIVERAS-MEDRANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 447.

No. 98–5453. SMITH *v.* MERKLE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 98–5454. VIVEROS-CASTRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 447.

No. 98–5455. TELLERIA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 162 F. 3d 1153.

No. 98–5456. WORTHINGTON *v.* DAY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 98–5457. CUSTODIO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 141 F. 3d 965.

No. 98–5458. EDWARDS *v.* TOBIN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 889.

No. 98–5459. CHHORN *v.* WEST, SECRETARY OF VETERANS AFFAIRS. C. A. 2d Cir. Certiorari denied. Reported below: 129 F. 3d 113.

No. 98–5460. BOUDREAU *v.* JARVIS, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 127 F. 3d 1099.

No. 98–5461. CURTIS *v.* PARKER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1330.

No. 98–5462. CLARKS *v.* CAMBRA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 98–5464. AUSTIN *v.* PINE, ATTORNEY GENERAL OF RHODE ISLAND. C. A. 1st Cir. Certiorari denied.

No. 98–5465. BATOR *v.* BREEN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 903.

No. 98–5466. CAPPS *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 98–5467. BROWN *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 714 So. 2d 1018.

No. 98–5469. ABNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 136 F. 3d 1330.

No. 98–5471. CRAIG *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied.

No. 98–5472. CANADY *v.* BAKER, SUPERINTENDENT, MANSFIELD CORRECTIONAL INSTITUTION. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 432.

No. 98–5473. CONNELLY *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 46 Conn. App. 486, 700 A. 2d 694.

No. 98–5474. RUIZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 921.

No. 98–5476. RAMIREZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 59 Cal. App. 4th 1548, 70 Cal. Rptr. 2d 341.

No. 98–5477. SMITH *v.* UNITED STATES; and
No. 98–5478. SUMLER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 136 F. 3d 188.

No. 98–5482. STEELEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1335.

No. 98–5483. PATTERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 140 F. 3d 767.

No. 98–5488. HYNES *v.* SQUILLACE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 143 F. 3d 653.

No. 98–5489. FELIPE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 148 F. 3d 101.

No. 98–5490. HERNANDEZ *v.* UNITED STATES; and
No. 98–5800. HERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 141 F. 3d 1042.

No. 98–5491. GREEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 144 F. 3d 54.

No. 98–5492. HARMS *v.* INTERNAL REVENUE SERVICE. C. A. 8th Cir. Certiorari denied. Reported below: 149 F. 3d 1187.

No. 98–5493. BREWSTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 137 F. 3d 853.

No. 98–5494. DAVIS *v.* COLONIAL SAVINGS. Ct. App. Ariz. Certiorari denied.

No. 98–5497. NORRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 144 F. 3d 50.

No. 98–5498. KELLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 140 F. 3d 596.

No. 98–5499. KEMBITSKEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 446.

No. 98–5500. MADSEN *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 137 F. 3d 602.

No. 98–5501. MAUWEE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1342.

No. 98–5502. MILLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1334.

No. 98–5506. IBRAHIM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 98–5507. GIBSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 146 F. 3d 868.

No. 98–5509. SAIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 141 F. 3d 463.

No. 98–5511. PERCOPO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 144 F. 3d 51.

No. 98–5512. JERMOSEN *v.* CAHILL ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 159 F. 3d 1347.

No. 98–5513. MOORE *v.* PAGE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 98–5515. JOHNSON *v.* ARVONIO, ADMINISTRATOR, EAST JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 98–5517. SHULMAN *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 445.

No. 98–5519. OUTLAW *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. D. C. Cir. Certiorari denied.

No. 98–5524. WASHINGTON, AKA ROBINSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 142 F. 3d 441.

No. 98–5525. MARES *v.* PAGE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 98–5526. LAWSON *v.* UNITED STATES; and
No. 98–5907. ALVAREZ, AKA HILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1171.

No. 98–5527. RANSON *v.* FLORIDA ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 720 So. 2d 525.

No. 98–5528. OTIS *v.* SCHOTTEN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–5529. PRINCE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 98–5531. MCBROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1176.

No. 98–5534. KOEHLER *v.* UNITED STATES;
No. 98–5559. SLATER *v.* UNITED STATES; and
No. 98–5560. O'NEILL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 137 F. 3d 237.

No. 98–5535. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 146 F. 3d 219.

No. 98–5537. HOPPER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 133 F. 3d 918.

No. 98–5538. ROBLES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 139 F. 3d 898.

No. 98–5539. RAMOS-REY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–5540. SCOTT *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–5541. RODRIGUEZ-RODRIGUEZ *v.* UNITED STATES; and No. 98–5561. GARCIA-BELTRAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 149 F. 3d 1.

No. 98–5543. NIEVES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 143 F. 3d 728.

No. 98–5544. MURKS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1334.

No. 98–5545. KIPKIRWA *v.* SANTA CLARA COUNTY PROBATION DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–5549. ABDUL-MATIYN *v.* NEW YORK. Sup. Ct. N. Y., Bronx County. Certiorari denied.

No. 98–5551. COOK *v.* MILLS, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 98–5552. D'GINTO *v.* GILLIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 98–5553. FLUITT *v.* STINSON, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 159 F. 3d 1346.

No. 98–5555. HAYNES *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1331.

No. 98–5556. GAULT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 141 F. 3d 1399.

No. 98–5558. BENSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 98–5563. WOODENLEGS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 931.

No. 98–5564. Reyes-Gutierrez *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 145 F. 3d 1347.

No. 98–5565. Shockey *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 141 F. 3d 1165.

No. 98–5566. Rumph *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1334.

No. 98–5567. Spencer *v.* Miller. C. A. 7th Cir. Certiorari denied. Reported below: 151 F. 3d 1033.

No. 98–5569. Saunders *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 98–5570. Souverain *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1327.

No. 98–5574. Murray *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 144 F. 3d 270.

No. 98–5575. Mouradian *v.* Detroit News et al. Ct. App. Mich. Certiorari denied.

No. 98–5576. Ramon Martinez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 143 F. 3d 1266.

No. 98–5578. Kazandjian *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 133 F. 3d 930.

No. 98–5580. Loftin *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 144 F. 3d 51.

No. 98–5581. Watkins *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 151 F. 3d 1034.

No. 98–5583. Sicairo Beltran *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–5584. Bautista *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 145 F. 3d 1140.

No. 98–5585. Barroga *v.* Gillan et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–5586. Kennedy, aka Kornegay *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 133 F. 3d 53.

No. 98–5591. SAMBOY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 98–5592. PAUL *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied.

No. 98–5595. BRYANT ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 563.

No. 98–5597. CREHORE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 148 F. 3d 577.

No. 98–5600. REAGAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 129 F. 3d 1257.

No. 98–5604. FEDERENKO *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 904.

No. 98–5606. DONALDSON *v.* DEPARTMENT OF AGRICULTURE. C. A. 6th Cir. Certiorari denied.

No. 98–5610. WALKER *v.* MCDANIEL, WARDEN. Sup. Ct. Nev. Certiorari denied. Reported below: 114 Nev. 1757, 988 P. 2d 876.

No. 98–5612. DUNCAN *v.* CHILDREN'S NATIONAL MEDICAL CENTER. Ct. App. D. C. Certiorari denied. Reported below: 702 A. 2d 207.

No. 98–5614. DENNIS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 17 Cal. 4th 468, 950 P. 2d 1035.

No. 98–5615. VAN DE WALKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 141 F. 3d 1451.

No. 98–5616. MARTIN *v.* MISSOURI. Ct. App. Mo., Southern Dist. Certiorari denied.

No. 98–5617. JARRAHI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1326.

No. 98–5618. EDMONDS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1171.

No. 98–5620. LOCKHART *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 155 F. 3d 565.

No. 98–5623. CHRISTIAN *v.* SEABOLD, WARDEN, ET AL. Ct. App. Ky. Certiorari denied.

No. 98–5624. DAVIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1180.

No. 98–5625. ROSS *v.* UNITED STATES; and
No. 98–5884. ADAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 131 F. 3d 970.

No. 98–5626. POSL *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 8th Cir. Certiorari denied. Reported below: 149 F. 3d 1188.

No. 98–5628. CHRISTIAN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 98–5631. OLIVAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 145 F. 3d 362.

No. 98–5632. SMALLEY *v.* FRANK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 98–5633. GONZALES-AMESCUA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 98–5635. DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 1359.

No. 98–5636. EDWARDS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 145 F. 3d 1347.

No. 98–5637. DUMAS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–5639. DAVIS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 292 Ill. App. 3d 1115, 717 N. E. 2d 857.

No. 98–5640. DILLON *v.* PARKE, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied.

No. 98–5641. DOYLE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. Ct. Crim. App. Tex. Certiorari denied.

No. 98–5642. RAMIREZ-GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 909.

No. 98–5644. COUNCE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1180.

No. 98–5646. HIGLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 98–5651. HAYNES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 143 F. 3d 1089.

No. 98–5653. DOE, AKA SMITH, AKA IROH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 149 F. 3d 634.

No. 98–5655. HAM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 156 F. 3d 1226.

No. 98–5660. HOPPER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 98–5662. GATTO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 98–5666. FUTRELL *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 129 F. 3d 1259.

No. 98–5672. STANDARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 133 F. 3d 931.

No. 98–5673. SPAULDING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1172.

No. 98–5674. PUCH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 F. 3d 1165.

No. 98–5675. MCLEAN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 98–5678. JOHNSON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 62 Cal. App. 4th 608, 72 Cal. Rptr. 2d 805.

No. 98–5685. BROOKS *v.* NUTH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1167.

No. 98–5686. VILLA ARELLANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 149 F. 3d 1194.

No. 98–5687. HERNANDEZ, AKA RODRIGUEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 156 F. 3d 1226.

No. 98–5690. MORALES *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 98–5693. WARREN *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 348 N. C. 80, 499 S. E. 2d 431.

No. 98–5700. WILLIAMSON *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. D. C. Cir. Certiorari denied.

No. 98–5701. CONNER *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 98–5702. PIERCE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1343.

No. 98–5703. SAUNDERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 149 F. 3d 1195.

No. 98–5704. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 98–5705. BRATTON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 727 So. 2d 176.

No. 98–5706. ABOH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1326.

No. 98–5708. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 132 F. 3d 628.

No. 98–5709. MOORE *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 98–5711. LUEPKE *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 155 F. 3d 568.

No. 98–5712. JOHNSON *v.* HENDERSON, POSTMASTER GENERAL. C. A. 8th Cir. Certiorari denied. Reported below: 137 F. 3d 1081.

No. 98–5714. CALHOUN *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 218 Wis. 2d 165, 578 N. W. 2d 209.

No. 98–5716. NOWACZYK *v.* SUPREME COURT OF NEW HAMPSHIRE ET AL. C. A. 1st Cir. Certiorari denied.

No. 98–5718. BATTLES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1342.

No. 98–5719. ANDERS *v.* TEXAS. Ct. App. Tex., 12th Dist. Certiorari denied. Reported below: 973 S. W. 2d 682.

No. 98–5720. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 129 F. 3d 117.

No. 98–5726. LAHERA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 437.

No. 98–5728. MARIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 144 F. 3d 1085.

No. 98–5730. WEST *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1343.

No. 98–5734. WEADON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 145 F. 3d 158.

No. 98–5739. PLUTA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 144 F. 3d 968.

No. 98–5740. ALLEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–5745. LANTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1181.

No. 98–5750. HUNTER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 145 F. 3d 946.

No. 98–5751. FREDERICKS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1342.

No. 98–5753. DANIEL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 149 F. 3d 1185.

No. 98–5756. MOORE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 127 F. 3d 1107.

No. 98–5757. MITNICK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1342.

No. 98–5758. SLATER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 141 F. 3d 1189.

No. 98–5759. SHAVERS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 151 F. 3d 1027.

No. 98–5768. MONTGOMERY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 150 F. 3d 983.

No. 98–5771. LOTT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 156 F. 3d 1233.

No. 98–5773. KEY-EL *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 349 Md. 811, 709 A. 2d 1305.

No. 98–5774. NOBLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 446.

No. 98–5775. MAGANA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 930.

No. 98–5780. NGUYEN *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA. C. A. D. C. Cir. Certiorari denied.

No. 98–5783. PERRY *v.* HENDERSON, POSTMASTER GENERAL. C. A. 8th Cir. Certiorari denied.

No. 98–5784. ORTIZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 146 F. 3d 25.

No. 98–5785. OUIMETTE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 137 F. 3d 24.

No. 98–5786. MCLANE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 98–5790. MAXWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 895.

No. 98–5794. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–5795. McKinney *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 143 F. 3d 325.

No. 98–5797. Boclair *v.* Page. C. A. 7th Cir. Certiorari denied.

No. 98–5801. Flores-Solano *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1342.

No. 98–5803. Swann *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 563.

No. 98–5808. Hopper *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 137 F. 3d 1351.

No. 98–5810. Downey *v.* Davis, Warden. C. A. 6th Cir. Certiorari denied.

No. 98–5814. Moore *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 159 F. 3d 638.

No. 98–5815. Lowe *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 145 F. 3d 45.

No. 98–5824. Hicks *v.* United States. Ct. App. D. C. Certiorari denied.

No. 98–5825. Helmstetter *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 98–5831. Curry *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 156 F. 3d 1232.

No. 98–5832. Beltran *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 446.

No. 98–5834. Campbell *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 134 F. 3d 379.

No. 98–5835. Brown *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 147 F. 3d 477.

No. 98–5838. Singh *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1327.

No. 98–5842. Garcia-Bermudez *v.* Brooks, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 727.

No. 98–5844. HINTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1160.

No. 98–5846. HINTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 98–5847. HARRIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 149 F. 3d 1185.

No. 98–5849. PAUL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 142 F. 3d 836.

No. 98–5851. ODUS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–5854. BLYTHE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 98–5857. WRIGHT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 145 F. 3d 972.

No. 98–5858. WESTERN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1172.

No. 98–5859. VENTURA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 146 F. 3d 91.

No. 98–5860. YOUNG, AKA BURNSIDE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–5863. YOUNG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 F. 3d 137.

No. 98–5865. ARAGON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 141 F. 3d 1186.

No. 98–5866. BRADSHAW *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1333.

No. 98–5868. LAMBERT ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 723.

No. 98–5874. LEONARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1161.

No. 98–5878. ORTEGA-RAMOS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 98–5879. REESE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1343.

No. 98–5887. ELBERT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 98–5889. HUNTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1342.

No. 98–5890. GARCIA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 162 F. 3d 1152.

No. 98–5891. HOOVER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1171.

No. 97–1798. BIRBROWER, MONTALBANO, CONDON & FRANK, P. C., ET AL. *v.* ESQ BUSINESS SERVICES, INC. Sup. Ct. Cal. Motions of American Corporate Counsel Association et al., Federal Communications Bar Association, and Securities Industry Association for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 17 Cal. 4th 119, 949 P. 2d 1.

No. 97–1825. ISQUITH, BY HER CUSTODIAN, ISQUITH, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED *v.* CAREMARK INTERNATIONAL, INC., ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 136 F. 3d 531.

No. 97–1841. CALDERON, WARDEN *v.* TAYLOR. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 134 F. 3d 981.

No. 97–2024. CALDERON, WARDEN *v.* CLARK. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 98–11. MICHIGAN *v.* BAILEY. Ct. App. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 98–22. OHIO *v.* TENACE. Ct. App. Ohio, Lucas County. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 121 Ohio App. 3d 702, 700 N. E. 2d 899.

No. 98–212. MICHIGAN *v.* BASS. Sup. Ct. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 457 Mich. 866, 577 N. W. 2d 667.

No. 97–1895. MCCARTHY ET AL. *v.* PROVIDENTIAL CORP. ET AL. C. A. 9th Cir. Motion of Stephane Bourcier de Carbon et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 122 F. 3d 1242.

No. 97–1929. MONTANA ET AL. *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. 9th Cir. Motions of Montana Association of Counties, National Water Resources Association et al., and Sunnyside Valley Irrigation District et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 137 F. 3d 1135.

No. 97–1958. SMALL LANDOWNERS OF OAHU ET AL. *v.* CITY AND COUNTY OF HONOLULU. C. A. 9th Cir. Motion of Pacific Legal Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 124 F. 3d 1150.

No. 97–1999. FIREMAN'S FUND INSURANCE CO. *v.* M. V. DSR ATLANTIC, HER ENGINES, TACKLE, MACHINERY, IN REM, ET AL. C. A. 9th Cir. Motion of American Institute of Marine Underwriters for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 131 F. 3d 1336.

No. 97–2032. KAIMOWITZ *v.* FLORIDA ET AL.; KAIMOWITZ *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA; and KAIMOWITZ *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA. C. A. 11th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 136 F. 3d 1330 (first judgment).

No. 97–2081. SASSANI *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 139 F. 3d 895.

No. 97–9571. GRIFFIN *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied.

No. 98–77. BREEDLOVE ET AL. *v.* EARTHGRAINS BAKING COS., INC., DBA CAMPBELL TAGGART BAKING CO., INC. C. A. 8th

Cir. Motion of petitioners to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 140 F. 3d 797.

No. 97–2050. GRABOSKI ET AL. *v.* GIULIANI, MAYOR OF THE CITY OF NEW YORK, ET AL. C. A. 2d Cir. Motion of COAPP–VSF, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 142 F. 3d 58.

No. 97–2063. STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. *v.* SPERONI ET AL. Sup. Ct. Ill. Motions for leave to file briefs as *amici curiae* filed by the following are granted: Public Citizen, Inc., et al., National Conference of Insurance Legislators, Alliance of American Insurers et al., Office of Public Insurance Counsel, Chamber of Commerce of the United States, and Washington Legal Foundation et al. Certiorari denied.

No. 97–9242. STEELE *v.* SISTRUNK ET AL. C. A. 11th Cir. Motion of respondents for determination of frivolousness denied. Certiorari denied. Reported below: 138 F. 3d 955.

No. 97–9286. SOLOMON *v.* CHENEY ET AL. C. A. 1st Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 132 F. 3d 30.

No. 97–9358. BREEST *v.* BRODEUR, COMMISSIONER, NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS. C. A. 1st Cir. Certiorari denied. JUSTICE SOUTER took no part in the consideration or decision of this petition.

No. 97–9517. HUDD *v.* SHIFFMAN ET AL. C. A. 7th Cir. Certiorari before judgment denied.

No. 97–9615. PENK *v.* CLINTON, PRESIDENT OF THE UNITED STATES. C. A. 10th Cir. Certiorari before judgment denied.

No. 97–9686. GIANOPOULOS *v.* BANCOHIO, AKA NCB/COLS NATIONAL CITIES CORP., ET AL. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 98–192. CHANDLER ET UX. *v.* NORWEST BANK MINNESOTA, NATIONAL ASSOCIATION, ET AL. C. A. 8th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 137 F. 3d 1053.

No. 98–54. DODD ET UX. *v.* HOOD RIVER COUNTY ET AL. C. A. 9th Cir. Motion of Hans Hoeck for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 136 F. 3d 1219.

No. 98–62. ETHICON, INC., ET AL. *v.* UNITED STATES SURGICAL CORP. ET AL. C. A. Fed. Cir. Motion of American Home Products Corp. et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 135 F. 3d 1456.

No. 98–69. SAL TINNERELLO & SONS, INC. *v.* TOWN OF STONINGTON ET AL. C. A. 2d Cir. Motion of BFI Waste Systems of North America for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 141 F. 3d 46.

No. 98–86. SHOEN *v.* SHOEN ET AL. Ct. App. Ariz. Certiorari denied. JUSTICE THOMAS took no part in the consideration or decision of this petition. Reported below: 191 Ariz. 64, 952 P. 2d 302.

No. 98–5055. MILLER ET AL. *v.* LORAIN COUNTY BOARD OF ELECTIONS ET AL. C. A. 6th Cir. Motion of Coalition for Free and Open Elections et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 141 F. 3d 252.

*Rehearing Denied*

No. 97–1567. AMERICAN MEDICAL ASSN. *v.* PRACTICE MANAGEMENT INFORMATION CORP., 524 U. S. 952;

No. 97–1872. ARSHAL *v.* DALTON, SECRETARY OF THE NAVY, 524 U. S. 954;

No. 97–7420. GAVIN ET AL. *v.* BRANSTAD ET AL., 524 U. S. 955;

No. 97–7635. KOSYLA *v.* ILLINOIS, 523 U. S. 1010;

No. 97–8265. CUNNINGHAM *v.* WOODS, WARDEN, ET AL., 523 U. S. 1125;

No. 97–8409. WILSON *v.* STEWART, SUPERINTENDENT, MCNEIL ISLAND CORRECTIONS CENTER, 523 U. S. 1140;

No. 97–8420. QUARTERMAN *v.* QUARTERMAN, 523 U. S. 1141;

No. 97–8430. MCCORD *v.* UNITED STATES, 523 U. S. 1100;

No. 97–8705. HALPIN *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, 523 U. S. 1131;

No. 97–8738. HILLIARD *v.* KAISER ET AL., 524 U. S. 941;

No. 97–8793. ALJAMI *v.* KENTUCKY, 524 U. S. 909;

No. 97–8855. WASHINGTON *v.* SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 50, ET AL., 524 U. S. 957;

No. 97–8861. IN RE BAEZ, 524 U. S. 950;

No. 97–8873. HUNTER *v.* SOUTH CAROLINA ET AL., 524 U. S. 943;

No. 97–8875. MOSSERI *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK (two judgments), 524 U. S. 931;

No. 97–8890. HARRIS *v.* HIGGINS, WARDEN, 524 U. S. 931;

No. 97–9002. CRAFTON *v.* CRAFTON, 524 U. S. 958;

No. 97–9006. CAMPBELL *v.* UNITED STATES POSTAL SERVICE, 524 U. S. 931; and

No. 97–9089. STEELE *v.* UNITED STATES, 524 U. S. 944. Petitions for rehearing denied.

No. 97–1615. PROPST, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF CHAMBERS, DECEASED *v.* KINGRY ET AL., 523 U. S. 1138. Motion for leave to file petition for rehearing denied.

## OCTOBER 7, 1998

*Miscellaneous Order*

No. A–281. NOBLES *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

## OCTOBER 9, 1998

*Dismissal Under Rule 46*

No. 97–8998. ANSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari dismissed under this Court's Rule 46. Reported below: 959 S. W. 2d 203.

*Probable Jurisdiction Noted*

No. 98–564. CLINTON, PRESIDENT OF THE UNITED STATES, ET AL. *v.* GLAVIN ET AL. Appeal from D. C. E. D. Va. Joint motion to expedite consideration of jurisdictional statement and to set an expedited briefing schedule granted. Probable jurisdiction noted. Brief of the Solicitor General is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday,

October 20, 1998. Briefs of appellees are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, November 4, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before Tuesday, November 17, 1998. This Court's Rule 29.2 does not apply. The case is consolidated for oral argument on Monday, November 30, 1998, with No. 98–404, *Department of Commerce et al.* v. *United States House of Representatives et al.* [probable jurisdiction noted, 524 U. S. 978], and a total of one and one-half hours allotted for oral argument. Reported below: 19 F. Supp. 2d 543.

## October 12, 1998

*Miscellaneous Order*

No. A–285. Lambert, Superintendent, Washington State Penitentiary *v.* Vargas, Next Friend of Sagastegui. Application to vacate the stay of execution of sentence of death, entered by the United States Court of Appeals for the Ninth Circuit on October 11, 1998, presented to Justice O'Connor, and by her referred to the Court, granted. Justice Stevens and Justice Breyer would deny the application to vacate the stay of execution.

*Certiorari Denied*

No. 98–6324 (A–278). Wright *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.

## October 13, 1998

*Miscellaneous Orders.* (See also No. 9, Orig., *ante,* p. 1.)

No. D–1961. In re Disbarment of Weisser. Motion to defer consideration granted. [For earlier order herein, see 524 U. S. 913.]

No. D–1977. In re Disbarment of Priamos. Disbarment entered. [For earlier order herein, see 524 U. S. 967.]

No. D–1984. IN RE DISBARMENT OF TURNER. Disbarment entered. [For earlier order herein, see 524 U. S. 973.]

No. D–1985. IN RE DISBARMENT OF DREW. Disbarment entered. [For earlier order herein, see 524 U. S. 973.]

No. D–1986. IN RE DISBARMENT OF PINCKNEY. Disbarment entered. [For earlier order herein, see 524 U. S. 973.]

No. D–1996. IN RE DISBARMENT OF BRAXTON. Harold L. Braxton, of Miami, 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–1997. IN RE DISBARMENT OF KRAMER. Steven M. Kramer, 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–1998. IN RE DISBARMENT OF TORPY. Richard D. Torpy, of Littleton, Colo., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1999. IN RE DISBARMENT OF CAMPOS QUIROZ. Raymundo Campos Quiroz, of Los Angeles, 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–2000. IN RE DISBARMENT OF HENRY. Donald Wilson Henry, of Woodland Hills, 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–2001. IN RE DISBARMENT OF LALIME. James L. Lalime, of Williamsville, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–19. In re Hargreaves;

No. M–20. Fore *v.* Carmel et al.; and

No. M–21. U. S. Fish Corp. *v.* Seminole Tribe of Florida. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

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 $98,644.56 to be paid as follows: 35% by Nebraska, 35% by Wyoming, 5% by Colorado, and 25% by the United States. [For earlier order herein, see, *e. g.*, 522 U. S. 1026.]

No. 97–303. Humana Inc. et al. *v.* Forsyth et al. C. A. 9th Cir. [Certiorari granted, 524 U. S. 936.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 97–930. Buckley, Secretary of State of Colorado *v.* American Constitutional Law Foundation, Inc., et al. C. A. 10th Cir. [Certiorari granted, 522 U. S. 1107.] Motion of respondent American Constitutional Law Foundation, Inc., for leave to permit respondent Bill Orr to sit at counsel table denied.

No. 97–1620. Seif, Secretary, Pennsylvania Department of Environmental Protection, et al. *v.* Chester Residents Concerned for Quality Living et al., 524 U. S. 974. Motion of petitioners to award costs denied.

No. 98–404. Department of Commerce et al. *v.* United States House of Representatives et al. D. C. D. C. [Probable jurisdiction noted, 524 U. S. 978.] Motion of Jerome Gray et al. for leave to file a brief as *amici curiae* granted.

No. 98–5554. Flanagan et ux. *v.* Arnaiz et al. C. A. 9th Cir.; and

No. 98–5590. Muhammad *v.* Federal Republic of Nigeria et al. C. A. 9th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 3, 1998, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 98–5917. IN RE MCDERMOTT;
No. 98–5923. IN RE MELONCON;
No. 98–5951. IN RE KIMBERLIN;
No. 98–5982. IN RE HAMILTON;
No. 98–6004. IN RE WEBB, AKA WEBB-EL;
No. 98–6007. IN RE KING;
No. 98–6072. IN RE CANTRELL; and
No. 98–6075. IN RE OKORO. Petitions for writs of habeas corpus denied.

No. 98–5895. IN RE DEBARDELEBEN. Petition for writ of mandamus denied.

*Certiorari Granted*

No. 98–6. EL PASO NATURAL GAS CO. ET AL. *v.* NEZTSOSIE ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 136 F. 3d 610.

No. 97–1868. UNUM LIFE INSURANCE COMPANY OF AMERICA *v.* WARD. C. A. 9th Cir. Motions of Standard Insurance Co., Association of California Life and Health Insurance Companies, and American Council of Life Insurance et al. for leave to file briefs as *amici curiae* granted. Certiorari granted. Reported below: 135 F. 3d 1276.

No. 97–1985. NEDER *v.* UNITED STATES. C. A. 11th Cir. Certiorari granted limited to the following questions: "1. Whether the trial court's failure to instruct the jury on the materiality element in this case was harmless error because materiality was not in dispute at trial? 2. Whether materiality is an element of the crimes set forth in the federal mail fraud (18 U. S. C. § 1341), wire fraud (18 U. S. C. § 1343), and bank fraud (18 U. S. C. § 1344) statutes?" Reported below: 136 F. 3d 1459.

*Certiorari Denied*

No. 97–1947. BEVERLY COMMUNITY HOSPITAL ASSN., DBA BEVERLY HOSPITAL, ET AL. *v.* BELSHE, DIRECTOR, CALIFORNIA DEPARTMENT OF HEALTH SERVICES, ET AL.;
No. 97–1949. GILMORE ET AL. *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.; and
No. 97–2079. CALIFORNIA AMBULANCE ASSN. ET AL. *v.* BELSHE, DIRECTOR, CALIFORNIA DEPARTMENT OF HEALTH SERVICES, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 132 F. 3d 1259.

No. 97–1994. NEWTON ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 131 F. 3d 147.

No. 97–2029. PARAMOUNT HEALTH SYSTEMS, INC., PERSONALLY AND ON BEHALF OF ALL PERSONS SIMILARLY SITUATED, ET AL. *v.* WRIGHT, DIRECTOR, ILLINOIS DEPARTMENT OF PUBLIC AID, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 138 F. 3d 706.

No. 97–9054. COLLIER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 959 S. W. 2d 621.

No. 97–9626. LEGRANDE *v.* EASLEY, ATTORNEY GENERAL OF NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1325.

No. 98–24. BAKER *v.* HENDERSON, POSTMASTER GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 114 F. 3d 668.

No. 98–50. KEWEENAW BAY INDIAN COMMUNITY *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 136 F. 3d 469.

No. 98–74. TEAGUE ET AL. *v.* BAKKER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 892.

No. 98–98. STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. *v.* SMITH. C. A. 9th Cir. Certiorari denied. Reported below: 140 F. 3d 1263.

No. 98–102. PETE LIEN & SONS, INC., DBA COLORADO LIEN CO. *v.* BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LARIMER ET AL. Ct. App. Colo. Certiorari denied.

No. 98–130. UNITED STATES *v.* CONTINENTAL AIRLINES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 134 F. 3d 536.

No. 98–154. MOORE *v.* BOARD OF EDUCATION OF THE JOHNSON CITY SCHOOLS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 134 F. 3d 781.

No. 98–179. PANDUIT CORP. *v.* THOMAS & BETTS CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 138 F. 3d 277.

No. 98–181. LOPEZ *v.* SHAPIRO ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 139 F. 3d 912.

No. 98–189. BOURCIER DE CARBON ET AL. *v.* GENERAL MOTORS CORP. ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–198. WHELAN ET AL. *v.* MERRELL DOW PHARMACEUTICALS, INC. C. A. D. C. Cir. Certiorari denied.

No. 98–201. KOCH ET AL. *v.* JAMES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 151 F. 3d 1025.

No. 98–215. HELLER *v.* FORTIS BENEFITS INSURANCE CO. C. A. D. C. Cir. Certiorari denied. Reported below: 142 F. 3d 487.

No. 98–219. FRIES *v.* HELSPER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 146 F. 3d 452.

No. 98–228. FRISARD *v.* TRAINA. C. A. 5th Cir. Certiorari denied. Reported below: 138 F. 3d 951.

No. 98–229. FUTURA DEVELOPMENT OF PUERTO RICO, INC. *v.* ESTADO LIBRE ASOCIADO DE PUERTO RICO ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 144 F. 3d 7.

No. 98–230. AETNA LIFE INSURANCE CO. *v.* ACE. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 1241.

No. 98–232. COUGHIN *v.* CITY OF BIRMINGHAM. Cir. Ct. Ala., Jefferson County. Certiorari denied.

No. 98–244. REPEAT-O-TYPE STENCIL MANUFACTURING CORP. *v.* HEWLETT-PACKARD CO. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1178.

No. 98–253. COOKSEY BROTHERS DISPOSAL CO., INC. *v.* BOYD COUNTY. Ct. App. Ky. Certiorari denied. Reported below: 973 S. W. 2d 64.

No. 98–255. PAUL *v.* FARMLAND INDUSTRIES, INC. C. A. 8th Cir. Certiorari denied. Reported below: 141 F. 3d 1169.

No. 98–256. SALTSMAN ET AL. *v.* CAMPBELL ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1333.

No. 98–261. MA ET AL. *v.* BROWN ET UX. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1336.

No. 98–265. SMITH *v.* UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT ET AL. C. A. 10th Cir. Certiorari denied.

No. 98–267. HOEINGS, AKA HOINS, ET AL. *v.* ADAMS COUNTY ET AL. Sup. Ct. Neb. Certiorari denied. Reported below: 254 Neb. 64, 574 N. W. 2d 498.

No. 98–269. DAVIS ET AL. *v.* UNITED STATES FIDELITY & GUARANTY CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 149 F. 3d 1189.

No. 98–271. CERTAIN UNDERWRITERS AT LLOYD'S, LONDON, ET AL. *v.* INDIANA GAS CO., INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 141 F. 3d 314.

No. 98–273. BERG *v.* KOZLOFF. Sup. Ct. Pa. Certiorari denied. Reported below: 552 Pa. 126, 713 A. 2d 1106.

No. 98–274. TYLER *v.* CHILES, GOVERNOR OF FLORIDA, ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 718 So. 2d 811.

No. 98–278. KIRWAN ET AL. *v.* CIGNA SETTLING DEFENDANTS. C. A. 7th Cir. Certiorari denied. Reported below: 142 F. 3d 441.

No. 98–280. LANE, CONSERVATOR OF THE ESTATE OF JAMERSON *v.* CITY AND COUNTY OF SAN FRANCISCO ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 98–282. TAMAGNI ET AL. *v.* TAX APPEALS TRIBUNAL OF NEW YORK ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 91 N. Y. 2d 530, 695 N. E. 2d 1125.

No. 98–287. SHANKLIN *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 2d Cir. Certiorari denied. Reported below: 137 F. 3d 732.

No. 98–293. FAVIS *v.* NAPA STATE HOSPITAL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 904.

No. 98–294. FLESCH *v.* WRANOSKY. Ct. App. Wis. Certiorari denied. Reported below: 216 Wis. 2d 114, 573 N. W. 2d 900.

No. 98–297. NAPLETON, NOT INDIVIDUALLY, BUT AS TRUSTEE UNDER THE KATHERINE R. NAPLETON REVOCABLE SELF-DECLARATION OF TRUST DATED OCTOBER 1, 1992 *v.* GENERAL MOTORS CORP. C. A. 7th Cir. Certiorari denied. Reported below: 138 F. 3d 1209.

No. 98–302. AIRBORNE FREIGHT CORP., DBA AIRBORNE EXPRESS *v.* KELLEY. C. A. 1st Cir. Certiorari denied. Reported below: 140 F. 3d 335.

No. 98–311. ISLANDER EAST RENTAL PROGRAM ET AL. *v.* BARFIELD ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 145 F. 3d 359.

No. 98–319. OBREGON ET UX. *v.* ALLSTATE INSURANCE CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1178.

No. 98–323. SHONG-CHING TONG *v.* MCMAHON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1341.

No. 98–343. NORLAND *v.* GRINNELL MUTUAL REINSURANCE CO. ET AL. Sup. Ct. Iowa. Certiorari denied. Reported below: 578 N. W. 2d 239.

No. 98–375. VERS, AN INCOMPETENT, BY HER DISCHARGED PERMANENT CONSERVATOR AND GUARDIAN AD LITEM, VERS, ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1182.

No. 98–416. NSBD, DBA FAIRLANE TOWN CENTER *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1332.

No. 98–420. AIELLO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 159 F. 3d 1345.

No. 98–427. CHICAGO MILWAUKEE CORP. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 141 F. 3d 1112.

No. 98–435. ELECTRONIC ENGINEERING CO. *v.* FEDERAL COMMUNICATIONS COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 140 F. 3d 1045.

No. 98–5001. BENSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 134 F. 3d 787.

No. 98–5094. JONES *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 17 Cal. 4th 279, 949 P. 2d 890.

No. 98–5134. CRIBBS *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 967 S. W. 2d 773.

No. 98–5139. CROCKETT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–5146. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 998.

No. 98–5209. DILLINGHAM *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–5212. EARHART *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 132 F. 3d 1062.

No. 98–5316. GALLAMORE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. Ct. Crim. App. Tex. Certiorari denied.

No. 98–5439. ABBINGTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 144 F. 3d 1003.

No. 98–5475. ROGERS *v.* LOUISIANA. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 701 So. 2d 261.

No. 98–5479. SANDERS *v.* BROWNER, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 151 F. 3d 1030.

No. 98–5480. SIEGRIST *v.* IWUAGWA. Ct. App. Ga. Certiorari denied. Reported below: 229 Ga. App. 508, 494 S. E. 2d 180.

No. 98–5484. PICKETT *v.* WAL-MART STORES, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1159.

No. 98–5485. FABIAN *v.* METROPOLITAN DADE COUNTY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 136 F. 3d 1331.

No. 98–5486. DIAZ *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 98–5487. DUVALL *v.* REYNOLDS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 139 F. 3d 768.

No. 98–5503. LEE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–5504. NOVOSAD *v.* NEW MEXICO BOARD OF MEDICAL EXAMINERS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 145 F. 3d 1346.

No. 98–5505. NATHAN *v.* COOK, SUPERINTENDENT, SOUTH MISSISSIPPI CORRECTIONAL INSTITUTION, ET AL. C. A. 5th Cir. Certiorari denied.

No. 98–5508. CHRISPEN *v.* JENNE, SHERIFF, BROWARD COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 958.

No. 98–5514. LOWE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 98–5516. SIMPSON *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–5518. RIVERA *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 424 Mass. 266, 675 N. E. 2d 791.

No. 98–5520. VIEIRA *v.* CALDERON, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 447.

No. 98–5521. TRAINOR *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 293 Ill. App. 3d 1150, 718 N. E. 2d 1096.

No. 98–5533. NEUMAN *v.* DUNCIL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 891.

No. 98–5542. ST. CLAIR *v.* HODGES, DISTRICT JUDGE, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 141 F. 3d 1185.

No. 98–5546. JEMZURA *v.* MUGGLIN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 133 F. 3d 907.

No. 98–5547. BROWN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 98–5550. MILLER *v.* HAYS STATE PRISON ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–5557. DREAD *v.* MARYLAND STATE POLICE. Ct. Sp. App. Md. Certiorari denied.

No. 98–5568. SINGLETON *v.* LEWIS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 892.

No. 98–5571. RAY *v.* TRUSTEES AND OFFICERS OF THE CHERRY CHAPEL UM CHURCH. Sup. Ct. Tex. Certiorari denied.

No. 98–5579. JOHNSON *v.* COGGINS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 144 F. 3d 50.

No. 98–5582. YANCEY *v.* GLAZER ET AL. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 98–5587. JOHNSON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 968 S. W. 2d 123.

No. 98–5588. MARR *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 98–5589. NORRIS *v.* SCHOTTEN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 146 F. 3d 314.

No. 98–5593. ROLAND *v.* TEXAS. Sup. Ct. Tex. Certiorari denied. Reported below: 973 S. W. 2d 665.

No. 98–5594. PERRY *v.* GOODIN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 149 F. 3d 1184.

No. 98–5596. HUMPHREY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 138 F. 3d 552.

No. 98–5601. RASHID *v.* HAWK, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 144 F. 3d 54.

No. 98–5602. RIVERA *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 718 So. 2d 185.

No. 98–5603. HARRIS *v.* KING ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 60 Cal. App. 4th 1185, 70 Cal. Rptr. 2d 790.

No. 98–5605. ENAND *v.* AHMAD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 135 F. 3d 769.

No. 98–5608. GRADY *v.* AFFILIATED CENTRAL, INC. C. A. 2d Cir. Certiorari denied. Reported below: 130 F. 3d 553.

No. 98–5609. TYUS *v.* B & G PACKAGING. C. A. 8th Cir. Certiorari denied.

No. 98–5611. COCHRAN *v.* NELSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 432.

No. 98–5621. KEENE *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 81 Ohio St. 3d 646, 693 N. E. 2d 246.

No. 98–5622. LUCAS *v.* BRINSON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 148 F. 3d 1071.

No. 98–5627. BARDO *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 551 Pa. 140, 709 A. 2d 871.

No. 98–5629. CORNELL *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–5630. RANSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 718 So. 2d 170.

No. 98–5634. XUAN HUYNH *v.* FORTE AIRPORT SERVICES, INC. C. A. 2d Cir. Certiorari denied.

No. 98–5638. HAMILTON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–5643. SCHUDER *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 98–5645. GONZALEZ *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–5647. CRAWFORD *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. Ct. Crim. App. Tex. Certiorari denied.

No. 98–5648. ALEXANDER *v.* PLILER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 903.

No. 98–5649. ABEGGLEN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–5652. FOSTER *v.* CUYAHOGA COUNTY BOARD OF COMMISSIONERS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 433.

No. 98–5657. THOMAS *v.* LOUISIANA DEPARTMENT OF LABOR ET AL. Sup. Ct. La. Certiorari denied. Reported below: 716 So. 2d 371.

No. 98–5658. HACHMEISTER *v.* HAWAII. Sup. Ct. Haw. Certiorari denied. Reported below: 87 Haw. 272, 954 P. 2d 651.

No. 98–5659. CORDLE *v.* SQUARE D CO. ET AL. Ct. App. Ky. Certiorari denied.

No. 98–5661. GANN *v.* CAMBRA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–5667. GUNNELL *v.* LAZAROFF, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–5668. HILL *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 709 So. 2d 643.

No. 98–5684. CERVENIAK *v.* BAKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–5691. MASON *v.* BRIGANO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–5699. TINSLEY *v.* O'DEA, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 436.

No. 98–5710. MARTIN *v.* MCELVANEY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 145 F. 3d 360.

No. 98–5727. KNUCKLES-EL *v.* ORDIWAY. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 434.

No. 98–5729. MANN *v.* SCHOTTEN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–5732. PUGH *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 155 F. 3d 567.

No. 98–5733. WILLIAMS *v.* BORG, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 737.

No. 98–5743. CUTEREZ MORALES *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied.

No. 98–5764. PEROTTI *v.* BAKER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1332.

No. 98–5791. KELLEY *v.* ROLFS ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–5805. SMITH *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–5821. TUBWELL *v.* EVANS. Sup. Ct. Miss. Certiorari denied.

No. 98–5828. DEMPSEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 433.

No. 98–5836. BEACHEM *v.* SCHRIRO, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 141 F. 3d 1292.

No. 98–5837. RICHARDSON *v.* VIRGINIA DEPARTMENT OF CORRECTIONS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 722.

No. 98–5840. SANDERS *v.* HOBBS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 151 F. 3d 1030.

No. 98–5843. HECKER *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 98–5852. ARKADILE *v.* WORTHINGTON ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–5862. THOMAS *v.* BARTLETT, SUPERINTENDENT, ELMIRA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 98–5871. LYNCH *v.* PATHMARK SUPERMARKETS. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 919.

No. 98–5873. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 146 F. 3d 547.

No. 98–5877. PEREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 98–5883. CARGILL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 144 F. 3d 51.

No. 98–5885. BELCHER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 145 F. 3d 360.

No. 98–5888. FORSYTHE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 729.

No. 98–5900. NICHOLS *v.* MCDADE, SUPERINTENDENT, HARNETT CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1325.

No. 98–5901. LEWIN *v.* THOMPSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1158.

No. 98–5906. ANJUM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 887.

No. 98–5908. STEPHENS *v.* RUBIN, SECRETARY OF THE TREASURY. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 958.

No. 98–5910. KUMARAN *v.* TOWN OF CICERO, ILLINOIS. C. A. 7th Cir. Certiorari denied.

No. 98–5913. PERKINS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 930.

No. 98–5915. OKORO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 151 F. 3d 1033.

No. 98–5916. PARKER *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 891.

No. 98–5918. MCCULLERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1171.

No. 98–5920. JONES ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 162 F. 3d 1157.

No. 98–5924. MARTINEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 159 F. 3d 1349.

No. 98–5926. BURROUS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 147 F. 3d 111.

No. 98–5927. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 561.

No. 98–5928. ACOBA *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 50 M. J. 116.

No. 98–5932. BLACKBURN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–5933. CLARK *v.* HENDERSON, POSTMASTER GENERAL, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 134 F. 3d 376.

No. 98–5935. CARTER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 149 F. 3d 1191.

No. 98–5937. CARTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 956.

No. 98–5938. AUGUST *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–5943. PARRA-RIOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 156 F. 3d 187.

No. 98–5945. CONTRERA *v.* UNITED STATES;
No. 98–5950. MORA *v.* UNITED STATES; and
No. 98–5993. MORA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 921.

No. 98–5946. MOODY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 139 F. 3d 477.

No. 98–5947. LEWAL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 919.

No. 98–5949. LOPEZ-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1342.

No. 98–5955. BACON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 929.

No. 98–5956. COTTO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1353.

No. 98–5957. NORRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1173.

No. 98–5961. TATUM *v.* CORRECTIONAL MEDICAL SYSTEMS ET AL. Ct. Sp. App. Md. Certiorari denied.

No. 98–5962. TYLER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 151 F. 3d 1034.

No. 98–5964. RICE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1176.

No. 98–5971. GANTT *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 140 F. 3d 249.

No. 98–5972. GRANT-CHASE *v.* RISLEY, COMMISSIONER, NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS. C. A. 1st Cir. Certiorari denied. Reported below: 145 F. 3d 431.

No. 98–5974. HICKS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 146 F. 3d 1198.

No. 98–5975. GARCIA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 921.

No. 98–5978. BERRY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 98–5990. SALLEE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 98–5998. ABBOTT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 728.

No. 98–6002. VISCOME *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 144 F. 3d 1365.

No. 98–6006. LOMELI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–6014. REES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 149 F. 3d 1185.

No. 98–6015. SPRATT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1173.

No. 98–6029. MURPHY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1332.

No. 98–6030. MANSANARES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 162 F. 3d 1165.

No. 98–6033. MICHELSEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 141 F. 3d 867.

No. 98–6036. PARKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 136 F. 3d 653.

No. 98–6044. BASSHAM *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 162 F. 3d 1165.

No. 98–6045. LISASUAIN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 98–6046. LAVIGNE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 930.

No. 98–6048. CIRILO-MUNOZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 139 F. 3d 34.

No. 98–6052. SIMMONS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 98–6054. BOYLES *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 218 Wis. 2d 166, 578 N. W. 2d 209.

No. 98–6056. BULLINGTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 728.

No. 98–6059. SPENCER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 98–6068. BURCIAGA-JIMENEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1174.

No. 98–6085. TROBAUGH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 97–1688. COLORADO *v.* ROMERO. Sup. Ct. Colo. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 953 P. 2d 550.

No. 97–1940. CALDERON, WARDEN *v.* MCLAIN. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 134 F. 3d 1383.

No. 98–55. CAIN, WARDEN *v.* HUMPHREY. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 138 F. 3d 552.

No. 98–203. NORTH CAROLINA *v.* JACKSON. Sup. Ct. N. C. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 348 N. C. 52, 497 S. E. 2d 409.

No. 97–1779. RICHARDS ET AL. *v.* LLOYD'S OF LONDON ET AL. C. A. 9th Cir. Motion of North American Securities Administrators Association, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this motion and this petition. Reported below: 135 F. 3d 1289.

No. 97–1795. EQUALITY FOUNDATION OF GREATER CINCINNATI, INC., ET AL. *v.* CITY OF CINCINNATI ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 128 F. 3d 289.

Opinion of JUSTICE STEVENS, with whom JUSTICE SOUTER and JUSTICE GINSBURG join, respecting the denial of the petition for a writ of certiorari.

As I have pointed out on more than one occasion, the denial of a petition for a writ of certiorari is not a ruling on the merits.[1] Sometimes such an order reflects nothing more than a conclusion that a particular case may not constitute an appropriate forum in which to decide a significant issue. In this case, the Sixth Circuit held that the city charter "merely removed municipally enacted special protection from gays and lesbians."[2] 128 F. 3d 289, 301

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[1] *Brown* v. *Texas*, 522 U. S. 940, 942 (1997) (opinion of STEVENS, J., respecting denial of certiorari); *Lackey* v. *Texas*, 514 U. S. 1045, 1047 (1995); *Barber* v. *Tennessee*, 513 U. S. 1184 (1995) (opinion of STEVENS, J., respecting denial of certiorari).

[2] The relevant amendment to the city charter reads:

"'The City of Cincinnati and its various Boards and Commissions may not enact, adopt, enforce or administer any ordinance, regulation, rule or policy which provides that homosexual, lesbian, or bisexual orientation, status, conduct, or relationship constitutes, entitles, or otherwise provides a person with the basis to have any claim of minority or protected status, quota preference or other preferential treatment. This provision of the City Charter shall in all respects be self-executing. Any ordinance, regulation, rule or policy enacted before this amendment is adopted that violates the forego-

(1997). This construction differs significantly, although perhaps not dispositively, from the reading advocated by the petitioners. They construe the charter as an enactment that "bars antidiscrimination protections only for gay, lesbian and bisexual citizens." Pet. for Cert. i.

This Court does not normally make an independent examination of state-law questions that have been resolved by a court of appeals. See *Bishop* v. *Wood*, 426 U. S. 341, 346–347 (1976). Thus, the confusion over the proper construction of the city charter counsels against granting the petition for certiorari. The Court's action today should not be interpreted either as an independent construction of the charter or as an expression of its views about the underlying issues that the parties have debated at length.

No. 98–245. HOWMEDICA, INC. *v.* ELBERT. C. A. 9th Cir. Motion of Pharmaceutical Research and Manufacturers of America for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this motion and this petition. Reported below: 143 F. 3d 1208.

No. 98–286. FISH *v.* MARSH, SPAEDER, BAUR, SPAEDER & SCHAAF ET AL. Super. Ct. Pa. Motion of petitioner to disqualify counsel and other relief denied. Certiorari denied. Reported below: 701 A. 2d 786.

No. 98–5410. ELLEDGE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 706 So. 2d 1340.

JUSTICE BREYER, dissenting.

Petitioner in this case has spent more than 23 years in prison under sentence of death. His claim—that the Constitution forbids his execution after a delay of this length—is a serious one.

The Eighth Amendment forbids punishments that are "cruel" and "unusual." Twenty-three years under sentence of death is unusual—whether one takes as a measuring rod current practice or the practice in this country and in England at the time our Constitution was written. See, *e. g.*, P. Mackay, Hanging in the

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ing prohibition shall be null and void and of no force or effect.'" 128 F. 3d 289, 291 (CA6 1997).

Balance: The Anti-Capital Punishment Movement in New York State, 1776–1861, p. 17 (1982) (executions took place soon after sentencing in 18th-century New York); *Pratt* v. *Attorney Gen. of Jamaica*, [1994] 2 App. Cas. 1, 17 (P. C. 1993) (same in United Kingdom); see also T. Jefferson, A Bill for Proportioning Crimes and Punishments (1779), reprinted in The Complete Jefferson 90, 95 (S. Padover ed. 1943); 2 Papers of John Marshall 207–209 (C. Cullen & H. Johnson eds. 1977) (petition seeking commutation of a death sentence in part because of lengthy 5-month delay).

Moreover, petitioner argues forcefully that his execution would be especially "cruel." Not only has he, in prison, faced the threat of death for nearly a generation, but he has experienced that delay because of the State's own faulty procedures and not because of frivolous appeals on his own part. His three successful appeals account for 18 of the 23 years of delay. A fourth appeal accounts for the remaining five years—which appeal, though ultimately unsuccessful, left the Florida Supreme Court divided 4–2. 706 So. 2d 1340 (1997); see Brief in Opposition 12 (conceding that "[a]ll delays were a result of [petitioner's] 'successful litigation' in the appellate courts of Florida and the federal system").

As JUSTICE STEVENS has previously pointed out, executions carried out after delays of this magnitude may prove particularly cruel. *Lackey* v. *Texas*, 514 U. S. 1045 (1995) (opinion respecting denial of certiorari). After such a delay, an execution may well cease to serve the legitimate penological purposes that otherwise provide a necessary constitutional justification for the death penalty. *Ibid.* Moreover, British jurists have suggested that the Bill of Rights of 1689, a document relevant to the interpretation of our own Constitution, may forbid, as cruel and unusual, significantly lesser delays. *Riley* v. *Attorney Gen. of Jamaica*, [1983] 1 App. Cas. 719, 734–735 (P. C. 1982) (Lord Scarman, joined by Lord Brightman, dissenting). See generally *Harmelin* v. *Michigan*, 501 U. S. 957, 966–967 (1991) (SCALIA, J., concurring in judgment) (on the relevance of the 1689 Bill of Rights to the interpretation of our own Constitution).

Finally, a reasoned answer to the "delay" question could help to ease the practical anomaly created when foreign courts refuse to extradite capital defendants to America for fear of undue delay in execution. See *Soering* v. *United Kingdom*, 11 Eur. H. R. Rep. 439 (1989) (holding that the extradition of a capital defendant to

America would be a violation of Article 3 of the European Convention on Human Rights, primarily because of the risk of delay before execution).

For these reasons, and for the additional reasons set forth by JUSTICE STEVENS in *Lackey*, *supra*, I would grant the petition for certiorari.

## OCTOBER 14, 1998

*Miscellaneous Order*

No. A–289. WRIGHT *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution.

## OCTOBER 19, 1998

*Miscellaneous Orders*

No. A–157. MITNICK *v.* UNITED STATES. Application for bail, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. A–209. IN RE MARTIN. C. A. 4th Cir. Application for stay, addressed to JUSTICE GINSBURG and referred to the Court, denied.

No. 98–85. HUNT, GOVERNOR OF NORTH CAROLINA, ET AL. *v.* CROMARTIE ET AL. D. C. E. D. N. C. [Probable jurisdiction noted, 524 U. S. 980.] Motion of Alfred Smallwood et al. for leave to intervene as appellants in this Court granted.

No. 98–6141. IN RE MILNER;
No. 98–6222. IN RE MOK; and
No. 98–6230. IN RE SEDDENS. Petitions for writs of habeas corpus denied.

No. 98–5665. IN RE HOLMES, AKA RICHARDS;
No. 98–5723. IN RE SCHLEEPER; and
No. 98–5741. IN RE CLARK. Petitions for writs of mandamus denied.

No. 98–6047. IN RE CLARK. Petition for writ of mandamus and/or prohibition denied.

*Certiorari Denied*

No. 97–9504. KORN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 138 F. 3d 1239.

No. 97–9577. EVANS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 140 F. 3d 1037.

No. 98–72. LAFONTAINE *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 269 Ga. 251, 497 S. E. 2d 367.

No. 98–88. FLESHMAN *v.* WEST, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 138 F. 3d 1429.

No. 98–91. THORNE *v.* DEPARTMENT OF DEFENSE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 893.

No. 98–103. PHARAON *v.* BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM. C. A. D. C. Cir. Certiorari denied. Reported below: 135 F. 3d 148.

No. 98–135. MORGAN *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 957.

No. 98–137. RESNER ET AL. *v.* ARC MILLS, INC. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 920.

No. 98–209. MERS *v.* MARRIOTT INTERNATIONAL GROUP ACCIDENTAL DEATH AND DISMEMBERMENT PLAN. C. A. 7th Cir. Certiorari denied. Reported below: 144 F. 3d 1014.

No. 98–239. HESTER INDUSTRIES, INC. *v.* STEIN, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 142 F. 3d 1472.

No. 98–275. EDDLETON *v.* BOARD OF SUPERVISORS OF HANOVER COUNTY. Sup. Ct. Va. Certiorari denied.

No. 98–281. ABSENTEE SHAWNEE TRIBE OF OKLAHOMA *v.* CITIZEN BAND OF POTAWATOMI INDIAN TRIBE OF OKLAHOMA. C. A. 10th Cir. Certiorari denied. Reported below: 142 F. 3d 1325.

No. 98–284. HAWTHORNE *v.* UNIVERSITY OF WEST FLORIDA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 130 F. 3d 442.

No. 98–285. HAMMONS, DBA FULL CIRCLE DISTRIBUTING *v.* ALCAN ALUMINUM CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 132 F. 3d 39.

No. 98–290. MARLBORO FOOTWORKS, LTD., ET AL. *v.* AEROGROUP INTERNATIONAL, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 152 F. 3d 948.

No. 98–291. MORRIS *v.* MORRIS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 98–298. DIETRICH *v.* CHEW, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF CHEW, DECEASED, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 143 F. 3d 24.

No. 98–317. SIGSBEY *v.* HARTMAN, JUDGE, 190TH JUDICIAL DISTRICT OF TEXAS, DALLAS COUNTY. Sup. Ct. Tex. Certiorari denied.

No. 98–321. COLE, SUBSTITUTE TRUSTEE, ESTATE OF REYNOLDS, DECEASED, ET AL. *v.* MITCHELL, PERSONAL REPRESENTATIVE OF THE ESTATE OF MITCHELL, DECEASED. Sup. Ct. Tenn. Certiorari denied. Reported below: 966 S. W. 2d 411.

No. 98–324. MAYER ET UX. *v.* ALLEN, MATKINS, LECK, GAMBLE & MALLORY ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–327. ABELA *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 98–329. BRANDON *v.* CHICAGO BOARD OF EDUCATION. C. A. 7th Cir. Certiorari denied. Reported below: 143 F. 3d 293.

No. 98–331. SHAFER *v.* BOARD OF REGENTS OF THE STATE OF NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 243 App. Div. 2d 838, 663 N. Y. S. 2d 359.

No. 98–333. WOOD *v.* MEADOWS, SECRETARY, STATE BOARD OF ELECTIONS OF VIRGINIA. C. A. 4th Cir. Certiorari denied.

No. 98–340. MCMANAMA *v.* BAGLEY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1177.

No. 98–341. HINCHLIFFE *v.* RESIDENTIAL PORTFOLIO INVESTMENT GROUP II. Super. Ct. Pa. Certiorari denied.

No. 98–354. FISCHER *v.* FLORIDA DIVISION OF ELECTIONS ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 706 So. 2d 289.

No. 98–356. RAY *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 152 F. 3d 946.

No. 98–361. CASTLEWOOD, INC. *v.* ANDERSON COUNTY ET AL. Sup. Ct. Tenn. Certiorari denied. Reported below: 969 S. W. 2d 908.

No. 98–389. GLAVARIS ET AL. *v.* YOUNG ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 908.

No. 98–428. WROBEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 447.

No. 98–429. PALUMBO BROTHERS, INC., FDBA LENINGER MID-STATES PAVING CO. AND PALUMBO EXCAVATING CO., ET AL. *v.* UNITED STATES; and

No. 98–434. FERRARINI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 145 F. 3d 850.

No. 98–438. HEDRICK *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1175.

No. 98–442. DE LA CRUZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 144 F. 3d 492.

No. 98–458. ROYAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1175.

No. 98–460. MILLARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 139 F. 3d 1200.

No. 98–461. OSBOURNE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1327.

No. 98–5167. ENRACA *v.* SUPERIOR COURT OF CALIFORNIA, RIVERSIDE COUNTY. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 98–5258. SHERLOCK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 F. 3d 369.

No. 98–5269. WALKER *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 113 Nev. 853, 944 P. 2d 762.

No. 98–5275. RENSHAW *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 254 Neb. 531, 577 N. W. 2d 296.

No. 98–5302. STOCKDALE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 129 F. 3d 1066 and 139 F. 3d 767.

No. 98–5333. MUSCA *v.* FRANK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 98–5663. EDMOND *v.* WILSON, WARDEN, ET AL. Ct. App. Colo. Certiorari denied.

No. 98–5664. FRIEND *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 333 Ark. xix.

No. 98–5669. DEYONGHE *v.* SCOTT, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 141 F. 3d 1184.

No. 98–5670. HOLMES, AKA RICHARDS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–5676. KEYES *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 965 S. W. 2d 187.

No. 98–5679. JACKSON *v.* SHANKS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 143 F. 3d 1313.

No. 98–5682. CRESPIN *v.* NEW MEXICO ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 144 F. 3d 641.

No. 98–5683. BANKERT *v.* SHANKS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 149 F. 3d 1190.

No. 98–5689. NAPPER *v.* HARDY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 435.

No. 98–5692. KENDRICK *v.* COHN, COMMISSIONER, INDIANA DEPARTMENT OF CORRECTION. C. A. 7th Cir. Certiorari denied.

No. 98–5694. WADE *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 98–5695. MAHONE *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 98–5696. MCLEOD *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 717 So. 2d 535.

No. 98–5697. LERETTE *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 98–5698. WYATT *v.* CITY OF BOSTON, MASSACHUSETTS, ET AL. C. A. 1st Cir. Certiorari denied.

No. 98–5713. WRIGHT *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 149 F. 3d 1194.

No. 98–5715. MENDOZA *v.* DUCHARME, SUPERINTENDENT, WASHINGTON STATE REFORMATORY. C. A. 9th Cir. Certiorari denied.

No. 98–5717. KNUCKLES-EL *v.* KOSKINEN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 156 F. 3d 1230.

No. 98–5721. PAYROT *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 144 F. 3d 50.

No. 98–5722. RIVERA *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 98–5724. SNELLING *v.* WASHINGTON APARTMENTS LIMITED PARTNERSHIP ET AL. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 963 S. W. 2d 366.

No. 98–5731. TRUESDALE *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 142 F. 3d 749.

No. 98–5735. JONES ET AL. *v.* SMITH ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 144 F. 3d 51.

No. 98–5736. JORDAN *v.* BUSH, GOVERNOR OF TEXAS, ET AL. C. A. 5th Cir. Certiorari denied.

No. 98–5737. BRODRICK *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied.

No. 98–5746. GRANBERRY *v.* BAPTIST MEMORIAL HOSPITAL. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1331.

No. 98–5747. GOODLETTE *v.* THOMPSON. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1337.

No. 98–5749. FLAHERTY *v.* NATIONAL MARINE FISHERIES SERVICE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 125 F. 3d 843.

No. 98–5752. HAYES *v.* PALOMAR POMERADO HEALTH SYSTEM. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 98–5754. GREGORY *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 348 N. C. 203, 499 S. E. 2d 753.

No. 98–5765. RAMSEY *v.* ANDERSON, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied. Reported below: 141 F. 3d 1165.

No. 98–5841. SHERRILLS *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO. C. A. 6th Cir. Certiorari denied.

No. 98–5856. ORTEZ *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 98–5861. TROUTMAN *v.* ANDERSON, WARDEN. Sup. Ct. Ohio. Certiorari denied. Reported below: 82 Ohio St. 3d 1429, 694 N. E. 2d 979.

No. 98–5872. LANAUX *v.* CENTRAL NEW YORK PSYCHIATRIC CENTER. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 919.

No. 98–5909. MOAWAD *v.* ANDERSON, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 143 F. 3d 942.

No. 98–5929. BURKHARDT *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 421 Pa. Super. 646, 613 A. 2d 26.

No. 98–5959. YOUNG *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–5966. OGDEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–5979. BROWN *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 98–5996. SMITH *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 145 F. 3d 458.

No. 98–5997. SHEPPARD *v.* LONG ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 141 F. 3d 1185.

No. 98–6018. MALONE *v.* VASQUEZ, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 138 F. 3d 711.

No. 98–6025. BYRD *v.* PRICE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied.

No. 98–6031. HY THI NGUYEN *v.* DALTON, SECRETARY OF THE NAVY. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1169.

No. 98–6034. LEE *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTION CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 146 F. 3d 615.

No. 98–6037. STOIANOFF *v.* NEW YORK TIMES ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 248 App. Div. 2d 525, 670 N. Y. S. 2d 204.

No. 98–6041. MARTIN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–6050. PEREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 129 F. 3d 255.

No. 98–6055. CURTIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 156 F. 3d 1232.

No. 98–6060. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–6076. SWEENEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 151 F. 3d 1033.

No. 98–6080. PEREZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 724.

No. 98–6093. DOE *v.* TOWSON STATE UNIVERSITY. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1168.

No. 98–6096. FISHER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 98–6098. FASHEWE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 921.

No. 98–6099. GUERRERO-ACOSTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 930.

No. 98–6102. HOLMES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 437.

No. 98–6105. JARRELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 147 F. 3d 315.

No. 98–6107. WASHINGTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 147 F. 3d 490.

No. 98–6108. ZELAYA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 151 F. 3d 1031.

No. 98–6116. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1334.

No. 98–6117. CALZONCINTH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1176.

No. 98–6119. BOLAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1176.

No. 98–6123. JAMES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 162 F. 3d 1152.

No. 98–6128. MONTALVO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 159 F. 3d 1349.

No. 98–6135. WILSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 931.

No. 98–6160. HUTCHINSON ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 141 F. 3d 1186.

No. 97–1790. LAWSON ET AL. *v.* MURRAY ET UX. Super. Ct. N. J., App. Div. Certiorari denied.

JUSTICE SCALIA, concurring.

This case approves a degree of restriction upon free speech that is unparalleled in the opinions of this Court. Petitioners have been enjoined from carrying signs with generalized anti-abortion messages, and signs identifying respondent as an abortionist. The prohibition is absolute with respect to the public street along the 330-foot front property line of the 1.25 acre parcel occupied (with an 80-foot setback) by respondent's residence; but it also prevents sign carrying beyond that zone (and "around" the Murray home), except for picketing by no more than 15 persons, no more than one hour every two weeks, and only if the police department is given 24 hours' notice. This silencing of speech on the public sidewalks has not been imposed to remedy any violence, disruption of traffic, or other tortious or unlawful activity that petitioners have engaged in or threatened; no such activity has occurred.

This dispute is here for the third time. An injunction against similar picketing at respondents' former residence, affirmed by the New Jersey Supreme Court, was vacated and remanded for reconsideration in light of our decision in *Madsen* v. *Women's Health Center, Inc.*, 512 U. S. 753 (1994). See *Murray* v. *Lawson*, 136 N. J. 32, 642 A. 2d 338, vacated and remanded, 513 U. S. 802 (1994). On remand the New Jersey Supreme Court revised the injunction, making it similar to what the one here provides. *Murray* v. *Lawson*, 138 N. J. 206, 649 A. 2d 1253 (1994). We denied certiorari in that case. 515 U. S. 1110 (1995). Subsequent to that decision, the Murrays moved, and sought a new injunction preventing picketing around their new residence. An injunction issued and was approved by the Appellate Division of the Superior Court of New Jersey; the Supreme Court of New Jersey declined a petition for certification.

Although I believe that what New Jersey has approved here makes a mockery of First Amendment law, I concur in the denial of certiorari for the same reasons I concurred the last time this dispute was here. See *ibid.* First, the lower court's reliance on a so-called "captive audience" exception to the doctrine of prior restraints may make it difficult to reach the most significant question the case presents: whether prior restraint of

speech may be imposed in absence of actual or threatened illegality. And second, experience suggests that seeking to bring the First Amendment to the assistance of abortion protesters is more likely to harm the former than help the latter.

No. 98–227. PRUNTY, WARDEN, ET AL. *v.* SINGH. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 142 F. 3d 1157.

No. 98–6420 (A–286). FITZGERALD *v.* GREENE, 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: 150 F. 3d 357.

*Rehearing Denied*

No. 97–8932. BARBIR *v.* WHITE, WARDEN, 524 U. S. 943. Petition for rehearing denied.

OCTOBER 20, 1998

*Miscellaneous Orders*

No. A–326. POLAND *v.* RENO, ATTORNEY GENERAL, ET AL. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

No. A–330. STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. *v.* POLAND. Application to vacate the stay of execution of sentence of death entered by the United States District Court for the District of Arizona on October 20, 1998, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied.

No. 98–6529 (A–320). IN RE POLAND. 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 Denied*

No. 98–6548 (A–328). POLAND *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 30, 1998

*Dismissal Under Rule 46*

No. 98–18. BROOKER *v.* DUROCHER DOCK & DREDGE ET AL. C. A. 11th Cir. [Certiorari granted, 524 U. S. 982.] Writ of certiorari dismissed under this Court's Rule 46.1.

NOVEMBER 2, 1998

*Certiorari Granted—Vacated and Remanded*

No. 98–19. UNITED STATES *v.* QUALLS. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Caron* v. *United States*, 524 U. S. 308 (1998). Reported below: 140 F. 3d 824.

*Miscellaneous Orders*

No. D–1976. IN RE DISBARMENT OF KALYVAS. Disbarment entered. [For earlier order herein, see 524 U. S. 967.]

No. D–1987. IN RE DISBARMENT OF ANGELO. Disbarment entered. [For earlier order herein, see 524 U. S. 973.]

No. D–1988. IN RE DISBARMENT OF PRICE. Disbarment entered. [For earlier order herein, see 524 U. S. 975.]

No. D–2002. IN RE DISBARMENT OF GIFIS. Steven H. Gifis, of Pennington, N. J., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2003. IN RE DISBARMENT OF CUETO. Amiel Stephen Cueto, of Belleville, 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–2004. IN RE DISBARMENT OF CONSOLI. James A. Consoli, of Dowingtown, Pa., 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–2005. IN RE DISBARMENT OF WASHBURN. A. Curtis Washburn, of Rockford, 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–2006. IN RE DISBARMENT OF PRICE. Paul Arthur Price, of Salt Lake City, Utah, 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–2007. IN RE DISBARMENT OF MONSOUR. Robert Dishington Monsour, of Murrysville, Pa., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–22. HERMANSEN *v.* UTAH ET AL.;

No. M–23. BRAVO *v.* DEPARTMENT OF VETERANS AFFAIRS ET AL.;

No. M–24. JIROVEC *v.* WOOD, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY; and

No. M–25. PUTNAM *v.* WEATHERBEE ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. M–26. SAI ET AL. *v.* UNITED STATES ET AL. Motion to direct the Clerk to file motion for leave to file bill of complaint denied.

No. 97–53. ROBERTS, GUARDIAN FOR JOHNSON *v.* GALEN OF VIRGINIA, INC., FORMERLY DBA HUMANA HOSPITAL-UNIVERSITY OF LOUISVILLE, DBA UNIVERSITY OF LOUISVILLE HOSPITAL. C. A. 6th Cir. [Certiorari granted, 524 U. S. 915.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 97–475. EL AL ISRAEL AIRLINES, LTD. *v.* TSUI YUAN TSENG. C. A. 2d Cir. [Certiorari granted, 523 U. S. 1117.] Motion of the Solicitor General for leave to file a supplemental brief as *amicus curiae* granted.

No. 97–843. DAVIS, AS NEXT FRIEND OF LASHONDA D. *v.* MONROE COUNTY BOARD OF EDUCATION ET AL. C. A. 11th Cir. [Certiorari granted, 524 U. S. 980.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 97–1337. MINNESOTA ET AL. *v.* MILLE LACS BAND OF CHIPPEWA INDIANS ET AL. C. A. 8th Cir. [Certiorari granted, 524 U. S. 915.] Motion of respondents John W. Thompson et al. for divided argument granted to be divided as follows: 20 minutes for Minnesota and 10 minutes for respondents John W. Thompson et al. Request for additional time for oral argument denied. Motion of the Solicitor General for divided argument granted.

No. 97–1489. YOUR HOME VISITING NURSE SERVICES, INC. *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 6th Cir. [Certiorari granted, 524 U. S. 925.] Motion of Oklahoma Hospital Association et al. for leave to file a brief as *amici curiae* out of time denied.

No. 97–1709. KUMHO TIRE CO., LTD., ET AL. *v.* CARMICHAEL ET AL. C. A. 11th Cir. [Certiorari granted, 524 U. S. 936.] Motions of International Association of Arson Investigators and National Academy of Forensic Engineers for leave to file briefs as *amici curiae* granted.

No. 97–8629. RICHARDSON *v.* UNITED STATES. C. A. 7th Cir. [Certiorari granted, *ante,* p. 809.] Motion for appointment of counsel granted, and it is ordered that William A. Barnett, Jr., Esq., of Chicago, Ill., be appointed to serve as counsel for petitioner in this case.

No. 98–5864. STRICKLER *v.* GREENE, WARDEN. C. A. 4th Cir. [Certiorari granted, *ante,* p. 809.] 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. 98–404. DEPARTMENT OF COMMERCE ET AL. *v.* UNITED STATES HOUSE OF REPRESENTATIVES ET AL. D. C. D. C. [Probable jurisdiction noted, 524 U. S. 978]; and

No. 98–564. CLINTON, PRESIDENT OF THE UNITED STATES, ET AL. *v.* GLAVIN ET AL. D. C. E. D. Va. [Probable jurisdiction noted, *ante,* p. 924.] Motion of appellees for divided argument granted.

No. 98–5530. IN RE LOWE;
No. 98–5681. IN RE LOWE; and
No. 98–5919. IN RE LOWE. Motions of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until November 23, 1998, 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. 98–5778. CARR *v.* CARR. App. Ct. Mass.;
No. 98–5816. IYEGHA *v.* UNITED AIRLINES, INC. Sup. Ct. Ala.; and
No. 98–6024. STAFFORD ET VIR *v.* ROSSOTTI, COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 23, 1998, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 97–9032. IN RE BROWN;
No. 98–528. IN RE NEAL;
No. 98–6293. IN RE TOBIAS;
No. 98–6353. IN RE PARKS; and
No. 98–6410. IN RE NASIR. Petitions for writs of habeas corpus denied.

No. 98–414. IN RE OWEN;
No. 98–5793. IN RE MILLER;
No. 98–5876. IN RE SCHNELLE; and
No. 98–6201. IN RE DEBARDELEBEN. Petitions for writs of mandamus denied.

*Certiorari Granted*

No. 97–1909. MURPHY BROTHERS, INC. *v.* MICHETTI PIPE STRINGING, INC. C. A. 11th Cir. Certiorari granted. Reported below: 125 F. 3d 1396.

No. 98–208. KOLSTAD *v.* AMERICAN DENTAL ASSOCIATION. C. A. D. C. Cir. Certiorari granted. Reported below: 139 F. 3d 958.

No. 98–369. NATIONAL AERONAUTICS AND SPACE ADMINISTRATION ET AL. *v.* FEDERAL LABOR RELATIONS AUTHORITY ET AL. C. A. 11th Cir. Certiorari granted. Reported below: 120 F. 3d 1208.

No. 98–377. LEHMAN, COMMISSIONER OF PATENTS AND TRADEMARKS *v.* ZURKO ET AL. C. A. Fed. Cir. Certiorari granted. Reported below: 142 F. 3d 1447.

No. 98–131. UNITED STATES *v.* SUN-DIAMOND GROWERS OF CALIFORNIA. C. A. D. C. Cir. Motion of Public Citizen for leave to file a brief as *amicus curiae* granted. Certiorari granted limited to the following question: "Is the requirement in 18 U. S. C. § 201(c)(1)(A) that a thing of value be given 'for or because of any official act' satisfied by a showing that the giving of a thing of value was motivated by the recipient's official position?" Reported below: 138 F. 3d 961.

No. 98–347. CLINTON, PRESIDENT OF THE UNITED STATES, ET AL. *v.* GOLDSMITH. C. A. Armed Forces. Motion of National Institute of Military Justice for leave to file a brief as *amicus curiae* granted. Certiorari granted. Reported below: 48 M. J. 84.

*Certiorari Denied*

No. 97–9442. TUNE *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–21. MERRILL LYNCH, PIERCE, FENNER & SMITH INC. ET AL. *v.* ROUBIK. Sup. Ct. Ill. Certiorari denied. Reported below: 181 Ill. 2d 373, 692 N. E. 2d 1167.

No. 98–28. CARPENTERS LOCAL 209, AFL–CIO *v.* ANHEUSER-BUSCH, INC. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1173.

No. 98–38. BERGER ET UX. *v.* CABLE NEWS NETWORK, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 129 F. 3d 505.

No. 98–68. STONER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 139 F. 3d 1343.

No. 98–145. BANKERS LIFE & CASUALTY CO. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 142 F. 3d 973.

No. 98–153. FLYNN ET AL. *v.* CITY OF BOSTON ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 140 F. 3d 42.

No. 98–158. GRADY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1327.

No. 98–172. BERING STRAIT SCHOOL DISTRICT *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 138 F. 3d 1281.

No. 98–173. ADVENTURE RESOURCES, INC. *v.* HOLLAND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 137 F. 3d 786.

No. 98–186. UMIC, INC., ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION, AS MANAGER OF THE FSLIC RESOLUTION FUND. C. A. 10th Cir. Certiorari denied. Reported below: 136 F. 3d 1375.

No. 98–188. HERMAN, SECRETARY OF LABOR *v.* L. R. WILLSON & SONS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 134 F. 3d 1235.

No. 98–194. O'NEILL, ON BEHALF OF HERSELF AND THE ESTATE OF O'NEILL, DECEASED, ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 142 F. 3d 428.

No. 98–197. ROUTEN *v.* WEST, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 142 F. 3d 1434.

No. 98–199. ACCESS TELECOMMUNICATIONS, ON BEHALF OF ITSELF AND ALL OTHERS SIMILARLY SITUATED, FKA UNIFIED TELECOMMUNICATIONS, L. L. C. *v.* SOUTHWESTERN BELL TELEPHONE CO. C. A. 8th Cir. Certiorari denied. Reported below: 137 F. 3d 605.

No. 98–204. MAMMOET SHIPPING B. V. ET AL. *v.* SKY SHIPPING LTD. ET AL.; and

No. 98–353. SKY SHIPPING LTD. *v.* MAMMOET SHIPPING B. V. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 139 F. 3d 1450.

No. 98–211. TURLINGTON ET UX. *v.* ATLANTA GAS LIGHT CO. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 135 F. 3d 1428.

No. 98–217. PARK VILLAGE APARTMENTS *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 152 F. 3d 943.

No. 98–224. SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* SNOWDEN. C. A. 11th Cir. Certiorari denied. Reported below: 135 F. 3d 732.

No. 98–260. BYRD ET AL. *v.* CANTU ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 137 F. 3d 1126.

No. 98–263. TISCHMANN *v.* ITT/SHERATON CORP. C. A. 2d Cir. Certiorari denied. Reported below: 145 F. 3d 561.

No. 98–307. MELODY *v.* BOROUGH OF EATONTOWN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 151 F. 3d 1026.

No. 98–312. BENION ET UX. *v.* BANK ONE, DAYTON, N. A., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 144 F. 3d 1056.

No. 98–314. MATTSON *v.* SCHULTZ. C. A. 7th Cir. Certiorari denied. Reported below: 145 F. 3d 937.

No. 98–325. DOE *v.* BERKELEY PUBLISHERS, DBA THE BERKELEY INDEPENDENT. Sup. Ct. S. C. Certiorari denied. Reported below: 329 S. C. 412, 496 S. E. 2d 636.

No. 98–334. FREED, FKA FRIEDLANDER *v.* AMERICAN ARBITRATION ASSN. ET AL. C. A. 7th Cir. Certiorari denied.

No. 98–335. HUNNEWELL *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied.

No. 98–336. RITCHEY *v.* UPJOHN DRUG CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 1313.

No. 98–337. PNEUMO ABEX CORP. ET AL. *v.* HIGH POINT, THOMASVILLE & DENTON RAILROAD CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 142 F. 3d 769.

No. 98–339. KELLEY *v.* KLUGER, PERETZ, KAPLAN & BERLIN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 148 F. 3d 1071.

No. 98–345. KEEVER *v.* CITY OF MIDDLETOWN. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 809.

No. 98–351. BEARD *v.* BAUM ET AL. Sup. Ct. Alaska. Certiorari denied. Reported below: 960 P. 2d 1.

No. 98–355. WRIGHT *v.* FREDERIKSEN. Ct. App. Colo. Certiorari denied.

No. 98–357. NADEL *v.* MORRISTOWN FIRE DEPARTMENT ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 98–358. RELIANCE INSURANCE CO. *v.* U. S. BANK OF WASHINGTON, N. A. C. A. 9th Cir. Certiorari denied. Reported below: 143 F. 3d 502.

No. 98–359. DOYLE ET AL. *v.* BELLSOUTH COMMUNICATIONS SYSTEMS, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 433.

No. 98–360. CHAMBERS ET AL. *v.* OHIO DEPARTMENT OF HUMAN SERVICES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 793.

No. 98–362. HEARTSPRINGS, INC. *v.* HEARTSPRING, INC., AKA INSTITUTE OF LOGOPEDICS, INC. C. A. 10th Cir. Certiorari denied. Reported below: 143 F. 3d 550.

No. 98–364. AMERICAN DENTAL ASSN. *v.* KOLSTAD. C. A. D. C. Cir. Certiorari denied. Reported below: 139 F. 3d 958.

No. 98–368. LADSON *v.* LADSON. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 293 Ill. App. 3d 1123, 718 N. E. 2d 1083.

No. 98–372. FOWLER *v.* BOARD OF COUNTY COMMISSIONERS OF POTTAWATOMIE COUNTY. Ct. Civ. App. Okla. Certiorari denied.

No. 98–374. SUN-DIAMOND GROWERS OF CALIFORNIA *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 138 F. 3d 961.

No. 98–380. BANK ONE, MILWAUKEE, N. A. *v.* P. A. BERGNER & CO. C. A. 7th Cir. Certiorari denied. Reported below: 140 F. 3d 1111.

No. 98–381. EGAN *v.* ATHOL MEMORIAL HOSPITAL ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 134 F. 3d 361.

No. 98–382. SCHMIDT ET UX., HEIRS OF DECEDENT SCHMIDT, ET AL. *v.* HTG, INC., ET AL. Sup. Ct. Kan. Certiorari denied. Reported below: 265 Kan. 372, 961 P. 2d 677.

No. 98–386. PERALES *v.* SUPREME COURT OF TEXAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 140 F. 3d 1039.

No. 98–392. WALKER ET AL. *v.* FIRST COMMERCIAL BANK, N. A. Sup. Ct. Ark. Certiorari denied. Reported below: 333 Ark. 100, 969 S. W. 2d 146.

No. 98–394. TAUBER ET AL. *v.* VIRGINIA EX REL. EARLEY, ATTORNEY GENERAL OF VIRGINIA, ET AL. Sup. Ct. Va. Certiorari denied. Reported below: 255 Va. 445, 499 S. E. 2d 839.

No. 98–401. MITCHELL *v.* RICHARDS, CHIEF INSURANCE COMMISSIONER OF SOUTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1159.

No. 98–402. GILDER *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 704 So. 2d 467.

No. 98–408. ALLISON ET UX. *v.* UNKNOWN HEIRS ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 289 Mont. 543, 971 P. 2d 1249.

No. 98–415. SEACOAST MOTORS OF SALISBURY, INC. *v.* CHRYSLER CORP. C. A. 1st Cir. Certiorari denied. Reported below: 143 F. 3d 626.

No. 98–417. GARNER ET UX. *v.* CORPUS CHRISTI NATIONAL BANK. Ct. App. Tex., 13th Dist. Certiorari denied. Reported below: 944 S. W. 2d 469.

No. 98–421. SCHULZ ET AL. *v.* NEW YORK STATE EXECUTIVE. Ct. App. N. Y. Certiorari denied. Reported below: 92 N. Y. 2d 1, 699 N. E. 2d 360.

No. 98–422. SNYDER *v.* GARB, JUDGE, COURT OF COMMON PLEAS, BUCKS COUNTY, PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1353.

No. 98–425. SOLOMON *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied. Reported below: 711 So. 2d 1141.

No. 98–440. DONLON ET AL. *v.* CITY OF OXNARD ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–441. DELAP *v.* OREGON. Sup. Ct. Ore. Certiorari denied.

No. 98–452. IN RE GILMAN. Sup. Ct. Cal. Certiorari denied.

No. 98–453. DUNCAN, PERSONALLY AND ON BEHALF OF HER DECEASED CHILD, BABY BOY SCOTT *v.* CALDERA, SECRETARY OF THE ARMY. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 719.

No. 98–459. WYNEKEN *v.* SCOTT ET AL. Ct. App. Ind. Certiorari denied. Reported below: 683 N. E. 2d 1367.

No. 98–475. DUNLAP *v.* NATIONAL BANK OF ALASKA. C. A. 9th Cir. Certiorari denied.

No. 98–481. ANDERSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 144 F. 3d 653.

No. 98–506. MANTELL ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 151 F. 3d 1027.

No. 98–508. MERRILL *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 727 So. 2d 179.

No. 98–513. GAGER ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 149 F. 3d 918.

No. 98–516. LIEN ET AL. *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 152 F. 3d 948.

No. 98–522. DAMICO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–541. WARREN *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 219 Wis. 2d 616, 579 N. W. 2d 698.

No. 98–547. APPERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 151 F. 3d 1031.

No. 98–549. KWOK CHING YU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 98–567. CERRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 133 F. 3d 929.

No. 98–5081. BILLIOT *v.* ANDERSON, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 135 F. 3d 311.

No. 98–5114. RAMOS-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 F. 3d 465.

No. 98–5374. ALBA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–5405. KASZA ET AL. *v.* BROWNER, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 133 F. 3d 1159.

No. 98–5412. WALLS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 141 F. 3d 1171.

No. 98–5431. SANCHEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 1410.

No. 98–5468. CAUTHERN *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 967 S. W. 2d 726.

No. 98–5495. MCGINN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–5510. STEVENSON *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 709 A. 2d 619.

No. 98–5532. CAPETILLO *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–5536. DARNE *v.* WISCONSIN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 137 F. 3d 484.

No. 98–5738. RAMIREZ *v.* HATCHER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 136 F. 3d 1209.

No. 98–5742. MORENO BARAJAS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–5744. SHROFF *v.* SUNSHINE EXTRAVAGANZA PROMOTION. C. A. 9th Cir. Certiorari denied.

No. 98–5755. ROW *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied. Reported below: 131 Idaho 303, 955 P. 2d 1082.

No. 98–5760. RANSOM *v.* SALKIN. Cir. Ct. Baltimore City, Md. Certiorari denied.

No. 98–5763. COLON *v.* FLORIDA COMMISSION ON ETHICS ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 717 So. 2d 529.

No. 98–5766. STEWART *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 292 Ill. App. 3d 1130, 717 N. E. 2d 864.

No. 98–5767. SMITH *v.* MORGAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 98–5769. JENKINS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 269 Ga. 282, 498 S. E. 2d 502.

No. 98–5770. KING *v.* MOODEY. C. A. 11th Cir. Certiorari denied. Reported below: 136 F. 3d 139.

No. 98–5776. COLLINS *v.* AUGUSTA HOUSING AUTHORITY, CITY OF AUGUSTA, GEORGIA. C. A. 11th Cir. Certiorari denied. Reported below: 141 F. 3d 1190.

No. 98–5777. BOYD *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 715 So. 2d 852.

No. 98–5779. MEANES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 138 F. 3d 1007.

No. 98–5781. MITCHELL *v.* TPI RESTAURANTS. C. A. 11th Cir. Certiorari denied. Reported below: 136 F. 3d 1330.

No. 98–5782. OATEY *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–5787. FAUSTINO RIVERA *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied.

No. 98–5788. PATTERSON *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 98–5792. KEESLING *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 98–5796. CLIFFORD *v.* BOZZELLA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 719.

No. 98–5798. AJAMU *v.* ALFRED ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 146 F. 3d 870.

No. 98–5802. EMERY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 139 F. 3d 191.

No. 98–5806. RILEY *v.* PRUNTY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 929.

No. 98–5809. HILL *v.* TURPIN, WARDEN. Sup. Ct. Ga. Certiorari denied. Reported below: 269 Ga. 302, 498 S. E. 2d 52.

No. 98–5811. ROUNDTREE *v.* KENNEDY ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–5812. SPARKS *v.* KENTUCKY CHARACTER AND FITNESS COMMITTEE ET AL. C. A. 6th Cir. Certiorari denied.

No. 98–5813. SPIGELSKI *v.* MCDONALD'S. C. A. 3d Cir. Certiorari denied.

No. 98–5817. LIEBERS *v.* SALINE COUNTY, KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 24 Kan. App. 2d xix, 951 P. 2d 1323.

No. 98–5819. DUBOSE *v.* JONES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–5820. SHAFER *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 969 S. W. 2d 719.

No. 98–5822. GUILLOT *v.* DAY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 146 F. 3d 867.

No. 98–5829. SHOOK *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 98–5830. HALL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–5833. BARNES *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 269 Ga. 345, 496 S. E. 2d 674.

No. 98–5839. PROSSER *v.* ROSS ET AL. C. A. 8th Cir. Certiorari denied.

No. 98–5850. RAWLINS *v.* ARIZONA DEPARTMENT OF CORRECTIONS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 928.

No. 98–5869. KEE *v.* MASSACHUSETTS MUTUAL LIFE INSURANCE CO. ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 717 So. 2d 533.

No. 98–5870. JACKSON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 182 Ill. 2d 30, 695 N. E. 2d 391.

No. 98–5880. NIEVES *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 718 So. 2d 169.

No. 98–5882. KURTZEMANN *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 98–5886. FORSYTH *v.* BRIGNER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 156 F. 3d 1229.

No. 98–5892. HARBISON ET AL. *v.* CAMPBELL, COMMISSIONER, TENNESSEE DEPARTMENT OF CORRECTION, ET AL. C. A. 6th Cir. Certiorari denied.

No. 98–5893. HIBBARD *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 7th Cir. Certiorari denied. Reported below: 139 F. 3d 901.

No. 98–5894. DEJESUS *v.* EDGAR, GOVERNOR OF ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 142 F. 3d 439.

No. 98–5899. NADDI *v.* HILL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 928.

No. 98–5902. WILLIS *v.* SPRAGUE. Ct. App. D. C. Certiorari denied.

No. 98–5903. WILLIS *v.* SOUTHERLAND. Ct. App. D. C. Certiorari denied.

No. 98–5904. KEIFFER *v.* CITY OF SEATTLE CIVIL SERVICE COMMISSION ET AL. Ct. App. Wash. Certiorari denied. Reported below: 87 Wash. App. 170, 940 P. 2d 704.

No. 98–5911. LaGrand et al. *v.* Stewart, Director, Arizona Department of Corrections. C. A. 9th Cir. Certiorari denied. Reported below: 133 F. 3d 1253.

No. 98–5912. Nelson *v.* Henson et al. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 928.

No. 98–5914. Osborne *v.* Singletary, Secretary, Florida Department of Corrections. Sup. Ct. Fla. Certiorari denied. Reported below: 707 So. 2d 1126.

No. 98–5921. Moran *v.* Trippett, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 149 F. 3d 1184.

No. 98–5925. Beckman *v.* California. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 98–5930. Beachem *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 294 Ill. App. 3d 1094, 721 N. E. 2d 849.

No. 98–5936. Castro *v.* Gibson, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 131 F. 3d 810.

No. 98–5960. Vargas *v.* Sikes, Warden. C. A. 11th Cir. Certiorari denied.

No. 98–5981. Earl *v.* Arkansas. Sup. Ct. Ark. Certiorari denied. Reported below: 333 Ark. 489, 970 S. W. 2d 789.

No. 98–5986. Fields *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 98–5999. Christian *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 98–6005. Willis *v.* Goodwill Industries of Kentucky, Inc. Ct. App. Ky. Certiorari denied.

No. 98–6011. Hurd *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 62 Cal. App. 4th 1084, 73 Cal. Rptr. 2d 203.

No. 98–6019. Lowrey *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 98–6022. ROSENTHAL *v.* BANKS, ADMINISTRATIVE APPEALS JUDGE, DEPARTMENT OF HEALTH AND HUMAN SERVICES. C. A. 1st Cir. Certiorari denied. Reported below: 181 F. 3d 80.

No. 98–6027. CUNNINGHAM *v.* PACE ET AL. C. A. 5th Cir. Certiorari denied.

No. 98–6028. JACKSON *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–6035. SCOTT *v.* BURTON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 98–6040. KROEMER *v.* IRVIN. C. A. 2d Cir. Certiorari denied.

No. 98–6063. TIDWELL *v.* MILLS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–6069. VINH HUNG LAM *v.* HARTE-HANKS COMMUNICATIONS, INC. C. A. 9th Cir. Certiorari denied. Reported below: 161 F. 3d 13.

No. 98–6074. RISHER *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 332 Ark. xxi.

No. 98–6078. BEARD *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 141 F. 3d 1165.

No. 98–6079. HYON O *v.* HENDERSON, POSTMASTER GENERAL. C. A. 9th Cir. Certiorari denied.

No. 98–6081. SCOTT *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 717 So. 2d 908.

No. 98–6083. JONES *v.* POOLE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–6084. LOWE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 136 F. 3d 1231.

No. 98–6089. VIENGVILAI *v.* NEWLAND, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1343.

No. 98–6091. ARLEDGE *v.* IDAHO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1173.

No. 98–6097. HIMMELSTEIN *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 155 F. 3d 570.

No. 98–6110. PACK *v.* PAGE, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 147 F. 3d 586.

No. 98–6112. PRINCE *v.* CORCORAN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 721.

No. 98–6118. BRACE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 F. 3d 247.

No. 98–6120. NANCE *v.* VIEREGGE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 147 F. 3d 589.

No. 98–6126. ROBINSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 149 F. 3d 1194.

No. 98–6129. JACKSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 98–6130. MAHONE *v.* HENDERSON, POSTMASTER GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 435.

No. 98–6136. WILLIAMSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 931.

No. 98–6142. MELTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 149 F. 3d 1185.

No. 98–6145. KING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 562.

No. 98–6153. LOMAX *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 98–6154. JOLLY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 704 A. 2d 855.

No. 98–6155. MARSH ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 144 F. 3d 1229.

No. 98–6156. CARDOZA-HINOJOSA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 140 F. 3d 610.

No. 98–6158. CARROLL *v.* LOCAL 144 PENSION FUND ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 917.

No. 98–6159. WILLIAMS *v.* FURLONG, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 149 F. 3d 1192.

No. 98–6163. CARRILLO-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1176.

No. 98–6165. DAVIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–6167. HANNAH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 149 F. 3d 1185.

No. 98–6168. GREGORY ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 151 F. 3d 1030.

No. 98–6169. GREEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 137 F. 3d 1349.

No. 98–6171. LOPEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 919.

No. 98–6172. ELWOOD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–6175. GUNN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 151 F. 3d 1031.

No. 98–6176. MARKUN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 98–6179. MALLARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 958.

No. 98–6183. PIERCE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 136 F. 3d 770.

No. 98–6185. MCLEGGAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1354.

No. 98–6186. MYERS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 98–6187. CARRILLO *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 131 F. 3d 133.

No. 98–6191. DEAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 146 F. 3d 1141.

No. 98–6192. FOX *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 149 F. 3d 1192.

No. 98–6196. DINKINS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 98–6197. GREEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 98–6202. FORD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1353.

No. 98–6203. GERMOSEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 98–6206. KENNEDY *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied.

No. 98–6207. LOPEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 723.

No. 98–6210. BOLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1178.

No. 98–6211. COPNEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 561.

No. 98–6213. KELLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 142 F. 3d 1282.

No. 98–6215. MORRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–6218. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 563.

No. 98–6223. LAZAREVICH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 147 F. 3d 1061.

No. 98–6224. ROJAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 931.

No. 98–6225. MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 930.

No. 98–6227. JONES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 446.

No. 98–6228. PROPHETT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 163 F. 3d 608.

No. 98–6232. KAZMIERCZAK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1354.

No. 98–6234. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 149 F. 3d 1194.

No. 98–6235. BROWN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 162 F. 3d 1152.

No. 98–6243. HERNANDEZ-GUERRERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 147 F. 3d 1075.

No. 98–6244. FRANK, AKA CLARKE, AKA WILSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 162 F. 3d 1152.

No. 98–6246. DUNBAR *v.* MICHIGAN DEPARTMENT OF CIVIL SERVICE, EMPLOYMENT RELATIONS BOARD. Ct. App. Mich. Certiorari denied.

No. 98–6249. FIELDS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 156 F. 3d 1232.

No. 98–6252. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 144 F. 3d 55.

No. 98–6253. WOOD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 145 F. 3d 362.

No. 98–6254. TELLECHIA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 151 F. 3d 1034.

No. 98–6255. VIRAMONTES-ALVARADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 149 F. 3d 912.

No. 98–6257. AL JIBORI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 149 F. 3d 125.

No. 98–6259. JENKINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 129 F. 3d 616.

No. 98–6260. HOOKS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 156 F. 3d 1240.

No. 98–6262. GENTILE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 144 F. 3d 1365.

No. 98–6267. GRANADOS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 562.

No. 98–6271. PEKER *v.* FADER ET AL. C. A. 2d Cir. Certiorari denied.

No. 98–6284. OVIEDO ROSALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1180.

No. 98–6285. SCRUGGS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 151 F. 3d 1030.

No. 98–6286. MARTINSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1490.

No. 98–6290. MING HOI WONG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 98–6291. VICKERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 150 F. 3d 1196.

No. 98–6295. BASWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 149 F. 3d 1196.

No. 98–6301. CARBAUGH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 141 F. 3d 791.

No. 98–6304. ALLMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1341.

No. 98–6307. MCKINNEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 156 F. 3d 1233.

No. 98–6315. RAMIREZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 563.

No. 98–6326. MURPHY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 201 F. 3d 429.

No. 98–6327. MCCOY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 98–6336. WOOD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 98–6339. VAZQUEZ-PULIDO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 155 F. 3d 1213.

No. 98–6342. BRAGGS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 432.

No. 97–1485. COATES, DIRECTOR, MASSACHUSETTS DIVISION OF MARINE FISHERIES, ET AL. *v.* STRAHAN. C. A. 1st Cir. Motion of Conservation Law Foundation, Inc., for leave to file a brief as *amicus curiae* granted. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 127 F. 3d 155.

No. 97–9525. HENDERSON *v.* TEXAS. Ct. Crim. App. Tex. Motion of petitioner to amend the petition for writ of certiorari and to supplement the record denied. Certiorari denied. Reported below: 962 S. W. 2d 544.

No. 98–292. CALDERON, WARDEN *v.* BROWN. Sup. Ct. Cal. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 17 Cal. 4th 873, 952 P. 2d 715.

No. 98–371. HILL, WARDEN, ET AL. *v.* NADDI. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 152 F. 3d 928.

No. 98–310. STATE INSURANCE FUND *v.* MATHER, TRUSTEE FOR THE ESTATE OF SOUTHERN STAR FOODS, INC. C. A. 10th Cir. Motion of National Council on Compensation Insurance, Inc., et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 144 F. 3d 712.

No. 98–352. AT&T UNIVERSAL CARD SERVICES, INC. *v.* REMBERT. C. A. 6th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 141 F. 3d 277.

*Rehearing Denied*

No. 97–9086. DIACONU *v.* DEFENSE LOGISTICS AGENCY ET AL., 524 U. S. 944. Petition for rehearing denied.

No. 97–9194. GUANIPA *v.* UNITED STATES, 524 U. S. 959. Motion for leave to file petition for rehearing denied.

NOVEMBER 3, 1998

*Dismissal Under Rule 46*

No. 98–6350. IN RE WHITFIELD. Petition for writ of mandamus dismissed under this Court's Rule 46.

NOVEMBER 4, 1998

*Dismissals Under Rule 46*

No. 98–597. GRANVILLE TOWNSHIP BOARD OF TRUSTEES *v.* SMITH ET AL. Sup. Ct. Ohio. Certiorari dismissed under this Court's Rule 46. Reported below: 81 Ohio St. 3d 608, 693 N. E. 2d 219.

No. 98–632. IN RE CALDERON, WARDEN, ET AL. Petition for writ of mandamus dismissed under this Court's Rule 46.

NOVEMBER 6, 1998

*Rehearing Denied*

No. 97–9567 (A–370). WILLIAMS *v.* CAIN, WARDEN, *ante*, p. 859. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for rehearing denied.

NOVEMBER 9, 1998

*Certiorari Granted—Vacated and Remanded*

No. 97–945. UNITED PAPERWORKERS INTERNATIONAL UNION ET AL. *v.* BUZENIUS ET AL. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Marquez* v. *Screen Actors*, *ante*, p. 33. Reported below: 124 F. 3d 788.

No. 97–1507. TEEL ET AL. *v.* KHURANA. C. A. 5th Cir. Motion of petitioners for double costs denied. Certiorari granted, judgment vacated, and case remanded with instructions to dismiss

the case as moot. See *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950). Reported below: 130 F. 3d 143.

*Miscellaneous Orders*

No. A–334. WEINSTEIN ET AL. *v.* STARR ET AL. Application for injunctive relief, addressed to JUSTICE SCALIA and referred to the Court, denied.

No. A–336. MARITIME OVERSEAS CORP. *v.* ELLIS. Sup. Ct. Tex. Application for stay, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. D–1941. IN RE DISBARMENT OF HUBER. Disbarment entered. [For earlier order herein, see 523 U. S. 1069.]

No. D–1973. IN RE DISBARMENT OF FALICK. Disbarment entered. [For earlier order herein, see 524 U. S. 949.]

No. D–2008. IN RE DISBARMENT OF MOORE. Theron Monroe Moore, of Norcross, 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–2009. IN RE DISBARMENT OF GLEAN. Michael Anthony Glean, of Smyrna, Ga., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–27. MASON *v.* SECURITIES AND EXCHANGE COMMISSION ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 97–9361. JONES *v.* UNITED STATES. C. A. 5th Cir. [Certiorari granted, *ante*, p. 809.] Motion of petitioner for appointment of second counsel denied.

No. 98–184. WYOMING *v.* HOUGHTON. Sup. Ct. Wyo. [Certiorari granted, 524 U. S. 983.] Motion for appointment of counsel granted, and it is ordered that Donna D. Domonkos, Esq., of Cheyenne, Wyo., be appointed to serve as counsel for respondent in this case.

No. 98–6416. IN RE SEWARD;
No. 98–6469. IN RE BEAZLEY;
No. 98–6470. IN RE BURCH; and
No. 98–6489. IN RE BALL. Petitions for writs of habeas corpus denied.

*Certiorari Granted*

No. 98–436. ALDEN ET AL. *v.* MAINE. Sup. Jud. Ct. Me. Certiorari granted. Reported below: 715 A. 2d 172.

No. 97–1927. HANLON ET AL. *v.* BERGER ET UX. C. A. 9th Cir.; and
No. 98–83. WILSON ET AL. *v.* LAYNE, DEPUTY UNITED STATES MARSHAL, ET AL. C. A. 4th Cir. Certiorari granted limited to the following questions: "1. Whether law enforcement officers violate the Fourth Amendment by allowing members of the news media to accompany them and to observe and record their execution of a warrant? 2. Whether, if this action violates the Fourth Amendment, the officers are nonetheless entitled to a defense of qualified immunity?" Cases consolidated and a total of one hour allotted for oral argument. Reported below: No. 97–1927, 129 F. 3d 505; No. 98–83, 141 F. 3d 111.

No. 98–5881. LILLY *v.* VIRGINIA. Sup. Ct. Va. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 255 Va. 558, 499 S. E. 2d 522.

*Certiorari Denied*

No. 97–1894. SEAHORSE COASTAL ASSISTANCE & TOWING ET AL. *v.* FLEISCHMANN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 137 F. 3d 131.

No. 98–128. MCNAMARA ET AL. *v.* CITY OF CHICAGO ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 138 F. 3d 1219.

No. 98–163. CITY OF IRVINE ET AL. *v.* NELSON ET AL., ON BEHALF OF THEMSELVES AND ON BEHALF OF OTHERS SIMILARLY SITUATED. C. A. 9th Cir. Certiorari denied. Reported below: 143 F. 3d 1196.

No. 98–190. HUFFINGTON *v.* NUTH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 140 F. 3d 572.

No. 98–254. PRINCESS CRUISES, INC. *v.* GENERAL ELECTRIC CO. C. A. 4th Cir. Certiorari denied. Reported below: 143 F. 3d 828.

No. 98–385. EARLES ET AL. *v.* STATE BOARD OF CERTIFIED PUBLIC ACCOUNTANTS OF LOUISIANA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 139 F. 3d 1033.

No. 98–400. SMITH, TRUSTEE FOR THE ESTATES OF HANSON ET AL. *v.* LASER, WILSON, BUFORD & WATTS, P. C., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 149 F. 3d 1188.

No. 98–403. MENCER *v.* HAMMONDS. C. A. 11th Cir. Certiorari denied. Reported below: 134 F. 3d 1066.

No. 98–407. PIANO ET UX. *v.* NASUTI, TRUSTEE. C. A. 11th Cir. Certiorari denied. Reported below: 148 F. 3d 1071.

No. 98–409. DUFFIELD *v.* ROBERTSON, STEPHENS & CO. C. A. 9th Cir. Certiorari denied. Reported below: 144 F. 3d 1182.

No. 98–410. FISTER, PARENT AND GUARDIAN OF FISTER *v.* MINNESOTA NEW COUNTRY SCHOOL. C. A. 8th Cir. Certiorari denied. Reported below: 149 F. 3d 1187.

No. 98–411. HUBER *v.* DISTRICT OF COLUMBIA BOARD ON PROFESSIONAL RESPONSIBILITY ET AL. Ct. App. D. C. Certiorari denied. Reported below: 708 A. 2d 259.

No. 98–412. JACKSON *v.* NCT CORP. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1158.

No. 98–418. WYOMING DEPARTMENT OF TRANSPORTATION *v.* STRAIGHT. C. A. 10th Cir. Certiorari denied. Reported below: 143 F. 3d 1387.

No. 98–423. THOMPSON *v.* DEPARTMENT OF THE NAVY. C. A. D. C. Cir. Certiorari denied.

No. 98–445. BATCHELDER, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF HONDA MOTOR CO., LTD., ET AL. *v.* KAWAMOTO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 147 F. 3d 915.

No. 98–448. STEWART *v.* STEWART. Ct. App. N. C. Certiorari denied. Reported below: 128 N. C. App. 754, 498 S. E. 2d 210.

No. 98–449. GUSTO RECORDS, INC., ET AL. *v.* PETERSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 140 F. 3d 1313.

No. 98–451. DOE *v.* MILES INC. ET AL. Ct. App. Ariz. Certiorari denied. Reported below: 193 Ariz. 51, 969 P. 2d 657.

No. 98–483. GIH-HORNG CHEN *v.* ZYGO CORP. C. A. 2d Cir. Certiorari denied. Reported below: 162 F. 3d 1147.

No. 98–486. O'BRIEN *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 168 F. 3d 1320.

No. 98–497. HANLON *v.* DUNBAR. Ct. App. D. C. Certiorari denied.

No. 98–503. BELLO, DBA NUCLEUS OIL CO. *v.* CITIZENS NATIONAL BANK ET AL. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 98–521. JENSVOLD *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1158.

No. 98–523. FRITZ *v.* LANCASTER COUNTY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 151 F. 3d 1025.

No. 98–537. MOODY *v.* MOODY. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 710 So. 2d 375.

No. 98–545. FLUOR DANIEL (NPOSR), INC. *v.* SEWARD. Sup. Ct. Wyo. Certiorari denied. Reported below: 956 P. 2d 1131.

No. 98–546. GREENE *v.* WCI HOLDINGS CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 136 F. 3d 313.

No. 98–566. KENNEDY *v.* GOLDIN, ADMINISTRATOR OF NATIONAL AERONAUTICS AND SPACE ADMINISTRATION. C. A. 11th Cir. Certiorari denied. Reported below: 140 F. 3d 1043.

No. 98–602. SMITH-GREGG *v.* DEPARTMENT OF THE INTERIOR. C. A. D. C. Cir. Certiorari denied.

No. 98–609. CASSIS MANAGEMENT CORP. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 917.

No. 98–617. SCHAEFFER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 149 F. 3d 1189.

No. 98–5151. PITSONBARGER *v.* GRAMLEY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 141 F. 3d 728.

No. 98–5818. LUDWIG *v.* VERMETTE ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 707 So. 2d 742.

No. 98–5931. BARNES *v.* PUCINSKI, CLERK, CIRCUIT COURT OF ILLINOIS, COOK COUNTY. Sup. Ct. Ill. Certiorari denied.

No. 98–5934. TAYLOR *v.* GARRETT, JUDGE, CIRCUIT COURT OF ALABAMA, JEFFERSON COUNTY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 136 F. 3d 1331.

No. 98–5939. BOGART *v.* CURRY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 887.

No. 98–5940. PARNELL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied.

No. 98–5941. SMITH *v.* PARKER, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 165 F. 3d 28.

No. 98–5944. POLLACK *v.* WILSHIRE LEASING, LTD. C. A. 11th Cir. Certiorari denied. Reported below: 142 F. 3d 1282.

No. 98–5952. MUNG VAN LAM *v.* BARNETT ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 151 F. 3d 1033.

No. 98–5958. CORRELL *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 137 F. 3d 1404.

No. 98–5965. PIZZO *v.* STALDER, SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 157 F. 3d 903.

No. 98–5967. PERFETTO *v.* KUHLMANN, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 920.

No. 98–5968. RICHARDSON *v.* HUFFMAN. C. A. 4th Cir. Certiorari denied. Reported below: 151 F. 3d 1030.

No. 98–5970. CLYMER *v.* RUBENSTEIN, DISTRICT ATTORNEY OF BUCKS COUNTY, PENNSYLVANIA, ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 707 A. 2d 554.

No. 98–5973. HOWELL *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 98–5977. WANLESS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 98–6013. FRANKLIN ET AL., ON BEHALF OF BERRY *v.* FRANCIS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 144 F. 3d 429.

No. 98–6017. JOHNSON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 182 Ill. 2d 96, 695 N. E. 2d 435.

No. 98–6039. LANE *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–6043. ALLEN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 956 P. 2d 918.

No. 98–6070. MILLER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 704 A. 2d 164.

No. 98–6077. WADE *v.* OHIO. Ct. App. Ohio, Richland County. Certiorari denied.

No. 98–6103. MOORE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–6109. STEVENS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 714 So. 2d 347.

No. 98–6147. RODDEN *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 143 F. 3d 441.

No. 98–6149. OBERUCH *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–6150. PALOMINO *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied.

No. 98–6181. MUELLER *v.* BRUCE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 139 F. 3d 912.

No. 98–6184. WARREN *v.* CHAPTER 13 TRUSTEE'S OFFICE. C. A. 11th Cir. Certiorari denied. Reported below: 135 F. 3d 146.

No. 98–6194. HAGANS *v.* CLINTON, PRESIDENT OF THE UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 98–6221. MASON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 704 A. 2d 164.

No. 98–6226. BAAQAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 149 F. 3d 1196.

No. 98–6236. CARDINE *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–6237. CANFIELD *v.* AMERICAN EUROCOPTER CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 154 F. 3d 417.

No. 98–6238. BRATTON *v.* CALIFORNIA. App. Dept., Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 98–6239. FRANCIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 131 F. 3d 1452.

No. 98–6256. PORTER *v.* GENERAL SERVICES ADMINISTRATION ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 151 F. 3d 1033.

No. 98–6264. GIBSON *v.* PENNSYLVANIA NATIONAL GUARD. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1351.

No. 98–6270. DAVIDSON *v.* HENDERSON, POSTMASTER GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 888.

No. 98–6273. ROSENBERG *v.* DEPARTMENT OF THE AIR FORCE ET AL. C. A. 4th Cir. Certiorari denied.

No. 98–6274. SIKORA *v.* BOHN. Sup. Ct. Neb. Certiorari denied.

No. 98–6276. OMOSEFUNMI *v.* COBB ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 181 F. 3d 80.

No. 98–6278. SIDLES *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1340.

No. 98–6279. HURD *v.* IOWA DEPARTMENT OF HUMAN SERVICES. Sup. Ct. Iowa. Certiorari denied. Reported below: 580 N. W. 2d 383.

No. 98–6283. PALMER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 724.

No. 98–6297. STRABLE *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 173 F. 3d 432.

No. 98–6302. TILDON *v.* MCCONNELL. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1160.

No. 98–6313. KOWALCZYK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 918.

No. 98–6328. AUGUST *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–6329. PRICE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 159 F. 3d 638.

No. 98–6330. STONE-LAO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 145 F. 3d 363.

No. 98–6331. RESTREPO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 150 F. 3d 1197.

No. 98–6332. CERVANTES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 930.

No. 98–6340. CROSBY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 893.

No. 98–6344. SUMLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 563.

No. 98–6346. CHARLES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1353.

No. 98–6347. CROCKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 893.

No. 98–6348. DOE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 149 F. 3d 945.

No. 98–6356. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 144 F. 3d 54.

No. 98–6366. BURNS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–6369. JONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 145 F. 3d 959.

No. 98–6370. MONTGOMERY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 724.

No. 98–6371. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 F. 3d 736.

No. 98–6373. LERMA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1180.

No. 98–6376. BROWN ET AL. *v.* UNITED STATES; and BRADDY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 682 A. 2d 1131 (first judgment).

No. 98–6377. THENEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 98–6378. TATE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 163 F. 3d 600.

No. 98–6379. WOODSON ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 163 F. 3d 600.

No. 98–6380. WALKER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 142 F. 3d 103.

No. 98–6381. COLLINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 98–6384. JAMES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–6388. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1335.

No. 98–6389. SHINAULT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 147 F. 3d 1266.

No. 98–6392. JORDAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 156 F. 3d 1233.

No. 98–6393. JEFFERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 149 F. 3d 444.

No. 98–6394. KNOX *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1351.

No. 98–6395. CHRISTENSEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 132 F. 3d 40.

No. 98–6398. MCKOY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1354.

No. 98–6399. KIPERTS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 930.

No. 98–6404. BUXTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 150 F. 3d 983.

No. 98–6405. HERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 141 F. 3d 1042.

No. 98–6407. FEINSTEIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 98–6424. CHILELLI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 156 F. 3d 1239.

No. 98–6425. BISHOP *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 728.

No. 98–6426. COLLINS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 150 F. 3d 668.

No. 98–6427. REINHARDT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1178.

No. 98–6428. PETERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 150 F. 3d 1196.

No. 98–6429. BAYLESS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 98–6439. WARDRICK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1161.

No. 98–93. RUBIN, SECRETARY OF THE TREASURY, ET AL. *v.* UNITED STATES, THROUGH THE INDEPENDENT COUNSEL. C. A. D. C. Cir. Certiorari denied. Reported below: 148 F. 3d 1073.

JUSTICE GINSBURG, dissenting.

I agree with JUSTICE BREYER that this Court, and not a Court of Appeals, ought to be the definitive judicial arbiter in this case. The matter is grave and the competency of the Judiciary (as opposed to the Legislature) to craft the privilege in question is genuinely debatable. Today's disposition, I note, does not in any sense constitute a ruling on the merits of the issue presented. See, *e. g.*, *Equality Foundation of Greater Cincinnati, Inc.* v. *Cincinnati*, 525 U. S. 943 (1998) (STEVENS, J., respecting denial of certiorari).

JUSTICE BREYER, dissenting.

This petition raises the question whether federal law recognizes a special Secret Service evidentiary privilege which, in effect, would permit a Secret Service agent protecting the President to refuse to testify unless he saw or heard conduct or statements that were clearly criminal. To put the matter more precisely, the Secret Service claims a privilege that would protect

> "information obtained by Secret Service personnel while performing their protective function in physical proximity to the President,"

except that it would not apply

> "in the context of a federal investigation or prosecution, to bar testimony by an officer or agent concerning observations or statements that, at the time they were made, were sufficient to provide reasonable grounds for believing that a felony has been, is being, or will be committed." *In re: Sealed Case*, 148 F. 3d 1073, 1075 (CADC 1998) (internal quotation marks omitted).

The Court of Appeals denied the existence of such a privilege. The Secretary of the Treasury asks this Court to review that determination.

I believe the question is important and that this Court should grant review. The physical security of the President of the United States has a special legal role to play in our constitutional

system. The Constitution vests the entire "Power" of one branch of Government in that single human being, the "President" of the United States. Art. II, § 1, cl. 1. He is the head of state. He and the Vice President are the only officials for whom the entire Nation votes. And he is responsible for the actions of the Executive Branch in much the same way that the entire Congress is responsible for the actions of the Legislative Branch or the entire Judiciary for those of the Judicial Branch. He has been called "'the sole indispensable man in government.'" *Clinton* v. *Jones*, 520 U. S. 681, 713 (1997) (BREYER, J., concurring in judgment) (quoting P. Kurland, Watergate and the Constitution 135 (1978)). Thus, one could reasonably believe that the law should take special account of the obvious fact that serious physical harm to the President is a national calamity—by recognizing a special governmental privilege where needed to help avert that calamity.

Moreover, the federal courts themselves have adequate legal authority to develop an evidentiary privilege that will materially help to ensure the physical safety of the President. Federal Rule of Evidence 501 says that "the privilege of a witness . . . shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience." This Court has held that this Rule "did not freeze the law governing the privileges of witnesses in federal trials at a particular point in our history, but rather directed federal courts to continue the evolutionary development of testimonial privileges." *Jaffee* v. *Redmond*, 518 U. S. 1, 9 (1996) (internal quotation marks omitted). See also *United States* v. *Weber Aircraft Corp.*, 465 U. S. 792, 804, n. 25 (1984) ("Rule 501 was adopted precisely because Congress wished to leave privilege questions to the courts rather than attempt to codify them"). The Court has suggested that a privilege will apply where permitting a refusal to testify serves "'a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth.'" *Trammel* v. *United States*, 445 U. S. 40, 50 (1980) (quoting *Elkins* v. *United States*, 364 U. S. 206, 234 (1960) (Frankfurter, J., dissenting)). The Court of Appeals recognized that the President's physical safety amounts to the kind of transcendent public good that, in principle, might justify the recognition of a new privilege here, *In re: Sealed Case*, *supra*, at 1076, just as important public need has led the courts to recognize new privileges in other cases, *Jaffee*

v. *Redmond*, *supra*; *Upjohn Co.* v. *United States*, 449 U. S. 383, 394–395 (1981) (extending attorney-client privilege to cases involving communication between a corporation's employees acting at the direction of its officers and the corporation's attorney); *Totten* v. *United States*, 92 U. S. 105, 107 (1876) (state secrets privilege); cf. 8 J. Wigmore, Evidence §§ 2290, 2333 (J. McNaughton rev. 1961) (explaining how common-law courts developed lawyer-client privilege and spousal privilege between the 16th and 19th centuries).

I concede that this Court, when analyzing a new claim of privilege, has looked to the ability of the privilege to win acceptance in federal courts and other jurisdictions. *Jaffee* v. *Redmond*, *supra*, at 12–13; *Trammel* v. *United States*, *supra*, at 47–50. There is no precedent for the privilege claimed in this case. But, as the Court of Appeals pointed out, the lack of precedent is "hardly surprising," for this "appears to be the first effort in U. S. history to compel testimony by agents guarding the President." *In re: Sealed Case*, 148 F. 3d, at 1076. For that reason, the Court of Appeals decided that "the absence of precedent" did not "weig[h] heavily against recognition of the privilege." *Ibid.* In my view, that determination was correct.

Further, there are strong reasons for believing that a President's physical safety requires the nearby presence of Secret Service agents. The terrible truth, as we all know, is that assassins have killed four American Presidents and have wounded one other. Nine Presidents have been the subject of assassination attempts, including attempts that have taken place while the President was in the White House itself. In addition, a would-be assassin fired a pistol at President-elect Roosevelt three weeks before his inauguration, and the United States has accused a foreign government of planning the assassination of former President Bush when he visited Kuwait in 1993. See Appendix, *infra*, at 996.

History also teaches that the difference between life and death can be a matter of a few feet between a President and his protectors. President McKinley, for example, standing in a receiving line at the Pan American Exposition in Buffalo, was approached by an assassin, gun in hand hidden under a handkerchief. A Secret Service agent next to the President, and noticing the handkerchief, might have stopped the assassin. But there was no agent next to the President, for exposition officials

had requested those places. The assassination succeeded. N. Y. Times, Sept. 7, 1901, p. 1, col. 2; App. to Pet. for Cert. 42a.

By way of contrast, when John Hinckley fired shots at President Reagan, a Secret Service agent next to the President immediately pushed the President toward a limousine, another pushed the two men into the car, and a third spread his arms and legs to protect the President (and was hit in the chest). The President's life was saved. P. Melanson, The Politics of Protection: The U. S. Secret Service in the Terrorist Age 186 (1984) (hereinafter Melanson). When a woman pointed a loaded semiautomatic pistol at President Ford, a Secret Service agent standing next to the President quickly grabbed the weapon with one hand and the woman's arm with the other. After another agent shouted a code warning, two agents grabbed the President and others swiftly surrounded him as they escorted him away. N. Y. Times, Sept. 6, 1975, p. 1, col. 8. Only two weeks later, a shot was fired at President Ford in San Francisco. The President was immediately shielded and hustled into his limousine. N. Y. Times, Sept. 23, 1975, p. 1, col. 8.

As these examples indicate, the Secret Service seeks to surround a President with "an all-encompassing zone of protection," such that agents, once alerted, can form a human shield within seconds. App. to Pet. for Cert. 41a. The Secret Service submitted undisputed affidavits stating that it cannot carry out this strategy effectively unless agents are near, and often next to, the President. *Id.*, at 37a–93a.

Even when the President is at the White House, the need for protection, and the corresponding need for agents to stay close to the President, does not disappear. A man unknown to President Carter visited him at the Oval Office. During the Reagan administration, a man on the Secret Service's list of dangerous persons, and with a history of mental disorders, reached the Oval Office without being stopped. Melanson 92. And as noted above, shots were fired at the White House when President Clinton was there. Even though the President was in the private residence at the time, agents fell upon the President within seconds to cover him and move him away from windows. App. to Pet. for Cert. 57a–58a.

Finally, I turn to what the Court of Appeals considered the key question in dispute: Is there a significant likelihood that, without the evidentiary privilege, Presidents too often will keep

agents at a distance? The words "too often" are important here. No one believes that the President would refuse protection outright. He cannot do so according to law. 18 U. S. C. § 3056(a). But no law can prescribe the President's attitude toward security. No law can dictate how faithfully the President follows the Secret Service's advice regarding security measures. And Presidential security may turn on close questions of degree. The Court of Appeals recognized that the matter was one of degree. It concluded that the Secretary had not shown the benefits of recognizing the privilege with sufficient force. Yet I believe this conclusion is open to significant doubt, particularly for the following two reasons.

First, the complexity of modern federal criminal law, codified in several thousand sections of the United States Code and the virtually infinite variety of factual circumstances that might trigger an investigation into a possible violation of the law, make it difficult for anyone to know, in advance, just when a particular set of statements might later appear (to a prosecutor) to be relevant to some such investigation. Thus, without the privilege, a President could not count on privacy. Rather, he would have to assume, in respect to many Presidential conversations, some genuine risk that a nearby Secret Service agent might later have to divulge their contents.

At the same time there may well be conversations—perfectly lawful conversations, concerning, say, politics or personalities—which a President reasonably would not want divulged. Unless those conversations clearly fall within the bounds of "executive privilege," the bounds of which are unclear, cf. Memorandum for All Executive Department and Agency General Counsels, from Lloyd Cutler, Special Counsel to the President (Sept. 28, 1994), the only way a President could assure privacy would be to create a physical distance between himself and his Secret Service staff. The problem, in other words, arises in respect to ordinary conversations, not in respect to the unusual circumstance of an *obvious* crime.

Second, former President George Bush, several past and present directors of the Secret Service, and all of the now-living former Special Agents in Charge of the Secret Service detail assigned to protect the President presented statements, either sworn or as *amici*, declaring that the absence of a privilege *will* cause the President to lose trust in his agents and keep them

at a distance. This conclusion is plausible in light of human psychology that could lead Presidents to discount certain invisible dangers, such as the risk of assassination in surroundings that seem familiar and where all seems secure. Presidents may ignore those inherent dangers to some small degree, if they do not like having another individual, even an unobtrusive Secret Service agent, right next to them wherever they go. Presidents have not always eagerly accepted the omnipresence of their protectors. Politicians often feel the need to mingle with the public in a way that frustrates the Secret Service's goal of maintaining a controlled environment. And even for those who accept their protectors, enthusiasm can wear thin as the Service pervades the President's private as well as public life. Melanson 126. Franklin Roosevelt, for example, would try to elude his protectors. See Tays, Presidential Reaction to Security: A Longitudinal Study, 10 Presidential Studies Quarterly 600, 601–602 (1980). President Truman summed up his attitude toward the Secret Service as follows: "'Kind and considerate as the Secret Service men were in the performance of their duty, I couldn't help feeling uncomfortable.'" *Id.*, at 603.

A delicate relationship exists between the President and his privacy-intruding protectors, one that may be particularly sensitive to the trust that comes from knowing that what the agents learn in the course of their duties will never be made public. That, in any event, is what the sworn statements set forth in the record and the briefs suggest. Those who provided those statements are in a position to know. It is difficult to characterize the statements as "speculation," *In re: Sealed Case*, 148 F. 3d, at 1076, particularly when the record contains nothing to the contrary.

The upshot, in my view, is that this Court should answer the question whether some kind of protective privilege exists and determine its outlines (whether, for example, it is waivable by the President). The matter is, as the Court of Appeals conceded, "fairly disputed." *Id.*, at 1079. It is legally uncertain. It is important. And only this Court can provide an authoritative answer.

The Independent Counsel at one point argued that "only this Court has the moral authority and public credibility to issue a final ruling on what the Secret Service plainly believes is a sensitive, life-or-death issue." Pet. for Cert. in *United States* v.

*Rubin*, O. T. 1997, No. 1942, p. 10 (redacted version). I agree. This Court, not a lower court, should decide this close legal question directly related to the physical security of the President of the United States.

I therefore dissent from the Court's denial of the writ.

## APPENDIX TO OPINION OF BREYER, J.

### Presidential Assassinations and Assaults

| Date | President | Location | Method | Result |
|---|---|---|---|---|
| 1/30/1835 | Andrew Jackson | Washington | Pistol | Misfire |
| 4/14/1865 | Abraham Lincoln | Washington | Pistol | Killed |
| 7/21/1881 | James Garfield | Washington | Pistol | Killed |
| 9/6/1901 | William McKinley | Buffalo | Pistol | Killed |
| 2/15/1933 | Franklin Roosevelt (President-elect) | Miami | Pistol | Missed target |
| 11/1/1950 | Harry Truman | Washington | Automatic weapon | Assailants intercepted |
| 11/22/1963 | John Kennedy | Dallas | Rifle | Killed |
| 9/5/1975 | Gerald Ford | Sacramento | Pistol | Misfire |
| 9/22/1975 | Gerald Ford | San Francisco | Pistol | Missed target |
| 3/30/1981 | Ronald Reagan | Washington | Pistol | Wounded |
| April 1993 | George Bush (former President) | Kuwait | Bomb | Plot thwarted |
| 10/29/1994 | Bill Clinton | Washington | Assault rifle | Missed target |

SOURCES: Kaiser, Presidential Assassinations and Assaults: Characteristics and Impact on Protective Procedures, 11 Presidential Studies Quarterly 545, 546–547 (1981); N. Y. Times, June 28, 1993, section A, p. 7, col. 2; N. Y. Times, Apr. 5, 1995, section A, p. 16, col. 5.

No. 98–222. STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* CORRELL. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 137 F. 3d 1404.

No. 98–237. ROBERTSON, STEPHENS & CO. *v.* DUFFIELD. C. A. 9th Cir. Motion of Securities Industry Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 144 F. 3d 1182.

No. 98–316. OFFICE OF THE PRESIDENT *v.* OFFICE OF THE INDEPENDENT COUNSEL. C. A. D. C. Cir. Motion of petitioner

for leave to file an unredacted appendix under seal granted. Certiorari denied. Reported below: 158 F. 3d 1263.

JUSTICE BREYER, with whom JUSTICE GINSBURG joins, dissenting.

The divided decision of the Court of Appeals makes clear that the question presented by this petition has no clear legal answer and is open to serious legal debate. Both parties agree that the question presented is important and warrants this Court's attention. See Pet. for Cert. 6–7; Pet. for Cert. in *United States of America* v. *Clinton*, O. T. 1997, No. 97–1924, p. 9. I recognize that a denial of certiorari is not a disposition on the merits of that question. See, *e. g.*, *Equality Foundation of Greater Cincinnati, Inc.* v. *Cincinnati*, *ante*, p. 943 (STEVENS, J., respecting denial of certiorari). Nonetheless, whether or when other opportunities for this Court to consider the issue arise depends upon whether or when the President, or other Government employees, will risk disclosing to Government lawyers significant matters that, under the Court of Appeals' decision, are not privileged. They may very well choose the cautious course, holding back information from Government counsel, perhaps hiring outside lawyers instead. I believe that this Court, not the Court of Appeals, should establish controlling legal principle in this disputed matter of law, of importance to our Nation's governance. I would grant the petition for certiorari.

No. 98–376. JACKSON ET AL. *v.* BENSON ET AL. Sup. Ct. Wis. Motion of National School Boards Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE BREYER would grant certiorari. Reported below: 218 Wis. 2d 835, 578 N. W. 2d 602.

*Rehearing Denied*

No. 97–8139. KARRIEM *v.* UNITED STATES ET AL., 523 U. S. 1065;

No. 97–9198. GLEATON *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 840;

No. 97–9264. GILBERT *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 840;

No. 97–9593. TURNER *v.* UNITED STATES ET AL., *ante*, p. 860;

No. 98–17. IN RE VEY, *ante*, p. 808; and

No. 98–5597. CREHORE *v.* UNITED STATES, *ante,* p. 912. Petitions for rehearing denied.

NOVEMBER 10, 1998

*Dismissal Under Rule 46*

No. 98–5898. IN RE FLOWERS. Petition for writ of mandamus dismissed under this Court's Rule 46.

NOVEMBER 16, 1998

*Miscellaneous Orders*

No. D–1970. IN RE DISBARMENT OF KURTZ. Disbarment entered. [For earlier order herein, see 524 U. S. 935.]

No. D–2010. IN RE DISBARMENT OF BEREANO. Bruce Charles Bereano, of Annapolis, Md., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2011. IN RE DISBARMENT OF WECHSLER. William Alfred Wechsler, 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–2012. IN RE DISBARMENT OF FRIEDMAN. Hirsch Friedman, 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–2013. IN RE DISBARMENT OF REHBERGER. Robert L. Rehberger, of Forsyth, 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–2014. IN RE DISBARMENT OF MYERSON. Harvey D. Myerson, of New York, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–28. DAWSON *v.* BAILEY, STATE TROOPER, COLBERT COUNTY, ALABAMA, ET AL.;

No. M–29. GELIS *v.* UNITED STATES; and

No. M–30. SEA AIR SHUTTLE CORP. *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 97–7597. KNOWLES *v.* IOWA. Sup. Ct. Iowa. [Certiorari granted, 523 U. S. 1019.] Motion for appointment of counsel granted, and it is ordered that Paul Rosenberg, Esq., of Des Moines, Iowa, be appointed to serve as counsel for petitioner in this case under Rule 39.6 of the Rules of this Court.

No. 98–286. FISH *v.* MARSH, SPAEDER, BAUR, SPAEDER & SCHAAF ET AL., *ante*, p. 944. Motion of respondents for damages and costs denied.

No. 98–512. DAVIS ET AL. *v.* CHILES, GOVERNOR OF FLORIDA, ET AL. C. A. 11th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 98–6577. IN RE BREEST. C. A. 1st Cir. Petition for writ of common-law certiorari denied. JUSTICE SOUTER took no part in the consideration or decision of this petition.

No. 98–6551. IN RE BURGESS;

No. 98–6561. IN RE EVERHART; and

No. 98–6646. IN RE PEREZ BUSTILLO. Petitions for writs of habeas corpus denied.

No. 98–5922. IN RE JEFFERSON;

No. 98–6023. IN RE SMITH;

No. 98–6067. IN RE WOODARD; and

No. 98–6383. IN RE KYRICOPOULOS. Petitions for writs of mandamus denied.

No. 98–467. IN RE VIEHWEG. Petition for writ of mandamus and/or prohibition denied.

*Certiorari Granted*

No. 97–2048. O'SULLIVAN *v.* BOERCKEL. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted limited to the following question: "May an individual who is in custody pursuant to a state criminal

conviction pursue claims in a federal habeas petition if those claims were not raised on direct appeal in a petition for discretionary review to the State's highest court?" Reported below: 135 F. 3d 1194.

No. 98–223. FLORIDA *v.* WHITE. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 710 So. 2d 949.

No. 98–262. MCGINNIS, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL. *v.* HADIX ET AL. C. A. 6th Cir. Certiorari granted limited to the following questions: "1. Whether, in litigation pending on the effective date of the Prison Litigation Reform Act, the attorney fee provision of PLRA § 803(d), 42 U. S. C. § 1997e(d), applies to fees awarded after the Act's effective date for services rendered after that date? 2. Whether, in such litigation, this fee provision applies to fees awarded after the Act's effective date for services rendered before that date?" Reported below: 143 F. 3d 246.

*Certiorari Denied.* (See also No. 98–6577, *supra.*)

No. 97–1993. SUN DRILLING PRODUCTS CORP. ET AL. *v.* RAYBORN. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 703 So. 2d 818.

No. 98–105. URBANO *v.* CONTINENTAL AIRLINES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 138 F. 3d 204.

No. 98–200. HARPER ET AL. *v.* BLOCKBUSTER ENTERTAINMENT CORP. C. A. 11th Cir. Certiorari denied. Reported below: 139 F. 3d 1385.

No. 98–272. NORFOLK SOUTHERN CORP. ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 140 F. 3d 240.

No. 98–279. YOUNG ET AL. *v.* LOCKHEED ADVANCED DEVELOPMENT CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1183.

No. 98–295. CARTER *v.* GOOD, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS SHERIFF OF RUTHERFORD COUNTY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1323.

No. 98–309. HANIFI ET AL. *v.* MOTOR CLUB OF AMERICA INSURANCE CO. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 170.

No. 98–391. GEE *v.* FLORIDA ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 718 So. 2d 175.

No. 98–397. CITIZENS FOR CLEAN GOVERNMENT *v.* RUSSELL ET AL.; and

No. 98–399. BURRIS, CHAIRPERSON, ARKANSAS ETHICS COMMISSION, ET AL. *v.* RUSSELL ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 146 F. 3d 563.

No. 98–430. PARENT-GUARDIAN ASSOCIATION OF ARLINGTON DEVELOPMENTAL CENTER *v.* PEOPLE FIRST OF TENNESSEE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1332.

No. 98–431. MELENDEZ ET UX. *v.* CITY OF LOS ANGELES. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 63 Cal. App. 4th 1, 73 Cal. Rptr. 2d 469.

No. 98–432. PARRINO, ADMINISTRATOR OF THE ESTATE OF PARRINO, DECEASED, AND SUCCESSOR TO PARRINO *v.* FHP, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 146 F. 3d 699.

No. 98–446. CARABELLO *v.* SUPREME COURT OF KENTUCKY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 149 F. 3d 1182.

No. 98–454. CITY OF CINCINNATI ET AL. *v.* KRUSE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 907.

No. 98–463. TSE ET AL. *v.* MIRAGE CASINO-HOTEL. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1341.

No. 98–464. TOWN OF TRENTON *v.* LOUNGE MANAGEMENT, LTD. Sup. Ct. Wis. Certiorari denied. Reported below: 219 Wis. 2d 13, 580 N. W. 2d 156.

No. 98–466. MARTIN *v.* KENTUCKY STATE POLICE ET AL. Sup. Ct. Ky. Certiorari denied.

No. 98–471. NORTON *v.* SAM'S CLUB ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 145 F. 3d 114.

No. 98–474. VAN GEMERT ET AL. *v.* LADICK. C. A. 10th Cir. Certiorari denied. Reported below: 146 F. 3d 1205.

No. 98–478. DONNER *v.* DONNER, DECEASED. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 98–493. SMITH *v.* SUPREME COURT OF COLORADO. Sup. Ct. Colo. Certiorari denied.

No. 98–498. HOOPER *v.* PERRINO, DOLINSKY, KARESH, WITHROW, JUARBE & BAIER, M. D., P. A., ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 116 Md. App. 739.

No. 98–509. COOPER ET AL. *v.* NORTH CAROLINA EX REL. LONG, COMMISSIONER OF INSURANCE, AS LIQUIDATOR OF TWENTIETH CENTURY LIFE INSURANCE CO. C. A. 4th Cir. Certiorari denied. Reported below: 151 F. 3d 1030.

No. 98–515. MILLER-WAGENKNECHT *v.* VILLAGE OF DOYLESTOWN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1332.

No. 98–526. VALENTIN *v.* GATES, JUDGE, COURT OF COMMON PLEAS, LEBANON COUNTY, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 162 F. 3d 1153.

No. 98–532. CONTINENTAL MARITIME OF SAN DIEGO, INC. *v.* LENANE. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 61 Cal. App. 4th 1073, 72 Cal. Rptr. 2d 121.

No. 98–538. DREXLER, FORMER SHERIFF OF TAZEWELL COUNTY, ET AL. *v.* LICKISS. C. A. 7th Cir. Certiorari denied. Reported below: 141 F. 3d 1220.

No. 98–550. KAZANJIAN *v.* ANNISTON CITY BOARD OF EDUCATION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 140 F. 3d 1043.

No. 98–558. FURBY *v.* UNITED AUTO WORKERS ET AL. Ct. App. Mich. Certiorari denied.

No. 98–560. LAPIDUS *v.* HAHN, INDIVIDUALLY AND AS LOS ANGELES CITY ATTORNEY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 906.

No. 98–592. KING *v.* BEAVERS. C. A. 8th Cir. Certiorari denied. Reported below: 148 F. 3d 1031.

No. 98–596. BABIGIAN *v.* COMMITTEE ON PROFESSIONAL STANDARDS, THIRD JUDICIAL DEPARTMENT. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 247 App. Div. 2d 817, 669 N. Y. S. 2d 686.

No. 98–599. DAVIS ET AL. *v.* TABACHNICK. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 428 Mass. 1001, 696 N. E. 2d 547.

No. 98–604. SANTIAGO *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 428 Mass. 39, 697 N. E. 2d 979.

No. 98–611. COUNTY OF SAN DIEGO ET AL. *v.* SCHNEIDER. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1340.

No. 98–615. YOUNG *v.* CALDERA, SECRETARY OF THE ARMY. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1172.

No. 98–626. ALFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 142 F. 3d 825.

No. 98–639. LESOON *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 10th Cir. Certiorari denied. Reported below: 141 F. 3d 1185.

No. 98–646. PAYNE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 724.

No. 98–664. MILLS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 928 and 152 F. 3d 1324.

No. 98–5113. RABY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 970 S. W. 2d 1.

No. 98–5248. JONES *v.* UNITED STATES;
No. 98–5424. DODSON *v.* UNITED STATES; and
No. 98–5725. MOTLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1326.

No. 98–5318. ETSITTY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 130 F. 3d 420 and 140 F. 3d 1274.

No. 98–5341. CAIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1160.

No. 98–5350. BURGER *v.* MASTERS, MATES & PILOTS UNION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 141 F. 3d 1189.

No. 98–5656. HOOD *v.* HELLING, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 141 F. 3d 892.

No. 98–5748. FARRIS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 144 F. 3d 50.

No. 98–5827. HENDERSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–5953. LINK *v.* PRODUCTION CREDIT ASSN. C. A. 8th Cir. Certiorari denied. Reported below: 141 F. 3d 1169.

No. 98–5954. MCDONALD *v.* MILLER, GOVERNOR OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 156 F. 3d 1238.

No. 98–5969. OKEN *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 716 A. 2d 1007.

No. 98–5983. HUTCHISON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–5984. HAINES *v.* TERRANGI, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1168.

No. 98–5985. GORE *v.* THE ENTERPRISE. C. A. 11th Cir. Certiorari denied.

No. 98–5987. GRAY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 142 F. 3d 1278.

No. 98–5988. SKIPPER *v.* ETOWAH COUNTY DEPARTMENT OF HUMAN RESOURCES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 149 F. 3d 1195.

No. 98–5989. SHAMSIDEEN *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1174.

No. 98–5991. PRUNTE *v.* WALT DISNEY CO. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 156 F. 3d 186.

No. 98–5992. STEELE *v.* COUNTY OF LOS ANGELES ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–5994. LINK *v.* CITY OF COLUMBUS, OHIO. Ct. App. Ohio, Franklin County. Certiorari denied. Reported below: 127 Ohio App. 3d 122, 711 N. E. 2d 1046.

No. 98–6000. ARAGON *v.* SHANKS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 144 F. 3d 690.

No. 98–6001. BARBER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 145 F. 3d 234.

No. 98–6003. WHITE *v.* WHITE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–6008. JONES ET AL. *v.* TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 137 F. 3d 1351.

No. 98–6009. BIRDS *v.* GARCIA ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–6010. COLLAZO *v.* MORTON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 98–6026. GRIBBLE *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 550 Pa. 62, 703 A. 2d 426.

No. 98–6032. JUDGE *v.* CARTER ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 98–6038. BILLINGS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 348 N. C. 169, 500 S. E. 2d 423.

No. 98–6042. THOMPSON *v.* BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA AT LINCOLN. Ct. App. Neb. Certiorari denied. Reported below: 6 Neb. App. 734, 577 N. W. 2d 749.

No. 98–6049. SHAFFER *v.* SAFFLE, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 148 F. 3d 1180.

No. 98–6051. OGILVIE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 201 F. 3d 428.

No. 98–6053. BUTTERFIELD *v.* SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 28, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 159 F. 3d 635.

No. 98–6057. CROSS *v.* PLACER COUNTY SUPERIOR COURT. C. A. 9th Cir. Certiorari denied.

No. 98–6058. BURNEY *v.* THOMPKINS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 136 F. 3d 142.

No. 98–6061. REED *v.* SCOTT, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1175.

No. 98–6062. QUARTERMAN *v.* LEWIS, JUDGE, PROBATE COURT OF CHATHAM COUNTY, GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 269 Ga. XXV, 500 S. E. 2d 336.

No. 98–6064. STANTON *v.* HUSZ ET AL. Ct. App. Wis. Certiorari denied.

No. 98–6071. JOHNSON *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 98–6073. SIKORA *v.* HOUSTON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 162 F. 3d 1165.

No. 98–6082. RANDLE *v.* TEXAS. C. A. 5th Cir. Certiorari denied.

No. 98–6086. MADISON *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 718 So. 2d 104.

No. 98–6088. CARVER *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 114 Nev. 1688, 988 P. 2d 807.

No. 98–6090. CAMPBELL *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 718 So. 2d 123.

No. 98–6092. JOHNSON *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 692 N. E. 2d 512.

No. 98–6095. DIGGS *v.* HALL ET AL. Ct. App. D. C. Certiorari denied.

No. 98–6101. HILL *v.* BURDICK, CHAPTER 7 TRUSTEE, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 201 F. 3d 428.

No. 98–6104. KIDO *v.* HAWAII. Sup. Ct. Haw. Certiorari denied. Reported below: 87 Haw. 198, 953 P. 2d 576.

No. 98–6106. GOMEZ *v.* EASTLAND COUNTY, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 142 F. 3d 1278.

No. 98–6121. MACK *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 182 Ill. 2d 377, 695 N. E. 2d 869.

No. 98–6144. NICOLAISON *v.* DOTH, COMMISSIONER OF HUMAN SERVICES OF MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 98–6216. MILLENDER *v.* HOOKS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–6258. LARA *v.* IOWA. Sup. Ct. Iowa. Certiorari denied. Reported below: 580 N. W. 2d 783.

No. 98–6265. HACHMEISTER *v.* DEPARTMENT OF DEFENSE. C. A. Fed. Cir. Certiorari denied. Reported below: 152 F. 3d 945.

No. 98–6287. VINNIE *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 428 Mass. 161, 698 N. E. 2d 896.

No. 98–6294. JORDAN *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 716 A. 2d 1004.

No. 98–6298. JACOBS *v.* EDWARDS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–6300. M'MALANI *v.* NEWPORT NEWS SHIPBUILDING & DRY DOCK CO. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1169.

No. 98–6305. BRIGHTWELL *v.* KYLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND DIAGNOSTIC/CLASSIFICATION CENTER AT CAMP HILL, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 151 F. 3d 1024.

No. 98–6323. CARTER *v.* HOPKINS, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 151 F. 3d 872.

No. 98–6333. KAHL *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 119 Md. App. 817.

No. 98–6335. THOMPSON *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 427 Mass. 729, 696 N. E. 2d 105.

No. 98–6345. PRESLEY *v.* PAGE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 98–6349. WITHERS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 156 F. 3d 181.

No. 98–6361. HURT *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 694 N. E. 2d 1212.

No. 98–6362. SHEPHERD *v.* ILLINOIS HUMAN RIGHTS COMMISSION. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 293 Ill. App. 3d 1139, 718 N. E. 2d 1091.

No. 98–6368. BRADVICA *v.* BLOCK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1336.

No. 98–6415. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1172.

No. 98–6423. MACK *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 98–6433. RUTHERFORD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 931.

No. 98–6434. ROCKOT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1354.

No. 98–6436. SEGERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 724.

No. 98–6438. STINNETT *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 129 N. C. App. 192, 497 S. E. 2d 696.

No. 98–6441. TREMBLAY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 157 F. 3d 901.

No. 98–6442. YOUNG *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 98–6444. WALTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–6445. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 896.

No. 98–6447. WILLIAMS *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Wayne County, N. C. Certiorari denied.

No. 98–6449. MENN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–6450. MCCARTHY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 135 F. 3d 754.

No. 98–6454. NOVAK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 146 F. 3d 73.

No. 98–6457. STEVENS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 149 F. 3d 747.

No. 98–6459. PAJOOH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 137 F. 3d 1350.

No. 98–6462. ASLANI *v.* DETROIT PUBLIC LIBRARY ET AL. Ct. App. Mich. Certiorari denied.

No. 98–6471. CUREAUX *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 1476.

No. 98–6475. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–6480. LANCELLOTTI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1342.

No. 98–6502. HALL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1354.

No. 98–6503. GRIFFIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 161 F. 3d 18.

No. 98–6504. GARCIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 156 F. 3d 1244.

No. 98–6507. DUGAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 150 F. 3d 865.

No. 98–6512. GONZALEZ-MENDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 150 F. 3d 1058.

No. 98–6545. BROWN *v.* CITY OF LITTLE ROCK, ARKANSAS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 149 F. 3d 1186.

No. 98–6596. BARBARO *v.* COLLERAN, ACTING SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT WAYMART, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–2057. DANNER *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 963 S. W. 2d 632.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, dissenting.

The Sixth Amendment guarantees a criminal defendant "the right . . . to be confronted with the witnesses against him." In this case, the Kentucky Supreme Court deprived James Danner of that right in defending against a prosecution for raping and sodomizing his daughter, because the victim of the asserted crime, now 15 years of age, vaguely protested that she could not be near him. The trial court conducted the following inquiry:

> "'Q. Why is it that him being there in the room would make you unable to tell your side?
>
> "'A. I don't know. I just can't. I just can't be near him.
>
> "'Q. We've already talked about that you're not afraid of him, are you?
>
> "'A. No.
>
> "'Q. I know it's difficult to exactly put a finger on what it is about; but why do you think that you could tell when he's not in the room but you couldn't tell it with him in the room?
>
> "'A. I don't know. I just can't be near him. I don't know why. I just can't.
>
> "'Q. Do you think that if you were to try and you know if we had to take breaks or something, you would be able to do it?
>
> "'A. I don't know.'" Pet. for Cert. 7.

Even though the witness had expressly disclaimed fear of the defendant, the trial court concluded:

> "'The Court finds that due to factors which I cannot define but yet go much further than anxiety or nervousness, as referred

> to the various cases that have been cited, that compelling need exists for the use of the electronic equipment. And although I am not making this decision simply for the witnesses *[sic]* convenience, or to prevent her from being nervous or anxious, as that no doubt happens to all witnesses, the Court is convinced that due to the nature of [the] testimony and the age of the witness that face-to-face arrangement would inhibit the witness to a degree that the jury's search for the truth would be clouded.'" *Id.*, at 7–8.

The Kentucky Supreme Court affirmed Danner's conviction. 963 S. W. 2d 632 (1998). Although petitioner objected that this procedure violated his constitutional right to confront his accuser, neither the trial court nor the Supreme Court so much as mentioned the Sixth Amendment.

*Maryland* v. *Craig*, 497 U. S. 836 (1990), holds that a State may allow child witnesses in abuse cases to testify outside the presence of the defendant if "necessary to protect a child witness from trauma that would be caused by testifying in the physical presence of the defendant, at least where such trauma would impair the child's ability to communicate . . . ." *Id.*, at 857. The child witnesses in *Craig* were presumably all around the age of the principal child witness, who was seven. See *Craig* v. *State*, 316 Md. 551, 555–556, 560 A. 2d 1120, 1122 (1989). Experts testified at trial that one child "wouldn't be able to communicate effectively," another "would probably stop talking and . . . withdraw and curl up," another would "become highly agitated, that he may refuse to talk or if he did talk, that he would choose his subject regardless of the questions," and another would "become extremely timid and unwilling to talk." *Craig*, 497 U. S., at 842 (internal quotation marks omitted).

I believe *Craig* was wrongly decided, since the confrontation guaranteed by the Sixth Amendment covers all witnesses in (as the text says) "*all* criminal prosecutions." (Emphasis added.) See *id.*, at 860 (SCALIA, J., dissenting). This case, however, comes nowhere close to fitting within *Craig*'s limited exception. Far from being rendered mute with fear at the prospect of facing her father, Danner's daughter did not even rule out the possibility of testifying if she could take breaks from the witness stand. Moreover, *Craig* hardly contemplates that the child-witness exception is available to 15-year-olds.

But for the precedent of *Craig*, the present case would be such an obvious and blatant violation of the Sixth Amendment that it would warrant summary reversal. Given *Craig*, however, it should be reviewed on certiorari and reversed to make clear that the exception we have created to the text of the Sixth Amendment is a narrow one. It is a dangerous business to water down the confrontation right so dramatically merely because society finds the charged crime particularly reprehensible. Indeed, the more reprehensible the charge, the more the defendant is in need of all constitutionally guaranteed protection for his defense.

No. 98–162. WILLIAMS ET AL. *v.* BYRD. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 142 F. 3d 427.

No. 98–193. CONSOLIDATED RAIL CORPORATION *v.* WICKER ET AL. C. A. 3d Cir. Motion of Association of American Railroads for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 142 F. 3d 690.

No. 98–289. HENDON, ADMINISTRATOR OF THE ESTATE OF MAYBERRY, DECEASED *v.* E. I. DU PONT DE NEMOURS & CO. ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 145 F. 3d 1331.

No. 98–424. NATIONAL SOLID WASTE MANAGEMENT ASSN. *v.* WILLIAMS, COMMISSIONER, MINNESOTA POLLUTION CONTROL AGENCY, ET AL. C. A. 8th Cir. Motion of BFI Waste Systems of North America for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 146 F. 3d 595.

No. 98–6796 (A–394). WILSON *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: 155 F. 3d 396.

No. 98–6830 (A–398). ENOCH *v.* GRAMLEY, WARDEN. C. A. 7th Cir. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied. Certiorari denied.

No. 98–6864 (A–404). GILLIAM *v.* SIMMS, SECRETARY, MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES. Ct. App. Md. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied.

*Rehearing Denied*

No. 97–1910. ZIEMKE ET AL. *v.* ALMOG ET AL., *ante*, p. 817;

No. 97–2004. NATIONAL COLLEGIATE ATHLETIC ASSN. *v.* LAW ET AL. (two judgments), *ante*, p. 822;

No. 97–2008. WEN-CHOUH LIN *v.* LIN, *ante*, p. 823;

No. 97–2060. GADDIS *v.* GADDIS, *ante*, p. 826;

No. 97–2066. YADEGAR *v.* YADEGAR ET AL., *ante*, p. 827;

No. 97–8681. HOLLAND *v.* MISSISSIPPI, *ante*, p. 829;

No. 97–9177. TUDOROV *v.* COLAZO, *ante*, p. 839;

No. 97–9192. BLOUNT *v.* UNITED STATES, *ante*, p. 840;

No. 97–9238. LIMEHOUSE *v.* RED LOBSTER, INC., *ante*, p. 842;

No. 97–9354. BOYD *v.* TENNESSEE, *ante*, p. 846;

No. 97–9682. KING *v.* SUPERIOR COURT OF NEW HAMPSHIRE, ROCKINGHAM COUNTY, *ante*, p. 866;

No. 98–34. FERNANDES *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL., *ante*, p. 869;

No. 98–213. UPSHAW *v.* BOND ET AL., *ante*, p. 877;

No. 98–5147. WEISWASSER *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 888;

No. 98–5200. CAPERS *v.* TCI OF NORTHERN NEW JERSEY, INC., *ante*, p. 891;

No. 98–5227. CUNNINGHAM *v.* KENT ET AL., *ante*, p. 893;

No. 98–5319. OZMEN *v.* NEW MEXICO, *ante*, p. 898;

No. 98–5328. TWIDDY *v.* CITY OF HEALDSBURG, CALIFORNIA, ET AL., *ante*, p. 899;

No. 98–5461. CURTIS *v.* PARKER, WARDEN, *ante*, p. 906; and

No. 98–5700. WILLIAMSON *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, *ante*, p. 915. Petitions for rehearing denied.

No. 97–2038. IN RE CROWELL, *ante*, p. 807. Motion of petitioner for leave to proceed further herein *in forma pauperis* granted. Petition for rehearing denied.

NOVEMBER 17, 1998

*Miscellaneous Order*

No. A–410. WILSON, GOVERNOR OF CALIFORNIA, ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA. Application to vacate the temporary restraining order entered by the United States District Court for the Northern District of California on November 16, 1998, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied.

*Certiorari Denied*

No. 98–6888 (A–414). MCDUFF *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: 163 F. 3d 1356.

NOVEMBER 30, 1998

*Miscellaneous Orders*

No. M–31. COLLINS *v.* WARNER-LAMBERT CO. Motion to direct the Clerk to file petition for writ of certiorari denied.

No. M–32. LAI *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. M–33. CANNON *v.* OKLAHOMA. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

No. 98–6132. SPETH *v.* NEW JERSEY. Super. Ct. N. J., App. Div.;

No. 98–6148. PERCESEPE *v.* NEW YORK STATE DEPARTMENT OF LABOR ET AL. C. A. 2d Cir.; and

No. 98–6615. STAFFORD *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 21, 1998, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 98–6672. IN RE NOLAND;
No. 98–6674. IN RE WHITLEY; and
No. 98–6721. IN RE PERRY. Petitions for writs of habeas corpus denied.

No. 98–6242. IN RE KING. Petition for writ of mandamus denied.

No. 98–6647. IN RE BYRD. Petition for writ of prohibition denied.

*Certiorari Granted*

No. 98–231. GRUPO MEXICANO DE DESARROLLO, S. A., ET AL. *v.* ALLIANCE BOND FUND, INC., ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 143 F. 3d 688.

*Certiorari Denied*

No. 97–8940. HARRIS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 550 Pa. 92, 703 A. 2d 441.

No. 97–9329. COLLINS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 550 Pa. 46, 703 A. 2d 418.

No. 98–94. FEDERICO *v.* DIPAOLO, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT NORFOLK. C. A. 1st Cir. Certiorari denied.

No. 98–225. MICHIGAN ET AL. *v.* DEPARTMENT OF ENERGY ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 128 F. 3d 754.

No. 98–276. DELEW ET AL. *v.* WAGNER ET AL.;
No. 98–443. WAGNER *v.* DELEW ET AL.; and
No. 98–444. LAS VEGAS METROPOLITAN POLICE DEPARTMENT ET AL. *v.* DELEW ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 143 F. 3d 1219.

No. 98–296. LEGAL AID SOCIETY OF HAWAII ET AL. *v.* LEGAL SERVICES CORPORATION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1017.

No. 98–313. GIBSON *v.* RIVERA ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–315. AMERICAN RE-INSURANCE CO. ET AL. *v.* CRAWFORD, INSURANCE COMMISSIONER OF OKLAHOMA, AS RECEIVER OF EMPLOYERS NATIONAL INSURANCE CORP. C. A. 5th Cir. Certiorari denied. Reported below: 141 F. 3d 585.

No. 98–320. BASTEK ET AL. *v.* FEDERAL CROP INSURANCE CORPORATION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 145 F. 3d 90.

No. 98–338. FIELDS *v.* ALBRIGHT, SECRETARY OF STATE. C. A. D. C. Cir. Certiorari denied. Reported below: 139 F. 3d 227.

No. 98–363. MOORE ET AL. *v.* TIME WARNER, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 133 F. 3d 928.

No. 98–378. STONE ET AL. *v.* NORTH CAROLINA DEPARTMENT OF LABOR ET AL. Sup. Ct. N. C. Certiorari denied. Reported below: 347 N. C. 473, 495 S. E. 2d 711.

No. 98–384. DEPARTMENT OF ENERGY ET AL. *v.* NORTHERN STATES POWER CO. ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 128 F. 3d 754.

No. 98–426. CITY OF OXNARD ET AL. *v.* JENSEN, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF JENSEN, DECEASED, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1078.

No. 98–455. GIANELLI MONEY PURCHASE PLAN AND TRUST, GIANELLI, TRUSTEE *v.* ADM INVESTOR SERVICES, INC. C. A. 11th Cir. Certiorari denied. Reported below: 146 F. 3d 1309.

No. 98–465. KANSAS CITY SOUTHERN RAILWAY CO. *v.* DARDEN ET AL. Ct. App. La., 1st Cir. Certiorari denied.

No. 98–479. KANSAS CITY SOUTHERN RAILWAY CO. *v.* MCKENNA ET AL. Cir. Ct. Hinds County, Miss. Certiorari denied.

No. 98–480. COMM-CARE CORP. *v.* LOUISIANA TAX COMMISSION ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 728 So. 2d 26.

No. 98–482. HANLIN *v.* MARTIN ET AL. C. A. 3d Cir. Certiorari denied.

No. 98–484. Rebel Oil Co. et al. *v.* Atlantic Richfield Co. C. A. 9th Cir. Certiorari denied. Reported below: 146 F. 3d 1088.

No. 98–487. Maritime Overseas Corp. *v.* Ellis. Sup. Ct. Tex. Certiorari denied. Reported below: 971 S. W. 2d 402.

No. 98–489. Brodtmann, Wife of Brodtmann, Deceased, et al. *v.* Duke et al. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 708 So. 2d 447.

No. 98–490. Bossley et ux., Individually and as Representatives of the Estate of Bossley, Deceased *v.* Dallas County Mental Health and Mental Retardation et al. Sup. Ct. Tex. Certiorari denied. Reported below: 968 S. W. 2d 339.

No. 98–491. Administrative Committee, Wal-Mart Stores, Inc., Associates Health and Welfare Plan *v.* Speciale. C. A. 7th Cir. Certiorari denied. Reported below: 147 F. 3d 612.

No. 98–494. Erieview Cartage, Inc. *v.* Pennsylvania Board of Finance and Revenue. Sup. Ct. Pa. Certiorari denied. Reported below: 551 Pa. 525, 711 A. 2d 473.

No. 98–496. P. C. Films Corp. *v.* MGM/UA Home Video Inc. et al. C. A. 2d Cir. Certiorari denied. Reported below: 138 F. 3d 453.

No. 98–499. Major League Umpires Assn. *v.* National League of Professional Baseball Clubs et al. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1352.

No. 98–501. Wynat Development Co. et al. *v.* Board of Levee Commissioners for the Parish of Orleans. Sup. Ct. La. Certiorari denied. Reported below: 710 So. 2d 783.

No. 98–502. Slotnik et al. *v.* Considine et al. Sup. Ct. Conn. Certiorari denied. Reported below: 244 Conn. 781, 712 A. 2d 396.

No. 98–504. Torres et al. *v.* Commissioner of Correction of Massachusetts et al. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 427 Mass. 611, 695 N. E. 2d 200.

No. 98–510. KUHNS *v.* CORESTATES FINANCIAL CORP., SUCCESSOR TO MERIDIAN BANCORP, INC. C. A. 3d Cir. Certiorari denied.

No. 98–511. VAUGHAN *v.* TEXAS. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 98–514. DAVIS ET UX. *v.* SUN OIL CO. C. A. 6th Cir. Certiorari denied. Reported below: 148 F. 3d 606.

No. 98–517. MILLER *v.* ALLEN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 146 F. 3d 871.

No. 98–518. SYNATEL INSTRUMENTATION LTD. *v.* VANDELUNE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 148 F. 3d 943.

No. 98–519. TOTH *v.* TOTH ET AL. Ct. App. Mich. Certiorari denied. Reported below: 227 Mich. App. 548, 577 N. W. 2d 111.

No. 98–524. POLSBY *v.* SPRUILL ET AL. C. A. D. C. Cir. Certiorari denied.

No. 98–530. PETERSON *v.* GENTILE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 129 F. 3d 127.

No. 98–533. CENTRAL TRANSPORT, INC., ET AL. *v.* MICHIGAN PUBLIC SERVICE COMMISSION. Ct. App. Mich. Certiorari denied. Reported below: 223 Mich. App. 288, 566 N. W. 2d 299.

No. 98–539. HAWAII LEASEHOLDERS EQUITY COALITION *v.* SMALL LANDOWNERS OF OAHU ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 124 F. 3d 1150.

No. 98–540. IRVING, AS GUARDIAN OF THE PERSON AND PROPERTY OF BASHIR AND AS ADMINISTRATRIX OF THE ESTATE OF IRVING, DECEASED *v.* MAZDA MOTOR CORP. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 136 F. 3d 764.

No. 98–542. SMITH *v.* JOHN PETER LEE, LTD., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1179.

No. 98–544. MERINO *v.* SAN DIEGO COUNTY COUNCIL OF THE BOY SCOUTS OF AMERICA ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 98–552. ARMSTRONG ET AL. *v.* MARTIN MARIETTA CORP. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 1374.

No. 98–553. TAIWAN SHIN YEH ENTERPRISE CO., LTD. *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO (PACIFIC EMPLOYERS INSURANCE CO., REAL PARTY IN INTEREST). Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 98–555. HINES *v.* BALTIMORE GAS & ELECTRIC CO. C. A. 4th Cir. Certiorari denied. Reported below: 134 F. 3d 363.

No. 98–565. EVERFRESH BEVERAGES, INC. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 162 F. 3d 1162.

No. 98–573. BRANDT *v.* ORTHOPEDICS CONSULTANTS OF WASHINGTON ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–580. BLACKMAN *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 968 S. W. 2d 138.

No. 98–587. WOOD *v.* RENDELL, MAYOR OF THE CITY OF PHILADELPHIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 156 F. 3d 1227.

No. 98–588. IN RE SMITH. C. A. 10th Cir. Certiorari denied. Reported below: 150 F. 3d 1227.

No. 98–589. COOK ET AL. *v.* HERMAN, SECRETARY OF LABOR. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 918.

No. 98–590. MCMULLAN ET UX. *v.* NATIONAL BANK OF COMMERCE. C. A. 8th Cir. Certiorari denied. Reported below: 162 F. 3d 1164.

No. 98–610. CHAMBERS ET AL. *v.* VAN HORN. Sup. Ct. Tex. Certiorari denied. Reported below: 970 S. W. 2d 542.

No. 98–612. MCCOWN *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 264 Kan. 655, 957 P. 2d 401.

No. 98–634. BENSCH ET AL. *v.* MATTOS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1179.

No. 98–637. SHIVES *v.* CSX TRANSPORTATION, INC. C. A. 4th Cir. Certiorari denied. Reported below: 151 F. 3d 164.

No. 98–641. ZVENIA *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 114 Nev. 1763, 988 P. 2d 882.

No. 98–645. HUNT *v.* ARMBRISTER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 149 F. 3d 1164.

No. 98–670. TEMPLE *v.* INTERNAL REVENUE SERVICE. C. A. 6th Cir. Certiorari denied.

No. 98–689. GALLARA, AKA STANFA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1353.

No. 98–690. NOSIK *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 245 Conn. 196, 715 A. 2d 673.

No. 98–693. PURDY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 144 F. 3d 241.

No. 98–695. PAFFORD ET AL. *v.* HERMAN, SECRETARY OF LABOR. C. A. 7th Cir. Certiorari denied. Reported below: 148 F. 3d 658.

No. 98–701. MILLS *v.* BABBITT, SECRETARY OF THE INTERIOR. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 927.

No. 98–703. NEUFELD ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 149 F. 3d 1185.

No. 98–705. SCHULER *v.* MCGRAW-HILL COS., INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 145 F. 3d 1346.

No. 98–714. PIERCE *v.* MANSFIELD. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 721.

No. 98–5053. SMITH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 98–5380. JENKINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 137 F. 3d 1355.

No. 98–5395. HUY VU NGUYEN DANG *v.* DUCHARME, SUPERINTENDENT, WASHINGTON STATE REFORMATORY. C. A. 9th Cir. Certiorari denied.

No. 98–5481. BLOCKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 144 F. 3d 51.

No. 98–5577. LOCKHART *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 149 F. 3d 1196.

No. 98–5680. NICKLASSON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 967 S. W. 2d 596.

No. 98–5772. LADUM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1328.

No. 98–5826. HOUGH *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 690 N. E. 2d 267.

No. 98–5848. STEVENS *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 691 N. E. 2d 412.

No. 98–5853. BIEGHLER *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 690 N. E. 2d 188.

No. 98–5942. RICHARDSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–6087. BOYD *v.* HAWK, DIRECTOR, FEDERAL BUREAU OF PRISONS. C. A. 2d Cir. Certiorari denied.

No. 98–6113. ROSENBERG *v.* ARLINGTON COUNTY GOVERNMENT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 161 F. 3d 3.

No. 98–6115. CRAWFORD *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 716 So. 2d 1028.

No. 98–6124. MOODY *v.* MOODY. Ct. Sp. App. Md. Certiorari denied. Reported below: 119 Md. App. 819.

No. 98–6131. LEWIS *v.* PUGH, COMMISSIONER, ALASKA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 98–6133. COLE *v.* JOHNSON, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 98–6137. WILLIAMS *v.* CONWAY ET AL. C. A. 8th Cir. Certiorari denied.

No. 98–6138. WILLIAMS *v.* FRANCIS ET AL. C. A. 8th Cir. Certiorari denied.

No. 98–6151. CHANEY *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 967 S. W. 2d 47.

No. 98–6152. SHAMSIDEEN *v.* PRICE, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 98–6157. BERRIEN *v.* SHANKS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 149 F. 3d 1190.

No. 98–6162. GLOVER *v.* PUCKETT. Sup. Ct. Wis. Certiorari denied. Reported below: 220 Wis. 2d 368, 585 N. W. 2d 160.

No. 98–6164. HICKS *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 330 S. C. 207, 499 S. E. 2d 209.

No. 98–6166. GREEN *v.* GERARD ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–6170. GRANT *v.* WHITE, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 151 F. 3d 1025.

No. 98–6173. HOWARD *v.* SHARPE, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 98–6174. DARDEN *v.* CITY OF BERKELEY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 904.

No. 98–6177. MONTFORD *v.* METROPOLITAN DADE COUNTY ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–6178. MONTFORD *v.* METROPOLITAN DADE COUNTY POLICE DEPARTMENT ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 956.

No. 98–6182. BARNES *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 88 Wash. App. 1031.

No. 98–6188. RANSON *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 722 So. 2d 201.

No. 98–6189. RANSON *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 725 So. 2d 1122.

No. 98–6190. GLISSON *v.* UNITED STATES FOREST SERVICE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 138 F. 3d 1181.

No. 98–6193. FOSTER *v.* NELSON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 727.

No. 98–6195. GRAY *v.* CURRAN, ATTORNEY GENERAL OF MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1324.

No. 98–6198. REEVES *v.* BRINSON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–6199. HALL *v.* FLORIDA DEPARTMENT OF CORRECTIONS ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–6200. HOGAN *v.* COFFEY ET AL. C. A. 6th Cir. Certiorari denied.

No. 98–6204. GILYARD *v.* MCCORMICK COUNTY JAIL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 889.

No. 98–6205. LEE *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 694 N. E. 2d 719.

No. 98–6209. CHRISTIANSEN *v.* CLARKE, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 147 F. 3d 655.

No. 98–6214. NELSON *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 444.

No. 98–6219. WYATT *v.* CITY OF BOSTON ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 181 F. 3d 81.

No. 98–6229. SEARLES *v.* RIVER MEAD CONDOMINIUM ASSN. App. Ct. Conn. Certiorari denied.

No. 98–6231. PALMISANO *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 2d Cir. Certiorari denied. Reported below: 135 F. 3d 860.

No. 98–6233. STUART *v.* FAMILY INDEPENDENCE AGENCY. Ct. App. Mich. Certiorari denied.

No. 98–6241. FERGUSON *v.* SAFECO INSURANCE COMPANY OF AMERICA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1168.

No. 98–6245. HARRIS *v.* PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1158.

No. 98–6247. EVANS *v.* FIRST KNOX NATIONAL TRUST ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 149 F. 3d 1183.

No. 98–6248. GEORGE *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 717 So. 2d 858.

No. 98–6250. LOPEZ *v.* DOUGLAS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 141 F. 3d 974.

No. 98–6251. SANTILLAN VALMONTE *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 2d Cir. Certiorari denied. Reported below: 136 F. 3d 914.

No. 98–6261. HEADSPETH *v.* MERCEDES-BENZ CREDIT CORP. ET AL. Ct. App. D. C. Certiorari denied. Reported below: 709 A. 2d 717.

No. 98–6263. MILNER ET AL. *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 7th Cir. Certiorari denied. Reported below: 148 F. 3d 812.

No. 98–6266. K. W. F. *v.* COLORADO. Ct. App. Colo. Certiorari denied. Reported below: 958 P. 2d 511.

No. 98–6268. HENDRIX *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 712 So. 2d 778.

No. 98–6269. GIASSON *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–6272. JOHNSON *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 155 F. 3d 569.

No. 98–6275. SELLERS *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 135 F. 3d 1333.

No. 98–6277. DJERF *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 191 Ariz. 583, 959 P. 2d 1274.

No. 98–6280. FERNANDEZ *v.* HOME SAVINGS OF AMERICA. C. A. 9th Cir. Certiorari denied. Reported below: 161 F. 3d 12.

No. 98–6281. FECHTER *v.* GOEBEL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 443.

No. 98–6282. FLOYD *v.* ALEXANDER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 148 F. 3d 615.

No. 98–6288. WEBBER *v.* DEPARTMENT OF DEFENSE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 730.

No. 98–6289. WARREN *v.* HENDERSON, WARDEN. Ct. App. D. C. Certiorari denied.

No. 98–6292. TUBWELL *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 98–6296. SAWYER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 477.

No. 98–6303. MADDIX *v.* GEORGE, SHERIFF, SALINE COUNTY, MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 98–6306. BRAUN *v.* STOTTS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 134 F. 3d 382.

No. 98–6316. SCHWARZ *v.* DEPARTMENT OF STATE. C. A. D. C. Cir. Certiorari denied. Reported below: 172 F. 3d 921.

No. 98–6317. SCHWARZ *v.* FEDERAL BUREAU OF PRISONS ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–6318. SCHWARZ *v.* EXECUTIVE OFFICE OF THE PRESIDENT. C. A. 5th Cir. Certiorari denied.

No. 98–6319. BROWN *v.* FRENCH, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 147 F. 3d 307.

No. 98–6320. BLEECKER *v.* CITY OF ATLANTIC CITY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 162 F. 3d 1150.

No. 98–6341. BOITNOTT *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 582 N. W. 2d 243.

No. 98–6352. BRENNAN *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 141 F. 3d 1189.

No. 98–6357. HODGES *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 98–6360. DAVIS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 704 A. 2d 650.

No. 98–6382. BRUMLEY *v.* GHEE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 156 F. 3d 1228.

No. 98–6387. SUMTER *v.* SAYBOLT, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1353.

No. 98–6390. WISE *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 136 F. 3d 1197.

No. 98–6396. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 151 F. 3d 476.

No. 98–6401. LACOURSE *v.* VERMONT. Sup. Ct. Vt. Certiorari denied. Reported below: 168 Vt. 162, 716 A. 2d 14.

No. 98–6406. GIATAS *v.* DIMITRI ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 162 F. 3d 1147.

No. 98–6413. ADAMS *v.* PORTUONDO, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 98–6432. SPRINKLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 144 F. 3d 54.

No. 98–6435. SLUSAR *v.* DALKON SHIELD CLAIMANTS TRUST. C. A. 11th Cir. Certiorari denied. Reported below: 150 F. 3d 1197.

No. 98–6446. WILSON *v.* GHEE. Sup. Ct. Ohio. Certiorari denied. Reported below: 83 Ohio St. 3d 1428, 699 N. E. 2d 945.

No. 98–6453. NALL *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1169.

No. 98–6455. LAWLESS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 729.

No. 98–6456. WILLIAMS *v.* MOLINA, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 151 F. 3d 1035.

No. 98–6461. ARVIN *v.* MILLS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–6465. BODWELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 134 F. 3d 379.

No. 98–6468. CHARITY *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 98–6476. BELL *v.* BEELER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1329.

No. 98–6477. BROOKS *v.* VOINOVICH, GOVERNOR OF OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 432.

No. 98–6481. MITCHELL *v.* HAWKINS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 560.

No. 98–6485. AINSWORTH *v.* CUNNINGHAM, WARDEN. Super. Ct. N. H., Merrimack County. Certiorari denied.

No. 98–6487. BRASWELL *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 155 F. 3d 573.

No. 98–6491. LILES *v.* EASLEY, ATTORNEY GENERAL OF NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 151 F. 3d 1029.

No. 98–6495. MALLARD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 164 F. 3d 620.

No. 98–6496. MOORE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 156 F. 3d 1245.

No. 98–6498. HANNAH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1354.

No. 98–6500. GONZALEZ, AKA QUINONES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 157 F. 3d 90.

No. 98–6501. FRAZIER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1179.

No. 98–6505. FERNANDEZ *v.* NEW YORK CITY POLICE DEPARTMENT ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 248 App. Div. 2d 384, 669 N. Y. S. 2d 1015.

No. 98–6506. D. P. *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 705 So. 2d 593.

No. 98–6508. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 149 F. 3d 1185.

No. 98–6509. RASHID *v.* DRUG ENFORCEMENT ADMINISTRATION. C. A. D. C. Cir. Certiorari denied.

No. 98–6520. SOTO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 931.

No. 98–6525. TCHAKMAKJIAN *v.* COHEN, SECRETARY OF DEFENSE. C. A. 9th Cir. Certiorari denied. Reported below: 133 F. 3d 929.

No. 98–6526. VELEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 98–6527. JUSTUS ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 162 F. 3d 1157.

No. 98–6531. PARREN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1343.

No. 98–6532. WHITE *v.* CALDWELL, WARDEN. C. A. 4th Cir. Certiorari denied.

No. 98–6533. THOMPSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1327.

No. 98–6537. A. S. *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 707 So. 2d 1196.

No. 98–6538. A. V. *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 706 So. 2d 945.

No. 98–6542. KYGER *v.* CARLTON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 146 F. 3d 374.

No. 98–6553. CHEESE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 98–6554. ETHERIDGE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1171.

No. 98–6556. GONZALEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 98–6558. GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 149 F. 3d 1008.

No. 98–6560. HAWKINS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 139 F. 3d 29.

No. 98–6562. FLAUGHER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–6564. FLUKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1160.

No. 98–6565. FLOWERS *v.* COURT OF APPEALS OF WISCONSIN, DISTRICT I, ET AL. Sup. Ct. Wis. Certiorari denied.

No. 98–6572. CASTANEDA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 728.

No. 98–6573. RICHARDS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 724.

No. 98–6578. NANTROUP *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 98–6579. LAWRENCE *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied.

No. 98–6580. LEATHERWOOD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 562.

No. 98–6582. SAINTE MARIE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 151 F. 3d 1002.

No. 98–6583. MONTGOMERY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 98–6584. BROWNE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 141 F. 3d 1170.

No. 98–6585. CAMARILLO *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 168 F. 3d 1316.

No. 98–6588. SANCHEZ-SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 931.

No. 98–6589. SHEA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 150 F. 3d 44.

No. 98–6591. FENNER ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 147 F. 3d 360.

No. 98–6593. EMIGH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 136 F. 3d 1330.

No. 98–6595. DOGGETT *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 98–6598. BAIG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 98–6600. EVANS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 159 F. 3d 637.

No. 98–6602. HUGHEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 147 F. 3d 423.

No. 98–6603. FRAZIER *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 727.

No. 98–6606. NAVARRO-SALCEDO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 136 F. 3d 140.

No. 98–6607. MITCHELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 164 F. 3d 626.

No. 98–6608. MOORE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 149 F. 3d 773.

No. 98–6610. TRAYLOR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 156 F. 3d 1233.

No. 98–6611. PITT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 724.

No. 98–6612. RATTIGAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 151 F. 3d 551.

No. 98–6613. PETERS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 98–6623. SCHWARZ *v.* INTERNAL REVENUE SERVICE. C. A. 2d Cir. Certiorari denied.

No. 98–6625. LATEJU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 163 F. 3d 608.

No. 98–6626. LAMB *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 562.

No. 98–6627. MERAZ-SANDOVAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 163 F. 3d 608.

No. 98–6628. RODRIGUEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 563.

No. 98–6629. JEFFUS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 135 F. 3d 771.

No. 98–6630. IRWIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 149 F. 3d 565.

No. 98–6631. MITCHELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 146 F. 3d 1338.

No. 98–6632. BURKE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 148 F. 3d 832.

No. 98–6633. RICHARDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 152 F. 3d 934.

No. 98–6634. STOCKE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1354.

No. 98–6635. PAREDES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 139 F. 3d 840.

No. 98–6639. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 151 F. 3d 384.

No. 98–6640. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1173.

No. 98–6644. SARGENT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 729.

No. 98–6645. PACHECO-IZAZAGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 930.

No. 98–6648. MARTIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–6650. MARTIN *v.* UNIVERSITY OF TEXAS HEALTH CENTER. C. A. 5th Cir. Certiorari denied. Reported below: 154 F. 3d 416.

No. 98–6653. WAGONER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 98–6654. VILLEGAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 142 F. 3d 242.

No. 98–6655. MIRANDA VASQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 161 F. 3d 16.

No. 98–6656. WITTERS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1354.

No. 98–6657. WILEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 98–6663. ANDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 141 F. 3d 1189.

No. 98–6668. NABORS ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 147 F. 3d 662.

No. 98–6669. IMAM *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 162 F. 3d 1165.

No. 98–6671. MCCAULEY *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 152 F. 3d 948.

No. 98–6689. RADMALL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 931.

No. 98–6690. STEINER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 931.

No. 98–6695. IGLESIA CRUZ *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 172 F. 3d 921.

No. 98–6698. WEBB ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 152 F. 3d 756.

No. 98–6699. AREVALO-PEREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 161 F. 3d 14.

No. 98–6708. MCFERREN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 437.

No. 98–43. ILLINOIS *v.* AUSTIN. App. Ct. Ill., 1st Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 293 Ill. App. 3d 784, 688 N. E. 2d 740.

No. 98–476. CALDERON, WARDEN *v.* DYER. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 151 F. 3d 970.

No. 98–543. TEXAS *v.* FERNANDEZ. Ct. App. Tex., 4th Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 989 S. W. 2d 781.

No. 98–593. NEW JERSEY *v.* SMITH. Sup. Ct. N. J. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 155 N. J. 83, 713 A. 2d 1033.

No. 98–326. THOMAS ET AL. *v.* ALBRIGHT, SECRETARY OF STATE. C. A. D. C. Cir. Motion of class of African-American Foreign Service Officers for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 139 F. 3d 227.

No. 98–735. LOE *v.* UNITED STATES. C. A. 9th Cir. Motion of petitioner for leave to file appendix to petition for writ of certiorari under seal granted. Certiorari denied. Reported below: 142 F. 3d 1122.

No. 98–6240. DEFOE *v.* MASSACHUSETTS DEPARTMENT OF REVENUE. C. A. 9th Cir. Certiorari before judgment denied.

*Rehearing Denied*

No. D–1958. IN RE DISBARMENT OF BERG, *ante*, p. 802;

No. 97–1890. KERBY *v.* SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA ET AL., *ante*, p. 816;

No. 97–1912. WIRTZ, EXECUTRIX OF THE ESTATE OF WHITLEY, ET AL. *v.* SWITZER, *ante*, p. 817;

No. 97–1957. K & K Construction, Inc., et al. *v.* Michigan Department of Natural Resources et al., *ante*, p. 819;

No. 97–1990. Belin *v.* Equal Employment Opportunity Commission et al., *ante*, p. 822;

No. 97–2034. Watts *v.* Caldera, Secretary of the Army, et al., *ante*, p. 825;

No. 97–2065. Carroll *v.* Black et al., *ante*, p. 826;

No. 97–2075. Green et al. *v.* City of Boston et al., *ante*, p. 827;

No. 97–8701. Kokoraleis *v.* Gilmore, Warden, *ante*, p. 829;

No. 97–8918. Baldwin *v.* Louisiana, *ante*, p. 831;

No. 97–8930. In re Campbell, *ante*, p. 808;

No. 97–8963. Prentice *v.* Information Resources, Inc., *ante*, p. 832;

No. 97–9027. Solis *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division, et al., *ante*, p. 834;

No. 97–9090. In re Seaton, *ante*, p. 807;

No. 97–9154. Williams *v.* Louisiana, *ante*, p. 838;

No. 97–9256. In re Farrell, *ante*, p. 807;

No. 97–9290. McEvoy *v.* Hoag, *ante*, p. 843;

No. 97–9292. Richmond *v.* North Carolina, *ante*, p. 843;

No. 97–9293. Tucker *v.* Barton et al., *ante*, p. 844;

No. 97–9363. Cummings *v.* Stewart, Director, Arizona Department of Corrections, et al., *ante*, p. 847;

No. 97–9364. Coates *v.* Shalala, Secretary of Health and Human Services, *ante*, p. 847;

No. 97–9376. Peterson *v.* Apfel, Commissioner of Social Security, *ante*, p. 847;

No. 97–9392. Stewart *v.* Hechinger Stores Co., *ante*, p. 848;

No. 97–9413. Williams *v.* United States, *ante*, p. 850;

No. 97–9441. In re Tasby, *ante*, p. 808;

No. 97–9467. Jordan *v.* United States, *ante*, p. 853;

No. 97–9543. Ward *v.* General Motors National Retirement Service, *ante*, p. 858;

No. 97–9551. Tonubbee *v.* River Parishes Guide et al., *ante*, p. 858;

No. 97–9554. In re Wapnick, *ante*, p. 807;

No. 97–9556. KING *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 858;

No. 97–9591. KEENAN *v.* OHIO, *ante*, p. 860;

No. 97–9629. TIZER *v.* MONTGOMERY COUNTY ORPHANS' COURT, *ante*, p. 863;

No. 97–9630. IN RE THOMPSON, *ante*, p. 807;

No. 97–9649. BELL *v.* UNITED STATES, *ante*, p. 864;

No. 97–9654. WALCZAK *v.* MASSACHUSETTS STATE RETIREMENT BOARD, *ante*, p. 864;

No. 97–9658. KING *v.* FREEDMAN ET AL., *ante*, p. 865;

No. 97–9676. IN RE HENDERSON, *ante*, p. 807;

No. 97–9678. SMITH *v.* UNITED STATES, *ante*, p. 866;

No. 97–9684. KING *v.* ELSER, *ante*, p. 866;

No. 98–106. SASSOWER *v.* MANGANO, PRESIDING JUSTICE OF THE APPELLATE DIVISION, SECOND DEPARTMENT, SUPREME COURT OF NEW YORK, ET AL., *ante*, p. 872;

No. 98–159. BERG *v.* STATE BAR OF CALIFORNIA, *ante*, p. 875;

No. 98–210. SPETH *v.* CAPITOL INDEMNITY CORP. ET AL., *ante*, p. 877;

No. 98–234. GARCIA-ABREGO *v.* UNITED STATES, *ante*, p. 878;

No. 98–240. POLYAK *v.* UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, *ante*, p. 878;

No. 98–273. BERG *v.* KOZLOFF, *ante*, p. 931;

No. 98–274. TYLER *v.* CHILES, GOVERNOR OF FLORIDA, ET AL., *ante*, p. 931;

No. 98–330. IN RE ATKINSON, *ante*, p. 808;

No. 98–435. ELECTRONIC ENGINEERING CO. *v.* FEDERAL COMMUNICATIONS COMMISSION, *ante*, p. 932;

No. 98–5007. SWANSON *v.* UNITED STATES, *ante*, p. 880;

No. 98–5026. ROBERTSON *v.* LOUISIANA, *ante*, p. 882;

No. 98–5055. MILLER ET AL. *v.* LORAIN COUNTY BOARD OF ELECTIONS ET AL., *ante*, p. 923;

No. 98–5133. MEASE *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 888;

No. 98–5149. ZIEBARTH *v.* AGRIBANK, FCB, *ante*, p. 888;

No. 98–5152. IN RE SWANSON, *ante*, p. 807;

No. 98–5166. GILLIES *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, *ante*, p. 889;

No. 98–5178. CAPPS *v.* CALIFORNIA, *ante*, p. 890;

No. 98–5290. BARLEY-COOKE *v.* EDISON ET AL., *ante*, p. 897;

No. 98–5293. ARONOVSKY *v.* NGUYEN ET AL., *ante*, p. 897;

No. 98–5369. SINGLETON *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 901;

No. 98–5373. COOMBS *v.* SOBINA, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. (two judgments), *ante*, p. 901;

No. 98–5386. SCOTT *v.* UNITED STATES, *ante*, p. 902;

No. 98–5419. MOLIN *v.* THE TRENTONIAN ET AL., *ante*, p. 904;

No. 98–5459. CHHORN *v.* WEST, SECRETARY OF VETERANS AFFAIRS, *ante*, p. 906;

No. 98–5519. OUTLAW *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 909;

No. 98–5548. IN RE VARELA, *ante*, p. 808;

No. 98–5551. COOK *v.* MILLS, WARDEN, ET AL., *ante*, p. 910;

No. 98–5557. DREAD *v.* MARYLAND STATE POLICE, *ante*, p. 935;

No. 98–5578. KAZANDJIAN *v.* UNITED STATES, *ante*, p. 911;

No. 98–5579. JOHNSON *v.* COGGINS ET AL., *ante*, p. 935;

No. 98–5605. ENAND *v.* AHMAD ET AL., *ante*, p. 935;

No. 98–5612. DUNCAN *v.* CHILDREN'S NATIONAL MEDICAL CENTER, *ante*, p. 912;

No. 98–5646. HIGLEY *v.* UNITED STATES, *ante*, p. 914;

No. 98–5667. GUNNELL *v.* LAZAROFF, WARDEN, *ante*, p. 937;

No. 98–5783. PERRY *v.* HENDERSON, POSTMASTER GENERAL, *ante*, p. 917;

No. 98–5795. MCKINNEY *v.* UNITED STATES, *ante*, p. 918;

No. 98–5828. DEMPSEY *v.* UNITED STATES, *ante*, p. 938; and

No. 98–6085. TROBAUGH *v.* UNITED STATES, *ante*, p. 942. Petitions for rehearing denied.

No. 97–8254. WOLDE-GIORGIS *v.* DELECKI ET AL., 523 U. S. 1125. Motion for leave to file petition for rehearing denied.

## DECEMBER 1, 1998

*Dismissal Under Rule 46*

No. 98–318. LOUISIANA ET AL. *v.* ST. TAMMANY PARISH SCHOOL BOARD ET AL. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 142 F. 3d 776.

DECEMBER 3, 1998

*Miscellaneous Order*

No. A–461 (98–7140). CANTU-TZIN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, granted pending disposition of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall continue pending the sending down of the judgment of this Court.

*Certiorari Denied*

No. 98–6997 (A–437). CARDWELL *v.* GREENE, 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: 152 F. 3d 331.

DECEMBER 4, 1998

*Miscellaneous Order*

No. A–463. GILBERT ET AL. *v.* BEASLEY, GOVERNOR OF SOUTH CAROLINA, ET AL. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution.

*Certiorari Denied*

No. 98–7126 (A–456). GLEATON *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. S. 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. JUSTICE STEVENS and JUSTICE BREYER would grant the application for stay of execution.

No. 98–7132 (A–458). GILBERT *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. S. C. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, de-

nied. Certiorari denied. JUSTICE STEVENS and JUSTICE BREYER would grant the application for stay of execution.

DECEMBER 7, 1998

*Affirmed on Appeal*

No. 98–562. CITY OF GRENADA, MISSISSIPPI, ET AL. *v.* HUBBARD ET AL. Affirmed on appeal from D. C. N. D. Miss.

*Miscellaneous Orders*

No. A–344. WISE *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. Application for certificate of appealability, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. D–1960. IN RE DISBARMENT OF MEISLER. Motion to vacate order of October 5, 1998 [*ante*, p. 802], denied.

No. D–1989. IN RE DISBARMENT OF WOLFROM. Disbarment entered. [For earlier order herein, see *ante*, p. 803.]

No. D–1990. IN RE DISBARMENT OF TAYLOR. Disbarment entered. [For earlier order herein, see *ante*, p. 803.]

No. D–1992. IN RE DISBARMENT OF CHRISTY. Disbarment entered. [For earlier order herein, see *ante*, p. 804.]

No. D–1993. IN RE DISBARMENT OF RICHARDSON. Disbarment entered. [For earlier order herein, see *ante*, p. 804.]

No. D–1994. IN RE DISBARMENT OF KRASNOVE. Disbarment entered. [For earlier order herein, see *ante*, p. 804.]

No. D–1995. IN RE DISBARMENT OF STEVENSON. Disbarment entered. [For earlier order herein, see *ante*, p. 804.]

No. D–2015. IN RE DISBARMENT OF HINGLE. Gilmer P. Hingle, of Monroe, 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–2016. IN RE DISBARMENT OF SMITH. Z. Hershel Smith, of Brooklyn, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days,

requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2017. IN RE DISBARMENT OF GLEE. Willi James Glee, of Charleston, S. 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–2018. IN RE DISBARMENT OF MARTUCCI. Joseph C. Martucci, of Miami, 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–2019. IN RE DISBARMENT OF FROST. Jack Nowell Frost, of Plainfield, N. J., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 98–5804. IN RE SMITH. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 98–726. IN RE LUKACS; and
No. 98–6354. IN RE SHAWLEY. Petitions for writs of mandamus denied.

No. 98–6391. IN RE MASON. Petition for writ of mandamus denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

*Certiorari Granted*

No. 98–470. RUHRGAS AG *v.* MARATHON OIL CO. ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 145 F. 3d 211.

No. 98–10. JEFFERSON COUNTY, ALABAMA *v.* ACKER, SENIOR JUDGE, UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ALABAMA, ET AL. C. A. 11th Cir. Certiorari granted limited to the following questions: "1. Whether the District Court had subject matter jurisdiction over this action in light of the Tax Injunction Act, 28 U. S. C. § 1341? 2. Whether a county privilege/occupational tax levied upon the pay or compensation of an Article

III judge violates the Supremacy Clause?" Reported below: 137 F. 3d 1314.

*Certiorari Denied*

No. 98–235. NUTRITIONAL HEALTH ALLIANCE ET AL. *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 144 F. 3d 220.

No. 98–241. BRICKHOUSE *v.* JONATHAN CORP. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 142 F. 3d 217.

No. 98–251. LOVING *v.* HART, COLONEL, COMMANDANT, UNITED STATES DISCIPLINARY BARRACKS, ET AL. C. A. Armed Forces. Certiorari denied. Reported below: 47 M. J. 438.

No. 98–383. WELDON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 129 F. 3d 1262.

No. 98–388. VOLKEMA ET AL. *v.* MICHIGAN ET AL. Ct. App. Mich. Certiorari denied. Reported below: 214 Mich. App. 66, 542 N. W. 2d 282.

No. 98–396. TEXAS ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION, AS MANAGER OF THE FSLIC RESOLUTION FUND AS RECEIVER OF FIRST SOUTH, N. A. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 98–468. MONTGOMERY *v.* CITY OF FARMINGTON HILLS ET AL. C. A. 6th Cir. Certiorari denied.

No. 98–485. TOWNSHIP OF LELAND ET AL. *v.* GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS (two judgments). C. A. 6th Cir. Certiorari denied. Reported below: 141 F. 3d 635 (first judgment); 149 F. 3d 1183 (second judgment).

No. 98–556. BURNS ET AL. *v.* STONE FOREST INDUSTRIES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 147 F. 3d 1182.

No. 98–557. FORD *v.* TOWN OF GRAFTON. App. Ct. Mass. Certiorari denied. Reported below: 44 Mass. App. 715, 693 N. E. 2d 1047.

No. 98–563. GABAY *v.* MOSTAZAFAN FOUNDATION OF IRAN, AKA FOUNDATION FOR THE OPPRESSED, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 918.

No. 98–570. BANK OF CHINA *v.* VOEST-ALPINE TRADING USA CORP. C. A. 5th Cir. Certiorari denied. Reported below: 142 F. 3d 887.

No. 98–571. CARTER, ADMINISTRATRIX OF THE ESTATE OF BRAUD, DECEASED, ET AL. *v.* FENNER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 136 F. 3d 1000.

No. 98–572. HORWATH ASSOCIATES *v.* CITY OF EAST PALO ALTO ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 98–575. BESTELMEYER *v.* HENRY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 98–582. GOTTFRIED *v.* MEDICAL PLANNING SERVICES, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 326.

No. 98–585. KRUMME ET AL. *v.* WESTPOINT STEVENS INC., FKA WESTPOINT-PEPPERELL, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 143 F. 3d 71.

No. 98–586. KEITH *v.* TEXAS. Ct. App. Tex., 8th Dist. Certiorari denied.

No. 98–595. MT. HOPE ASPHALT CORP. ET AL. *v.* ZAGATA, COMMISSIONER, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 248 App. Div. 2d 540, 669 N. Y. S. 2d 874.

No. 98–616. BARBER *v.* WELCH. Ct. Civ. App. Ala. Certiorari denied. Reported below: 736 So. 2d 685.

No. 98–618. MCCLELLAN FEDERAL CREDIT UNION *v.* PARKER. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 668.

No. 98–619. JONAS *v.* BRIGGS, EXECUTRIX OF THE ESTATE OF MOREY, DECEASED. Sup. Ct. N. H. Certiorari denied.

No. 98–621. IN RE LENTINO. C. A. 5th Cir. Certiorari denied.

No. 98–624. GLASER *v.* CITY OF SAN DIEGO. C. A. 9th Cir. Certiorari denied. Reported below: 163 F. 3d 606.

No. 98–631. WEEKS *v.* OKLAHOMA BAR ASSN. Sup. Ct. Okla. Certiorari denied. Reported below: 969 P. 2d 347.

No. 98–638. GOWAN *v.* DEPARTMENT OF THE AIR FORCE. C. A. 10th Cir. Certiorari denied. Reported below: 148 F. 3d 1182.

No. 98–658. MAYEUX *v.* UNITED STATES ARMY CORPS OF ENGINEERS. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1180.

No. 98–663. STURGIS *v.* EMPLOYERS INSURANCE OF WAUSAU ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1341.

No. 98–683. COGHILL *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 98–711. RODRIGUE ET AL. *v.* MADDEN ET AL. Sup. Jud. Ct. Me. Certiorari denied.

No. 98–729. RANDALL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1181.

No. 98–750. HUSICK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 156 F. 3d 186.

No. 98–5297. BENNETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 893.

No. 98–5762. WOOD *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 715 So. 2d 819.

No. 98–5845. HILL *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 114 Nev. 169, 953 P. 2d 1077.

No. 98–5905. HARRIS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 182 Ill. 2d 114, 695 N. E. 2d 447.

No. 98–5963. BELTRAN TORRES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 140 F. 3d 392.

No. 98–5976. HARMON *v.* MATARAZZO. C. A. 2d Cir. Certiorari denied. Reported below: 162 F. 3d 1147.

No. 98–6125. PEEVY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 17 Cal. 4th 1184, 953 P. 2d 1212.

No. 98–6299. MASSEY *v.* HEAD, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–6308. LEDFORD *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 970 S. W. 2d 17.

No. 98–6309. MARTINEZ *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 98–6310. LINDSTEDT *v.* BAUM ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 141 F. 3d 1169.

No. 98–6311. NELSON *v.* STRINGER, SHERIFF, MARION COUNTY, MISSISSIPPI, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1176.

No. 98–6312. NELSON *v.* IDAHO. Ct. App. Idaho. Certiorari denied. Reported below: 131 Idaho 210, 953 P. 2d 650.

No. 98–6321. CROSS *v.* CAMBRA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 98–6325. MCINERNEY *v.* CITY AND COUNTY OF SAN FRANCISCO ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 98–6334. WASHINGTON *v.* WARD, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 98–6337. WILLIAMS *v.* VENTURA COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–6338. WORTHEN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 964 P. 2d 904.

No. 98–6343. BAUHAUS *v.* REYNOLDS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 726.

No. 98–6351. CROWDER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–6355. POWERS *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 331 S. C. 37, 501 S. E. 2d 116.

No. 98–6359. HILL *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 331 S. C. 94, 501 S. E. 2d 122.

No. 98–6363. SPANGLER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 711 So. 2d 1125.

No. 98–6364. SAUNDERS *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 510.

No. 98–6367. BENTLEY *v.* DEMSKIE, ACTING SUPERINTENDENT, WOODBOURNE CORRECTIONAL FACILITY, ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 250 App. Div. 2d 886, 673 N. Y. S. 2d 226.

No. 98–6375. BARNETT *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 17 Cal. 4th 1044, 954 P. 2d 384.

No. 98–6402. LABANKOFF ET AL. *v.* VIKING CREDIT CORP. ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 98–6460. RIGGINS *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 98–6466. BARTLETT *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Certiorari denied.

No. 98–6479. MCLENNON *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 98–6490. CARTER *v.* AMTRAK CORPORATION. C. A. 11th Cir. Certiorari denied. Reported below: 152 F. 3d 936.

No. 98–6499. DINSMORE-THOMAS *v.* FEDERAL DEPOSIT INSURANCE CORPORATION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 904.

No. 98–6513. LANIER *v.* SUPERIOR COURT OF THE DISTRICT OF COLUMBIA ET AL. Ct. App. D. C. Certiorari denied.

No. 98–6536. THOMAS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 725 So. 2d 1111.

No. 98–6541. MOSS *v.* DUNCAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 134 F. 3d 378.

No. 98–6544. BROWN *v.* MCGINNIS ET AL. C. A. 6th Cir. Certiorari denied.

No. 98–6567. HARPER *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–6569. FIELDS *v.* DUNCAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 98–6597. BROWN *v.* VIDOR, DEPUTY WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 98–6605. MCCLANAHAN *v.* WELLMORE COAL CORP. C. A. 4th Cir. Certiorari denied. Reported below: 133 F. 3d 920.

No. 98–6637. RASHED *v.* DORSEY ET AL. C. A. 3d Cir. Certiorari denied.

No. 98–6642. SMITH *v.* DUNCAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–6643. SHARMA *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 98–6649. JAMES *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 559.

No. 98–6658. CHILDS *v.* SMITH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1167.

No. 98–6662. CARPENTER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 98–6665. BOWEN *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 183 Ill. 2d 103, 699 N. E. 2d 577.

No. 98–6675. BORJA-ESPINOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 156 F. 3d 1239.

No. 98–6676. MCBRIDE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 154 F. 3d 418.

No. 98–6677. MARSHALL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 157 F. 3d 477.

No. 98–6680. De La Rosa, aka Acosta *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 187 F. 3d 623.

No. 98–6682. Grant *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 148 F. 3d 530.

No. 98–6684. Cook *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 152 F. 3d 933.

No. 98–6685. Graves *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 154 F. 3d 418.

No. 98–6686. Clark et ux. *v.* City of Portland, Oregon. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1337.

No. 98–6687. Lupercio Ramirez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 145 F. 3d 345.

No. 98–6688. Savage-El *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 98–6693. Reinhardt *v.* United States Postal Service et al. C. A. 11th Cir. Certiorari denied.

No. 98–6697. Walton *v.* Virginia. Sup. Ct. Va. Certiorari denied. Reported below: 256 Va. 85, 501 S. E. 2d 134.

No. 98–6702. Collazo-Diaz *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 149 F. 3d 1.

No. 98–6704. Sandoval *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 156 F. 3d 1241.

No. 98–6706. LaBoone *v.* Angelone, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 166 F. 3d 333.

No. 98–6707. Lawton *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 162 F. 3d 1158.

No. 98–6716. Vaid, aka Johnson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 724.

No. 98–6722. Rodriguez *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 920.

No. 98–6728. WILEY *v.* SMITH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 564.

No. 98–6730. WONG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 98–6734. WHITING *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 215 F. 3d 1313.

No. 98–6739. RIVERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 159 F. 3d 1348.

No. 98–6748. WILLIAMS *v.* MCKEEN, ACTING ADMINISTRATOR, SOUTHERN STATE CORRECTIONAL FACILITY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 166 F. 3d 1207.

No. 98–6750. KULIK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 729.

No. 98–6751. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 98–6753. JAMES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1326.

No. 98–6756. ALEXANDER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 156 F. 3d 181.

No. 98–6758. ALANIZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 148 F. 3d 929.

No. 98–6759. ISMEL ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 723.

No. 98–6763. LYDAY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 162 F. 3d 1175.

No. 98–6764. LUTZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 723.

No. 98–6766. BUDD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 157 F. 3d 903.

No. 98–6772. GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 154 F. 3d 418.

No. 98–6774. DOSS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1177.

No. 98–6776. ADLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 929.

No. 98–6780. KING *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–6781. NELSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1354.

No. 98–6786. WILLIAMS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 164 F. 3d 620.

No. 98–6787. THOMAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 155 F. 3d 833.

No. 98–6791. YOSSIF *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 141 F. 3d 1155.

No. 98–6793. BYERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 722.

No. 98–6795. PEREZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 133 F. 3d 919.

No. 98–6804. MATTISON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 156 F. 3d 447.

No. 98–6805. MARJI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 158 F. 3d 60.

No. 98–6807. ASHLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 156 F. 3d 1240.

No. 98–6810. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 161 F. 3d 5.

No. 98–6812. WRIGHT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–266. ANNE ARUNDEL COUNTY *v.* WEST ET AL. C. A. 4th Cir. Motion of National League of Cities et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 137 F. 3d 752.

No. 98–568. HILLIARD ET AL., TRUSTEES UNDER TRUST AGREEMENT DATED MAY 5, 1979 *v.* SHELL WESTERN E & P, INC. C. A. 6th Cir. Certiorari denied. JUSTICE BREYER took no part

in the consideration or decision of this petition. Reported below: 149 F. 3d 1183.

No. 98–734. ZRNCHIK ET AL. *v.* AMOCO OIL CO. Sup. Ct. Ind. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 696 N. E. 2d 383.

No. 98–6976 (A–437). CORWIN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death and for certificate of appealability, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Motion to supplement the record denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 150 F. 3d 467.

*Rehearing Denied*

No. 97–2084. LOCKERBY *v.* DUGAL ET AL., *ante*, p. 828;

No. 97–9062. CASTALDI *v.* TOWNSHIP OF RADNOR ET AL., *ante*, p. 835;

No. 97–9516. GALLO *v.* KERNAN, WARDEN, *ante*, p. 856;

No. 97–9620. HUNT *v.* UNITED STATES, *ante*, p. 862;

No. 98–67. BRANDT *v.* MALENG ET AL., *ante*, p. 871;

No. 98–77. BREEDLOVE ET AL. *v.* EARTHGRAINS BAKING COS., INC., DBA CAMPBELL TAGGART BAKING CO., INC., *ante*, p. 921;

No. 98–164. BRANDT *v.* KING COUNTY DISTRICT COURT, SHORELINE DIVISION, *ante*, p. 875;

No. 98–285. HAMMONS, DBA FULL CIRCLE DISTRIBUTING *v.* ALCAN ALUMINUM CORP. ET AL., *ante*, p. 948;

No. 98–333. WOOD *v.* MEADOWS, SECRETARY, STATE BOARD OF ELECTIONS OF VIRGINIA, *ante*, p. 948;

No. 98–355. WRIGHT *v.* FREDERIKSEN, *ante*, p. 964;

No. 98–356. RAY *v.* UNITED STATES, *ante*, p. 949;

No. 98–5129. KIERSTEAD *v.* SUTER, CLERK, SUPREME COURT OF THE UNITED STATES, ET AL. (two judgments), *ante*, p. 888;

No. 98–5157. WILLIS *v.* LINAHAN, WARDEN, *ante*, p. 889;

No. 98–5413. TWEED *v.* WILKINSON, DIRECTOR, OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, ET AL., *ante*, p. 903;

No. 98–5585. BARROGA *v.* GILLAN ET AL., *ante*, p. 911;

No. 98–5622. LUCAS *v.* BRINSON, WARDEN, ET AL., *ante*, p. 936;

No. 98–5871. LYNCH *v.* PATHMARK SUPERMARKETS, *ante*, p. 938;

No. 98–5887. ELBERT *v.* UNITED STATES, *ante*, p. 920;

No. 98–5911. LAGRAND ET AL. *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, *ante*, p. 971;

No. 98–5915. OKORO *v.* UNITED STATES, *ante*, p. 939;

No. 98–6004. IN RE WEBB, AKA WEBB-EL, *ante*, p. 928; and

No. 98–6080. PEREZ *v.* UNITED STATES, *ante*, p. 954. Petitions for rehearing denied.

## DECEMBER 8, 1998

*Rehearing Denied*

No. 98–5731 (A–434). TRUESDALE *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 951. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Petition for rehearing denied.

## DECEMBER 9, 1998

*Miscellaneous Orders*

No. M–35 (A–471). TUAN ANH NGUYEN *v.* GIBSON, WARDEN. Motion to permit filing of a petition for writ of certiorari denied. Application for stay of execution of sentence of death, presented to JUSTICE BREYER, and by him referred to the Court, denied. JUSTICE STEVENS, JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER would grant the application for stay of execution.

No. 98–7167 (A–466). IN RE TUAN ANH NGUYEN. 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. 98–7206 (A–468). BARBER *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied.

DECEMBER 10, 1998

*Miscellaneous Order*

No. A–436 (98–7001). FAULDER *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, granted pending disposition of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall continue pending the sending down of the judgment of this Court.

DECEMBER 11, 1998

*Dismissal Under Rule 46*

No. 98–767. PINEHURST NATIONAL CORP. ET AL. *v.* RESORTS OF PINEHURST, INC. C. A. 4th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 148 F. 3d 417.

*Miscellaneous Order*

No. A–475. TRUESDALE *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

*Certiorari Denied*

No. 98–7236 (A–474). TRUESDALE *v.* BEASLEY, GOVERNOR OF SOUTH CAROLINA, ET AL. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied.

DECEMBER 14, 1998

*Certiorari Granted—Reversed and Remanded.* (See No. 98–437, *ante,* p. 141.)

*Miscellaneous Orders*

No. D–1996. IN RE DISBARMENT OF BRAXTON. Disbarment entered. [For earlier order herein, see *ante,* p. 926.]

No. D–1998. IN RE DISBARMENT OF TORPY. Disbarment entered. [For earlier order herein, see *ante,* p. 926.]

No. D–1999. IN RE DISBARMENT OF CAMPOS QUIROZ. Disbarment entered. [For earlier order herein, see *ante,* p. 926.]

No. D–2001. IN RE DISBARMENT OF LALIME. Disbarment entered. [For earlier order herein, see *ante,* p. 926.]

No. D–2002. IN RE DISBARMENT OF GIFIS. Steven H. Gifis, of Pennington, N. J., 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 November 2, 1998 [*ante,* p. 957], is discharged.

No. D–2020. IN RE DISBARMENT OF FITSOS. John Fitsos, 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. 97–843. DAVIS, AS NEXT FRIEND OF LASHONDA D. *v.* MONROE COUNTY BOARD OF EDUCATION ET AL. C. A. 11th Cir. [Certiorari granted, 524 U. S. 980.] Motion of American Civil Liberties Union et al. for leave to file a brief as *amici curiae* granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 97–1732. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM ET AL. *v.* FELZEN ET AL. C. A. 7th Cir. [Certiorari granted, 524 U. S. 980.] Motion of Public Citizen, Inc., et al. for leave to file a brief as *amici curiae* granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. JUSTICE O'CONNOR took no part in the consideration or decision of these motions.

No. 97–2000. AMERICAN MANUFACTURERS MUTUAL INSURANCE CO. ET AL. *v.* SULLIVAN ET AL. C. A. 3d Cir. [Certiorari granted, 524 U. S. 981.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 98–84. NATIONAL COLLEGIATE ATHLETIC ASSN. *v.* SMITH. C. A. 3d Cir. [Certiorari granted, 524 U. S. 982.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 98–85. HUNT, GOVERNOR OF NORTH CAROLINA, ET AL. *v.* CROMARTIE ET AL. D. C. E. D. N. C. [Probable jurisdiction noted, 524 U. S. 980.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 98–97. ANDERSON, DIRECTOR, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, ET AL. *v.* ROE ET AL., ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED. C. A. 9th Cir. [Certiorari granted, 524 U. S. 982.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 98–184. WYOMING *v.* HOUGHTON. Sup. Ct. Wyo. [Certiorari granted, 524 U. S. 983.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 98–369. NATIONAL AERONAUTICS AND SPACE ADMINISTRATION ET AL. *v.* FEDERAL LABOR RELATIONS AUTHORITY ET AL. C. A. 11th Cir. [Certiorari granted, *ante*, p. 960.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 98–436. ALDEN ET AL. *v.* MAINE. Sup. Jud. Ct. Me. [Certiorari granted, *ante*, p. 981.] Motion of the United States for leave to intervene granted.

No. 98–6817. SCHWARZ *v.* FEDERAL BUREAU OF INVESTIGATION. C. A. 10th Cir.;

No. 98–6818. SCHWARZ *v.* NATIONAL INSTITUTE OF CORRECTIONS ET AL. C. A. 10th Cir.;

No. 98–6819. SCHWARZ *v.* UNITED STATES PAROLE COMMISSION ET AL. C. A. 4th Cir.; and

No. 98–6820. SCHWARZ *v.* NATIONAL ARCHIVES AND RECORDS ADMINISTRATION. C. A. 10th Cir. Motions of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until January 4, 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. 98–6948. IN RE MORALES. Petition for writ of habeas corpus denied.

No. 98–708. IN RE STAFNE. Motion of Center for Judicial Accountability for leave to file a brief as *amicus curiae* granted. Petition for writ of mandamus denied.

No. 98–6484. IN RE BAZUA-AVILES. Petition for writ of mandamus and/or prohibition denied.

*Certiorari Granted*

No. 98–536. OLMSTEAD, COMMISSIONER, GEORGIA DEPARTMENT OF HUMAN RESOURCES, ET AL. *v.* L. C., BY ZIMRING, GUARDIAN AD LITEM AND NEXT FRIEND, ET AL. C. A. 11th Cir. Certiorari granted.* Reported below: 138 F. 3d 893.

*Certiorari Denied*

No. 98–370. SEAGATE TECHNOLOGY, INC. *v.* BEAIRD ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 145 F. 3d 1159.

No. 98–390. DEPAEPE, EXECUTOR OF THE ESTATE OF DEPAEPE *v.* GENERAL MOTORS CORP. C. A. 7th Cir. Certiorari denied. Reported below: 141 F. 3d 715.

No. 98–419. CHRISTOPHER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 142 F. 3d 46.

No. 98–439. KIRSH ET VIR *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 159 F. 3d 1347.

No. 98–472. GREATER NEW ORLEANS EXPRESSWAY COMMISSION ET AL. *v.* PENDERGRASS. C. A. 5th Cir. Certiorari denied. Reported below: 144 F. 3d 342.

No. 98–505. MATHEWS *v.* SEARS PENSION PLAN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 144 F. 3d 461.

No. 98–520. PALM, INDIVIDUALLY AND AS SURVIVING PARENT OF PALM, DECEASED *v.* LAS VEGAS METROPOLITAN POLICE DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 444.

No. 98–578. COLSTON ET AL. *v.* BARNHART. C. A. 5th Cir. Certiorari denied. Reported below: 130 F. 3d 96 and 146 F. 3d 282.

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*[REPORTER'S NOTE: For amendment of this order, see *post*, p. 1062.]

No. 98–603. KERTH ET AL. *v.* HAMOT HEALTH FOUNDATION, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1351.

No. 98–608. JONES ET AL. *v.* GEORGIA PACIFIC CORP. ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–613. PEOPLES BANK & TRUST COMPANY OF HAZARD *v.* PENICK, DBA W. PENICK ELECTRICAL CONSTRUCTION, INC. C. A. 6th Cir. Certiorari denied. Reported below: 149 F. 3d 1184.

No. 98–620. STONE CONSOLIDATED, INC. *v.* M/V KAPETAN MARTINOVIC, IN REM, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 140 F. 3d 1043.

No. 98–623. JERRY K. *v.* DAWN D. Sup. Ct. Cal. Certiorari denied. Reported below: 17 Cal. 4th 932, 952 P. 2d 1139.

No. 98–625. BRADY ET AL. *v.* OHMAN, SECRETARY OF STATE OF WYOMING. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 726.

No. 98–628. SYKES *v.* MINNESOTA. Ct. App. Minn. Certiorari denied. Reported below: 578 N. W. 2d 807.

No. 98–629. TOWN OF NEWBURGH ET AL. *v.* HOLZAPFEL. C. A. 2d Cir. Certiorari denied. Reported below: 145 F. 3d 516.

No. 98–642. HIRSCHFELD *v.* ROGERS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 925.

No. 98–648. O'CONNELL ET AL. *v.* MILAZZO. C. A. 7th Cir. Certiorari denied. Reported below: 151 F. 3d 587.

No. 98–649. LINDQUIST *v.* CONDRA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 162 F. 3d 1164.

No. 98–691. SEBASTIAN ET AL. *v.* MARINECHANCE SHIPPING, LTD. C. A. 5th Cir. Certiorari denied. Reported below: 143 F. 3d 216.

No. 98–694. MANU *v.* G. E. CAPITAL MORTGAGE SERVICES, INC. Super. Ct. Pa. Certiorari denied. Reported below: 701 A. 2d 789.

No. 98–725. GREASER *v.* MISSOURI DEPARTMENT OF CORRECTIONS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 145 F. 3d 979.

No. 98–741. BIXLER *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 582 N. W. 2d 252.

No. 98–745. JOHNSON ET UX. *v.* INTERNAL REVENUE SERVICE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 146 F. 3d 867.

No. 98–748. LESOON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 727.

No. 98–755. HADDAD *v.* VIRGINIA POLYTECHNIC INSTITUTE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 720.

No. 98–768. PATTERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 148 F. 3d 1013.

No. 98–776. BAIRD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1353.

No. 98–782. NICHOLS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 142 F. 3d 857.

No. 98–785. MANKARIOUS ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 151 F. 3d 694.

No. 98–786. ZAKARIAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 156 F. 3d 1241.

No. 98–804. CURRIER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 151 F. 3d 39.

No. 98–813. ALEXANDER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 157 F. 3d 906.

No. 98–5372. MARMOLEJO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 139 F. 3d 528.

No. 98–5444. DURAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 141 F. 3d 1186.

No. 98–5598. ROBERTS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–5980. HOWARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 150 F. 3d 1197.

No. 98–6012. HAILE *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 139 F. 3d 901.

No. 98–6408. HEMMERLE *v.* ERDMAN ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 725 So. 2d 1132.

No. 98–6409. GREIST *v.* NORRISTOWN STATE HOSPITAL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 156 F. 3d 1224.

No. 98–6411. BUHL *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied. Reported below: 960 S. W. 2d 927.

No. 98–6414. WHITE *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 82 Ohio St. 3d 16, 693 N. E. 2d 772.

No. 98–6418. SENA *v.* LYTLE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 728.

No. 98–6419. SCHLEEPER *v.* CAMPBELL, JUDGE, CIRCUIT COURT OF MISSOURI, ST. LOUIS COUNTY. Sup. Ct. Mo. Certiorari denied.

No. 98–6430. CERILLI *v.* BARBIERI, WARDEN. C. A. 2d Cir. Certiorari denied.

No. 98–6443. TURRENTINE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 965 P. 2d 955.

No. 98–6492. JORDAN *v.* JOURNAL NEWSPAPERS, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1168.

No. 98–6516. MASON *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 82 Ohio St. 3d 144, 694 N. E. 2d 932.

No. 98–6518. BALDWIN *v.* SUPERIOR COURT OF THE DISTRICT OF COLUMBIA. Ct. App. D. C. Certiorari denied.

No. 98–6604. MINK *v.* GENERAL MOTORS CORP. C. A. 6th Cir. Certiorari denied. Reported below: 165 F. 3d 27.

No. 98–6614. SPERRY *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 98–6622. COLLIE *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 710 So. 2d 1000.

No. 98–6705. KELLER *v.* LINDSEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 98–6710. MOTTE *v.* UNITED STATES FEDERAL PAROLE OFFICERS ET AL. C. A. 3d Cir. Certiorari denied.

No. 98–6731. COLEMAN *v.* CALDERON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 150 F. 3d 1105.

No. 98–6732. COOKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 156 F. 3d 187.

No. 98–6749. MAZZELL *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 559.

No. 98–6761. MAYBERRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 98–6762. MANTILLA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 162 F. 3d 1152.

No. 98–6765. PERRY *v.* BENNETT, SUPERINTENDENT, ELMIRA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 920.

No. 98–6770. HUTCHINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 562.

No. 98–6777. BRAZIEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 156 F. 3d 1239.

No. 98–6782. MENDOZA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 156 F. 3d 1245.

No. 98–6789. MOSER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 165 F. 3d 29.

No. 98–6790. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 418.

No. 98–6797. SCHWENSOW *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 151 F. 3d 650.

No. 98–6800. SUBER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 158 F. 3d 587.

No. 98–6803. GARCIA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 166 F. 3d 1206.

No. 98–6806. MANSFIELD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 156 F. 3d 182.

No. 98–6814. UMEGBOLU *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 156 F. 3d 185.

No. 98–6815. SERANG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 156 F. 3d 910.

No. 98–6816. SWINT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 98–6823. JACKSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 155 F. 3d 942.

No. 98–6826. KNIGHT *v.* DEPARTMENT OF THE NAVY. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1169.

No. 98–6827. THOMAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 98–6828. BARRON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 145 F. 3d 1385.

No. 98–6831. MATHES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 151 F. 3d 251.

No. 98–6832. JUVENILE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 156 F. 3d 1240.

No. 98–6833. LUCAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 161 F. 3d 15.

No. 98–6834. DAVIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 149 F. 3d 1192.

No. 98–6835. ANDINO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 148 F. 3d 101.

No. 98–6836. BROWN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 159 F. 3d 1348.

No. 98–6853. HERNANDEZ-CASTILLO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 156 F. 3d 1245.

No. 98–6855. GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 156 F. 3d 182.

No. 98–6857. ZENONE ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 725.

No. 98–6861. TAYLOR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 154 F. 3d 675.

No. 98–6863. CLARK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 161 F. 3d 3.

No. 98–366. MCKUNE, WARDEN, ET AL. *v.* STELTZLEN. Ct. App. Kan. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 24 Kan. App. 2d xl, 944 P. 2d 197.

No. 98–367. HANNIGAN, WARDEN, ET AL. *v.* STANSBURY; and SIMMONS, SECRETARY OF CORRECTIONS, ET AL. *v.* BANKES. Sup. Ct. Kan. Motion of respondent Raymond F. Stansbury for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 265 Kan. 404, 960 P. 2d 227 (first judgment); 265 Kan. 341, 963 P. 2d 412 (second judgment).

No. 98–636. SILBERSTEIN ET AL. *v.* ZWAAN. C. A. 3d Cir. Motion of petitioners to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 156 F. 3d 1227.

*Rehearing Denied*

No. 97–9251. BAST *v.* GLASBERG ET AL., *ante*, p. 842;

No. 97–9351. SATTERWHITE *v.* SMALL ET AL., *ante*, p. 846;

No. 97–9456. POWELL *v.* BATTLE, WARDEN, *ante*, p. 852;

No. 97–9665. BROWN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 865;

No. 97–9674. HUMMEL *v.* BACA, JUDGE, DISTRICT COURT OF TEXAS, EL PASO COUNTY, *ante*, p. 866;

No. 98–5015. JENNINGS *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL., *ante*, p. 881;

No. 98–5184. RANGEN *v.* SECURITIES AND EXCHANGE COMMISSION, *ante*, p. 890;

No. 98–5400. O'CONNELL *v.* BACA, JUDGE, DISTRICT COURT OF NEW MEXICO, BERNALILLO COUNTY, ET AL., *ante*, p. 903;

No. 98–5632. SMALLEY *v.* FRANK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL., *ante*, p. 913;

No. 98–5763. COLON *v.* FLORIDA COMMISSION ON ETHICS ET AL., *ante*, p. 968;

No. 98–5991. PRUNTE *v.* WALT DISNEY CO. ET AL., *ante*, p. 1005; and

No. 98–6076. SWEENEY *v.* UNITED STATES, *ante*, p. 953. Petitions for rehearing denied.

No. 98–5602. RIVERA *v.* FLORIDA, *ante*, p. 935; and

No. 98–5722. RIVERA *v.* FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 951. Motions for leave to file petitions for rehearing denied.

DECEMBER 16, 1998

*Miscellaneous Order*

No. 98–7249 (A–476). IN RE DUVALL. 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. 98–7273 (A–487). DUVALL *v.* REYNOLDS, 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.

No. 98–7289 (A–488). DUVALL *v.* KEATING, GOVERNOR OF OKLAHOMA, ET AL. 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. Reported below: 162 F. 3d 1058.

DECEMBER 17, 1998

*Dismissal Under Rule 46*

No. 98–812. BARBERA ET UX. *v.* NATHAN, CHAPTER 7 TRUSTEE. C. A. 6th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 156 F. 3d 1228.

*Miscellaneous Order*

No. 98–536. OLMSTEAD, COMMISSIONER, GEORGIA DEPARTMENT OF HUMAN RESOURCES, ET AL. *v.* L. C., BY ZIMRING, GUARDIAN AD LITEM AND NEXT FRIEND, ET AL. C. A. 11th Cir. [Certiorari granted, *ante,* p. 1054.] The order entered December 14, 1998, granting the petition for writ of certiorari is amended to read as follows: "Certiorari granted limited to Question 1 presented by the petition."

DECEMBER 18, 1998

*Dismissal Under Rule 46*

No. 98–771. FLIGHT INTERNATIONAL OF FLORIDA ET AL. *v.* DESROSIERS, BY AND THROUGH HIS GUARDIAN AD LITEM, DESROSIERS, ET AL. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 156 F. 3d 952.

*Miscellaneous Order*

No. 98–7323 (A–499). IN RE SMITH. 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. 98–7318 (A–497). SMITH *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. S. 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.

DECEMBER 21, 1998

*Dismissal Under Rule 46*

No. 98–808. ATRIA RECLAMELUCIFERS FABRIEKEN BV (CRICKET BV) ET AL. *v.* TALKINGTON ET AL. C. A. 4th Cir. Cer-

tiorari dismissed under this Court's Rule 46.1. Reported below: 152 F. 3d 254.

JANUARY 5, 1999

*Miscellaneous Order*

No. A–547. MOODY *v.* RODRIGUEZ ET AL. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

JANUARY 8, 1999

*Certiorari Granted*

No. 97–1943. SUTTON ET AL. *v.* UNITED AIR LINES, INC. C. A. 10th 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 22, 1999. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 24, 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, April 12, 1999. This Court's Rule 29.2 does not apply. Reported below: 130 F. 3d 893.

No. 97–1992. MURPHY *v.* UNITED PARCEL SERVICE, INC. C. A. 10th Cir. Certiorari granted limited to Questions 1 and 4 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., Monday, February 22, 1999. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 24, 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, April 12, 1999. This Court's Rule 29.2 does not apply. Reported below: 141 F. 3d 1185.

No. 98–149. COLLEGE SAVINGS BANK *v.* FLORIDA PREPAID POSTSECONDARY EDUCATION EXPENSE BOARD ET AL. C. A. 3d Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, February 22, 1999. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 24, 1999. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or be-

fore 3 p.m., Monday, April 12, 1999. This Court's Rule 29.2 does not apply. Reported below: 131 F. 3d 353.

No. 98–531. Florida Prepaid Postsecondary Education Expense Board *v.* College Savings Bank et al. C. A. Fed. Cir. Motion of Regents of the University of California for leave to file a brief as *amicus curiae* granted. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, February 22, 1999. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 24, 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, April 12, 1999. This Court's Rule 29.2 does not apply. Reported below: 148 F. 3d 1343.

No. 98–591. Albertson's, Inc. *v.* Kirkingburg. C. A. 9th Cir. Motions of American Trucking Associations et al. and United Parcel Service of America, Inc., for leave to file briefs as *amici curiae* granted. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, February 22, 1999. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 24, 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, April 12, 1999. This Court's Rule 29.2 does not apply. Reported below: 143 F. 3d 1228.

*Certiorari Denied*

No. 98–7541 (A–551). Howard *v.* Moore, Director, South Carolina Department of Corrections, et al. Sup. Ct. S. 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.

January 11, 1999

*Affirmed on Appeal*

No. 98–548. Parker-Weaver et al. *v.* Fordice, Governor of Mississippi, et al. Affirmed on appeal from D. C. S. D. Miss.

*Miscellaneous Orders.** (See also No. 98–6945, *ante,* p. 153.)

No. M–34. HUGO P. *v.* GEORGE P. ET AL. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 97–843. DAVIS, AS NEXT FRIEND OF LASHONDA D. *v.* MONROE COUNTY BOARD OF EDUCATION ET AL. C. A. 11th Cir. [Certiorari granted, 524 U. S. 980.] Motion of National School Boards Association et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 97–1049. LYNN ET AL. *v.* MURPHY, 522 U. S. 1115. Motion of respondent for compensation and expenses denied without prejudice to refiling in the United States Court of Appeals for the Second Circuit.

No. 97–1625. CALIFORNIA DENTAL ASSN. *v.* FEDERAL TRADE COMMISSION. C. A. 9th Cir. [Certiorari granted, 524 U. S. 980.] Motion of Consumer Dental Choice Project of the National Institute for Science, Law, and Public Policy, Inc., for leave to file a brief as *amicus curiae* granted.

No. 98–5864. STRICKLER *v.* GREENE, WARDEN. C. A. 4th Cir. [Certiorari granted, *ante,* p. 809.] Motion of National Association of Criminal Defense Lawyers et al. for leave to file a brief as *amici curiae* granted.

No. 98–5881. LILLY *v.* VIRGINIA. Sup. Ct. Va. [Certiorari granted, *ante,* p. 981.] Motion of National Association of Criminal Defense Attorneys et al. for leave to file a brief as *amici curiae* granted.

No. 98–6024. STAFFORD ET VIR *v.* ROSSOTTI, COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Motion of petitioners for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 960] denied.

No. 98–6127. RIVERA *v.* ALLIN ET AL. C. A. 11th Cir.;

No. 98–6679. MACE *v.* MISSOURI DEPARTMENT OF SOCIAL SERVICES, DIVISION OF CHILD SUPPORT ENFORCEMENT. C. A. 8th Cir.;

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*For the Court's order adopting revisions to the Rules of this Court, see *post,* p. 1190.

No. 98–6713. MACE *v.* MISSOURI ET AL. C. A. 8th Cir.; and
No. 98–6879. MACE *v.* MISSOURI ET AL. C. A. 8th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioners are allowed until February 1, 1999, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 98–6510. IN RE RIVERA. Motion of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until February 1, 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. 98–6385. SWISHER *v.* TEXAS COMMISSION FOR LAWYER DISCIPLINE. Sup. Ct. Tex.;
No. 98–6618. SANSONE *v.* MCI TELECOMMUNICATIONS. C. A. 4th Cir.; and
No. 98–6621. SWISHER *v.* TEXAS COMMISSION FOR LAWYER DISCIPLINE. Sup. Ct. Tex. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until February 1, 1999, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 98–7088. IN RE DAY;
No. 98–7105. IN RE SEAVOY;
No. 98–7143. IN RE CARTER; and
No. 98–7227. IN RE RODRIGUEZ-VELAZQUEZ. Petitions for writs of habeas corpus denied.

No. 98–6474. IN RE BIBBS;
No. 98–6619. IN RE SALDANA;
No. 98–6670. IN RE MARSHALL;
No. 98–6919. IN RE MAYBERRY; and
No. 98–7022. IN RE CHRISTY. Petitions for writs of mandamus denied.

No. 98–6651. IN RE TERMINELLO. Petition for writ of mandamus and/or prohibition denied.

*Certiorari Denied*

No. 98–243. REDMON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 138 F. 3d 1109.

No. 98–457. DALE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 140 F. 3d 1054.

No. 98–473. UNITED STATES EX REL. SEQUOIA ORANGE CO. ET AL. *v.* SUNKIST GROWERS, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 151 F. 3d 1139.

No. 98–488. MCDERMOTT ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 1st Cir. Certiorari denied. Reported below: 141 F. 3d 1149.

No. 98–500. HOLMES ET AL. *v.* CALIFORNIA ARMY NATIONAL GUARD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 124 F. 3d 1126.

No. 98–535. TEXAS EDUCATION AGENCY *v.* MESSER. C. A. 5th Cir. Certiorari denied. Reported below: 130 F. 3d 130.

No. 98–551. TRIPLE A FIRE PROTECTION, INC. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 136 F. 3d 727.

No. 98–559. AUSTIN *v.* DAWSON-AUSTIN. Sup. Ct. Tex. Certiorari denied. Reported below: 968 S. W. 2d 319.

No. 98–561. EXXEL/ATMOS, INC. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 147 F. 3d 972.

No. 98–569. AMSTERDAM VIDEO, INC., ET AL. *v.* CITY OF NEW YORK ET AL.; and

No. 98–574. HICKERSON ET AL. *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 146 F. 3d 99.

No. 98–581. SOTH *v.* BALTIMORE SUNPAPERS, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1325.

No. 98–583. JACKSON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 255 Va. 625, 499 S. E. 2d 538.

No. 98–622. FALOW *v.* GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT OF NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 98–633. DUNN *v.* ALABAMA AGRICULTURAL AND MECHANICAL UNIVERSITY ET AL. Ct. Civ. App. Ala. Certiorari denied. Reported below: 719 So. 2d 224.

No. 98–635. McPhail, Administratrix of the Estate of McPhail, Deceased *v.* Mitsubishi Motor Manufacturing of America, Inc., et al. C. A. 11th Cir. Certiorari denied. Reported below: 141 F. 3d 1190.

No. 98–644. Barker et al. *v.* Golf U. S. A., Inc. C. A. 8th Cir. Certiorari denied. Reported below: 154 F. 3d 788.

No. 98–647. Nebraska *v.* Pattno. Sup. Ct. Neb. Certiorari denied. Reported below: 254 Neb. 733, 579 N. W. 2d 503.

No. 98–650. Nitram, Inc., et al. *v.* M. A. N. Gutehoffnungshutte GmbH. C. A. 11th Cir. Certiorari denied. Reported below: 141 F. 3d 1434.

No. 98–654. Southeastern Pennsylvania Transportation Authority et al. *v.* Christ's Bride Ministries, Inc. C. A. 3d Cir. Certiorari denied. Reported below: 148 F. 3d 242.

No. 98–656. Lopez *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–666. Kolodziej *v.* Reines. C. A. 7th Cir. Certiorari denied. Reported below: 142 F. 3d 970.

No. 98–669. Leviton Manufacturing Co., Inc. *v.* Rhode Island Insurers' Insolvency Fund. Sup. Ct. R. I. Certiorari denied. Reported below: 716 A. 2d 730.

No. 98–672. American Blind & Wallpaper Factory, Inc. *v.* Alvord Polk, Inc., et al. C. A. 3d Cir. Certiorari denied. Reported below: 162 F. 3d 1150.

No. 98–673. Douglas *v.* DynMcDermott Petroleum Operations Co. et al. C. A. 5th Cir. Certiorari denied. Reported below: 144 F. 3d 364.

No. 98–675. Harline *v.* Department of Justice et al. C. A. 10th Cir. Certiorari denied. Reported below: 148 F. 3d 1199.

No. 98–679. Metro Ford Truck Sales, Inc. *v.* Ford Motor Co. C. A. 5th Cir. Certiorari denied. Reported below: 145 F. 3d 320.

No. 98–680. Scott *v.* Prudential Securities, Inc. C. A. 11th Cir. Certiorari denied. Reported below: 141 F. 3d 1007.

No. 98–681. MONKS, AKA STAFFORD *v.* MASSIE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 727.

No. 98–685. ANDERSON ET AL. *v.* ANHEUSER-BUSCH COS., INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 163 F. 3d 605.

No. 98–686. LEVENTHAL, AS SUCCESSOR TO PROVIDENCE CONSTRUCTION CO. *v.* BAUER. Ct. App. Ga. Certiorari denied. Reported below: 229 Ga. App. 679, 494 S. E. 2d 527.

No. 98–696. HORN *v.* BASSETT FURNITURE INDUSTRIES, INC. C. A. 8th Cir. Certiorari denied. Reported below: 162 F. 3d 1164.

No. 98–698. ALDRIDGE ET AL. *v.* LILY-TULIP, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 145 F. 3d 363.

No. 98–699. BOYETT *v.* TROY STATE UNIVERSITY AT MONTGOMERY (TSUM) ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 142 F. 3d 1284.

No. 98–700. GRAND RIVER DAM AUTHORITY ET AL. *v.* DALRYMPLE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 145 F. 3d 1180.

No. 98–702. LAWRENCE COUNTY ET AL. *v.* WILSON. C. A. 8th Cir. Certiorari denied. Reported below: 154 F. 3d 757.

No. 98–710. MARCUS ET AL. *v.* IOWA PUBLIC TELEVISION ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 150 F. 3d 924.

No. 98–712. STRASBURGER *v.* BOARD OF EDUCATION, HARDIN COUNTY COMMUNITY UNIT SCHOOL DISTRICT NO. 1, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 143 F. 3d 351.

No. 98–716. NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES & TECHNICIANS ET AL. *v.* ABC, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 140 F. 3d 459.

No. 98–717. BYBEE ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 129 F. 3d 124.

No. 98–728. DRILTECH, INC. *v.* REEDRILL CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 168 F. 3d 1318.

No. 98–738. TENNISON ET AL. *v.* PAULUS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 144 F. 3d 1285.

No. 98–743. TURNER *v.* BANK ONE, LEXINGTON, N. A., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 156 F. 3d 1228.

No. 98–749. MORGAN *v.* COHEN, SECRETARY OF DEFENSE. C. A. 3d Cir. Certiorari denied. Reported below: 142 F. 3d 670.

No. 98–754. NYE *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 159 F. 3d 637.

No. 98–763. GUNDACKER ET AL. *v.* UNISYS CORP. C. A. 8th Cir. Certiorari denied. Reported below: 151 F. 3d 842.

No. 98–769. SIMMONS *v.* WETHERALL ET AL. Sup. Ct. Conn. Certiorari denied.

No. 98–770. BROADMAN, JUDGE, SUPERIOR COURT FOR TULARE COUNTY *v.* CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE. Sup. Ct. Cal. Certiorari denied. Reported below: 18 Cal. 4th 1079, 959 P. 2d 715.

No. 98–772. FOSS *v.* FOSS. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 925.

No. 98–781. PETERS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 153 F. 3d 445.

No. 98–792. TROST *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 152 F. 3d 715.

No. 98–800. TRAIL ENTERPRISES, INC., DBA WILSON OIL CO. *v.* CITY OF HOUSTON. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 957 S. W. 2d 625.

No. 98–803. BEATY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 147 F. 3d 522.

No. 98–805. WYMAN-GORDON FORGINGS, INC., ET AL. *v.* MCCORKLE, JUDGE, DISTRICT COURT OF HARRIS COUNTY, TEXAS, ET AL. Sup. Ct. Tex. Certiorari denied.

No. 98–809. DeCuir *v.* County of Los Angeles et al. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 64 Cal. App. 4th 75, 75 Cal. Rptr. 2d 102.

No. 98–816. Billington *v.* Angelone, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 557.

No. 98–823. Leslie et ux. *v.* Commissioner of Internal Revenue. C. A. 9th Cir. Certiorari denied. Reported below: 146 F. 3d 643.

No. 98–838. Polanco *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 145 F. 3d 536.

No. 98–841. Coleman *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 149 F. 3d 674.

No. 98–843. Maryland *v.* Walker. Ct. Sp. App. Md. Certiorari denied. Reported below: 121 Md. App. 364, 709 A. 2d 177.

No. 98–844. Mascheroni *v.* Regents of the University of California et al. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 98–845. Jimenez Aragon *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 157 F. 3d 900.

No. 98–847. Liddle & Robinson, L. L. P. *v.* Kidder, Peabody & Co., Inc. C. A. D. C. Cir. Certiorari denied. Reported below: 146 F. 3d 899.

No. 98–848. Smith *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 155 F. 3d 1051.

No. 98–849. Lucarelli *v.* West, Secretary of Veterans Affairs, et al. C. A. D. C. Cir. Certiorari denied.

No. 98–855. Blue Cross & Blue Shield United of Wisconsin *v.* Marshfield Clinic et al. C. A. 7th Cir. Certiorari denied. Reported below: 152 F. 3d 588.

No. 98–857. Weslin et al. *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 156 F. 3d 292.

No. 98–860. Minix *v.* Kentucky et al. Ct. App. Ky. Certiorari denied.

No. 98–861. MILLER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 148 F. 3d 207.

No. 98–866. RUSSO ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 145 F. 3d 551.

No. 98–870. REHMAN *v.* ECC INTERNATIONAL CORP. C. A. 11th Cir. Certiorari denied. Reported below: 157 F. 3d 906.

No. 98–882. MURTARI *v.* MURTARI. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 249 App. Div. 2d 960, 673 N. Y. S. 2d 278.

No. 98–886. TINDOL *v.* TEXAS. Ct. App. Tex., 8th Dist. Certiorari denied.

No. 98–890. ESTATE OF DELAUNE, DECEASED, ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 143 F. 3d 995.

No. 98–892. SAVOIE ET AL. *v.* RODNEY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 162 F. 3d 1165.

No. 98–895. IVERY *v.* DEPARTMENT OF THE NAVY. C. A. Fed. Cir. Certiorari denied. Reported below: 168 F. 3d 1321.

No. 98–904. NARAYAN *v.* ST. CHARLES HOSPITAL. C. A. 6th Cir. Certiorari denied. Reported below: 149 F. 3d 1184.

No. 98–931. GRANT ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1342.

No. 98–938. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 154 F. 3d 417.

No. 98–5144. COOPER *v.* UNITED STATES; and
No. 98–5191. MARTIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 132 F. 3d 1400.

No. 98–5406. MCKITTRICK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 1170.

No. 98–5433. BAUSCH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 140 F. 3d 739.

No. 98–5496. NYESTE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1334.

No. 98–5677. MARTINEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 412.

No. 98–5778. CARR *v.* CARR. App. Ct. Mass. Certiorari denied. Reported below: 44 Mass. App. 924, 691 N. E. 2d 963.

No. 98–5855. ALLEN *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 686 N. E. 2d 760.

No. 98–5948. MONROE *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied. Reported below: 142 N. H. 857, 711 A. 2d 878.

No. 98–6066. MONROE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 148 F. 3d 1070.

No. 98–6143. MUSSELWHITE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 17 Cal. 4th 1216, 954 P. 2d 475.

No. 98–6146. RUIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 F. 3d 359.

No. 98–6212. CLUCK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 143 F. 3d 174.

No. 98–6217. TIMBERLAKE *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 690 N. E. 2d 243.

No. 98–6386. ROBERTS *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 137 F. 3d 1062.

No. 98–6421. MITCHELL *v.* WILLIAMS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 560.

No. 98–6422. MOSLEY *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 333 Ark. 273, 968 S. W. 2d 612.

No. 98–6431. SIMS *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 333 Ark. 405, 969 S. W. 2d 657.

No. 98–6440. VICKERS *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 144 F. 3d 613.

No. 98–6448. LEGRANDE *v.* HOGEWOOD. C. A. 4th Cir. Certiorari denied. Reported below: 161 F. 3d 2.

No. 98–6452. PIZZO *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 724 So. 2d 745.

No. 98–6464. JAMES *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 98–6467. CONNELLY *v.* MCCONNELL ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–6472. ALVAREZ *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 98–6473. COLEMAN *v.* BEILEIN, SHERIFF. C. A. 2d Cir. Certiorari denied.

No. 98–6478. CANO *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–6482. CROSS *v.* COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT. C. A. 9th Cir. Certiorari denied.

No. 98–6483. CHAROWSKY *v.* WAPINSKY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1350.

No. 98–6486. BARRAZA *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 98–6488. ATHERTON *v.* ARLINGTON COUNTY, VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1323.

No. 98–6493. MCINTURFF *v.* CORCORAN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1169.

No. 98–6494. MARSHALL *v.* STRAUB, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–6497. MORETTI *v.* CHASE MORTGAGE SERVICES, INC. Sup. Ct. N. J. Certiorari denied.

No. 98–6511. KING *v.* WRIGHT, SUPERINTENDENT, CLALLAM BAY CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 98–6515. JACKSON *v.* MILLIKEN. Ct. App. D. C. Certiorari denied.

No. 98–6519. CARTER *v.* CASKEY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1179.

No. 98–6522. JOHNSON *v.* KINDT, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 158 F. 3d 1060.

No. 98–6528. NEELLEY *v.* NAGLE, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 917.

No. 98–6530. WELCH *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 98–6534. WOODCOCK *v.* NEW YORK STATE HIGHER EDUCATION SERVICES CORPORATION. C. A. 10th Cir. Certiorari denied. Reported below: 144 F. 3d 1340.

No. 98–6535. VORA *v.* CONEMAUGH VALLEY MEMORIAL HOSPITAL OF JOHNSTOWN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 156 F. 3d 1227.

No. 98–6539. IVEY *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 331 S. C. 118, 502 S. E. 2d 92.

No. 98–6540. KASHANNEJAD *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–6543. MCCARTHY *v.* MAASS, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1339.

No. 98–6546. ARTMORE *v.* TEXAS; and
No. 98–6547. ARTMORE *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 98–6549. WILLIAMS *v.* SOBINA, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET. C. A. 3d Cir. Certiorari denied.

No. 98–6550. WHITFIELD *v.* TEXAS (three judgments). Ct. Crim. App. Tex. Certiorari denied.

No. 98–6552. COLLIER *v.* DRAGOO ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 726.

No. 98–6555. GORNICK *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–6557. FIKROU *v.* COUNTY OF SANTA CLARA ET AL. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 98–6563. GASSAWAY *v.* CODY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 132 F. 3d 42.

No. 98–6566. GEE *v.* DEUTH. C. A. 7th Cir. Certiorari denied.

No. 98–6568. FORD *v.* MORRISON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–6570. DAVIS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 717 So. 2d 530.

No. 98–6574. WOODS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–6576. PORTER *v.* RARDIN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 98–6586. CAPROOD *v.* BESSINGER, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1167.

No. 98–6587. PRICE *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 152 F. 3d 933.

No. 98–6590. DUNCAN *v.* OREGON. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1337.

No. 98–6599. BOULINEAU *v.* WOZNIAK ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 152 F. 3d 936.

No. 98–6609. MANCHA *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 98–6616. SWEATT *v.* POINDEXTER ET AL. C. A. 6th Cir. Certiorari denied.

No. 98–6617. SANTOS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 250 App. Div. 2d 413, 673 N. Y. S. 2d 94.

No. 98–6620. PARKS *v.* O'DEA, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–6624. MCCALL *v.* SOUTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1169.

No. 98–6636. RAMIREZ *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–6641. LOVE *v.* TOWN OF LAKE PROVIDENCE, LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied.

No. 98–6652. CHUNG YEE CHOI *v.* ROSS, SUPERINTENDENT, ARTHUR KILL CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 98–6659. ALBERTS *v.* SHILLINGER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 726.

No. 98–6660. BURGESS *v.* KITZHABER, GOVERNOR OF OREGON. Sup. Ct. Ore. Certiorari denied.

No. 98–6661. BANKS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 98–6664. YARBROUGH *v.* CITY OF KINGFISHER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 730.

No. 98–6666. KELLY *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 331 S. C. 132, 502 S. E. 2d 99.

No. 98–6673. CLEMONS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 82 Ohio St. 3d 438, 696 N. E. 2d 1009.

No. 98–6683. DRAUS *v.* TOWN OF HOULTON, MAINE, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 141 F. 3d 1149.

No. 98–6691. SCHAFFER *v.* KOENIG. C. A. 3d Cir. Certiorari denied. Reported below: 162 F. 3d 1152.

No. 98–6692. RANSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 727 So. 2d 909.

No. 98–6694. CATO RIGGS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied. Reported below: 223 Mich. App. 662, 568 N. W. 2d 101.

No. 98–6701. TAYLOR *v.* PULLINS ET AL. Sup. Ct. App. W. Va. Certiorari denied.

No. 98–6703. ALLEN *v.* MAHONEY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1336.

No. 98–6709. MIZE *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 269 Ga. 646, 501 S. E. 2d 219.

No. 98–6711. JOHNSON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 98–6712. MAY *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 551 Pa. 286, 710 A. 2d 44.

No. 98–6717. MCLAURIN *v.* TRENT, WARDEN. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 203 W. Va. 67, 506 S. E. 2d 322.

No. 98–6718. NAGY *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 98–6719. JACKSON *v.* KUHLMANN, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 98–6720. PECK *v.* CHAFIN, JUDGE, CIRCUIT COURT OF WEST VIRGINIA, WAYNE COUNTY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1324.

No. 98–6723. PEDONE *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1178.

No. 98–6724. PALMISANO *v.* UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT. C. A. 7th Cir. Certiorari denied. Reported below: 151 F. 3d 1033.

No. 98–6725. STRUSS *v.* STRACK, SUPERINTENDENT, FISHKILL CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 98–6726. CARSON *v.* KAUTZKY, DIRECTOR, IOWA DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied. Reported below: 150 F. 3d 973.

No. 98–6727. WILLIAMS *v.* MCLAUGHLIN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1354.

No. 98–6729. WAMBACH *v.* EASLEY, ATTORNEY GENERAL OF NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 564.

No. 98–6733. VILLALBA *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–6735. ALVARADO ET VIR *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 98–6736. CROSS *v.* DROZD ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–6737. CROSS *v.* PELICAN BAY STATE PRISON. C. A. 9th Cir. Certiorari denied.

No. 98–6738. SIMS *v.* BROWN. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 722.

No. 98–6740. SELLERS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–6741. PALOMINO *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied.

No. 98–6742. WALKER *v.* SUMNER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 931.

No. 98–6743. WILLIAMS *v.* COUNTY OF STANISLAUS PLANNING DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1343.

No. 98–6744. TAYLOR *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL INSTITUTE. C. A. 7th Cir. Certiorari denied.

No. 98–6745. PIERCE *v.* LOCAL 863, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 98–6746. TAYLOR *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–6747. YOUNGER *v.* SAFFLE, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 730.

No. 98–6752. KEE *v.* PROVIDENT LIFE & ACCIDENT INSURANCE CO. C. A. 11th Cir. Certiorari denied.

No. 98–6754. SIKORA *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied.

No. 98–6755. ROCHESTER *v.* SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 161 F. 3d 3.

No. 98–6757. ALVARO C. *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–6760. MARTIN *v.* KEELING, ASSISTANT WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1159.

No. 98–6767. EVANS ET UX. *v.* FLIPPIN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 156 F. 3d 1229.

No. 98–6768. R. A. D. *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 295 Ill. App. 3d 1142, 726 N. E. 2d 241.

No. 98–6769. EASON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1177.

No. 98–6771. DUFF *v.* LEWIS. Sup. Ct. Nev. Certiorari denied. Reported below: 114 Nev. 564, 958 P. 2d 82.

No. 98–6773. EVANS *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–6775. DILLON *v.* RUSSELL, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 165 F. 3d 27.

No. 98–6778. BERNYS *v.* NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 162 F. 3d 1147.

No. 98–6779. MORRISON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–6783. WIGFALL *v.* KIMMERLY. Ct. App. Mich. Certiorari denied.

No. 98–6784. TRIGLER *v.* BRADLEY ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–6785. YORDAN *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 725 So. 2d 1139.

No. 98–6788. WILSON ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 154 F. 3d 658.

No. 98–6792. BAUTISTA *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 98–6794. BILES *v.* CORCORAN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 151 F. 3d 1028.

No. 98–6808. WILLIAMS *v.* U-HAUL COMPANY OF COLORADO. C. A. 10th Cir. Certiorari denied. Reported below: 161 F. 3d 19.

No. 98–6809. WOOD *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 162 F. 3d 1158.

No. 98–6813. WILLIAMSON *v.* GREGOIRE, ATTORNEY GENERAL OF WASHINGTON. C. A. 9th Cir. Certiorari denied. Reported below: 151 F. 3d 1180.

No. 98–6822. SCHAIRED *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–6837. STEELE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–6838. HALL *v.* MILLS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–6842. HOWARD *v.* SANDERS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–6847. GONZALEZ-ALVIRA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 98–6848. SHARMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 154 F. 3d 418.

No. 98–6850. SUTTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 156 F. 3d 185.

No. 98–6852. GONZALEZ *v.* CONSOLIDATED REAL ESTATE INVESTMENTS, DBA L'IL ABNER MOBILE HOME PARK. Sup. Ct. Fla. Certiorari denied. Reported below: 722 So. 2d 192.

No. 98–6854. GUNWALL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 156 F. 3d 1245.

No. 98–6856. BUCKLEW *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 973 S. W. 2d 83.

No. 98–6858. TORRES *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 962 P. 2d 3.

No. 98–6859. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 156 F. 3d 185.

No. 98–6866. SAUNDERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 156 F. 3d 1233.

No. 98–6868. WYRICK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 149 F. 3d 773.

No. 98–6869. WHETHERS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1354.

No. 98–6873. WEST *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–6874. CROSSLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 162 F. 3d 1162.

No. 98–6875. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 157 F. 3d 900.

No. 98–6876. CANINO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–6877. LANDER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 156 F. 3d 185.

No. 98–6878. LOCKETT *v.* CALDERA, SECRETARY OF THE ARMY. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1169.

No. 98–6880. LOTT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 156 F. 3d 1240.

No. 98–6881. CORTEZ-LUNA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 161 F. 3d 15.

No. 98–6882. MERAZ-SANDOVAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 163 F. 3d 608.

No. 98–6883. LIDDAWI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1342.

No. 98–6885. OZURU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 920.

No. 98–6887. STEWART *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 168 F. 3d 480.

No. 98–6889. BOIGEGRAIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 155 F. 3d 1181.

No. 98–6892. SHAKARIAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 156 F. 3d 1241.

No. 98–6895. MARSHALL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–6897. DESOUZA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 20.

No. 98–6901. GERMOSEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 139 F. 3d 120.

No. 98–6902. ELDRIDGE, AKA ISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 562.

No. 98–6904. GUIDRY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 156 F. 3d 1240.

No. 98–6905. HERMOSILLO-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 161 F. 3d 15.

No. 98–6906. RATLIFF *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 155 F. 3d 569.

No. 98–6907. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 159 F. 3d 1355.

No. 98–6910. DOBBINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 165 F. 3d 29.

No. 98–6911. DUKES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 147 F. 3d 1033.

No. 98–6912. JONES *v.* CORCORAN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 720.

No. 98–6915. MILLER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–6916. LANK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 144 F. 3d 54.

No. 98–6917. MILES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 98–6918. VANCE ET AL. *v.* UNITED STATES; and
No. 98–6921. MCCOY ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 162 F. 3d 1157.

No. 98–6922. HERLIHY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 157 F. 3d 900.

No. 98–6924. BROWN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 98–6925. ALBERTSEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 162 F. 3d 1156.

No. 98–6926. WESTCOTT, AKA MORRISON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 159 F. 3d 107.

No. 98–6928. PORTER *v.* HENDERSON, POSTMASTER GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 444.

No. 98–6929. ROSENBERG *v.* FEDERAL PROTECTION SERVICE. C. A. D. C. Cir. Certiorari denied. Reported below: 172 F. 3d 920.

No. 98–6930. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 157 F. 3d 900.

No. 98–6931. REEVES *v.* FLOWERS. C. A. 11th Cir. Certiorari denied. Reported below: 156 F. 3d 186.

No. 98–6935. BEVLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 157 F. 3d 900.

No. 98–6937. JARAMILLO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 156 F. 3d 1245.

No. 98–6938. MUSTIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 156 F. 3d 1240.

No. 98–6940. MATTINGLY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 161 F. 3d 4.

No. 98–6942. GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1342.

No. 98–6943. DENT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 149 F. 3d 180.

No. 98–6946. MEDLEY *v.* GRAMLEY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 98–6947. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 151 F. 3d 384.

No. 98–6949. LUNA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 98–6951. BURGOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 137 F. 3d 841.

No. 98–6953. CLAY *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 975 S. W. 2d 121.

No. 98–6954. BROOMFIELD *v.* UNITED STATES; and
No. 98–6990. BROOMFIELD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 161 F. 3d 15.

No. 98–6958. BENNETT *v.* TEXAS. Sup. Ct. Tex. Certiorari denied.

No. 98–6960. ALVIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 98–6961. MARTINEZ SANDOVAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 1190.

No. 98–6962. OBERLIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1343.

No. 98–6963. SAMUELS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 166 F. 3d 1206.

No. 98–6964. PEREYRA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 98–6965. PANTIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 155 F. 3d 91.

No. 98–6967. PATTERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 150 F. 3d 382.

No. 98–6968. POTTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 895.

No. 98–6969. PASTOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 98–6971. BANKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 162 F. 3d 1156.

No. 98–6974. SPIKES *v.* UNITED STATES; and
No. 98–7170. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 158 F. 3d 913.

No. 98–6977. CESPEDES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 151 F. 3d 1329.

No. 98–6981. MENNELLA *v.* OFFICE OF COURT ADMINISTRATION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 164 F. 3d 618.

No. 98–6982. LANDRY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 154 F. 3d 897.

No. 98–6983. KRUEGER *v.* DOE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 162 F. 3d 1173.

No. 98–6984. LOVELACE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–6985. RICHMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1354.

No. 98–6986. COURTNEY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 708 A. 2d 1008.

No. 98–6987. ORTEGA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 150 F. 3d 937.

No. 98–6988. STRABLE *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied.

No. 98–6989. PESEK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 98–6991. SALEMO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 98–6992. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 166 F. 3d 1215.

No. 98–6993. STAUFFER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 156 F. 3d 1241.

No. 98–6994. PIERCE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 705 A. 2d 1086.

No. 98–6995. RIGGIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1176.

No. 98–6998. WALTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 156 F. 3d 1245.

No. 98–6999. SEHORN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 98–7002. THOMPSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 150 F. 3d 865.

No. 98–7003. TELESFORD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 98–7004. WASHINGTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 98–7005. VAUGHN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–7012. OLIVARES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–7014. JOHNSTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 146 F. 3d 785.

No. 98–7017. LAKE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 150 F. 3d 269.

No. 98–7019. NASIRUDDIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 162 F. 3d 1157.

No. 98–7020. YANCEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 564.

No. 98–7021. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 149 F. 3d 1193.

No. 98–7023. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 98–7026. TATE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 162 F. 3d 1166.

No. 98–7028. GRIMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 142 F. 3d 1342.

No. 98–7029. DAVIS *v.* UNITED STATES; and
No. 98–7194. DAVIS, AKA OLIVER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 149 F. 3d 1193.

No. 98–7032. DAVIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–7034. HILL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 161 F. 3d 15.

No. 98–7036. FELGENTRAEGER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 930.

No. 98–7037. DeBardeleben *v.* United States District Court for the District of Maryland. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1323.

No. 98–7038. Mathison *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 157 F. 3d 541.

No. 98–7041. Mimms *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 562.

No. 98–7043. Byrd *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 163 F. 3d 599.

No. 98–7047. Petty *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 98–7051. Holland *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 162 F. 3d 1157.

No. 98–7055. Garrett *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 172 F. 3d 860.

No. 98–7059. Broadwater *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 151 F. 3d 1359.

No. 98–7060. Ndibe *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 163 F. 3d 600.

No. 98–7062. Mound *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 149 F. 3d 799.

No. 98–7063. Myers *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 563.

No. 98–7067. Morris *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 98–7071. Loucks *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 149 F. 3d 1048.

No. 98–7073. Mitchell *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 98–7074. Moberly *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 149 F. 3d 1192.

No. 98–7082. Marshall *v.* United States et al. C. A. 5th Cir. Certiorari denied. Reported below: 154 F. 3d 417.

No. 98–7084. KISSICK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 729.

No. 98–7085. MAHIQUE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 150 F. 3d 1330.

No. 98–7086. EICKLEBERRY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–7089. GULLION *v.* WRIGHT, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1168.

No. 98–7091. DARDEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1171.

No. 98–7093. HESTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 157 F. 3d 903.

No. 98–7096. GREEN *v.* FRENCH, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 143 F. 3d 865.

No. 98–7097. DAHLER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 143 F. 3d 1084.

No. 98–7098. STYLES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 162 F. 3d 1158.

No. 98–7100. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 156 F. 3d 1046.

No. 98–7102. BLANKENSHIP *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 159 F. 3d 336.

No. 98–7110. GILDEA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 132 F. 3d 31.

No. 98–7112. HINOJOSA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–7113. EWING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 955.

No. 98–7114. DECKARD, AKA VALE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 151 F. 3d 1030.

No. 98–7117. ALTAMIRANO-LOPEZ, AKA OCHOA-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 158 F. 3d 583.

No. 98–7121. DUTTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 161 F. 3d 4.

No. 98–7122. FRENCH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 162 F. 3d 1156.

No. 98–7123. FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 135 F. 3d 1000.

No. 98–7127. SINGLETARY *v.* LUKEHART ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 728.

No. 98–7128. ALLEN *v.* CRABTREE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 153 F. 3d 1030.

No. 98–7129. CLAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 156 F. 3d 638.

No. 98–7130. MARTINEZ *v.* UNITED STATES; and
No. 98–7134. TINEO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 165 F. 3d 34.

No. 98–7135. WHEELER ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 725.

No. 98–7136. WALTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1327.

No. 98–7139. CRAWFORD *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–7140. CANTU-TZIN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 162 F. 3d 295.

No. 98–7141. FITZGERALD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–7147. BOWMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 164 F. 3d 621.

No. 98–7149. BLOUNT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1326.

No. 98–7150. JACKSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 161 F. 3d 18.

No. 98–7152. LUMPKIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 163 F. 3d 608.

No. 98–7155. MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 162 F. 3d 97.

No. 98–7158. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1327.

No. 98–7160. MAYWEATHERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 154 F. 3d 418.

No. 98–7162. MILTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 724.

No. 98–7163. JARVIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 166 F. 3d 349.

No. 98–7175. PEYTON ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 164 F. 3d 627.

No. 98–7181. BRISENO-MANZO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 163 F. 3d 607.

No. 98–7185. TRUETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 161 F. 3d 20.

No. 98–7186. WILLIAMS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 730.

No. 98–7192. FLORES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 149 F. 3d 1272.

No. 98–7193. HAMMONS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 152 F. 3d 1025.

No. 98–7195. GRAY-BEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 156 F. 3d 733.

No. 98–7196. FLYTHE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 98–7197. FREEMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 162 F. 3d 1160.

No. 98–7207. YOUBOTY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 172 F. 3d 861.

No. 98–7219. BARTOLOTTA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 153 F. 3d 875.

No. 98–167. ARIZONANS FOR OFFICIAL ENGLISH ET AL. *v.* ARIZONA ET AL. Sup. Ct. Ariz. Motion of Arizona Legislators for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 191 Ariz. 441, 957 P. 2d 984.

No. 98–433. MERKLE, WARDEN *v.* SEIDEL. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 146 F. 3d 750.

No. 98–529. FORD *v.* SCHERING-PLOUGH CORP. ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 145 F. 3d 601.

No. 98–657. STATE STREET BANK & TRUST CO. *v.* SIGNATURE FINANCIAL GROUP, INC. C. A. Fed. Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 149 F. 3d 1368.

No. 98–736. LIPCON ET AL. *v.* UNDERWRITERS AT LLOYD'S LONDON ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 148 F. 3d 1285.

No. 98–6571. HENRY *v.* WILLIAMSON ET AL. C. A. 8th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 98–534. BRADY ET AL. *v.* DAVIS. C. A. 6th Cir. Motions of Michigan Municipal Risk Management Authority and Michigan Municipal League for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 143 F. 3d 1021.

No. 98–600. AT&T CORP. *v.* ANDERSON ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 147 F. 3d 467.

No. 98–718. HEATH *v.* BAXTER INTERNATIONAL ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 151 F. 3d 1032.

No. 98–659. PAUL *v.* WILLIAM MORROW & CO., INC., ET AL. C. A. 11th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 149 F. 3d 1194.

No. 98–674. BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER *v.* WILKINS. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 145 F. 3d 1006.

No. 98–707. CENTRAL OF GEORGIA RAILROAD CO. *v.* MOCK. Ct. App. Ga. Motion of Association of American Railroads for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 231 Ga. App. 586, 499 S. E. 2d 673.

No. 98–721. UNITED STATES *v.* PLAYERS INTERNATIONAL, INC., ET AL. C. A. 3d Cir. Motion of Valley Broadcasting Co. et al. for leave to file a brief as *amici curiae* granted. Certiorari before judgment denied.

No. 98–864. ESTOCK CORP., N. V., ET AL. *v.* FIRST NATIONAL BANK OF CHICAGO. C. A. 7th Cir. Motions of Illinois Trial Lawyers Association and Association of Trial Lawyers of America for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 148 F. 3d 760.

*Rehearing Denied*

No. 97–1130. PFAFF *v.* WELLS ELECTRONICS, INC., *ante,* p. 55;
No. 97–1975. SPRING *v.* WASHINGTON, *ante,* p. 821;
No. 97–8620. ESCOBAR *v.* UNITED STATES, *ante,* p. 829;
No. 97–8960. LOWE *v.* OKLAHOMA, *ante,* p. 832;
No. 97–8984. BRADFORD *v.* THOMPSON, WARDEN, *ante,* p. 833;
No. 97–9352. IN RE LOWE, *ante,* p. 807;
No. 97–9429. IN RE LOWE, *ante,* p. 808;
No. 97–9503. MATHIS *v.* ODEN ET AL., *ante,* p. 855;
No. 97–9529. ASHIEGBU *v.* KIM ET AL., *ante,* p. 857;
No. 97–9552. ASHIEGBU *v.* HERRON, OHIO BUREAU OF EMPLOYMENT SERVICES, ET AL., *ante,* p. 858;
No. 97–9626. LEGRANDE *v.* EASLEY, ATTORNEY GENERAL OF NORTH CAROLINA, *ante,* p. 929;
No. 97–9633. EPLEY *v.* TEXAS, *ante,* p. 863;
No. 97–9661. IN RE LOWE, *ante,* p. 808;
No. 97–9667. ANDERSON *v.* GARNER, WARDEN, *ante,* p. 865;

No. 97–9693. BROWN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 867;

No. 98–9. EMANUEL ET AL., DBA SALVATION DISPOSAL & CONSTRUCTION CO. *v.* J. M. CONTAINER CORP., *ante*, p. 867;

No. 98–277. ARMSTRONG *v.* SCHOOL DISTRICT OF PHILADELPHIA ET AL., *ante*, p. 879;

No. 98–386. PERALES *v.* SUPREME COURT OF TEXAS ET AL., *ante*, p. 965;

No. 98–478. DONNER *v.* DONNER, DECEASED, *ante*, p. 1002;

No. 98–497. HANLON *v.* DUNBAR, *ante*, p. 983;

No. 98–503. BELLO, DBA NUCLEUS OIL CO. *v.* CITIZENS NATIONAL BANK ET AL., *ante*, p. 983;

No. 98–573. BRANDT *v.* ORTHOPEDICS CONSULTANTS OF WASHINGTON ET AL., *ante*, p. 1019;

No. 98–602. SMITH-GREGG *v.* DEPARTMENT OF THE INTERIOR, *ante*, p. 983;

No. 98–5006. ROJAS *v.* UNITED STATES POSTAL SERVICE, *ante*, p. 880;

No. 98–5077. LOWE *v.* MONARD, *ante*, p. 885;

No. 98–5105. IN RE LOWE, *ante*, p. 808;

No. 98–5197. IN RE LOWE, *ante*, p. 808;

No. 98–5242. HENSLER *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, *ante*, p. 894;

No. 98–5246. BUTLER *v.* GAMMICK, DISTRICT ATTORNEY, WASHOE COUNTY, NEVADA, *ante*, p. 894;

No. 98–5256. ROTHEL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 895;

No. 98–5282. IN RE LOWE, *ante*, p. 808;

No. 98–5343. ASHIEGBU *v.* DAMSCHRODER, *ante*, p. 899;

No. 98–5344. BARBOUR *v.* MICHIGAN DEPARTMENT OF SOCIAL SERVICES, *ante*, p. 900;

No. 98–5399. DANIELS *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL., *ante*, p. 903;

No. 98–5416. BROWN *v.* UNITED STATES, *ante*, p. 904;

No. 98–5435. SLAGEL *v.* SHELL OIL CO. ET AL., *ante*, p. 905;

No. 98–5463. CLARK *v.* UNITED STATES, *ante*, p. 899;

No. 98–5514. LOWE *v.* OKLAHOMA, *ante*, p. 934;

No. 98–5568. SINGLETON *v.* LEWIS ET AL., *ante*, p. 935;

No. 98–5635. DIAZ *v.* UNITED STATES, *ante*, p. 913;

No. 98–5659. CORDLE *v.* SQUARE D CO. ET AL., *ante*, p. 937;
No. 98–5769. JENKINS *v.* GEORGIA, *ante*, p. 968;
No. 98–5787. FAUSTINO RIVERA *v.* FLORIDA, *ante*, p. 968;
No. 98–5788. PATTERSON *v.* SOUTH CAROLINA, *ante*, p. 968;
No. 98–5789. IN RE LINCOLN, *ante*, p. 807;
No. 98–5809. HILL *v.* TURPIN, WARDEN, *ante*, p. 969;
No. 98–5833. BARNES *v.* GEORGIA, *ante*, p. 969;
No. 98–5850. RAWLINS *v.* ARIZONA DEPARTMENT OF CORRECTIONS ET AL., *ante*, p. 970;
No. 98–5899. NADDI *v.* HILL, WARDEN, ET AL., *ante*, p. 970;
No. 98–5968. RICHARDSON *v.* HUFFMAN, *ante*, p. 984;
No. 98–6008. JONES ET AL. *v.* TEXAS, *ante*, p. 1005;
No. 98–6031. HY THI NGUYEN *v.* DALTON, SECRETARY OF THE NAVY, *ante*, p. 953;
No. 98–6124. MOODY *v.* MOODY, *ante*, p. 1021;
No. 98–6158. CARROLL *v.* LOCAL 144 PENSION FUND ET AL., *ante*, p. 973;
No. 98–6194. HAGANS *v.* CLINTON, PRESIDENT OF THE UNITED STATES, *ante*, p. 986;
No. 98–6230. IN RE SEDDENS, *ante*, p. 946;
No. 98–6245. HARRIS *v.* PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS, *ante*, p. 1024;
No. 98–6274. SIKORA *v.* BOHN, *ante*, p. 986;
No. 98–6278. SIDLES *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 987;
No. 98–6316. SCHWARZ *v.* DEPARTMENT OF STATE, *ante*, p. 1025;
No. 98–6317. SCHWARZ *v.* FEDERAL BUREAU OF PRISONS ET AL., *ante*, p. 1025;
No. 98–6318. SCHWARZ *v.* EXECUTIVE OFFICE OF THE PRESIDENT, *ante*, p. 1025;
No. 98–6373. LERMA *v.* UNITED STATES, *ante*, p. 988;
No. 98–6480. LANCELLOTTI *v.* UNITED STATES, *ante*, p. 1009;
No. 98–6561. IN RE EVERHART, *ante*, p. 999; and
No. 98–6623. SCHWARZ *v.* INTERNAL REVENUE SERVICE, *ante*, p. 1031. Petitions for rehearing denied.

No. 92–1449. PARKER *v.* OREGON STATE BOARD OF BAR EXAMINERS, 508 U. S. 950. Motion of petitioner for leave to proceed further herein *in forma pauperis* granted. Motion for leave to file petition for rehearing denied.

No. 98–5279. KLAIMON *v.* CIGNA COS. ET AL., *ante*, p. 896. Motion for leave to file petition for rehearing denied.

JANUARY 13, 1999

*Miscellaneous Orders*

No. A–567. MALONE *v.* CALDERON, WARDEN, ET AL. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied.

No. 98–7650 (A–569). IN RE FARRIS. 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. 98–7609 (A–566). MALONE *v.* CALDERON, WARDEN, ET AL. C. A. 8th Cir. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE SOUTER would grant the application for stay of execution. Reported below: 167 F. 3d 1186.

No. 98–7651 (A–570). FARRIS *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 15, 1999

*Certiorari Granted*

No. 98–238. WEST, SECRETARY OF VETERANS AFFAIRS *v.* GIBSON. C. A. 7th Cir. Certiorari granted. Brief of the Solicitor General is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, February 25, 1999. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 24, 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, April 12, 1999. This Court's Rule 29.2 does not apply. Reported below: 137 F. 3d 992.

No. 98–387. GREATER NEW ORLEANS BROADCASTING ASSN., INC., ET AL. *v.* UNITED STATES ET AL. 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., Thursday, February 25, 1999. Brief of the Solicitor General is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 24, 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, April 12, 1999. This Court's Rule 29.2 does not apply. Reported below: 149 F. 3d 334.

No. 98–507. SNYDER *v.* TREPAGNIER ET AL. C. A. 5th Cir. Certiorari granted limited to the following questions: "1. Whether a jury finding that a constitutional violation incurred by use of excessive force in an arrest necessarily precludes a finding of qualified immunity, so as to make such dual findings irreconcilable? 2. Whether a reviewing court may reconcile apparent inconsistencies in special jury verdicts despite possible defects in special interrogatories submitted, by determining whether, upon review of the entire record, the verdict as a whole was reasonable and supported by the evidence?" Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, February 25, 1999. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 24, 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, April 12, 1999. This Court's Rule 29.2 does not apply. Reported below: 142 F. 3d 791.

No. 98–727. CUNNINGHAM *v.* HAMILTON COUNTY, OHIO. C. A. 6th Cir. Certiorari granted limited to Question 1 presented by the petition. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, February 25, 1999. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 24, 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, April 12, 1999. This Court's Rule 29.2 does not apply. Reported below: 144 F. 3d 418.

## JANUARY 19, 1999

*Certiorari Granted—Vacated and Remanded*

No. 98–5070. SLEKIS *v.* THOMAS, COMMISSIONER, CONNECTICUT DEPARTMENT OF SOCIAL SERVICES. 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 the interpretive guidance issued by the Health Care Financing Administration on September 4, 1998. Reported below: 139 F. 3d 80.

*Miscellaneous Orders*

No. A–482. LINEBERGER *v.* UNITED STATES. Application for release pending appeal, addressed to JUSTICE GINSBURG and referred to the Court, denied.

No. D–1910. IN RE DISBARMENT OF CARANCHINI. Disbarment entered. [For earlier order herein, see 522 U. S. 1104.]

No. D–1934. IN RE DISBARMENT OF SADLER. Gerald A. Sadler, of Houston, Tex., 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 April 20, 1998 [523 U. S. 1069], is discharged.

No. D–1940. IN RE DISBARMENT OF LEWINSON. Disbarment entered. [For earlier order herein, see 523 U. S. 1069.]

No. D–1991. IN RE DISBARMENT OF BECKER. Disbarment entered. [For earlier order herein, see *ante*, p. 803.]

No. D–2000. IN RE DISBARMENT OF HENRY. Disbarment entered. [For earlier order herein, see *ante*, p. 926.]

No. D–2003. IN RE DISBARMENT OF CUETO. Disbarment entered. [For earlier order herein, see *ante*, p. 957.]

No. D–2004. IN RE DISBARMENT OF CONSOLI. Disbarment entered. [For earlier order herein, see *ante*, p. 957.]

No. D–2005. IN RE DISBARMENT OF WASHBURN. Disbarment entered. [For earlier order herein, see *ante*, p. 958.]

No. D–2021. IN RE DISBARMENT OF RECKDENWALD. Edward Walker Reckdenwald, 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–2022. IN RE DISBARMENT OF JACKSON. Kent Wayne Jackson, of Phoenix, Ariz., 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–2023. IN RE DISBARMENT OF WEINBERGER. Barrett Neil Weinberger, of Cincinnati, 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–2024. IN RE DISBARMENT OF FORMAN. Neal Forman, of Brooklyn, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2025. IN RE DISBARMENT OF SEGAL. Alan Harris Segal, of Newton, 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–2026. IN RE DISBARMENT OF FREYDL. Thomas Patrick Freydl, of Bloomfield Hills, Mich., 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–2027. IN RE DISBARMENT OF GILL. John Michael Gill, of Glen Burnie, Md., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2028. IN RE DISBARMENT OF EFIRD. William Palmer Efird, of Memphis, Tenn., 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–2029. IN RE DISBARMENT OF PUGLIA. Andrew R. Puglia, of Winter Hill, 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–2030. IN RE DISBARMENT OF WEISS. Michael S. Weiss, of Mamaroneck, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2031. IN RE DISBARMENT OF CUSTER. William B. Custer, of Portland, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–36 (98–34). FERNANDES *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL., *ante*, pp. 869 and 1013. Motion to direct the Clerk to file second petition for rehearing denied.

No. M–37. CENTER *v.* NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS ET AL.; and

No. M–38. SILVA *v.* KELLY ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 126, Orig. KANSAS *v.* NEBRASKA ET AL. Motion for leave to file bill of complaint granted. Motion of Nebraska for leave to file a surreply brief denied. Defendants are allowed 60 days within which to file an answer. [For earlier order herein, see *ante*, p. 805.]

No. 98–5611. COCHRAN *v.* NELSON ET AL., *ante*, p. 936. Motion of respondents for sanctions denied.

No. 98–7291. IN RE SUMMERS. Petition for writ of habeas corpus denied.

No. 98–778. IN RE WEST;

No. 98–913. IN RE MUELLER;

No. 98–6860. IN RE VANDERBECK; and

No. 98–7205. IN RE WILLIAMS. Petitions for writs of mandamus denied.

No. 98–6927. IN RE CELESTINE. Petition for writ of mandamus and/or prohibition denied.

No. 98–6821. IN RE SURLES. Petition for writ of prohibition denied.

*Certiorari Denied*

No. 98–127. CAMPOS ET AL. *v.* TICKETMASTER CORP. C. A. 8th Cir. Certiorari denied. Reported below: 140 F. 3d 1166.

No. 98–308. CURRY *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 48 M. J. 115.

No. 98–348. TEXAS *v.* WALKER; and
No. 98–350. WALKER *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 142 F. 3d 813.

No. 98–456. BOEHMS *v.* CROWELL ET AL., AS MEMBERS OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY. C. A. 5th Cir. Certiorari denied. Reported below: 139 F. 3d 452.

No. 98–469. KASHUBA *v.* LEGION INSURANCE CO., C/O BALLARD, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 1273.

No. 98–525. OPERATION RESCUE NATIONAL ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 147 F. 3d 68.

No. 98–576. LABORDE *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1325.

No. 98–594. DON LEE DISTRIBUTOR, INC. (WARREN), ET AL. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 834.

No. 98–601. DODDS *v.* AMERICAN BROADCASTING CO., INC. C. A. 9th Cir. Certiorari denied. Reported below: 143 F. 3d 1053.

No. 98–605. POUNDS *v.* DOUGLAS COUNTY BOARD OF COMMISSIONERS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 141 F. 3d 1190.

No. 98–607. GOETZ, DBA JERRY GOETZ & SONS *v.* GLICKMAN, SECRETARY OF AGRICULTURE, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 149 F. 3d 1131.

No. 98–614. ESTATE OF MUER, DECEASED *v.* KARBEL, PERSONAL REPRESENTATIVE OF THE ESTATE OF DRUMMEY ET AL., DECEASED; and

No. 98–817. KARBEL, PERSONAL REPRESENTATIVE OF THE ESTATE OF DRUMMEY ET AL. *v.* ESTATE OF MUER, DECEASED. C. A. 6th Cir. Certiorari denied. Reported below: 146 F. 3d 410.

No. 98–627. UNITED TRANSPORTATION UNION *v.* SLATER, SECRETARY OF TRANSPORTATION, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 149 F. 3d 851.

No. 98–630. HAMILTON *v.* DOCTOR'S ASSOCIATES, INC. C. A. 2d Cir. Certiorari denied. Reported below: 150 F. 3d 157.

No. 98–643. JAKUBOWSKI *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 7th Cir. Certiorari denied. Reported below: 150 F. 3d 675.

No. 98–651. LINDQUIST *v.* LOBECK ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 706 So. 2d 358.

No. 98–661. PANI ET AL. *v.* EMPIRE BLUE CROSS BLUE SHIELD. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 67.

No. 98–662. HART *v.* O'BRIEN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 127 F. 3d 424.

No. 98–665. SLAUTTERBACK ET AL. *v.* IPC MUTUAL INDEMNITY, LTD. C. A. 11th Cir. Certiorari denied. Reported below: 132 F. 3d 47.

No. 98–671. CITIZENS FOR A CONSTITUTIONAL CONVENTION ET AL. *v.* YOSHINA, CHIEF ELECTION OFFICER OF HAWAII, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 140 F. 3d 1218.

No. 98–677. ARMSTRONG *v.* NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS. Ct. App. N. C. Certiorari denied. Reported below: 129 N. C. App. 153, 499 S. E. 2d 462.

No. 98–688. ATEEQ *v.* NAJOR ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 928.

No. 98–692. RADECKI, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF RADECKI, DECEASED, ET AL. *v.*

BARELA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 146 F. 3d 1227.

No. 98–732. POLARIS INSURANCE CO., LTD. *v.* BRUNET ET AL. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 711 So. 2d 308.

No. 98–733. POWELL ET AL. *v.* ALABAMA POWER CO. Sup. Ct. Ala. Certiorari denied. Reported below: 733 So. 2d 491.

No. 98–742. AMERICAN NATIONAL FIRE INSURANCE CO. *v.* PACIFIC INSURANCE CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 148 F. 3d 396.

No. 98–747. QUARTZ CREEK LAND CO. *v.* CHILDERS. Ct. App. Colo. Certiorari denied. Reported below: 946 P. 2d 534.

No. 98–760. TRIPLETT ET AL. *v.* LIVINGSTON COUNTY BOARD OF EDUCATION ET AL. Ct. App. Ky. Certiorari denied. Reported below: 967 S. W. 2d 25.

No. 98–761. MARTIN *v.* BAUGH. C. A. 11th Cir. Certiorari denied. Reported below: 141 F. 3d 1417.

No. 98–775. MILLER *v.* VANNATTA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 151 F. 3d 1215.

No. 98–779. UNITED STATES SURGICAL CORP. *v.* APPLIED MEDICAL RESOURCES CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 147 F. 3d 1374.

No. 98–780. MCMILLAN *v.* MASSACHUSETTS SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 140 F. 3d 288.

No. 98–783. WRIGHT *v.* ERNST & YOUNG LLP. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 169.

No. 98–784. PMC, INC. *v.* SHERWIN-WILLIAMS CO. C. A. 7th Cir. Certiorari denied. Reported below: 151 F. 3d 610.

No. 98–787. SCOTT *v.* CARGILL INVESTOR SERVICES, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 144 F. 3d 55.

No. 98–788. CANADY ET AL. *v.* ALLSTATE INSURANCE CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 162 F. 3d 1163.

No. 98–790. MARTINEZ ARES *v.* MARTINEZ. Ct. Civ. App. Ala. Certiorari denied. Reported below: 740 So. 2d 498.

No. 98–793. SCHEERER ET VIR *v.* HARDEE'S FOOD SYSTEMS, INC. C. A. 8th Cir. Certiorari denied. Reported below: 148 F. 3d 1036.

No. 98–795. CALZADILLA CONSTRUCTION CORP. *v.* MUNICIPALITY OF VEGA BAJA. Ct. App. P. R. Certiorari denied.

No. 98–797. AMWEST SAVINGS ASSN. ET AL. *v.* STATEWIDE CAPITAL, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 144 F. 3d 885.

No. 98–798. CHARTER PLC *v.* CAMERON, INDIVIDUALLY AND AS SPECIAL ADMINISTRATOR OF THE ESTATE OF LATTA, DECEASED, ET AL. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 296 Ill. App. 3d 978, 695 N. E. 2d 572.

No. 98–801. RADFORD *v.* GENERAL DYNAMICS CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 151 F. 3d 396.

No. 98–802. SHAMROCK FARMS CO. ET AL. *v.* VENEMAN, SECRETARY, CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 146 F. 3d 1177.

No. 98–806. WESTLING ET UX. *v.* COUNTY OF MILLE LACS ET AL. Sup. Ct. Minn. Certiorari denied. Reported below: 581 N. W. 2d 815.

No. 98–807. KMART CORP., AS NAMED FIDUCIARY OF THE KMART CORPORATION MASTER WELFARE BENEFIT PLAN *v.* SCHLEIBAUM ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 153 F. 3d 496.

No. 98–811. HOYOS ET AL. *v.* CAMILO-ROBLES. C. A. 1st Cir. Certiorari denied. Reported below: 151 F. 3d 1.

No. 98–815. BROWNING-FERRIS INDUSTRIES OF COLORADO, INC. *v.* DECKER. Sup. Ct. Colo. Certiorari denied.

No. 98–820. FORT BEND COUNTY *v.* BRADY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 145 F. 3d 691.

No. 98–824. WILSON *v.* HILL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–827. In re Aldrich, District Judge; and
No. 98–6890. Smith *v.* Wilkinson et al. C. A. 6th Cir. Certiorari denied. Reported below: 137 F. 3d 911.

No. 98–828. Home Boy 2000 *v.* Gucci America, Inc., et al. C. A. 2d Cir. Certiorari denied. Reported below: 158 F. 3d 631.

No. 98–833. Samuel Madden Homes Tenant Council *v.* Alexandria Resident Council, Inc. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 718.

No. 98–850. Rockwell International Corp. *v.* Celeritas Technologies, Ltd. C. A. Fed. Cir. Certiorari denied. Reported below: 150 F. 3d 1354.

No. 98–868. PMC Trust et al. *v.* Foothills Townhome Assn. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 65 Cal. App. 4th 688, 76 Cal. Rptr. 2d 516.

No. 98–877. Myers *v.* Third Judicial District Court of Salt Lake County et al. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 727.

No. 98–879. Mahurkar *v.* C. R. Bard, Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 155 F. 3d 574.

No. 98–884. Lake James Community Volunteer Fire Department, Inc. *v.* Burke County. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 277.

No. 98–903. Minns, Individually and as Parent and Guardian of Minns (Infant), et al. *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 445.

No. 98–910. Young *v.* Daley, Secretary of Commerce. C. A. D. C. Cir. Certiorari denied.

No. 98–914. Wright *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 163 F. 3d 600.

No. 98–922. Barnett *v.* Department of Veterans Affairs. C. A. 6th Cir. Certiorari denied. Reported below: 153 F. 3d 338.

No. 98–937. Harris et al. *v.* United States et al. C. A. 9th Cir. Certiorari denied. Reported below: 163 F. 3d 606.

No. 98–944. FISHER ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1158.

No. 98–946. SHLIKAS *v.* WAKE FOREST UNIVERSITY ET AL. C. A. 4th Cir. Certiorari denied.

No. 98–948. JACKSON *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 48 M. J. 292.

No. 98–953. BOWMAN *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1167.

No. 98–955. THAI *v.* BOARD OF REVIEW, NEW JERSEY DEPARTMENT OF LABOR. Super. Ct. N. J., App. Div. Certiorari denied.

No. 98–973. BOUCHAT *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 122 Md. App. 787.

No. 98–5607. DONALDSON *v.* DEPARTMENT OF AGRICULTURE. C. A. 6th Cir. Certiorari denied.

No. 98–5816. IYEGHA *v.* UNITED AIRLINES, INC. Sup. Ct. Ala. Certiorari denied. Reported below: 734 So. 2d 1002.

No. 98–6016. SANTA MARIA-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 143 F. 3d 914.

No. 98–6100. EDGE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 562.

No. 98–6148. PERCESEPE *v.* NEW YORK STATE DEPARTMENT OF LABOR ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 125 F. 3d 844.

No. 98–6161. HOLLY *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 716 So. 2d 979.

No. 98–6208. NEELY *v.* NEWTON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 149 F. 3d 1074.

No. 98–6365. EVEHEMA ET AL. *v.* INDIAN HEALTH SERVICES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 141 F. 3d 1182.

No. 98–6397. BEN-YISRAYL *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 690 N. E. 2d 1141.

No. 98–6400. LUCAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 F. 3d 956.

No. 98–6451. WHITAKER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 977 S. W. 2d 595.

No. 98–6514. JOHNSTON *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 152 F. 3d 941.

No. 98–6517. NEVIUS *v.* MCDANIEL, WARDEN, ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1734.

No. 98–6521. LESKO *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 553 Pa. 233, 719 A. 2d 217.

No. 98–6575. VERNER *v.* UNITED STATES PAROLE COMMISSION. C. A. 10th Cir. Certiorari denied. Reported below: 150 F. 3d 1172.

No. 98–6798. RICHARDS *v.* BERGE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 98–6799. PARSON *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 98–6801. MARTIN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–6811. VARGAS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–6824. KNIGHT *v.* CIRCUIT COURT OF ALABAMA, HOUSTON COUNTY. Sup. Ct. Ala. Certiorari denied.

No. 98–6825. LEWIS *v.* TEXAS. C. A. 5th Cir. Certiorari denied.

No. 98–6829. PETERSON *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 725 So. 2d 1137.

No. 98–6839. HAYES *v.* GOORD, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 142 F. 3d 517.

No. 98–6840. HUMPHREY *v.* REDMON. Sup. Ct. Mont. Certiorari denied. Reported below: 290 Mont. 530, 977 P. 2d 342.

No. 98–6841. DAY *v.* PURKETT, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 98–6843. GASTER *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1168.

No. 98–6844. FLOYD *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 98–6845. HARRISON *v.* PITCHER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–6846. FLOURNOY *v.* GLAZIER. C. A. 9th Cir. Certiorari denied.

No. 98–6851. GARCIA QUINTERO *v.* NORTH CAROLINA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 721.

No. 98–6862. SIMPSON *v.* SIMPSON. Super. Ct. Cobb County, Ga. Certiorari denied.

No. 98–6865. STEIN *v.* WOOD, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 134 F. 3d 379.

No. 98–6867. PERRY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 98–6870. TAYLOR *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 148 F. 3d 1276.

No. 98–6871. WARREN *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 98–6872. WILLIAMS *v.* WALGREEN CO. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 932.

No. 98–6884. KINDRED *v.* NORTHOME/INDUS. INDEPENDENT SCHOOL DISTRICT 363. C. A. 8th Cir. Certiorari denied. Reported below: 154 F. 3d 801.

No. 98–6886. PAL *v.* PAL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 98–6893. LEAPHART *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. Ct. App. Mich. Certiorari denied.

No. 98–6894. MOBLEY *v.* STINSON, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 98–6896. HADDERTON *v.* HADDERTON. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 98–6898. EDMOND *v.* BATSON. C. A. 11th Cir. Certiorari denied.

No. 98–6899. DICKERSON *v.* LEAVITT RENTALS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 726.

No. 98–6900. JENKINS *v.* HILL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 163 F. 3d 606.

No. 98–6908. SERRANO *v.* THOMAS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–6909. PLAIR *v.* PRICE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH. C. A. 3d Cir. Certiorari denied.

No. 98–6913. NEWCOMB *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–6914. DAURE *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 144 F. 3d 56.

No. 98–6920. JOHNSON *v.* PURKETT, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 98–6936. VASALKA *v.* KEANE, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 98–6939. LEE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–6941. GREEN *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 348 N. C. 588, 502 S. E. 2d 819.

No. 98–6944. BRADFIELD *v.* COMPTON ET AL. Ct. App. Tenn. Certiorari denied.

No. 98–6996. PEROTTI *v.* COLLINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–7000. SANFORD *v.* GILLIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 166 F. 3d 1206.

No. 98–7011. SUMTER *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 3d Cir. Certiorari denied.

No. 98–7015. NOLLMEYER *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 728.

No. 98–7039. MARTINEZ *v.* NEW MEXICO ET AL. Sup. Ct. N. M. Certiorari denied.

No. 98–7044. THOMAS *v.* DEPARTMENT OF THE NAVY. C. A. Fed. Cir. Certiorari denied. Reported below: 155 F. 3d 570.

No. 98–7072. LAWHORN *v.* FLEMING, WARDEN, ET AL.; LAWHORN *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL.; and LAWHORN *v.* FLEMING, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied.

No. 98–7080. BURGESS *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–7094. FERMIN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 250 App. Div. 2d 389, 673 N. Y. S. 2d 84.

No. 98–7095. HOWARD *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 98–7125. HARRELL *v.* DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION. C. A. D. C. Cir. Certiorari denied.

No. 98–7133. TURNER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–7137. BROWN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–7138. CUNNINGHAM *v.* HEUSZEL, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 157 F. 3d 902.

No. 98–7142. DOPSON *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 296 Ill. App. 3d 1088, 726 N. E. 2d 1197.

No. 98–7145. ABOUHALIMA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 88.

No. 98–7177. JONES *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 979 S. W. 2d 171.

No. 98–7209. PACHECO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 154 F. 3d 1236.

No. 98–7213. BEVERLY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–7220. CAMPOS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–7223. EVANS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 148 F. 3d 477.

No. 98–7224. ORTIZ RAMIRES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 98–7225. SHENBERG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 146 F. 3d 871.

No. 98–7226. PAYNE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 164 F. 3d 626.

No. 98–7229. CROSS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–7231. CRUZ-SANTANA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 165 F. 3d 29.

No. 98–7237. FRANKLYN, AKA FRANKLIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 157 F. 3d 90.

No. 98–7239. GONZALEZ MUNOZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 150 F. 3d 401.

No. 98–7245. VASSELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 163 F. 3d 600.

No. 98–7247. VAUTIER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 144 F. 3d 756.

No. 98–7248. MCNEAL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 164 F. 3d 621.

No. 98–7250. SHERWOOD *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 156 F. 3d 219.

No. 98–7251. ROGERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 150 F. 3d 851.

No. 98–7254. SEWELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–7257. RICKS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 165 F. 3d 29.

No. 98–7270. TINSLEY ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 166 F. 3d 336.

No. 98–7271. BUMAN *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 220 Wis. 2d 357, 582 N. W. 2d 504.

No. 98–7275. CROUSHORN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 98–7277. AHMAD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 162 F. 3d 1156.

No. 98–7281. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 154 F. 3d 655.

No. 98–7282. TUTT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 165 F. 3d 29.

No. 98–652. SBC COMMUNICATIONS, INC., ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. 5th Cir. Motion of Texas Justice Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this motion and this petition. Reported below: 154 F. 3d 226.

No. 98–653. BELL ATLANTIC CORP. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. 5th Cir. Certiorari de-

nied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 154 F. 3d 226.

No. 98–687. NEW JERSEY *v.* NELSON. Sup. Ct. N. J. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 155 N. J. 487, 715 A. 2d 281.

No. 98–737. MARSHALL ET AL. *v.* SUSTER ET AL. C. A. 6th Cir. Motion of Secretary of State of Connecticut et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 149 F. 3d 523.

No. 98–799. KAUTHER SDN BHD *v.* STERNBERG ET AL. C. A. 7th Cir. Motion of American Association of Retired Persons et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 149 F. 3d 659.

No. 98–819. KRELL ET AL. *v.* PRUDENTIAL INSURANCE COMPANY OF AMERICA; and

No. 98–888. JOHNSON *v.* PRUDENTIAL INSURANCE COMPANY OF AMERICA. C. A. 3d Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of these petitions. Reported below: 148 F. 3d 283.

No. 98–5021. RIGGS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

Opinion of JUSTICE STEVENS, with whom JUSTICE SOUTER and JUSTICE GINSBURG join, respecting the denial of the petition for a writ of certiorari.

This *pro se* petition for certiorari raises a serious question concerning the application of California's "three strikes" law, Cal. Penal Code Ann. § 667 (West Supp. 1998), to petty offenses.

In 1995, petitioner stole a bottle of vitamins from a supermarket. The California Court of Appeal described his offense as "a petty theft motivated by homelessness and hunger." App. to Pet. for Cert. 12. If this had been petitioner's first offense, it would have been treated as a misdemeanor punishable by a fine or a jail sentence of six months or less. See Cal. Penal Code Ann. § 490 (West 1988). Because of petitioner's prior record, however, the trial judge was authorized, and perhaps even required, to treat the crime as a felony. See Cal. Penal Code Ann. § 666 (West Supp. 1998); *People* v. *Terry*, 47 Cal. App. 4th 329, 54 Cal. Rptr. 2d 769 (1996); *People* v. *Dent*, 38 Cal. App. 4th 1726,

45 Cal. Rptr. 2d 746 (1995). Having elevated the character of the offense, the judge was then compelled to apply the mandatory sentencing provisions of the three-strikes law and to impose a minimum sentence of 25 years to life imprisonment. See Cal. Penal Code Ann. § 667(e)(2)(A) (West Supp. 1998) (requiring that persons convicted of a "felony" who have two prior qualifying felony convictions be so sentenced). Petitioner asks us to decide that this sentence is so "grossly disproportionate" to his crime that it violates the Eighth Amendment. See *Harmelin* v. *Michigan*, 501 U. S. 957, 1001 (1991) (KENNEDY, J., concurring in part and concurring in judgment).

This question is obviously substantial, particularly since California appears to be the only State in which a misdemeanor could receive such a severe sentence. See *id.*, at 1004–1005 (opinion of KENNEDY, J.); *Solem* v. *Helm*, 463 U. S. 277, 291 (1983). While this Court has traditionally accorded to state legislatures considerable (but not unlimited) deference to determine the length of sentences "for crimes concededly classified and classifiable as felonies," *Rummel* v. *Estelle*, 445 U. S. 263, 274 (1980), petty theft does not appear to fall into that category. Furthermore, petty theft has many characteristics in common with the crime for which we invalidated a life sentence in *Solem*, uttering a "no account" check for $100. "It involve[s] neither violence nor [the] threat of violence to any person"; the amount of money involved is relatively small; and the State treats the crime as a felony (here, only under certain circumstances) pursuant to a unique quirk in state law. 463 U. S., at 296, and n. 20.

Nevertheless, there are valid reasons for not issuing the writ in this case. Neither the California Supreme Court nor any federal tribunal has yet addressed the question. Given the fact that a defendant's prior criminal record may play a dual role in the enhancement scheme—first converting the misdemeanor into a felony, and then invoking the provisions of the three-strikes law—there is some uncertainty about how our cases dealing with the punishment of recidivists should apply. We have of course held that "a State is justified in punishing a recidivist more severely than it punishes a first offender." *Id.*, at 296. But in order to avoid double jeopardy concerns, we have repeatedly emphasized that under recidivist sentencing schemes "the enhanced punishment imposed for the [present] offense 'is not to be viewed as . . . [an] additional penalty for the earlier crimes,' but instead as 'a

stiffened penalty for the latest crime, which is considered to be an aggravated offense because a repetitive one.'" *Witte* v. *United States*, 515 U. S. 389, 400 (1995) (quoting *Gryger* v. *Burke*, 334 U. S. 728, 732 (1948)). See also *Moore* v. *Missouri*, 159 U. S. 673, 677 (1895) (under a recidivist statute, "the accused is not again punished for the first offence" because "'the punishment is for the last offence committed, and it is rendered more severe in consequence of the situation into which the party had previously brought himself'"). It is thus unclear how, if at all, a defendant's criminal record beyond the requisite two prior "strikes"—petitioner in this case has eight prior felony convictions—affects the constitutionality of his sentence, especially when the State "double counts" the defendant's recidivism in the course of imposing that punishment. Cf. *Solem*, 463 U. S., at 298–299; *Rummel*, 445 U. S., at 274, n. 11.

The denial of this petition for certiorari, as always, does not constitute a ruling on the merits. Moreover, since petitioner is asking us to apply a settled rule of Eighth Amendment law, rather than to fashion a new rule, his claim may be asserted in federal court by way of an application for a writ of habeas corpus. See *Spencer* v. *Georgia*, 500 U. S. 960 (1991) (KENNEDY, J., concurring in denial of certiorari). It is therefore prudent for this Court to await review by other courts before addressing the issue. Cf. *McCray* v. *New York*, 461 U. S. 961 (1983) (opinion of STEVENS, J., respecting denial of certiorari).

JUSTICE BREYER, dissenting.

I agree with JUSTICE STEVENS that this petition for certiorari raises a serious question concerning the application of a "three-strikes" law to what is in essence a petty offense. I believe it appropriate to review that question in this case and would grant the writ of certiorari.

No. 98–6065. LOPEZ *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Fla. Motion of petitioner to strike the appendix and portions of the brief in opposition denied. Certiorari denied. Reported below: 719 So. 2d 287.

*Rehearing Denied*

No. 97–8515. FRANKLIN *v.* JONES, WARDEN, ET AL., *ante*, p. 828;

No. 97–8888. GREEN *v.* SPITZER, ATTORNEY GENERAL OF NEW YORK, *ante*, p. 830;

No. 97–9389. FLEMING *v.* UNITED STATES ET AL., *ante*, p. 848;

No. 97–9425. FLY *v.* GEORGIA, *ante*, p. 850;

No. 98–52. DUBIN *v.* UNITED STATES, *ante*, p. 870;

No. 98–105. URBANO *v.* CONTINENTAL AIRLINES, INC., *ante*, p. 1000;

No. 98–363. MOORE ET AL. *v.* TIME WARNER, INC., ET AL., *ante*, p. 1016;

No. 98–588. IN RE SMITH, *ante*, p. 1019;

No. 98–641. ZVENIA *v.* NEVADA, *ante*, p. 1020;

No. 98–705. SCHULER *v.* MCGRAW-HILL COS., INC., ET AL., *ante*, p. 1020;

No. 98–5841. SHERRILLS *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, *ante*, p. 952;

No. 98–5990. SALLEE *v.* UNITED STATES, *ante*, p. 941;

No. 98–6062. QUARTERMAN *v.* LEWIS, JUDGE, PROBATE COURT OF CHATHAM COUNTY, GEORGIA, *ante*, p. 1006;

No. 98–6073. SIKORA *v.* HOUSTON ET AL., *ante*, p. 1006;

No. 98–6250. LOPEZ *v.* DOUGLAS, WARDEN, ET AL., *ante*, p. 1024;

No. 98–6280. FERNANDEZ *v.* HOME SAVINGS OF AMERICA, *ante*, p. 1025;

No. 98–6344. SUMLER *v.* UNITED STATES, *ante*, p. 987; and

No. 98–6525. TCHAKMAKJIAN *v.* COHEN, SECRETARY OF DEFENSE, *ante*, p. 1028. Petitions for rehearing denied.

No. 98–5735. JONES ET AL. *v.* SMITH ET AL., *ante*, p. 951. Motion for leave to file petition for rehearing denied.

No. 98–5813. SPIGELSKI *v.* MCDONALD'S, *ante*, p. 969. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

JANUARY 20, 1999

*Certiorari Denied*

No. 98–7680 (A–581). SHEPPARD *v.* TAYLOR, WARDEN. C. A. 4th Cir. Application for stay of execution of sentence of death, addressed 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: 165 F. 3d 19.

No. 98–7715 (A–585). SHEPPARD *v.* EARLEY, ATTORNEY GENERAL OF VIRGINIA. C. A. 4th Cir. Application for preliminary injunction, addressed to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. Reported below: 168 F. 3d 689.

JANUARY 22, 1999

*Miscellaneous Order*

No. A–603. ATKINS *v.* CATOE, INTERIM DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. Application for stay of execution of sentence of death, addressed to THE CHIEF JUSTICE, and by him referred to the Court, denied.

*Probable Jurisdiction Noted*

No. 98–405. RENO, ATTORNEY GENERAL *v.* BOSSIER PARISH SCHOOL BOARD; and

No. 98–406. PRICE ET AL. *v.* BOSSIER PARISH SCHOOL BOARD. Appeals from D. C. D. C. Probable jurisdiction noted, cases consolidated, and a total of one hour allotted for oral argument. Briefs of appellants are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 5, 1999. Brief of appellee is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 2, 1999. Reply briefs, if any, are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 16, 1999. This Court's Rule 29.2 does not apply. Reported below: 7 F. Supp. 2d 29.

*Certiorari Granted*

No. 98–830. AMOCO PRODUCTION CO., ON BEHALF OF ITSELF AND THE CLASS IT REPRESENTS *v.* SOUTHERN UTE INDIAN TRIBE ET AL. C. A. 10th 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 5, 1999. Briefs of respondents are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 2, 1999. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 16, 1999. This Court's Rule 29.2 does not apply. JUSTICE BREYER took no part in the

consideration or decision of this petition.* Reported below: 151 F. 3d 1251.

*Certiorari Denied*

No. 98–7077. Sauceda Vega *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 354.

January 25, 1999

*Dismissals Under Rule 46*

No. 98–881. Minnesota Mutual Life Insurance Co. *v.* Hagan et al.; and

No. 98–911. Paragon Financial Services, Inc., et al. *v.* Hagan et al. Sup. Ct. Ala. Certiorari dismissed under this Court's Rule 46.1. Reported below: 721 So. 2d 167.

No. 98–945. Bryan *v.* Norfolk Southern Railway Co. C. A. 8th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 154 F. 3d 899.

*Miscellaneous Orders*

No. D–2007. In re Disbarment of Monsour. Disbarment entered. [For earlier order herein, see *ante*, p. 958.]

No. D–2010. In re Disbarment of Bereano. Disbarment entered. [For earlier order herein, see *ante*, p. 998.]

No. D–2014. In re Disbarment of Myerson. Disbarment entered. [For earlier order herein, see *ante*, p. 998.]

No. M–39. Woods *v.* United States. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. M–40. Schubert *v.* Superior Court of Washington. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 97–1008. Cleveland *v.* Policy Management Systems Corp. et al. C. A. 5th Cir. [Certiorari granted, *ante*, p. 808.]

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*[Reporter's Note: For amendment of this order, see *post*, p. 1130.]

Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 97–1868. UNUM LIFE INSURANCE COMPANY OF AMERICA *v.* WARD. C. A. 9th Cir. [Certiorari granted, *ante*, p. 928.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 98–6. EL PASO NATURAL GAS CO. ET AL. *v.* NEZTSOSIE ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 928.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 98–208. KOLSTAD *v.* AMERICAN DENTAL ASSOCIATION. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 960.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 98–10. JEFFERSON COUNTY, ALABAMA *v.* ACKER, SENIOR JUDGE, UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ALABAMA, ET AL. C. A. 11th Cir. [Certiorari granted, *ante*, p. 1039.] Motion of the parties to dispense with printing the joint appendix granted.

No. 98–7024. LANDSBERGER *v.* SCHAFER, JUDGE, SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY, ET AL. C. A. 9th Cir.; and

No. 98–7374. THIELE *v.* UNITED STATES. C. A. 9th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until February 16, 1999, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 98–7311. VAN WAGNER *v.* HENRY, WARDEN. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until February 16, 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. 98–7358. IN RE MOORE; and

No. 98–7445. IN RE HILL. Petitions for writs of habeas corpus denied.

No. 98–7343. IN RE DUNN. Petition for writ of mandamus denied.

*Certiorari Granted*

No. 98–678. Los Angeles Police Department *v.* United Reporting Publishing Corp. C. A. 9th Cir. Certiorari granted. Reported below: 146 F. 3d 1133.

No. 98–963. Nixon, Attorney General of Missouri, et al. *v.* Shrink Missouri Government PAC et al. C. A. 8th Cir. Certiorari granted. Reported below: 161 F. 3d 519.

No. 98–791. Kimel et al. *v.* Florida Board of Regents et al.; and

No. 98–796. United States *v.* Florida Board of Regents et al. C. A. 11th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 139 F. 3d 1426.

*Certiorari Denied*

No. 98–492. Beverly Health & Rehabilitation Services, Inc., et al. *v.* Kobell et al. C. A. 3d Cir. Certiorari denied. Reported below: 142 F. 3d 428.

No. 98–655. Sands et al. *v.* Securities and Exchange Commission. C. A. 9th Cir. Certiorari denied. Reported below: 142 F. 3d 1186.

No. 98–660. Marroquin et ux. *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 144 F. 3d 51.

No. 98–722. Davis *v.* Zirkelbach et al. C. A. 7th Cir. Certiorari denied. Reported below: 149 F. 3d 614.

No. 98–774. Atlantic Lloyd's Insurance Company of Texas et al. *v.* Zurich Insurance Co. et al. C. A. 5th Cir. Certiorari denied. Reported below: 146 F. 3d 868.

No. 98–832. Miller & Son Paving, Inc. *v.* Plumstead Township. Sup. Ct. Pa. Certiorari denied. Reported below: 552 Pa. 652, 717 A. 2d 483.

No. 98–840. Heusser *v.* MLQ Investors, L. P. C. A. 9th Cir. Certiorari denied. Reported below: 146 F. 3d 746.

No. 98–842. Derryberry, Individually and as Next Friend of Bryant *v.* NationsBank of Texas, N. A., fka

N. C. N. B. Texas National Bank. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 98–846. Stencel *v.* Emard. C. A. 9th Cir. Certiorari denied. Reported below: 153 F. 3d 949.

No. 98–854. Thomas *v.* Missouri. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 972 S. W. 2d 309.

No. 98–862. Watson *v.* First National Bankcard Center. C. A. 8th Cir. Certiorari denied. Reported below: 162 F. 3d 1166.

No. 98–865. ANR Pipeline Co. et al. *v.* Lafaver, Secretary, Kansas Department of Revenue, et al. C. A. 10th Cir. Certiorari denied. Reported below: 150 F. 3d 1178.

No. 98–872. Tahara *v.* Matson Terminals, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 929.

No. 98–883. Michigan Automotive Research Corp. *v.* Michigan Department of Treasury. Ct. App. Mich. Certiorari denied. Reported below: 222 Mich. App. 227, 564 N. W. 2d 503.

No. 98–887. Miller *v.* Miller. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 64 Cal. App. 4th 111, 74 Cal. Rptr. 2d 797.

No. 98–891. Hirschfeld *v.* Zlaket, Chief Justice, Arizona Supreme Court, et al. Sup. Ct. Ariz. Certiorari denied. Reported below: 192 Ariz. 40, 960 P. 2d 640.

No. 98–894. Scott *v.* Ohio. Ct. App. Ohio, Mahoning County. Certiorari denied.

No. 98–900. Collin *v.* University of Virginia et al. C. A. 4th Cir. Certiorari denied. Reported below: 163 F. 3d 598.

No. 98–901. Tokheim *v.* Commodity Futures Trading Commission. C. A. 7th Cir. Certiorari denied. Reported below: 153 F. 3d 474.

No. 98–902. Plaza *v.* General Assurance Co., aka General Accident Insurance Co. App. Div., Sup. Ct. N. Y., 1st

Jud. Dept. Certiorari denied. Reported below: 244 App. Div. 2d 238, 664 N. Y. S. 2d 444.

No. 98–908. Moss *v.* City of Montgomery et al. C. A. 11th Cir. Certiorari denied.

No. 98–925. Parham *v.* Mississippi. Sup. Ct. Miss. Certiorari denied. Reported below: 722 So. 2d 465.

No. 98–936. Perez *v.* Arizona. Ct. App. Ariz. Certiorari denied.

No. 98–956. Cannon et al. *v.* Williams. C. A. 1st Cir. Certiorari denied. Reported below: 156 F. 3d 86.

No. 98–968. Johnson *v.* Illinois. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 296 Ill. App. 3d 1082, 726 N. E. 2d 1195.

No. 98–979. Ghent *v.* New York et al. C. A. 2d Cir. Certiorari denied. Reported below: 164 F. 3d 617.

No. 98–984. Erwin *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 155 F. 3d 818.

No. 98–997. Dickey *v.* City of Hartsville et al. C. A. 4th Cir. Certiorari denied. Reported below: 149 F. 3d 1167.

No. 98–1000. Dachman *v.* Schwieterman et al. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 558.

No. 98–1006. Miszko *v.* Spitzer, Attorney General of New York, et al. C. A. 2d Cir. Certiorari denied. Reported below: 164 F. 3d 618.

No. 98–1015. Owens *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 158 F. 3d 584.

No. 98–1017. Juda *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 98–6180. Thomas *v.* Gilmore, Warden. C. A. 7th Cir. Certiorari denied. Reported below: 144 F. 3d 513.

No. 98–6374. Benevides *v.* California. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 64 Cal. App. 4th 728, 75 Cal. Rptr. 2d 388.

No. 98–6592. FALGE *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 11th Cir. Certiorari denied. Reported below: 150 F. 3d 1320.

No. 98–6802. IHEKE *v.* UNITED STATES; and
No. 98–7030. EMUCHAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 156 F. 3d 185.

No. 98–6932. PERRY *v.* UNITED PARCEL SERVICE. C. A. 11th Cir. Certiorari denied.

No. 98–6933. CLEMONS *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 720 So. 2d 985.

No. 98–6952. ANSLEY *v.* GREENBUS LINES, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 159 F. 3d 1345.

No. 98–6955. BERGNE *v.* DUNCAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 98–6956. AMADOR *v.* GREINER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 98–6957. COHEA *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 98–6959. CARPENTER *v.* MILLS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–6966. ROSENBERG *v.* HYATT HOTEL AND RESORT ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 172 F. 3d 920.

No. 98–6970. SPAIN *v.* VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 20.

No. 98–6972. BONNETT *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 348 N. C. 417, 502 S. E. 2d 563.

No. 98–6978. LAWRENCE *v.* TURPIN, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 152 F. 3d 933.

No. 98–6979. KISKILA ET UX. *v.* BUSINESS EXCHANGE, INC. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 98–6980. NINEMIRE *v.* STOVALL, ATTORNEY GENERAL OF KANSAS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 156 F. 3d 1244.

No. 98–7001. FAULDER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–7006. VICKERS *v.* MISSOURI. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 956 S. W. 2d 405.

No. 98–7007. YOUNG *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 98–7008. YOUNGBEAR *v.* ANHEUSER-BUSCH, INC.; and YOUNGBEAR *v.* PLAYBOY ENTERPRISES, INC. C. A. 8th Cir. Certiorari denied.

No. 98–7009. SAZIO *v.* ALCOSER ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–7013. MARSHALL *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 963 P. 2d 1.

No. 98–7016. MCCARTNEY *v.* TERRAL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 157 F. 3d 903.

No. 98–7018. MARIN *v.* MARYLAND BOARD OF LAW EXAMINERS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 162 F. 3d 1155.

No. 98–7025. TALVENSAARI *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–7087. DOGGETT *v.* SPARKS ET AL. C. A. 2d Cir. Certiorari denied.

No. 98–7116. BISHOP *v.* NEWLAND, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–7119. GREEN *v.* FLORIDA PAROLE AND PARDON COMMISSION ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–7131. CRESPO *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 246 Conn. 665, 718 A. 2d 925.

No. 98–7157. SNOW *v.* SNOW. Sup. Ct. Mont. Certiorari denied. Reported below: 289 Mont. 543, 971 P. 2d 1249.

No. 98–7159. RICHARDSON *v.* WEST, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 173 F. 3d 432.

No. 98–7183. ZAKRZEWSKI *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 717 So. 2d 488.

No. 98–7187. THOMPSON *v.* DEPARTMENT OF THE TREASURY. C. A. Fed. Cir. Certiorari denied. Reported below: 155 F. 3d 574.

No. 98–7203. STREET *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 297 Ill. App. 3d 1124, —— N. E. 2d ——.

No. 98–7246. YOUNG *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 458 Mich. 43, 580 N. W. 2d 404.

No. 98–7252. SPLAIN *v.* NEWTON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 161 F. 3d 18.

No. 98–7253. RANDOLPH *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–7263. MILNER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 155 F. 3d 697.

No. 98–7268. CLIFTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 158 F. 3d 583.

No. 98–7272. CHAPPELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 161 F. 3d 8.

No. 98–7279. WHETHERS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1354.

No. 98–7293. SMITH *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 98–7295. CHARBONNEAU *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 98–7297. ANDERTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 136 F. 3d 747.

No. 98–7305. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 161 F. 3d 5.

No. 98–7310. UBOH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 98–7315. MCCARROLL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 921.

No. 98–7317. LATTANY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 98–7320. BROWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–7322. BELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 98–7324. REYES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 172 F. 3d 861.

No. 98–7326. URIAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 161 F. 3d 16.

No. 98–7327. CLIFF *v.* SLAATTEN ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 98–7330. GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 159 F. 3d 1355.

No. 98–7332. FAZZINI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–7334. MILLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 146 F. 3d 1281.

No. 98–7335. MILLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 151 F. 3d 957.

No. 98–7337. DOUGLAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1326.

No. 98–7338. GONZALEZ, AKA GONZALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 908.

No. 98–7339. NGUYEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 98–7340. LAWRENCE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 729.

No. 98–7341. MENDOZA-MORA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 159 F. 3d 1356.

No. 98–7342. LUNA-HERRERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 149 F. 3d 1054.

No. 98–7345. HOLLAND *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–7357. NAGY *v.* UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT. C. A. 2d Cir. Certiorari denied.

No. 98–7364. MOLINA-SUERO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 164 F. 3d 620.

No. 98–7370. RODRIGUEZ-PENA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 54 F. 3d 764.

No. 98–7375. RAMOS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 98–7379. QUINTERO-FIGUEROA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 98–7382. CUNNINGHAM *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 145 F. 3d 1385.

No. 98–7385. BRUNETTI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1353.

No. 98–7386. CONNELLY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 156 F. 3d 978.

No. 98–7389. BRISENO-MANZO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 163 F. 3d 607.

No. 98–7390. ARIAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 139 F. 3d 840.

No. 98–7392. CHRISTY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 561.

No. 98–7410. WARDELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 159 F. 3d 1361.

No. 98–7411. VEGA-BENAVIDES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 161 F. 3d 7.

No. 98–7418. ANDERSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 172 F. 3d 921.

No. 98–2. METROPOLITAN LIFE INSURANCE CO. *v.* SABO. C. A. 3d Cir. Motion of American Council of Life Insurance for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 137 F. 3d 185.

No. 98–831. ALBUQUERQUE JOURNAL *v.* GONZALES ET AL. C. A. 10th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 150 F. 3d 1246.

*Rehearing Denied*

No. 98–425. SOLOMON *v.* FLORIDA BAR, *ante*, p. 965;

No. 98–468. MONTGOMERY *v.* CITY OF FARMINGTON HILLS ET AL., *ante*, p. 1040;

No. 98–519. TOTH *v.* TOTH ET AL., *ante*, p. 1018;

No. 98–5214. HART/CROSS *v.* UNITED STATES, *ante*, p. 892;

No. 98–5819. DUBOSE *v.* JONES, WARDEN, ET AL., *ante*, p. 969;

No. 98–6138. WILLIAMS *v.* FRANCIS ET AL., *ante*, p. 1021;

No. 98–6229. SEARLES *v.* RIVER MEAD CONDOMINIUM ASSN., *ante*, p. 1023;

No. 98–6390. WISE *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 1026;

No. 98–6408. HEMMERLE *v.* ERDMAN ET AL., *ante*, p. 1057;

No. 98–6436. SEGERS *v.* UNITED STATES, *ante*, p. 1008;

No. 98–6490. CARTER *v.* AMTRAK CORPORATION, *ante*, p. 1044; and

No. 98–6579. LAWRENCE *v.* COMMISSIONER OF INTERNAL REVENUE, *ante*, p. 1029. Petitions for rehearing denied.

No. 97–9568. BOWMAN *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 859; and

No. 98–5634. XUAN HUYNH *v.* FORTE AIRPORT SERVICES, INC., *ante*, p. 936. Motions for leave to file petitions for rehearing denied.

JANUARY 29, 1999

*Miscellaneous Order*

No. 98–830. AMOCO PRODUCTION CO., ON BEHALF OF ITSELF AND THE CLASS IT REPRESENTS *v.* SOUTHERN UTE INDIAN TRIBE ET AL. C. A. 10th Cir. [Certiorari granted, *ante*, p. 1118.] The order granting the petition for writ of certiorari is amended to read as follows:

Certiorari granted limited to the following question: "Whether, in reserving to the United States 'coal' in lands patented under the 1909 and 1910 Coal Land Acts, 30 U. S. C. §§ 81, 83–85, while passing the surface land and all other minerals (including natural gas) to the patentee, Congress reserved only the solid rock fuel commonly known as 'coal,' but not natural gas in coal formations?" Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 5, 1999. Briefs of respondents are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 2, 1999. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 16, 1999. This Court's Rule 29.2 does not apply. JUSTICE BREYER took no part in the consideration or decision of this petition.

FEBRUARY 1, 1999

*Certiorari Denied*

No. 98–7792 (A–618). FRY *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Application for stay of execution of sentence of death, addressed 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: 165 F. 3d 18.

FEBRUARY 3, 1999

*Miscellaneous Order*

No. 98–7965 (A–644). IN RE GERLAUGH. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Petition for writ of habeas corpus denied. JUSTICE STEVENS and JUSTICE BREYER would grant the application for stay of execution.

*Certiorari Denied*

No. 98–7964 (A–643). GERLAUGH *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. JUSTICE STEVENS and JUSTICE BREYER would grant the application for stay of execution. Reported below: 167 F. 3d 1222.

No. 98–7967 (A–645). SELLERS *v.* OKLAHOMA PARDON AND PAROLE BOARD ET AL. 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 8, 1999

*Miscellaneous Order*

No. 98–8042 (A–657). IN RE SIRIPONGS. 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 Denied*

No. 98–7466 (A–544). CORDOVA *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: 157 F. 3d 380.

No. 98–8043 (A–658). SIRIPONGS *v.* CALDERON, WARDEN. 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: 167 F. 3d 1225.

FEBRUARY 10, 1999

*Dismissal Under Rule 46*

No. 98–7401. HICKMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 151 F. 3d 446.

FEBRUARY 11, 1999

*Miscellaneous Order*

No. A–664. BARBER *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.

*Certiorari Denied*

No. 98–8095 (A–667). BARBER *v.* TEXAS BOARD OF PARDONS AND PAROLES ET AL. 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 before judgment denied.

FEBRUARY 16, 1999

*Dismissal Under Rule 46*

No. 98–1124. KABIR ET AL. *v.* SILICON VALLEY BANK ET AL. Ct. App. Cal., 6th App. Dist. Certiorari dismissed as to respondents Silicon Valley Bank, Robert Gionfriddo, Robert McMillan, Sherry Stevens, Marc Cadieux, Roger Smith, and John Dean under this Court's Rule 46.1.

*Miscellaneous Orders*

No. A–685. CANTU-TZIN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. JUSTICE BREYER took no part in the consideration or decision of this application.

No. 98–8108 (A–678). IN RE COX. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

FEBRUARY 19, 1999

*Certiorari Denied*

No. 98–8173 (A–691). FRANKLIN ET AL., AS NEXT FRIENDS FOR BERRY *v.* FRANCIS, WARDEN. C. A. 6th Cir. Application for stay of execution of sentence of death, presented to JUSTICE

STEVENS, and by him referred to the Court, denied. Certiorari denied. Reported below: 168 F. 3d 261.

## FEBRUARY 22, 1999

*Appeal Dismissed*

No. 98–413. LEGISLATURE OF CALIFORNIA ET AL. *v.* UNITED STATES HOUSE OF REPRESENTATIVES ET AL. Appeal from D. C. D. C. dismissed. Reported below: 11 F. Supp. 2d 76.

*Certiorari Granted—Vacated and Remanded*

No. 97–1519. FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* IOWA UTILITIES BOARD ET AL.; and

No. 97–1520. AT&T CORP. ET AL. *v.* IOWA UTILITIES BOARD ET AL. C. A. 8th Cir. Certiorari granted, judgment vacated, and cases remanded for further consideration in light of *AT&T Corp.* v. *Iowa Utilities Bd.*, *ante*, p. 366. JUSTICE O'CONNOR took no part in the consideration or decision of these cases. Reported below: 135 F. 3d 535.

No. 98–909. OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 12 *v.* BLOOM ET AL. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Marquez* v. *Screen Actors*, *ante*, p. 33. Reported below: 153 F. 3d 844.

*Certiorari Dismissed*

No. 98–7222. EVANS *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari dismissed. Reported below: 725 So. 2d 613.

*Miscellaneous Orders*

No. A–620. MILBERG WEISS BERSHAD HYNES & LERACH ET AL. *v.* LEXECON INC. ET AL. D. C. N. D. Ill. Application for stay, addressed to JUSTICE SOUTER and referred to the Court, denied.

No. D–1997. IN RE DISBARMENT OF KRAMER. Further consideration of response to the rule to show cause deferred. [For earlier order herein, see *ante*, p. 926.]

No. D–2006. IN RE DISBARMENT OF PRICE. Disbarment entered. [For earlier order herein, see *ante*, p. 958.]

No. D–2008. IN RE DISBARMENT OF MOORE. Disbarment entered. [For earlier order herein, see *ante*, p. 980.]

No. D–2009. IN RE DISBARMENT OF GLEAN. Disbarment entered. [For earlier order herein, see *ante*, p. 980.]

No. D–2011. IN RE DISBARMENT OF WECHSLER. Disbarment entered. [For earlier order herein, see *ante*, p. 998.]

No. D–2012. IN RE DISBARMENT OF FRIEDMAN. Disbarment entered. [For earlier order herein, see *ante*, p. 998.]

No. D–2015. IN RE DISBARMENT OF HINGLE. Disbarment entered. [For earlier order herein, see *ante*, p. 1038.]

No. D–2016. IN RE DISBARMENT OF SMITH. Disbarment entered. [For earlier order herein, see *ante*, p. 1038.]

No. D–2017. IN RE DISBARMENT OF GLEE. Disbarment entered. [For earlier order herein, see *ante*, p. 1039.]

No. D–2019. IN RE DISBARMENT OF FROST. Disbarment entered. [For earlier order herein, see *ante*, p. 1039.]

No. D–2020. IN RE DISBARMENT OF FITSOS. Disbarment entered. [For earlier order herein, see *ante*, p. 1052.]

No. D–2032. IN RE DISBARMENT OF BOOREAM. Charles V. Booream III, of Milltown, N. J., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2033. IN RE DISBARMENT OF BALDRIDGE. H. Gene Baldridge, of Ashland, 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–2034. IN RE DISBARMENT OF TEW. F. Allen Tew, of Indianapolis, Ind., 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–2035. IN RE DISBARMENT OF GOULD. Albert Ira Gould, of Bolton, 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–2036. IN RE DISBARMENT OF ATKIN. Sanford I. Atkin, of Cleveland, 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–2037. IN RE DISBARMENT OF SCHULMAN. Robert D. Schulman, of New York 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–2038. IN RE DISBARMENT OF GOLDSWEIG. Susan Goldsweig, of Yonkers, N. Y., 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–2039. IN RE DISBARMENT OF LEVENE. Robert G. Levene, of Tustin, 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–2040. IN RE DISBARMENT OF TIERNAN. Gerald James Tiernan, of San Francisco, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2041. IN RE DISBARMENT OF MANNING. Lawrence Paul Manning, of San Francisco, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2042. IN RE DISBARMENT OF BUTLER. Philip Gale Butler, Jr., of Greenville, 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–2043. IN RE DISBARMENT OF REA. Peter H. Rea, of Branson, Mo., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2044. IN RE DISBARMENT OF MCCALLUM. William C. McCallum, 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–2045. IN RE DISBARMENT OF HOLLANDER. David Stephen Hollander, of Boca Raton, 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. M–41. BISCHOF *v.* UNITED STATES; and

No. M–42. RUIZ-RIVERA *v.* DEPARTMENT OF EDUCATION ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 97–1732. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM ET AL. *v.* FELZEN ET AL., *ante*, p. 315. Motion of respondents for an order respecting costs denied. JUSTICE O'CONNOR took no part in the consideration or decision of this motion.

No. 97–1927. HANLON ET AL. *v.* BERGER ET UX. C. A. 9th Cir. [Certiorari granted, *ante*, p. 981]; and

No. 98–83. WILSON ET AL. *v.* LAYNE, DEPUTY UNITED STATES MARSHAL, ET AL. C. A. 4th Cir. [Certiorari granted, *ante*, p. 981.] Motion of the parties respecting oral argument granted, and the time is allotted as follows: 20 minutes for petitioners Hanlon et al. in No. 97–1927 and federal respondents Layne et al. in No. 98–83; 10 minutes for state respondents in No. 98–83; 15 minutes for respondents Berger et ux. in No. 97–1927; and 15 minutes for petitioners Wilson et al. in No. 98–83.

No. 98–10. JEFFERSON COUNTY, ALABAMA *v.* ACKER, SENIOR JUDGE, UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ALABAMA, ET AL. C. A. 11th Cir. [Certiorari granted, *ante*, p. 1039.] Motion of the Solicitor General for leave to participate

in oral argument as *amicus curiae* and for divided argument granted.

No. 98–208. KOLSTAD *v.* AMERICAN DENTAL ASSOCIATION. C. A. D. C. Cir. [Certiorari granted, *ante,* p. 960.] Motion of Rutherford Institute for leave to file a brief as *amicus curiae* granted. Motion of respondent to permit the Chamber of Commerce of the United States to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 98–6510. IN RE RIVERA. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 1066] denied.

No. 98–6679. MACE *v.* MISSOURI DEPARTMENT OF SOCIAL SERVICES, DIVISION OF CHILD SUPPORT ENFORCEMENT. C. A. 8th Cir.; and

No. 98–6713. MACE *v.* MISSOURI ET AL. C. A. 8th Cir. Motions of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 1065] denied.

No. 98–7061. MILLER *v.* J & J DRILLING, INC. Ct. App. Wash.;

No. 98–7264. COERS *v.* TEXAS GUARANTEED STUDENT LOAN CORPORATION ET AL. C. A. 5th Cir.;

No. 98–7413. WALDEN *v.* LEVITT. C. A. 3d Cir.; and

No. 98–7425. SANTESSON *v.* MANOUKIAN ET AL. Ct. App. Cal., 6th App. Dist. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 15, 1999, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 98–7529. IN RE AL-AMIN;

No. 98–7643. IN RE RASHID;

No. 98–7780. IN RE LINTZ;

No. 98–7807. IN RE BREWER;

No. 98–7922. IN RE GUICE; and

No. 98–7927. IN RE GRIFFIN. Petitions for writs of habeas corpus denied.

No. 98–7101. IN RE RUIZ;

No. 98–7161. IN RE LEWIS;

No. 98–7208. IN RE BONNER;

No. 98–7233. IN RE LITTLE; and
No. 98–7256. IN RE RICE. Petitions for writs of mandamus denied.

No. 98–1088. IN RE VEY;
No. 98–7151. IN RE MOSSERI;
No. 98–7166. IN RE BALL; and
No. 98–7168. IN RE ABIDEKUN. Petitions for writs of mandamus and/or prohibition denied.

*Certiorari Granted*

No. 98–6322. SLACK *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma* pauperis granted. Certiorari granted limited to the following question: "If a person's petition for habeas corpus under 28 U. S. C. § 2254 is dismissed for failure to exhaust state remedies, and he subsequently exhausts his state remedies and refiles the § 2254 petition, are claims included within that petition that were not included within his initial § 2254 filing 'second or successive' habeas applications?"

*Certiorari Denied*

No. 97–1834. BRILLINGER ET AL. *v.* GENERAL ELECTRIC CO. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 130 F. 3d 61.

No. 98–322. EXXON CORP. ET AL. *v.* DOW CHEMICAL CO. C. A. Fed. Cir. Certiorari denied. Reported below: 139 F. 3d 1470.

No. 98–447. VITEK SUPPLY CORP. ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 144 F. 3d 476.

No. 98–462. WOODWARD *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 149 F. 3d 46.

No. 98–554. LEE *v.* HUGHES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 145 F. 3d 1272.

No. 98–577. GOMEZ-OCHOA *v.* RENO, ATTORNEY GENERAL, ET AL. C. A. 5th Cir. Certiorari denied.

No. 98–598. COUSIN ET AL. *v.* SUNDQUIST, GOVERNOR OF TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 818.

No. 98–606. TAYLOR *v.* ROONEY; and
No. 98–789. ROONEY *v.* TAYLOR. C. A. 2d Cir. Certiorari denied. Reported below: 143 F. 3d 679.

No. 98–640. ROBERTS ET UX. *v.* FLORIDA POWER & LIGHT CO. C. A. 11th Cir. Certiorari denied. Reported below: 146 F. 3d 1305.

No. 98–668. ROBERTS *v.* KLING. C. A. 10th Cir. Certiorari denied. Reported below: 144 F. 3d 710.

No. 98–676. HART ET AL. *v.* GWADOSKY, SECRETARY OF STATE OF MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 715 A. 2d 165.

No. 98–709. SHEMPERT ET AL. *v.* HARWICK CHEMICAL CORP. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 151 F. 3d 793.

No. 98–713. FRONTIER PACIFIC INSURANCE CO. *v.* FEDERAL TRADE COMMISSION. C. A. 9th Cir. Certiorari denied. Reported below: 149 F. 3d 1036.

No. 98–715. WILSON *v.* YAKLICH ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 148 F. 3d 596.

No. 98–719. SEUS *v.* JOHN NUVEEN & CO., INC. C. A. 3d Cir. Certiorari denied. Reported below: 146 F. 3d 175.

No. 98–720. GEORGOPOULOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 149 F. 3d 169.

No. 98–723. EUROPE AND OVERSEAS COMMODITY TRADERS, S. A. *v.* BANQUE PARIBAS LONDON ET AL.; and
No. 98–923. BANQUE PARIBAS LONDON ET AL. *v.* EUROPE AND OVERSEAS COMMODITY TRADERS, S. A. C. A. 2d Cir. Certiorari denied. Reported below: 147 F. 3d 118.

No. 98–740. NEC CORP. ET AL. *v.* UNITED STATES ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 151 F. 3d 1361.

No. 98–744. LOCAL 24, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA *v.* SCHOONOVER; and

No. 98–773. CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE *v.* SCHOONOVER. C. A. 6th Cir. Certiorari denied. Reported below: No. 98–744, 147 F. 3d 492; No. 98–773, 49 F. 3d 219 and 147 F. 3d 492.

No. 98–746. NATIONWIDE MUTUAL INSURANCE CO. *v.* INSURANCE COMPANY OF NORTH AMERICA ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 150 F. 3d 545.

No. 98–752. DEPARTMENT OF ENVIRONMENTAL PROTECTION OF FLORIDA *v.* BOUCHARD TRANSPORTATION CO. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 147 F. 3d 1344.

No. 98–753. EXXON CHEMICAL PATENTS, INC. *v.* DOW CHEMICAL CO. C. A. Fed. Cir. Certiorari denied. Reported below: 155 F. 3d 573.

No. 98–756. DIAL SERVICE INTERNATIONAL, INC., ET AL. *v.* KIM. C. A. 2d Cir. Certiorari denied. Reported below: 159 F. 3d 1347.

No. 98–758. FICKLING ET AL. *v.* HERMAN, SECRETARY OF LABOR; and

No. 98–762. SOUTH CAROLINA NATIONAL BANK *v.* HERMAN, SECRETARY OF LABOR. C. A. 11th Cir. Certiorari denied. Reported below: 140 F. 3d 1413.

No. 98–759. CITY OF CHICAGO *v.* YANG. C. A. 7th Cir. Certiorari denied. Reported below: 137 F. 3d 522.

No. 98–777. CITY OF SOUTHFIELD ET AL. *v.* REESE. C. A. 6th Cir. Certiorari denied. Reported below: 162 F. 3d 1162.

No. 98–794. ESTATE OF MUELLER, DECEASED, ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied. Reported below: 153 F. 3d 302.

No. 98–810. KOTTLE *v.* NORTHWEST KIDNEY CENTERS. C. A. 9th Cir. Certiorari denied. Reported below: 146 F. 3d 1056.

No. 98–834. PLANNED PARENTHOOD OF THE BLUE RIDGE ET AL. *v.* CAMBLOS, IN HIS OFFICIAL CAPACITY AS COMMONWEALTH'S ATTORNEY, COUNTY OF ALBEMARLE. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 352.

No. 98–839. Najar Vda. de Panta, Individually and as Personal Representative of the Estate of Panta Pazos, Deceased, et al. *v.* Afram Carriers, Inc. C. A. 5th Cir. Certiorari denied. Reported below: 145 F. 3d 298.

No. 98–851. Reuters Television International, Ltd., et al. *v.* Los Angeles News Service. C. A. 9th Cir. Certiorari denied. Reported below: 149 F. 3d 987.

No. 98–852. Romer et al. *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 148 F. 3d 359.

No. 98–853. Taylor et al. *v.* Quality Hyundai, Inc., et al. C. A. 7th Cir. Certiorari denied. Reported below: 150 F. 3d 689.

No. 98–856. Hyatt *v.* Boone. C. A. Fed. Cir. Certiorari denied. Reported below: 146 F. 3d 1348.

No. 98–858. Cowboy Auto Sales, Inc., et al. *v.* Halwood et ux. Ct. App. N. M. Certiorari denied.

No. 98–869. Hong Kong & Shanghai Banking Corp., Ltd. *v.* Simon. C. A. 9th Cir. Certiorari denied. Reported below: 153 F. 3d 991.

No. 98–874. Iskcon Miami, Inc., et al. *v.* Metropolitan Dade County et al. C. A. 11th Cir. Certiorari denied. Reported below: 147 F. 3d 1282.

No. 98–880. Figueroa, dba The Export Group *v.* Mexican Coffee Institute. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 925.

No. 98–885. Pere, Individually and on Behalf of Her Minor Children, Pere et al. *v.* Nuovo Pignone S.p.A. C. A. 5th Cir. Certiorari denied. Reported below: 150 F. 3d 477.

No. 98–889. Washington Physicians Service Assn. et al. *v.* Gregoire, Attorney General of Washington, et al. C. A. 9th Cir. Certiorari denied. Reported below: 147 F. 3d 1039.

No. 98–893. Zaruba, Sheriff, DuPage County *v.* Franklin et al. C. A. 7th Cir. Certiorari denied. Reported below: 150 F. 3d 682.

No. 98–898. SMITH, INDIVIDUALLY AND ON BEHALF OF ALL BENEFICIARIES OF ALLEN, DECEASED *v.* AMERICAN ISUZU MOTORS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 137 F. 3d 859.

No. 98–905. SINGH ET AL. *v.* PAN AMERICAN WORLD AIRWAYS, INC., ET AL.; and

No. 98–907. PATEL ET AL. *v.* PAN AMERICAN WORLD AIRWAYS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 148 F. 3d 84.

No. 98–921. NORDSTROM *v.* NORDSTROM. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 965 S. W. 2d 575.

No. 98–924. BLACKNER *v.* CONTINENTAL AIRLINES, INC. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 311 N. J. Super. 10, 709 A. 2d 258.

No. 98–928. NICOLE'S, INC., DBA WHARTON AUTOMATION ASSOCIATES, ET AL. *v.* PYRAMID TECHNOLOGY CORP., INC. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 928.

No. 98–929. WHITE *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 98–930. GOLLAHER *v.* UTAH. Ct. App. Utah. Certiorari denied.

No. 98–934. EGBUNA *v.* TIME-LIFE LIBRARIES, INC. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 184.

No. 98–935. IN RE JOHNSON. C. A. 8th Cir. Certiorari denied. Reported below: 152 F. 3d 859.

No. 98–939. LEAVITT ET AL. *v.* KESSEL. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 204 W. Va. 95, 511 S. E. 2d 720.

No. 98–940. LEVENE & EISENBERG *v.* GOLD COAST ASSET ACQUISITION, L. P. C. A. 9th Cir. Certiorari denied. Reported below: 144 F. 3d 1288 and 154 F. 3d 1103.

No. 98–941. CRESCENT TOWING & SALVAGE CO., INC., ET AL. *v.* ORMET PRIMARY ALUMINUM CORP. ET AL. Sup. Ct. La. Certiorari denied. Reported below: 720 So. 2d 628.

No. 98–943. HOLLMAN *v.* WILSON, SUPERINTENDENT, RETREAT CORRECTIONAL INSTITUTION, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 158 F. 3d 177.

No. 98–949. DURAN *v.* CNO, INC. Ct. App. N. M. Certiorari denied.

No. 98–951. BREEDLOVE *v.* SKY BRYCE ASSN., INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 557.

No. 98–952. GIBSON *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 98–954. ANDERSON *v.* IMPERIAL CENTER V, L. P., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 134 F. 3d 376.

No. 98–962. POLYAK *v.* SOOKER ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 98–964. EDWARDS *v.* CALIFORNIA UNIVERSITY OF PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 156 F. 3d 488.

No. 98–965. FOXWORTH *v.* RICHARDSON, MARION COUNTY SHERIFF, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 139 F. 3d 889.

No. 98–967. SPARKS *v.* MATTOX & MATTOX. Ct. App. Ind. Certiorari denied. Reported below: 691 N. E. 2d 521.

No. 98–969. HARMONIC DESIGN, INC., ET AL. *v.* HUNTER DOUGLAS, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 153 F. 3d 1318.

No. 98–971. TRULL *v.* TRULL ET AL. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 295 Ill. App. 3d 1126, 726 N. E. 2d 234.

No. 98–974. FOX *v.* FOX. Ct. Sp. App. Md. Certiorari denied. Reported below: 121 Md. App. 717.

No. 98–975. LAVODIE, SUCCESSOR DIRECTOR-TRUSTEE FOR 3011 CORP., T/A U. S. BOOKS, ET AL. *v.* CASSILLY, INDIVIDUALLY AND AS STATES ATTORNEY, HARFORD COUNTY, MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 720.

No. 98–976. LOPEZ *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 4th Cir. Certiorari denied. Reported below: 141 F. 3d 1159.

No. 98–982. THOMPKINS *v.* QUINCY'S RESTAURANT, INC. Ct. Civ. App. Ala. Certiorari denied. Reported below: 740 So. 2d 491.

No. 98–988. NIX, CHIEF JUSTICE (RETIRED), SUPREME COURT OF PENNSYLVANIA, ET AL. *v.* LARSEN. C. A. 3d Cir. Certiorari denied. Reported below: 154 F. 3d 82.

No. 98–991. TARANTINO *v.* PIERCE. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1174.

No. 98–995. ROBISHEAUX *v.* MEMORIAL CITY REGIONAL MALL. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 98–998. SEABORN ET AL. *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 143 F. 3d 1405.

No. 98–1001. RODEN *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 723 So. 2d 1246.

No. 98–1002. PORT *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–1004. GARAU *v.* HAHN ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–1005. RODRIGUEZ *v.* CITY OF CHICAGO. C. A. 7th Cir. Certiorari denied. Reported below: 156 F. 3d 771.

No. 98–1009. SMITH *v.* SUPREME COURT OF THE UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 98–1010. PAUL *v.* PB–KBB, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1179.

No. 98–1012. HESS *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 98–1013. LEVITIN ET AL. *v.* PAINEWEBBER, INC.; and BISSELL *v.* MERRILL LYNCH & CO., INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 159 F. 3d 698 (first judgment); 157 F. 3d 138 (second judgment).

No. 98–1014. AIRBUS INDUSTRIE ET AL. *v.* LINTON ET AL. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 934 S. W. 2d 754.

No. 98–1016. DAVID B. ET AL. *v.* MCDONALD, DIRECTOR, ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 156 F. 3d 780.

No. 98–1019. JAISINGHANI *v.* CAPITAL CITIES/ABC, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 149 F. 3d 1195.

No. 98–1021. HECKMAN *v.* UGI UTILITIES, INC. Super. Ct. Pa. Certiorari denied. Reported below: 704 A. 2d 1129.

No. 98–1023. PHELPS *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 98–1027. WINGS, AKA L & L WINGS, INC. *v.* TWO'S COMPANY. C. A. 11th Cir. Certiorari denied. Reported below: 161 F. 3d 21.

No. 98–1029. SPENCER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 98–1030. RUSSELL ET AL. *v.* BURRIS, CHAIRPERSON, ARKANSAS ETHICS COMMISSION, ET AL. C. A. 8th Cir. Certiorari denied.

No. 98–1031. BIERI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 98–1032. CHI-MING CHOW *v.* MICHIGAN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 165 F. 3d 26.

No. 98–1038. LARSEN *v.* AFFLERBACH ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 152 F. 3d 240.

No. 98–1040. ARKANSAS RIGHT TO LIFE STATE POLITICAL ACTION COMMITTEE ET AL. *v.* BUTLER, STATE ATTORNEY, BENTON COUNTY, ET AL. C. A. 8th Cir. Certiorari denied.

No. 98–1043. COLVIN *v.* NATIONAL AUTOMOTIVE PARTS ASSN. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 168 F. 3d 1321.

No. 98–1050. BATTLE *v.* DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 149 F. 3d 1194.

No. 98–1053. DORSEY *v.* LEHMAN BROTHERS HOLDINGS ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 98–1060. ORANGE COUNTY *v.* MYERS. C. A. 2d Cir. Certiorari denied. Reported below: 157 F. 3d 66.

No. 98–1067. CHOE *v.* GILMORE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 98–1073. HERNANDEZ *v.* LOCKRIDGE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 158 F. 3d 583.

No. 98–1075. STILLO *v.* HEDRICK ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 294 Ill. App. 3d 1107, 721 N. E. 2d 855.

No. 98–1078. PHELPS *v.* KANSAS. C. A. 10th Cir. Certiorari denied. Reported below: 162 F. 3d 1174.

No. 98–1080. VLASIC FOODS INTERNATIONAL, INC. *v.* DEFOREST, EXECUTRIX OF THE ESTATE OF ZENDER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 156 F. 3d 1236.

No. 98–1081. CRENSHAW *v.* DISCIPLINARY COMMISSION OF THE SUPREME COURT OF INDIANA. C. A. 7th Cir. Certiorari denied.

No. 98–1083. OLSON ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 156 F. 3d 1240.

No. 98–1084. R. J. CORMAN RAILROAD CORP. *v.* LOUISVILLE GAS & ELECTRIC CO. Ct. App. Ky. Certiorari denied.

No. 98–1087. FERRARA *v.* MICHIGAN JUDICIAL TENURE COMMISSION. Sup. Ct. Mich. Certiorari denied. Reported below: 458 Mich. 350, 582 N. W. 2d 817.

No. 98–1095. LASALLE NATIONAL BANK ET AL. *v.* TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 295 Ill. App. 3d 61, 691 N. E. 2d 881.

No. 98–1096. CENEX, INC., FKA FARMERS UNION CENTRAL EXCHANGE, INC. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 156 F. 3d 1377.

No. 98–1100. FLOWERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 98–1102. DEBOSE *v.* SECRETARY OF THE ARMY. C. A. 5th Cir. Certiorari denied. Reported below: 154 F. 3d 417.

No. 98–1105. GIESBERG *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 984 S. W. 2d 245.

No. 98–1107. SALERY ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 156 F. 3d 185.

No. 98–1118. TESTA *v.* GRAMLEY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 98–1129. SANK *v.* NEW JERSEY ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 98–1132. IVANKOV *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 146 F. 3d 73.

No. 98–1134. RODRIGUEZ *v.* DALEY, SECRETARY OF COMMERCE. C. A. 4th Cir. Certiorari denied. Reported below: 162 F. 3d 1155.

No. 98–1142. VAN ZANDT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 164 F. 3d 620.

No. 98–1144. ROCKY MOUNTAIN RADAR, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION. C. A. 10th Cir. Certiorari denied. Reported below: 158 F. 3d 1118.

No. 98–1158. JELKS *v.* FEDERAL COMMUNICATIONS COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 146 F. 3d 878.

No. 98–1168. BROZYNA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 151 F. 3d 1026.

No. 98–1171. GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 98–1175. DACCARET-GHIA ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 168 F. 3d 480.

No. 98–1177. HEILBRUNN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–1187. JAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 21.

No. 98–1188. FAZIO ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 159 F. 3d 1355.

No. 98–1196. GREEN *v.* MORTHAM, SECRETARY OF STATE OF FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 155 F. 3d 1332.

No. 98–1202. PORTWOOD ET AL. *v.* FORD MOTOR CO. Sup. Ct. Ill. Certiorari denied. Reported below: 183 Ill. 2d 459, 701 N. E. 2d 1102.

No. 98–5867. MATHENEY *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 688 N. E. 2d 883.

No. 98–5995. LEAL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–6122. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 151 F. 3d 1031.

No. 98–6314. STEPHENS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–6358. HARRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 159 F. 3d 1357.

No. 98–6403. MOSES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 148 F. 3d 277.

No. 98–6458. SMITH *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 977 S. W. 2d 610.

No. 98–6463. COLELLA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 977 S. W. 2d 621.

No. 98–6594. EYOUM *v.* HOOKS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1173.

No. 98–6618. SANSONE *v.* MCI TELECOMMUNICATIONS. C. A. 4th Cir. Certiorari denied. Reported below: 151 F. 3d 1030.

No. 98–6638. O'ROURKE *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 153 F. 3d 560.

No. 98–6667. LATIMORE *v.* SPENCER, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION, ET AL. C. A. 1st Cir. Certiorari denied.

No. 98–6696. ACEVEDO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 141 F. 3d 1421.

No. 98–6700. CALAMBRO, BY AND THROUGH CALAMBRO, AS NEXT FRIEND OF CALAMBRO *v.* IGNACIO, WARDEN, ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 114 Nev. 108, 964 P. 2d 794.

No. 98–6714. WHITE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 153 F. 3d 197.

No. 98–6715. WHITE *v.* UNITED STATES; and
No. 98–6849. SAWYER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 146 F. 3d 870.

No. 98–6903. DAVIS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 720 So. 2d 1006.

No. 98–6923. CROWDER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 141 F. 3d 1202.

No. 98–6950. MILLWEE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 18 Cal. 4th 96, 954 P. 2d 990.

No. 98–7010. SNAVELY *v.* CITY OF PALO ALTO. C. A. 9th Cir. Certiorari denied. Reported below: 156 F. 3d 1238.

No. 98–7031. GEDEON *v.* HOST MARRIOTT CORP. ET AL. C. A. 4th Cir. Certiorari denied.

No. 98–7033. NEGRON-GAZTAMBIDE *v.* HERNANDEZ-TORRES ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 145 F. 3d 410.

No. 98–7035. GEORGE *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 331 S. C. 342, 503 S. E. 2d 168.

No. 98–7040. MORGAN *v.* COKER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 156 F. 3d 182.

No. 98–7045. BOYD *v.* FRENCH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 147 F. 3d 319.

No. 98–7048. SHACKELFORD *v.* CHAMPION, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 156 F. 3d 1244.

No. 98–7049. PATTERSON *v.* ENDICOTT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 98–7056. WRIGHT *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–7057. THOMAS, AKA ALLAH *v.* SIKES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–7058. RYAN D. L. *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 219 Wis. 849 and 220 Wis. 2d 360, 580 N. W. 2d 660.

No. 98–7064. JACOBSON *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 155 Ore. App. 488, 967 P. 2d 530.

No. 98–7065. CAMPBELL *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 146 F. 3d 606.

No. 98–7066. MAPLES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–7068. JOHNSON *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 119 Md. App. 817.

No. 98–7070. BUTLER *v.* MILLS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–7075. NEESE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–7078. REED *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 332 S. C. 35, 503 S. E. 2d 747.

No. 98–7079. CARLEY *v.* CARLEY. C. A. 2d Cir. Certiorari denied.

No. 98–7081. INMAN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 98–7083. JIROVEC *v.* WOOD, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 134 F. 3d 377.

No. 98–7090. HERNANDEZ *v.* AYERS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–7092. HOMER *v.* EDGEWORTH ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1174.

No. 98–7099. RUSH *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 83 Ohio St. 3d 53, 697 N. E. 2d 634.

No. 98–7103. CLARKE *v.* STALDER, SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 154 F. 3d 186.

No. 98–7104. PARKER *v.* CHAMPION, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 148 F. 3d 1219.

No. 98–7106. SHERRILLS *v.* PENNINGTON ET AL. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 98–7107. ROSENBERG *v.* ROSENBERG. C. A. D. C. Cir. Certiorari denied.

No. 98–7108. BOOKLESS *v.* MCKUNE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 98–7109. DESMOND *v.* MASSACHUSETTS BAY TRANSPORTATION AUTHORITY ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 181 F. 3d 79.

No. 98–7111. HINES *v.* ALFORD, SUPERINTENDENT, GULF CORRECTIONAL INSTITUTION. Sup. Ct. Fla. Certiorari denied. Reported below: 727 So. 2d 906.

No. 98–7115. HURD *v.* KEANE, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 98–7120. FINK *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Certiorari denied.

No. 98–7124. HAUPT *v.* DRAVILLAS REAL ESTATE ET AL. Ct. App. D. C. Certiorari denied.

No. 98–7144. BRANCATO *v.* MISSOURI ET AL. C. A. 8th Cir. Certiorari denied.

No. 98–7146. CROWLEY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–7148. BROWN *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 903.

No. 98–7153. JOHNSON *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 706 So. 2d 468.

No. 98–7154. KENDRICK *v.* CITY OF EUREKA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1338.

No. 98–7156. OMOSEFUNMI *v.* SERVICE PROCESSING CENTER ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 201 F. 3d 428.

No. 98–7165. BODDIE *v.* CARPENTER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 159 F. 3d 1345.

No. 98–7169. CARR *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 706 So. 2d 991.

No. 98–7171. SAFOUANE ET UX. *v.* DEPARTMENT OF SOCIAL AND HEALTH SERVICES FOR THE STATE OF WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 98–7172. RIGSBY *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 98–7173. STEWART *v.* CITY OF MESQUITE, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1178.

No. 98–7174. JOHNSON *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 704 So. 2d 995.

No. 98–7178. KIPP *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 18 Cal. 4th 349, 956 P. 2d 1169.

No. 98–7179. QADIR *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 163 F. 3d 599.

No. 98–7180. PATTERSON *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied.

No. 98–7184. TAMME *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 973 S. W. 2d 13.

No. 98–7188. TAYLOR *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–7189. TEDDER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 728 So. 2d 718.

No. 98–7190. TRIPLETT *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 158 F. 3d 584.

No. 98–7191. EDMOND *v.* CIRCUIT COURT OF ALABAMA, ESCAMBIA COUNTY. Sup. Ct. Ala. Certiorari denied.

No. 98–7198. DIAAB *v.* WHARTON. C. A. 11th Cir. Certiorari denied.

No. 98–7199. CODDINGTON *v.* MAKEL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 1330.

No. 98–7200. ANDERSON *v.* REGIONAL MEDICAL CENTER AT MEMPHIS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 162 F. 3d 1161.

No. 98–7201. BEWLEY *v.* CITY OF DUNCAN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 149 F. 3d 1190.

No. 98–7202. SOSA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–7204. SHABAZZ *v.* LINDSEY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–7210. PRUNTY *v.* OHIO. C. A. 6th Cir. Certiorari denied.

No. 98–7211. CABAL *v.* TETRAPLASTICS, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 163 F. 3d 601.

No. 98–7212. PATTON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–7214. BARREN *v.* HARRINGTON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 152 F. 3d 1193.

No. 98–7215. ARNETT *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 98–7216. ISMAIL *v.* SHIPLEVY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–7217. BRIDGEFORTH *v.* FIELDS, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 153 F. 3d 726.

No. 98–7218. BONDS *v.* KOONTZ ET AL. C. A. 11th Cir. Certiorari denied.

No. 98–7228. ESPARZA *v.* ROLLINS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1337.

No. 98–7230. CONTURSI *v.* CIVIL SERVICE COMMISSION ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 98–7232. LEONARD *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 114 Nev. 639, 958 P. 2d 1220.

No. 98–7234. LEFKOWITZ *v.* CITI-EQUITY GROUP, INC. C. A. 8th Cir. Certiorari denied. Reported below: 146 F. 3d 609.

No. 98–7235. MCCLASKIE *v.* WEST VIRGINIA. Cir. Ct. Kanawha County, W. Va. Certiorari denied.

No. 98–7240. KANJORSKI *v.* CITY OF SATELLITE BEACH ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 150 F. 3d 1196.

No. 98–7241. LYLE *v.* SMITH ET AL. C. A. 6th Cir. Certiorari denied.

No. 98–7242. WALKER *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 972 S. W. 2d 295.

No. 98–7243. WILLIAMS *v.* MCFADDEN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 161 F. 3d 16.

No. 98–7244. VARNADORE *v.* JARVIS, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION. C. A. 4th Cir. Certiorari denied. Reported below: 161 F. 3d 5.

No. 98–7255. RICHARDSON *v.* SAUNDERS ET AL. C. A. 4th Cir. Certiorari denied.

No. 98–7258. NICHOLS *v.* TEXAS. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 98–7260. MASON *v.* NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 2d Cir. Certiorari denied.

No. 98–7265. ANDERSON *v.* LEMASTER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 149 F. 3d 1190.

No. 98–7266. CHASE *v.* MOYER. Sup. Ct. Del. Certiorari denied. Reported below: 719 A. 2d 489.

No. 98–7267. BRANCATO *v.* ST. LOUIS COMMUNITY COLLEGE AT FLORISSANT VALLEY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 163 F. 3d 601.

No. 98–7269. SUNIGA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–7274. CHAIDEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 98–7276. BURKE *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied.

No. 98–7278. BENTLEY *v.* SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 98–7283. WILLIAMS *v.* FRENCH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 146 F. 3d 203.

No. 98–7284. THOMAS *v.* HARGETT, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 162 F. 3d 1174.

No. 98–7285. VERSER *v.* NELSON. C. A. 7th Cir. Certiorari denied.

No. 98–7286. BRICE *v.* VIRGINIA BEACH CORRECTIONAL CENTER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 133 F. 3d 913.

No. 98–7287. BAKER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 966 P. 2d 797.

No. 98–7288. ALEXANDER *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied.

No. 98–7292. PATTERSON *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. Ct. App. Mich. Certiorari denied.

No. 98–7294. SIMMS *v.* SIZER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 164 F. 3d 625.

No. 98–7296. SMITH *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–7298. SMITH *v.* BARRY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 19.

No. 98–7300. SELLERS *v.* SANDERS, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 159 F. 3d 1356.

No. 98–7301. PEETE *v.* STEGALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–7302. RIOS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 48 M. J. 261.

No. 98–7303. SANTOS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 706 A. 2d 1258.

No. 98–7304. POOLE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–7308. WILLIAMS *v.* USX CORP. C. A. 3d Cir. Certiorari denied. Reported below: 166 F. 3d 1207.

No. 98–7309. WILLIAMS *v.* COURT OF CRIMINAL APPEALS OF TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 98–7312. BUTLER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–7313. CLARK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 163 F. 3d 603.

No. 98–7314. MCBRIDE *v.* NULTY, SUPERINTENDENT, COLD SPRINGS CORRECTIONAL FACILITY. C. A. 4th Cir. Certiorari denied. Reported below: 163 F. 3d 599.

No. 98–7316. IBRAHIM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 164 F. 3d 621.

No. 98–7319. MANGRUM *v.* MARSHALL. C. A. 11th Cir. Certiorari denied.

No. 98–7321. BROWN *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 722 So. 2d 197.

No. 98–7325. AUTEN *v.* GOMEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 162 F. 3d 1167.

No. 98–7328. ARMSTRONG *v.* RODRIGUEZ, CHAIRMAN, TEXAS BOARD OF PARDONS AND PAROLES, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 145 F. 3d 360.

No. 98–7329. DAVIS *v.* BETHLEHEM STEEL CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 166 F. 3d 1199.

No. 98–7331. HUTCHINSON *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 135 Wash. 2d 863, 959 P. 2d 1061.

No. 98–7333. FALTAS *v.* THE STATE NEWSPAPER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 557.

No. 98–7336. GARRETT *v.* BESHEARS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 145 F. 3d 1324.

No. 98–7344. GOLDSBY *v.* ROWLEY, SUPERINTENDENT, NORTHEAST CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 98–7346. HOGAN *v.* NOBLES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 149 F. 3d 1179.

No. 98–7347. HAMILTON *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 98–7348. PHILLIPS *v.* CARTER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–7355. SCANTLEBERRY-FRANK *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 158 F. 3d 612.

No. 98–7356. ROSE *v.* COOK, DIRECTOR, OREGON DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 164 F. 3d 631.

No. 98–7359. MATHISON ET UX. *v.* MINNEHAHA COUNTY, SOUTH DAKOTA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 163 F. 3d 602.

No. 98–7360. THOMPSON *v.* KEOHANE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1341.

No. 98–7361. TSUHA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–7362. WILSON *v.* OHIO. C. A. 6th Cir. Certiorari denied.

No. 98–7363. MONTENEGRO *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 296 Ill. App. 3d 1067, 726 N. E. 2d 1188.

No. 98–7365. WOLFGRAM ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–7366. WILLIAMS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–7367. YRDANOFF *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 98–7369. SKORNIAK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 98–7371. LOPS *v.* LOPS. C. A. 11th Cir. Certiorari denied. Reported below: 140 F. 3d 927.

No. 98–7373. WHITLATCH *v.* PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, BUREAU OF DRIVER LICENSING. Sup. Ct. Pa. Certiorari denied. Reported below: 552 Pa. 298, 715 A. 2d 387.

No. 98–7377. POLLARD *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 98–7381. SHAW *v.* DAVIS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 722.

No. 98–7383. CROMARTIE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 161 F. 3d 18.

No. 98–7387. BABBITT *v.* CALDERON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 151 F. 3d 1170.

No. 98–7388. BRYAN *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 140 F. 3d 1354.

No. 98–7394. HERMANEK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1342.

No. 98–7397. GENOA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 98–7400. HILL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 164 F. 3d 632.

No. 98–7402. ANTONIO ESTEVEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 164 F. 3d 619.

No. 98–7405. PROBY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 159 F. 3d 1355.

No. 98–7407. SANDOVAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 164 F. 3d 632.

No. 98–7408. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 152 F. 3d 934.

No. 98–7409. VARGAS ESTRADA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 164 F. 3d 619.

No. 98–7412. NAVARRO TORRES *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 98–7414. TRUETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 161 F. 3d 20.

No. 98–7416. URIAS *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 164 F. 3d 632.

No. 98–7417. WILLIAMS *v.* CUOMO, SECRETARY OF HOUSING AND URBAN DEVELOPMENT. C. A. 7th Cir. Certiorari denied. Reported below: 151 F. 3d 1035.

No. 98–7421. VALENCIA-AYALA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 98–7423. CRAFT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 165 F. 3d 28.

No. 98–7424. BELTRAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 164 F. 3d 619.

No. 98–7426. HENRIQUES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 161 F. 3d 4.

No. 98–7428. HUNTER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–7429. DILLON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 98–7431. GARDNER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–7432. EVANS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–7433. FEIST *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 908.

No. 98–7434. HAYES *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–7436. RYAN *v.* DRAGOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 98–7439. PICCOLO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1354.

No. 98–7440. HILL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 98–7441. GILLIS *v.* ENDICOTT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 98–7446. HINES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 154 F. 3d 772.

No. 98–7447. DENNIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 131 F. 3d 1452.

No. 98–7448. HURNEY *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 80 Ohio St. 3d 1446, 686 N. E. 2d 274.

No. 98–7457. RAMON *v.* CITY OF HOUSTON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 156 F. 3d 181.

No. 98–7458. SHEPHERD *v.* ROSSOTTI, COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied.

No. 98–7461. RUSSELL *v.* ARMSTRONG, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTION. App. Ct. Conn. Certiorari denied. Reported below: 49 Conn. App. 52, 712 A. 2d 978.

No. 98–7464. PERRY *v.* COUNTY OF SAN DIEGO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 162 F. 3d 1169.

No. 98–7467. VENTURA-CANDELARIO, AKA GUITEREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 164 F. 3d 620.

No. 98–7470. CHESTNUT *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied.

No. 98–7471. BARNETT *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 980 S. W. 2d 297.

No. 98–7478. MARTINES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1354.

No. 98–7480. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 161 F. 3d 21.

No. 98–7482. MIOTKE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 166 F. 3d 339.

No. 98–7483. LEBARON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 156 F. 3d 621.

No. 98–7484. NELSON *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 149 F. 3d 1193.

No. 98–7485. MEANS *v.* ALEXANDER ET AL. C. A. D. C. Cir. Certiorari denied.

No. 98–7488. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 166 F. 3d 340.

No. 98–7489. LOWE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 159 F. 3d 1357.

No. 98–7492. WRIGHT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 178 F. 3d 1298.

No. 98–7493. CRIALES *v.* AMERICAN AIRLINES, INC. C. A. 2d Cir. Certiorari denied.

No. 98–7494. MILLIGAN ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 164 F. 3d 627.

No. 98–7495. LINDAHL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1342.

No. 98–7496. MARSH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 164 F. 3d 632.

No. 98–7498. MOORE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–7499. MOORE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 98–7502. PHAM *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 164 F. 3d 620.

No. 98–7503. SNOWDEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 164 F. 3d 632.

No. 98–7504. SANCHO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 157 F. 3d 918.

No. 98–7507. ADAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 161 F. 3d 3.

No. 98–7512. HIGGASON *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 98–7513. DEVOIL-EL *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 160 F. 3d 1184.

No. 98–7516. GLOVER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 156 F. 3d 1244.

No. 98–7517. HARRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 161 F. 3d 7.

No. 98–7519. HUDDLESTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 98–7520. ROMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 98–7523. RODRIGUEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 168 F. 3d 480.

No. 98–7525. CHRISTIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 164 F. 3d 626.

No. 98–7527. CROOKSHANK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 161 F. 3d 15.

No. 98–7530. ALLEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 161 F. 3d 20.

No. 98–7531. BONDS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 164 F. 3d 631.

No. 98–7536. JARRETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 154 F. 3d 772.

No. 98–7537. ALLEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 161 F. 3d 5.

No. 98–7539. BRAUN *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 10th Cir. Certiorari denied.

No. 98–7543. TALK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 158 F. 3d 1064.

No. 98–7544. CHAMBERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 165 F. 3d 918.

No. 98–7545. BYRNES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 166 F. 3d 1215.

No. 98–7552. JONES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 164 F. 3d 620.

No. 98–7554. LOFTON *v.* ATWOOD. C. A. D. C. Cir. Certiorari denied. Reported below: 172 F. 3d 920.

No. 98–7556. LIBRETTI *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 161 F. 3d 18.

No. 98–7558. MORENO *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–7560. MORRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 149 F. 3d 1188.

No. 98–7563. GOLDEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 168 F. 3d 478.

No. 98–7564. MARTINEZ GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 163 F. 3d 608.

No. 98–7566. GOTSCH *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied. Reported below: 143 N. H. 88, 719 A. 2d 606.

No. 98–7568. HUERTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 164 F. 3d 632.

No. 98–7569. HILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 21.

No. 98–7570. GRIGGS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 98–7572. BOADU *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 4th Cir. Certiorari denied. Reported below: 164 F. 3d 623.

No. 98–7574. BROWN *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 10th Cir. Certiorari denied. Reported below: 161 F. 3d 17.

No. 98–7575. JUDD *v.* UNITED STATES (two judgments). C. A. 5th Cir. Certiorari denied.

No. 98–7576. MELBERT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–7582. JOHNSON *v.* GILLIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 98–7585. CURET-CASELLAS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 98–7586. CHAMBERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 157 F. 3d 541.

No. 98–7587. ALEXANDER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 163 F. 3d 426.

No. 98–7588. MILTON ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 153 F. 3d 891.

No. 98–7590. JACKSON *v.* NIXON, ATTORNEY GENERAL OF MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied.

No. 98–7592. LOPEZ *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–7595. MCQUEEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 166 F. 3d 1216.

No. 98–7599. WENBURG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 161 F. 3d 22.

No. 98–7600. KINNISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 161 F. 3d 4.

No. 98–7601. SAMANIEGO LORETO *v.* THOMAS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 98–7602. NANCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 21.

No. 98–7603. MILLS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 135 F. 3d 771.

No. 98–7608. BRAVO *v.* DEPARTMENT OF VETERANS AFFAIRS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 162 F. 3d 1167.

No. 98–7613. RAMSEY *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 149 F. 3d 749.

No. 98–7614. LENA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 151 F. 3d 1027.

No. 98–7624. JAMES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 156 F. 3d 1240.

No. 98–7625. BOGARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 98–7627. BLACK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 158 F. 3d 588.

No. 98–7629. PADILLA-MENDOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 157 F. 3d 730.

No. 98–7630. ROBERTSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 158 F. 3d 1370.

No. 98–7631. SHERROD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 166 F. 3d 1215.

No. 98–7632. SLATER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 162 F. 3d 1175.

No. 98–7633. KEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 145 F. 3d 771.

No. 98–7639. YOUNG *v.* BOWLEN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–7655. MCDANIEL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 165 F. 3d 29.

No. 98–7657. ERLACH *v.* NEW YORK CITY BOARD OF EDUCATION. C. A. 2d Cir. Certiorari denied. Reported below: 129 F. 3d 113.

No. 98–7663. SHORT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 98–7664. POLK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 909.

No. 98–7665. SANTOYO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 146 F. 3d 519.

No. 98–7666. PALOMO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 162 F. 3d 93.

No. 98–7669. NGUYEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 155 F. 3d 1219.

No. 98–7670. PETREYKOV ET AL. *v.* SPITZER, ATTORNEY GENERAL OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 159 F. 3d 1347.

No. 98–7671. THORPE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 164 F. 3d 632.

No. 98–7672. TORRES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 162 F. 3d 1171.

No. 98–7676. BINDLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 157 F. 3d 1235.

No. 98–7677. BENDEK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 146 F. 3d 1326.

No. 98–7681. AGUILERA *v.* WEARE, CLERK, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 163 F. 3d 605.

No. 98–7683. EMUCHAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 156 F. 3d 185.

No. 98–7684. GUZEY *v.* LAW OFFICES OF HOWARD A. KAPP. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–7685. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 166 F. 3d 341.

No. 98–7691. FEDD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 161 F. 3d 4.

No. 98–7705. SILLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 165 F. 3d 24.

No. 98–7706. RICHIEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 162 F. 3d 1158.

No. 98–7707. PAYAN-APODACA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 165 F. 3d 36.

No. 98–7708. POWELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 159 F. 3d 500.

No. 98–7709. PERRY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 152 F. 3d 900.

No. 98–7711. LINSMEIER *v.* WEST, SECRETARY OF VETERANS AFFAIRS. C. A. 6th Cir. Certiorari denied. Reported below: 156 F. 3d 1230.

No. 98–7712. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 562.

No. 98–7713. ALEXANDER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 162 F. 3d 1152.

No. 98–7714. CARROLL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 166 F. 3d 334.

No. 98–7718. NERLICH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 162 F. 3d 97.

No. 98–7720. ROBINSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 165 F. 3d 34.

No. 98–7721. SEWELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 159 F. 3d 275.

No. 98–7724. TAYLOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 149 F. 3d 1195.

No. 98–7725. TARRANT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 158 F. 3d 946.

No. 98–7728. STODDARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 150 F. 3d 1140.

No. 98–7729. RICCO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 166 F. 3d 336.

No. 98–7730. SCHWARTZ *v.* EMHART GLASS MACHINERY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 163 F. 3d 607.

No. 98–7733. LOOS ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 165 F. 3d 504.

No. 98–7737. WOODARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 152 F. 3d 935.

No. 98–7741. SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–7743. ERVIN *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 979 S. W. 2d 149.

No. 98–7744. DAVIS ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 154 F. 3d 772.

No. 98–7745. HULL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 160 F. 3d 265.

No. 98–7746. FUENTES-DIAZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 164 F. 3d 632.

No. 98–7747. ESCOBAR-OREJUELA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 98–7750. GRAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 152 F. 3d 816.

No. 98–7752. GUTIERREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 165 F. 3d 37.

No. 98–7753. BAILEY *v.* UNITED STATES; and
No. 98–7765. WOODS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 22.

No. 98–7754. LEWIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 21.

No. 98–7755. LAWSON *v.* KIRSCHNER. C. A. 2d Cir. Certiorari denied. Reported below: 152 F. 3d 919.

No. 98–7756. NYHUIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 98–7758. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 148 F. 3d 1003.

No. 98–7759. BARTON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 727 So. 2d 902.

No. 98–7770. ANTONELLI *v.* HURLEY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 151 F. 3d 1032.

No. 98–7772. SIMMONS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 137 F. 3d 1352.

No. 98–7774. POLAND *v.* RENO, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 98–7775. POLK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 162 F. 3d 95.

No. 98–7777. MARSHALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 162 F. 3d 94.

No. 98–7783. MUHAMMAD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 98–7784. LEBARON ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 98–7785. LANGFORD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 98–7787. JAMAL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–7788. MARTIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 166 F. 3d 1216.

No. 98–7789. MAGGARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 156 F. 3d 843.

No. 98–7793. GUADALUPE ALTAMIRANO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 166 F. 3d 348.

No. 98–7794. ALLEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 153 F. 3d 1037.

No. 98–7797. CALLOWAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 162 F. 3d 1161.

No. 98–7804. WOODS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 98–7806. TOBIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 155 F. 3d 636.

No. 98–7808. WORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 98–7810. LLOYD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 98–7816. KIMBERLIN *v.* UNITED STATES PAROLE COMMISSION. C. A. 4th Cir. Certiorari denied.

No. 98–7821. MARZANO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 160 F. 3d 399.

No. 98–7824. NICHOLSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 98–7826. WATSON *v.* SMITH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 161 F. 3d 5.

No. 98–682. BOUCHARD TRANSPORTATION CO., INC., ET AL. *v.* UNITED STATES ET AL. C. A. 11th Cir. Motions of Maritime Law Association of the United States and American Waterways Operators for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 147 F. 3d 1344.

No. 98–873. JOHN CRANE INC. *v.* ABATE ET AL. Ct. Sp. App. Md. Motion of National Association of Manufacturers et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 121 Md. App. 590, 710 A. 2d 944.

No. 98–918 (A–511). PUERTO RICO MARINE MANAGEMENT, INC., ET AL. *v.* HOOPER. Ct. App. La., 4th Cir. Application for stay, addressed to JUSTICE O'CONNOR and referred to the Court, denied. Certiorari denied. Reported below: 716 So. 2d 197.

No. 98–947. AT&T WIRELESS SERVICES ET AL. *v.* TENORE ET AL. Sup. Ct. Wash. Motion of Cellular Telecommunications Industry Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this motion and this petition. Reported below: 136 Wash. 2d 322, 962 P. 2d 104.

No. 98–960. COBB *v.* E. I. DU PONT DE NEMOURS & CO. ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE O'CONNOR took no

part in the consideration or decision of this petition. Reported below: 153 F. 3d 719.

No. 98–1003. GIRRES ET AL. *v.* BORMANN ET AL. Sup. Ct. Iowa. Motion of National Pork Producers Council et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this motion and this petition. Reported below: 584 N. W. 2d 309.

*Rehearing Denied*

No. 97–9166. KNIGHT *v.* IVESTER ET AL., *ante*, p. 839;

No. 97–9670. HOWE *v.* VIRGINIA, *ante*, p. 865;

No. 98–520. PALM, INDIVIDUALLY AND AS SURVIVING PARENT OF PALM, DECEASED *v.* LAS VEGAS METROPOLITAN POLICE DEPARTMENT ET AL., *ante*, p. 1054;

No. 98–800. TRAIL ENTERPRISES, INC., DBA WILSON OIL CO. *v.* CITY OF HOUSTON, *ante*, p. 1070;

No. 98–5080. NWACHUKWU *v.* UNITED STATES, *ante*, p. 885;

No. 98–5647. CRAWFORD *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 936;

No. 98–5669. DEYONGHE *v.* SCOTT, WARDEN, *ante*, p. 950;

No. 98–5767. SMITH *v.* MORGAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL., *ante*, p. 968;

No. 98–5807. IN RE SCHULTZ, *ante*, p. 807;

No. 98–5876. IN RE SCHNELLE, *ante*, p. 960;

No. 98–5939. BOGART *v.* CURRY ET AL., *ante*, p. 984;

No. 98–5992. STEELE *v.* COUNTY OF LOS ANGELES ET AL., *ante*, p. 1005;

No. 98–6003. WHITE *v.* WHITE, WARDEN, ET AL., *ante*, p. 1005;

No. 98–6057. CROSS *v.* PLACER COUNTY SUPERIOR COURT, *ante*, p. 1006;

No. 98–6109. STEVENS *v.* FLORIDA, *ante*, p. 985;

No. 98–6115. CRAWFORD *v.* MISSISSIPPI, *ante*, p. 1021;

No. 98–6137. WILLIAMS *v.* CONWAY ET AL., *ante*, p. 1021;

No. 98–6152. SHAMSIDEEN *v.* PRICE, WARDEN, *ante*, p. 1022;

No. 98–6174. DARDEN *v.* CITY OF BERKELEY, CALIFORNIA, ET AL., *ante*, p. 1022;

No. 98–6198. REEVES *v.* BRINSON, WARDEN, ET AL., *ante*, p. 1023;

No. 98–6293. IN RE TOBIAS, *ante*, p. 960;

No. 98–6366. BURNS *v.* UNITED STATES, *ante*, p. 988;

No. 98–6387. SUMTER *v.* SAYBOLT, INC., ET AL., *ante,* p. 1026;
No. 98–6466. BARTLETT *v.* DEPARTMENT OF THE ARMY, *ante,* p. 1044;
No. 98–6482. CROSS *v.* COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT, *ante,* p. 1074;
No. 98–6549. WILLIAMS *v.* SOBINA, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, *ante,* p. 1075;
No. 98–6629. JEFFUS *v.* UNITED STATES, *ante,* p. 1031;
No. 98–6643. SHARMA *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, *ante,* p. 1045;
No. 98–6671. MCCAULEY *v.* UNITED STATES, *ante,* p. 1032;
No. 98–6736. CROSS *v.* DROZD ET AL., *ante,* p. 1079;
No. 98–6737. CROSS *v.* PELICAN BAY STATE PRISON, *ante,* p. 1079;
No. 98–6754. SIKORA *v.* UNITED STATES ET AL., *ante,* p. 1080;
No. 98–6795. PEREZ *v.* UNITED STATES, *ante,* p. 1048; and
No. 98–6808. WILLIAMS *v.* U-HAUL COMPANY OF COLORADO, *ante,* p. 1081. Petitions for rehearing denied.

No. 98–659. PAUL *v.* WILLIAM MORROW & CO., INC., ET AL., *ante,* p. 1094. Petition for rehearing denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

## FEBRUARY 24, 1999

*Miscellaneous Orders*

No. A–706 (98–1368). STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. *v.* LAGRAND. C. A. 9th Cir. Application to vacate stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, granted. JUSTICE GINSBURG would deny the application to vacate stay of execution.

JUSTICE STEVENS, dissenting.

The State has filed a petition for certiorari in No. 98–1368 raising the following four questions:

"1. Has the Ninth Circuit opinion holding that execution by lethal gas constitutes cruel and unusual punishment under the Eighth Amendment, created a conflict among the circuits requiring this Court to resolve the constitutionality of Arizona's method of execution?

"2. Does an inmate who chooses to be executed by lethal gas, rather than the available constitutional method of lethal injection, waive his right to complain that lethal gas is unconstitutional?

"3. Whether an inmate who failed to timely raise an argument about the unconstitutionality of lethal gas in state court has shown cause by claiming that it would have been futile for his appellate lawyer to raise the claim even though lethal gas was the only method of execution at the time the inmate was sentenced? Whether the inmate can show cause for his procedural default by claiming that factual information about lethal gas was unavailable even though numerous executions by lethal gas had occurred over the previous five decades?

"4. Whether application of a ruling declaring lethal gas an unconstitutional method of execution is a new rule being applied on collateral review in derogation of *Teague* v. *Lane*[, 489 U. S. 288 (1989)?]" Pet. for Cert. (i).

In my opinion, all four of these questions presented in the State's petition for certiorari merit this Court's attention. I would, therefore, grant that petition and allow the stay to remain in place. Otherwise, the case may become moot.

No. A–706 (98–1368). STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. *v.* LAGRAND. C. A. 9th Cir. Motion by Karl LaGrand to clarify the order entered by the Court in the above captioned case on February 24, 1999 [immediately *supra*], denied. JUSTICE GINSBURG took no part in the consideration or decision of this motion.

JUSTICE STEVENS, dissenting.

Because I am not at all sure that the Court has authority to vacate an injunction without first granting certiorari, and because I also think the Court's order is not entirely clear, I would grant the motion for clarification.

No. 98–8222 (A–705). IN RE GREEN. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

*Certiorari Denied*

No. 98–8136 (A–700). GREEN *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: 160 F. 3d 1029.

## MARCH 1, 1999

*Miscellaneous Orders*

No. D–1906. IN RE DISBARMENT OF NEELY. The rule to show cause entered January 20, 1998 [522 U. S. 1073], is discharged, and the order suspending respondent from practice of law in this Court is vacated.

No. D–2023. IN RE DISBARMENT OF WEINBERGER. Barrett Neil Weinberger, of Cincinnati, Ohio, 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 19, 1999 [*ante,* p. 1100], is discharged.

No. D–2046. IN RE DISBARMENT OF PELLICANE. Robert J. Pellicane, of Hauppauge, 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–2047. IN RE DISBARMENT OF HESS. Stanford Donald Hess, of Baltimore, Md., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2048. IN RE DISBARMENT OF WOLOSIN. Gary Ellis Wolosin, of Cincinnati, 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. M–44. WALTON *v.* CITY OF MANASSAS; and

No. M–45. TAYLOR *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 97–1927. HANLON ET AL. *v.* BERGER ET UX. C. A. 9th Cir. [Certiorari granted, *ante,* p. 981]; and

No. 98–83. WILSON ET AL. *v.* LAYNE, DEPUTY UNITED STATES MARSHAL, ET AL. C. A. 4th Cir. [Certiorari granted, *ante,* p. 981.] A total of 10 additional minutes for oral argument are allotted to petitioners Hanlon et al., federal respondents Layne et al., and state respondents. A total of 10 additional minutes for oral argument are allotted to respondents Berger et ux. and petitioners Wilson et al.

No. 98–223. FLORIDA *v.* WHITE. Sup. Ct. Fla. [Certiorari granted, *ante,* p. 1000.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 98–369. NATIONAL AERONAUTICS AND SPACE ADMINISTRATION ET AL. *v.* FEDERAL LABOR RELATIONS AUTHORITY ET AL. C. A. 11th Cir. [Certiorari granted, *ante,* p. 960.] Motion of respondent American Federation of Government Employees for divided argument granted, and the time is divided as follows: 20 minutes for the Federal Labor Relations Authority, and 10 minutes for the American Federation of Government Employees, AFL–CIO.

No. 98–1041. WHITBURN, SECRETARY, WISCONSIN DEPARTMENT OF HEALTH AND FAMILY SERVICES, ET AL. *v.* ADDIS ET AL. C. A. 7th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 98–7306. LOWE *v.* CANTRELL. Ct. Civ. App. Okla. Motion of petitioner to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until March 22, 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. 98–7999. IN RE ROSE. Petition for writ of habeas corpus denied.

No. 98–7455. IN RE ADDAMS-MORE. Petition for writ of mandamus denied.

*Certiorari Granted*

No. 98–822. FRIENDS OF THE EARTH, INC., ET AL. *v.* LAIDLAW ENVIRONMENTAL SERVICES (TOC), INC. C. A. 4th Cir. Motion

of Public Citizen for leave to file a brief as *amicus curiae* granted. Certiorari granted. Reported below: 149 F. 3d 303.

*Certiorari Denied*

No. 98–697. HARBERT/LUMMUS AGRIFUELS PROJECTS ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 142 F. 3d 1429.

No. 98–765. SONNEBERG *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 164 F. 3d 621.

No. 98–837. SHOTTS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 145 F. 3d 1289.

No. 98–863. LAFAYETTE PLACE ASSOCIATES *v.* CITY OF BOSTON. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 427 Mass. 509, 694 N. E. 2d 820.

No. 98–867. CLAGG ET AL. *v.* BAYCLIFFS CORP. ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 82 Ohio St. 3d 277, 695 N. E. 2d 728.

No. 98–871. UNITED STATES *v.* HUGHES AIRCRAFT CO. C. A. Fed. Cir. Certiorari denied. Reported below: 140 F. 3d 1470.

No. 98–875. DAVISTER CORP. *v.* UNITED REPUBLIC LIFE INSURANCE CO. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 152 F. 3d 1277.

No. 98–897. GABLE *v.* PATTON ET AL.; and
No. 98–1072. PATTON *v.* GABLE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 142 F. 3d 940.

No. 98–912. ROSS *v.* INDIANA STATE TEACHERS ASSN. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 159 F. 3d 1001.

No. 98–919. LUMSDEN ET AL. *v.* LIBERTY MUTUAL INSURANCE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 159 F. 3d 1356.

No. 98–985. HERBERT *v.* REINSTEIN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 162 F. 3d 1151.

No. 98–986. DAIMLERCHRYSLER CORP. *v.* KOLOSSO AUTO SALES, INC. C. A. 7th Cir. Certiorari denied. Reported below: 148 F. 3d 892.

No. 98–987. HELLER *v.* YANNITELLI ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 247 App. Div. 2d 271, 668 N. Y. S. 2d 613.

No. 98–1020. RILEY *v.* ST. LOUIS COUNTY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 153 F. 3d 627.

No. 98–1022. SMITH *v.* SMITH. Super. Ct. Pa. Certiorari denied.

No. 98–1024. KING *v.* UNITED STATES; and
No. 98–6523. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 161 F. 3d 5.

No. 98–1033. BAIR, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF BAIR, ET AL. *v.* HAGANS ET AL. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 98–1034. LOVENESS ET UX. *v.* ARIZONA DEPARTMENT OF REVENUE. Ct. App. Ariz. Certiorari denied. Reported below: 192 Ariz. 224, 963 P. 2d 303.

No. 98–1042. SMITH *v.* SUPREME COURT OF COLORADO. C. A. 10th Cir. Certiorari denied.

No. 98–1047. KOERNER ET AL. *v.* CRESCENT CITY EMERGENCY MEDICAL SERVICES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 159 F. 3d 1356.

No. 98–1049. ALLINDER *v.* INTER-CITY PRODUCTS CORP. (USA) ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 152 F. 3d 544.

No. 98–1051. BOJEKIAN ET UX. *v.* FORT LEE PLANNING BOARD ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 98–1068. MAGNOLIA VENTURE CAPITAL CORP. *v.* MISSISSIPPI DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT. C. A. 5th Cir. Certiorari denied. Reported below: 151 F. 3d 439.

No. 98–1069. HERNANDEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–1070. HARRIS *v.* TEXAS. Ct. App. Tex., 12th Dist. Certiorari denied. Reported below: 986 S. W. 2d 619.

No. 98–1086. HORVATH *v.* OHIO STATE TEACHERS RETIREMENT BOARD. Sup. Ct. Ohio. Certiorari denied. Reported below: 83 Ohio St. 3d 67, 697 N. E. 2d 644.

No. 98–1114. ONSTINE *v.* RAMALEY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 163 F. 3d 607.

No. 98–1157. SHABAZZ *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 246 Conn. 746, 719 A. 2d 440.

No. 98–1179. COMPAGNIE EURALAIR, S. A. *v.* GENERAL ELECTRIC CO. C. A. 2d Cir. Certiorari denied. Reported below: 164 F. 3d 617.

No. 98–1180. SCHAP *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 49 M. J. 317.

No. 98–1185. IDARECIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 164 F. 3d 620.

No. 98–1205. ANDONIAN *v.* UNITED STATES (two judgments). C. A. 9th Cir. Certiorari denied.

No. 98–1212. KIRK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 159 F. 3d 1357.

No. 98–1232. DAYTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 162 F. 3d 1178.

No. 98–6524. WALDEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 146 F. 3d 487.

No. 98–6559. HARTBARGER ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 148 F. 3d 777.

No. 98–6681. HUDSON, AKA BLACK, AKA BALK *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 159 F. 3d 637.

No. 98–6891. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 162 F. 3d 1162.

No. 98–7042. BOLIN *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 114 Nev. 503, 960 P. 2d 784.

No. 98–7050. DAVIS *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 718 So. 2d 1166.

No. 98–7052. FLETCHER *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 348 N. C. 292, 500 S. E. 2d 668.

No. 98–7053. DE LA TORRE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 157 F. 3d 1205.

No. 98–7076. BURDIX-DANA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 149 F. 3d 741.

No. 98–7118. BLANTON *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 975 S. W. 2d 269.

No. 98–7351. SHAW *v.* KANSAS. Ct. App. Kan. Certiorari denied.

No. 98–7352. SOLIS *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 98–7368. SANDERS-BEY *v.* STEGALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–7376. RAGLIN *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 83 Ohio St. 3d 253, 699 N. E. 2d 482.

No. 98–7378. OTT *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 967 P. 2d 472.

No. 98–7380. SNOW *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–7393. CONE *v.* DUTTON, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 98–7396. EDENS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 98–7403. HIPPS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 348 N. C. 377, 501 S. E. 2d 625.

No. 98–7415. VANN *v.* WILSON; VANN *v.* MILLER; and VANN *v.* SMEDLEY. Sup. Ct. Okla. Certiorari denied.

No. 98–7419. BAKER *v.* DONSCO, INC. C. A. 3d Cir. Certiorari denied.

No. 98–7420. WEATHERLY *v.* OKLAHOMA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 149 F. 3d 1192.

No. 98–7422. WATKIS *v.* AMERICAN NATIONAL INSURANCE CO. C. A. 11th Cir. Certiorari denied. Reported below: 150 F. 3d 1197.

No. 98–7427. HUNTER *v.* STRAUB, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–7430. HURD *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 718 So. 2d 168.

No. 98–7435. FORD *v.* ALABAMA BOARD OF PARDONS AND PAROLES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 149 F. 3d 1196.

No. 98–7442. DICESARE *v.* BALDRIDGE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 156 F. 3d 1243.

No. 98–7443. GREGORY *v.* LOVE ET AL. C. A. 3d Cir. Certiorari denied.

No. 98–7444. FASSLER *v.* COLLINS, JUDGE, SUPERIOR COURT OF ARIZONA, PIMA COUNTY. Sup. Ct. Ariz. Certiorari denied.

No. 98–7449. PEREZ *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–7454. TAYLOR *v.* MCDUFFIE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 479.

No. 98–7456. OLDHAM *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 977 S. W. 2d 354.

No. 98–7469. TRIPP *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 289 Ill. App. 3d 1157, 713 N. E. 2d 840.

No. 98–7472. BULJAT *v.* FEDERAL HOME LOAN MORTGAGE CORPORATION ET AL. C. A. 4th Cir. Certiorari denied.

No. 98–7473. CARRASCO CASTILLO *v.* TEXAS. Ct. App. Tex., 8th Dist. Certiorari denied.

No. 98–7474. BLAKE *v.* MILLS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–7475. BECTON *v.* HARTE HANKS DIRECT MARKETING. C. A. 4th Cir. Certiorari denied. Reported below: 164 F. 3d 623.

No. 98–7509. COOK *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 83 Ohio St. 3d 404, 700 N. E. 2d 570.

No. 98–7561. FEUERWERKER *v.* ZENT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 98–7567. DAVIS *v.* MUROV ET AL. Sup. Ct. Va. Certiorari denied.

No. 98–7577. KIGHT *v.* O'NEILL ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 159 F. 3d 1360.

No. 98–7583. LEE *v.* STEWART ET AL. C. A. 9th Cir. Certiorari denied.

No. 98–7606. MCINTIRE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 159 F. 3d 1357.

No. 98–7611. BRICKHOUSE *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 129 N. C. App. 644, 501 S. E. 2d 390.

No. 98–7612. BAILEY *v.* ALEXANDER, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 98–7617. REED *v.* ROSSOTTI, COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 155 F. 3d 560.

No. 98–7622. IGLESIAS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 51 M. J. 117.

No. 98–7636. MACIEL *v.* ROWLAND ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 145 F. 3d 1339.

No. 98–7637. SMITH *v.* BUDGET RENT-A-CAR SYSTEMS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 164 F. 3d 625.

No. 98–7653. PATTERSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 98–7658. ACOLI *v.* NEW JERSEY STATE PAROLE BOARD. Super. Ct. N. J., App. Div. Certiorari denied.

No. 98–7674. MEANS *v.* SEGAL, CHAIR, FEDERAL LABOR RELATIONS AUTHORITY. C. A. D. C. Cir. Certiorari denied.

No. 98–7679. BOYD *v.* HELFER, CHAIRMAN, BOARD OF DIRECTORS, FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. 7th Cir. Certiorari denied. Reported below: 151 F. 3d 1032.

No. 98–7693. SMITH *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 98–7704. YOUNG YIL JO *v.* ANDERSON. C. A. 9th Cir. Certiorari denied.

No. 98–7710. LAMPTON *v.* UNITED STATES;
No. 98–7734. JACKSON *v.* UNITED STATES; and
No. 98–7766. WALKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 158 F. 3d 251.

No. 98–7739. ANTHONY *v.* NEW YORK STATE DIVISION OF PAROLE. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 252 App. Div. 2d 704, 679 N. Y. S. 2d 158.

No. 98–7757. LEVITAN *v.* UNITED STATES; and
No. 98–7811. LEVITAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 F. 3d 1041.

No. 98–7763. WILLIAMS *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 22.

No. 98–7764. WILLINGHAM *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 253 App. Div. 2d 533, 676 N. Y. S. 2d 883.

No. 98–7790. MORRIS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 98–7799. RUZZO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 162 F. 3d 98.

No. 98–7800. PASSMORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 21.

No. 98–7819. VILLAREAL *v.* UNITED STATES; and

No. 98–7900. MALISZEWSKI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 161 F. 3d 992.

No. 98–7823. MORERA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 F. 3d 724.

No. 98–7831. PENA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 98–7835. BROWN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 147.

No. 98–7836. BOLES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 162 F. 3d 1177.

No. 98–7837. BOGELA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 156 F. 3d 187.

No. 98–7839. MARIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 165 F. 3d 33.

No. 98–7840. MARCUM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 166 F. 3d 1216.

No. 98–7841. STOCKHEIMER ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 157 F. 3d 1082.

No. 98–7842. POTTS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 165 F. 3d 34.

No. 98–7843. SHEFFEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 98–7844. RAY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 162 F. 3d 1175.

No. 98–7845. MCKEEVE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 98–7848. KEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 21.

No. 98–7850. TAVIZON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 98–7855. HARRISON, AKA IORIZZO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 156 F. 3d 182.

No. 98–7857. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 163 F. 3d 599.

No. 98–7860. GEIGER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 162 F. 3d 1170.

No. 98–7862. EL-JASSEM, AKA DOE, AKA AL-JAWARY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 165 F. 3d 15.

No. 98–7866. HORTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 21.

No. 98–7867. HUNT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 162 F. 3d 1176.

No. 98–7868. GREER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 158 F. 3d 228.

No. 98–7869. HUNTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 166 F. 3d 1211.

No. 98–7870. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 98–7873. HERNANDEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 168 F. 3d 480.

No. 98–7874. FLENNORY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 145 F. 3d 1264.

No. 98–7879. CLAYTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 168 F. 3d 480.

No. 98–7881. MILES *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 98–7883. SERESI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 98–7887. NEVELS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 160 F. 3d 226.

No. 98–7888. BLANTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 165 F. 3d 918.

No. 98–7891. BYRD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 158 F. 3d 1215.

No. 98–7892. O'Connor *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 166 F. 3d 344.

No. 98–7895. Perez-Sosa *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 164 F. 3d 1082.

No. 98–7896. Potwin *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 98–7897. Lawson *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 155 F. 3d 980.

No. 98–7898. James *v.* United States Parole Commission. C. A. 9th Cir. Certiorari denied. Reported below: 159 F. 3d 1200.

No. 98–7905. Sweeney *v.* Smith, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 165 F. 3d 20.

No. 98–7918. Humphrey *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 98–7932. DeHart *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 98–7936. De La Garza *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 158 F. 3d 583.

No. 98–7944. Felici *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 98–7951. Muhammed *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 159 F. 3d 1352.

No. 98–8027. Djadi *v.* Corcoran, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 164 F. 3d 624.

No. 98–8059. Smith *v.* County of Contra Costa Board of Supervisors et al. C. A. 9th Cir. Certiorari denied. Reported below: 161 F. 3d 14.

No. 98–1045. Artuz, Superintendent, Green Haven Correctional Facility *v.* Fernandez; Artuz, Superintendent, Green Haven Correctional Facility *v.* Brooks; Artuz, Superintendent, Green Haven Correctional Facility *v.* Sosa; Stinson, Superintendent, Great Meadow Correctional Facility *v.* Avincola; Keane, Superintendent, Sing Sing Correctional Facility *v.* Brannigan; Senkowski,

Superintendent, Clinton Correctional Facility *v.* Kirby; Kelly, Superintendent, Attica Correctional Facility *v.* Oppenheimer; and Walker, Superintendent, Auburn Correctional Facility *v.* La Torres. C. A. 2d Cir. Motions of respondents Adalberto Fernandez and Timothy Kirby for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 98–1127. Bowersox, Superintendent, Potosi Correctional Center *v.* Smith. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 159 F. 3d 345.

No. 98–7465. Bitterman *v.* Bitterman. Sup. Ct. Fla. Motion of respondent Boose Casey Ciklin Lubitz Martens McBane & O'Connell for damages denied. Motion of petitioner for damages denied. Certiorari denied. Reported below: 714 So. 2d 356.

No. 98–7817. Levitan *v.* United States. C. A. 11th Cir. Motion of petitioner to seal petition for writ of certiorari denied. Certiorari denied. Reported below: 140 F. 3d 1041.

*Rehearing Denied*

No. 98–242. In re Lauslega, *ante*, p. 808;

No. 98–633. Dunn *v.* Alabama Agricultural and Mechanical University et al., *ante*, p. 1067;

No. 98–639. Lesoon *v.* Commissioner of Internal Revenue, *ante*, p. 1003;

No. 98–717. Bybee et ux. *v.* Commissioner of Internal Revenue, *ante*, p. 1069;

No. 98–792. Trost *v.* United States, *ante*, p. 1070;

No. 98–5484. Pickett *v.* Wal-Mart Stores, Inc., et al., *ante*, p. 933;

No. 98–6488. Atherton *v.* Arlington County, Virginia, *ante*, p. 1074;

No. 98–6515. Jackson *v.* Milliken, *ante*, p. 1074;

No. 98–6550. Whitfield *v.* Texas (three judgments), *ante*, p. 1075;

No. 98–6744. Taylor *v.* Hanks, Superintendent, Wabash Valley Correctional Institute, *ante*, p. 1079;

No. 98–6768. R. A. D. *v.* Illinois, *ante*, p. 1080;

No. 98–6852. Gonzalez *v.* Consolidated Real Estate Investments, dba L'il Abner Mobile Home Park, *ante*, p. 1082;

No. 98–6958. BENNETT *v.* TEXAS, *ante*, p. 1086;

No. 98–7114. DECKARD, AKA VALE *v.* UNITED STATES, *ante*, p. 1090;

No. 98–7123. FLORES *v.* UNITED STATES, *ante*, p. 1091;

No. 98–7138. CUNNINGHAM *v.* HEUSZEL, WARDEN, ET AL., *ante*, p. 1112; and

No. 98–7193. HAMMONS *v.* UNITED STATES, *ante*, p. 1092. Petitions for rehearing denied.

No. 96–9340. LAVERTU *v.* BOROFSKY, LEWIS & AMODEO-VICKERY, 522 U. S. 843; and

No. 97–9417. GELLERT *v.* COMMISSIONER OF INTERNAL REVENUE ET AL., *ante*, p. 850.

# RULES OF THE SUPREME COURT OF THE UNITED STATES

ADOPTED JANUARY 11, 1999

EFFECTIVE MAY 3, 1999

The following are the Rules of the Supreme Court of the United States as revised on January 11, 1999. See *post*, p. 1190. The amended Rules became effective May 3, 1999, as provided in Rule 48, *post*, p. 1247.

For previous revisions of the Rules of the Supreme Court see 346 U. S. 949, 388 U. S. 931, 398 U. S. 1013, 445 U. S. 985, 493 U. S. 1099, 515 U. S. 1197, and 519 U. S. 1161.

# ORDER ADOPTING REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

MONDAY, JANUARY 11, 1999

IT IS ORDERED that the revised Rules of this Court, today approved by the Court and lodged with the Clerk, shall be effective May 3, 1999, and be printed as an appendix to the United States Reports.

IT IS FURTHER ORDERED that the Rules promulgated January 16, 1997, see 519 U. S. 1161, shall be rescinded as of May 2, 1999, and that the revised Rules shall govern all proceedings in cases commenced after that date and, to the extent feasible and just, cases then pending.

# RULES OF THE SUPREME COURT OF THE UNITED STATES

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# RULES OF THE SUPREME COURT OF THE UNITED STATES

ADOPTED JANUARY 11, 1999—EFFECTIVE MAY 3, 1999

## PART I. THE COURT

### Rule 1. Clerk

1. The Clerk receives documents for filing with the Court and has authority to reject any submitted filing that does not comply with these Rules.

2. The Clerk maintains the Court's records and will not permit any of them to be removed from the Court building except as authorized by the Court. Any document filed with the Clerk and made a part of the Court's records may not thereafter be withdrawn from the official Court files. After the conclusion of proceedings in this Court, original records and documents transmitted to this Court by any other court will be returned to the court from which they were received.

3. Unless the Court or the Chief Justice orders otherwise, the Clerk's office is open from 9 a.m. to 5 p.m., Monday through Friday, except on federal legal holidays listed in 5 U. S. C. § 6103.

### Rule 2. Library

1. The Court's library is available for use by appropriate personnel of this Court, members of the Bar of this Court, Members of Congress and their legal staffs, and attorneys for the United States and for federal departments and agencies.

2. The library's hours are governed by regulations made by the Librarian with the approval of the Chief Justice or the Court.

3. Library books may not be removed from the Court building, except by a Justice or a member of a Justice's staff.

### Rule 3. Term

The Court holds a continuous annual Term commencing on the first Monday in October and ending on the day before the first Monday in October of the following year. See 28 U. S. C. § 2. At the end of each Term, all cases pending on the docket are continued to the next Term.

### Rule 4. Sessions and Quorum

1. Open sessions of the Court are held beginning at 10 a.m. on the first Monday in October of each year, and thereafter as announced by the Court. Unless it orders otherwise, the Court sits to hear arguments from 10 a.m. until noon and from 1 p.m. until 3 p.m.

2. Six Members of the Court constitute a quorum. See 28 U. S. C. § 1. In the absence of a quorum on any day appointed for holding a session of the Court, the Justices attending—or if no Justice is present, the Clerk or a Deputy Clerk—may announce that the Court will not meet until there is a quorum.

3. When appropriate, the Court will direct the Clerk or the Marshal to announce recesses.

## Part II. Attorneys and Counselors

### Rule 5. Admission to the Bar

1. To qualify for admission to the Bar of this Court, an applicant must have been admitted to practice in the highest court of a State, Commonwealth, Territory or Possession, or the District of Columbia for a period of at least three years immediately before the date of application; must not have been the subject of any adverse disciplinary action pronounced or in effect during that 3-year period; and must appear to the Court to be of good moral and professional character.

2. Each applicant shall file with the Clerk (1) a certificate from the presiding judge, clerk, or other authorized official of that court evidencing the applicant's admission to practice there and the applicant's current good standing, and (2) a

completely executed copy of the form approved by this Court and furnished by the Clerk containing (a) the applicant's personal statement, and (b) the statement of two sponsors endorsing the correctness of the applicant's statement, stating that the applicant possesses all the qualifications required for admission, and affirming that the applicant is of good moral and professional character. Both sponsors must be members of the Bar of this Court who personally know, but are not related to, the applicant.

3. If the documents submitted demonstrate that the applicant possesses the necessary qualifications, and if the applicant has signed the oath or affirmation and paid the required fee, the Clerk will notify the applicant of acceptance by the Court as a member of the Bar and issue a certificate of admission. An applicant who so wishes may be admitted in open court on oral motion by a member of the Bar of this Court, provided that all other requirements for admission have been satisfied.

4. Each applicant shall sign the following oath or affirmation: I, ....., do solemnly swear (or affirm) that as an attorney and as a counselor of this Court, I will conduct myself uprightly and according to law, and that I will support the Constitution of the United States.

5. The fee for admission to the Bar and a certificate bearing the seal of the Court is $100, payable to the United States Supreme Court. The Marshal will deposit such fees in a separate fund to be disbursed by the Marshal at the direction of the Chief Justice for the costs of admissions, for the benefit of the Court and its Bar, and for related purposes.

6. The fee for a duplicate certificate of admission to the Bar bearing the seal of the Court is $15, and the fee for a certificate of good standing is $10, payable to the United States Supreme Court. The proceeds will be maintained by the Marshal as provided in paragraph 5 of this Rule.

### Rule 6. Argument *Pro Hac Vice*

1. An attorney not admitted to practice in the highest court of a State, Commonwealth, Territory or Possession, or the District of Columbia for the requisite three years, but

otherwise eligible for admission to practice in this Court under Rule 5.1, may be permitted to argue *pro hac vice.*

2. An attorney qualified to practice in the courts of a foreign state may be permitted to argue *pro hac vice.*

3. Oral argument *pro hac vice* is allowed only on motion of the counsel of record for the party on whose behalf leave is requested. The motion shall state concisely the qualifications of the attorney who is to argue *pro hac vice.* It shall be filed with the Clerk, in the form required by Rule 21, no later than the date on which the respondent's or appellee's brief on the merits is due to be filed, and it shall be accompanied by proof of service as required by Rule 29.

**Rule 7. Prohibition Against Practice**

No employee of this Court shall practice as an attorney or counselor in any court or before any agency of government while employed by the Court; nor shall any person after leaving such employment participate in any professional capacity in any case pending before this Court or in any case being considered for filing in this Court, until two years have elapsed after separation; nor shall a former employee ever participate in any professional capacity in any case that was pending in this Court during the employee's tenure.

**Rule 8. Disbarment and Disciplinary Action**

1. Whenever a member of the Bar of this Court has been disbarred or suspended from practice in any court of record, or has engaged in conduct unbecoming a member of the Bar of this Court, the Court will enter an order suspending that member from practice before this Court and affording the member an opportunity to show cause, within 40 days, why a disbarment order should not be entered. Upon response, or if no response is timely filed, the Court will enter an appropriate order.

2. After reasonable notice and an opportunity to show cause why disciplinary action should not be taken, and after a hearing if material facts are in dispute, the Court may take any appropriate disciplinary action against any attorney who

is admitted to practice before it for conduct unbecoming a member of the Bar or for failure to comply with these Rules or any Rule or order of the Court.

### Rule 9. Appearance of Counsel

1. An attorney seeking to file a document in this Court in a representative capacity must first be admitted to practice before this Court as provided in Rule 5, except that admission to the Bar of this Court is not required for an attorney appointed under the Criminal Justice Act of 1964, see 18 U. S. C. § 3006A(d)(6), or under any other applicable federal statute. The attorney whose name, address, and telephone number appear on the cover of a document presented for filing is considered counsel of record, and a separate notice of appearance need not be filed. If the name of more than one attorney is shown on the cover of the document, the attorney who is counsel of record shall be clearly identified.

2. An attorney representing a party who will not be filing a document shall enter a separate notice of appearance as counsel of record indicating the name of the party represented. A separate notice of appearance shall also be entered whenever an attorney is substituted as counsel of record in a particular case.

## Part III. Jurisdiction on Writ of Certiorari

### Rule 10. Considerations Governing Review on Certiorari

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that

conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

### Rule 11. Certiorari to a United States Court of Appeals Before Judgment

A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court. See 28 U. S. C. § 2101(e).

### Rule 12. Review on Certiorari: How Sought; Parties

1. Except as provided in paragraph 2 of this Rule, the petitioner shall file 40 copies of a petition for a writ of certiorari, prepared as required by Rule 33.1, and shall pay the Rule 38(a) docket fee.

2. A petitioner proceeding *in forma pauperis* under Rule 39 shall file an original and 10 copies of a petition for a writ of certiorari prepared as required by Rule 33.2, together with an original and 10 copies of the motion for leave to proceed *in forma pauperis.* A copy of the motion shall pre-

cede and be attached to each copy of the petition. An inmate confined in an institution, if proceeding *in forma pauperis* and not represented by counsel, need file only an original petition and motion.

3. Whether prepared under Rule 33.1 or Rule 33.2, the petition shall comply in all respects with Rule 14 and shall be submitted with proof of service as required by Rule 29. The case then will be placed on the docket. It is the petitioner's duty to notify all respondents promptly, on a form supplied by the Clerk, of the date of filing, the date the case was placed on the docket, and the docket number of the case. The notice shall be served as required by Rule 29.

4. Parties interested jointly, severally, or otherwise in a judgment may petition separately for a writ of certiorari; or any two or more may join in a petition. A party not shown on the petition as joined therein at the time the petition is filed may not later join in that petition. When two or more judgments are sought to be reviewed on a writ of certiorari to the same court and involve identical or closely related questions, a single petition for a writ of certiorari covering all the judgments suffices. A petition for a writ of certiorari may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached.

5. No more than 30 days after a case has been placed on the docket, a respondent seeking to file a conditional cross-petition (*i. e.*, a cross-petition that otherwise would be untimely) shall file, with proof of service as required by Rule 29, 40 copies of the cross-petition prepared as required by Rule 33.1, except that a cross-petitioner proceeding *in forma pauperis* under Rule 39 shall comply with Rule 12.2. The cross-petition shall comply in all respects with this Rule and Rule 14, except that material already reproduced in the appendix to the opening petition need not be reproduced again. A cross-petitioning respondent shall pay the Rule 38(a) docket fee or submit a motion for leave to proceed *in forma pauperis.* The cover of the cross-petition shall indicate clearly that it is a conditional cross-petition. The cross-

petition then will be placed on the docket, subject to the provisions of Rule 13.4. It is the cross-petitioner's duty to notify all cross-respondents promptly, on a form supplied by the Clerk, of the date of filing, the date the cross-petition was placed on the docket, and the docket number of the cross-petition. The notice shall be served as required by Rule 29. A cross-petition for a writ of certiorari may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached. The time to file a conditional cross-petition will not be extended.

6. All parties to the proceeding in the court whose judgment is sought to be reviewed are deemed parties entitled to file documents in this Court, unless the petitioner notifies the Clerk of this Court in writing of the petitioner's belief that one or more of the parties below have no interest in the outcome of the petition. A copy of such notice shall be served as required by Rule 29 on all parties to the proceeding below. A party noted as no longer interested may remain a party by notifying the Clerk promptly, with service on the other parties, of an intention to remain a party. All parties other than the petitioner are considered respondents, but any respondent who supports the position of a petitioner shall meet the petitioner's time schedule for filing documents, except that a response supporting the petition shall be filed within 20 days after the case is placed on the docket, and that time will not be extended. Parties who file no document will not qualify for any relief from this Court.

7. The clerk of the court having possession of the record shall keep it until notified by the Clerk of this Court to certify and transmit it. In any document filed with this Court, a party may cite or quote from the record, even if it has not been transmitted to this Court. When requested by the Clerk of this Court to certify and transmit the record, or any part of it, the clerk of the court having possession of the record shall number the documents to be certified and shall transmit therewith a numbered list specifically identifying each document transmitted. If the record, or stipulated por-

tions, have been printed for the use of the court below, that printed record, plus the proceedings in the court below, may be certified as the record unless one of the parties or the Clerk of this Court requests otherwise. The record may consist of certified copies, but if the lower court is of the view that original documents of any kind should be seen by this Court, that court may provide by order for the transport, safekeeping, and return of such originals.

**Rule 13. Review on Certiorari: Time for Petitioning**

1. Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals (including the United States Court of Appeals for the Armed Forces) is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.

2. The Clerk will not file any petition for a writ of certiorari that is jurisdictionally out of time. See, *e. g.*, 28 U. S. C. § 2101(c).

3. The time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice). But if a petition for rehearing is timely filed in the lower court by any party, the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment.

4. A cross-petition for a writ of certiorari is timely when it is filed with the Clerk as provided in paragraphs 1, 3, and 5 of this Rule, or in Rule 12.5. However, a conditional cross-petition (which except for Rule 12.5 would be untimely)

will not be granted unless another party's timely petition for a writ of certiorari is granted.

5. For good cause, a Justice may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days. An application to extend the time to file shall set out the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting rehearing, and set out specific reasons why an extension of time is justified. The application must be received by the Clerk at least 10 days before the date the petition is due, except in extraordinary circumstances. For the time and manner of presenting the application, see Rules 21, 22, 30, and 33.2. An application to extend the time to file a petition for a writ of certiorari is not favored.

**Rule 14. Content of a Petition for a Writ of Certiorari**

1. A petition for a writ of certiorari shall contain, in the order indicated:

(a) The questions presented for review, expressed concisely in relation to the circumstances of the case, without unnecessary detail. The questions should be short and should not be argumentative or repetitive. If the petitioner or respondent is under a death sentence that may be affected by the disposition of the petition, the notation "capital case" shall precede the questions presented. The questions shall be set out on the first page following the cover, and no other information may appear on that page. The statement of any question presented is deemed to comprise every subsidiary question fairly included therein. Only the questions set out in the petition, or fairly included therein, will be considered by the Court.

(b) A list of all parties to the proceeding in the court whose judgment is sought to be reviewed (unless the caption of the case contains the names of all the parties), and a corporate disclosure statement as required by Rule 29.6.

(c) If the petition exceeds five pages, a table of contents and a table of cited authorities.

(d) Citations of the official and unofficial reports of the opinions and orders entered in the case by courts or administrative agencies.

(e) A concise statement of the basis for jurisdiction in this Court, showing:

(i) the date the judgment or order sought to be reviewed was entered (and, if applicable, a statement that the petition is filed under this Court's Rule 11);

(ii) the date of any order respecting rehearing, and the date and terms of any order granting an extension of time to file the petition for a writ of certiorari;

(iii) express reliance on Rule 12.5, when a cross-petition for a writ of certiorari is filed under that Rule, and the date of docketing of the petition for a writ of certiorari in connection with which the cross-petition is filed;

(iv) the statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment or order in question; and

(v) if applicable, a statement that the notifications required by Rule 29.4(b) or (c) have been made.

(f) The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case, set out verbatim with appropriate citation. If the provisions involved are lengthy, their citation alone suffices at this point, and their pertinent text shall be set out in the appendix referred to in subparagraph 1(i).

(g) A concise statement of the case setting out the facts material to consideration of the questions presented, and also containing the following:

(i) If review of a state-court judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or sum-

mary thereof, with specific reference to the places in the record where the matter appears (*e. g.*, court opinion, ruling on exception, portion of court's charge and exception thereto, assignment of error), so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari. When the portions of the record relied on under this subparagraph are voluminous, they shall be included in the appendix referred to in subparagraph 1(i).

(ii) If review of a judgment of a United States court of appeals is sought, the basis for federal jurisdiction in the court of first instance.

(h) A direct and concise argument amplifying the reasons relied on for allowance of the writ. See Rule 10.

(i) An appendix containing, in the order indicated:

(i) the opinions, orders, findings of fact, and conclusions of law, whether written or orally given and transcribed, entered in conjunction with the judgment sought to be reviewed;

(ii) any other relevant opinions, orders, findings of fact, and conclusions of law entered in the case by courts or administrative agencies, and, if reference thereto is necessary to ascertain the grounds of the judgment, of those in companion cases (each document shall include the caption showing the name of the issuing court or agency, the title and number of the case, and the date of entry);

(iii) any order on rehearing, including the caption showing the name of the issuing court, the title and number of the case, and the date of entry;

(iv) the judgment sought to be reviewed if the date of its entry is different from the date of the opinion or order required in sub-subparagraph (i) of this subparagraph;

(v) material required by subparagraphs 1(f) or 1(g)(i); and

(vi) any other material the petitioner believes essential to understand the petition.

If the material required by this subparagraph is voluminous, it may be presented in a separate volume or volumes with appropriate covers.

2. All contentions in support of a petition for a writ of certiorari shall be set out in the body of the petition, as provided in subparagraph 1(h) of this Rule. No separate brief in support of a petition for a writ of certiorari may be filed, and the Clerk will not file any petition for a writ of certiorari to which any supporting brief is annexed or appended.

3. A petition for a writ of certiorari should be stated briefly and in plain terms and may not exceed the page limitations specified in Rule 33.

4. The failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition.

5. If the Clerk determines that a petition submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. A corrected petition received no more than 60 days after the date of the Clerk's letter will be deemed timely.

### Rule 15. Briefs in Opposition; Reply Briefs; Supplemental Briefs

1. A brief in opposition to a petition for a writ of certiorari may be filed by the respondent in any case, but is not mandatory except in a capital case, see Rule 14.1(a), or when ordered by the Court.

2. A brief in opposition should be stated briefly and in plain terms and may not exceed the page limitations specified in Rule 33. In addition to presenting other arguments for denying the petition, the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted. Counsel are admonished

that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition. Any objection to consideration of a question presented based on what occurred in the proceedings below, if the objection does not go to jurisdiction, may be deemed waived unless called to the Court's attention in the brief in opposition.

3. Any brief in opposition shall be filed within 30 days after the case is placed on the docket, unless the time is extended by the Court or a Justice, or by the Clerk under Rule 30.4. Forty copies shall be filed, except that a respondent proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the brief in opposition. If the petitioner is proceeding *in forma pauperis*, the respondent may file an original and 10 copies of a brief in opposition prepared as required by Rule 33.2. Whether prepared under Rule 33.1 or Rule 33.2, the brief in opposition shall comply with the requirements of Rule 24 governing a respondent's brief, except that no summary of the argument is required. A brief in opposition may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached. The brief in opposition shall be served as required by Rule 29.

4. No motion by a respondent to dismiss a petition for a writ of certiorari may be filed. Any objections to the jurisdiction of the Court to grant a petition for a writ of certiorari shall be included in the brief in opposition.

5. The Clerk will distribute the petition to the Court for its consideration upon receiving an express waiver of the right to file a brief in opposition, or, if no waiver or brief in opposition is filed, upon the expiration of the time allowed for filing. If a brief in opposition is timely filed, the Clerk will distribute the petition, brief in opposition, and any reply

brief to the Court for its consideration no less than 10 days after the brief in opposition is filed.

6. Any petitioner may file a reply brief addressed to new points raised in the brief in opposition, but distribution and consideration by the Court under paragraph 5 of this Rule will not be deferred pending its receipt. Forty copies shall be filed, except that petitioner proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The reply brief shall be served as required by Rule 29.

7. If a cross-petition for a writ of certiorari has been docketed, distribution of both petitions will be deferred until the cross-petition is due for distribution under this Rule.

8. Any party may file a supplemental brief at any time while a petition for a writ of certiorari is pending, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing. A supplemental brief shall be restricted to new matter and shall follow, insofar as applicable, the form for a brief in opposition prescribed by this Rule. Forty copies shall be filed, except that a party proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The supplemental brief shall be served as required by Rule 29.

## Rule 16. Disposition of a Petition for a Writ of Certiorari

1. After considering the documents distributed under Rule 15, the Court will enter an appropriate order. The order may be a summary disposition on the merits.

2. Whenever the Court grants a petition for a writ of certiorari, the Clerk will prepare, sign, and enter an order to that effect and will notify forthwith counsel of record and the court whose judgment is to be reviewed. The case then will be scheduled for briefing and oral argument. If the record has not previously been filed in this Court, the Clerk will

request the clerk of the court having possession of the record to certify and transmit it. A formal writ will not issue unless specially directed.

3. Whenever the Court denies a petition for a writ of certiorari, the Clerk will prepare, sign, and enter an order to that effect and will notify forthwith counsel of record and the court whose judgment was sought to be reviewed. The order of denial will not be suspended pending disposition of a petition for rehearing except by order of the Court or a Justice.

## Part IV. Other Jurisdiction

### Rule 17. Procedure in an Original Action

1. This Rule applies only to an action invoking the Court's original jurisdiction under Article III of the Constitution of the United States. See also 28 U. S. C. § 1251 and U. S. Const., Amdt. 11. A petition for an extraordinary writ in aid of the Court's appellate jurisdiction shall be filed as provided in Rule 20.

2. The form of pleadings and motions prescribed by the Federal Rules of Civil Procedure is followed. In other respects, those Rules and the Federal Rules of Evidence may be taken as guides.

3. The initial pleading shall be preceded by a motion for leave to file, and may be accompanied by a brief in support of the motion. Forty copies of each document shall be filed, with proof of service. Service shall be as required by Rule 29, except that when an adverse party is a State, service shall be made on both the Governor and the Attorney General of that State.

4. The case will be placed on the docket when the motion for leave to file and the initial pleading are filed with the Clerk. The Rule 38(a) docket fee shall be paid at that time.

5. No more than 60 days after receiving the motion for leave to file and the initial pleading, an adverse party shall file 40 copies of any brief in opposition to the motion, with proof of service as required by Rule 29. The Clerk will dis-

tribute the filed documents to the Court for its consideration upon receiving an express waiver of the right to file a brief in opposition, or, if no waiver or brief is filed, upon the expiration of the time allowed for filing. If a brief in opposition is timely filed, the Clerk will distribute the filed documents to the Court for its consideration no less than 10 days after the brief in opposition is filed. A reply brief may be filed, but consideration of the case will not be deferred pending its receipt. The Court thereafter may grant or deny the motion, set it for oral argument, direct that additional documents be filed, or require that other proceedings be conducted.

6. A summons issued out of this Court shall be served on the defendant 60 days before the return day specified therein. If the defendant does not respond by the return day, the plaintiff may proceed *ex parte*.

7. Process against a State issued out of this Court shall be served on both the Governor and the Attorney General of that State.

### Rule 18. Appeal from a United States District Court

1. When a direct appeal from a decision of a United States district court is authorized by law, the appeal is commenced by filing a notice of appeal with the clerk of the district court within the time provided by law after entry of the judgment sought to be reviewed. The time to file may not be extended. The notice of appeal shall specify the parties taking the appeal, designate the judgment, or part thereof, appealed from and the date of its entry, and specify the statute or statutes under which the appeal is taken. A copy of the notice of appeal shall be served on all parties to the proceeding as required by Rule 29, and proof of service shall be filed in the district court together with the notice of appeal.

2. All parties to the proceeding in the district court are deemed parties entitled to file documents in this Court, but a party having no interest in the outcome of the appeal may so notify the Clerk of this Court and shall serve a copy of the notice on all other parties. Parties interested jointly,

severally, or otherwise in the judgment may appeal separately, or any two or more may join in an appeal. When two or more judgments involving identical or closely related questions are sought to be reviewed on appeal from the same court, a notice of appeal for each judgment shall be filed with the clerk of the district court, but a single jurisdictional statement covering all the judgments suffices. Parties who file no document will not qualify for any relief from this Court.

3. No more than 60 days after filing the notice of appeal in the district court, the appellant shall file 40 copies of a jurisdictional statement and shall pay the Rule 38 docket fee, except that an appellant proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the jurisdictional statement. The jurisdictional statement shall follow, insofar as applicable, the form for a petition for a writ of certiorari prescribed by Rule 14, and shall be served as required by Rule 29. The case will then be placed on the docket. It is the appellant's duty to notify all appellees promptly, on a form supplied by the Clerk, of the date of filing, the date the case was placed on the docket, and the docket number of the case. The notice shall be served as required by Rule 29. The appendix shall include a copy of the notice of appeal showing the date it was filed in the district court. For good cause, a Justice may extend the time to file a jurisdictional statement for a period not exceeding 60 days. An application to extend the time to file a jurisdictional statement shall set out the basis for jurisdiction in this Court; identify the judgment sought to be reviewed; include a copy of the opinion, any order respecting rehearing, and the notice of appeal; and set out specific reasons why an extension of time is justified. For the time and manner of presenting the application, see Rules 21, 22, and 30. An application to extend the time to file a jurisdictional statement is not favored.

4. No more than 30 days after a case has been placed on the docket, an appellee seeking to file a conditional cross-appeal (*i. e.*, a cross-appeal that otherwise would be untimely) shall file, with proof of service as required by Rule 29, a jurisdictional statement that complies in all respects (including number of copies filed) with paragraph 3 of this Rule, except that material already reproduced in the appendix to the opening jurisdictional statement need not be reproduced again. A cross-appealing appellee shall pay the Rule 38 docket fee or submit a motion for leave to proceed *in forma pauperis.* The cover of the cross-appeal shall indicate clearly that it is a conditional cross-appeal. The cross-appeal then will be placed on the docket. It is the cross-appellant's duty to notify all cross-appellees promptly, on a form supplied by the Clerk, of the date of filing, the date the cross-appeal was placed on the docket, and the docket number of the cross-appeal. The notice shall be served as required by Rule 29. A cross-appeal may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached. The time to file a cross-appeal will not be extended.

5. After a notice of appeal has been filed in the district court, but before the case is placed on this Court's docket, the parties may dismiss the appeal by stipulation filed in the district court, or the district court may dismiss the appeal on the appellant's motion, with notice to all parties. If a notice of appeal has been filed, but the case has not been placed on this Court's docket within the time prescribed for docketing, the district court may dismiss the appeal on the appellee's motion, with notice to all parties, and may make any just order with respect to costs. If the district court has denied the appellee's motion to dismiss the appeal, the appellee may move this Court to docket and dismiss the appeal by filing an original and 10 copies of a motion presented in conformity with Rules 21 and 33.2. The motion shall be accompanied by proof of service as required by Rule 29, and by a certificate from the clerk of the district court, certifying that a notice of appeal was filed and that the appellee's mo-

tion to dismiss was denied. The appellant may not thereafter file a jurisdictional statement without special leave of the Court, and the Court may allow costs against the appellant.

6. Within 30 days after the case is placed on this Court's docket, the appellee may file a motion to dismiss, to affirm, or in the alternative to affirm or dismiss. Forty copies of the motion shall be filed, except that an appellee proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the motion to dismiss, to affirm, or in the alternative to affirm or dismiss. The motion shall follow, insofar as applicable, the form for a brief in opposition prescribed by Rule 15, and shall comply in all respects with Rule 21.

7. The Clerk will distribute the jurisdictional statement to the Court for its consideration upon receiving an express waiver of the right to file a motion to dismiss or to affirm or, if no waiver or motion is filed, upon the expiration of the time allowed for filing. If a motion to dismiss or to affirm is timely filed, the Clerk will distribute the jurisdictional statement, motion, and any brief opposing the motion to the Court for its consideration no less than 10 days after the motion is filed.

8. Any appellant may file a brief opposing a motion to dismiss or to affirm, but distribution and consideration by the Court under paragraph 7 of this Rule will not be deferred pending its receipt. Forty copies shall be filed, except that an appellant proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The brief shall be served as required by Rule 29.

9. If a cross-appeal has been docketed, distribution of both jurisdictional statements will be deferred until the cross-appeal is due for distribution under this Rule.

10. Any party may file a supplemental brief at any time while a jurisdictional statement is pending, calling attention

to new cases, new legislation, or other intervening matter not available at the time of the party's last filing. A supplemental brief shall be restricted to new matter and shall follow, insofar as applicable, the form for a brief in opposition prescribed by Rule 15. Forty copies shall be filed, except that a party proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The supplemental brief shall be served as required by Rule 29.

11. The clerk of the district court shall retain possession of the record until notified by the Clerk of this Court to certify and transmit it. See Rule 12.7.

12. After considering the documents distributed under this Rule, the Court may dispose summarily of the appeal on the merits, note probable jurisdiction, or postpone consideration of jurisdiction until a hearing of the case on the merits. If not disposed of summarily, the case stands for briefing and oral argument on the merits. If consideration of jurisdiction is postponed, counsel, at the outset of their briefs and at oral argument, shall address the question of jurisdiction. If the record has not previously been filed in this Court, the Clerk of this Court will request the clerk of the court in possession of the record to certify and transmit it.

13. If the Clerk determines that a jurisdictional statement submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. If a corrected jurisdictional statement is received no more than 60 days after the date of the Clerk's letter, its filing will be deemed timely.

### Rule 19. Procedure on a Certified Question

1. A United States court of appeals may certify to this Court a question or proposition of law on which it seeks instruction for the proper decision of a case. The certificate shall contain a statement of the nature of the case and the facts on which the question or proposition of law arises.

Only questions or propositions of law may be certified, and they shall be stated separately and with precision. The certificate shall be prepared as required by Rule 33.2 and shall be signed by the clerk of the court of appeals.

2. When a question is certified by a United States court of appeals, this Court, on its own motion or that of a party, may consider and decide the entire matter in controversy. See 28 U. S. C. § 1254(2).

3. When a question is certified, the Clerk will notify the parties and docket the case. Counsel shall then enter their appearances. After docketing, the Clerk will submit the certificate to the Court for a preliminary examination to determine whether the case should be briefed, set for argument, or dismissed. No brief may be filed until the preliminary examination of the certificate is completed.

4. If the Court orders the case briefed or set for argument, the parties will be notified and permitted to file briefs. The Clerk of this Court then will request the clerk of the court in possession of the record to certify and transmit it. Any portion of the record to which the parties wish to direct the Court's particular attention should be printed in a joint appendix, prepared in conformity with Rule 26 by the appellant or petitioner in the court of appeals, but the fact that any part of the record has not been printed does not prevent the parties or the Court from relying on it.

5. A brief on the merits in a case involving a certified question shall comply with Rules 24, 25, and 33.1, except that the brief for the party who is the appellant or petitioner below shall be filed within 45 days of the order requiring briefs or setting the case for argument.

## Rule 20. Procedure on a Petition for an Extraordinary Writ

1. Issuance by the Court of an extraordinary writ authorized by 28 U. S. C. § 1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional

circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

2. A petition seeking a writ authorized by 28 U. S. C. § 1651(a), § 2241, or § 2254(a) shall be prepared in all respects as required by Rules 33 and 34. The petition shall be captioned "*In re* [name of petitioner]" and shall follow, insofar as applicable, the form of a petition for a writ of certiorari prescribed by Rule 14. All contentions in support of the petition shall be included in the petition. The case will be placed on the docket when 40 copies of the petition are filed with the Clerk and the docket fee is paid, except that a petitioner proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the petition. The petition shall be served as required by Rule 29 (subject to subparagraph 4(b) of this Rule).

3. (a) A petition seeking a writ of prohibition, a writ of mandamus, or both in the alternative shall state the name and office or function of every person against whom relief is sought and shall set out with particularity why the relief sought is not available in any other court. A copy of the judgment with respect to which the writ is sought, including any related opinion, shall be appended to the petition together with any other document essential to understanding the petition.

(b) The petition shall be served on every party to the proceeding with respect to which relief is sought. Within 30 days after the petition is placed on the docket, a party shall file 40 copies of any brief or briefs in opposition thereto, which shall comply fully with Rule 15. If a party named as a respondent does not wish to respond to the petition, that party may so advise the Clerk and all other parties by letter. All persons served are deemed respondents for all purposes in the proceedings in this Court.

4. (a) A petition seeking a writ of habeas corpus shall comply with the requirements of 28 U. S. C. §§ 2241 and 2242, and in particular with the provision in the last paragraph of § 2242, which requires a statement of the "reasons for not making application to the district court of the district in which the applicant is held." If the relief sought is from the judgment of a state court, the petition shall set out specifically how and where the petitioner has exhausted available remedies in the state courts or otherwise comes within the provisions of 28 U. S. C. § 2254(b). To justify the granting of a writ of habeas corpus, the petitioner must show that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court. This writ is rarely granted.

(b) Habeas corpus proceedings, except in capital cases, are *ex parte*, unless the Court requires the respondent to show cause why the petition for a writ of habeas corpus should not be granted. A response, if ordered, or in a capital case, shall comply fully with Rule 15. Neither the denial of the petition, without more, nor an order of transfer to a district court under the authority of 28 U. S. C. § 2241(b), is an adjudication on the merits, and therefore does not preclude further application to another court for the relief sought.

5. The Clerk will distribute the documents to the Court for its consideration when a brief in opposition under subparagraph 3(b) of this Rule has been filed, when a response under subparagraph 4(b) has been ordered and filed, when the time to file has expired, or when the right to file has been expressly waived.

6. If the Court orders the case set for argument, the Clerk will notify the parties whether additional briefs are required, when they shall be filed, and, if the case involves a petition for a common-law writ of certiorari, that the parties shall prepare a joint appendix in accordance with Rule 26.

## Part V. Motions and Applications

### Rule 21. Motions to the Court

1. Every motion to the Court shall clearly state its purpose and the facts on which it is based and may present legal argument in support thereof. No separate brief may be filed. A motion should be concise and shall comply with any applicable page limits. Rule 22 governs an application addressed to a single Justice.

2. (a) A motion in any action within the Court's original jurisdiction shall comply with Rule 17.3.

(b) A motion to dismiss as moot (or a suggestion of mootness), a motion for leave to file a brief as *amicus curiae*, and any motion the granting of which would dispose of the entire case or would affect the final judgment to be entered (other than a motion to docket and dismiss under Rule 18.5 or a motion for voluntary dismissal under Rule 46) shall be prepared as required by Rule 33.1, and 40 copies shall be filed, except that a movant proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file a motion prepared as required by Rule 33.2, and shall file the number of copies required for a petition by such a person under Rule 12.2. The motion shall be served as required by Rule 29.

(c) Any other motion to the Court shall be prepared as required by Rule 33.2; the moving party shall file an original and 10 copies. The Court subsequently may order the moving party to prepare the motion as required by Rule 33.1; in that event, the party shall file 40 copies.

3. A motion to the Court shall be filed with the Clerk and shall be accompanied by proof of service as required by Rule 29. No motion may be presented in open Court, other than a motion for admission to the Bar, except when the proceeding to which it refers is being argued. Oral argument on a motion will not be permitted unless the Court so directs.

4. Any response to a motion shall be filed as promptly as possible considering the nature of the relief sought and any

asserted need for emergency action, and, in any event, within 10 days of receipt, unless the Court or a Justice, or the Clerk under Rule 30.4, orders otherwise. A response to a motion prepared as required by Rule 33.1, except a response to a motion for leave to file an *amicus curiae* brief (see Rule 37.5), shall be prepared in the same manner if time permits. In an appropriate case, the Court may act on a motion without waiting for a response.

**Rule 22. Applications to Individual Justices**

1. An application addressed to an individual Justice shall be filed with the Clerk, who will transmit it promptly to the Justice concerned if an individual Justice has authority to grant the sought relief.

2. The original and two copies of any application addressed to an individual Justice shall be prepared as required by Rule 33.2, and shall be accompanied by proof of service as required by Rule 29.

3. An application shall be addressed to the Justice allotted to the Circuit from which the case arises. When the Circuit Justice is unavailable for any reason, the application addressed to that Justice will be distributed to the Justice then available who is next junior to the Circuit Justice; the turn of the Chief Justice follows that of the most junior Justice.

4. A Justice denying an application will note the denial thereon. Thereafter, unless action thereon is restricted by law to the Circuit Justice or is untimely under Rule 30.2, the party making an application, except in the case of an application for an extension of time, may renew it to any other Justice, subject to the provisions of this Rule. Except when the denial is without prejudice, a renewed application is not favored. Renewed application is made by a letter to the Clerk, designating the Justice to whom the application is to be directed, and accompanied by 10 copies of the original application and proof of service as required by Rule 29.

5. A Justice to whom an application for a stay or for bail is submitted may refer it to the Court for determination.

6. The Clerk will advise all parties concerned, by appropriately speedy means, of the disposition made of an application.

### Rule 23. Stays

1. A stay may be granted by a Justice as permitted by law.

2. A party to a judgment sought to be reviewed may present to a Justice an application to stay the enforcement of that judgment. See 28 U. S. C. § 2101(f).

3. An application for a stay shall set out with particularity why the relief sought is not available from any other court or judge. Except in the most extraordinary circumstances, an application for a stay will not be entertained unless the relief requested was first sought in the appropriate court or courts below or from a judge or judges thereof. An application for a stay shall identify the judgment sought to be reviewed and have appended thereto a copy of the order and opinion, if any, and a copy of the order, if any, of the court or judge below denying the relief sought, and shall set out specific reasons why a stay is justified. The form and content of an application for a stay are governed by Rules 22 and 33.2.

4. A judge, court, or Justice granting an application for a stay pending review by this Court may condition the stay on the filing of a supersedeas bond having an approved surety or sureties. The bond will be conditioned on the satisfaction of the judgment in full, together with any costs, interest, and damages for delay that may be awarded. If a part of the judgment sought to be reviewed has already been satisfied, or is otherwise secured, the bond may be conditioned on the satisfaction of the part of the judgment not otherwise secured or satisfied, together with costs, interest, and damages.

## Part VI. Briefs on the Merits and Oral Argument

### Rule 24. Briefs on the Merits: In General

1. A brief on the merits for a petitioner or an appellant shall comply in all respects with Rules 33.1 and 34 and shall contain in the order here indicated:

(a) The questions presented for review under Rule 14.1(a). The questions shall be set out on the first page following the cover, and no other information may appear on that page. The phrasing of the questions presented need not be identical with that in the petition for a writ of certiorari or the jurisdictional statement, but the brief may not raise additional questions or change the substance of the questions already presented in those documents. At its option, however, the Court may consider a plain error not among the questions presented but evident from the record and otherwise within its jurisdiction to decide.

(b) A list of all parties to the proceeding in the court whose judgment is under review (unless the caption of the case in this Court contains the names of all parties). Any amended corporate disclosure statement as required by Rule 29.6 shall be placed here.

(c) If the brief exceeds five pages, a table of contents and a table of cited authorities.

(d) Citations of the official and unofficial reports of the opinions and orders entered in the case by courts and administrative agencies.

(e) A concise statement of the basis for jurisdiction in this Court, including the statutory provisions and time factors on which jurisdiction rests.

(f) The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case, set out verbatim with appropriate citation. If the provisions involved are lengthy, their citation alone suffices at this point, and their pertinent text, if not already set out in the petition for a writ of certiorari, jurisdictional statement, or an appendix to either document, shall be set out in an appendix to the brief.

(g) A concise statement of the case, setting out the facts material to the consideration of the questions presented, with appropriate references to the joint appendix, *e. g.*, App. 12, or to the record, *e. g.*, Record 12.

(h) A summary of the argument, suitably paragraphed. The summary should be a clear and concise condensation of the argument made in the body of the brief; mere repetition

of the headings under which the argument is arranged is not sufficient.

(i) The argument, exhibiting clearly the points of fact and of law presented and citing the authorities and statutes relied on.

(j) A conclusion specifying with particularity the relief the party seeks.

2. A brief on the merits for a respondent or an appellee shall conform to the foregoing requirements, except that items required by subparagraphs 1(a), (b), (d), (e), (f), and (g) of this Rule need not be included unless the respondent or appellee is dissatisfied with their presentation by the opposing party.

3. A brief on the merits may not exceed the page limitations specified in Rule 33.1(g). An appendix to a brief may include only relevant material, and counsel are cautioned not to include in an appendix arguments or citations that properly belong in the body of the brief.

4. A reply brief shall conform to those portions of this Rule applicable to the brief for a respondent or an appellee, but, if appropriately divided by topical headings, need not contain a summary of the argument.

5. A reference to the joint appendix or to the record set out in any brief shall indicate the appropriate page number. If the reference is to an exhibit, the page numbers at which the exhibit appears, at which it was offered in evidence, and at which it was ruled on by the judge shall be indicated, *e. g.*, Pl. Exh. 14, Record 199, 2134.

6. A brief shall be concise, logically arranged with proper headings, and free of irrelevant, immaterial, or scandalous matter. The Court may disregard or strike a brief that does not comply with this paragraph.

## Rule 25. Briefs on the Merits: Number of Copies and Time to File

1. The petitioner or appellant shall file 40 copies of the brief on the merits within 45 days of the order granting the writ of certiorari, noting probable jurisdiction, or postponing

consideration of jurisdiction. Any respondent or appellee who supports the petitioner or appellant shall meet the petitioner's or appellant's time schedule for filing documents.

2. The respondent or appellee shall file 40 copies of the brief on the merits within 30 days after receiving the brief for the petitioner or appellant.

3. The petitioner or appellant shall file 40 copies of the reply brief, if any, within 30 days after receiving the brief for the respondent or appellee, but any reply brief must actually be received by the Clerk not later than one week before the date of oral argument. Any respondent or appellee supporting the petitioner or appellant may file a reply brief.

4. The time periods stated in paragraphs 1 and 2 of this Rule may be extended as provided in Rule 30. An application to extend the time to file a brief on the merits is not favored. If a case is advanced for hearing, the time to file briefs on the merits may be abridged as circumstances require pursuant to an order of the Court on its own motion or that of a party.

5. A party wishing to present late authorities, newly enacted legislation, or other intervening matter that was not available in time to be included in a brief may file 40 copies of a supplemental brief, restricted to such new matter and otherwise presented in conformity with these Rules, up to the time the case is called for oral argument or by leave of the Court thereafter.

6. After a case has been argued or submitted, the Clerk will not file any brief, except that of a party filed by leave of the Court.

7. The Clerk will not file any brief that is not accompanied by proof of service as required by Rule 29.

### Rule 26. Joint Appendix

1. Unless the Clerk has allowed the parties to use the deferred method described in paragraph 4 of this Rule, the petitioner or appellant, within 45 days after entry of the order granting the writ of certiorari, noting probable jurisdiction, or postponing consideration of jurisdiction, shall file

40 copies of a joint appendix, prepared as required by Rule 33.1. The joint appendix shall contain: (1) the relevant docket entries in all the courts below; (2) any relevant pleadings, jury instructions, findings, conclusions, or opinions; (3) the judgment, order, or decision under review; and (4) any other parts of the record that the parties particularly wish to bring to the Court's attention. Any of the foregoing items already reproduced in a petition for a writ of certiorari, jurisdictional statement, brief in opposition to a petition for a writ of certiorari, motion to dismiss or affirm, or any appendix to the foregoing, that was prepared as required by Rule 33.1, need not be reproduced again in the joint appendix. The petitioner or appellant shall serve three copies of the joint appendix on each of the other parties to the proceeding as required by Rule 29.

2. The parties are encouraged to agree on the contents of the joint appendix. In the absence of agreement, the petitioner or appellant, within 10 days after entry of the order granting the writ of certiorari, noting probable jurisdiction, or postponing consideration of jurisdiction, shall serve on the respondent or appellee a designation of parts of the record to be included in the joint appendix. Within 10 days after receiving the designation, a respondent or appellee who considers the parts of the record so designated insufficient shall serve on the petitioner or appellant a designation of additional parts to be included in the joint appendix, and the petitioner or appellant shall include the parts so designated. If the Court has permitted the respondent or appellee to proceed *in forma pauperis*, the petitioner or appellant may seek by motion to be excused from printing portions of the record the petitioner or appellant considers unnecessary. In making these designations, counsel should include only those materials the Court should examine; unnecessary designations should be avoided. The record is on file with the Clerk and available to the Justices, and counsel may refer in briefs and in oral argument to relevant portions of the record not included in the joint appendix.

3. When the joint appendix is filed, the petitioner or appellant immediately shall file with the Clerk a statement of the cost of printing 50 copies and shall serve a copy of the statement on each of the other parties as required by Rule 29. Unless the parties agree otherwise, the cost of producing the joint appendix shall be paid initially by the petitioner or appellant; but a petitioner or appellant who considers that parts of the record designated by the respondent or appellee are unnecessary for the determination of the issues presented may so advise the respondent or appellee, who then shall advance the cost of printing the additional parts, unless the Court or a Justice otherwise fixes the initial allocation of the costs. The cost of printing the joint appendix is taxed as a cost in the case, but if a party unnecessarily causes matter to be included in the joint appendix or prints excessive copies, the Court may impose these costs on that party.

4. (a) On the parties' request, the Clerk may allow preparation of the joint appendix to be deferred until after the briefs have been filed. In that event, the petitioner or appellant shall file the joint appendix no more than 14 days after receiving the brief for the respondent or appellee. The provisions of paragraphs 1, 2, and 3 of this Rule shall be followed, except that the designations referred to therein shall be made by each party when that party's brief is served. Deferral of the joint appendix is not favored.

(b) If the deferred method is used, the briefs on the merits may refer to the pages of the record. In that event, the joint appendix shall include in brackets on each page thereof the page number of the record where that material may be found. A party wishing to refer directly to the pages of the joint appendix may serve and file copies of its brief prepared as required by Rule 33.2 within the time provided by Rule 25, with appropriate references to the pages of the record. In that event, within 10 days after the joint appendix is filed, copies of the brief prepared as required by Rule 33.1 containing references to the pages of the joint appendix in place of, or in addition to, the initial references to the pages of the record, shall be served and filed. No other change may be

made in the brief as initially served and filed, except that typographical errors may be corrected.

5. The joint appendix shall be prefaced by a table of contents showing the parts of the record that it contains, in the order in which the parts are set out, with references to the pages of the joint appendix at which each part begins. The relevant docket entries shall be set out after the table of contents, followed by the other parts of the record in chronological order. When testimony contained in the reporter's transcript of proceedings is set out in the joint appendix, the page of the transcript at which the testimony appears shall be indicated in brackets immediately before the statement that is set out. Omissions in the transcript or in any other document printed in the joint appendix shall be indicated by asterisks. Immaterial formal matters (*e. g.*, captions, subscriptions, acknowledgments) shall be omitted. A question and its answer may be contained in a single paragraph.

6. Exhibits designated for inclusion in the joint appendix may be contained in a separate volume or volumes suitably indexed. The transcript of a proceeding before an administrative agency, board, commission, or officer used in an action in a district court or court of appeals is regarded as an exhibit for the purposes of this paragraph.

7. The Court, on its own motion or that of a party, may dispense with the requirement of a joint appendix and may permit a case to be heard on the original record (with such copies of the record, or relevant parts thereof, as the Court may require) or on the appendix used in the court below, if it conforms to the requirements of this Rule.

8. For good cause, the time limits specified in this Rule may be shortened or extended by the Court or a Justice, or by the Clerk under Rule 30.4.

### Rule 27. Calendar

1. From time to time, the Clerk will prepare a calendar of cases ready for argument. A case ordinarily will not be called for argument less than two weeks after the brief on the merits for the respondent or appellee is due.

2. The Clerk will advise counsel when they are required to appear for oral argument and will publish a hearing list in advance of each argument session for the convenience of counsel and the information of the public.

3. The Court, on its own motion or that of a party, may order that two or more cases involving the same or related questions be argued together as one case or on such other terms as the Court may prescribe.

### Rule 28. Oral Argument

1. Oral argument should emphasize and clarify the written arguments in the briefs on the merits. Counsel should assume that all Justices have read the briefs before oral argument. Oral argument read from a prepared text is not favored.

2. The petitioner or appellant shall open and may conclude the argument. A cross-writ of certiorari or cross-appeal will be argued with the initial writ of certiorari or appeal as one case in the time allowed for that one case, and the Court will advise the parties who shall open and close.

3. Unless the Court directs otherwise, each side is allowed one-half hour for argument. Counsel is not required to use all the allotted time. Any request for additional time to argue shall be presented by motion under Rule 21 no more than 15 days after the petitioner's or appellant's brief on the merits is filed, and shall set out specifically and concisely why the case cannot be presented within the half-hour limitation. Additional time is rarely accorded.

4. Only one attorney will be heard for each side, except by leave of the Court on motion filed no more than 15 days after the respondent's or appellee's brief on the merits is filed. Any request for divided argument shall be presented by motion under Rule 21 and shall set out specifically and concisely why more than one attorney should be allowed to argue. Divided argument is not favored.

5. Regardless of the number of counsel participating in oral argument, counsel making the opening argument shall

present the case fairly and completely and not reserve points of substance for rebuttal.

6. Oral argument will not be allowed on behalf of any party for whom a brief has not been filed.

7. By leave of the Court, and subject to paragraph 4 of this Rule, counsel for an *amicus curiae* whose brief has been filed as provided in Rule 37 may argue orally on the side of a party, with the consent of that party. In the absence of consent, counsel for an *amicus curiae* may seek leave of the Court to argue orally by a motion setting out specifically and concisely why oral argument would provide assistance to the Court not otherwise available. Such a motion will be granted only in the most extraordinary circumstances.

## Part VII. Practice and Procedure

### Rule 29. Filing and Service of Documents; Special Notifications; Corporate Listing

1. Any document required or permitted to be presented to the Court or to a Justice shall be filed with the Clerk.

2. A document is timely filed if it is received by the Clerk within the time specified for filing; or if it is sent to the Clerk through the United States Postal Service by first-class mail (including express or priority mail), postage prepaid, and bears a postmark showing that the document was mailed on or before the last day for filing. Commercial postage meter labels alone are not acceptable. If submitted by an inmate confined in an institution, a document is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing and is accompanied by a notarized statement or declaration in compliance with 28 U. S. C. § 1746 setting out the date of deposit and stating that first-class postage has been prepaid. If the postmark is missing or not legible, the Clerk will require the person who mailed the document to submit a notarized statement or declaration in compliance with 28 U. S. C. § 1746 setting out the details of the mailing and stating that the mailing took place on a particular date within the permitted time. A document also is

timely filed if it is forwarded through a private delivery or courier service and is actually received by the Clerk within the time permitted for filing.

3. Any document required by these Rules to be served may be served personally or by mail on each party to the proceeding at or before the time of filing. If the document has been prepared as required by Rule 33.1, three copies shall be served on each other party separately represented in the proceeding. If the document has been prepared as required by Rule 33.2, service of a single copy on each other separately represented party suffices. If personal service is made, it shall consist of delivery at the office of the counsel of record, either to counsel or to an employee therein. If service is by mail, it shall consist of depositing the document with the United States Postal Service, with no less than first-class postage prepaid, addressed to counsel of record at the proper post office address. When a party is not represented by counsel, service shall be made on the party, personally or by mail.

4. (a) If the United States or any federal department, office, agency, officer, or employee is a party to be served, service shall be made on the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530–0001. When an agency of the United States that is a party is authorized by law to appear before this Court on its own behalf, or when an officer or employee of the United States is a party, the agency, officer, or employee shall be served in addition to the Solicitor General.

(b) In any proceeding in this Court in which the constitutionality of an Act of Congress is drawn into question, and neither the United States nor any federal department, office, agency, officer, or employee is a party, the initial document filed in this Court shall recite that 28 U. S. C. § 2403(a) may apply and shall be served on the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530–0001. In such a proceeding from any court of the United States, as de-

fined by 28 U. S. C. § 451, the initial document also shall state whether that court, pursuant to 28 U. S. C. § 2403(a), certified to the Attorney General the fact that the constitutionality of an Act of Congress was drawn into question. See Rule 14.1(e)(v).

(c) In any proceeding in this Court in which the constitutionality of any statute of a State is drawn into question, and neither the State nor any agency, officer, or employee thereof is a party, the initial document filed in this Court shall recite that 28 U. S. C. § 2403(b) may apply and shall be served on the Attorney General of that State. In such a proceeding from any court of the United States, as defined by 28 U. S. C. § 451, the initial document also shall state whether that court, pursuant to 28 U. S. C. § 2403(b), certified to the State Attorney General the fact that the constitutionality of a statute of that State was drawn into question. See Rule 14.1(e)(v).

5. Proof of service, when required by these Rules, shall accompany the document when it is presented to the Clerk for filing and shall be separate from it. Proof of service shall contain, or be accompanied by, a statement that all parties required to be served have been served, together with a list of the names, addresses, and telephone numbers of counsel indicating the name of the party or parties each counsel represents. It is not necessary that service on each party required to be served be made in the same manner or evidenced by the same proof. Proof of service may consist of any one of the following:

(a) an acknowledgment of service, signed by counsel of record for the party served, and bearing the address and telephone number of such counsel;

(b) a certificate of service, reciting the facts and circumstances of service in compliance with the appropriate paragraph or paragraphs of this Rule, and signed by a member of the Bar of this Court representing the party on whose behalf service is made or by an attorney appointed to represent that party under the Criminal Justice Act of 1964, see

18 U. S. C. § 3006A(d)(6), or under any other applicable federal statute; or

(c) a notarized affidavit or declaration in compliance with 28 U. S. C. § 1746, reciting the facts and circumstances of service in accordance with the appropriate paragraph or paragraphs of this Rule, whenever service is made by any person not a member of the Bar of this Court and not an attorney appointed to represent a party under the Criminal Justice Act of 1964, see 18 U. S. C. § 3006A(d)(6), or under any other applicable federal statute.

6. Every document, except a joint appendix or *amicus curiae* brief, filed by or on behalf of a nongovernmental corporation shall contain a corporate disclosure statement identifying the parent corporations and listing any publicly held company that owns 10% or more of the corporation's stock. If there is no parent or publicly held company owning 10% or more of the corporation's stock, a notation to this effect shall be included in the document. If a statement has been included in a document filed earlier in the case, reference may be made to the earlier document (except when the earlier statement appeared in a document prepared under Rule 33.2), and only amendments to the statement to make it current need be included in the document being filed.

### Rule 30. Computation and Extension of Time

1. In the computation of any period of time prescribed or allowed by these Rules, by order of the Court, or by an applicable statute, the day of the act, event, or default from which the designated period begins to run is not included. The last day of the period shall be included, unless it is a Saturday, Sunday, federal legal holiday listed in 5 U. S. C. § 6103, or day on which the Court building is closed by order of the Court or the Chief Justice, in which event the period shall extend until the end of the next day that is not a Saturday, Sunday, federal legal holiday, or day on which the Court building is closed.

2. Whenever a Justice or the Clerk is empowered by law or these Rules to extend the time to file any document, an

application seeking an extension shall be filed within the period sought to be extended. An application to extend the time to file a petition for a writ of certiorari or to file a jurisdictional statement must be received by the Clerk at least 10 days before the specified final filing date as computed under these Rules; if received less than 10 days before the final filing date, such application will not be granted except in the most extraordinary circumstances.

3. An application to extend the time to file a petition for a writ of certiorari, to file a jurisdictional statement, to file a reply brief on the merits, or to file a petition for rehearing shall be made to an individual Justice and presented and served on all other parties as provided by Rule 22. Once denied, such an application may not be renewed.

4. An application to extend the time to file any document or paper other than those specified in paragraph 3 of this Rule may be presented in the form of a letter to the Clerk setting out specific reasons why an extension of time is justified. The letter shall be served on all other parties as required by Rule 29. The application may be acted on by the Clerk in the first instance, and any party aggrieved by the Clerk's action may request that the application be submitted to a Justice or to the Court. The Clerk will report action under this paragraph to the Court as instructed.

**Rule 31. Translations**

Whenever any record to be transmitted to this Court contains material written in a foreign language without a translation made under the authority of the lower court, or admitted to be correct, the clerk of the court transmitting the record shall advise the Clerk of this Court immediately so that this Court may order that a translation be supplied and, if necessary, printed as part of the joint appendix.

**Rule 32. Models, Diagrams, and Exhibits**

1. Models, diagrams, and exhibits of material forming part of the evidence taken in a case and brought to this Court for its inspection shall be placed in the custody of the Clerk at least two weeks before the case is to be heard or submitted.

2. All models, diagrams, exhibits, and other items placed in the custody of the Clerk shall be removed by the parties no more than 40 days after the case is decided. If this is not done, the Clerk will notify counsel to remove the articles forthwith. If they are not removed within a reasonable time thereafter, the Clerk will destroy them or dispose of them in any other appropriate way.

### Rule 33. Document Preparation: Booklet Format; 8½- by 11-Inch Paper Format

1. *Booklet Format:* (a) Except for a document expressly permitted by these Rules to be submitted on 8½- by 11-inch paper, see, *e. g.*, Rules 21, 22, and 39, every document filed with the Court shall be prepared in a 6⅛- by 9¼-inch booklet format using a standard typesetting process (*e. g.*, hot metal, photocomposition, or computer typesetting) to produce text printed in typographic (as opposed to typewritten) characters. The process used must produce a clear, black image on white paper. The text must be reproduced with a clarity that equals or exceeds the output of a laser printer.

(b) The text of every booklet-format document, including any appendix thereto, shall be typeset in Roman 11-point or larger type with 2-point or more leading between lines. The typeface should be similar to that used in current volumes of the United States Reports. Increasing the amount of text by using condensed or thinner typefaces, or by reducing the space between letters, is strictly prohibited. Type size and face shall be consistent throughout. Quotations in excess of 50 words shall be indented. The typeface of footnotes shall be 9-point or larger with 2-point or more leading between lines. The text of the document must appear on both sides of the page.

(c) Every booklet-format document shall be produced on paper that is opaque, unglazed, and not less than 60 pounds in weight, and shall have margins of at least three-fourths of an inch on all sides. The text field, including footnotes, may not exceed 4⅛ by 7⅛ inches. The document shall be bound

firmly in at least two places along the left margin (saddle stitch or perfect binding preferred) so as to permit easy opening, and no part of the text should be obscured by the binding. Spiral, plastic, metal, or string bindings may not be used. Copies of patent documents, except opinions, may be duplicated in such size as is necessary in a separate appendix.

(d) Every booklet-format document shall comply with the page limits shown on the chart in subparagraph 1(g) of this Rule. The page limits do not include the questions presented, the list of parties and the corporate disclosure statement, the table of contents, the table of cited authorities, or any appendix. Verbatim quotations required under Rule 14.1(f), if set out in the text of a brief rather than in the appendix, are also excluded. For good cause, the Court or a Justice may grant leave to file a document in excess of the page limits, but application for such leave is not favored. An application to exceed page limits shall comply with Rule 22 and must be received by the Clerk at least 15 days before the filing date of the document in question, except in the most extraordinary circumstances.

(e) Every booklet-format document shall have a suitable cover consisting of 65-pound weight paper in the color indicated on the chart in subparagraph 1(g) of this Rule. If a separate appendix to any document is filed, the color of its cover shall be the same as that of the cover of the document it supports. The Clerk will furnish a color chart upon request. Counsel shall ensure that there is adequate contrast between the printing and the color of the cover. A document filed by the United States, or by any other federal party represented by the Solicitor General, shall have a gray cover. A joint appendix, answer to a bill of complaint, motion for leave to intervene, and any other document not listed in subparagraph 1(g) of this Rule shall have a tan cover.

(f) Forty copies of a booklet-format document shall be filed.

(g) Page limits and cover colors for booklet-format documents are as follows:

| | Type of Document | Page Limits | Color of Cover |
|---|---|---|---|
| (i) | Petition for a Writ of Certiorari (Rule 14); Motion for Leave to File a Bill of Complaint and Brief in Support (Rule 17.3); Jurisdictional Statement (Rule 18.3); Petition for an Extraordinary Writ (Rule 20.2) | 30 | white |
| (ii) | Brief in Opposition (Rule 15.3); Brief in Opposition to Motion for Leave to File an Original Action (Rule 17.5); Motion to Dismiss or Affirm (Rule 18.6); Brief in Opposition to Mandamus or Prohibition (Rule 20.3(b)); Response to a Petition for Habeas Corpus (Rule 20.4) | 30 | orange |
| (iii) | Reply to Brief in Opposition (Rules 15.6 and 17.5); Brief Opposing a Motion to Dismiss or Affirm (Rule 18.8) | 10 | tan |
| (iv) | Supplemental Brief (Rules 15.8, 17, 18.10, and 25.5) | 10 | tan |
| (v) | Brief on the Merits for Petitioner or Appellant (Rule 24); Exceptions by Plaintiff to Report of Special Master (Rule 17) | 50 | light blue |
| (vi) | Brief on the Merits for Respondent or Appellee (Rule 24.2); Brief on the Merits for Respondent or Appellee Supporting Petitioner or Appellant (Rule 12.6); Exceptions by Party Other Than Plaintiff to Report of Special Master (Rule 17) | 50 | light red |
| (vii) | Reply Brief on the Merits (Rule 24.4) | 20 | yellow |
| (viii) | Reply to Plaintiff's Exceptions to Report of Special Master (Rule 17) | 50 | orange |
| (ix) | Reply to Exceptions by Party Other Than Plaintiff to Report of Special Master (Rule 17) | 50 | yellow |
| (x) | Brief for an *Amicus Curiae* at the Petition Stage (Rule 37.2) | 20 | cream |
| (xi) | Brief for an *Amicus Curiae* in Support of the Plaintiff, Petitioner, or Appellant, or in Support of Neither Party, on the Merits or in an Original Action at the Exceptions Stage (Rule 37.3) | 30 | light green |
| (xii) | Brief for an *Amicus Curiae* in Support of the Defendant, Respondent, or Appellee, on the Merits or in an Original Action at the Exceptions Stage (Rule 37.3) | 30 | dark green |
| (xiii) | Petition for Rehearing (Rule 44) | 10 | tan |

2. *8½- by 11-Inch Paper Format:* (a) The text of every document, including any appendix thereto, expressly permitted by these Rules to be presented to the Court on 8½- by 11-inch paper shall appear double spaced, except for indented quotations, which shall be single spaced, on opaque, unglazed, white paper. The document shall be stapled or bound at the upper left-hand corner. Copies, if required, shall be produced on the same type of paper and shall be legible. The original of any such document (except a motion to dismiss or affirm under Rule 18.6) shall be signed by the party proceeding *pro se* or by counsel of record who must be a member of the Bar of this Court or an attorney appointed under the Criminal Justice Act of 1964, see 18 U. S. C. § 3006A(d)(6), or under any other applicable federal statute. Subparagraph 1(g) of this Rule does not apply to documents prepared under this paragraph.

(b) Page limits for documents presented on 8½- by 11-inch paper are: 40 pages for a petition for a writ of certiorari, jurisdictional statement, petition for an extraordinary writ, brief in opposition, or motion to dismiss or affirm; and 15 pages for a reply to a brief in opposition, brief opposing a motion to dismiss or affirm, supplemental brief, or petition for rehearing. The page exclusions specified in subparagraph 1(d) of this Rule apply.

### Rule 34. Document Preparation: General Requirements

Every document, whether prepared under Rule 33.1 or Rule 33.2, shall comply with the following provisions:

1. Each document shall bear on its cover, in the order indicated, from the top of the page:

(a) the docket number of the case or, if there is none, a space for one;

(b) the name of this Court;

(c) the caption of the case as appropriate in this Court;

(d) the nature of the proceeding and the name of the court from which the action is brought (*e. g.*, "On Petition for Writ of Certiorari to the United States Court of Appeals for the

Fifth Circuit"; or, for a merits brief, "On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit");

(e) the title of the document (*e. g.*, "Petition for Writ of Certiorari," "Brief for Respondent," "Joint Appendix");

(f) the name of the attorney who is counsel of record for the party concerned (who must be a member of the Bar of this Court except as provided in Rule 33.2), and on whom service is to be made, with a notation directly thereunder identifying the attorney as counsel of record and setting out counsel's office address and telephone number. Only one counsel of record may be noted on a single document. The names of other members of the Bar of this Court or of the bar of the highest court of a State acting as counsel, and, if desired, their addresses, may be added, but counsel of record shall be clearly identified. Names of persons other than attorneys admitted to a state bar may not be listed, unless the party is appearing *pro se,* in which case the party's name, address, and telephone number shall appear. The foregoing shall be displayed in an appropriate typographic manner and, except for the identification of counsel, may not be set in type smaller than standard 11-point, if the document is prepared as required by Rule 33.1.

2. Every document exceeding five pages (other than a joint appendix), whether prepared under Rule 33.1 or Rule 33.2, shall contain a table of contents and a table of cited authorities (*i. e.*, cases alphabetically arranged, constitutional provisions, statutes, treatises, and other materials) with references to the pages in the document where such authorities are cited.

3. The body of every document shall bear at its close the name of counsel of record and such other counsel, identified on the cover of the document in conformity with subparagraph 1(g) of this Rule, as may be desired.

## Rule 35. Death, Substitution, and Revivor; Public Officers

1. If a party dies after the filing of a petition for a writ of certiorari to this Court, or after the filing of a notice of ap-

peal, the authorized representative of the deceased party may appear and, on motion, be substituted as a party. If the representative does not voluntarily become a party, any other party may suggest the death on the record and, on motion, seek an order requiring the representative to become a party within a designated time. If the representative then fails to become a party, the party so moving, if a respondent or appellee, is entitled to have the petition for a writ of certiorari or the appeal dismissed, and if a petitioner or appellant, is entitled to proceed as in any other case of nonappearance by a respondent or appellee. If the substitution of a representative of the deceased is not made within six months after the death of the party, the case shall abate.

2. Whenever a case cannot be revived in the court whose judgment is sought to be reviewed, because the deceased party's authorized representative is not subject to that court's jurisdiction, proceedings will be conducted as this Court may direct.

3. When a public officer who is a party to a proceeding in this Court in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate and any successor in office is automatically substituted as a party. The parties shall notify the Clerk in writing of any such successions. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting substantial rights of the parties will be disregarded.

4. A public officer who is a party to a proceeding in this Court in an official capacity may be described as a party by the officer's official title rather than by name, but the Court may require the name to be added.

### Rule 36. Custody of Prisoners in Habeas Corpus Proceedings

1. Pending review in this Court of a decision in a habeas corpus proceeding commenced before a court, Justice, or judge of the United States, the person having custody of the prisoner may not transfer custody to another person unless the transfer is authorized under this Rule.

2. Upon application by a custodian, the court, Justice, or judge who entered the decision under review may authorize transfer and the substitution of a successor custodian as a party.

3. (a) Pending review of a decision failing or refusing to release a prisoner, the prisoner may be detained in the custody from which release is sought or in other appropriate custody or may be enlarged on personal recognizance or bail, as may appear appropriate to the court, Justice, or judge who entered the decision, or to the court of appeals, this Court, or a judge or Justice of either court.

(b) Pending review of a decision ordering release, the prisoner shall be enlarged on personal recognizance or bail, unless the court, Justice, or judge who entered the decision, or the court of appeals, this Court, or a judge or Justice of either court, orders otherwise.

4. An initial order respecting the custody or enlargement of the prisoner, and any recognizance or surety taken, shall continue in effect pending review in the court of appeals and in this Court unless for reasons shown to the court of appeals, this Court, or a judge or Justice of either court, the order is modified or an independent order respecting custody, enlargement, or surety is entered.

### Rule 37. Brief for an *Amicus Curiae*

1. An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An *amicus curiae* brief that does not serve this purpose burdens the Court, and its filing is not favored.

2. (a) An *amicus curiae* brief submitted before the Court's consideration of a petition for a writ of certiorari, motion for leave to file a bill of complaint, jurisdictional statement, or petition for an extraordinary writ, may be filed if accompanied by the written consent of all parties, or if the Court grants leave to file under subparagraph 2(b) of this Rule. The brief shall be submitted within the time allowed for filing a brief in opposition or for filing a motion to dismiss

or affirm. The *amicus curiae* brief shall specify whether consent was granted, and its cover shall identify the party supported.

(b) When a party to the case has withheld consent, a motion for leave to file an *amicus curiae* brief before the Court's consideration of a petition for a writ of certiorari, motion for leave to file a bill of complaint, jurisdictional statement, or petition for an extraordinary writ may be presented to the Court. The motion, prepared as required by Rule 33.1 and as one document with the brief sought to be filed, shall be submitted within the time allowed for filing an *amicus curiae* brief, and shall indicate the party or parties who have withheld consent and state the nature of the movant's interest. Such a motion is not favored.

3. (a) An *amicus curiae* brief in a case before the Court for oral argument may be filed if accompanied by the written consent of all parties, or if the Court grants leave to file under subparagraph 3(b) of this Rule. The brief shall be submitted within the time allowed for filing the brief for the party supported, or if in support of neither party, within the time allowed for filing the petitioner's or appellant's brief. The *amicus curiae* brief shall specify whether consent was granted, and its cover shall identify the party supported or indicate whether it suggests affirmance or reversal. The Clerk will not file a reply brief for an *amicus curiae*, or a brief for an *amicus curiae* in support of, or in opposition to, a petition for rehearing.

(b) When a party to a case before the Court for oral argument has withheld consent, a motion for leave to file an *amicus curiae* brief may be presented to the Court. The motion, prepared as required by Rule 33.1 and as one document with the brief sought to be filed, shall be submitted within the time allowed for filing an *amicus curiae* brief, and shall indicate the party or parties who have withheld consent and state the nature of the movant's interest.

4. No motion for leave to file an *amicus curiae* brief is necessary if the brief is presented on behalf of the United States by the Solicitor General; on behalf of any agency of

the United States allowed by law to appear before this Court when submitted by the agency's authorized legal representative; on behalf of a State, Commonwealth, Territory, or Possession when submitted by its Attorney General; or on behalf of a city, county, town, or similar entity when submitted by its authorized law officer.

5. A brief or motion filed under this Rule shall be accompanied by proof of service as required by Rule 29, and shall comply with the applicable provisions of Rules 21, 24, and 33.1 (except that it suffices to set out in the brief the interest of the *amicus curiae*, the summary of the argument, the argument, and the conclusion). A motion for leave to file may not exceed five pages. A party served with the motion may file an objection thereto, stating concisely the reasons for withholding consent; the objection shall be prepared as required by Rule 33.2.

6. Except for briefs presented on behalf of *amicus curiae* listed in Rule 37.4, a brief filed under this Rule shall indicate whether counsel for a party authored the brief in whole or in part and shall identify every person or entity, other than the *amicus curiae*, its members, or its counsel, who made a monetary contribution to the preparation or submission of the brief. The disclosure shall be made in the first footnote on the first page of text.

## Rule 38. Fees

Under 28 U. S. C. § 1911, the fees charged by the Clerk are:

(a) for docketing a case on a petition for a writ of certiorari or on appeal or for docketing any other proceeding, except a certified question or a motion to docket and dismiss an appeal under Rule 18.5, $300;

(b) for filing a petition for rehearing or a motion for leave to file a petition for rehearing, $200;

(c) for reproducing and certifying any record or paper, $1 per page; and for comparing with the original thereof any photographic reproduction of any record or paper, when furnished by the person requesting its certification, $.50 per page;

(d) for a certificate bearing the seal of the Court, $10; and

(e) for a check paid to the Court, Clerk, or Marshal that is returned for lack of funds, $35.

### Rule 39. Proceedings *In Forma Pauperis*

1. A party seeking to proceed *in forma pauperis* shall file a motion for leave to do so, together with the party's notarized affidavit or declaration (in compliance with 28 U. S. C. § 1746) in the form prescribed by the Federal Rules of Appellate Procedure, Form 4. The motion shall state whether leave to proceed *in forma pauperis* was sought in any other court and, if so, whether leave was granted. If the United States district court or the United States court of appeals has appointed counsel under the Criminal Justice Act of 1964, 18 U. S. C. § 3006A, or under any other applicable federal statute, no affidavit or declaration is required, but the motion shall cite the statute under which counsel was appointed.

2. If leave to proceed *in forma pauperis* is sought for the purpose of filing a document, the motion, and an affidavit or declaration if required, shall be filed together with that document and shall comply in every respect with Rule 21. As provided in that Rule, it suffices to file an original and 10 copies, unless the party is an inmate confined in an institution and is not represented by counsel, in which case the original, alone, suffices. A copy of the motion shall precede and be attached to each copy of the accompanying document.

3. Except when these Rules expressly provide that a document shall be prepared as required by Rule 33.1, every document presented by a party proceeding under this Rule shall be prepared as required by Rule 33.2 (unless such preparation is impossible). Every document shall be legible. While making due allowance for any case presented under this Rule by a person appearing *pro se*, the Clerk will not file any document if it does not comply with the substance of these Rules or is jurisdictionally out of time.

4. When the documents required by paragraphs 1 and 2 of this Rule are presented to the Clerk, accompanied by proof of service as required by Rule 29, they will be placed on

the docket without the payment of a docket fee or any other fee.

5. The respondent or appellee in a case filed *in forma pauperis* shall respond in the same manner and within the same time as in any other case of the same nature, except that the filing of an original and 10 copies of a response prepared as required by Rule 33.2, with proof of service as required by Rule 29, suffices. The respondent or appellee may challenge the grounds for the motion for leave to proceed *in forma pauperis* in a separate document or in the response itself.

6. Whenever the Court appoints counsel for an indigent party in a case set for oral argument, the briefs on the merits submitted by that counsel, unless otherwise requested, shall be prepared under the Clerk's supervision. The Clerk also will reimburse appointed counsel for any necessary travel expenses to Washington, D. C., and return in connection with the argument.

7. In a case in which certiorari has been granted, probable jurisdiction noted, or consideration of jurisdiction postponed, this Court may appoint counsel to represent a party financially unable to afford an attorney to the extent authorized by the Criminal Justice Act of 1964, 18 U. S. C. § 3006A, or by any other applicable federal statute.

8. If satisfied that a petition for a writ of certiorari, jurisdictional statement, or petition for an extraordinary writ is frivolous or malicious, the Court may deny leave to proceed *in forma pauperis.*

### Rule 40. Veterans, Seamen, and Military Cases

1. A veteran suing to establish reemployment rights under any provision of law exempting veterans from the payment of fees or court costs, may file a motion for leave to proceed on papers prepared as required by Rule 33.2. The motion shall ask leave to proceed as a veteran and be accompanied by an affidavit or declaration setting out the moving party's veteran status. A copy of the motion shall precede and be attached to each copy of the petition for a writ

of certiorari or other substantive document filed by the veteran.

2. A seaman suing under 28 U. S. C. § 1916 may proceed without prepayment of fees or costs or furnishing security therefor, but is not entitled to proceed under Rule 33.2, except as authorized by the Court on separate motion under Rule 39.

3. An accused person petitioning for a writ of certiorari to review a decision of the United States Court of Appeals for the Armed Forces under 28 U. S. C. § 1259 may proceed without prepayment of fees or costs or furnishing security therefor and without filing an affidavit of indigency, but is not entitled to proceed on papers prepared as required by Rule 33.2, except as authorized by the Court on separate motion under Rule 39.

## Part VIII. Disposition of Cases

### Rule 41. Opinions of the Court

Opinions of the Court will be released by the Clerk immediately upon their announcement from the bench, or as the Court otherwise directs. Thereafter, the Clerk will cause the opinions to be issued in slip form, and the Reporter of Decisions will prepare them for publication in the preliminary prints and bound volumes of the United States Reports.

### Rule 42. Interest and Damages

1. If a judgment for money in a civil case is affirmed, any interest allowed by law is payable from the date the judgment under review was entered. If a judgment is modified or reversed with a direction that a judgment for money be entered below, the mandate will contain instructions with respect to the allowance of interest. Interest in cases arising in a state court is allowed at the same rate that similar judgments bear interest in the courts of the State in which judgment is directed to be entered. Interest in cases arising in a court of the United States is allowed at the interest rate authorized by law.

2. When a petition for a writ of certiorari, an appeal, or an application for other relief is frivolous, the Court may award the respondent or appellee just damages, and single or double costs under Rule 43. Damages or costs may be awarded against the petitioner, appellant, or applicant, against the party's counsel, or against both party and counsel.

**Rule 43. Costs**

1. If the Court affirms a judgment, the petitioner or appellant shall pay costs unless the Court otherwise orders.

2. If the Court reverses or vacates a judgment, the respondent or appellee shall pay costs unless the Court otherwise orders.

3. The Clerk's fees and the cost of printing the joint appendix are the only taxable items in this Court. The cost of the transcript of the record from the court below is also a taxable item, but shall be taxable in that court as costs in the case. The expenses of printing briefs, motions, petitions, or jurisdictional statements are not taxable.

4. In a case involving a certified question, costs are equally divided unless the Court otherwise orders, except that if the Court decides the whole matter in controversy, as permitted by Rule 19.2, costs are allowed as provided in paragraphs 1 and 2 of this Rule.

5. To the extent permitted by 28 U. S. C. § 2412, costs under this Rule are allowed for or against the United States or an officer or agent thereof, unless expressly waived or unless the Court otherwise orders.

6. When costs are allowed in this Court, the Clerk will insert an itemization of the costs in the body of the mandate or judgment sent to the court below. The prevailing side may not submit a bill of costs.

7. In extraordinary circumstances the Court may adjudge double costs.

**Rule 44. Rehearing**

1. Any petition for the rehearing of any judgment or decision of the Court on the merits shall be filed within 25 days

after entry of the judgment or decision, unless the Court or a Justice shortens or extends the time. The petitioner shall file 40 copies of the rehearing petition and shall pay the filing fee prescribed by Rule 38(b), except that a petitioner proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The petition shall state its grounds briefly and distinctly and shall be served as required by Rule 29. The petition shall be presented together with certification of counsel (or of a party unrepresented by counsel) that it is presented in good faith and not for delay; one copy of the certificate shall bear the signature of counsel (or of a party unrepresented by counsel). A copy of the certificate shall follow and be attached to each copy of the petition. A petition for rehearing is not subject to oral argument and will not be granted except by a majority of the Court, at the instance of a Justice who concurred in the judgment or decision.

2. Any petition for the rehearing of an order denying a petition for a writ of certiorari or extraordinary writ shall be filed within 25 days after the date of the order of denial and shall comply with all the form and filing requirements of paragraph 1 of this Rule, including the payment of the filing fee if required, but its grounds shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. The petition shall be presented together with certification of counsel (or of a party unrepresented by counsel) that it is restricted to the grounds specified in this paragraph and that it is presented in good faith and not for delay; one copy of the certificate shall bear the signature of counsel (or of a party unrepresented by counsel). The certificate shall be bound with each copy of the petition. The Clerk will not file a petition without a certificate. The petition is not subject to oral argument.

3. The Clerk will not file any response to a petition for rehearing unless the Court requests a response. In the absence of extraordinary circumstances, the Court will not

grant a petition for rehearing without first requesting a response.

4. The Clerk will not file consecutive petitions and petitions that are out of time under this Rule.

5. The Clerk will not file any brief for an *amicus curiae* in support of, or in opposition to, a petition for rehearing.

### Rule 45. Process; Mandates

1. All process of this Court issues in the name of the President of the United States.

2. In a case on review from a state court, the mandate issues 25 days after entry of the judgment, unless the Court or a Justice shortens or extends the time, or unless the parties stipulate that it issue sooner. The filing of a petition for rehearing stays the mandate until disposition of the petition, unless the Court orders otherwise. If the petition is denied, the mandate issues forthwith.

3. In a case on review from any court of the United States, as defined by 28 U. S. C. § 451, a formal mandate does not issue unless specially directed; instead, the Clerk of this Court will send the clerk of the lower court a copy of the opinion or order of this Court and a certified copy of the judgment. The certified copy of the judgment, prepared and signed by this Court's Clerk, will provide for costs if any are awarded. In all other respects, the provisions of paragraph 2 of this Rule apply.

### Rule 46. Dismissing Cases

1. At any stage of the proceedings, whenever all parties file with the Clerk an agreement in writing that a case be dismissed, specifying the terms for payment of costs, and pay to the Clerk any fees then due, the Clerk, without further reference to the Court, will enter an order of dismissal.

2. (a) A petitioner or appellant may file a motion to dismiss the case, with proof of service as required by Rule 29, tendering to the Clerk any fees due and costs payable. No

more than 15 days after service thereof, an adverse party may file an objection, limited to the amount of damages and costs in this Court alleged to be payable or to showing that the moving party does not represent all petitioners or appellants. The Clerk will not file any objection not so limited.

(b) When the objection asserts that the moving party does not represent all the petitioners or appellants, the party moving for dismissal may file a reply within 10 days, after which time the matter will be submitted to the Court for its determination.

(c) If no objection is filed—or if upon objection going only to the amount of damages and costs in this Court, the party moving for dismissal tenders the additional damages and costs in full within 10 days of the demand therefor—the Clerk, without further reference to the Court, will enter an order of dismissal. If, after objection as to the amount of damages and costs in this Court, the moving party does not respond by a tender within 10 days, the Clerk will report the matter to the Court for its determination.

3. No mandate or other process will issue on a dismissal under this Rule without an order of the Court.

## Part IX. Definitions and Effective Date

### Rule 47. Reference to "State Court" and "State Law"

The term "state court," when used in these Rules, includes the District of Columbia Court of Appeals and the Supreme Court of the Commonwealth of Puerto Rico. See 28 U. S. C. §§ 1257 and 1258. References in these Rules to the common law and statutes of a State include the common law and statutes of the District of Columbia and of the Commonwealth of Puerto Rico.

### Rule 48. Effective Date of Rules

1. These Rules, adopted January 11, 1999, will be effective May 3, 1999.

2. The Rules govern all proceedings after their effective date except to the extent that, in the opinion of the Court, their application to a pending matter would not be feasible or would work an injustice, in which event the former procedure applies.

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The next page is purposely numbered 1301. The numbers between 1267 and 1301 were intentionally omitted, in order to make it possible to publish in-chambers opinions with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

## OPINION OF INDIVIDUAL JUSTICE IN CHAMBERS

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# MURDAUGH, SOLICITOR, 14TH JUDICIAL CIRCUIT OF SOUTH CAROLINA, ET AL. *v.* LIVINGSTON

ON APPLICATION TO VACATE STAY

No. A–396. Decided November 18, 1998

The State's application to vacate an October 20, 1998, temporary restraining order enjoining it from proceeding with indictments against respondent is denied without prejudice. Under Federal Rule of Civil Procedure 65, such an order ordinarily cannot remain in effect for more than 10 days. Here, the Magistrate Judge has recommended dismissal, and the matter appears to be pending before the District Court. Should that court issue a preliminary injunction or further stay the proceedings, the State may renew its application.

CHIEF JUSTICE REHNQUIST, Circuit Justice.

The District Court in this case entered a temporary restraining order on October 20, 1998, against the State, enjoining it from proceeding further with the indictments against respondent. Pursuant to Rule 65 of the Federal Rules of Civil Procedure, a temporary restraining order cannot remain in effect for more than 10 days unless extended for good cause by the district court or consented to by the adverse party. I am advised that the Magistrate Judge to whom this case was assigned has recommended dismissal, and, so far as I know, the matter is now pending before the District Court. I therefore deny the State's application to vacate the stay, without prejudice to its renewal should the District Court issue a preliminary injunction or further stay the criminal proceedings.

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**AT-WILL EMPLOYMENT.** See **Civil Rights Act of 1871.**

**AUTOMOBILE SEARCHES.** See **Constitutional Law,** IV, 2.

**BALLOT INITIATIVE PETITIONS.** See **Constitutional Law,** III.

**BENEFIT PLANS.** See **Employee Retirement Income Security Act of 1974.**

**BOYCOTTS.** See **Antitrust.**

**CALIFORNIA.** See **Voting Rights Act of 1965.**

**CAR SEARCHES.** See **Constitutional Law,** IV, 2.

**CENSUS CLAUSE.** See **Constitutional Law,** I.

**CIVIL RIGHTS ACT OF 1871.**

*Damages claim—Interference with at-will employment relationships.*—Allegation by petitioner at-will employee that respondent third parties conspired to have him fired in retaliation for obeying a federal grand jury subpoena and to deter him from testifying in their upcoming criminal trial states a claim for damages under 42 U. S. C. § 1985(2). Haddle v. Garrison, p. 121.

**COLLECTIVE-BARGAINING AGREEMENTS.** See **Arbitration.**

**COLORADO.** See **Constitutional Law,** III.

**COMMERCIAL SALE OF NEW PRODUCTS.** See **Patent Act of 1952.**

**CONGRESSIONAL APPORTIONMENT.** See **Constitutional Law,** I.

**CONSPIRACY.** See **Civil Rights Act of 1871.**

**CONSTITUTIONAL LAW.**

**I. Census Clause.**

*Population determination—Use of statistical sampling.*—Census Act prohibits certain proposed uses of statistical sampling to determine population for congressional apportionment purposes. Department of Commerce v. United States House of Representatives, p. 316.

**II. Due Process.**

*Property seizure—Notice of remedies for property's return.*—When police seize property for a criminal investigation, Due Process Clause does not require them to provide owner with notice of state-law remedies for property's return. West Covina v. Perkins, p. 234.

**III. Freedom of Speech.**

*Ballot initiatives—Restrictions on petition circulators.*—Colorado requirements that initiative-petition circulators be registered voters and wear badges bearing their names, and that an initiative's proponents report names and addresses of paid circulators and amount they are paid, violate First Amendment. Buckley v. American Constitutional Law Foundation, Inc., p. 182.

**IV. Searches and Seizures.**

1. *Privacy expectation in place searched—Apartment used for business.*—Because respondents had no legitimate expectation of privacy in another's apartment used for a purely business transaction, any search that may have occurred there did not violate their Fourth Amendment rights. Minnesota v. Carter, p. 83.

**CONSTITUTIONAL LAW—**Continued.

2. *Traffic stop—Automobile search.*—An officer who issues a citation during a traffic stop, rather than making an arrest, may not conduct a full search of car. Knowles v. Iowa, p. 113.

**CRIMINAL LAW.** See **Constitutional Law,** IV.

**DEATH PENALTY.** See **Habeas Corpus.**

**DEFINED BENEFIT PLANS.** See **Employee Retirement Income Security Act of 1974.**

**DEPORTATION.** See **Illegal Immigration Reform and Immigrant Responsibility Act of 1996.**

**DISCRIMINATION BASED ON SEX.** See **Education Amendments of 1972.**

**DISCRIMINATION IN VOTING.** See **Voting Rights Act of 1965.**

**DUE PROCESS.** See **Constitutional Law,** II.

**DUTY OF FAIR REPRESENTATION.** See **Labor.**

**EARLY RETIREMENT PROGRAM.** See **Employee Retirement Income Security Act of 1974.**

**EDUCATION AMENDMENTS OF 1972.**

*Title IX—Coverage.*—Dues payments from member colleges and universities that receive federal funds do not suffice to subject NCAA to Title IX suit. National Collegiate Athletic Assn. v. Smith, p. 459.

**ELECTIONS.** See **Constitutional Law,** III; **Voting Rights Act of 1965.**

**EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT.**

*Failure to stabilize patient—Improper motive.*—In order to recover in a suit alleging a violation of 42 U. S. C. § 1395dd(b)—which requires a hospital to either stabilize a patient with an emergency medical condition or provide for a transfer to another facility—a plaintiff need not prove that hospital acted with an improper motive in failing to stabilize her. Roberts v. Galen of Va., Inc., p. 249.

**EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.**

*Defined benefit plan—Amendments.*—Petitioner did not violate ERISA by amending its defined benefit plan to provide for an early retirement program and a noncontributory benefit structure for new participants. Hughes Aircraft Co. v. Jacobson, p. 432.

**EMPLOYER AND EMPLOYEES.** See **Arbitration; Civil Rights Act of 1871; Employee Retirement Income Security Act of 1974; Labor.**

**FAIR REPRESENTATION DUTY.** See **Labor.**

**FEDERAL COMMUNICATION COMMISSION REGULATION OF LOCAL TELEPHONE MARKETS.** See **Telecommunications Act of 1966.**

**FEDERAL COURTS.** See **Illegal Immigration Reform and Immigrant Responsibility Act of 1996.**

**FEDERAL-QUESTION JURISDICTION.** See **Social Security Act.**

**FEDERAL-STATE RELATIONS.** See **McCarran-Ferguson Act.**

**FIRST AMENDMENT.** See **Constitutional Law,** III.

**FOURTEENTH AMENDMENT.** See **Constitutional Law,** II.

**FOURTH AMENDMENT.** See **Constitutional Law,** IV.

**FREEDOM OF SPEECH.** See **Constitutional Law,** III.

**GROUP BOYCOTTS.** See **Antitrust.**

**HABEAS CORPUS.**

*Death sentence—Harmless-error analysis.*—In affirming a habeas grant setting aside respondent's state-imposed death sentence, Ninth Circuit erred in failing to apply harmless-error analysis mandated by *Brecht* v. *Abrahamson*, 507 U. S. 619, 637. Calderon v. Coleman, p. 141.

**HARMLESS-ERROR ANALYSIS.** See **Habeas Corpus.**

**HEALTH INSURANCE REGULATION.** See **McCarran-Ferguson Act.**

**HOME SEARCHES.** See **Constitutional Law,** IV, 1.

**HOSPITAL AND PATIENTS.** See **Emergency Medical Treatment and Active Labor Act.**

**ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996.**

*Federal-court jurisdiction—Review of deportation decisions.*—Title 8 U. S. C. § 1252(g), which was instituted by IIRIRA and severely restricts judicial review of deportation proceedings, deprives federal courts of jurisdiction over respondents' selective-enforcement claim, which was pending on IIRIRA's effective date. Reno v. American-Arab Anti-Discrimination Comm., p. 471.

**IMMIGRATION.** See **Illegal Immigration Reform and Immigrant Responsibility Act of 1996.**

**IMMUNITY FROM SUIT.** See **Administrative Procedure Act.**

***IN FORMA PAUPERIS*.** See **Supreme Court,** 3.

**INITIATIVE PETITIONS.** See **Constitutional Law,** III.

**INSURANCE REGULATION.** See **McCarran-Ferguson Act.**

**INVENTIONS.** See **Patent Act of 1952.**

**LABOR.** See also **Arbitration.**

*National Labor Relations Act—Duty of fair representation—Union security clause.*—A union does not breach its duty of fair representation by negotiating a union security clause that uses 29 U. S. C. § 158(a)(3)'s language without expressly explaining this Court's interpretation of that language; petitioner's challenge to clause's 30-day grace period provision was within National Labor Relations Board's primary jurisdiction. Marquez v. Screen Actors, p. 33.

**LIENS ON FEDERAL GOVERNMENT PROPERTY.** See **Administrative Procedure Act.**

**LOCAL TELEPHONE MARKETS.** See **Telecommunications Act of 1966.**

**McCARRAN-FERGUSON ACT.**

*State insurance regulation—Violation of Racketeer Influenced and Corrupt Organizations Act.*—Because RICO advances Nevada's interest in combating insurance fraud and does not frustrate any articulated state policy or disturb Nevada's administrative regime, § 2(b) of McCarran-Ferguson Act does not block respondent policy beneficiaries' recourse to RICO to challenge an insurer's scheme to gain discounts for hospital services and pass costs on to beneficiaries. Humana Inc. v. Forsyth, p. 299.

**MEDICAL INSURANCE REGULATION.** See **McCarran-Ferguson Act.**

**MEDICAL TREATMENT IN EMERGENCIES.** See **Emergency Medical Treatment and Active Labor Act.**

**MEDICARE.** See **Social Security Act.**

**NATIONAL LABOR RELATIONS ACT.** See **Labor.**

**NEVADA.** See **McCarran-Ferguson Act.**

**PATENT ACT OF 1952.**

*Validity of patent—On-sale bar.*—Under 35 U. S. C. § 102(b)—which provides that no person may patent an invention that has been on sale more than one year before filing a patent application—1-year period began to run when petitioner offered his invention for commercial sale, not when he reduced his invention to practice; thus, his patent is invalid. Pfaff v. Wells Electronics, Inc., p. 55.

**PATIENT CARE.** See **Emergency Medical Treatment and Active Labor Act.**

***PER SE* ILLEGALITY OF BOYCOTTS.** See **Antitrust.**

**PERSONAL INJURY CLAIMS.** See **Warsaw Convention.**

**POPULATION OF UNITED STATES.** See **Constitutional Law,** I.

**PRECLEARANCE OF VOTING CHANGES.** See **Voting Rights Act of 1965.**

**PRIVACY EXPECTATION.** See **Constitutional Law,** IV, 1.

**PROPERTY SEIZURES.** See **Constitutional Law,** II.

**PROVIDER REIMBURSEMENT REVIEW BOARD.** See **Social Security Act.**

**RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT.** See **McCarran-Ferguson Act.**

**REOPENING OF MEDICARE REIMBURSEMENT DECISIONS.** See **Social Security Act.**

**REPETITIOUS FILINGS.** See **Supreme Court,** 3.

**RESTRAINING ORDERS.** See **Stays.**

**RETIREMENT BENEFITS.** See **Employee Retirement Income Security Act of 1974.**

**RIGHT TO PRIVACY.** See **Constitutional Law,** IV, 1.

**SEARCHES AND SEIZURES.** See **Constitutional Law,** IV.

**SEIZURE OF PROPERTY.** See **Constitutional Law,** II.

**SELECTIVE ENFORCEMENT OF IMMIGRATION LAWS.** See **Illegal Immigration Reform and Immigrant Responsibility Act of 1996.**

**SEX DISCRIMINATION.** See **Education Amendments of 1972.**

**SHERMAN ACT.** See **Antitrust.**

**SOCIAL SECURITY ACT.**

*Medicare provider reimbursement—Review of fiscal intermediary's reopening decision.*—Provider Reimbursement Review Board does not have jurisdiction to review intermediary's refusal to reopen its decision on amount of reimbursement to which a provider is entitled for covered health services; petitioner is not otherwise entitled to judicial review of intermediary's decision under either federal-question statute or Administrative Procedure Act's judicial-review provisions. Your Home Visiting Nurses Services, Inc. v. Shalala, p. 449.

**SOVEREIGN IMMUNITY.** See **Administrative Procedure Act.**

**STATISTICAL SAMPLING.** See **Constitutional Law,** I.

**STAYS.**

*Temporary restraining order.*—State's application to vacate a temporary restraining order enjoining it from proceeding with indictments against respondent is denied without prejudice. Murdaugh v. Livingston (REHNQUIST, C. J., in chambers), p. 1301.

**SUPREME COURT.**

1. Notation of the death of Justice Powell (retired), p. v.

2. Rules of the Supreme Court, p. 1189.

3. *In forma pauperis—Repetitious filings.*—Abusive filer is denied leave to proceed *in forma pauperis* on this and all future petitions for certiorari and for extraordinary writs in noncriminal matters. In re Kennedy, p. 153.

**TELECOMMUNICATIONS ACT OF 1996.**

*Federal Communications Commission's jurisdiction—Local-competition provisions.*—FCC has jurisdiction to implement Act's provisions regulating competition in local telephone markets; with one exception, FCC's rules are consistent with that Act. AT&T Corp. v. Iowa Utilities Bd., p. 366.

**TELEPHONE MARKETS.** See **Telecommunications Act of 1966.**

**TEMPORARY RESTRAINING ORDERS.** See **Stays.**

**TITLE IX.** See **Education Amendments of 1972.**

**TRAFFIC STOPS.** See **Constitutional Law,** IV, 2.

**UNION SECURITY CLAUSES.** See **Labor.**

**UNITED STATES' POPULATION.** See **Constitutional Law,** I.

**VOTING RIGHTS ACT OF 1965.**

*Preclearance requirements—Voting changes mandated by noncovered State.*—Preclearance requirements of § 5 of Act apply to measures mandated by a noncovered State to extent that those measures will effect a voting change in a covered county within that State. Lopez v. Monterey County, p. 266.

**WARSAW CONVENTION.**

*Airline passenger—Personal injury claim.*—Warsaw Convention's text, drafting history, and underlying purpose establish that a passenger cannot maintain a personal injury damages action against an airline under local law when her claim does not satisfy Convention's conditions for liability. El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng, p. 155.

**WORDS AND PHRASES.**

"*Invention.*" Patent Act of 1952, 35 U. S. C. § 102(b). Pfaff v. Wells Electronics, Inc., p. 55.