UNITED STATES

REPORTS

562

OCT. TERM 2010

UNITED STATES REPORTS

VOLUME 562

CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 2010

BEGINNING OF TERM

OCTOBER 4, 2010, THROUGH MARCH 21, 2011

CHRISTINE LUCHOK FALLON

REPORTER OF DECISIONS

WASHINGTON : 2016

Printed on Uncoated Permanent Printing Paper

For sale by the Superintendent of Documents, U. S. Government Printing Office

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OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS

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*Ms. Fallon was appointed Acting Reporter of Decisions effective November 8, 2010. She was appointed Reporter of Decisions effective March 3, 2011. See *post*, pp. v and 1267.

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 28, 2010, viz.:

For the District of Columbia Circuit, John G. Roberts, Jr., Chief Justice.

For the First Circuit, Stephen Breyer, Associate Justice.

For the Second Circuit, Ruth Bader Ginsburg, Associate Justice.

For the Third Circuit, Samuel A. Alito, Jr., Associate Justice.

For the Fourth Circuit, John G. Roberts, Jr., Chief Justice.

For the Fifth Circuit, Antonin Scalia, Associate Justice.

For the Sixth Circuit, Elena Kagan, Associate Justice.

For the Seventh Circuit, Elena Kagan, Associate Justice.

For the Eighth Circuit, Samuel A. Alito, Jr., Associate Justice.

For the Ninth Circuit, Anthony M. Kennedy, Associate Justice.

For the Tenth Circuit, Sonia Sotomayor, Associate Justice.

For the Eleventh Circuit, Clarence Thomas, Associate Justice.

For the Federal Circuit, John G. Roberts, Jr., Chief Justice.

September 28, 2010.

(For next previous allotment, see 561 U. S. vi.)

APPOINTMENT OF REPORTER OF DECISIONS

Supreme Court of the United States

MONDAY, MARCH 7, 2011

Present: Chief Justice Roberts, Justice Kennedy, Justice Thomas, Justice Ginsburg, Justice Alito, and Justice Kagan.

The Chief Justice said:

I am pleased to announce that the Court has appointed Christine L. Fallon as the Reporter of Decisions. Ms. Fallon, who was formerly the Deputy Reporter of Decisions is the 16th Reporter of Decisions. Congratulations.

TABLE OF CASES REPORTED

NOTE: All undesignated references herein to the United States Code are to the 2006 edition.

Cases reported before page 801 are those decided with opinions of the Court or decisions *per curiam*. Cases reported on page 801 *et seq.* are those in which orders were entered.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 2010

WILSON, SUPERINTENDENT, INDIANA STATE PRISON *v.* CORCORAN

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

No. 10–91. Decided November 8, 2010

The Seventh Circuit granted respondent habeas relief, concluding that the Indiana Supreme Court had made "'an unreasonable determination of the facts'" under 28 U. S. C. § 2254(d)(2) when it accepted the trial court's representation that it did not rely on nonstatutory aggravating factors in sentencing respondent to death. The Seventh Circuit therefore required the Indiana trial court to reconsider its sentence in order to "prevent non-compliance with Indiana law."

Held: The Seventh Circuit erred in granting habeas relief. Federal courts may not grant federal habeas relief to state prisoners "'for errors of state law.'" *Estelle* v. *McGuire*, 502 U. S. 62, 67. Nor did it suffice for the Seventh Circuit to rely on § 2254(d)(2), which does not repeal § 2254(a)'s command that habeas relief may be afforded to a state prisoner "only on the ground" that his custody violates federal law.

Certiorari granted; 593 F. 3d 547, vacated and remanded.

PER CURIAM.

Federal courts may not issue writs of habeas corpus to state prisoners whose confinement does not violate federal law. Because the Court of Appeals granted the writ to re-

spondent without finding such a violation, we vacate its judgment and remand.

* * *

In 1997, respondent Joseph Corcoran shot and killed four men, including his brother and his sister's fiance. An Indiana jury found him guilty of four counts of murder, found the statutory aggravating circumstance of multiple murders, and unanimously recommended capital punishment. The trial judge agreed and sentenced respondent to death.

But on appeal, the Supreme Court of Indiana vacated the sentence out of concern that the trial judge might have violated Indiana law by relying partly on nonstatutory aggravating factors when imposing the death penalty. *Corcoran* v. *State*, 739 N. E. 2d 649, 657–658 (2000). When addressing respondent at sentencing, the trial court had remarked:

> "'[T]he knowing and intentional murders of four innocent people is an extremely heinous and aggravated crime. . . . I don't think in the history of this county we've had a mass murderer such as yourself. It makes you, Mr. Corcoran, a very dangerous, evil mass murderer. And I am convinced in my heart of hearts, . . . if given the opportunity, you will murder again.'" *Id.*, at 657 (quoting transcript).

According to the Indiana Supreme Court, the trial judge's reference to the innocence of respondent's victims, the heinousness of his offense, and his future dangerousness was not necessarily improper; it is permissible to provide "an appropriate context for consideration of the alleged aggravating and mitigating circumstances." *Ibid.* (internal quotation marks omitted). But because the trial court might have meant that it weighed these factors as aggravating circumstances, the Indiana Supreme Court remanded for resentencing. See *ibid.*

On remand, the trial court issued a revised sentencing order. It wrote:

> "'The trial Court, in balancing the proved aggravators and mitigators, emphasizes to the Supreme Court that it only relied upon those proven statutory aggravators. The trial Court's remarks at the sentencing hearing, and the language in the original sentencing order explain why such high weight was given to the statutory aggravator of multiple murder, and further support the trial Court's personal conclusion that the sentence is appropriate punishment for this offender and these crimes.'" *Corcoran* v. *State*, 774 N. E. 2d 495, 498 (Ind. 2002) (quoting order).

On appeal, over respondent's objection, the Supreme Court accepted this explanation and affirmed the sentence. *Id.*, at 498–499, 502. It explained that it was "now satisfied that the trial court has relied on only aggravators listed in Indiana Code § 35–50–2–9(b). . . . There is no lack of clarity in [the trial court's] statement and no plausible reason to believe it untrue." *Id.*, at 499.

Respondent later applied to the United States District Court for the Northern District of Indiana for a writ of habeas corpus. His habeas petition asserted a number of grounds for relief, including a renewed claim that, notwithstanding its assurances to the contrary, the trial court improperly relied on nonstatutory aggravating factors when it resentenced him. Respondent also asserted that this reliance violated the Eighth and Fourteenth Amendments. Record, Doc. 13, p. 11. In its response to the petition, the State specifically disputed that contention. *Id.*, Doc. 33, at 16 ("[Respondent] fails to establish any constitutional deficiency in [the] Indiana Supreme Court's review of the trial court's treatment of Corcoran's sentence on remand, let alone does it show that the state supreme court's judgment is in any way inconsistent with applicable United States Supreme Court precedent").

The District Court, however, had no need to resolve this dispute because it granted habeas relief on a wholly different

ground: that an offer by the prosecutor to take the death penalty off the table in exchange for a waiver of a jury trial had violated the Sixth Amendment. *Corcoran* v. *Buss*, 483 F. Supp. 2d 709, 725–726 (2007). It did not address the sentencing challenge because that was "rendered moot" by the grant of habeas relief. *Id.*, at 734.

The State appealed, and the Seventh Circuit reversed the District Court's Sixth Amendment ruling. *Corcoran* v. *Buss*, 551 F. 3d 703, 712, 714 (2008). Then, evidently overlooking respondent's remaining sentencing claims, the Seventh Circuit remanded the case to the District Court "with instructions to deny the writ." *Id.*, at 714. To correct this oversight, we granted certiorari and vacated the Seventh Circuit's judgment. *Corcoran* v. *Levenhagen*, 558 U. S. 1 (2009) *(per curiam)*. We explained that the Court of Appeals "should have permitted the District Court to consider Corcoran's unresolved challenges to his death sentence on remand, or should have itself explained why such consideration was unnecessary." *Id.*, at 2.

On remand—and without any opportunity for briefing by the parties—the Court of Appeals changed course and *granted* habeas relief. *Corcoran* v. *Levenhagen*, 593 F. 3d 547, 555 (2010). After determining that respondent's sentencing challenge had been waived by his failure to include it in his original cross-appeal, the Seventh Circuit concluded that the claim satisfied plain-error review. *Id.*, at 551. The panel explained that, "unlike the Indiana Supreme Court," it was unsatisfied with the trial court's representation that it relied only on aggravating factors authorized by Indiana law. *Ibid.* Because the trial court's revised sentencing order said that it used the nonstatutory factors of heinousness, victims' innocence, and future dangerousness to determine the weight given to the aggravator of multiple murders, the Seventh Circuit concluded that the Indiana Supreme Court had made an " 'unreasonable determination of the facts' " when it accepted the trial court's representation that it did not rely

on those factors as aggravating circumstances. *Ibid.* (quoting 28 U. S. C. § 2254(d)(2)). The panel therefore required the Indiana trial court to reconsider its sentencing determination in order to "prevent non-compliance with Indiana law." 593 F. 3d, at 552–553.

But it is only noncompliance with *federal* law that renders a State's criminal judgment susceptible to collateral attack in the federal courts. The habeas statute unambiguously provides that a federal court may issue the writ to a state prisoner "only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U. S. C. § 2254(a). And we have repeatedly held that " 'federal habeas corpus relief does not lie for errors of state law.' " *Estelle* v. *McGuire*, 502 U. S. 62, 67 (1991) (quoting *Lewis* v. *Jeffers*, 497 U. S. 764, 780 (1990)). "[I]t is not the province of a federal habeas court to reexamine state-court determinations on state-law questions." 502 U. S., at 67–68. But here, the panel's opinion contained no hint that it thought the violation of Indiana law it had unearthed also entailed the infringement of any federal right. Not only did the court frame respondent's claim as whether "the Indiana trial court considered non-statutory aggravating circumstances . . . in contravention of *state law*," 593 F. 3d, at 551 (emphasis added), it also explicitly acknowledged that "[n]othing in [its] opinion prevents Indiana from adopting a rule permitting the use of non-statutory aggravators in the death sentence selection process. *See Zant v. Stephens*, 462 U. S. 862, 878 (1983) (permitting their use under federal law)," *id.*, at 551–552 (citations omitted).

Nor did it suffice for the Court of Appeals to find an unreasonable determination of the facts under 28 U. S. C. § 2254(d)(2). That provision allows habeas petitioners to avoid the bar to habeas relief imposed with respect to federal claims adjudicated on the merits in state court by showing that the state court's decision was "based on an unreasonable determination of the facts in light of the evidence presented

in the State court proceeding." It does not repeal the command of § 2254(a) that habeas relief may be afforded to a state prisoner "only on the ground" that his custody violates federal law.

In response to the Seventh Circuit's opinion, the State filed a petition for rehearing and rehearing en banc. The State's petition argued that the Seventh Circuit had erred by granting relief in the absence of a federal violation. It also contended, on the authority of our opinion in *Wainwright* v. *Goode*, 464 U. S. 78 (1983) *(per curiam)*, that the Court of Appeals erred by second-guessing the Indiana Supreme Court's factual determination that its own trial court complied with Indiana law.

The Seventh Circuit denied rehearing, but amended its opinion to include this language:

> "This [remand for resentencing] will cure the state trial court's 'unreasonable determination of the facts.' 28 U. S. C. § 2254(d)(1) *[sic]*. (It will also prevent noncompliance with Indiana law. [Corcoran] contended that, under the circumstances of this case, noncompliance with state law also violates the federal Constitution and thus warrants him relief under 28 U. S. C. § 2254(d)(2). [The State] has not advanced any contrary argument based on *Wainwright v. Goode*, 464 U. S. 78 (1983), or any similar decision.)" App. to Pet. for Cert. 144a–145a.

The amendment did not cure the defect. It is not enough to note that a habeas petitioner *asserts* the existence of a constitutional violation; unless the federal court agrees with that assertion, it may not grant relief. The Seventh Circuit's opinion reflects no such agreement, nor does it even articulate what federal right was allegedly infringed. In fact, as to one possible federal claim, the court maintains that it would *not* violate federal law for Indiana to adopt a rule authorizing what the trial court did. 593 F. 3d, at 551–552.

In lieu of finding or even describing a constitutional error, the amended opinion says only that the State had not "advanced any contrary argument based on *Wainwright v. Goode* . . . or any similar decision." App. to Pet. for Cert. 145a. It is not clear what this language was meant to convey. It cannot have meant that the State forfeited the position that respondent's allegations do not state a constitutional violation, since (as we observed) the State explicitly disputed that point before the District Court—the last forum in which the subject had been raised, leading the Court of Appeals to conclude that *respondent* had waived the claim entirely. 593 F. 3d, at 551. And there is no suggestion that the State has ever *conceded* the existence of a federal right to be sentenced in accordance with Indiana law. Under those circumstances, it was improper for the Court of Appeals to issue the writ without first concluding that a violation of federal law had been established.

The petition for a writ of certiorari and respondent's motion for leave to proceed *in forma pauperis* are granted. The judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion. We express no view about the merits of the habeas petition.

It is so ordered.

Syllabus

ABBOTT *v.* UNITED STATES

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

No. 09–479. Argued October 4, 2010—Decided November 15, 2010*

Petitioners Abbott and Gould, defendants in unrelated prosecutions, were charged with drug and firearm offenses, including violation of 18 U. S. C. § 924(c), which prohibits using, carrying, or possessing a deadly weapon in connection with "any crime of violence or drug trafficking crime," § 924(c)(1)(A). The minimum prison term for a § 924(c) offense is five years, § 924(c)(1)(A)(i), in addition to "any other term of imprisonment imposed on the [offender]," § 924(c)(1)(D)(ii). Abbott was convicted on the § 924(c) count, on two predicate drug-trafficking counts, and of being a felon in possession of a firearm. He received a 15-year mandatory minimum sentence for his felon-in-possession conviction and an additional five years for his § 924(c) violation. Gould's predicate drug-trafficking crime carried a ten-year mandatory minimum sentence; he received an additional five years for his § 924(c) violation. On appeal, Abbott and Gould challenged their § 924(c) sentences, resting their objections on the "except" clause prefacing § 924(c)(1)(A). That clause provides for imposition of a minimum five-year term as a consecutive sentence "[e]xcept to the extent that a greater minimum sentence is otherwise provided by [§ 924(c) itself] or by any other provision of law." Abbott urged that the "except" clause was triggered by his 15-year felon-in-possession sentence; Gould said the same of the ten years commanded by his predicate trafficking crime. The Third Circuit affirmed Abbott's sentence, concluding that the "except" clause "refers only to other minimum sentences that may be imposed" for § 924(c) violations. Gould fared no better before the Fifth Circuit.

Held: A defendant is subject to the highest mandatory minimum specified for his conduct in § 924(c), unless another provision of law directed to conduct proscribed by § 924(c) imposes an even greater mandatory minimum. Pp. 15–28.

(a) Section 924(c) was enacted as part of the Gun Control Act of 1968, but the "except" clause was not added until 1998. Under the pre-1998 text, it is undisputed, separate counts of conviction did not preempt § 924(c) sentences, and Abbott and Gould would have been correctly sen-

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*Together with No. 09–7073, *Gould* v. *United States*, on certiorari to the United States Court of Appeals for the Fifth Circuit.

tenced under § 924(c). The question here is whether Congress' 1998 reformulation of § 924(c) rendered their sentences excessive. The 1998 alteration responded primarily to *Bailey* v. *United States*, 516 U. S. 137, which held that § 924(c)(1)'s ban on "use" of a firearm did not reach "mere possession" of a weapon, *id.*, at 144. In addition to bringing possession within the statute's compass, Congress increased the severity of § 924(c) sentences by changing "once mandatory sentences into mandatory minimum sentences," *United States* v. *O'Brien*, 560 U. S. 218, 232, and by elevating the sentences for brandishing and discharging a firearm and for repeat offenses. Congress also restructured the provision, "divid[ing] what was once a lengthy principal sentence into separate subparagraphs," *id.*, at 227, and it added the "except" clause at issue. Pp. 15–18.

(b) The leading portion of the "except" clause now prefacing, § 924(c)(1)(A) refers to a "greater minimum sentence . . . otherwise provided by [§ 924(c) itself]"; the second segment of the clause refers to a greater minimum provided outside § 924(c) "by any other provision of law." To determine whether a greater minimum sentence is "otherwise provided . . . by any other provision of law," the key question is: otherwise provided *for what*? Most courts have answered: for the conduct § 924(c) proscribes, *i. e.*, possessing a firearm in connection with a predicate crime.

Abbott and Gould disagree. Gould would apply the "except" clause whenever any count of conviction at sentencing requires a greater minimum sentence. Abbott argues that the minimum sentence "otherwise provided" must be one imposed for the criminal transaction that triggered § 924(c) or, in the alternative, for a firearm offense involving the same firearm that triggered § 924(c). These three interpretations share a common, but implausible, premise: that Congress in 1998 adopted a less aggressive mode of applying § 924(c), one that significantly reduced the severity of the provision's impact on defendants. The pre-1998 version of § 924(c) prescribed a discrete sentence to be imposed on top of the sentence received for the predicate crime or any separate firearm conviction. It is unlikely that Congress meant a prefatory clause, added in a bill dubbed "An Act [t]o throttle criminal use of guns," to effect a departure so great from § 924(c)'s original insistence that sentencing judges impose *additional* punishment for § 924(c) violations. Abbott's and Gould's readings would undercut that same bill's primary objective: to expand § 924(c)'s coverage to reach firearm possession. Their readings would also result in sentencing anomalies Congress surely did not intend. Section 924(c), as they construe it, would often impose no penalty at all for the conduct that provision makes independently criminal. Stranger still, the worst offenders would often secure shorter sentences

than less grave offenders, because the highest sentences on other counts of conviction would be most likely to preempt § 924(c) sentences. Abbott and Gould respond that sentencing judges may take account of any anomalies and order appropriate adjustments. While a judge exercising discretion under 18 U. S. C. § 3553(a) would not be required to sentence a more culpable defendant to a lesser term, this Court doubts that Congress had such a cure in mind in 1998, seven years before *United States* v. *Booker*, 543 U. S. 220, held that district courts have discretion to depart from the Sentencing Guidelines based on § 3553(a). Abbott and Gould alternatively contend that Congress could have anticipated that the then-mandatory Guidelines would resolve disparities by prescribing a firearm enhancement to the predicate sentence. But Congress expressly rejected an analogous scheme in 1984, when it amended § 924(c) to impose a penalty even when the predicate crime itself prescribed a firearm enhancement. Between 1984 and 1998, Congress expanded the reach or increased the severity of § 924(c) four times, never suggesting that a Guidelines firearm enhancement might suffice to accomplish § 924(c)'s objective. Nor is there any indication that Congress was contemplating the Guidelines' relationship to § 924(c) when it added the "except" clause. Pp. 18–24.

(c) The Government's reading—that the "except" clause is triggered only when another provision commands a longer term for conduct violating § 924(c)—makes far more sense. It gives effect to statutory language commanding that all § 924(c) offenders shall receive additional punishment for their violation of that provision, a command reiterated three times: First, the statute states that the § 924(c)(1) punishment "shall" be imposed "in addition to" the penalty for the predicate offense, § 924(c)(1)(A); second, § 924(c) demands a discrete punishment even if the predicate crime itself "provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device," *ibid.*; third, § 924(c)(1)(D)(ii) rules out the possibility that a § 924(c) sentence might "run concurrently with any other term of imprisonment." Interpreting the "except" clause to train on conduct offending § 924(c) also makes sense as a matter of syntax. The clause is a proviso, most naturally read to refer to the conduct § 924(c) proscribes. See *United States* v. *Morrow*, 266 U. S. 531, 534–535. There is strong contextual support for the view that the "except" clause was intended simply to clarify § 924(c). At the same time Congress added the clause, it made the rest of § 924(c) more complex, dividing its existing sentencing prescriptions into four paragraphs, and adding new penalties for brandishing and discharging a firearm. Congress thought the restructuring might confuse sentencing judges: It added the "except" clause's initial part, which covers greater minimums provided "by this subsection," to instruct judges

not to stack ten years for discharging a gun on top of seven for brandishing the same weapon. In referencing greater minimums provided by "any other provision of law," the second portion of the clause simply furnishes the same no-stacking instruction for cases in which § 924(c) and a different statute both punish conduct offending § 924(c). Congress likely anticipated such cases when framing the "except" clause, for the bill that reformulated § 924(c)'s text also amended 18 U. S. C. § 3559(c) to command a life sentence for certain repeat felons convicted of "firearms possession (as described in section 924(c))." This interpretation does not render the "except" clause's second part effectively meaningless. Though § 3559(c) is the only existing statute, outside of § 924(c) itself, that the Government places within the "except" clause, the "any other provision of law" portion installs a safety valve for additional sentences that Congress may codify outside § 924(c) in the future. Neither *United States* v. *Gonzales*, 520 U. S. 1, nor *Republic of Iraq* v. *Beaty*, 556 U. S. 848, warrants a different conclusion. Pp. 24–28.

No. 09–479, 574 F. 3d 203; No. 09–7073, 329 Fed. Appx. 569, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which all other Members joined, except KAGAN, J., who took no part in the consideration or decision of the cases.

David L. Horan, by appointment of the Court, 559 U. S. 1065, argued the cause for petitioner in No. 09–7073. With him on the briefs were *David J. Schenck*, *Paul F. Theiss*, and *Gregory A. Castanias*. *James E. Ryan* argued the cause for petitioner in No. 09–479. With him on the briefs were *Mark T. Stancil*, *Daniel R. Ortiz*, *George A. Rutherglen*, *Elizabeth K. Ainslie*, *David T. Goldberg*, and *John P. Elwood*.

Acting Deputy Solicitor General McLeese argued the cause for the United States in both cases. On the brief were *Acting Solicitor General Katyal*, *Assistant Attorney General Breuer*, *Deputy Solicitor General Dreeben*, *David A. O'Neil*, and *John M. Pellettieri*.†

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†Briefs of *amici curiae* urging reversal in both cases were filed for the American Bar Association by *Carolyn B. Lamm;* for Families Against Mandatory Minimums by *Mary Price*, *Peter Goldberger*, *Margaret Colgate Love*, *Stephanos Bibas*, *Stephen B. Kinnaird*, and *Sean D. Unger;* and for the National Association of Criminal Defense Lawyers by *Miguel A. Estrada*, *David Debold*, and *Joshua L. Dratel*.

JUSTICE GINSBURG delivered the opinion of the Court.

As one of several measures to punish gun possession by persons engaged in crime, Congress made it a discrete offense to use, carry, or possess a deadly weapon in connection with "any crime of violence or drug trafficking crime." 18 U. S. C. § 924(c)(1)(A). The minimum prison term for the offense described in § 924(c) is five years, § 924(c)(1)(A)(i), in addition to "any other term of imprisonment imposed on the [offender]," § 924(c)(1)(D)(ii). The two consolidated cases before us call for interpretation of § 924(c) as that provision was reformulated in 1998.

Kevin Abbott and Carlos Rashad Gould, petitioners here, defendants below, were charged with multiple drug and firearm offenses; charges on which they were convicted included violation of § 924(c). Each objected to the imposition of any additional prison time for his § 924(c) conviction. Their objections rested on the "except" clause now prefacing § 924(c)(1)(A). Under that clause, a minimum term of five years shall be imposed as a consecutive sentence "[e]xcept to the extent that a greater minimum sentence is otherwise provided by [§ 924(c) itself] or by any other provision of law."

Abbott and Gould read § 924(c)'s "except" clause to secure them against prison time for their § 924(c) convictions. They claim exemption from punishment under § 924(c) because they were sentenced to greater mandatory minimum prison terms for convictions on other counts charging different offenses. The "except" clause, they urge, ensures that § 924(c) offenders will serve at least five years in prison. If conviction on a different count yields a mandatory sentence exceeding five years, they maintain, the statutory requirement is satisfied and the penalty specified for the § 924(c) violation becomes inoperative.

The courts below, agreeing with the Government's construction of the statute, read § 924(c)(1) as independently requiring a sentence of at least five years, tacked onto any other sentence the defendant receives. The "except" clause

refers to "a greater minimum sentence . . . otherwise provided." "[O]therwise provided" *for what,* the courts below asked; their answer, for conduct offending § 924(c), *i. e.*, possessing a firearm in connection with a crime of violence or drug-trafficking crime.

A defendant is not spared from a separate, consecutive sentence for a § 924(c) conviction, the lower courts determined, whenever he faces a higher mandatory minimum for a different count of conviction. Instead, according to the courts below and the Government here, the "except" clause applies only when another provision—whether contained within or placed outside § 924(c)—commands a longer term for conduct violating § 924(c). For example, the mandatory minimum sentence for a § 924(c) offense is five years, but if the firearm is brandished, the minimum rises to seven years, and if the firearm is discharged, to ten years. § 924(c)(1)(A)(i), (ii), (iii). A defendant who possessed, brandished, and discharged a firearm in violation of § 924(c) would thus face a mandatory minimum term of ten years.

We hold, in accord with the courts below, and in line with the majority of the Courts of Appeals, that a defendant is subject to a mandatory, consecutive sentence for a § 924(c) conviction, and is not spared from that sentence by virtue of receiving a higher mandatory minimum on a different count of conviction. Under the "except" clause as we comprehend it, a § 924(c) offender is not subject to stacked sentences for violating § 924(c). If he possessed, brandished, and discharged a gun, the mandatory penalty would be 10 years, not 22. He is, however, subject to the highest mandatory minimum specified for his conduct in § 924(c), unless another provision of law directed to conduct proscribed by § 924(c) imposes an even greater mandatory minimum.

I

Abbott and Gould, defendants in unrelated prosecutions, were each charged with violating § 924(c)(1)(A)(i) by possess-

ing a firearm in furtherance of a drug-trafficking crime. Abbott's case was tried to a jury in the Eastern District of Pennsylvania, which convicted him on the § 924(c) count and three others: two predicate trafficking counts, 21 U. S. C. §§ 841, 846, and being a felon in possession of a firearm, 18 U. S. C. § 922(g). Given Abbott's extensive criminal history, his felon-in-possession conviction triggered a 15-year mandatory minimum under the Armed Career Criminal Act (ACCA), 18 U. S. C. § 924(e). The District Court sentenced Abbott to the 15 years mandated by ACCA, and to an additional five years for the § 924(c) violation, yielding a total prison term of 20 years.[1]

Gould's indictment listed seven separate drug and firearm charges. In return for Gould's agreement to plead guilty, the Government dropped all but two: one § 924(c) offense and one predicate drug-trafficking crime. The latter, for conspiracy to possess with intent to distribute cocaine base, carried a ten-year mandatory minimum under § 841(b)(1)(A). Firearm involvement was not an element of that offense. The United States District Court for the Northern District of Texas imposed a sentence of 11 years and five months for the trafficking offense and an additional five years for the § 924(c) violation, for a total of 16 years and five months.

On appeal, Abbott and Gould challenged the five-year consecutive sentence each received under § 924(c). Abbott urged that ACCA's 15-year mandatory minimum triggered § 924(c)'s "except" clause, because ACCA qualified as "[an]-other provision of law" that "provided" a "greater minimum sentence." Gould said the same of the ten years commanded by his predicate trafficking crime.

The United States Court of Appeals for the Third Circuit affirmed Abbott's sentence, concluding that the "except"

[1] Abbott received ten years on each drug-trafficking count. Those sentences, imposed concurrently, did not alter his total term of imprisonment and do not figure in this litigation.

clause "refers only to other minimum sentences that may be imposed for violations of § 924(c)." 574 F. 3d 203, 208 (2009). Gould fared no better before the Fifth Circuit. 329 Fed. Appx. 569, 570 (2009) *(per curiam)*. That court's precedent already confined the exception to conduct offending § 924(c). *United States* v. *London*, 568 F. 3d 553, 564 (2009). To resolve the division among the Circuits on the proper construction of § 924(c)'s "except" clause,[2] we granted certiorari in both cases and consolidated them for argument. 559 U. S. 903 (2010).

II

A

Congress enacted 18 U. S. C. § 924(c) as part of the Gun Control Act of 1968, 82 Stat. 1213. The "except" clause, which did not appear in § 924(c) as originally composed, was introduced by statutory amendment in 1998. See An Act [t]o throttle criminal use of guns, 112 Stat. 3469. We begin by setting out § 924(c), first as it read before 1998, then as amended that year.

The earlier version read in relevant part:

> "Whoever, during and in relation to any crime of violence or drug trafficking crime (including a crime of vio-

[2] Compare *United States* v. *Williams*, 558 F. 3d 166, 171 (CA2 2009) (clause covers "minimum sentences for . . . offenses arising from the same criminal transaction or operative set of facts"); and *United States* v. *Almany*, 598 F. 3d 238, 241 (CA6 2010) (clause applies whenever a defendant "is subject" to a greater mandatory minimum), with *United States* v. *Parker*, 549 F. 3d 5, 11–12 (CA1 2008) (clause does not cover sentences for predicate drug offenses but might cover sentences for ACCA firearm offenses); *United States* v. *Villa*, 589 F. 3d 1334, 1343 (CA10 2009) (clause covers only sentences for conduct offending § 924(c)); *United States* v. *Segarra*, 582 F. 3d 1269, 1272–1273 (CA11 2009) (same); 574 F. 3d, at 208 (case below) (same); *United States* v. *Easter*, 553 F. 3d 519, 526 (CA7 2009) *(per curiam)* (same); *United States* v. *Studifin*, 240 F. 3d 415, 423 (CA4 2001) (same); *United States* v. *Alaniz*, 235 F. 3d 386 (CA8 2000) (same); and 329 Fed. Appx., at 570 (case below) (same).

> lence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) . . . , uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for five years, and if the firearm is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, to imprisonment for ten years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to imprisonment for thirty years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for twenty years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to life imprisonment without release. Notwithstanding any other provision of law, . . . the term of imprisonment imposed under this subsection [shall not] run concurrently with any other term of imprisonment including that imposed for the crime of violence or drug trafficking crime in which the firearm was used or carried." § 924(c)(1) (1994 ed.) (footnote omitted).

If this pre-1998 text governed, all agree, separate counts of conviction would have no preemptive force, and Abbott and Gould would have been correctly sentenced under § 924(c). The question we confront is whether Congress' 1998 reformulation of § 924(c) rendered the sentences imposed on Abbott and Gould excessive.

The 1998 alteration responded primarily to our decision in *Bailey* v. *United States*, 516 U. S. 137 (1995). In proscribing "use" of a firearm, *Bailey* held, § 924(c)(1) did not reach "mere possession" of the weapon. *Id.*, at 144. Congress legislated a different result; in the 1998 revision, "colloquially known as the Bailey Fix Act," the Legislature brought

possession within the statute's compass. *United States* v. *O'Brien*, 560 U. S. 218, 233 (2010) (internal quotation marks omitted).

In addition to the change prompted by *Bailey*, Congress increased the severity of § 924(c) sentences in two other respects: The 1998 revision "changed what were once mandatory sentences into mandatory minimum sentences," *O'Brien*, 560 U. S., at 232; and it elevated the sentences for brandishing and discharging a firearm and for repeat offenses. Congress also restructured the provision, "divid-[ing] what was once a lengthy principal sentence into separate subparagraphs." *Id.*, at 227. And it added the prefatory "except" clause at issue in the cases now before us. As amended, § 924(c)(1)(A) prescribes:

> "Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—
>
> "(i) be sentenced to a term of imprisonment of not less than 5 years;
>
> "(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and
>
> "(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years."

The 1998 reformulation, furthermore, removed to separate paragraphs the provisions commanding higher penalties for

especially destructive weapons and "second or subsequent" offenses. See § 924(c)(1)(B), (C).[3] While leaving the penalties for highly destructive weapons unchanged, the revision raised the base punishment for "second or subsequent" offenses from 20 years to 25. *Ibid.* The reformulation also transferred the bar on concurrent sentences to § 924(c)(1)(D)(ii):

> "[N]o term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed."

B

The leading portion of the "except" clause, which now prefaces § 924(c)(1)(A), refers to a "greater minimum sentence . . . otherwise provided by this subsection," *i. e.*, by § 924(c) itself; the second segment of the clause refers to a greater minimum provided outside § 924(c) "by any other provision of law." Beyond debate, the latter instruction does not re-

[3] These provisions read:

"(B) If the firearm possessed by a person convicted of a violation of this subsection—

"(i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

"(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

"(C) In the case of a second or subsequent conviction under this subsection, the person shall—

"(i) be sentenced to a term of imprisonment of not less than 25 years; and

"(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life."

lieve a § 924(c) offender of additional punishment "simply because a higher mandatory minimum sentence exists in the United States Code." Brief for Petitioner in No. 09–479, p. 19 (hereinafter Abbott Brief). Were it otherwise, the statute's ascending series of minimums, set out in § 924(c)(1)(A)–(C), would have no work to do; the only possible § 924(c) sentence would be the Code's highest—life. The "except" clause, it is therefore undisputed, "has to have *some* understood referent to be intelligible." *United States* v. *Parker*, 549 F. 3d 5, 11 (CA1 2008). What should that referent be? As we comprehend the clause, to determine whether a greater minimum sentence is "otherwise provided . . . by any other provision of law," the key question one must ask is: otherwise provided *for what*? As earlier noted, see *supra*, at 13, most courts, in line with the courts below and the Government, have answered: for the conduct § 924(c) proscribes, *i. e.*, possessing a firearm in connection with a predicate crime.

Abbott and Gould disagree and offer diverse readings. Gould principally would apply the "except" clause to preclude a § 924(c) sentence whenever "any of a defendant's counts of convictio[n] at sentencing" require a greater minimum sentence. Brief for Petitioner in No. 09–7073, p. 14 (hereinafter Gould Brief).

In lieu of Gould's position that any greater minimum sentence on a different count of conviction will do, Abbott advances a somewhat narrower "transactional approach." Any sentence imposed on the defendant fits the bill, he urges, so long as the sentence was imposed "because of the criminal transaction that triggered § 924(c) in the first place." Abbott Brief 10. Accord *United States* v. *Williams*, 558 F. 3d 166, 171 (CA2 2009).

Abbott also tenders an alternative construction: The minimum sentence "otherwise provided" must be for a firearm offense—for example, Abbott's felon-in-possession charge—

involving the same firearm that triggered § 924(c).[4] Conceding that this reading is "not commanded by the [statute's] plain language," Tr. of Oral Arg. 24, Abbott asserts that it advances § 924(c)'s goal—to discourage bearing arms in furtherance of crime—while avoiding the imposition of "two consecutive mandatory minimum sentences for the single use of a single firearm," Abbott Brief 47 (emphasis omitted).

The three interpretations just described share a common premise. In adding the "except" clause in 1998, all three posit, Congress adopted a less aggressive mode of applying § 924(c), one that significantly reduced the severity of the provision's impact on defendants. Like the courts below, we regard this premise as implausible. As earlier observed, see *supra,* at 15–16, the pre-1998 version of § 924(c) prescribed a discrete sentence—punishment to be imposed regardless of the sentence received for the predicate crime or any separate firearm conviction. Abbott and Gould think the "except" clause installed, instead, a modest scheme designed simply to ensure that all § 924(c) offenders "serve at least 5 years in prison." Gould Brief 5; see Abbott Brief 10. We doubt that Congress meant a prefatory clause, added in a bill dubbed "An Act [t]o throttle criminal use of guns," to effect a departure so great from § 924(c)'s longstanding thrust, *i. e.,* its insistence that sentencing judges impose *additional* punishment for § 924(c) violations.

Were we to accept any of the readings proposed by Abbott or Gould, it bears emphasis, we would undercut that same bill's primary objective: to expand § 924(c)'s coverage to reach firearm possession. In 1999, more than half of those who violated § 924(c) in connection with a drug-trafficking offense received a mandatory minimum of ten years or more for that trafficking offense. Letter from Glenn R. Schmitt, United States Sentencing Commission, to Supreme Court Library (Nov. 10, 2010) (available in Clerk of Court's case file).

[4] Because Gould's only firearm-related offense is his § 924(c) offense, Gould's sentence would stand under Abbott's alternative construction.

Congress, however, imposed only a five-year minimum for firearm possession "in furtherance of" a drug offense. As construed by Abbott and Gould, the amendment to include firearm possession as a § 924(c) offense would spare the most serious drug offenders from any discrete punishment for the very firearm activity the amendment targeted. "We are disinclined to say that what Congress imposed with one hand . . . it withdrew with the other . . . ." *Logan* v. *United States*, 552 U. S. 23, 35 (2007).

Abbott's and Gould's proposed readings, moreover, would result in sentencing anomalies Congress surely did not intend. We note first that § 924(c), as they construe it, would often impose no penalty at all for the conduct that provision makes independently criminal. Tr. of Oral Arg. 52. For example, an individual who sold enough drugs to receive a ten-year minimum sentence under § 841(b)(1)(A) could, so far as § 924(c) is concerned, possess or even brandish a gun without incurring any additional punishment.

Stranger still, under the Abbott and Gould readings, the worst offenders would often secure the shortest sentences. Consider two defendants convicted of trafficking in cocaine. The first possesses 500 grams and is subject to a mandatory minimum of five years, § 841(b)(1)(B); the second possesses five kilograms and is subject to a mandatory minimum of ten years, § 841(b)(1)(A). Both brandish firearms, calling for a sentence of seven years under § 924(c)(1)(A)(ii). The first defendant, under all readings, will spend at least 12 years in prison. The second defendant's ten-year drug minimum, according to Abbott and Gould, triggers the "except" clause and wipes out that defendant's § 924(c) penalty; though the more culpable of the two, the second defendant's minimum term would be just ten years. Brief for United States 40. Like the Third Circuit below, "[w]e are confident that Congress did not intend such a bizarre result." 574 F. 3d, at 209.

Abbott's alternative construction, which homes in on other firearm offenses, gives rise to similar oddities. On this

reading, Abbott's 15-year ACCA sentence for being a felon in possession would preempt his five-year § 924(c) sentence, and his minimum term would be 15 years, rather than 20.[5] But if ACCA were not at issue, Abbott's minimum term would be the same 15 years: his five-year § 924(c) sentence on top of his ten-year drug sentence. Qualification as a career criminal would carry no consequence.

Nor does Abbott's second construction necessarily promote more equitable outcomes. Suppose, for example, that a career criminal sold drugs together with a first-time offender, and both brandished firearms in the process. The first-time offender, lacking a felon-in-possession conviction, would serve a seven-year § 924(c) sentence on top of a ten-year drug sentence, for a total of 17 years. But the career criminal's ACCA sentence would preempt the § 924(c) sentence; he would serve only 15 years.

Abbott and Gould respond that sentencing judges may take account of such anomalies and order appropriate adjustments. We observe first that no correction or avoidance appears possible for the anomaly that, while § 924(c) "defines a standalone crime," a § 924(c) sentence would be wiped out by a wholly separate and independent conviction. *United States* v. *Easter*, 553 F. 3d 519, 526 (CA7 2009) *(per curiam)* ("A determination of guilt that yields no sentence is not a judgment of conviction at all."). We do, however, agree that a judge exercising discretion under 18 U. S. C. § 3553(a) "would [not] be *required* to sentence" a more culpable defendant to a lesser term; the judge could increase that defendant's sentence for a predicate crime to make up for § 924(c)'s failure to effect any enlargement of the time served. *United States* v. *Whitley*, 529 F. 3d 150, 155 (CA2 2008). But we doubt Congress had such a cure in mind in 1998, seven years before we held, in *United States* v. *Booker*, 543 U. S.

[5] ACCA sentences may run concurrently with drug sentences.

220 (2005), that district courts have discretion to depart from the Sentencing Guidelines on the basis of § 3553(a).

Abbott and Gould alternatively contend that Congress could have anticipated that the then-mandatory Guidelines would resolve disparities. See Abbott Brief 32–35; Gould Brief 30–32. On this view, the "except" clause ensures that a § 924(c) offender incurs a minimum sentence of considerable length; the Guidelines would then control, elevating that sentence based on firearm possession or use. See United States Sentencing Commission, Guidelines Manual §§ 2D1.1(b)(1), 2K2.1(b)(5) (Nov. 1998) (increasing offense level for defendants who use or possess firearms in course of violent crime or drug trafficking); §§ 2D1.1(b)(1), 2K2.1(b)(6) (Nov. 2009) (same).

We do not gainsay that Abbott and Gould project a rational, less harsh, mode of sentencing. But we do not think it was the mode Congress ordered. Congress expressly rejected an analogous scheme in 1984, when it amended § 924(c) in the same law that created the Sentencing Commission and the Guidelines. § 1005, 98 Stat. 2138. Four years earlier, in *Busic* v. *United States*, 446 U. S. 398, 404 (1980), we had read § 924(c) to impose no penalty when the predicate crime itself prescribed a firearm enhancement; similarly, Abbott and Gould now read § 924(c) to impose no penalty when the Guidelines prescribe a firearm enhancement to the predicate sentence. The 1984 legislation "repudiated" *Busic*, clarifying that § 924(c) applied even when the predicate crime already "provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device." *United States* v. *Gonzales*, 520 U. S. 1, 10 (1997) (internal quotation marks omitted).

Between 1984 and 1998, Congress expanded the reach or increased the severity of § 924(c) on four occasions, never suggesting that a Guidelines firearm enhancement might suf-

fice to accomplish § 924(c)'s objective.[6] Nor is there the slightest indication that Congress was contemplating the Guidelines' relationship to § 924(c) when it added the "except" clause in the 1998 amendments.[7]

The "except" clause, we note, would have been a most haphazard way to achieve a Guidelines-driven rollback of § 924(c). If Congress wanted to ensure that § 924(c) offenders "receive at least five years in prison," and to rely on the Guidelines for the rest, Abbott Brief 10, there was an obvious solution: Congress could have excised all prescriptions ordering that § 924(c) sentences shall run consecutively to other sentences. Without such a requirement, *all* defendants would benefit from a minimum-plus-Guidelines regime—not just the most culpable offenders. Congress did not adopt that obvious solution, we think, because it did not want the Guidelines to supplant § 924(c).

C

The Government's reading of the "except" clause, we are convinced, makes far more sense than the interpretations urged by Abbott and Gould. In imposing a sentence for a § 924(c) violation "[e]xcept to the extent that a greater mini-

[6] Firearms Owners' Protection Act, 1986, § 104(a), 100 Stat. 456–457 (increasing sentences for certain firearms and adding drug trafficking as a predicate felony); Anti-Drug Abuse Act of 1988, § 6460, 102 Stat. 4373–4374 (increasing sentences); Crime Control Act of 1990, § 1101, 104 Stat. 4829 (same); Public Safety and Recreational Firearms Use Protection Act, 1994, Pub. L. 103–322, § 110102(c), 108 Stat. 1998 (same).

[7] For those who take legislative history into account, it is as silent as is the statute's text. The sole reference to the "except" clause appears in the statement of one witness at a Senate hearing. See Hearing on S. 191 before the Senate Committee on the Judiciary, 105th Cong., 1st Sess., 38 (1997) (statement of Thomas G. Hungar) ("[B]y adding an introductory clause authorizing imposition of stiffer minimum sentences if required under other provisions of law, S. 191 eliminates any potential inconsistency with other statutes.").

mum sentence is otherwise provided . . . by any other provision of law," Congress meant:

> "[I]f another provision of the United States Code mandates a punishment for using, carrying, or possessing a firearm in connection with a drug trafficking crime or crime of violence, and that minimum sentence is longer than the punishment applicable under Section 924(c), then the longer sentence applies." Brief for United States 17.

This reading gives effect to the statutory language commanding that all § 924(c) offenders shall receive additional punishment for their violation of that provision, a command reiterated three times. First, the statute states that the punishment specified in § 924(c)(1) "shall" be imposed "in addition to" the penalty for the predicate offense. § 924(c)(1)(A). Second, after *Busic*, § 924(c) demands a discrete punishment even if the predicate crime itself "provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device." § 924(c)(1)(A). Third, § 924(c)(1)(D)(ii) rules out the possibility that a § 924(c) sentence might "run concurrently with any other term of imprisonment." We doubt that Congress, having retained this thrice-repeated instruction, would simultaneously provide an exception severely limiting application of the instruction. Cf. *Greenlaw* v. *United States*, 554 U. S. 237, 251 (2008) ("We resist attributing to Congress an intention to render a statute so internally inconsistent.").

Interpreting the "except" clause to train on conduct offending § 924(c) also makes sense as a matter of syntax. The "except" clause is not a standalone enactment, or even standalone sentence. Rather, it precedes and qualifies § 924(c)(1)(A)'s principal clause, which punishes the possession of a firearm in connection with specified predicate crimes. The "grammatical and logical scope" of a proviso,

we have held, "is confined to the subject-matter of the principal clause" to which it is attached. *United States* v. *Morrow*, 266 U. S. 531, 534–535 (1925). As a proviso attached to § 924(c), the "except" clause is most naturally read to refer to the conduct § 924(c) proscribes. Accord *United States* v. *Villa*, 589 F. 3d 1334, 1343 (CA10 2009).

There is strong contextual support for our view that Congress intended the "except" clause to serve simply as a clarification of § 924(c), not as a major restraint on the statute's operation. At the same time Congress added the "except" clause, it made the rest of § 924(c) more complex. The 1998 revision divided the statute's existing sentencing prescriptions into four paragraphs in lieu of one, and added new penalties for brandishing and discharging a firearm. § 924(c)(1)(A)–(D). We know that Congress thought the restructuring might confuse sentencing judges: Warding off confusion, all agree, was the Legislature's sole objective in adding the initial part of the "except" clause, which covers greater minimums provided "by this subsection." That portion of the clause instructs judges to pick the single highest sentence stipulated for a § 924(c) violation within § 924(c) itself, and not to stack ten years for discharging a gun on top of seven for brandishing the same weapon, whenever a defendant does both.

In referencing greater minimums provided by "any other provision of law," we think, the second portion of the "except" clause simply furnishes the same no-stacking instruction for cases in which § 924(c) and a different statute both punish conduct offending § 924(c). Congress likely anticipated such cases when the "except" clause was framed in 1998, for the bill that reformulated the text of § 924(c) did just one thing more: It amended 18 U. S. C. § 3559(c) to command a life sentence when certain repeat felons are convicted of "firearms possession (as described in section 924(c))." § 1(b), 112 Stat. 3470.

Our interpretation, Abbott and Gould protest, renders the second part of the "except" clause effectively meaningless. Section 3559(c) is the only existing statute, outside of § 924(c) itself, the Government places within the "except" clause. Tr. of Oral Arg. 32–35, 42–44.[8] But § 3559(c) already imposes a life sentence. A defendant would find little comfort in knowing that no § 924(c) sentence, say five years or seven, will be tacked on to his § 3559(c) life term.

As Courts of Appeals have observed, however, the "any other provision of law" portion of the "except" clause installs a "safety valve." *United States* v. *Studifin*, 240 F. 3d 415, 423 (CA4 2001). It "allow[s] for additional § 924(c) sentences," akin to the sentence prescribed in § 3559(c), that Congress may codify outside § 924(c) "in the future." 574 F. 3d, at 208. We do not regard this allowance as "implausible." See Abbott Brief 22; Gould Brief 21. As the Government points out, "there is nothing unusual about Congress prescribing mandatory minimum penalties for substantive offenses codified in other provisions." Brief for United States 22. See, *e. g.*, § 3559(c) (prescribing penalties for violations of, *inter alia*, 49 U. S. C. § 46502 and 18 U. S. C. §§ 1111, 2111, 2113, and 2118); § 3559(d) (prescribing penalties for violations of, *inter alia*, 18 U. S. C. §§ 2422, 2423, and 2251); 18 U. S. C. § 924(e) (prescribing penalty for violation of § 922(g)). See also 18 U. S. C. § 924(j)(1) (prescribing a nonmandatory penalty of death for individuals who commit murder with a firearm in the course of a § 924(c) offense).

Our decisions in *Gonzales* and *Republic of Iraq* v. *Beaty*, 556 U. S. 848 (2009), do not warrant a different conclusion. We observed in *Gonzales* that "the word 'any' [ordinarily] has an expansive meaning." 520 U. S., at 5 (holding that

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[8] We agree with the Government that a qualifying statute need not "explicit[ly] reference" § 924(c), Tr. of Oral Arg. 27; a statute will fit the bill if it provides a greater mandatory minimum for an offense that embodies all the elements of a § 924(c) offense.

"any other term of imprisonment" includes terms imposed by state courts (internal quotation marks omitted)). See also *Beaty*, 556 U. S., at 856 (the word "any" in "any other provision of law" was "no warrant to limit the class of provisions of law"). But our decision on the petitions of Abbott and Gould does not turn on artificial confinement of the phrase "any other provision of law." We rely, instead, on the different direction Congress prescribed for the "except" clause: It applies only when "a greater minimum sentence is otherwise provided." "In the contest between reading" that phrase "to refer to penalties for the [§ 924(c)] offense in question or to penalties for any [other] offense [a defendant commits], we believe the former is the most natural." *Easter*, 553 F. 3d, at 526.[9]

* * *

For the reasons stated, the judgments of the Court of Appeals for the Third Circuit and the Court of Appeals for the Fifth Circuit are

Affirmed.

JUSTICE KAGAN took no part in the consideration or decision of these cases.

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[9] Abbott and Gould invoke the rule of lenity as a final reason to construe the "except" clause to bar their punishments under § 924(c); if their proposed limitations are textually possible, they maintain, we may not choose the Government's. "[T]he touchstone of the rule of lenity is statutory ambiguity." *Bifulco* v. *United States*, 447 U. S. 381, 387 (1980) (internal quotation marks omitted). "[A]fter consulting traditional canons of statutory construction," *United States* v. *Shabani*, 513 U. S. 10, 17 (1994), we are persuaded that none remains here: The "except" clause covers only conduct offending § 924(c). Although the clause might have been more meticulously drafted, the "grammatical possibility" of a defendant's interpretation does not command a resort to the rule of lenity if the interpretation proffered by the defendant reflects "an implausible reading of the congressional purpose." *Caron* v. *United States*, 524 U. S. 308, 316 (1998).

Syllabus

LOS ANGELES COUNTY, CALIFORNIA *v.* HUMPHRIES ET AL.

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

No. 09–350. Argued October 5, 2010—Decided November 30, 2010

The Humphrieses (hereinafter respondents) were accused of child abuse in California, but were later exonerated. However, under California law, their names were added to a Child Abuse Central Index (Index), where they would remain available to various state agencies for at least 10 years. The statute has no procedures for allowing individuals to challenge their inclusion in the Index, and neither California nor Los Angeles County has created such procedures. Respondents filed suit under 42 U. S. C. § 1983, seeking damages, an injunction, and a declaration that public officials and petitioner Los Angeles County had deprived them of their constitutional rights by failing to create a mechanism through which they could contest inclusion in the Index. The District Court granted the defendants summary judgment, but the Ninth Circuit disagreed, holding that the Fourteenth Amendment required the State to provide those on the list with notice and a hearing, and thus respondents were entitled to declaratory relief. The court also held that respondents were prevailing parties entitled to attorney's fees, including $60,000 from the county. The county objected, claiming that as a municipal entity, it was liable only if its "policy or custom" caused the deprivation of a plaintiff's federal right, *Monell* v. *New York City Dept. of Social Servs.*, 436 U. S. 658, 694; but a *state* policy caused any deprivation here. The Ninth Circuit, *inter alia*, found that respondents did prevail against the county on their claim for declaratory relief because *Monell* did not apply to prospective relief claims.

Held: Monell's "policy or custom" requirement applies in § 1983 cases irrespective of whether the relief sought is monetary or prospective. Pp. 34–39.

(a) In *Monroe* v. *Pape*, 365 U. S. 167, this Court based its holding that municipal entities were not "person[s]" under § 1983 on the provision's legislative history, particularly Congress' rejection of the so-called Sherman amendment, which would have made municipalities liable for damages done by *private* persons "'riotously and tumultuously assembled,'" *id.*, at 188–190, and n. 38. Reexamining this legislative history in *Monell*, the Court overruled *Monroe*. It concluded that Congress had rejected the Sherman amendment, not because it would have imposed lia-

bility on municipalities, but because it would have imposed such liability solely based on the acts of others. The Court, on the basis of the statutory text and the legislative history, went on to explain what acts are the municipality's own for purposes of liability. The Court held that "a municipality cannot be held liable" solely for the acts of others, *e. g.*, "*solely* because it employs a tortfeasor," 436 U. S., at 691, but it may be held liable "when execution of a government's policy or custom . . . inflicts the injury," *id.*, at 694. Pp. 34–36.

(b) Section 1983, read in light of *Monell*'s understanding of the legislative history, explains why claims for prospective relief, like claims for money damages, fall within the scope of the "policy or custom" requirement. Nothing in § 1983 suggests that the causation requirement should change with the form of relief sought. In fact, the text suggests the opposite when it provides that a person who meets § 1983's elements "shall be liable . . . in an action at law, suit in equity, or other proper proceeding for redress." Thus, as *Monell* explicitly stated, "[l]ocal governing bodies . . . can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes" a policy or custom. 436 U. S., at 690. To find the "policy or custom" requirement inapplicable in prospective relief cases would also undermine *Monell*'s logic. For whether an action or omission is a municipality's "own" has to do with the nature of the action or omission, not with the nature of the relief that is later sought in court. Pp. 36–37.

(c) Respondents' arguments to the contrary are unconvincing. Pp. 37–39.

Reversed and remanded.

BREYER, J., delivered the opinion of the Court, in which all other Members joined, except KAGAN, J., who took no part in the consideration or decision of the case.

Timothy T. Coates argued the cause for petitioner. With him on the briefs were *Alison M. Turner* and *Mark D. Rutter.*

Andrew J. Pincus argued the cause for respondents. With him on the brief were *Charles A. Rothfeld*, *Scott L. Shuchart*, and *Esther G. Boynton.*

JUSTICE BREYER delivered the opinion of the Court.

In *Monell* v. *New York City Dept. of Social Servs.*, 436 U. S. 658 (1978), this Court held that civil rights plaintiffs

suing a municipal entity under 42 U. S. C. § 1983 must show that their injury was caused by a municipal policy or custom. The case before the Court in *Monell* directly involved monetary damages. The question presented is whether the "policy or custom" requirement also applies when plaintiffs seek prospective relief, such as an injunction or a declaratory judgment. We conclude that it does so apply.

I

The case arises out of the following circumstances: The California Child Abuse and Neglect Reporting Act, Cal. Penal Code Ann. § 11164 *et seq.* (West Rev. Supp. 2010), requires law enforcement and other state agencies to investigate allegations of child abuse. These agencies must report to the California Department of Justice all instances of reported child abuse the agency finds "not unfounded," even if they are "inconclusive or unsubstantiated." §§ 11169(a), 11170(a)(3). The statute requires the department to include all these reports in a Child Abuse Central Index (Index), where they remain available to various state agencies for at least 10 years. § 11170(a). The statute also says that if

> "a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact and shall not retain the report." § 11169(a).

The statute, however, does not set forth procedures for reviewing whether a previously filed report is unfounded, or for allowing individuals to challenge their inclusion in the Index. Nor, up until the time of this lawsuit, had California or Los Angeles County created any such procedures. But cf. § 11170(a)(2) ("The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section").

The two plaintiffs in this case were initially accused of child abuse. But they were later exonerated. They sought to have their names removed from the Index. Unable to

convince the Los Angeles Sheriff's Department to remove them, they filed this § 1983 case against the attorney general of California, the Los Angeles County sheriff, two detectives in the sheriff's department, and the County of Los Angeles. They sought damages, an injunction, and a declaration that the defendants had deprived them of their constitutional rights by failing to create a procedural mechanism through which one could contest inclusion on the Index. See U. S. Const., Amdt. 14; Rev. Stat. § 1979, 42 U. S. C. § 1983. The District Court for the Central District of California granted summary judgment to all of the defendants on the ground that California had not deprived the plaintiffs of a constitutionally protected "liberty" interest. But on appeal the Ninth Circuit disagreed.

The Ninth Circuit held that the Fourteenth Amendment required the State to provide those included on the list notice and "'some kind of hearing.'" 554 F. 3d 1170, 1201 (2009). Thus the Circuit held that the plaintiffs were entitled to declaratory relief, and it believed that (on remand) they might prove damages as well. *Ibid.*

The Ninth Circuit also held that the plaintiffs were prevailing parties, thereby entitled to approximately $600,000 in attorney's fees. 42 U. S. C. § 1988(b) (providing for payment of attorney's fees to parties prevailing on § 1983 claims). See No. 05–56467 (June 22, 2009), App. to Pet. for Cert. 1–4 (hereinafter First Fee Order); No. 05–56467 (Dec. 2, 2009), App. to Reply to Brief in Opposition 1–2 (hereinafter Second Fee Order). The Ninth Circuit wrote that Los Angeles County must pay approximately $60,000 of this amount. First Fee Order 3; Second Fee Order 2.

Los Angeles County denied that it was liable and therefore that it could be held responsible for attorney's fees. It argued that, in respect to the county, the plaintiffs were not prevailing parties. That is because the county is a municipal entity. Under *Monell*'s holding a municipal entity is liable under § 1983 only if a municipal *"policy or custom"* caused a

plaintiff to be deprived of a federal right. 436 U. S., at 694 (emphasis added). And it was *state* policy, not *county* policy, that brought about any deprivation here.

The Ninth Circuit responded to this argument as follows: First, it said that county policy *might* be responsible for the deprivation. It "is possible," the Ninth Circuit said, that the county, "[b]y failing to" "creat[e] an independent procedure that would allow" the plaintiffs "to challenge their listing[,] . . . adopted a custom and policy that violated" the plaintiffs' "constitutional rights." 554 F. 3d, at 1202. Second, it said that "because this issue is not clear based on the record before us on appeal . . . we remand to the district court to determine the County's liability under *Monell*." *Ibid.* Third, it saw no reason to remand in respect to the county's obligation to pay $60,000 in attorney's fees. That, it wrote, is because "*in our circuit . . . the limitations to liability established in Monell do not apply to claims for prospective relief*," such as the declaratory judgment that the Circuit had ordered entered. First Fee Order 3–4 (citing *Chaloux* v. *Killeen*, 886 F. 2d 247, 250 (CA9 1989); *Truth* v. *Kent School Dist.*, 542 F. 3d 634, 644 (CA9 2008); emphasis added).

The county then asked us to review this last-mentioned Ninth Circuit holding, namely, the holding that *Monell*'s "policy or custom" requirement applies only to claims for damages but not to claims for prospective relief. Because the Courts of Appeals are divided on this question, we granted the county's petition for certiorari. Compare *Reynolds* v. *Giuliani*, 506 F. 3d 183, 191 (CA2 2007) (holding that *Monell*'s "policy or custom" requirement applies to claims for prospective relief as well as claims for damages); *Dirrane* v. *Brookline Police Dept.*, 315 F. 3d 65, 71 (CA1 2002) (same); *Greensboro Professional Fire Fighters Assn., Local 3157* v. *Greensboro*, 64 F. 3d 962, 967, n. 6 (CA4 1995) (applying the *Monell* requirement to a prospective relief claim); *Church* v. *Huntsville*, 30 F. 3d 1332, 1347 (CA11 1994) (same), with

Chaloux, supra, at 251 (holding that *Monell* does not apply to prospective relief claims). See also *Gernetzke* v. *Kenosha Unified School Dist. No. 1*, 274 F. 3d 464, 468 (CA7 2001) (reserving the question but noting the "predominant" view that "*Monell*'s holding applies regardless of the nature of the relief sought").

We conclude that *Monell*'s holding applies to § 1983 claims against municipalities for prospective relief as well as to claims for damages.

II

A

We begin with § 1983 itself, which provides:

> "Every *person* who, under color of any [state] statute, ordinance, regulation, custom, or usage . . . subjects, or causes to be subjected, any . . . other person . . . to the deprivation of any rights . . . secured by the Constitution and laws [of the United States], shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." (Emphasis added.)

In 1961, in *Monroe* v. *Pape,* 365 U. S. 167, this Court held that municipal entities were not "person[s]" under § 1983. The Court based this conclusion on the history of the Civil Rights Act of 1871's enactment. It noted that Congress rejected an amendment (called the Sherman amendment) that would have made municipalities liable for damage done by *private* persons "'riotously and tumultuously assembled.'" *Id.,* at 188–190, and n. 38 (quoting Cong. Globe, 42d Cong., 1st Sess., 663 (1871)). This rejection, the Court thought, reflected a determination by the 1871 House of Representatives that "'Congress had no constitutional power to impose *any obligation* upon county and town organizations, the mere instrumentality for the administration of state law.'" 365 U. S., at 190 (quoting Cong. Globe, *supra,* at 804 (statement of Rep. Poland); emphasis added). The Court concluded that Congress must have doubted its "constitutional

power . . . to impose civil liability on municipalities." 365 U. S., at 190. And for that reason, Congress must have intended to exclude municipal corporations as § 1983 defendants. The statute's key term "person" therefore did not cover municipal entities. *Id.*, at 191.

Sixteen years later, in *Monell*, the Court reconsidered the question of municipal liability. After reexamining the 1871 legislative history in detail, the Court concluded that Congress had rejected the Sherman amendment, not because it would have imposed liability upon municipalities, but because it would have imposed liability upon municipalities based purely upon the *acts of others*. That is to say, the rejected amendment would have imposed liability upon local governments "without regard to whether a local government *was in any way at fault* for the breach of the peace for which it was to be held for damages." 436 U. S., at 681, n. 40 (emphasis added). In *Monell*'s view Congress may have thought that it lacked the power to impose that kind of indirect liability upon municipalities, *id.*, at 679, but "nothing said in debate on the Sherman amendment would have prevented holding a municipality liable . . . for *its own* violations of the Fourteenth Amendment," *id.*, at 683 (emphasis added). The Court, overruling *Monroe*, held that municipalities were "persons" under § 1983. 436 U. S., at 690.

The Court also concluded that a municipality could not be held liable under § 1983 solely because it employed a tortfeasor. The Court's conclusion rested on "the language of § 1983, read against the background of the same legislative history." *Id.*, at 691. Section 1983's causation language imposes liability on a "'person who . . . shall subject, or cause to be subjected, any person'" to a deprivation of federal rights. *Ibid.* (quoting 17 Stat. 13; emphasis deleted). That language, the Court observed, could not "be easily read to impose liability vicariously . . . solely on the basis of the existence of an employer-employee relationship with a tortfeasor." 436 U. S., at 692. The statute's legislative history,

in particular the constitutional objections that had been raised to the Sherman amendment, supported this conclusion. *Id.*, at 692–694, and n. 57.

For these reasons, the Court concluded that a municipality could be held liable under § 1983 only for its own violations of federal law. *Id.*, at 694. The Court described what made a violation a municipality's *own* violation:

> "Local governing bodies, therefore, can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers. . . . [They can also be sued for] deprivations visited pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decisionmaking channels." *Id.*, at 690–691 (footnote omitted).

The Court has also included the terms "usage" and "practice" as customs for which liability is appropriate. See *ibid.* The length of this list of types of municipal action leads us here to use a shorthand term "policy or custom," but when we do so, we mean to refer to the entire list. See *id.*, at 694 (using the shorthand "policy or custom"); see also, *e. g.*, *Fitzgerald* v. *Barnstable School Comm.*, 555 U. S. 246, 257–258 (2009) (using the phrase "custom, policy, or practice," to describe municipal liability under § 1983).

In sum, in *Monell* the Court held that "a municipality cannot be held liable" solely for the acts of others, *e. g.*, "*solely* because it employs a tortfeasor." 436 U. S., at 691. But the municipality may be held liable "when execution of a government's *policy or custom* . . . inflicts the injury." *Id.*, at 694 (emphasis added).

B

The language of § 1983 read in light of *Monell*'s understanding of the legislative history explains why claims for

prospective relief, like claims for money damages, fall within the scope of the "policy or custom" requirement. Nothing in the text of § 1983 suggests that the causation requirement contained in the statute should change with the form of relief sought. In fact, the text suggests the opposite when it provides that a person who meets § 1983's elements "shall be liable . . . in an action at law, suit in equity, or other proper proceeding for redress." Thus, as *Monell* explicitly stated, "[l]ocal governing bodies . . . can be sued directly under § 1983 for monetary, *declaratory, or injunctive relief* where, as here, the action that is alleged to be unconstitutional implements or executes" a policy or custom. 436 U. S., at 690 (emphasis added). *Monell* went on to quote this Court's statement in a 1973 case, *Kenosha* v. *Bruno*, 412 U. S. 507, 513, to the effect that the Congress that enacted § 1983 did not intend the "'generic word "person" . . . *to have a bifurcated application to municipal corporations depending on the nature of the relief sought against them.*'" 436 U. S., at 701, n. 66 (emphasis added). *Monell* added that "[n]othing we say today affects" this pre-*Monell* "conclusion." *Ibid.*

Monell's logic also argues against any such relief-based bifurcation. The *Monell* Court thought that Congress intended potential § 1983 liability where a municipality's *own* violations were at issue but not where only the violations of *others* were at issue. The "policy or custom" requirement rests upon that distinction and embodies it in law. To find the requirement inapplicable where prospective relief is at issue would undermine *Monell*'s logic. For whether an action or omission is a municipality's "own" has to do with the nature of the action or omission, not with the nature of the relief that is later sought in court.

C

The Humphrieses' (hereinafter respondents) arguments to the contrary are unconvincing. Respondents correctly note that by the time *Monell* reached the Supreme Court only the plaintiffs' damages claim remained live. See *id.*, at 661.

From this fact they conclude that the Court's holding applies directly only to claims for monetary damages. A holding, however, can extend through its logic beyond the specific facts of the particular case. It does so here.

Respondents add that not only did *Monell* involve a damages claim, but its holding rests upon the concern that municipalities might have to pay large damages awards. The Court so suggests when it points out that municipalities should not be liable for an employee's wrongful acts, simply by applying agency-based principles of *respondeat superior*. But as we have pointed out, the Court's rejection of *respondeat superior* liability primarily rested not on the municipality's economic needs, but on the fact that liability in such a case does not arise out of the municipality's own wrongful conduct.

Respondents further claim that, where prospective relief is at issue, *Monell* is redundant. They say that a court cannot grant prospective relief against a municipality unless the municipality's own conduct has caused the violation. Hence, where such relief is otherwise proper, the *Monell* requirement "shouldn't screen out any case." Tr. of Oral Arg. 48.

To argue that a requirement is necessarily satisfied, however, is not to argue that its satisfaction is unnecessary. If respondents are right, our holding may have limited practical significance. But that possibility does not provide us with a convincing reason to sow confusion by adopting a bifurcated relief-based approach to municipal liability that the Court has previously rejected.

Finally, respondents make the mirror-image argument that applying *Monell*'s requirement to prospective relief claims will leave some set of ongoing constitutional violations beyond redress. Despite the fact that four Circuits apply *Monell*'s requirement to prospective relief, however, respondents have not presented us with any actual or hypothetical example that provides serious cause for concern.

* * *

For these reasons, we hold that *Monell*'s "policy or custom" requirement applies in § 1983 cases irrespective of whether the relief sought is monetary or prospective. The Ninth Circuit's contrary judgment is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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

Syllabus

COSTCO WHOLESALE CORP. *v.* OMEGA, S. A.

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

No. 08–1423. Argued November 8, 2010—Decided December 13, 2010
541 F. 3d 982, affirmed by an equally divided Court.

Roy T. Englert, Jr., argued the cause for petitioner. With him on the briefs were *Ariel N. Lavinbuk*, *Norman H. Levine*, and *Aaron J. Moss*.

Aaron M. Panner argued the cause for respondent. With him on the brief were *Michael K. Kellogg* and *Matthew C. Wagner*.

Deputy Solicitor General Stewart argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Acting Solicitor General Katyal*, *Assistant Attorney General West*, and *Melissa Arbus Sherry*.*

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*Briefs of *amici curiae* urging reversal were filed for the American Library Association et al. by *Jonathan Band;* for eBay, Inc., et al. by *David B. Salmons* and *Mary T. Huser;* for the Entertainment Merchants Association et al. by *John T. Mitchell* and *Kathleen Hartnett;* for Intel Corp. by *Theodore B. Olson*, *Matthew D. McGill*, and *Tina M. Chappell;* for Public Citizen by *Gregory A. Beck*, *Adina H. Rosenbaum*, and *Allison M. Zieve;* for Public Knowledge et al. by *Gigi B. Sohn;* and for the Retail Industry Leaders Association et al. by *Seth D. Greenstein*.

Briefs of *amici curiae* urging affirmance were filed for the American Bar Association by *Stephen N. Zack* and *Thomas C. Goldstein;* for the American Watch Association by *Ronald G. Dove, Jr.;* for the Association of American Publishers by *Charles S. Sims* and *Jon A. Baumgarten;* for the Business Software Alliance by *Andrew J. Pincus;* for FUJIFILM Corp. et al. by *Lawrence Rosenthal;* for the Motion Picture Association of America, Inc., et al. by *Seth P. Waxman*, *Randolph D. Moss*, *Catherine M. A. Carroll*, and *Jennifer L. Pariser;* and for the Software & Information Industry Association by *Scott E. Bain*.

Briefs of *amici curiae* were filed for the American Intellectual Property Law Association by *Patrick J. Coyne;* and for the Intellectual Property Owners Association by *George L. Graff*, *Kevin Rhodes*, *Victoria A. Cundiff*, *Rebecca K. Myers*, and *Laura K. Isenberg*.

PER CURIAM.

The judgment is affirmed by an equally divided Court.

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

Per Curiam

MADISON COUNTY, NEW YORK, ET AL. *v.* ONEIDA INDIAN NATION OF NEW YORK

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

No. 10–72. Decided January 10, 2011

After this Court granted certiorari to consider whether tribal sovereignty bars taxing authorities from foreclosing to collect lawfully imposed property taxes, respondent advised the Court that the Oneida Indian Nation had waived its sovereign immunity to enforcement of real property taxation by state and local governments and addressed petitioners' concerns about the waiver's validity, scope, and permanence.

Held: The case is remanded for the Second Circuit to address, in the first instance, whether to revisit its sovereign immunity ruling in light of this development, and—if necessary—proceed to address other relevant questions consistent with its sovereign immunity ruling.

605 F. 3d 149, vacated and remanded.

PER CURIAM.

We granted certiorari, *post*, p. 960, on the questions "whether tribal sovereign immunity from suit, to the extent it should continue to be recognized, bars taxing authorities from foreclosing to collect lawfully imposed property taxes" and "whether the ancient Oneida reservation in New York was disestablished or diminished." Pet. for Cert. *i.* Counsel for respondent Oneida Indian Nation advised the Court through a letter on November 30, 2010, that the Nation had, on November 29, 2010, passed a tribal declaration and ordinance waiving "its sovereign immunity to enforcement of real property taxation through foreclosure by state, county and local governments within and throughout the United States." Oneida Indian Nation, Ordinance No. O–10–1 (2010). Petitioners Madison and Oneida Counties responded in a December 1, 2010 letter, questioning the validity, scope, and permanence of that waiver; the Nation addressed those concerns in a December 2, 2010 letter.

We vacate the judgment and remand the case to the United States Court of Appeals for the Second Circuit. That court should address, in the first instance, whether to revisit its ruling on sovereign immunity in light of this new factual development, and—if necessary—proceed to address other questions in the case consistent with its sovereign immunity ruling. See *Kiyemba* v. *Obama*, 559 U. S. 131 (2010) *(per curiam)*.

Petitioners are awarded costs in this Court pursuant to this Court's Rule 43.2.

It is so ordered.

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

Syllabus

MAYO FOUNDATION FOR MEDICAL EDUCATION AND RESEARCH ET AL. *v.* UNITED STATES

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

No. 09–837. Argued November 8, 2010—Decided January 11, 2011

Petitioners (hereinafter Mayo) offer residency programs to doctors who have graduated from medical school and seek additional instruction in a chosen specialty. Those programs train doctors primarily through hands-on experience. Although residents are required to take part in formal educational activities, these doctors generally spend the bulk of their time—typically 50 to 80 hours a week—caring for patients. Mayo pays its residents annual "stipends" of over $40,000 and also provides them with health insurance, malpractice insurance, and paid vacation time.

The Federal Insurance Contributions Act (FICA) requires employees and employers to pay taxes on all "wages" employees receive, 26 U. S. C. §§ 3101(a), 3111(a), and defines "wages" to include "all remuneration for employment," § 3121(a). FICA defines "employment" as "any service . . . performed . . . by an employee for the person employing him," § 3121(b), but excludes from taxation any "service performed in the employ of . . . a school, college, or university . . . if such service is performed by a student who is enrolled and regularly attending classes at [the school]," § 3121(b)(10). Since 1951, the Treasury Department has construed the student exception to exempt from taxation students who work for their schools "as an incident to and for the purpose of pursuing a course of study." 16 Fed. Reg. 12474. In 2004, the Department issued regulations providing that "[t]he services of a full-time employee"—which includes an employee normally scheduled to work 40 hours or more per week—"are not incident to and for the purpose of pursuing a course of study." 26 CFR § 31.3121(b)(10)–2(d)(3)(iii). The Department explained that this analysis "is not affected by the fact that the services . . . may have an educational, instructional, or training aspect." *Ibid.* The rule offers as an example a medical resident whose normal schedule requires him to perform services 40 or more hours per week, and concludes that the resident is not a student.

Mayo filed suit asserting that this rule was invalid, and the District Court agreed. It found the full-time employee rule inconsistent with § 3121's unambiguous text and concluded that the factors governing this Court's analysis in *National Muffler Dealers Assn., Inc.* v. *United*

States, 440 U. S. 472, also indicated that the rule was invalid. The Eighth Circuit reversed. Applying *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, the Court of Appeals concluded that the Department's regulation was a permissible interpretation of an ambiguous statute.

Held: The Treasury Department's full-time employee rule is a reasonable construction of § 3121(b)(10). Pp. 52–60.

(a) Under *Chevron*'s two-part framework, the Court first asks whether Congress has "directly addressed the precise question at issue." 467 U. S., at 842–843. Congress has not done so here; the statute does not define "student" or otherwise attend to the question whether medical residents are subject to FICA. Pp. 52–53.

(b) The parties debate whether the Court should next apply *Chevron* step two or the multifactor analysis used to review a tax regulation in *National Muffler*. Absent a justification to do so, this Court is not inclined to apply a less deferential framework to evaluate Treasury Department regulations than it uses to review rules adopted by any other agency. The Court has "[r]ecogniz[ed] the importance of maintaining a uniform approach to judicial review of administrative action." *Dickinson* v. *Zurko*, 527 U. S. 150, 154. And the principles underlying *Chevron* apply with full force in the tax context. *Chevron* recognized that an agency's power "'to administer a congressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left . . . by Congress.'" 467 U. S., at 843. Filling gaps in the Internal Revenue Code plainly requires the Treasury Department to make interpretive choices for statutory implementation at least as complex as the ones made by other agencies in administering their statutes.

It is true that the full-time employee rule, like the rule at issue in *National Muffler*, was promulgated under the Department's general authority to "prescribe all needful rules and regulations for the enforcement" of the Internal Revenue Code. 26 U. S. C. § 7805(a). It is also true that this Court, in opinions predating *Chevron*, stated that it owed less deference to a rule adopted under that general grant of authority than it would afford rules issued pursuant to more specific grants. See *Rowan Cos.* v. *United States*, 452 U. S. 247, 253; *United States* v. *Vogel Fertilizer Co.*, 455 U. S. 16, 24. Since then, however, the Court has found *Chevron* deference appropriate "when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority." *United States* v. *Mead Corp.*, 533 U. S. 218, 226–227. *Chevron* and *Mead* provide the appro-

priate framework for evaluating the full-time employee rule. The Department issued the rule pursuant to an explicit authorization to prescribe needful rules and regulations, and only after notice-and-comment procedures. The Court has recognized these to be good indicators of a rule meriting *Chevron* deference, *Mead*, *supra*, at 229–231. Pp. 53–58.

(c) The rule easily satisfies *Chevron*'s second step. Mayo accepts the Treasury Department's determination that an individual may not qualify for the student exception unless the educational aspect of his relationship with his employer predominates over the service aspect of that relationship, but objects to the Department's conclusion that residents working more than 40 hours per week categorically cannot satisfy that requirement. Mayo argues that the Treasury Department should be required to engage in a case-by-case inquiry into what each employee does and why he does it, and that the Department has arbitrarily distinguished between hands-on training and classroom instruction. But regulation, like legislation, often requires drawing lines. The Department reasonably sought to distinguish between workers who study and students who work. Focusing on the hours spent working and those spent in studies is a sensible way to accomplish that goal. The Department thus has drawn a distinction between education and service, not between classroom instruction and hands-on training. The Treasury Department also reasonably concluded that its full-time employee rule would "improve administrability," 69 Fed. Reg. 76405, and thereby "has avoided the wasteful litigation and continuing uncertainty that would inevitably accompany [a] case-by-case approach" like the one Mayo advocates, *United States* v. *Correll*, 389 U. S. 299, 302. Moreover, the rule reasonably takes into account the Social Security Administration's concern that exempting residents from FICA would deprive them and their families of vital Social Security disability and survivorship benefits. Pp. 58–60.

568 F. 3d 675, affirmed.

ROBERTS, C. J., delivered the opinion of the Court, in which all other Members joined, except KAGAN, J., who took no part in the consideration or decision of the case.

Theodore B. Olson argued the cause for petitioners. With him on the briefs were *Matthew D. McGill*, *Amir C. Tayrani*, and *John W. Windhorst, Jr.*

Matthew D. Roberts argued the cause for the United States. With him on the brief were *Deputy Solicitor Gen-*

eral Kneedler, *Acting Assistant Attorney General DiCicco*, *Deputy Solicitor General Stewart*, *Teresa E. McLaughlin*, and *Bridget M. Rowan*.*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Nearly all Americans who work for wages pay taxes on those wages under the Federal Insurance Contributions Act (FICA), which Congress enacted to collect funds for Social Security. The question presented in this case is whether doctors who serve as medical residents are properly viewed as "student[s]" whose service Congress has exempted from FICA taxes under 26 U. S. C. § 3121(b)(10).

I

A

Most doctors who graduate from medical school in the United States pursue additional education in a specialty to become board certified to practice in that field. Petitioners Mayo Foundation for Medical Education and Research, Mayo Clinic, and the Regents of the University of Minnesota (collectively Mayo) offer medical residency programs that pro-

*Briefs of *amici curiae* urging reversal were filed for the American Hospital Association by *F. Curt Kirschner, Jr.*, and *Ritu K. Singh;* for the Association of American Medical Colleges et al. by *Jonathan S. Franklin*, *Robert A. Burgoyne*, and *Mark Emery;* for BJC HealthCare et al. by *Mark H. Churchill*, *Paul M. Thompson*, *Robin L. Greenhouse*, and *Jeffrey W. Mikoni;* for the Loyola University Medical Center by *Stephen B. Kinnaird*, *Charles E. Reiter III*, and *Nancy Iredale;* for the University of Alabama at Birmingham et al. by *Robert A. Long, Jr.*, *Michael R. Levy*, *Michael A. Schlanger*, and *Mark W. Mosier;* for the University of Texas System by *John P. Elwood*, *Barry D. Burgdorf*, *Donald F. Wood*, and *Harry M. Reasoner;* and for Carlton M. Smith by *Mr. Smith*, *pro se*.

Briefs of *amici curiae* urging affirmance were filed for the Committee of Interns and Residents SEIU et al. by *Thomas M. Kennedy;* and for the Doctors Council SEIU by *Richard M. Betheil*.

Kristin E. Hickman, *pro se*, filed a brief as *amicus curiae*.

vide such instruction. Mayo's residency programs, which usually last three to five years, train doctors primarily through hands-on experience. Residents often spend between 50 and 80 hours a week caring for patients, typically examining and diagnosing them, prescribing medication, recommending plans of care, and performing certain procedures. Residents are generally supervised in this work by more senior residents and by faculty members known as attending physicians. In 2005, Mayo paid its residents annual "stipends" ranging between $41,000 and $56,000 and provided them with health insurance, malpractice insurance, and paid vacation time.

Mayo residents also take part in "a formal and structured educational program." Brief for Petitioners 5 (internal quotation marks omitted). Residents are assigned textbooks and journal articles to read and are expected to attend weekly lectures and other conferences. Residents also take written exams and are evaluated by the attending faculty physicians. But the parties do not dispute that the bulk of residents' time is spent caring for patients.

B

Through the Social Security Act and related legislation, Congress has created a comprehensive national insurance system that provides benefits for retired workers, disabled workers, unemployed workers, and their families. See *United States* v. *Lee*, 455 U. S. 252, 254, 258, and nn. 1, 7 (1982). Congress funds Social Security by taxing both employers and employees under FICA on the wages employees earn. See 26 U. S. C. § 3101(a) (tax on employees); § 3111(a) (tax on employers). Congress has defined "wages" broadly, to encompass "all remuneration for employment." § 3121(a) (2006 ed. and Supp. III). The term "employment" has a similarly broad reach, extending to "any service, of whatever nature, performed . . . by an employee for the person employing him." § 3121(b).

Congress has, however, exempted certain categories of service and individuals from FICA's demands. As relevant here, Congress has excluded from taxation "service performed in the employ of . . . a school, college, or university . . . if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university." § 3121(b)(10) (2006 ed.). The Social Security Act, which governs workers' eligibility for benefits, contains a corresponding student exception materially identical to § 3121(b)(10). 42 U. S. C. § 410(a)(10).

Since 1951, the Treasury Department has applied the student exception to exempt from taxation students who work for their schools "as an incident to and for the purpose of pursuing a course of study" there. 16 Fed. Reg. 12474 (adopting Treas. Regs. 127, § 408.219(c)); see Treas. Reg. § 31.3121(b)(10)–2(d), 26 CFR § 31.3121(b)(10)–2(d) (2010). Until 2005, the Department determined whether an individual's work was "incident to" his studies by performing a case-by-case analysis. The primary considerations in that analysis were the number of hours worked and the course load taken. See, *e. g.*, Rev. Rul. 78–17, 1978–1 Cum. Bull. 307 (services of individual "employed on a full-time basis" with a part-time course load are "not incident to and for the purpose of pursuing a course of study").

For its part, the Social Security Administration (SSA) also articulated in its regulations a case-by-case approach to the corresponding student exception in the Social Security Act. See 20 CFR § 404.1028(c) (1998). The SSA has, however, "always held that resident physicians are not students." SSR 78–3, Cum. Bull. 1978, pp. 55–56. In 1998, the Court of Appeals for the Eighth Circuit held that the SSA could not categorically exclude residents from student status, given that its regulations provided for a case-by-case approach. See *Minnesota* v. *Apfel*, 151 F. 3d 742, 747–748. Following that decision, the Internal Revenue Service received more than 7,000 claims seeking FICA tax refunds on

the ground that medical residents qualified as students under §3121(b)(10) of the Internal Revenue Code. 568 F. 3d 675, 677 (CA8 2009).

Facing that flood of claims, the Treasury Department "determined that it [wa]s necessary to provide additional clarification of the ter[m]" "student" as used in §3121(b)(10), particularly with respect to individuals who perform "services that are in the nature of on the job training." 69 Fed. Reg. 8605 (2004). The Department proposed an amended rule for comment and held a public hearing on it. See *id.*, at 76405.

On December 21, 2004, the Department adopted an amended rule prescribing that an employee's service is "incident" to his studies only when "[t]he educational aspect of the relationship between the employer and the employee, as compared to the service aspect of the relationship, [is] predominant." *Id.*, at 76408; Treas. Reg. §31.3121(b)(10)–2(d)(3)(i), 26 CFR §31.3121(b)(10)–2(d)(3)(i) (2005). The rule categorically provides that "[t]he services of a full-time employee"—as defined by the employer's policies, but in any event including any employee normally scheduled to work 40 hours or more per week—"are not incident to and for the purpose of pursuing a course of study." 69 Fed. Reg. 76408; Treas. Reg. §31.3121(b)(10)–2(d)(3)(iii), 26 CFR §31.3121(b)(10)–2(d)(3)(iii) (the full-time employee rule). The amended provision clarifies that the Department's analysis "is not affected by the fact that the services performed . . . may have an educational, instructional, or training aspect." *Ibid.* The rule also includes as an example the case of "Employee E," who is employed by "University V" as a medical resident. 69 Fed. Reg. 76409; Treas. Reg. §31.3121(b)(10)–2(e), 26 CFR §31.3121(b)(10)–2(e) (Example 4). Because Employee E's "normal work schedule calls for [him] to perform services 40 or more hours per week," the rule provides that his service is "not incident to and for the purpose of pursuing a course of study," and he accordingly is not an exempt "student" under §3121(b)(10).

69 Fed. Reg. 76409, 76410; Treas. Reg. § 31.3121(b)(10)–2(e), 26 CFR § 31.3121(b)(10)–2(e) (Example 4).

C

After the Department promulgated the full-time employee rule, Mayo filed suit seeking a refund of the money it had withheld and paid on its residents' stipends during the second quarter of 2005. 503 F. Supp. 2d 1164, 1166–1167 (Minn. 2007); *Regents of Univ. of Minn.* v. *United States*, Civ. No. 06–5084 (D Minn., Apr. 1, 2008), App. to Pet. for Cert. 47a. Mayo asserted that its residents were exempt under § 3121(b)(10) and that the Treasury Department's full-time employee rule was invalid.

The District Court granted Mayo's motion for summary judgment. The court held that the full-time employee rule is inconsistent with the unambiguous text of § 3121, which the court understood to dictate that "an employee is a 'student' so long as the educational aspect of his service predominates over the service aspect of the relationship with his employer." 503 F. Supp. 2d, at 1175. The court also determined that the factors governing this Court's analysis of regulations set forth in *National Muffler Dealers Assn., Inc.* v. *United States*, 440 U. S. 472 (1979), "indicate that the full-time employee exception is invalid." 503 F. Supp. 2d, at 1176; see App. to Pet. for Cert. 54a.

The Government appealed, and the Court of Appeals reversed. 568 F. 3d 675. Applying our opinion in *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), the Court of Appeals concluded that "the statute is silent or ambiguous on the question whether a medical resident working for the school full-time is a 'student'" for purposes of § 3121(b)(10), and that the Department's amended regulation "is a permissible interpretation of the statut[e]." 568 F. 3d, at 679–680, 683.

We granted Mayo's petition for certiorari. 560 U. S. 938 (2010).

II

A

We begin our analysis with the first step of the two-part framework announced in *Chevron*, *supra*, at 842–843, and ask whether Congress has "directly addressed the precise question at issue." We agree with the Court of Appeals that Congress has not done so. The statute does not define the term "student," and does not otherwise attend to the precise question whether medical residents are subject to FICA. See 26 U. S. C. § 3121(b)(10).

Mayo nonetheless contends that the Treasury Department's full-time employee rule must be rejected under *Chevron* step one. Mayo argues that the dictionary definition of "student"—one "who engages in 'study' by applying the mind 'to the acquisition of learning, whether by means of books, observation, or experiment' "—plainly encompasses residents. Brief for Petitioners 22 (quoting Oxford Universal Dictionary 2049–2050 (3d ed. 1955)). And, Mayo adds, residents are not excluded from that category by the only limitation on students Congress has imposed under the statute—that they "be 'enrolled and regularly attending classes at [a] school.' " Brief for Petitioners 22 (quoting § 3121(b)(10)).

Mayo's reading does not eliminate the statute's ambiguity as applied to working professionals. In its reply brief, Mayo acknowledges that a full-time professor taking evening classes—a person who presumably would satisfy the statute's class-enrollment requirement and apply his mind to learning—could be excluded from the exemption and taxed because he is not " 'predominant[ly]' " a student. Reply Brief for Petitioners 7. Medical residents might likewise be excluded on the same basis; the statute itself does not resolve the ambiguity.

The District Court interpreted § 3121(b)(10) as unambiguously foreclosing the Department's rule by mandating that

an employee be deemed "a 'student' so long as the educational aspect of his service predominates over the service aspect of the relationship with his employer." 503 F. Supp. 2d, at 1175. We do not think it possible to glean so much from the little that § 3121 provides. In any event, the statutory text still would offer no insight into how Congress intended predominance to be determined or whether Congress thought that medical residents would satisfy the requirement.

To the extent Congress has specifically addressed medical residents in § 3121, moreover, it has expressly excluded these doctors from exemptions they might otherwise invoke. See §§ 3121(b)(6)(B), (7)(C)(ii) (excluding medical residents from exemptions available to employees of the District of Columbia and the United States). That choice casts doubt on any claim that Congress specifically intended to insulate medical residents from FICA's reach in the first place.

In sum, neither the plain text of the statute nor the District Court's interpretation of the exemption "speak[s] with the precision necessary to say definitively whether [the statute] applies to" medical residents. *United States* v. *Eurodif S. A.*, 555 U. S. 305, 319 (2009).

B

In the typical case, such an ambiguity would lead us inexorably to *Chevron* step two, under which we may not disturb an agency rule unless it is "'arbitrary or capricious in substance, or manifestly contrary to the statute.'" *Household Credit Services, Inc.* v. *Pfennig*, 541 U. S. 232, 242 (2004) (quoting *United States* v. *Mead Corp.*, 533 U. S. 218, 227 (2001)). In this case, however, the parties disagree over the proper framework for evaluating an ambiguous provision of the Internal Revenue Code.

Mayo asks us to apply the multifactor analysis we used to review a tax regulation in *National Muffler*, *supra*. There we explained:

> "A regulation may have particular force if it is a substantially contemporaneous construction of the statute by those presumed to have been aware of congressional intent. If the regulation dates from a later period, the manner in which it evolved merits inquiry. Other relevant considerations are the length of time the regulation has been in effect, the reliance placed on it, the consistency of the Commissioner's interpretation, and the degree of scrutiny Congress has devoted to the regulation during subsequent re-enactments of the statute." *Id.*, at 477.

The Government, on the other hand, contends that the *National Muffler* standard has been superseded by *Chevron.* The sole question for the Court at step two under the *Chevron* analysis is "whether the agency's answer is based on a permissible construction of the statute." 467 U. S., at 843.

Since deciding *Chevron,* we have cited both *National Muffler* and *Chevron* in our review of Treasury Department regulations. See, *e. g., United States* v. *Cleveland Indians Baseball Co.,* 532 U. S. 200, 219 (2001) (citing *National Muffler*); *Cottage Savings Assn.* v. *Commissioner,* 499 U. S. 554, 560–561 (1991) (same); *United States* v. *Boyle,* 469 U. S. 241, 246, n. 4 (1985) (citing *Chevron*); see also *Atlantic Mut. Ins. Co.* v. *Commissioner,* 523 U. S. 382, 387, 389 (1998) (citing *Chevron* and *Cottage Savings*).

Although we have not thus far distinguished between *National Muffler* and *Chevron,* they call for different analyses of an ambiguous statute. Under *National Muffler,* for example, a court might view an agency's interpretation of a statute with heightened skepticism when it has not been consistent over time, when it was promulgated years after the relevant statute was enacted, or because of the way in which the regulation evolved. 440 U. S., at 477. The District Court in this case cited each of these factors in rejecting the Treasury Department's rule, noting in particular that the regulation had been promulgated after an adverse judicial

decision. See 503 F. Supp. 2d, at 1176; see also Brief for Petitioners 41–44 (relying on the same considerations).

Under *Chevron*, in contrast, deference to an agency's interpretation of an ambiguous statute does not turn on such considerations. We have repeatedly held that "[a]gency inconsistency is not a basis for declining to analyze the agency's interpretation under the *Chevron* framework." *National Cable & Telecommunications Assn.* v. *Brand X Internet Services*, 545 U. S. 967, 981 (2005); accord, *Eurodif S. A.*, *supra*, at 316. We have instructed that "neither antiquity nor contemporaneity with [a] statute is a condition of [a regulation's] validity." *Smiley* v. *Citibank (South Dakota), N. A.*, 517 U. S. 735, 740 (1996). And we have found it immaterial to our analysis that a "regulation was prompted by litigation." *Id.*, at 741. Indeed, in *United Dominion Industries, Inc.* v. *United States*, 532 U. S. 822, 838 (2001), we expressly invited the Treasury Department to "amend its regulations" if troubled by the consequences of our resolution of the case.

Aside from our past citation of *National Muffler*, Mayo has not advanced any justification for applying a less deferential standard of review to Treasury Department regulations than we apply to the rules of any other agency. In the absence of such justification, we are not inclined to carve out an approach to administrative review good for tax law only. To the contrary, we have expressly "[r]ecogniz[ed] the importance of maintaining a uniform approach to judicial review of administrative action." *Dickinson* v. *Zurko*, 527 U. S. 150, 154 (1999). See, *e. g.*, *Skinner* v. *Mid-America Pipeline Co.*, 490 U. S. 212, 222–223 (1989) (declining to apply "a different and stricter nondelegation doctrine in cases where Congress delegates discretionary authority to the Executive under its taxing power").

The principles underlying our decision in *Chevron* apply with full force in the tax context. *Chevron* recognized that "[t]he power of an administrative agency to administer a con-

gressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress." 467 U. S., at 843 (internal quotation marks omitted). It acknowledged that the formulation of that policy might require "more than ordinary knowledge respecting the matters subjected to agency regulations." *Id.*, at 844 (internal quotation marks omitted). Filling gaps in the Internal Revenue Code plainly requires the Treasury Department to make interpretive choices for statutory implementation at least as complex as the ones other agencies must make in administering their statutes. Cf. *Bob Jones Univ.* v. *United States*, 461 U. S. 574, 596 (1983) ("In an area as complex as the tax system, the agency Congress vests with administrative responsibility must be able to exercise its authority to meet changing conditions and new problems"). We see no reason why our review of tax regulations should not be guided by agency expertise pursuant to *Chevron* to the same extent as our review of other regulations.

As one of Mayo's *amici* points out, however, both the full-time employee rule and the rule at issue in *National Muffler* were promulgated pursuant to the Treasury Department's general authority under 26 U. S. C. § 7805(a) to "prescribe all needful rules and regulations for the enforcement" of the Internal Revenue Code. See Brief for Carlton M. Smith 4–7. In two decisions predating *Chevron*, this Court stated that "we owe the [Treasury Department's] interpretation less deference" when it is contained in a rule adopted under that "general authority" than when it is "issued under a specific grant of authority to define a statutory term or prescribe a method of executing a statutory provision." *Rowan Cos.* v. *United States*, 452 U. S. 247, 253 (1981); *United States* v. *Vogel Fertilizer Co.*, 455 U. S. 16, 24 (1982) (quoting *Rowan*).

Since *Rowan* and *Vogel* were decided, however, the administrative landscape has changed significantly. We have held

that *Chevron* deference is appropriate "when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority." *Mead*, 533 U. S., at 226–227. Our inquiry in that regard does not turn on whether Congress's delegation of authority was general or specific. For example, in *National Cable & Telecommunications Assn.*, *supra*, we held that the Federal Communications Commission was delegated "the authority to promulgate binding legal rules" entitled to *Chevron* deference under statutes that gave the Commission "the authority to 'execute and enforce,'" and "to 'prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions' of," the Communications Act of 1934. 545 U. S., at 980–981 (quoting 47 U. S. C. §§ 151, 201(b)). See also *Sullivan* v. *Everhart*, 494 U. S. 83, 87, 88–89 (1990) (applying *Chevron* deference to rule promulgated pursuant to delegation of "general authority to 'make rules and regulations and to establish procedures, not inconsistent with the provisions of this subchapter, which are necessary or appropriate to carry out such provisions'" (quoting 42 U. S. C. § 405(a) (1982 ed.))).

We believe *Chevron* and *Mead*, rather than *National Muffler* and *Rowan*, provide the appropriate framework for evaluating the full-time employee rule. The Department issued the full-time employee rule pursuant to the explicit authorization to "prescribe all needful rules and regulations for the enforcement" of the Internal Revenue Code. 26 U. S. C. § 7805(a) (2006 ed.). We have found such "express congressional authorizations to engage in the process of rulemaking" to be "a very good indicator of delegation meriting *Chevron* treatment." *Mead*, *supra*, at 229. The Department issued the full-time employee rule only after notice-and-comment procedures, 69 Fed. Reg. 76405, again a consideration identified in our precedents as a "significant" sign that a rule mer-

its *Chevron* deference. *Mead, supra,* at 230–231; see, *e. g.*, *Long Island Care at Home, Ltd.* v. *Coke,* 551 U. S. 158, 173–174 (2007).

We have explained that "the ultimate question is whether Congress would have intended, and expected, courts to treat [the regulation] as within, or outside, its delegation to the agency of 'gap-filling' authority." *Id.*, at 173 (emphasis deleted). In the *Long Island Care* case, we found that *Chevron* provided the appropriate standard of review "[w]here an agency rule sets forth important individual rights and duties, where the agency focuses fully and directly upon the issue, where the agency uses full notice-and-comment procedures to promulgate a rule, [and] where the resulting rule falls within the statutory grant of authority." 551 U. S., at 173. These same considerations point to the same result here. This case falls squarely within the bounds of, and is properly analyzed under, *Chevron* and *Mead.*

C

The full-time employee rule easily satisfies the second step of *Chevron,* which asks whether the Department's rule is a "reasonable interpretation" of the enacted text. 467 U. S., at 844. To begin, Mayo accepts that "the 'educational aspect of the relationship between the employer and the employee, as compared to the service aspect of the relationship, [must] be predominant' " in order for an individual to qualify for the exemption. Reply Brief for Petitioners 6–7 (quoting Treas. Reg. § 31.3121(b)(10)–2(d)(3)(i), 26 CFR § 31.3121(b)(10)–2(d)(3)(i)). Mayo objects, however, to the Department's conclusion that residents who work more than 40 hours per week categorically cannot satisfy that requirement. Because residents' employment is itself educational, Mayo argues, the hours a resident spends working make him "more of a student, not less of one." Reply Brief for Petitioners 15, n. 3 (emphasis deleted). Mayo contends that the Treasury Department should be required to engage in a case-by-case

inquiry into "*what* [each] employee does [in his service] and *why*" he does it. *Id.*, at 7. Mayo also objects that the Department has drawn an arbitrary distinction between "hands-on training" and "classroom instruction." Brief for Petitioners 35.

We disagree. Regulation, like legislation, often requires drawing lines. Mayo does not dispute that the Treasury Department reasonably sought a way to distinguish between workers who study and students who work, see IRS Letter Ruling 9332005 (May 3, 1993). Focusing on the hours an individual works and the hours he spends in studies is a perfectly sensible way of accomplishing that goal. The Department explained that an individual's service and his "course of study are separate and distinct activities" in "the vast majority of cases," and reasoned that "[e]mployees who are working enough hours to be considered full-time employees . . . have filled the conventional measure of available time with work, and not study." 69 Fed. Reg. 8607. The Department thus did not distinguish classroom education from clinical training but rather education from service. The Department reasonably concluded that its full-time employee rule would "improve administrability," *id.*, at 76405, and it thereby "has avoided the wasteful litigation and continuing uncertainty that would inevitably accompany any purely case-by-case approach" like the one Mayo advocates, *United States* v. *Correll*, 389 U. S. 299, 302 (1967).

As the Treasury Department has explained, moreover, the full-time employee rule has more to recommend it than administrative convenience. The Department reasonably determined that taxing residents under FICA would further the purpose of the Social Security Act and comport with this Court's precedent. As the Treasury Department appreciated, this Court has understood the terms of the Social Security Act to "'import a breadth of coverage,'" 69 Fed. Reg. 8605 (quoting *Social Security Bd.* v. *Nierotko*, 327 U. S. 358, 365 (1946)), and we have instructed that "exemptions from

taxation are to be construed narrowly," *Bingler* v. *Johnson*, 394 U. S. 741, 752 (1969). Although Mayo contends that medical residents have not yet begun their "working lives" because they are not "fully trained," Reply Brief for Petitioners 13 (internal quotation marks omitted), the Department certainly did not act irrationally in concluding that these doctors—"who work long hours, serve as highly skilled professionals, and typically share some or all of the terms of employment of career employees"—are the kind of workers that Congress intended to both contribute to and benefit from the Social Security system, 69 Fed. Reg. 8608.

The Department's rule takes into account the SSA's concern that exempting residents from FICA would deprive residents and their families of vital disability and survivorship benefits that Social Security provides. *Id.*, at 8605. Mayo wonders whether the full-time employee rule will result in residents being taxed under FICA but denied coverage by the SSA. The Government informs us, however, that the SSA continues to adhere to its longstanding position that medical residents are not students and thus remain eligible for coverage. Brief for United States 29–30; Tr. of Oral Arg. 33–34.

* * *

We do not doubt that Mayo's residents are engaged in a valuable educational pursuit or that they are students of their craft. The question whether they are "students" for purposes of § 3121, however, is a different matter. Because it is one to which Congress has not directly spoken, and because the Treasury Department's rule is a reasonable construction of what Congress has said, the judgment of the Court of Appeals must be affirmed.

It is so ordered.

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

Syllabus

RANSOM *v.* FIA CARD SERVICES, N. A., FKA MBNA AMERICA BANK, N. A.

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

No. 09–907. Argued October 4, 2010—Decided January 11, 2011

Chapter 13 of the Bankruptcy Code uses a statutory formula known as the "means test" to help ensure that debtors who *can* pay creditors *do* pay them. The means test instructs a debtor to determine his "disposable income"—the amount he has available to reimburse creditors—by deducting from his current monthly income "amounts reasonably necessary to be expended" for, *inter alia*, "maintenance or support." 11 U. S. C. § 1325(b)(2)(A)(i). For a debtor whose income is above the median for his State, the means test indentifies which expenses qualify as "amounts reasonably necessary to be expended." As relevant here, the statute provides that "[t]he debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service [IRS] for the area in which the debtor resides." § 707(b)(2)(A)(ii)(I).

The Standards are tables listing standardized expense amounts for basic necessities, which the IRS prepares to help calculate taxpayers' ability to pay overdue taxes. The IRS also creates supplemental guidelines known as the "Collection Financial Standards," which describe how to use the tables and what the amounts listed in them mean. The Local Standards include an allowance for transportation expenses, divided into vehicle "Ownership Costs" and vehicle "Operating Costs." The Collection Financial Standards explain that "Ownership Costs" cover monthly loan or lease payments on an automobile; the expense amounts listed are based on nationwide car-financing data. The Collection Financial Standards further state that a taxpayer who has no car payment may not claim an allowance for ownership costs.

When petitioner Ransom filed for Chapter 13 bankruptcy relief, he listed respondent (FIA) as an unsecured creditor. Among his assets, Ransom reported a car that he owns free of any debt. In determining his monthly expenses, he nonetheless claimed a car-ownership deduction of $471, the full amount specified in the "Ownership Costs" table, as well as a separate $338 deduction for car-operating costs. Based on his

means-test calculations, Ransom proposed a bankruptcy plan that would result in repayment of approximately 25% of his unsecured debt. FIA objected on the ground that the plan did not direct all of Ransom's disposable income to unsecured creditors. FIA contended that Ransom should not have claimed the car-ownership allowance because he does not make loan or lease payments on his car. Agreeing, the Bankruptcy Court denied confirmation of the plan. The Ninth Circuit Bankruptcy Appellate Panel and the Ninth Circuit affirmed.

Held: A debtor who does not make loan or lease payments may not take the car-ownership deduction. Pp. 69–80.

(a) This Court's interpretation begins with the language of the Bankruptcy Code, which provides that a debtor may claim only "applicable" expense amounts listed in the Standards. Because the Code does not define the key word "applicable," the term carries its ordinary meaning of appropriate, relevant, suitable, or fit. What makes an expense amount "applicable" in this sense is most naturally understood to be its correspondence to an individual debtor's financial circumstances. Congress established a filter, permitting a debtor to claim a deduction from a National or Local Standard table only if that deduction is appropriate for him. And a deduction is so appropriate only if the debtor will incur the kind of expense covered by the table during the life of the plan. Had Congress not wanted to separate debtors who qualify for an allowance from those who do not, it could have omitted the term "applicable" altogether. Without that word, all debtors would be eligible to claim a deduction for each category listed in the Standards. Interpreting the statute to require a threshold eligibility determination thus ensures that "applicable" carries meaning, as each word in a statute should.

This reading draws support from the statute's context and purpose. The Code initially defines a debtor's disposable income as his "current monthly income . . . less amounts reasonably necessary to be expended." § 1325(b)(2). It then instructs that such reasonably necessary amounts "shall be determined in accordance with" the means test. § 1325(b)(3). Because Congress intended the means test to approximate the debtor's reasonable expenditures on essential items, a debtor should be required to qualify for a deduction by actually incurring an expense in the relevant category. Further, the statute's purpose—to ensure that debtors pay creditors the maximum they can afford—is best achieved by interpreting the means test, consistent with the statutory text, to reflect a debtor's ability to afford repayment. Pp. 69–71.

(b) The vehicle-ownership category covers only the costs of a car loan or lease. The expense amount listed ($471) is the average monthly pay-

ment for loans and leases nationwide; it is not intended to estimate other conceivable expenses associated with maintaining a car. Maintenance expenses are the province of the separate "Operating Costs" deduction. A person who owns a car free and clear is entitled to the "Operating Costs" deduction for all driving-related expenses. But such a person may not claim the "Ownership Costs" deduction, because that allowance is for the separate costs of a car loan or lease. The IRS's Collection Financial Standards reinforce this conclusion by making clear that individuals who have a car but make no loan or lease payments may take only the operating-costs deduction. Because Ransom owns his vehicle outright, he incurs no expense in the "Ownership Costs" category, and that expense amount is therefore not "applicable" to him. Pp. 71–73.

(c) Ransom's arguments to the contrary—an alternative interpretation of the key word "applicable," an objection to the Court's view of the scope of the "Ownership Costs" category, and a criticism of the policy implications of the Court's approach—are unpersuasive. Pp. 73–80.

577 F. 3d 1026, affirmed.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, GINSBURG, BREYER, ALITO, and SOTOMAYOR, JJ., joined. SCALIA, J., filed a dissenting opinion, *post*, p. 80.

Christopher P. Burke argued the cause for petitioner. With him on the briefs was *Daniel Lucid.*

Deanne E. Maynard argued the cause for respondent. With her on the brief were *Seth M. Galanter*, *Marc A. Hearron*, *Mark P. Ladner*, *Larren M. Nashelsky*, *Gilbert B. Weisman*, *John D. Sheehan*, and *William Andrew McNeal.*

Nicole A. Saharsky argued the cause for the United States as *amicus curiae* in support of respondent. With her on the brief were *Acting Solicitor General Katyal*, *Acting Assistant Attorney General Hertz*, *Deputy Solicitor General Stewart*, *William Kanter*, *Jeffrica Jenkins Lee*, *Ramona D. Elliott*, and *P. Matthew Sutko.**

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*A brief of *amicus curiae* urging reversal was filed for the National Association of Consumer Bankruptcy Attorneys by *Jonathan S. Massey* and *Tara Twomey.*

A brief of *amicus curiae* urging affirmance was filed for G. Eric Brunstad, Jr., by *Mr. Brunstad, pro se,* and *Collin O'Connor Udell.*

JUSTICE KAGAN delivered the opinion of the Court.

Chapter 13 of the Bankruptcy Code enables an individual to obtain a discharge of his debts if he pays his creditors a portion of his monthly income in accordance with a court-approved plan. 11 U. S. C. § 1301 *et seq.* To determine how much income the debtor is capable of paying, Chapter 13 uses a statutory formula known as the "means test." §§ 707(b)(2) (2006 ed. and Supp. III), 1325(b)(3)(A) (2006 ed.). The means test instructs a debtor to deduct specified expenses from his current monthly income. The result is his "disposable income"—the amount he has available to reimburse creditors. § 1325(b)(2).

This case concerns the specified expense for vehicle-ownership costs. We must determine whether a debtor like petitioner Jason Ransom who owns his car outright, and so does not make loan or lease payments, may claim an allowance for car-ownership costs (thereby reducing the amount he will repay creditors). We hold that the text, context, and purpose of the statutory provision at issue preclude this result. A debtor who does not make loan or lease payments may not take the car-ownership deduction.

I

A

"Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA or Act) to correct perceived abuses of the bankruptcy system." *Milavetz, Gallop & Milavetz, P. A.* v. *United States*, 559 U. S. 229, 231–232 (2010). In particular, Congress adopted the means test—"[t]he heart of [BAPCPA's] consumer bankruptcy reforms," H. R. Rep. No. 109–31, pt. 1, p. 2 (2005) (hereinafter H. R. Rep.), and the home of the statutory language at issue here—to help ensure that debtors who *can* pay creditors *do* pay them. See, *e. g.*, *ibid.* (under BAPCPA, "debtors [will] repay creditors the maximum they can afford").

In Chapter 13 proceedings, the means test provides a formula to calculate a debtor's disposable income, which the debtor must devote to reimbursing creditors under a court-approved plan generally lasting from three to five years. §§ 1325(b)(1)(B) and (b)(4).[1] The statute defines "disposable income" as "current monthly income" less "amounts reasonably necessary to be expended" for "maintenance or support," business expenditures, and certain charitable contributions. §§ 1325(b)(2)(A)(i) and (ii). For a debtor whose income is above the median for his State, the means test identifies which expenses qualify as "amounts reasonably necessary to be expended." The test supplants the pre-BAPCPA practice of calculating debtors' reasonable expenses on a case-by-case basis, which led to varying and often inconsistent determinations. See, *e. g.*, *In re Slusher*, 359 B. R. 290, 294 (Bkrtcy. Ct. Nev. 2007).

Under the means test, a debtor calculating his "reasonably necessary" expenses is directed to claim allowances for defined living expenses, as well as for secured and priority debt. §§ 707(b)(2)(A)(ii)–(iv). As relevant here, the statute provides:

> "The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal

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[1] Chapter 13 borrows the means test from Chapter 7, where it is used as a screening mechanism to determine whether a Chapter 7 proceeding is appropriate. Individuals who file for bankruptcy relief under Chapter 7 liquidate their nonexempt assets, rather than dedicate their future income, to repay creditors. See 11 U. S. C. §§ 704(a)(1), 726. If the debtor's Chapter 7 petition discloses that his disposable income as calculated by the means test exceeds a certain threshold, the petition is presumptively abusive. § 707(b)(2)(A)(i). If the debtor cannot rebut the presumption, the court may dismiss the case or, with the debtor's consent, convert it into a Chapter 13 proceeding. § 707(b)(1).

> Revenue Service [IRS] for the area in which the debtor resides." § 707(b)(2)(A)(ii)(I).

These are the principal amounts that the debtor can claim as his reasonable living expenses and thereby shield from creditors.

The National and Local Standards referenced in this provision are tables that the IRS prepares listing standardized expense amounts for basic necessities.[2] The IRS uses the Standards to help calculate taxpayers' ability to pay overdue taxes. See 26 U. S. C. § 7122(d)(2). The IRS also prepares supplemental guidelines known as the Collection Financial Standards, which describe how to use the tables and what the amounts listed in them mean.

The Local Standards include an allowance for transportation expenses, divided into vehicle "Ownership Costs" and vehicle "Operating Costs."[3] At the time Ransom filed for bankruptcy, the "Ownership Costs" table appeared as follows:

Ownership Costs

	First Car	**Second Car**
National	$471	$332

App. to Brief for Respondent 5a. The Collection Financial Standards explain that these ownership costs represent "na-

[2] The National Standards designate allowances for six categories of expenses: (1) food; (2) housekeeping supplies; (3) apparel and services; (4) personal care products and services; (5) out-of-pocket health care costs; and (6) miscellaneous expenses. Internal Revenue Manual § 5.15.1.8 (Oct. 2, 2009), http://www.irs.gov/irm/part5/irm_05-015-001.html#d0e1012 (all Internet materials as visited Jan. 7, 2011, and available in Clerk of Court's case file). The Local Standards authorize deductions for two kinds of expenses: (1) housing and utilities; and (2) transportation. *Id.*, § 5.15.1.9.

[3] Although both components of the transportation allowance are listed in the Local Standards, only the operating-cost expense amounts vary by geography; in contrast, the IRS provides a nationwide figure for ownership costs.

tionwide figures for monthly loan or lease payments," *id.*, at 2a; the numerical amounts listed are "base[d] . . . on the five-year average of new and used car financing data compiled by the Federal Reserve Board," *id.*, at 3a. The Collection Financial Standards further instruct that, in the tax-collection context, "[i]f a taxpayer has no car payment, . . . only the operating costs portion of the transportation standard is used to come up with the allowable transportation expense." *Ibid.*

B

Ransom filed for Chapter 13 bankruptcy relief in July 2006. App. 1, 54. Among his liabilities, Ransom itemized over $82,500 in unsecured debt, including a claim held by respondent FIA Card Services, N. A. (FIA). *Id.*, at 41. Among his assets, Ransom listed a 2004 Toyota Camry, valued at $14,000, which he owns free of any debt. *Id.*, at 38, 49, 52.

For purposes of the means test, Ransom reported income of $4,248.56 per month. *Id.*, at 46. He also listed monthly expenses totaling $4,038.01. *Id.*, at 53. In determining those expenses, Ransom claimed a car-ownership deduction of $471 for the Camry, the full amount specified in the IRS's "Ownership Costs" table. *Id.*, at 49. Ransom listed a separate deduction of $338 for car-operating costs. *Ibid.* Based on these figures, Ransom had disposable income of $210.55 per month. *Id.*, at 53.

Ransom proposed a 5-year plan that would result in repayment of approximately 25% of his unsecured debt. *Id.*, at 55. FIA objected to confirmation of the plan on the ground that it did not direct all of Ransom's disposable income to unsecured creditors. *Id.*, at 64. In particular, FIA argued that Ransom should not have claimed the car-ownership allowance because he does not make loan or lease payments on his car. *Id.*, at 67. FIA noted that without this allowance, Ransom's disposable income would be $681.55—the $210.55 he reported plus the $471 he deducted for vehicle ownership. *Id.*, at 71. The difference over the 60 months of the plan amounts to about $28,000.

C

The Bankruptcy Court denied confirmation of Ransom's plan. App. to Pet. for Cert. 48. The court held that Ransom could deduct a vehicle-ownership expense only "if he is currently making loan or lease payments on that vehicle." *Id.*, at 41.

Ransom appealed to the Ninth Circuit Bankruptcy Appellate Panel, which affirmed. *In re Ransom*, 380 B. R. 799, 808–809 (2007). The panel reasoned that an "expense [amount] becomes relevant to the debtor (i. e., appropriate or applicable to the debtor) when he or she in fact has such an expense." *Id.*, at 807. "[W]hat is important," the panel noted, "is the payments that debtors actually make, not how many cars they own, because [those] payments . . . are what actually affect their ability to" reimburse unsecured creditors. *Ibid.*

The United States Court of Appeals for the Ninth Circuit affirmed. *In re Ransom*, 577 F. 3d 1026, 1027 (2009). The plain language of the statute, the court held, "does not allow a debtor to deduct an 'ownership cost' . . . that the debtor does not have." *Id.*, at 1030. The court observed that "[a]n 'ownership cost' is not an 'expense'—either actual or applicable—if it does not exist, period." *Ibid.*

We granted a writ of certiorari to resolve a split of authority over whether a debtor who does not make loan or lease payments on his car may claim the deduction for vehicle-ownership costs. 559 U. S. 1066 (2010).[4] We now affirm the Ninth Circuit's judgment.

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[4] Compare *In re Ransom*, 577 F. 3d 1026, 1027 (CA9 2009) (case below), with *In re Washburn*, 579 F. 3d 934, 935 (CA8 2009) (permitting the allowance); *In re Tate*, 571 F. 3d 423, 424 (CA5 2009) (same); and *In re Ross-Tousey*, 549 F. 3d 1148, 1162 (CA7 2008) (same). The question has also divided bankruptcy courts. See, *e. g.*, *In re Canales*, 377 B. R. 658, 662 (Bkrtcy. Ct. CD Cal. 2007) (citing dozens of cases reaching opposing results).

II

Our interpretation of the Bankruptcy Code starts "where all such inquiries must begin: with the language of the statute itself." *United States* v. *Ron Pair Enterprises, Inc.*, 489 U. S. 235, 241 (1989). As noted, the provision of the Code central to the decision of this case states:

> "The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the [IRS] for the area in which the debtor resides." § 707(b)(2)(A)(ii)(I).

The key word in this provision is "applicable": A debtor may claim not all, but only "applicable" expense amounts listed in the Standards. Whether Ransom may claim the $471 car-ownership deduction accordingly turns on whether that expense amount is "applicable" to him.

Because the Code does not define "applicable," we look to the ordinary meaning of the term. See, *e. g.*, *Hamilton* v. *Lanning*, 560 U. S. 505, 513 (2010). "Applicable" means "capable of being applied: having relevance" or "fit, suitable, or right to be applied: appropriate." Webster's Third New International Dictionary 105 (2002). See also New Oxford American Dictionary 74 (2d ed. 2005) ("relevant or appropriate"); 1 Oxford English Dictionary 575 (2d ed. 1989) ("[c]apable of being applied" or "[f]it or suitable for its purpose, appropriate"). So an expense amount is "applicable" within the plain meaning of the statute when it is appropriate, relevant, suitable, or fit.

What makes an expense amount "applicable" in this sense (appropriate, relevant, suitable, or fit) is most naturally understood to be its correspondence to an individual debtor's financial circumstances. Rather than authorizing all debtors to take deductions in all listed categories, Congress es-

tablished a filter: A debtor may claim a deduction from a National or Local Standard table (like "[Car] Ownership Costs") if, but only if, that deduction is appropriate for him. And a deduction is so appropriate only if the debtor has costs corresponding to the category covered by the table—that is, only if the debtor will incur that kind of expense during the life of the plan. The statute underscores the necessity of making such an individualized determination by referring to "*the debtor's* applicable monthly expense amounts," § 707(b)(2)(A)(ii)(I) (emphasis added)—in other words, the expense amounts applicable (appropriate, etc.) to each particular debtor. Identifying these amounts requires looking at the financial situation of the debtor and asking whether a National or Local Standard table is relevant to him.

If Congress had not wanted to separate in this way debtors who qualify for an allowance from those who do not, it could have omitted the term "applicable" altogether. Without that word, all debtors would be eligible to claim a deduction for each category listed in the Standards. Congress presumably included "applicable" to achieve a different result. See *Leocal* v. *Ashcroft*, 543 U. S. 1, 12 (2004) ("[W]e must give effect to every word of a statute wherever possible"). Interpreting the statute to require a threshold determination of eligibility ensures that the term "applicable" carries meaning, as each word in a statute should.

This reading of "applicable" also draws support from the statutory context. The Code initially defines a debtor's disposable income as his "current monthly income . . . less amounts *reasonably necessary to be expended.*" § 1325(b)(2) (emphasis added). The statute then instructs that "[a]mounts reasonably necessary to be expended . . . shall be determined in accordance with" the means test. § 1325(b)(3). Because Congress intended the means test to approximate the debtor's reasonable expenditures on essential items, a debtor should be required to qualify for a deduction by actually incurring an expense in the relevant category. If a debtor will not have a particular kind of expense

during his plan, an allowance to cover that cost is not "reasonably necessary" within the meaning of the statute.[5]

Finally, consideration of BAPCPA's purpose strengthens our reading of the term "applicable." Congress designed the means test to measure debtors' disposable income and, in that way, "to ensure that [they] repay creditors the maximum they can afford." H. R. Rep., at 2. This purpose is best achieved by interpreting the means test, consistent with the statutory text, to reflect a debtor's ability to afford repayment. Cf. *Hamilton*, 560 U. S., at 520 (rejecting an interpretation of the Bankruptcy Code that "would produce [the] senseless resul[t]" of "deny[ing] creditors payments that the debtor could easily make"). Requiring a debtor to incur the kind of expenses for which he claims a means-test deduction thus advances BAPCPA's objectives.

Because we conclude that a person cannot claim an allowance for vehicle-ownership costs unless he has some expense falling within that category, the question in this case becomes: What expenses does the vehicle-ownership category cover? If it covers loan and lease payments alone, Ransom does not qualify, because he has no such expense. Only if that category also covers other costs associated with having a car would Ransom be entitled to this deduction.

The less inclusive understanding is the right one: The ownership category encompasses the costs of a car loan or lease and nothing more. As noted earlier, the numerical amounts listed in the "Ownership Costs" table are "base[d] . . . on the five-year average of new and used car financing data compiled by the Federal Reserve Board." App. to Brief for Re-

[5] This interpretation also avoids the anomalous result of granting preferential treatment to individuals with above-median income. Because the means test does not apply to Chapter 13 debtors whose incomes are below the median, those debtors must prove on a case-by-case basis that each claimed expense is reasonably necessary. See §§ 1325(b)(2) and (3). If a below-median-income debtor cannot take a deduction for a nonexistent expense, we doubt Congress meant to provide such an allowance to an above-median-income debtor—the very kind of debtor whose perceived abuse of the bankruptcy system inspired Congress to enact the means test.

spondent 3a. In other words, the sum $471 is the average monthly payment for loans and leases nationwide; it is not intended to estimate other conceivable expenses associated with maintaining a car. The Standards do account for those additional expenses, but in a different way: They are mainly the province of the separate deduction for vehicle "Operating Costs," which include payments for "[v]ehicle insurance, . . . maintenance, fuel, state and local registration, required inspection, parking fees, tolls, [and] driver's license." Internal Revenue Manual §§5.15.1.7 and 5.15.1.9 (May 1, 2004), reprinted in App. to Brief for Respondent 16a, 20a; see also IRS, Collection Financial Standards (Feb. 19, 2010), http://www.irs.gov/individuals/article/0,,id=96543,00.html.[6] A person who owns a car free and clear is entitled to claim the "Operating Costs" deduction for all these expenses of driving—and Ransom in fact did so, to the tune of $338. But such a person is not entitled to claim the "Ownership Costs" deduction, because that allowance is for the separate costs of a car loan or lease.

The Collection Financial Standards—the IRS's explanatory guidelines to the National and Local Standards—explicitly recognize this distinction between ownership and operating costs, making clear that individuals who have a car but make no loan or lease payments may claim only the operating allowance. App. to Brief for Respondent 3a; see *supra*, at 66–67. Although the statute does not incorporate the IRS's guidelines, courts may consult this material in interpreting the National and Local Standards; after all, the IRS uses those tables for a similar purpose—to determine how much money a delinquent taxpayer can afford to pay the Government. The guidelines of course cannot control if they are at odds with the statutory language. But here, the Collection

[6] In addition, the IRS has categorized taxes, including those associated with car ownership, as an "Other Necessary Expens[e]," for which a debtor may take a deduction. See App. to Brief for Respondent 26a; Brief for United States as *Amicus Curiae* 16, n. 4.

Financial Standards' treatment of the car-ownership deduction reinforces our conclusion that, under the statute, a debtor seeking to claim this deduction must make some loan or lease payments.[7]

Because Ransom owns his vehicle free and clear of any encumbrance, he incurs no expense in the "Ownership Costs" category of the Local Standards. Accordingly, the car-ownership expense amount is not "applicable" to him, and the Ninth Circuit correctly denied that deduction.

III

Ransom's argument to the contrary relies on a different interpretation of the key word "applicable," an objection to our view of the scope of the "Ownership Costs" category, and a criticism of the policy implications of our approach. We do not think these claims persuasive.

A

Ransom first offers another understanding of the term "applicable." A debtor, he says, determines his "applicable" deductions by locating the box in each National or Local Standard table that corresponds to his geographic location, income, family size, or number of cars. Under this approach, a debtor "consult[s] the table[s] alone" to determine his appropriate expense amounts. Reply Brief for Petitioner 16. Because he has one car, Ransom argues that his "applicable" allowance is the sum listed in the first column of the "Owner-

[7] Because the dissent appears to misunderstand our use of the Collection Financial Standards, and because it may be important for future cases to be clear on this point, we emphasize again that the statute does not "incorporat[e]" or otherwise "impor[t]" the IRS's guidance. *Post*, at 81, 83 (opinion of SCALIA, J.). The dissent questions what possible basis except incorporation could justify our consulting the IRS's view, *post*, at 83, n., but we think that basis obvious: The IRS *creates* the National and Local Standards referenced in the statute, revises them as it deems necessary, and uses them every day. The agency might, therefore, have something insightful and persuasive (albeit not controlling) to say about them.

ship Costs" table ($471); if he had a second vehicle, the amount in the second column ($332) would also be "applicable." On this approach, the word "applicable" serves a function wholly internal to the tables; rather than filtering out debtors for whom a deduction is not at all suitable, the term merely directs each debtor to the correct box (and associated dollar amount of deduction) within every table.

This alternative reading of "applicable" fails to comport with the statute's text, context, or purpose. As intimated earlier, *supra*, at 70, Ransom's interpretation would render the term "applicable" superfluous. Assume Congress had omitted that word and simply authorized a deduction of "the debtor's monthly expense amounts" specified in the Standards. That language, most naturally read, would direct each debtor to locate the box in every table corresponding to his location, income, family size, or number of cars and to deduct the amount stated. In other words, the language would instruct the debtor to use the exact approach Ransom urges. The word "applicable" is not necessary to accomplish that result; it is necessary only for the different purpose of dividing debtors eligible to make use of the tables from those who are not. Further, Ransom's reading of "applicable" would sever the connection between the means test and the statutory provision it is meant to implement—the authorization of an allowance for (but only for) "reasonably necessary" expenses. Expenses that are wholly fictional are not easily thought of as reasonably necessary. And finally, Ransom's interpretation would run counter to the statute's overall purpose of ensuring that debtors repay creditors to the extent they can—here, by shielding some $28,000 that he does not in fact need for loan or lease payments.

As against all this, Ransom argues that his reading is necessary to account for the means test's distinction between "applicable" and "actual" expenses—more fully stated, between the phrase "*applicable* monthly expense

amounts" specified in the Standards and the phrase "*actual* monthly expenses for . . . Other Necessary Expenses." § 707(b)(2)(A)(ii)(I) (emphasis added). The latter phrase enables a debtor to deduct his actual expenses in particular categories that the IRS designates relating mainly to taxpayers' health and welfare. Internal Revenue Manual § 5.15.1.10(1), http://www.irs.gov/irm/part5/irm_05-015-001.html#d0e1381. According to Ransom, "applicable" cannot mean the same thing as "actual." Brief for Petitioner 40. He thus concludes that "an 'applicable' expense can be claimed [under the means test] even if no 'actual' expense was incurred." *Ibid.*

Our interpretation of the statute, however, equally avoids conflating "applicable" with "actual" costs. Although the expense amounts in the Standards apply only if the debtor incurs the relevant expense, the debtor's out-of-pocket cost may well not control the amount of the deduction. If a debtor's actual expenses exceed the amounts listed in the tables, for example, the debtor may claim an allowance only for the specified sum, rather than for his real expenditures.[8] For the Other Necessary Expense categories, by contrast, the debtor may deduct his actual expenses, no matter how high

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[8] The parties and the Solicitor General as *amicus curiae* dispute the proper deduction for a debtor who has expenses that are *lower* than the amounts listed in the Local Standards. Ransom argues that a debtor may claim the specified expense amount in full regardless of his out-of-pocket costs. Brief for Petitioner 24–27. The Government concurs with this view, provided (as we require) that a debtor has *some* expense relating to the deduction. See Brief for United States as *Amicus Curiae* 19–21. FIA, relying on the IRS's practice, contends to the contrary that a debtor may claim only his actual expenditures in this circumstance. Brief for Respondent 12, 45–46 (arguing that the Local Standards function as caps). We decline to resolve this issue. Because Ransom incurs no ownership expense at all, the car-ownership allowance is not applicable to him in the first instance. Ransom is therefore not entitled to a deduction under either approach.

they are.[9] Our reading of the means test thus gives full effect to "the distinction between 'applicable' and 'actual' without taking a further step to conclude that 'applicable' means 'nonexistent.'" *In re Ross-Tousey*, 368 B. R. 762, 765 (Bkrtcy. Ct. ED Wis. 2007), rev'd, 549 F. 3d 1148 (CA7 2008).

Finally, Ransom's reading of "applicable" may not even answer the essential question: whether a debtor may claim a deduction. "[C]onsult[ing] the table[s] alone" to determine a debtor's deduction, as Ransom urges us to do, Reply Brief for Petitioner 16, often will not be sufficient because the tables are not self-defining. This case provides a prime example. The "Ownership Costs" table features two columns labeled "First Car" and "Second Car." See *supra*, at 66. Standing alone, the table does not specify whether it refers to the first and second cars *owned* (as Ransom avers), or the first and second cars for which the debtor incurs *ownership costs* (as FIA maintains)—and so the table does not resolve the issue in dispute.[10] See *In re Kimbro*, 389 B. R. 518, 533

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[9] For the same reason, the allowance for "applicable monthly expense amounts" at issue here differs from the additional allowances that the dissent cites for the deduction of actual expenditures. See *post*, at 82 (noting allowances for "actual expenses" for care of an elderly or chronically ill household member, § 707(b)(2)(A)(ii)(II), and for home energy costs, § 707(b)(2)(A)(ii)(V)).

[10] The interpretive problem is not, as the dissent suggests, "whether to claim a deduction for one car or for two," *post*, at 82, but rather whether to claim a deduction for *any* car that is owned if the debtor has no ownership costs. Indeed, if we had to decide this question on the basis of the table alone, we might well decide that a debtor who does not make loan or lease payments cannot claim an allowance. The table, after all, is titled "Ownership *Costs*"—suggesting that it applies to those debtors who incur such costs. And as noted earlier, the dollar amounts in the table represent average automobile loan and lease payments nationwide (with all other car-related expenses approximated in the separate "Operating Costs" table). See *supra*, at 71–72. Ransom himself concedes that not every debtor falls within the terms of this table; he would exclude, and thus prohibit from taking a deduction, a person who does not own a car. Brief for Petitioner 33. In like manner, the four corners of the table ap-

(Bkrtcy. App. Panel CA6 2008) (Fulton, J., dissenting) ("[O]ne cannot really 'just look up' dollar amounts in the tables without either referring to IRS guidelines for using the tables or imposing pre-existing assumptions about how [they] are to be navigated" (footnote omitted)). Some amount of interpretation is necessary to decide what the deduction is for and whether it is applicable to Ransom; and so we are brought back full circle to our prior analysis.

B

Ransom next argues that viewing the car-ownership deduction as covering no more than loan and lease payments is inconsistent with a separate sentence of the means test that provides: "Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts." § 707(b)(2)(A)(ii)(I). The car-ownership deduction cannot comprise *only* loan and lease payments, Ransom contends, because those payments are *always* debts. See Brief for Petitioner 28, 44–45.

Ransom ignores that the "notwithstanding" sentence governs the full panoply of deductions under the National and Local Standards and the Other Necessary Expense categories. We hesitate to rely on that general provision to interpret the content of the car-ownership deduction because Congress did not draft the former with the latter specially in mind; any friction between the two likely reflects only a lack of attention to how an across-the-board exclusion of debt payments would correspond to a particular IRS allowance.[11]

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pear to exclude an additional group—debtors like Ransom who own their cars free and clear and so do not make the loan or lease payments that constitute "Ownership Costs."

[11] Because Ransom does not make payments on his car, we need not and do not resolve how the "notwithstanding" sentence affects the vehicle-ownership deduction when a debtor has a loan or lease expense. See Brief for United States as *Amicus Curiae* 23, n. 5 (offering alternative views on this question); Tr. of Oral Arg. 51–52.

Further, the "notwithstanding" sentence by its terms functions only to exclude, and not to authorize, deductions. It cannot establish an allowance for nonloan or nonlease ownership costs that no National or Local Standard covers. Accordingly, the "notwithstanding" sentence does nothing to alter our conclusion that the "Ownership Costs" table does not apply to a debtor whose car is not encumbered.

C

Ransom finally contends that his view of the means test is necessary to avoid senseless results not intended by Congress. At the outset, we note that the policy concerns Ransom emphasizes pale beside one his reading creates: His interpretation, as we have explained, would frustrate BAPCPA's core purpose of ensuring that debtors devote their full disposable income to repaying creditors. See *supra*, at 71. We nonetheless address each of Ransom's policy arguments in turn.

Ransom first points out a troubling anomaly: Under our interpretation, "[d]ebtors can time their bankruptcy filing to take place while they still have a few car payments left, thus retaining an ownership deduction which they would lose if they filed just after making their last payment." Brief for Petitioner 54. Indeed, a debtor with only a single car payment remaining, Ransom notes, is eligible to claim a monthly ownership deduction. *Id.*, at 15, 52.

But this kind of oddity is the inevitable result of a standardized formula like the means test, even more under Ransom's reading than under ours. Such formulas are by their nature over- and under-inclusive. In eliminating the pre-BAPCPA case-by-case adjudication of above-median-income debtors' expenses, on the ground that it leant itself to abuse, Congress chose to tolerate the occasional peculiarity that a brighter-line test produces. And Ransom's alternative reading of the statute would spawn its own anomalies—even placing to one side the fundamental strangeness of giving a debtor an allowance for loan or lease payments when he has

not a penny of loan or lease costs. On Ransom's view, for example, a debtor entering bankruptcy might purchase for a song a junkyard car—"an old, rusted pile of scrap metal [that would] si[t] on cinder blocks in his backyard," *In re Brown*, 376 B. R. 601, 607 (Bkrtcy. Ct. SD Tex. 2007)—in order to deduct the $471 car-ownership expense and reduce his payment to creditors by that amount. We do not see why Congress would have preferred that result to the one that worries Ransom. That is especially so because creditors may well be able to remedy Ransom's "one payment left" problem. If car payments cease during the life of the plan, just as if other financial circumstances change, an unsecured creditor may move to modify the plan to increase the amount the debtor must repay. See 11 U. S. C. § 1329(a)(1).

Ransom next contends that denying the ownership allowance to debtors in his position "sends entirely the wrong message, namely, that it is advantageous to be deeply in debt on motor vehicle loans, rather than to pay them off." Brief for Petitioner 55. But the choice here is not between thrifty savers and profligate borrowers, as Ransom would have it. Money is fungible: The $14,000 that Ransom spent to purchase his Camry outright was money he did not devote to paying down his credit card debt, and Congress did not express a preference for one use of these funds over the other. Further, Ransom's argument mistakes what the deductions in the means test are meant to accomplish. Rather than effecting any broad federal policy as to saving or borrowing, the deductions serve merely to ensure that debtors in bankruptcy can afford essential items. The car-ownership allowance thus safeguards a debtor's ability to retain a car throughout the plan period. If the debtor already owns a car outright, he has no need for this protection.

Ransom finally argues that a debtor who owns his car free and clear may need to replace it during the life of the plan; "[g]ranting the ownership cost deduction to a vehicle that is owned outright," he states, "accords best with economic reality." *Id.*, at 52. In essence, Ransom seeks an emer-

gency cushion for car owners. But nothing in the statute authorizes such a cushion, which all debtors presumably would like in the event some unexpected need arises. And a person who enters bankruptcy without any car at all may also have to buy one during the plan period; yet Ransom concedes that a person in this position cannot claim the ownership deduction. Tr. of Oral Arg. 20. The appropriate way to account for unanticipated expenses like a new vehicle purchase is not to distort the scope of a deduction, but to use the method that the Code provides for all Chapter 13 debtors (and their creditors): modification of the plan in light of changed circumstances. See § 1329(a)(1); see also *supra*, at 79.

IV

Based on BAPCPA's text, context, and purpose, we hold that the Local Standard expense amount for transportation "Ownership Costs" is not "applicable" to a debtor who will not incur any such costs during his bankruptcy plan. Because the "Ownership Costs" category covers only loan and lease payments and because Ransom owns his car free from any debt or obligation, he may not claim the allowance. In short, Ransom may not deduct loan or lease expenses when he does not have any. We therefore affirm the judgment of the Ninth Circuit.

It is so ordered.

JUSTICE SCALIA, dissenting.

I would reverse the judgment of the Ninth Circuit. I agree with the conclusion of the three other Courts of Appeals to address the question: that a debtor who owns a car free and clear is entitled to the car-ownership allowance. See *In re Washburn*, 579 F. 3d 934 (CA8 2009); *In re Tate*, 571 F. 3d 423 (CA5 2009); *In re Ross-Tousey*, 549 F. 3d 1148 (CA7 2008).

The statutory text at issue is the phrase enacted in the Bankruptcy Abuse Prevention and Consumer Protection Act

of 2005 (BAPCPA), "applicable monthly expense amounts specified under the National Standards and Local Standards," 11 U. S. C. § 707(b)(2)(A)(ii)(I). The Court holds that the word "applicable" in this provision imports into the Local Standards a directive in the Internal Revenue Service's Collection Financial Standards, which have as their stated purpose "to help determine a taxpayer's ability to pay a delinquent tax liability," App. to Brief for Respondent 1a. That directive says that "[i]f a taxpayer has no car payment," the ownership cost provisions of the Local Standards will not apply. *Id.*, at 3a.

That directive forms no part of the Local Standards to which the statute refers; and the fact that portions of the Local Standards are to be disregarded for revenue-collection purposes says nothing about whether they are to be disregarded for purposes of Chapter 13 of the Bankruptcy Code. The Court believes, however, that unless the IRS's Collection Financial Standards are imported into the Local Standards, the word "applicable" would do no work, violating the principle that "'[w]e must give effect to every word of a statute wherever possible.'" *Ante*, at 70 (quoting *Leocal* v. *Ashcroft*, 543 U. S. 1, 12 (2004)). I disagree. The canon against superfluity is not a canon against verbosity. When a thought could have been expressed more concisely, one does not always have to cast about for some additional meaning to the word or phrase that could have been dispensed with. This has always been understood. A House of Lords opinion holds, for example, that in the phrase "'in addition to and not in derogation of'" the last part adds nothing but emphasis. *Davies* v. *Powell Duffryn Associated Collieries, Ltd.*, [1942] A. C. 601, 607.

It seems to me that is the situation here. To be sure, one can say "according to the attached table"; but it is acceptable (and indeed I think more common) to say "according to the applicable provisions of the attached table." That seems to me the fairest reading of "applicable monthly expense

amounts specified under the National Standards and Local Standards." That is especially so for the Ownership Costs portion of the Local Standards, which had no column titled "No Car." Here the expense amount would be that shown for one car (which is all the debtor here owned) rather than that shown for two cars; and it would be no expense amount if the debtor owned no car, since there is no "applicable" provision for that on the table. For operating and public transportation costs, the "applicable" amount would similarly be the amount provided by the Local Standards for the geographic region in which the debtor resides. (The debtor would not first be required to prove that he actually operates the cars that he owns, or, if he does not own a car, that he actually uses public transportation.) The Court claims that the tables "are not self-defining," and that "[s]ome amount of interpretation" is necessary in choosing whether to claim a deduction at all, for one car, or for two. *Ante*, at 76, 77. But this problem seems to me more metaphysical than practical. The point of the statutory language is to entitle debtors who own cars to an ownership deduction, and I have little doubt that debtors will be able to choose correctly whether to claim a deduction for one car or for two.

If the meaning attributed to the word by the Court were intended, it would have been most precise to say "monthly expense amounts specified under the National Standards and Local Standards, if applicable for IRS collection purposes." And even if utter precision was too much to expect, it would at least have been more natural to say "monthly expense amounts specified under the National Standards and Local Standards, *if applicable*." That would make it clear that amounts specified under those Standards may nonetheless not be applicable, justifying (perhaps) resort to some source other than the Standards themselves to give meaning to the condition. The very next paragraph of the Bankruptcy Code uses that formulation ("if applicable") to limit to actual expenses the deduction for care of an elderly or chronically

ill household member: "[T]he debtor's monthly expenses may include, *if applicable*, the continuation of actual expenses paid by the debtor that are reasonable and necessary" for that purpose. 11 U. S. C. § 707(b)(2)(A)(ii)(II) (emphasis added).

Elsewhere as well, the Code makes it very clear when prescribed deductions are limited to actual expenditures. Section 707(b)(2)(A)(ii)(I) itself authorizes deductions for a host of expenses—health and disability insurance, for example—only to the extent that they are "actual . . . expenses" that are "reasonably necessary." Additional deductions for energy are allowed, but again only if they are "actual expenses" that are "reasonable and necessary." § 707(b)(2)(A)(ii)(V). Given the clarity of those limitations to actual outlays, it seems strange for Congress to limit the car-ownership deduction to the somewhat peculiar category "cars subject to any amount whatever of outstanding indebtedness" by the mere word "applicable," meant as incorporation of a limitation that appears in instructions to IRS agents.*

I do not find the normal meaning of the text undermined by the fact that it produces a situation in which a debtor who

*The Court protests that I misunderstand its use of the Collection Financial Standards. Its opinion does not, it says, find them to be incorporated by the Bankruptcy Code; they simply "reinforc[e] our conclusion that . . . a debtor seeking to claim this deduction must make some loan or lease payments." *Ante*, at 73. True enough, the opinion says that the Bankruptcy Code "does not incorporate the IRS's guidelines," but it immediately continues that "courts may consult this material in interpreting the National and Local Standards" so long as it is not "at odds with the statutory language." *Ante*, at 72. In the present context, the real-world difference between finding the guidelines incorporated and finding it appropriate to consult them escapes me, since I can imagine no basis for consulting them unless Congress meant them to be consulted, which would mean they are incorporated. And without incorporation, they *are* at odds with the statutory language, which otherwise contains no hint that eligibility for a car-ownership deduction requires anything other than ownership of a car.

owes no payments on his car nonetheless gets the operating-expense allowance. For the Court's more strained interpretation still produces a situation in which a debtor who owes only a single remaining payment on his car gets the full allowance. As for the Court's imagined horrible in which "a debtor entering bankruptcy might purchase for a song a junkyard car," *ante*, at 79: That is fairly matched by the imagined horrible that, under the Court's scheme, a debtor entering bankruptcy might purchase a junkyard car for a song plus a $10 promissory note payable over several years. He would get the full ownership-expense deduction.

Thus, the Court's interpretation does not, as promised, maintain "the connection between the means test and the statutory provision it is meant to implement—the authorization of an allowance for (but only for) 'reasonably necessary' expenses," *ante*, at 74. Nor do I think this difficulty is eliminated by the *deus ex machina* of 11 U. S. C. § 1329(a)(1), which according to the Court would allow an unsecured creditor to "move to modify the plan to increase the amount the debtor must repay," *ante*, at 79. Apart from the fact that, as a practical matter, the sums involved would hardly make this worth the legal costs, allowing such ongoing revisions of matters specifically covered by the rigid means test would return us to "the pre-BAPCPA case-by-case adjudication of above-median-income debtors' expenses," *ante*, at 78. If the BAPCPA had thought such adjustments necessary, surely it would have taken the much simpler and more logical step of providing going in that the ownership-expense allowance would apply only so long as monthly payments were due.

The reality is, to describe it in the Court's own terms, that occasional overallowance (or, for that matter, underallowance) "is the inevitable result of a standardized formula like the means test . . . . Congress chose to tolerate the occasional peculiarity that a brighter-line test produces." *Ibid.* Our job, it seems to me, is not to eliminate or reduce those "oddit[ies]," *ibid.*, but to give the formula Congress

adopted its fairest meaning. In my judgment the "applicable monthly expense amounts" for operating costs "specified under the . . . Local Standards" are the amounts specified in those Standards for either one car or two cars, whichever of those is applicable.

Syllabus

HARRINGTON, WARDEN *v.* RICHTER

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

No. 09–587. Argued October 12, 2010—Decided January 19, 2011

In 1994, deputies called to drug dealer Johnson's California home found Johnson wounded and Klein fatally wounded. Johnson claimed that he was shot in his bedroom by respondent Richter's codefendant, Branscombe; that he found Klein on the living room couch; and that his gun safe, a pistol, and cash were missing. His account was corroborated by evidence at the scene, including, relevant here, spent shell casings, blood spatters, and blood pooled in the bedroom doorway. Investigators took a blood sample from a wall near the bedroom door, but not from the blood pool. A search of Richter's home turned up the safe and ammunition matching evidence at the scene. After his arrest on murder and other charges, Richter initially denied his involvement, but later admitted disposing of Johnson's and Branscombe's guns. The prosecution initially built its case on Johnson's testimony and the circumstantial evidence, but it adjusted its approach after Richter's counsel, in his opening statement, outlined the theory that Branscombe shot Johnson in self-defense and that Klein was killed in the crossfire in the bedroom doorway, and stressed the lack of forensic support for the prosecution's case. The prosecution then decided to call an expert in blood pattern evidence, who testified that it was unlikely that Klein had been shot outside the living room and then moved to the couch, and a serologist, who testified that the blood sample taken near the blood pool could be Johnson's but not Klein's. Under cross-examination, she conceded that she had not tested the sample for cross-contamination and that a degraded sample would make it difficult to tell if it had blood of Klein's type. Defense counsel called Richter to tell his conflicting version of events and called other witnesses to corroborate Richter's version. Richter was convicted and sentenced to life without parole. He later sought habeas relief from the California Supreme Court, asserting, *inter alia*, that his counsel provided ineffective assistance, see *Strickland* v. *Washington*, 466 U. S. 668, when he failed to present expert testimony on blood evidence, because it could have disclosed the blood pool's source and bolstered Richter's theory. He also offered affidavits from forensic experts to support his claim. The court denied the petition in a one-sentence summary order. Subsequently, he reasserted his state

claims in a federal habeas petition. The District Court denied his petition. A Ninth Circuit panel affirmed, but the en banc court reversed. Initially it questioned whether 28 U. S. C. § 2254(d)—which, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), limits the availability of federal habeas relief for claims previously "adjudicated on the merits" in state court—applied to Richter's petition, since the State Supreme Court issued only a summary denial. But it found the state-court decision unreasonable anyway. In its view, trial counsel was deficient in failing to consult blood evidence experts in planning a trial strategy and in preparing to rebut expert evidence the prosecution might—and later did—offer.

Held:

1. Section 2254(d) applies to Richter's petition, even though the state court's order was unaccompanied by an opinion explaining the court's reasoning. Pp. 97–100.

(a) By its terms, § 2254(d) bars relitigation of a claim "adjudicated on the merits" in state court unless, among other exceptions, the earlier state-court "decision" involved "an unreasonable application" of "clearly established Federal law, as determined by" this Court, § 2254(d)(1). Nothing in its text—which refers only to a "decision" resulting from an "adjudication"—requires a statement of reasons. Where the state-court decision has no explanation, the habeas petitioner must still show there was no reasonable basis for the state court to deny relief. There is no merit to the assertion that applying § 2254(d) when state courts issue summary rulings will encourage those courts to withhold explanations. The issuance of summary dispositions can enable state judiciaries to concentrate resources where most needed. Pp. 97–99.

(b) Nor is there merit to Richter's argument that § 2254(d) does not apply because the California Supreme Court did not say it was adjudicating his claim "on the merits." When a state court has denied relief, adjudication on the merits can be presumed absent any contrary indication or state-law procedural principles. The presumption may be overcome by a more likely explanation for the state court's decision, but Richter does not make that showing here. Pp. 99–100.

2. Richter was not entitled to the habeas relief ordered by the Ninth Circuit. Pp. 100–113.

(a) That court failed to accord the required deference to the decision of a state court adjudicating the same claims later presented in the federal habeas petition. Its opinion shows an improper understanding of § 2254(d)'s unreasonableness standard and operation in the context of a *Strickland* claim. Asking whether the state court's application of *Strickland*'s standard was unreasonable is different from asking

whether defense counsel's performance fell below that standard. Under AEDPA, a state court must be granted a deference and latitude that are not in operation in a case involving direct review under *Strickland.* A state court's determination that a claim lacks merit precludes federal habeas relief so long as "fairminded jurists could disagree" on the correctness of that decision. *Yarborough* v. *Alvarado,* 541 U. S. 652, 664. And the more general the rule being considered, "the more leeway courts have in reaching outcomes in case-by-case determinations." *Ibid.* The Ninth Circuit explicitly conducted a *de novo* review and found a *Strickland* violation; it then declared without further explanation that the state court's contrary decision was unreasonable. But § 2254(d) requires a habeas court to determine what arguments or theories supported, or could have supported, the state-court decision and then to ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with a prior decision of this Court. AEDPA's unreasonableness standard is not a test of the confidence of a federal habeas court in the conclusion it would reach as a *de novo* matter. Even a strong case for relief does not make the state court's contrary conclusion unreasonable. Section 2254(d) is designed to confirm that state courts are the principal forum for asserting constitutional challenges to state convictions. Pp. 100–104.

(b) The Ninth Circuit erred in concluding that Richter demonstrated an unreasonable application of *Strickland* by the state court. Pp. 104–113.

(1) Richter could have secured relief in state court only by showing both that his counsel provided deficient assistance and that prejudice resulted. To be deficient, counsel's representation must have fallen "below an objective standard of reasonableness," *Strickland,* 466 U. S., at 688; and there is a "strong presumption" that counsel's representation is within the "wide range" of reasonable professional assistance, *id.,* at 689. The question is whether counsel made errors so fundamental that counsel was not functioning as the counsel guaranteed by the Sixth Amendment. Prejudice requires demonstrating "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.,* at 694. "Surmounting *Strickland*'s high bar is never . . . easy." *Padilla* v. *Kentucky,* 559 U. S. 356, 371. *Strickland* can function as a way to escape rules of waiver and forfeiture. The question is whether an attorney's representation amounted to incompetence under prevailing professional norms, not whether it deviated from best practices or most common custom. Establishing that a state court's application of *Strickland* was unreasonable under § 2254(d) is even more difficult, since both standards are "highly deferential," 466 U. S., at 689, and since *Strickland*'s general

standard has a substantial range of reasonable applications. The question under § 2254(d) is not whether counsel's actions were reasonable, but whether there is any reasonable argument that counsel satisfied *Strickland*'s deferential standard. Pp. 104–105.

(2) The Ninth Circuit erred in holding that because Richter's attorney had not consulted forensic blood experts or introduced expert evidence, the State Supreme Court could not reasonably have concluded counsel provided adequate representation.

A state court could reasonably conclude that a competent attorney could elect a strategy that did not require using blood evidence experts. Rare are the situations in which the latitude counsel enjoys will be limited to any one technique or approach. There were any number of experts whose insight might have been useful to the defense. Counsel is entitled to balance limited resources in accord with effective trial tactics and strategies. In finding otherwise the Ninth Circuit failed to "reconstruct the circumstances of counsel's challenged conduct" and "evaluate the conduct from counsel's perspective at the time." *Strickland*, *supra*, at 689. Given the many factual differences between the prosecution and defense versions of events, it was far from evident at the time of trial that the blood source was central to Richter's case. And relying on "the harsh light of hindsight" to cast doubt on a trial that took place over 15 years ago is precisely what *Strickland* and AEDPA seek to prevent. See *Bell* v. *Cone*, 535 U. S. 685, 702. Even had the value of expert testimony been apparent, it would be reasonable to conclude that a competent attorney might elect not to use it here, where counsel had reason to question the truth of his client's account. Making blood evidence a central issue could also have led the prosecution to produce its own expert analysis, possibly destroying Richter's case, or distracted the jury with esoteric questions of forensic science. Defense counsel's opening statement may have inspired the prosecution to present forensic evidence, but that shows only that the defense strategy did not work out as well as hoped. In light of the record here there was no basis to rule that the state court's determination was unreasonable.

The Court of Appeals erred in dismissing such concern as an inaccurate account of counsel's actual thinking, since *Strickland* examined only the objective reasonableness of counsel's actions. As to whether counsel was constitutionally deficient for not preparing expert testimony as a response to the prosecution's, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for remote possibilities. Here, even if counsel was mistaken, the prosecution itself did not expect to present forensic testimony until the eve of trial. Thus, it is at least debatable whether counsel's error was so fundamental as to call the trial's fairness into doubt. Even if counsel

should have foreseen the prosecution's tactic, Richter would still need to show it was indisputable that *Strickland* required his attorney to rely on a rebuttal witness rather than on cross-examination to discredit the witnesses, but *Strickland* imposes no such requirement. And while it is possible an isolated error can constitute ineffective assistance if it is sufficiently egregious, it is difficult to establish ineffective assistance where counsel's overall performance reflects active and capable advocacy. Pp. 106–111.

(3) The Ninth Circuit also erred in concluding that Richter had established prejudice under *Strickland*, which asks whether it is "reasonably likely" the verdict would have been different, 466 U. S., at 696, not whether a court can be certain counsel's performance had no effect on the outcome or that reasonable doubt might have been established had counsel acted differently. There must be a substantial likelihood of a different result. The State Supreme Court could have reasonably concluded that Richter's prejudice evidence fell short of this standard. His expert serology evidence established only a theoretical possibility of Klein's blood being in the blood pool; and at trial, defense counsel extracted a similar concession from the prosecution's expert. It was also reasonable to find Richter had not established prejudice given that he offered no evidence challenging other conclusions of the prosecution's experts, *e. g.*, that the blood sample matched Johnson's blood type. There was, furthermore, sufficient conventional circumstantial evidence pointing to Richter's guilt, including, *e. g.*, the items found at his home. Pp. 111–113.

578 F. 3d 944, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, THOMAS, BREYER, ALITO, and SOTOMAYOR, JJ., joined. GINSBURG, J., filed an opinion concurring in the judgment, *post*, p. 113. KAGAN, J., took no part in the consideration or decision of the case.

Harry Joseph Colombo, Deputy Attorney General of California, argued the cause for petitioner. With him on the briefs were *Edmund G. Brown, Jr.*, Attorney General, *Dane R. Gillette*, Chief Assistant Attorney General, *Donald E. de Nicola*, Deputy State Solicitor General, *Michael P. Farrell*, Senior Assistant Attorney General, and *Ward A. Campbell*, Supervising Deputy Attorney General.

Clifford Gardner argued the cause for respondent. With him on the brief were *Catherine White* and *Edward Swanson.**

JUSTICE KENNEDY delivered the opinion of the Court.

The writ of habeas corpus stands as a safeguard against imprisonment of those held in violation of the law. Judges must be vigilant and independent in reviewing petitions for the writ, a commitment that entails substantial judicial resources. Those resources are diminished and misspent, however, and confidence in the writ and the law it vindicates

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*Briefs of *amici curiae* urging reversal were filed for the State of Texas et al. by *Greg Abbott,* Attorney General of Texas, *C. Andrew Weber,* First Assistant Attorney General, *Eric J. R. Nichols,* Deputy Attorney General, *Edward L. Marshall*, *James C. Ho,* Solicitor General, *James P. Sullivan,* Assistant Solicitor General, and *Jessica Hartsell*, Assistant Attorney General, by *Kevin T. Kane,* Chief State's Attorney of Connecticut, and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *Terry Goddard* of Arizona, *Dustin McDaniel* of Arkansas, *Joseph R. Biden III* of Delaware, *Bill McCollum* of Florida, *Mark J. Bennett* of Hawaii, *Lawrence G. Wasden* of Idaho, *Lisa Madigan* of Illinois, *Gregory F. Zoeller* of Indiana, *Tom Miller* of Iowa, *Steve Six* of Kansas, *James D. "Buddy" Caldwell* of Louisiana, *Douglas F. Gansler* of Maryland, *Martha Coakley* of Massachusetts, *Michael A. Cox* of Michigan, *Jim Hood* of Mississippi, *Chris Koster* of Missouri, *Jon Bruning* of Nebraska, *Gary K. King* of New Mexico, *Wayne Stenehjem* of North Dakota, *Richard Cordray* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Henry D. McMaster* of South Carolina, *Marty J. Jackley* of South Dakota, *Robert E. Cooper, Jr.*, of Tennessee, *Mark L. Shurtleff* of Utah, *Kenneth T. Cuccinelli II* of Virginia, *Robert M. McKenna* of Washington, *J. B. Van Hollen* of Wisconsin, and *Bruce A. Salzburg* of Wyoming; and for the Criminal Justice Legal Foundation by *Kent S. Scheidegger.*

Briefs of *amici curiae* urging affirmance were filed for Law Professors et al. by *Jeffrey T. Green;* and for the National Association of Criminal Defense Lawyers by *John H. Blume*, *Keir M. Weyble*, and *Jeffrey L. Fisher.*

Charles D. Weisselberg, Nina Rivkind, and *John T. Philipsborn* filed a brief for California Attorneys for Criminal Justice et al. as *amici curiae.*

undermined, if there is judicial disregard for the sound and established principles that inform its proper issuance. That judicial disregard is inherent in the opinion of the Court of Appeals for the Ninth Circuit here under review. The Court of Appeals, in disagreement with the contrary conclusions of the Supreme Court of the State of California and of a United States District Court, ordered habeas corpus relief granted to set aside the conviction of Joshua Richter, respondent here. This was clear error.

Under 28 U. S. C. § 2254(d), the availability of federal habeas relief is limited with respect to claims previously "adjudicated on the merits" in state-court proceedings. The first inquiry this case presents is whether that provision applies when state-court relief is denied without an accompanying statement of reasons. If it does, the question is whether the Court of Appeals adhered to the statute's terms, in this case as it relates to ineffective-assistance claims judged by the standard set forth in *Strickland* v. *Washington*, 466 U. S. 668 (1984). A second case decided today, *Premo* v. *Moore*, *post*, p. 115, presents similar issues. Here, as in that case, it is necessary to reverse the Court of Appeals for failing to accord required deference to the decision of a state court.

I

It is necessary to begin by discussing the details of a crime committed more than a decade and a half ago.

A

Sometime after midnight on December 20, 1994, sheriff's deputies in Sacramento County, California, arrived at the home of a drug dealer named Joshua Johnson. Hours before, Johnson had been smoking marijuana in the company of Richter and two other men, Christian Branscombe and Patrick Klein. When the deputies arrived, however, they found only Johnson and Klein. Johnson was hysterical and covered in blood. Klein was lying on a couch in Johnson's living

room, unconscious and bleeding. Klein and Johnson each had been shot twice. Johnson recovered; Klein died of his wounds.

Johnson gave investigators this account: After falling asleep, he awoke to find Richter and Branscombe in his bedroom, at which point Branscombe shot him. Johnson heard more gunfire in the living room and the sound of his assailants leaving. He got up, found Klein bleeding on the living room couch, and called 911. A gun safe, a pistol, and $6,000 cash, all of which had been in the bedroom, were missing.

Evidence at the scene corroborated Johnson's account. Investigators found spent shell casings in the bedroom (where Johnson said he had been shot) and in the living room (where Johnson indicated Klein had been shot). In the living room there were two casings, a .32 caliber and a .22 caliber. One of the bullets recovered from Klein's body was a .32 and the other was a .22. In the bedroom there were two more casings, both .32 caliber. In addition detectives found blood spatter near the living room couch and bloodstains in the bedroom. Pools of blood had collected in the kitchen and the doorway to Johnson's bedroom. Investigators took only a few blood samples from the crime scene. One was from a blood splash on the wall near the bedroom doorway, but no sample was taken from the doorway blood pool itself.

Investigators searched Richter's residence and found Johnson's gun safe, two boxes of .22-caliber ammunition, and a gun magazine loaded with cartridges of the same brand and type as the boxes. A ballistics expert later concluded the .22-caliber bullet that struck Klein and the .22-caliber shell found in the living room matched the ammunition found in Richter's home and bore markings consistent with the model of gun for which the magazine was designed.

Richter and Branscombe were arrested. At first Richter denied involvement. He would later admit taking Johnson's pistol and disposing of it and of the .32-caliber weapon Branscombe used to shoot Johnson and Klein. Richter's counsel

produced Johnson's missing pistol, but neither of the guns used to shoot Johnson and Klein was found.

B

Branscombe and Richter were tried together on charges of murder, attempted murder, burglary, and robbery. Only Richter's case is presented here.

The prosecution built its case on Johnson's testimony and on circumstantial evidence. Its opening statement took note of the shell casings found at the crime scene and the ammunition and gun safe found at Richter's residence. Defense counsel offered explanations for the circumstantial evidence and derided Johnson as a drug dealer, a paranoid, and a trigger-happy gun fanatic who had drawn a pistol on Branscombe and Richter the last time he had seen them. And there were inconsistencies in Johnson's story. In his 911 call, for instance, Johnson first said there were four or five men who had broken into his house, not two; and in the call he did not identify Richter and Branscombe among the intruders.

Blood evidence does not appear to have been part of the prosecution's planned case prior to trial, and investigators had not analyzed the few blood samples taken from the crime scene. But the opening statement from the defense led the prosecution to alter its approach. Richter's attorney outlined the theory that Branscombe had fired on Johnson in self-defense and that Klein had been killed not on the living room couch but in the crossfire in the bedroom doorway. Defense counsel stressed deficiencies in the investigation, including the absence of forensic support for the prosecution's version of events.

The prosecution took steps to adjust to the counterattack now disclosed. Without advance notice and over the objection of Richter's attorney, one of the detectives who investigated the shootings testified for the prosecution as an expert in blood pattern evidence. He concluded it was unlikely

Klein had been shot outside the living room and then moved to the couch, given the patterns of blood on Klein's face, as well as other evidence including "high velocity" blood spatter near the couch consistent with the location of a shooting. The prosecution also offered testimony from a serologist. She testified the blood sample taken near the pool by the bedroom door could be Johnson's but not Klein's.

Defense counsel's cross-examination probed weaknesses in the testimony of these two witnesses. The detective who testified on blood patterns acknowledged that his inferences were imprecise, that it was unlikely Klein had been lying down on the couch when shot, and that he could not say the blood in the living room was from either of Klein's wounds. Defense counsel elicited from the serologist a concession that she had not tested the bedroom blood sample for cross-contamination. She said that if the year-old sample had degraded, it would be difficult to tell whether blood of Klein's type was also present in the sample.

For the defense, Richter's attorney called seven witnesses. Prominent among these was Richter himself. Richter testified he and Branscombe returned to Johnson's house just before the shootings in order to deliver something to one of Johnson's roommates. By Richter's account, Branscombe entered the house alone while Richter waited in the driveway; but after hearing screams and gunshots, Richter followed inside. There he saw Klein lying not on the couch but in the bedroom doorway, with Johnson on the bed and Branscombe standing in the middle of the room. According to Richter, Branscombe said he shot at Johnson and Klein after they attacked him. Other defense witnesses provided some corroboration for Richter's story. His former girlfriend, for instance, said she saw the gun safe at Richter's house shortly before the shootings.

The jury returned a verdict of guilty on all charges. Richter was sentenced to life without parole. On appeal, his conviction was affirmed. *People* v. *Branscombe*, 72 Cal.

Rptr. 2d 773 (App. 1998) (officially depublished). The California Supreme Court denied a petition for review, *People* v. *Branscombe,* No. S069751, 1998 Cal. LEXIS 4252 (June 24, 1998), and Richter did not file a petition for certiorari with this Court. His conviction became final.

C

Richter later petitioned the California Supreme Court for a writ of habeas corpus. He asserted a number of grounds for relief, including ineffective assistance of counsel. As relevant here, he claimed his counsel was deficient for failing to present expert testimony on serology, pathology, and blood spatter patterns, testimony that, he argued, would disclose the source of the blood pool in the bedroom doorway. This, he contended, would bolster his theory that Johnson had moved Klein to the couch.

He offered affidavits from three types of forensic experts. First, he provided statements from two blood serologists who said there was a possibility Klein's blood was intermixed with blood of Johnson's type in the sample taken from near the pool in the bedroom doorway. Second, he provided a statement from a pathologist who said the blood pool was too large to have come from Johnson given the nature of his wounds and his own account of his actions while waiting for the police. Third, he provided a statement from an expert in bloodstain analysis who said the absence of "a large number of satellite droplets" in photographs of the area around the blood in the bedroom doorway was inconsistent with the blood pool coming from Johnson as he stood in the doorway. App. 118. Richter argued this evidence established the possibility that the blood in the bedroom doorway came from Klein, not Johnson. If that were true, he argued, it would confirm his account, not Johnson's. The California Supreme Court denied Richter's petition in a one-sentence summary order. *In re Richter,* No. S082167 (Mar. 28, 2001), App. to

Pet. for Cert. 22a. Richter did not seek certiorari from this Court.

After the California Supreme Court issued its summary order denying relief, Richter filed a petition for habeas corpus in United States District Court for the Eastern District of California. He reasserted the claims in his state petition. The District Court denied his petition, and a three-judge panel of the Court of Appeals for the Ninth Circuit affirmed. *Richter* v. *Hickman*, 521 F. 3d 1222 (2008). The Court of Appeals granted rehearing en banc and reversed the District Court's decision. *Richter* v. *Hickman*, 578 F. 3d 944 (2009).

As a preliminary matter, the Court of Appeals questioned whether 28 U. S. C. § 2254(d) was applicable to Richter's petition, since the California Supreme Court issued only a summary denial when it rejected his *Strickland* claims; but it determined the California decision was unreasonable in any event and that Richter was entitled to relief. The court held Richter's trial counsel was deficient for failing to consult experts on blood evidence in determining and pursuing a trial strategy and in preparing to rebut expert evidence the prosecution might—and later did—offer. Four judges dissented from the en banc decision.

We granted certiorari. 559 U. S. 935 (2010).

II

The statutory authority of federal courts to issue habeas corpus relief for persons in state custody is provided by 28 U. S. C. § 2254, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). The text of § 2254(d) states:

> "An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

> "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> "(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding."

As an initial matter, it is necessary to decide whether § 2254(d) applies when a state court's order is unaccompanied by an opinion explaining the reasons relief has been denied.

By its terms § 2254(d) bars relitigation of any claim "adjudicated on the merits" in state court, subject only to the exceptions in §§ 2254(d)(1) and (2). There is no text in the statute requiring a statement of reasons. The statute refers only to a "decision," which resulted from an "adjudication." As every Court of Appeals to consider the issue has recognized, determining whether a state court's decision resulted from an unreasonable legal or factual conclusion does not require that there be an opinion from the state court explaining the state court's reasoning. See *Chadwick* v. *Janecka*, 312 F. 3d 597, 605–606 (CA3 2002); *Wright* v. *Secretary for Dept. of Corrections*, 278 F. 3d 1245, 1253–1254 (CA11 2002); *Sellan* v. *Kuhlman*, 261 F. 3d 303, 311–312 (CA2 2001); *Bell* v. *Jarvis*, 236 F. 3d 149, 158–162 (CA4 2000) (en banc); *Harris* v. *Stovall*, 212 F. 3d 940, 943, n. 1 (CA6 2000); *Aycox* v. *Lytle*, 196 F. 3d 1174, 1177–1178 (CA10 1999); *James* v. *Bowersox*, 187 F. 3d 866, 869 (CA8 1999). And as this Court has observed, a state court need not cite or even be aware of our cases under § 2254(d). *Early* v. *Packer*, 537 U. S. 3, 8 (2002) *(per curiam)*. Where a state court's decision is unaccompanied by an explanation, the habeas petitioner's burden still must be met by showing there was no reasonable basis for the state court to deny relief. This is so whether or not the state court reveals which of the elements in a multipart claim it found insufficient, for § 2254(d) applies when a "claim," not a component of one, has been adjudicated.

There is no merit to the assertion that compliance with § 2254(d) should be excused when state courts issue summary rulings because applying § 2254(d) in those cases will encourage state courts to withhold explanations for their decisions. Opinion-writing practices in state courts are influenced by considerations other than avoiding scrutiny by collateral attack in federal court. Cf. *In re Robbins*, 18 Cal. 4th 770, 778, n. 1, 959 P. 2d 311, 316, n. 1 (1998) (state procedures limiting habeas are "a means of protecting the integrity of our own appeal and habeas corpus process," rather than a device for "insulating our judgments from federal court review" (emphasis deleted)). At the same time, requiring a statement of reasons could undercut state practices designed to preserve the integrity of the case-law tradition. The issuance of summary dispositions in many collateral attack cases can enable a state judiciary to concentrate its resources on the cases where opinions are most needed. See Brief for California Attorneys for Criminal Justice et al. as *Amici Curiae* 8 (noting that the California Supreme Court disposes of close to 10,000 cases a year, including more than 3,400 original habeas corpus petitions).

There is no merit either in Richter's argument that § 2254(d) is inapplicable because the California Supreme Court did not say it was adjudicating his claim "on the merits." The state court did not say it was denying the claim for any other reason. When a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary. Cf. *Harris* v. *Reed*, 489 U. S. 255, 265 (1989) (presumption of a merits determination when it is unclear whether a decision appearing to rest on federal grounds was decided on another basis).

The presumption may be overcome when there is reason to think some other explanation for the state court's decision

is more likely. See, *e. g.*, *Ylst* v. *Nunnemaker*, 501 U. S. 797, 803 (1991). Richter, however, does not make that showing. He mentions the theoretical possibility that the members of the California Supreme Court may not have agreed on the reasons for denying his petition. It is pure speculation, however, to suppose that happened in this case. And Richter's assertion that the mere possibility of a lack of agreement prevents any attribution of reasons to the state court's decision is foreclosed by precedent. See *ibid.*

As has been noted before, the California courts or Legislature can alter the State's practices or elaborate more fully on their import. *Evans* v. *Chavis*, 546 U. S. 189, 197, 199 (2006). But that has not occurred here. This Court now holds and reconfirms that § 2254(d) does not require a state court to give reasons before its decision can be deemed to have been "adjudicated on the merits." Richter has failed to show that the California Supreme Court's decision did not involve a determination of the merits of his claim. Section 2254(d) applies to his petition.

III

Federal habeas relief may not be granted for claims subject to § 2254(d) unless it is shown that the earlier state court's decision "was contrary to" federal law then clearly established in the holdings of this Court, § 2254(d)(1); *Williams* v. *Taylor*, 529 U. S. 362, 412 (2000); or that it "involved an unreasonable application of" such law, § 2254(d)(1); or that it "was based on an unreasonable determination of the facts" in light of the record before the state court, § 2254(d)(2).

The Court of Appeals relied on the second of these exceptions to § 2254(d)'s relitigation bar, the exception in § 2254(d)(1) permitting relitigation where the earlier state decision resulted from an "unreasonable application of" clearly established federal law. In the view of the Court of Appeals, the California Supreme Court's decision on Richter's ineffective-assistance claim unreasonably applied the

holding in *Strickland*. The Court of Appeals' lengthy opinion, however, discloses an improper understanding of § 2254(d)'s unreasonableness standard and of its operation in the context of a *Strickland* claim.

The pivotal question is whether the state court's application of the *Strickland* standard was unreasonable. This is different from asking whether defense counsel's performance fell below *Strickland*'s standard. Were that the inquiry, the analysis would be no different than if, for example, this Court were adjudicating a *Strickland* claim on direct review of a criminal conviction in a United States district court. Under AEDPA, though, it is a necessary premise that the two questions are different. For purposes of § 2254(d)(1), "an *unreasonable* application of federal law is different from an *incorrect* application of federal law." *Williams*, *supra*, at 410. A state court must be granted a deference and latitude that are not in operation when the case involves review under the *Strickland* standard itself.

A state court's determination that a claim lacks merit precludes federal habeas relief so long as "fairminded jurists could disagree" on the correctness of the state court's decision. *Yarborough* v. *Alvarado*, 541 U. S. 652, 664 (2004). And as this Court has explained, "[E]valuating whether a rule application was unreasonable requires considering the rule's specificity. The more general the rule, the more leeway courts have in reaching outcomes in case-by-case determinations." *Ibid.* "[I]t is not an unreasonable application of clearly established Federal law for a state court to decline to apply a specific legal rule that has not been squarely established by this Court." *Knowles* v. *Mirzayance*, 556 U. S. 111, 122 (2009) (internal quotation marks omitted).

Here it is not apparent how the Court of Appeals' analysis would have been any different without AEDPA. The court explicitly conducted a *de novo* review, 578 F. 3d, at 952; and after finding a *Strickland* violation, it declared, without further explanation, that the "state court's decision to the con-

trary constituted an unreasonable application of *Strickland.*" 578 F. 3d, at 969. AEDPA demands more. Under § 2254(d), a habeas court must determine what arguments or theories supported or, as here, could have supported, the state court's decision; and then it must ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision of this Court. The opinion of the Court of Appeals all but ignored "the only question that matters under § 2254(d)(1)." *Lockyer* v. *Andrade,* 538 U. S. 63, 71 (2003).

The Court of Appeals appears to have treated the unreasonableness question as a test of its confidence in the result it would reach under *de novo* review: Because the Court of Appeals had little doubt that Richter's *Strickland* claim had merit, the Court of Appeals concluded the state court must have been unreasonable in rejecting it. This analysis overlooks arguments that would otherwise justify the state court's result and ignores further limitations of § 2254(d), including its requirement that the state court's decision be evaluated according to the precedents of this Court. See *Renico* v. *Lett,* 559 U. S. 766, 778–779 (2010). It bears repeating that even a strong case for relief does not mean the state court's contrary conclusion was unreasonable. See *Lockyer*, *supra,* at 75.

If this standard is difficult to meet, that is because it was meant to be. As amended by AEDPA, § 2254(d) stops short of imposing a complete bar on federal-court relitigation of claims already rejected in state proceedings. Cf. *Felker* v. *Turpin,* 518 U. S. 651, 664 (1996) (discussing AEDPA's "modified res judicata rule" under § 2244). It preserves authority to issue the writ in cases where there is no possibility fairminded jurists could disagree that the state court's decision conflicts with this Court's precedents. It goes no further. Section 2254(d) reflects the view that habeas corpus is a "guard against extreme malfunctions in the state criminal justice systems," not a substitute for ordinary error correc-

tion through appeal. *Jackson* v. *Virginia*, 443 U. S. 307, 332, n. 5 (1979) (Stevens, J., concurring in judgment). As a condition for obtaining habeas corpus from a federal court, a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.

The reasons for this approach are familiar. "Federal habeas review of state convictions frustrates both the States' sovereign power to punish offenders and their good-faith attempts to honor constitutional rights." *Calderon* v. *Thompson*, 523 U. S. 538, 555–556 (1998) (internal quotation marks omitted). It "disturbs the State's significant interest in repose for concluded litigation, denies society the right to punish some admitted offenders, and intrudes on state sovereignty to a degree matched by few exercises of federal judicial authority." *Reed*, 489 U. S., at 282 (KENNEDY, J., dissenting).

Section 2254(d) is part of the basic structure of federal habeas jurisdiction, designed to confirm that state courts are the principal forum for asserting constitutional challenges to state convictions. Under the exhaustion requirement, a habeas petitioner challenging a state conviction must first attempt to present his claim in state court. 28 U. S. C. § 2254(b). If the state court rejects the claim on procedural grounds, the claim is barred in federal court unless one of the exceptions to the doctrine of *Wainwright* v. *Sykes*, 433 U. S. 72, 82–84 (1977), applies. And if the state court denies the claim on the merits, the claim is barred in federal court unless one of the exceptions to § 2254(d) set out in §§ 2254(d)(1) and (2) applies. Section 2254(d) thus complements the exhaustion requirement and the doctrine of procedural bar to ensure that state proceedings are the central process, not just a preliminary step for a later federal habeas proceeding, see *id.*, at 90.

Here, however, the Court of Appeals gave § 2254(d) no operation or function in its reasoning. Its analysis illustrates a lack of deference to the state court's determination and an improper intervention in state criminal processes, contrary to the purpose and mandate of AEDPA and to the now well-settled meaning and function of habeas corpus in the federal system.

IV

The conclusion of the Court of Appeals that Richter demonstrated an unreasonable application by the state court of the *Strickland* standard now must be discussed. To have been entitled to relief from the California Supreme Court, Richter had to show both that his counsel provided deficient assistance and that there was prejudice as a result.

To establish deficient performance, a person challenging a conviction must show that "counsel's representation fell below an objective standard of reasonableness." 466 U. S., at 688. A court considering a claim of ineffective assistance must apply a "strong presumption" that counsel's representation was within the "wide range" of reasonable professional assistance. *Id.*, at 689. The challenger's burden is to show "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.*, at 687.

With respect to prejudice, a challenger must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*, at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." *Id.*, at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Id.*, at 687.

"Surmounting *Strickland*'s high bar is never an easy task." *Padilla* v. *Kentucky*, 559 U. S. 356, 371 (2010). An ineffective-assistance claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. *Strickland*, 466 U. S., at 689–690. Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings, knew of materials outside the record, and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." *Id.*, at 689; see also *Bell* v. *Cone*, 535 U. S. 685, 702 (2002); *Lockhart* v. *Fretwell*, 506 U. S. 364, 372 (1993). The question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. *Strickland*, 466 U. S., at 690.

Establishing that a state court's application of *Strickland* was unreasonable under § 2254(d) is all the more difficult. The standards created by *Strickland* and § 2254(d) are both "highly deferential," *id.*, at 689; *Lindh* v. *Murphy*, 521 U. S. 320, 333, n. 7 (1997), and when the two apply in tandem, review is "doubly" so, *Knowles*, 556 U. S., at 123. The *Strickland* standard is a general one, so the range of reasonable applications is substantial. 556 U. S., at 123. Federal habeas courts must guard against the danger of equating unreasonableness under *Strickland* with unreasonableness under § 2254(d). When § 2254(d) applies, the question is not whether counsel's actions were reasonable. The question is whether there is any reasonable argument that counsel satisfied *Strickland*'s deferential standard.

A

With respect to defense counsel's performance, the Court of Appeals held that because Richter's attorney had not consulted forensic blood experts or introduced expert evidence, the California Supreme Court could not reasonably have concluded counsel provided adequate representation. This conclusion was erroneous.

1

The Court of Appeals first held that Richter's attorney rendered constitutionally deficient service because he did not consult blood evidence experts in developing the basic strategy for Richter's defense or offer their testimony as part of the principal case for the defense. *Strickland*, however, permits counsel to "make a reasonable decision that makes particular investigations unnecessary." 466 U. S., at 691. It was at least arguable that a reasonable attorney could decide to forgo inquiry into the blood evidence in the circumstances here.

Criminal cases will arise where the only reasonable and available defense strategy requires consultation with experts or introduction of expert evidence, whether pretrial, at trial, or both. There are, however, "countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." *Id.*, at 689. Rare are the situations in which the "wide latitude counsel must have in making tactical decisions" will be limited to any one technique or approach. *Ibid.* It can be assumed that in some cases counsel would be deemed ineffective for failing to consult or rely on experts, but even that formulation is sufficiently general that state courts would have wide latitude in applying it. Here it would be well within the bounds of a reasonable judicial determination for the state court to conclude that defense counsel could follow a strategy that did not require

the use of experts regarding the pool in the doorway to Johnson's bedroom.

From the perspective of Richter's defense counsel when he was preparing Richter's defense, there were any number of hypothetical experts—specialists in psychiatry, psychology, ballistics, fingerprints, tire treads, physiology, or numerous other disciplines and subdisciplines—whose insight might possibly have been useful. An attorney can avoid activities that appear "distractive from more important duties." *Bobby* v. *Van Hook*, 558 U. S. 4, 11 (2009) *(per curiam)*. Counsel was entitled to formulate a strategy that was reasonable at the time and to balance limited resources in accord with effective trial tactics and strategies. See *Knowles*, *supra*, at 125–126; *Rompilla* v. *Beard*, 545 U. S. 374, 383 (2005); *Wiggins* v. *Smith*, 539 U. S. 510, 525 (2003); *Strickland*, 466 U. S., at 699.

In concluding otherwise the Court of Appeals failed to "reconstruct the circumstances of counsel's challenged conduct" and "evaluate the conduct from counsel's perspective at the time." *Id.*, at 689. In its view Klein's location was "the single most critical issue in the case" given the differing theories of the prosecution and the defense, and the source of the blood in the doorway was therefore of central concern. 578 F. 3d, at 953–954. But it was far from a necessary conclusion that this was evident at the time of the trial. There were many factual differences between prosecution and defense versions of the events on the night of the shootings. It is only because forensic evidence has emerged concerning the source of the blood pool that the issue could with any plausibility be said to stand apart. Reliance on "the harsh light of hindsight" to cast doubt on a trial that took place now more than 15 years ago is precisely what *Strickland* and AEDPA seek to prevent. *Cone*, 535 U. S., at 702; see also *Lockhart*, *supra*, at 372.

Even if it had been apparent that expert blood testimony could support Richter's defense, it would be reasonable to conclude that a competent attorney might elect not to use it. The Court of Appeals opinion for the en banc majority rests in large part on a hypothesis that reasonably could have been rejected. The hypothesis is that without jeopardizing Richter's defense, an expert could have testified that the blood in Johnson's doorway could not have come from Johnson and could have come from Klein, thus suggesting that Richter's version of the shooting was correct and Johnson's a fabrication. This theory overlooks the fact that concentrating on the blood pool carried its own serious risks. If serological analysis or other forensic evidence demonstrated that the blood came from Johnson alone, Richter's story would be exposed as an invention. An attorney need not pursue an investigation that would be fruitless, much less one that might be harmful to the defense. *Strickland, supra,* at 691. Here Richter's attorney had reason to question the truth of his client's account, given, for instance, Richter's initial denial of involvement and the subsequent production of Johnson's missing pistol.

It would have been altogether reasonable to conclude that this concern justified the course Richter's counsel pursued. Indeed, the Court of Appeals recognized this risk insofar as it pertained to the suggestion that counsel should have had the blood evidence tested. 578 F. 3d, at 956, n. 9. But the court failed to recognize that making a central issue out of blood evidence would have increased the likelihood of the prosecution's producing its own evidence on the blood pool's origins and composition; and once matters proceeded on this course, there was a serious risk that expert evidence could destroy Richter's case. Even apart from this danger, there was the possibility that expert testimony could shift attention to esoteric matters of forensic science, distract the jury from whether Johnson was telling the truth, or transform

the case into a battle of the experts. Accord, *Bonin* v. *Calderon*, 59 F. 3d 815, 836 (CA9 1995).

True, it appears that defense counsel's opening statement itself inspired the prosecution to introduce expert forensic evidence. But the prosecution's evidence may well have been weakened by the fact that it was assembled late in the process; and in any event the prosecution's response shows merely that the defense strategy did not work out as well as counsel had hoped, not that counsel was incompetent.

To support a defense argument that the prosecution has not proved its case it sometimes is better to try to cast pervasive suspicion of doubt than to strive to prove a certainty that exonerates. All that happened here is that counsel pursued a course that conformed to the first option. If this case presented a *de novo* review of *Strickland*, the foregoing might well suffice to reject the claim of inadequate counsel, but that is an unnecessary step. The Court of Appeals must be reversed if there was a reasonable justification for the state court's decision. In light of the record here there was no basis to rule that the state court's determination was unreasonable.

The Court of Appeals erred in dismissing strategic considerations like these as an inaccurate account of counsel's actual thinking. Although courts may not indulge "*post hoc* rationalization" for counsel's decisionmaking that contradicts the available evidence of counsel's actions, *Wiggins*, *supra*, at 526–527, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." *Yarborough* v. *Gentry*, 540 U. S. 1, 8 (2003) *(per curiam)*. After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome.

Strickland, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind. 466 U. S., at 688.

2

The Court of Appeals also found that Richter's attorney was constitutionally deficient because he had not expected the prosecution to offer expert testimony and therefore was unable to offer expert testimony of his own in response.

The Court of Appeals erred in suggesting counsel had to be prepared for "any contingency," 578 F. 3d, at 946 (internal quotation marks omitted). *Strickland* does not guarantee perfect representation, only a "'reasonably competent attorney.'" 466 U. S., at 687 (quoting *McMann* v. *Richardson*, 397 U. S. 759, 770 (1970)); see also *Gentry*, *supra*, at 7. Representation is constitutionally ineffective only if it "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair trial. *Strickland*, *supra*, at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.

Here, Richter's attorney was mistaken in thinking the prosecution would not present forensic testimony. But the prosecution itself did not expect to make that presentation and had made no preparations for doing so on the eve of trial. For this reason alone, it is at least debatable whether counsel's error was so fundamental as to call the fairness of the trial into doubt.

Even if counsel should have foreseen that the prosecution would offer expert evidence, Richter would still need to show it was indisputable that *Strickland* required his attorney to act upon that knowledge. Attempting to establish this, the Court of Appeals held that defense counsel should have offered expert testimony to rebut the evidence from the prose-

cution. But *Strickland* does not enact Newton's third law for the presentation of evidence, requiring for every prosecution expert an equal and opposite expert from the defense.

In many instances cross-examination will be sufficient to expose defects in an expert's presentation. When defense counsel does not have a solid case, the best strategy can be to say that there is too much doubt about the State's theory for a jury to convict. And while in some instances "even an isolated error" can support an ineffective-assistance claim if it is "sufficiently egregious and prejudicial," *Murray* v. *Carrier*, 477 U. S. 478, 496 (1986), it is difficult to establish ineffective assistance when counsel's overall performance indicates active and capable advocacy. Here Richter's attorney represented him with vigor and conducted a skillful cross-examination. As noted, defense counsel elicited concessions from the State's experts and was able to draw attention to weaknesses in their conclusions stemming from the fact that their analyses were conducted long after investigators had left the crime scene. For all of these reasons, it would have been reasonable to find that Richter had not shown his attorney was deficient under *Strickland*.

B

The Court of Appeals further concluded that Richter had established prejudice under *Strickland* given the expert evidence his attorney could have introduced. It held that the California Supreme Court would have been unreasonable in concluding otherwise. This too was error.

In assessing prejudice under *Strickland*, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. See *Wong* v. *Belmontes*, 558 U. S. 15, 27 (2009) *(per curiam)*; *Strickland*, 466 U. S., at 693. Instead, *Strickland* asks whether it is "reasonably likely" the result would have been different. *Id.*, at 696. This does not require a

showing that counsel's actions "more likely than not altered the outcome," but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." *Id.*, at 693, 697. The likelihood of a different result must be substantial, not just conceivable. *Id.*, at 693.

It would not have been unreasonable for the California Supreme Court to conclude Richter's evidence of prejudice fell short of this standard. His expert serology evidence established nothing more than a theoretical possibility that, in addition to blood of Johnson's type, Klein's blood may also have been present in a blood sample taken near the bedroom doorway pool. At trial, defense counsel extracted a concession along these lines from the prosecution's expert. The pathology expert's claim about the size of the blood pool could be taken to suggest only that the wounded and hysterical Johnson erred in his assessment of time or that he bled more profusely than estimated. And the analysis of the purported blood pattern expert indicated no more than that Johnson was not standing up when the blood pool formed.

It was also reasonable to find Richter had not established prejudice given that he offered no evidence directly challenging other conclusions reached by the prosecution's experts. For example, there was no dispute that the blood sample taken near the doorway pool matched Johnson's blood type. The California Supreme Court reasonably could have concluded that testimony about patterns that form when blood drips to the floor or about the rate at which Johnson was bleeding did not undermine the results of chemical tests indicating blood type. Nor did Richter provide any direct refutation of the State's expert testimony describing how blood spatter near the couch suggested a shooting in the living room and how the blood patterns on Klein's face were inconsistent with Richter's theory that Klein had been killed in the bedroom doorway and moved to the couch.

There was, furthermore, sufficient conventional circumstantial evidence pointing to Richter's guilt. It included the gun safe and ammunition found at his home; his flight from the crime scene; his disposal of the .32-caliber gun and of Johnson's pistol; his shifting story concerning his involvement; the disappearance prior to the arrival of the law enforcement officers of the .22-caliber weapon that killed Klein; the improbability of Branscombe's not being wounded in the shootout that resulted in a combined four bullet wounds to Johnson and Klein; and the difficulties the intoxicated and twice-shot Johnson would have had in carrying the body of a dying man from bedroom doorway to living room couch, not to mention the lack of any obvious reason for him to do so. There was ample basis for the California Supreme Court to think any real possibility of Richter's being acquitted was eclipsed by the remaining evidence pointing to guilt.

* * *

The California Supreme Court's decision on the merits of Richter's *Strickland* claim required more deference than it received. Richter was not entitled to the relief ordered by the Court of Appeals. The judgment is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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

JUSTICE GINSBURG, concurring in the judgment.

In failing even to consult blood experts in preparation for the murder trial, Richter's counsel, I agree with the Court of Appeals, "was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Strickland* v. *Washington*, 466 U. S. 668, 687 (1984). The strong force of the prosecution's case, however, was not significantly reduced by the affidavits offered in support of Richter's habeas

petition. I would therefore not rank counsel's lapse "so serious as to deprive [Richter] of a fair trial, a trial whose result is reliable." *Ibid.* For that reason, I concur in the Court's judgment.

Syllabus

PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY *v.* MOORE

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

No. 09–658. Argued October 12, 2010—Decided January 19, 2011

Respondent Moore and two accomplices attacked and bloodied Kenneth Rogers, tied him up, and threw him in the trunk of a car before driving into the Oregon countryside, where Moore fatally shot him. Afterwards, Moore and one accomplice told Moore's brother and the accomplice's girlfriend that they had intended to scare Rogers, but that Moore had accidentally shot him. Moore and the accomplice repeated this account to the police. On the advice of counsel, Moore agreed to plead no contest to felony murder in exchange for the minimum sentence for that offense. He later sought postconviction relief in state court, claiming that he had been denied effective assistance of counsel. He complained that his lawyer had not moved to suppress his confession to police in advance of the lawyer's advice that Moore considered before accepting the plea offer. The court concluded the suppression motion would have been fruitless in light of Moore's other admissible confession to two witnesses. Counsel gave that as his reason for not making the motion. He added that he had advised Moore that, because of the abuse Rogers suffered before the shooting, Moore could be charged with aggravated murder. That crime was punishable by death or life in prison without parole. These facts led the state court to conclude Moore had not established ineffective assistance of counsel under *Strickland* v. *Washington*, 466 U. S. 668. Moore sought federal habeas relief, renewing his ineffective-assistance claim. The District Court denied the petition, but the Ninth Circuit reversed, holding that the state court's conclusion was an unreasonable application of clearly established law in light of *Strickland* and was contrary to *Arizona* v. *Fulminante*, 499 U. S. 279.

Held: Moore was not entitled to the habeas relief ordered by the Ninth Circuit. Pp. 120–133.

(a) Under 28 U. S. C. § 2254(d), federal habeas relief may not be granted with respect to any claim a state court has adjudicated on the merits unless, among other exceptions, the state-court decision denying relief involves "an unreasonable application" of "clearly established Federal law, as determined by" this Court. The relevant federal law is the standard for ineffective assistance of counsel under *Strickland*, which

requires a showing of "both deficient performance by counsel and prejudice." *Knowles* v. *Mirzayance*, 556 U. S. 111, 122. Pp. 120–123.

(b) The state-court decision was not an unreasonable application of either part of the *Strickland* rule. Pp. 123–133.

(1) The state court would not have been unreasonable to accept as a justification for counsel's action that suppression would have been futile in light of Moore's other admissible confession to two witnesses. This explanation confirms that counsel's representation was adequate under *Strickland*, so it is unnecessary to consider the reasonableness of his other justification—that a suppression motion would have failed. Plea bargains involve complex negotiations suffused with uncertainty, and defense counsel must make strategic choices in balancing opportunities—pleading to a lesser charge and obtaining a lesser sentence—and risks—that the plea bargain might come before the prosecution finds its case is getting weaker, not stronger. Failure to respect the latitude *Strickland* requires can create at least two problems. First, the potential for distortions and imbalance that can inhere in a hindsight perspective may become all too real; and habeas courts must be mindful of their limited role, to assess deficiency in light of information then available to counsel. Second, ineffective-assistance claims that lack necessary foundation may bring instability to the very process the inquiry seeks to protect because prosecutors must have assurances that a plea will not be undone in court years later. In applying and defining the *Strickland* standard—reasonable competence in representing the accused—substantial deference must be accorded to counsel's judgment. The absence of a developed and extensive record and well-defined prosecution or defense case creates a particular risk at the early plea stage. Here, Moore's prospects at trial were anything but certain. Counsel knew that the two witnesses presented a serious strategic concern and that delaying the plea for further proceedings might allow the State to uncover additional incriminating evidence in support of a capital prosecution. Under these circumstances, counsel made a reasonable choice. At the very least, the state court would not have been unreasonable to so conclude. The Court of Appeals relied further on *Fulminante*, but a state-court adjudication of counsel's performance under the Sixth Amendment cannot be "contrary to" *Fulminante*, for *Fulminante*—which involved the admission of an involuntary confession in violation of the Fifth Amendment—says nothing about *Strickland*'s effectiveness standard. Pp. 123–128.

(2) The state court also reasonably could have concluded that Moore was not prejudiced by counsel's actions. To prevail in state court, he had to demonstrate "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have in-

Syllabus

sisted on going to trial." *Hill* v. *Lockhart*, 474 U. S. 52, 59. Deference to the state court's prejudice determination is significant, given the uncertainty inherent in plea negotiations. That court reasonably could have determined that Moore would have accepted the plea agreement even if his second confession had been ruled inadmissible. The State's case was already formidable with two witnesses to an admissible confession, and it could have become stronger had the investigation continued. Moore also faced the possibility of grave punishments. Counsel's bargain for the minimum sentence for the crime of conviction was thus favorable, and forgoing a challenge to the confession may have been essential to securing that agreement. Again, the state court's finding could not be contrary to *Fulminante*, which does not speak to *Strickland*'s prejudice standard or contemplate prejudice in the plea bargain context. To the extent *Fulminante*'s harmless-error analysis sheds any light on this case, it suggests that the state court's prejudice determination was reasonable. Pp. 128–133.

574 F. 3d 1092, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, THOMAS, BREYER, ALITO, and SOTOMAYOR, JJ., joined. GINSBURG, J., filed an opinion concurring in the judgment, *post*, p. 133. KAGAN, J., took no part in the consideration or decision of the case.

John R. Kroger, Attorney General of Oregon, argued the cause for petitioner. With him on the briefs were *Mary H. Williams*, Deputy Attorney General, *David B. Thompson*, Acting Solicitor General, and *Rolf C. Moan*, Assistant Attorney General.

Steven T. Wax argued the cause for respondent. With him on the brief was *Anthony D. Bornstein*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of South Carolina et al. by *Henry D. McMaster*, Attorney General of South Carolina, *John W. McIntosh*, Deputy Attorney General, *Donald J. Zelenka*, Assistant Deputy Attorney General, and *Melody J. Brown*, Assistant Attorney General, and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *Daniel S. Sullivan* of Alaska, *Terry Goddard* of Arizona, *John W. Suthers* of Colorado, *Joseph R. Biden III* of Delaware, *Lawrence G. Wasden* of Idaho, *Gregory F. Zoeller* of Indiana, *Steve Six* of Kansas, *James D. "Buddy" Caldwell* of Louisiana, *Janet T. Mills* of Maine, *Douglas F. Gansler* of Maryland, *Michael A. Cox* of Michigan, *Steve Bullock* of Montana, *Gary King* of New Mexico, *Wayne Steneh-*

JUSTICE KENNEDY delivered the opinion of the Court.

This case calls for determinations parallel in some respects to those discussed in today's opinion in *Harrington* v. *Richter*, *ante*, p. 86. Here, as in *Richter*, the Court reviews a decision of the Court of Appeals for the Ninth Circuit granting federal habeas corpus relief in a challenge to a state criminal conviction. Here, too, the case turns on the proper implementation of one of the stated premises for issuance of federal habeas corpus contained in 28 U. S. C. § 2254(d), the instruction that federal habeas corpus relief may not be granted with respect to any claim a state court has adjudicated on the merits unless, among other exceptions, the state court's decision denying relief involves "an unreasonable application" of "clearly established Federal law, as determined by the Supreme Court of the United States." And, as in *Richter*, the relevant clearly established law derives from *Strickland* v. *Washington*, 466 U. S. 668 (1984), which provides the standard for inadequate assistance of counsel under the Sixth Amendment. *Richter* involves a California conviction and addresses the adequacy of representation when counsel did not consult or use certain experts in pretrial preparation and at trial. The instant case involves an unrelated Oregon conviction and concerns the adequacy of representation in providing an assessment of a plea bargain without first seeking suppression of a confession assumed to have been improperly obtained.

I

On December 7, 1995, respondent Randy Moore and two confederates attacked Kenneth Rogers at his home and bloodied him before tying him with duct tape and throwing

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jem of North Dakota, *W. A. Drew Edmondson* of Oklahoma, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Marty J. Jackley* of South Dakota, *Robert E. Cooper, Jr.*, of Tennessee, *Greg Abbott* of Texas, *Kenneth T. Cuccinnelli II* of Virginia, *J. B. Van Hollen* of Wisconsin, and *Bruce A. Salzburg* of Wyoming; and for the Criminal Justice Legal Foundation by *Kent S. Scheidegger*.

him in the trunk of a car. They drove into the Oregon countryside, where Moore shot Rogers in the temple, killing him.

Afterwards, Moore and one of his accomplices told two people—Moore's brother and the accomplice's girlfriend—about the crimes. According to Moore's brother, Moore and his accomplice admitted:

> "[T]o make an example and put some scare into Mr. Rogers . . . , they had blind-folded him [and] duct taped him and put him in the trunk of the car and took him out to a place that's a little remote . . . . [T]heir intent was to leave him there and make him walk home . . . .
>
> . . . . .
>
> "[Moore] had taken the revolver from Lonnie and at the time he had taken it, Mr. Rogers had slipped backwards on the mud and the gun discharged." App. 157–158.

Moore and his accomplice repeated this account to the police. On the advice of counsel Moore agreed to plead no contest to felony murder in exchange for a sentence of 300 months, the minimum sentence allowed by law for the offense.

Moore later filed for postconviction relief in an Oregon state court, alleging that he had been denied his right to effective assistance of counsel. He complained that his lawyer had not filed a motion to suppress his confession to police in advance of the lawyer's advice that Moore considered before accepting the plea offer. After an evidentiary hearing, the Oregon court concluded a "motion to suppress would have been fruitless" in light of the other admissible confession by Moore, to which two witnesses could testify. *Id.*, at 140. As the court noted, Moore's trial counsel explained why he did not move to exclude Moore's confession to police:

> "Mr. Moore and I discussed the possibility of filing a Motion to Suppress and concluded that it would be unavailing, because . . . he had previously made a full confession to his brother and to [his accomplice's girlfriend], either

> one of whom could have been called as a witness at any time to repeat his confession in full detail." Jordan Affidavit (Feb. 26, 1999), App. to Pet. for Cert. 70, ¶4.

Counsel added that he had made Moore aware of the possibility of being charged with aggravated murder, which carried a potential death sentence, as well as the possibility of a sentence of life imprisonment without parole. See Ore. Rev. Stat. § 163.105(1)(a) (1995). The intense and serious abuse to the victim before the shooting might well have led the State to insist on a strong response. In light of these facts the Oregon court concluded Moore had not established ineffective assistance of counsel under *Strickland.*

Moore filed a petition for habeas corpus in the United States District Court for the District of Oregon, renewing his ineffective-assistance claim. The District Court denied the petition, finding sufficient evidence to support the Oregon court's conclusion that suppression would not have made a difference.

A divided panel of the United States Court of Appeals for the Ninth Circuit reversed. *Moore* v. *Czerniak*, 574 F. 3d 1092 (2009). In its view the state court's conclusion that counsel's action did not constitute ineffective assistance was an unreasonable application of clearly established law in light of *Strickland* and was contrary to *Arizona* v. *Fulminante*, 499 U. S. 279 (1991). Six judges dissented from denial of rehearing en banc. 574 F. 3d, at 1162.

We granted certiorari *sub nom. Belleque* v. *Moore*, 559 U. S. 1004 (2010).

II

The statutory authority of federal courts to issue habeas corpus relief for persons in state custody is defined by 28 U. S. C. § 2254, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). The text of § 2254(d) states:

> "An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a

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

AEDPA prohibits federal habeas relief for any claim adjudicated on the merits in state court, unless one of the exceptions listed in § 2254(d) obtains. Relevant here is § 2254(d)(1)'s exception "permitting relitigation where the earlier state decision resulted from an 'unreasonable application of' clearly established federal law." *Richter*, *ante*, at 100. The applicable federal law consists of the rules for determining when a criminal defendant has received inadequate representation as defined in *Strickland.*

To establish ineffective assistance of counsel "a defendant must show both deficient performance by counsel and prejudice." *Knowles* v. *Mirzayance*, 556 U. S. 111, 122 (2009). In addressing this standard and its relationship to AEDPA, the Court today in *Richter*, *ante*, at 104–105, gives the following explanation:

> "To establish deficient performance, a person challenging a conviction must show that 'counsel's representation fell below an objective standard of reasonableness.' *[Strickland,]* 466 U. S., at 688. A court considering a claim of ineffective assistance must apply a 'strong presumption' that counsel's representation was within the 'wide range' of reasonable professional assistance. *Id.*, at 689. The challenger's burden is to show 'that counsel made errors so serious that counsel was

not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment.' *Id.*, at 687.

"With respect to prejudice, a challenger must demonstrate 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' . . .

"'Surmounting *Strickland*'s high bar is never an easy task.' *Padilla* v. *Kentucky*, 559 U. S. 356, 371 (2010). An ineffective-assistance claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial [or in pretrial proceedings], and so the *Strickland* standard must be applied with scrupulous care, lest 'intrusive post-trial inquiry' threaten the integrity of the very adversary process the right to counsel is meant to serve. *Strickland*, 466 U. S., at 689–690. Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings, knew of materials outside the record, and interacted with the client, with opposing counsel, and with the judge. It is 'all too tempting' to 'second-guess counsel's assistance after conviction or adverse sentence.' *Id.*, at 689; see also *Bell* v. *Cone*, 535 U. S. 685, 702 (2002); *Lockhart* v. *Fretwell*, 506 U. S. 364, 372 (1993). The question is whether an attorney's representation amounted to incompetence under 'prevailing professional norms,' not whether it deviated from best practices or most common custom. *Strickland*, 466 U. S., at 690.

"Establishing that a state court's application of *Strickland* was unreasonable under § 2254(d) is all the more difficult. The standards created by *Strickland* and § 2254(d) are both 'highly deferential,' *id.*, at 689; *Lindh* v. *Murphy*, 521 U. S. 320, 333, n. 7 (1997), and when the two apply in tandem, review is 'doubly' so, *Knowles*, 556 U. S., at 123. The *Strickland* standard is

a general one, so the range of reasonable applications is substantial. 556 U. S., at 123. Federal habeas courts must guard against the danger of equating unreasonableness under *Strickland* with unreasonableness under § 2254(d). When § 2254(d) applies, the question is not whether counsel's actions were reasonable. The question is whether there is any reasonable argument that counsel satisfied *Strickland*'s deferential standard."

III

The question becomes whether Moore's counsel provided ineffective assistance by failing to seek suppression of Moore's confession to police before advising Moore regarding the plea. Finding that any "motion to suppress would have been fruitless," the state postconviction court concluded that Moore had not received ineffective assistance of counsel. App. 140. The state court did not specify whether this was because there was no deficient performance under *Strickland* or because Moore suffered no *Strickland* prejudice, or both. To overcome the limitation imposed by § 2254(d), the Court of Appeals had to conclude that both findings would have involved an unreasonable application of clearly established federal law. See *Richter*, *ante*, at 109–110. In finding that this standard was met, the Court of Appeals erred, for the state-court decision was not an unreasonable application of either part of the *Strickland* rule.

A

The Court of Appeals was wrong to accord scant deference to counsel's judgment, and doubly wrong to conclude it would have been unreasonable to find that the defense attorney qualified as counsel for Sixth Amendment purposes. *Knowles*, *supra*, at 123; *Strickland*, *supra*, at 687. Counsel gave this explanation for his decision to discuss the plea bargain without first challenging Moore's confession to the police: that suppression would serve little purpose in

light of Moore's other full and admissible confession, to which both his brother and his accomplice's girlfriend could testify. The state court would not have been unreasonable to accept this explanation.

Counsel also justified his decision by asserting that any motion to suppress was likely to fail. Reviewing the reasonableness of that justification is complicated by the possibility that petitioner forfeited one argument that would have supported its position: The Court of Appeals assumed that a motion would have succeeded because the warden did not argue otherwise. Of course that is not the same as a concession that no competent attorney would think a motion to suppress would have failed, which is the relevant question under *Strickland*. See *Kimmelman* v. *Morrison*, 477 U. S. 365, 382 (1986); *Richter*, *ante*, at 109–110. It is unnecessary to consider whether counsel's second justification was reasonable, however, since the first and independent explanation—that suppression would have been futile—confirms that his representation was adequate under *Strickland*, or at least that it would have been reasonable for the state court to reach that conclusion.

Acknowledging guilt and accepting responsibility by an early plea respond to certain basic premises in the law and its function. Those principles are eroded if a guilty plea is too easily set aside based on facts and circumstances not apparent to a competent attorney when actions and advice leading to the plea took place. Plea bargains are the result of complex negotiations suffused with uncertainty, and defense attorneys must make careful strategic choices in balancing opportunities and risks. The opportunities, of course, include pleading to a lesser charge and obtaining a lesser sentence, as compared with what might be the outcome not only at trial but also from a later plea offer if the case grows stronger and prosecutors find stiffened resolve. A risk, in addition to the obvious one of losing the chance for a defense verdict, is that an early plea bargain might come

before the prosecution finds its case is getting weaker, not stronger. The State's case can begin to fall apart as stories change, witnesses become unavailable, and new suspects are identified.

These considerations make strict adherence to the *Strickland* standard all the more essential when reviewing the choices an attorney made at the plea bargain stage. Failure to respect the latitude *Strickland* requires can create at least two problems in the plea context. First, the potential for the distortions and imbalance that can inhere in a hindsight perspective may become all too real. The art of negotiation is at least as nuanced as the art of trial advocacy, and it presents questions further removed from immediate judicial supervision. There are, moreover, special difficulties in evaluating the basis for counsel's judgment: An attorney often has insights borne of past dealings with the same prosecutor or court, and the record at the pretrial stage is never as full as it is after a trial. In determining how searching and exacting their review must be, habeas courts must respect their limited role in determining whether there was manifest deficiency in light of information then available to counsel. *Lockhart* v. *Fretwell*, 506 U. S. 364, 372 (1993). AEDPA compounds the imperative of judicial caution.

Second, ineffective-assistance claims that lack necessary foundation may bring instability to the very process the inquiry seeks to protect. *Strickland* allows a defendant "to escape rules of waiver and forfeiture," *Richter*, *ante*, at 105. Prosecutors must have assurance that a plea will not be undone years later because of infidelity to the requirements of AEDPA and the teachings of *Strickland*. The prospect that a plea deal will afterwards be unraveled when a court second-guesses counsel's decisions while failing to accord the latitude *Strickland* mandates or disregarding the structure dictated by AEDPA could lead prosecutors to forgo plea bargains that would benefit defendants, a result favorable to no one.

Whether before, during, or after trial, when the Sixth Amendment applies, the formulation of the standard is the same: reasonable competence in representing the accused. *Strickland*, 466 U. S., at 688. In applying and defining this standard substantial deference must be accorded to counsel's judgment. *Id.*, at 689. But at different stages of the case that deference may be measured in different ways.

In the case of an early plea, neither the prosecution nor the defense may know with much certainty what course the case may take. It follows that each side, of necessity, risks consequences that may arise from contingencies or circumstances yet unperceived. The absence of a developed or an extensive record and the circumstance that neither the prosecution nor the defense case has been well defined create a particular risk that an after-the-fact assessment will run counter to the deference that must be accorded counsel's judgment and perspective when the plea was negotiated, offered, and entered.

Prosecutors in the present case faced the cost of litigation and the risk of trying their case without Moore's confession to the police. Moore's counsel could reasonably believe that a swift plea bargain would allow Moore to take advantage of the State's aversion to these hazards. And whenever cases involve multiple defendants, there is a chance that prosecutors might convince one defendant to testify against another in exchange for a better deal. Moore's plea eliminated that possibility and ended an ongoing investigation. Delaying the plea for further proceedings would have given the State time to uncover additional incriminating evidence that could have formed the basis of a capital prosecution. It must be remembered, after all, that Moore's claim that it was an accident when he shot the victim through the temple might be disbelieved.

It is not clear how the successful exclusion of the confession would have affected counsel's strategic calculus. The prosecution had at its disposal two witnesses able to relate

another confession. True, Moore's brother and the girlfriend of his accomplice might have changed their accounts in a manner favorable to Moore. But the record before the state court reveals no reason to believe that either witness would violate the legal obligation to convey the content of Moore's confession. And to the extent that his accomplice's girlfriend had an ongoing interest in the matter, she might have been tempted to put more blame, not less, on Moore. Then, too, the accomplices themselves might have decided to implicate Moore to a greater extent than his own confession did, say by indicating that Moore shot the victim deliberately, not accidentally. All these possibilities are speculative. What counsel knew at the time was that the existence of the two witnesses to an additional confession posed a serious strategic concern.

Moore's prospects at trial were thus anything but certain. Even now, he does not deny any involvement in the kidnaping and killing. In these circumstances, and with a potential capital charge lurking, Moore's counsel made a reasonable choice to opt for a quick plea bargain. At the very least, the state court would not have been unreasonable to so conclude. Cf. *Yarborough* v. *Alvarado*, 541 U. S. 652, 664 (2004) (explaining that state courts enjoy "more leeway" under AEDPA in applying general standards).

The Court of Appeals' contrary holding rests on a case that did not involve ineffective assistance of counsel: *Arizona* v. *Fulminante*, 499 U. S. 279. To reach that result, it transposed that case into a novel context; and novelty alone—at least insofar as it renders the relevant rule less than "clearly established"—provides a reason to reject it under AEDPA. See *Yarborough*, *supra*, at 666 ("Section 2254(d)(1) would be undermined if habeas courts introduced rules not clearly established under the guise of extensions to existing law . . . [, although c]ertain principles are fundamental enough that when new factual permutations arise, the necessity to apply the earlier rule will be beyond doubt"). And the transposi-

tion is improper even on its own terms. According to the Court of Appeals, "*Fulminante* stands for the proposition that the admission of an additional confession ordinarily reinforces and corroborates the others and is therefore prejudicial." 574 F. 3d, at 1111. Based on that reading, the Court of Appeals held that the state court's decision "was contrary to *Fulminante*." *Id.*, at 1102. But *Fulminante* may not be so incorporated into the *Strickland* performance inquiry.

A state-court adjudication of the performance of counsel under the Sixth Amendment cannot be "contrary to" *Fulminante*, for *Fulminante*—which involved the admission of an involuntary confession in violation of the Fifth Amendment—says nothing about the *Strickland* standard of effectiveness. See *Bell* v. *Cone*, 535 U. S. 685, 694 (2002) ("A federal habeas court may issue the writ under the 'contrary to' clause if the state court applies a rule different from the governing law set forth in our cases, or if it decides a case differently than we have done on a set of materially indistinguishable facts"). The *Fulminante* prejudice inquiry presumes a constitutional violation, whereas *Strickland* seeks to define one. The state court accepted counsel's view that seeking to suppress Moore's second confession would have been "fruitless." It would not have been unreasonable to conclude that counsel could incorporate that view into his assessment of a plea offer, a subject with which *Fulminante* is in no way concerned.

A finding of constitutionally adequate performance under *Strickland* cannot be contrary to *Fulminante*. The state court likely reached the correct result under *Strickland*. And under § 2254(d), that it reached a reasonable one is sufficient. See *Richter*, *ante*, at 109.

B

The Court of Appeals further concluded that it would have been unreasonable for the state postconviction court to have found no prejudice in counsel's failure to suppress Moore's

confession to police. To prevail on prejudice before the state court Moore had to demonstrate "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill* v. *Lockhart*, 474 U. S. 52, 59 (1985).

Deference to the state court's prejudice determination is all the more significant in light of the uncertainty inherent in plea negotiations described above: The stakes for defendants are high, and many elect to limit risk by forgoing the right to assert their innocence. A defendant who accepts a plea bargain on counsel's advice does not necessarily suffer prejudice when his counsel fails to seek suppression of evidence, even if it would be reversible error for the court to admit that evidence.

The state court here reasonably could have determined that Moore would have accepted the plea agreement even if his second confession had been ruled inadmissible. By the time the plea agreement cut short investigation of Moore's crimes, the State's case was already formidable and included two witnesses to an admissible confession. Had the prosecution continued to investigate, its case might well have become stronger. At the same time, Moore faced grave punishments. His decision to plead no contest allowed him to avoid a possible sentence of life without parole or death. The bargain counsel struck was thus a favorable one—the statutory minimum for the charged offense—and the decision to forgo a challenge to the confession may have been essential to securing that agreement.

Once again the Court of Appeals reached a contrary conclusion by pointing to *Fulminante:* "The state court's finding that a motion to suppress a recorded confession to the police would have been 'fruitless' . . . was without question contrary to clearly established federal law as set forth in *Fulminante.*" 574 F. 3d, at 1112. And again there is no sense in which the state court's finding could be contrary to *Fulminante*, for *Fulminante* says nothing about prejudice for

Strickland purposes, nor does it contemplate prejudice in the plea bargain context.

The Court of Appeals appears to have treated *Fulminante* as a *per se* rule of prejudice, or something close to it, in all cases involving suppressible confessions. It is not. In *Fulminante* five Justices made the uncontroversial observation that many confessions are powerful evidence. See, *e. g.*, 499 U. S., at 296. *Fulminante*'s prejudice analysis arose on direct review following an acknowledged constitutional error at trial. The State therefore had the burden of showing that it was "clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error." *Neder* v. *United States*, 527 U. S. 1, 18 (1999) (paraphrasing *Fulminante*, *supra*). That standard cannot apply to determinations whether inadequate assistance of counsel prejudiced a defendant who entered into a plea agreement. Many defendants reasonably enter plea agreements even though there is a significant probability—much more than a reasonable doubt—that they would be acquitted if they proceeded to trial. Thus, the question in the present case is not whether Moore was sure beyond a reasonable doubt that he would still be convicted if the extra confession were suppressed. It is whether Moore established the reasonable probability that he would not have entered his plea but for his counsel's deficiency, *Hill*, *supra*, at 59, and more to the point, whether a state court's decision to the contrary would be unreasonable.

To the extent *Fulminante*'s application of the harmless-error standard sheds any light on the present case, it suggests that the state court's prejudice determination was reasonable. *Fulminante* found that an improperly admitted confession was not harmless under *Chapman* v. *California*, 386 U. S. 18 (1967), because the remaining evidence against the defendant was weak. The additional evidence consisted primarily of a second confession that Fulminante had made to the informant's fiance. But many of its details were not

corroborated, the fiance had not reported the confession for a long period of time, the State had indicated that both confessions were essential to its case, and the fiance potentially "had a motive to lie." 499 U. S., at 300. Moore's plea agreement, by contrast, ended the government's investigation well before trial, yet the evidence against Moore was strong. The accounts of Moore's second confession to his brother and his accomplice's girlfriend corroborated each other, were given to people without apparent reason to lie, and were reported without delay.

The State gave no indication that its felony-murder prosecution depended on the admission of the police confession, and Moore does not now deny that he kidnaped and killed Rogers. Given all this, an unconstitutional admission of Moore's confession to police might well have been found harmless even on direct review if Moore had gone to trial after the denial of a suppression motion.

Other than for its discussion of the basic proposition that a confession is often powerful evidence, *Fulminante* is not relevant to the present case. The state postconviction court reasonably could have concluded that Moore was not prejudiced by counsel's actions. Under AEDPA, that finding ends federal review. See *Richter*, *ante*, at 109.

Judge Berzon's concurring opinion in the Court of Appeals does not provide a basis for issuance of the writ. The concurring opinion would have found the state court's prejudice determination unreasonable in light of *Kimmelman*. It relied on *Kimmelman* to find that Moore suffered prejudice for *Strickland* purposes because there was a reasonable possibility that he would have obtained a better plea agreement but for his counsel's errors. But *Kimmelman* concerned a conviction following a bench trial, so it did not establish, much less clearly establish, the appropriate standard for prejudice in cases involving plea bargains. See 477 U. S., at 389. That standard was established in *Hill*, which held that a defendant who enters a plea agreement must show

"a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." 474 U. S., at 59. Moore's failure to make that showing forecloses relief under AEDPA.

IV

There are certain differences between inadequate-assistance-of-counsel claims in cases where there was a full trial on the merits and those, like this one, where a plea was entered even before the prosecution decided upon all of the charges. A trial provides the full written record and factual background that serve to limit and clarify some of the choices counsel made. Still, hindsight cannot suffice for relief when counsel's choices were reasonable and legitimate based on predictions of how the trial would proceed. See *Richter*, *ante*, at 108.

Hindsight and second guesses are also inappropriate, and often more so, where a plea has been entered without a full trial or, as in this case, even before the prosecution decided on the charges. The added uncertainty that results when there is no extended, formal record and no actual history to show how the charges have played out at trial works against the party alleging inadequate assistance. Counsel, too, faced that uncertainty. There is a most substantial burden on the claimant to show ineffective assistance. The plea process brings to the criminal justice system a stability and a certainty that must not be undermined by the prospect of collateral challenges in cases not only where witnesses and evidence have disappeared, but also in cases where witnesses and evidence were not presented in the first place. The substantial burden to show ineffective assistance of counsel, the burden the claimant must meet to avoid the plea, has not been met in this case.

The state postconviction court's decision involved no unreasonable application of Supreme Court precedent. Because the Court of Appeals erred in finding otherwise, its

judgment is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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

JUSTICE GINSBURG, concurring in the judgment.

To prevail under the prejudice requirement of *Strickland* v. *Washington*, 466 U. S. 668, 694 (1984), a petitioner for federal habeas corpus relief must demonstrate "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial," *Hill* v. *Lockhart*, 474 U. S. 52, 59 (1985). As Moore's counsel confirmed at oral argument, see Tr. of Oral Arg. 32, Moore never declared that, better informed, he would have resisted the plea bargain and opted for trial. For that reason, I concur in the Court's judgment.

Syllabus

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION ET AL. *v.* NELSON ET AL.

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

No. 09–530. Argued October 5, 2010—Decided January 19, 2011

The National Aeronautics and Space Administration (NASA) has a workforce of both federal civil servants and Government contract employees. Respondents are contract employees at NASA's Jet Propulsion Laboratory (JPL), which is operated by the California Institute of Technology (Cal Tech). Respondents were not subject to Government background checks at the time they were hired, but that changed when the President ordered the adoption of uniform identification standards for both federal civil servants and contractor employees. The Department of Commerce mandated that contract employees with long-term access to federal facilities complete a standard background check, typically the National Agency Check with Inquiries (NACI), by October 2007. NASA modified its contract with Cal Tech to reflect the new requirement, and JPL announced that employees who did not complete the NACI process in time would be denied access to JPL and face termination by Cal Tech.

The NACI process, long used for prospective civil servants, begins with the employee filling out a standard form (here, Standard Form 85, the Questionnaire for Non-Sensitive Positions (SF–85)). SF–85 asks whether an employee has "used, possessed, supplied, or manufactured illegal drugs" in the last year. If so, the employee must provide details, including information about "treatment or counseling received." The employee must also sign a release authorizing the Government to obtain personal information from schools, employers, and others during its investigation. Once SF–85 is completed, the Government sends the employee's references a questionnaire (Form 42) that asks open-ended questions about whether they have "any reason to question" the employee's "honesty or trustworthiness," or have "adverse information" concerning a variety of other matters. All SF–85 and Form 42 responses are subject to the protections of the Privacy Act.

With the deadline for completing the NACI process drawing near, respondents brought suit, claiming, as relevant here, that the background-check process violates a constitutional right to informational privacy. The District Court declined to issue a preliminary injunction, but the Ninth Circuit reversed. It held that SF–85's inquiries

into recent drug involvement furthered the Government's interest in combating illegal-drug use, but that the drug "treatment or counseling" question furthered no legitimate interest and was thus likely to be held unconstitutional. It also held that Form 42's open-ended questions were not narrowly tailored to meet the Government's interests in veri fying contractors' identities and ensuring JPL's security, and thus also likely violated respondents' informational-privacy rights.

Held:

1. In two cases decided over 30 years ago, this Court referred broadly to a constitutional privacy "interest in avoiding disclosure of personal matters." *Whalen* v. *Roe*, 429 U. S. 589, 599–600; *Nixo*n v. *Administra tor of General Services*, 433 U. S. 425, 457. In *Whalen*, the Court up held a New York law permitting the collection of names and addresses of persons prescribed dangerous drugs, nding that the statute's "security provisions," which protected against "public disclosure" of patient infor mation, 462 U. S., at 600–601, were suf cient to protect a privacy inter est "arguably . . . root[ed] in the Constitution," *id.*, at 605. In *Nixon*, the Court upheld a law requiring the former President to turn over his Presidential papers and tape recordings for archival review and screen ing, concluding that the federal Act at issue, like the statute in *Whalen*, had protections against "undue dissemination of private materials." 433 U. S., at 458. Since *Nixon*, the Court has said little else on the subject of a constitutional right to informational privacy. Pp. 144–146.

2. Assuming, without deciding, that the Government's challenged in quiries implicate a privacy interest of constitutional signi cance, that interest, whatever its scope, does not prevent the Government from ask ing reasonable questions of the sort included on SF–85 and Form 42 in an employment background investigation that is subject to the Privacy Act's safeguards against public disclosure. Pp. 147–159.

(a) The forms are reasonable in light of the Government interests at stake. Pp. 148–155.

(1) Judicial review of the forms must take into account the con text in which the Government's challenged inquiries arise. When the Government acts in its capacity "as proprietor" and manager of its "in ternal operation," *Cafeteria & Restaurant Workers* v. *McElroy*, 367 U. S. 886, 896, it has a much freer hand than when it regulates as to citizens generally. The questions respondents challenge are part of a standard background check of the sort used by millions of private em ployers. The Government has been conducting employment investiga tions since the Republic's earliest days, and the President has had statu tory authority to assess an applicant's tness for the civil service since 1871. Standard background investigations similar to those at issue be

came mandatory for federal civil-service candidates in 1953, and the investigations challenged here arose from a decision to extend that requirement to federal contract employees. This history shows that the Government has an interest in conducting basic background checks in order to ensure the security of its facilities and to employ a competent, reliable work force to carry out the people's business. The interest is not diminished by the fact that respondents are contract employees. There are no meaningful distinctions in the duties of NASA's civil-service and contractor employees, especially at JPL, where contract employees do work that is critical to NASA's mission and that is funded with a multibillion-dollar taxpayer investment. Pp. 148–151.

(2) The challenged questions on SF–85 and Form 42 are reasonable, employment-related inquiries that further the Government's interests in managing its internal operations. SF–85's "treatment or counseling" question is a followup question to a reasonable inquiry about illegal-drug use. In context, the drug-treatment inquiry is also a reasonable, employment-related inquiry. The Government, recognizing that illegal-drug use is both a criminal and medical issue, seeks to separate out those drug users who are taking steps to address and overcome their problems. Thus, it uses responses to the drug-treatment question as a mitigating factor in its contractor credentialing decisions. The Court rejects the argument that the Government has a constitutional burden to demonstrate that its employment background questions are "necessary" or the least restrictive means of furthering its interests. So exacting a standard runs directly contrary to *Whalen*. See 429 U. S., at 596–597. Pp. 151–154.

(3) Like SF–85's drug-treatment question, Form 42's open-ended questions are reasonably aimed at identifying capable employees who will faithfully conduct the Government's business. Asking an applicant's designated references broad questions about job suitability is an appropriate tool for separating strong candidates from weak ones. The reasonableness of such questions is illustrated by their pervasiveness in the public and private sectors. Pp. 154–155.

(b) In addition to being reasonable in light of the Government interests at stake, SF–85 and Form 42 are also subject to substantial protections against disclosure to the public. *Whalen* and *Nixon* recognized that a "statutory or regulatory duty to avoid unwarranted disclosures" generally allays privacy concerns created by government "accumulation" of "personal information" for "public purposes." *Whalen, supra*, at 605. Respondents attack only the Government's collection of information, and here, as in *Whalen* and *Nixon*, the information collected is shielded by statute from unwarranted disclosure. The Privacy Act—

Syllabus

which allows the Government to maintain only those records "relevant and necessary to accomplish" a purpose authorized by law, 5 U. S. C. § 552a(e)(1); requires written consent before the Government may disclose an individual's records, § 552a(b); and imposes criminal liability for willful violations of its nondisclosure obligations, § 552a(i)(1)—"evidence[s] a proper concern" for individual privacy. *Whalen*, *supra*, at 605; *Nixon*, *supra*, at 458–459. Respondents' claim that the statutory exceptions to the Privacy Act's disclosure bar, see §§ 552a(b)(1)–(12), leave its protections too porous to supply a meaningful check against unwarranted disclosures. But that argument rests on an incorrect reading of *Whalen*, *Nixon*, and the Privacy Act. Pp. 155–159.

530 F. 3d 865, reversed and remanded.

[illegible] J., delivered the opinion of the Court, in which [illegible] C. J., and [illegible] JJ., joined. [illegible] J., led an opinion concurring in the judgment, in which [illegible] J., joined, *post*, p. 159. [illegible] J., led an opinion concurring in the judgment, *post*, p. 169. [illegible] J., took no part in the consideration or decision of the case.

Acting Solicitor General Katyal argued the cause for petitioners. With him on the briefs were *Assistant Attorney General West*, *Deputy Solicitor General Kneedler*, *Nicole A. Saharsky*, *Mark B. Stern*, and *Benjamin M. Shultz*.

Dan Stormer argued the cause for respondents. With him on the brief were *Virginia Keeny*, *Paul R. Q. Wolfson*, and *Shirley Cassin Woodward*.*

**Christopher A. Mohr* and *Michael R. Klipper* led a brief for the Consumer Data Industry Association et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging af rmance were led for the American Astronomical Society by *Jeffrey F. Pryce* and *Alice E. Loughran;* for the American Civil Liberties Union et al. by *Aden J. Fine*, *Steven R. Shapiro*, *Jameel Jaffer*, *David Blair-Loy*, *Peter J. Eliasberg*, and *Alan L. Schlosser;* for the California Employment Lawyers Association by *Marc A. Coleman;* for the Drug Policy Alliance by *David T. Goldberg*, *Sean H. Donahue*, and *Daniel N. Abrahamson;* for the Electronic Frontier Foundation by *Jennifer Stisa Granick;* and for the Electronic Privacy Information Center et al. by *Marc Rotenberg*.

Diane J. Curran led a brief for the Union of Concerned Scientists as *amicus curiae*.

JUSTICE ALITO delivered the opinion of the Court.

In two cases decided more than 30 years ago, this Court referred broadly to a constitutional privacy "interest in avoiding disclosure of personal matters." *Whalen* v. *Roe*, 429 U. S. 589, 599–600 (1977); *Nixon* v. *Administrator of General Services*, 433 U. S. 425, 457 (1977). Respondents in this case, federal contract employees at a Government laboratory, claim that two parts of a standard employment background investigation violate their rights under *Whalen* and *Nixon*. Respondents challenge a section of a form questionnaire that asks employees about treatment or counseling for recent illegal-drug use. They also object to certain open-ended questions on a form sent to employees' designated references.

We assume, without deciding, that the Constitution protects a privacy right of the sort mentioned in *Whalen* and *Nixon*. We hold, however, that the challenged portions of the Government's background check do not violate this right in the present case. The Government's interests as employer and proprietor in managing its internal operations, combined with the protections against public dissemination provided by the Privacy Act of 1974, 5 U. S. C. § 552a (2006 ed. and Supp. IV), satisfy any "interest in avoiding disclosure" that may "arguably ha[ve] its roots in the Constitution." *Whalen*, *supra*, at 599, 605.

I

A

The National Aeronautics and Space Administration (NASA) is an independent federal agency charged with planning and conducting the Government's "space activities." Pub. L. 111–314, § 3, 124 Stat. 3333, 51 U. S. C. § 20112(a)(1). NASA's work force numbers in the tens of thousands of employees. While many of these workers are federal civil servants, a substantial majority are employed directly by

Government contractors. Contract employees play an im portant role in NASA's mission, and their duties are func tionally equivalent to those performed by civil servants.

One NASA facility, the Jet Propulsion Laboratory (JPL) in Pasadena, California, is staffed exclusively by contract employees. NASA owns JPL, but the California Institute of Technology (Cal Tech) operates the facility under a Gov ernment contract. JPL is the lead NASA center for deep-space robotics and communications. Most of this country's unmanned space missions—from the Explorer 1 satellite in 1958 to the Mars Rovers of today—have been developed and run by JPL. JPL scientists contribute to NASA earth-observation and technology-development projects. Many JPL employees also engage in pure scienti c research on top ics like "the star formation history of the universe" and "the fundamental properties of quantum uids." App. 64–65, 68.

Twenty-eight JPL employees are respondents here. Many of them have worked at the lab for decades, and none has ever been the subject of a Government background in vestigation. At the time when respondents were hired, background checks were standard only for federal civil serv ants. See Exec. Order No. 10450, 3 CFR 936 (1949–1953 Comp.). In some instances, individual contracts required background checks for the employees of federal contractors, but no blanket policy was in place.

The Government has recently taken steps to eliminate this two-track approach to background investigations. In 2004, a recommendation by the 9/11 Commission prompted the President to order new, uniform identi cation standards for "[f]ederal employees," including "contractor employees." Homeland Security Presidential Directive/HSPD–12—Policy for a Common Identi cation Standard for Federal Employees and Contractors, Public Papers of the President, George W. Bush, Vol. 2, Aug. 27, p. 1765 (2007) (hereinafter HSPD–12), App. 127. The Department of Commerce implemented this

directive by mandating that contract employees with long term access to federal facilities complete a standard background check, typically the National Agency Check with Inquiries (NACI). National Inst. of Standards and Technology, Personal Identity Verification of Federal Employees & Contractors, pp. iii–vi, 1–8, 6 (FIPS PUB 201–1, Mar. 2006) (hereinafter FIPS PUB 201–1), App. 131–150, 144–145.[1]

An October 2007 deadline was set for completion of these investigations. Memorandum from Joshua B. Bolten, Director, OMB, to the Heads of all Departments and Agencies (Aug. 5, 2005), App. 112. In January 2007, NASA modified its contract with Cal Tech to reflect the new background-check requirement. JPL management informed employees that anyone failing to complete the NACI process by October 2007 would be denied access to JPL and would face termination by Cal Tech.

B

The NACI process has long been the standard background investigation for prospective civil servants. The process begins when the applicant or employee fills out a form questionnaire. Employees who work in "non-sensitive" positions (as all respondents here do) complete Standard Form 85 (SF–85). Office of Personnel Management (OPM), Standard Form 85, Questionnaire for Non-Sensitive Positions, App. 88–95.[2]

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[1] As alternatives to the NACI process, the Department of Commerce also authorized federal agencies to use another "Office of Personnel Management . . . or National Security community investigation required for Federal employment." App. 145. None of these alternative background checks are at issue here.

[2] For public-trust and national-security positions, more detailed forms are required. See OPM, Standard Form 85P, Questionnaire for Public Trust Positions, online at http://www.opm.gov/Forms/pdf_fill/sf85p.pdf (all Internet materials as visited Jan. 13, 2011, and available in Clerk of Court's case file); OPM, Standard Form 86, Questionnaire for National Security Positions, online at http://www.opm.gov/Forms/pdf_fill/sf86.pdf.

Most of the questions on SF–85 seek basic biographical information: name, address, prior residences, education, employment history, and personal and professional references. The form also asks about citizenship, selective-service registration, and military service. The last question asks whether the employee has "used, possessed, supplied, or manufactured illegal drugs" in the last year. *Id.*, at 94. If the answer is yes, the employee must provide details, including information about "any treatment or counseling received." *Ibid.* A "truthful response," the form notes, cannot be used as evidence against the employee in a criminal proceeding. *Ibid.* The employee must certify that all responses on the form are true and must sign a release authorizing the Government to obtain personal information from schools, employers, and others during its investigation.

Once a completed SF–85 is on file, the "agency check" and "inquiries" begin. 75 Fed. Reg. 5359 (2010). The Government runs the information provided by the employee through FBI and other federal-agency databases. It also sends out form questionnaires to the former employers, schools, landlords, and references listed on SF–85. The particular form at issue in this case—the Investigative Request for Personal Information, Form 42—goes to the employee's former landlords and references. *Ibid.*[3]

Form 42 is a two-page document that takes about five minutes to complete. See *ibid.* It explains to the reference that "[y]our name has been provided by" a particular employee or applicant to help the Government determine that person's "suitability for employment or a security clearance." App. 96–97. After several preliminary questions about the extent of the reference's associations with the employee, the form asks if the reference has "any reason to question" the

[3] The Government sends separate forms to employers (Form 41), educational institutions (Form 43), record repositories (Form 40), and law enforcement agencies (Form 44). 75 Fed. Reg. 5359. None of these forms are at issue here.

employee's "honesty or trustworthiness." *Id.*, at 97. It also asks if the reference knows of any "adverse information" concerning the employee's "violations of the law," " nancial integrity," "abuse of alcohol and/or drugs," "mental or emo tional stability," "general behavior or conduct," or "other matters." *Ibid.* If "yes" is checked for any of these catego ries, the form calls for an explanation in the space below. That space is also available for providing "additional in formation" ("derogatory" or "positive") that may bear on "suitability for government employment or a security clear ance." *Ibid.*

All responses to SF–85 and Form 42 are subject to the protections of the Privacy Act. The Act authorizes the Gov ernment to keep records pertaining to an individual only when they are "relevant and necessary" to an end "required to be accomplished" by law. 5 U. S. C. § 552a(e)(1). Individ uals are permitted to access their records and request amendments to them. §§ 552a(d)(1), (2). Subject to certain exceptions, the Government may not disclose records per taining to an individual without that individual's written con sent. § 552a(b).

C

About two months before the October 2007 deadline for completing the NACI, respondents brought this suit, claim ing, as relevant here, that the background-check process vio lates a constitutional right to informational privacy. App. 82 (Complaint for Injunctive and Declaratory Relief).[4] The District Court denied respondents' motion for a preliminary injunction, but the Ninth Circuit granted an injunction pend ing appeal, 506 F. 3d 713 (2007), and later reversed the Dis trict Court's order. The court held that portions of both SF–85 and Form 42 are likely unconstitutional and should be preliminarily enjoined. 512 F. 3d 1134, vacated and super seded, 530 F. 3d 865 (2008).

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[4] Respondents sought to represent a class of "JPL employees in non sensitive positions." App. 79. No class has been certi ed.

Turning first to SF–85, the Court of Appeals noted respondents' concession "that most of the questions" on the form are "unproblematic" and do not "implicate the constitutional right to informational privacy." 530 F. 3d, at 878. But the court determined that the "group of questions concerning illegal drugs" required closer scrutiny. *Ibid.* Applying Circuit precedent, the court upheld SF–85's inquiries into recent involvement with drugs as "necessary to further the government's legitimate interest" in combating illegal-drug use. *Id.*, at 879. The court went on to hold, however, that the portion of the form requiring disclosure of drug "treatment or counseling" furthered no legitimate interest and was thus likely to be held unconstitutional. *Ibid.*

Form 42, in the Court of Appeals' estimation, was even "more problematic." *Ibid.* The form's "open-ended and highly private" questions, the court concluded, were not "narrowly tailored" to meet the Government's interests in verifying contractors' identities and "ensuring the security of the JPL." *Id.*, at 881, 880. As a result, the court held, these "open-ended" questions, like the drug-treatment question on SF–85, likely violate respondents' informational-privacy rights.[5]

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[5] In the Ninth Circuit, respondents also challenged the criteria that they believe the Government will use to determine their "suitability" for employment at JPL. Respondents relied on a document, which had been temporarily posted on the JPL intranet, that listed factors purportedly bearing on suitability for federal employment. App. 98–104. Among the listed factors were a failure to "mee[t] financial obligations," "health issues," and "mental, emotional, psychological, or psychiatric issues." *Id.*, at 98, 102. Other factors, which were listed under the heading "Criminal or Immoral Conduct," included "indecent exposure," "voyeurism," "indecent proposal[s]," and "carnal knowledge." *Id.*, at 98. The document also stated that while "homosexuality," "adultery," and "illegitimate children" were not "suitability" issues in and of themselves, they might pose "security issue[s]" if circumstances indicated a "susceptibility to coercion or blackmail." *Id.*, at 102. The Court of Appeals rejected respondents' "challenges to . . . suitability determination[s]" as unripe. 530 F. 3d, at

Over the dissents of five judges, the Ninth Circuit denied rehearing en banc. 568 F. 3d 1028 (2009). We granted certiorari. 559 U. S. 990 (2010).

II

As noted, respondents contend that portions of SF–85 and Form 42 violate their "right to informational privacy." Brief for Respondents 15. This Court considered a similar claim in *Whalen*, 429 U. S. 589, which concerned New York's practice of collecting "the names and addresses of all persons" prescribed dangerous drugs with both "legitimate and illegitimate uses." *Id.*, at 591. In discussing that claim, the Court said that "[t]he cases sometimes characterized as protecting 'privacy'" actually involved "at least two different kinds of interests": one, an "interest in avoiding disclosure of personal matters";[6] the other, an interest in "making certain kinds of important decisions" free from government interference.[7] *Id.*, at 598–600. The patients who brought suit in

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873. Although respondents did not file a cross-petition from that portion of the Ninth Circuit's judgment, they nonetheless discuss these suitability criteria at some length in their brief before this Court. Respondents' challenge to these criteria is not before us. We note, however, the Acting Solicitor General's statement at oral argument that "NASA will not and does not use" the document to which respondents object "to make contractor credentialing decisions." Tr. of Oral Arg. 22.

[6] 429 U. S., at 598–599, and n. 25 (citing *Olmstead* v. *United States*, 277 U. S. 438, 478 (1928) (Brandeis, J., dissenting) (describing "the right to be let alone" as "the right most valued by civilized men"); *Griswold* v. *Connecticut*, 381 U. S. 479, 483 (1965) ("[T]he First Amendment has a penumbra where privacy is protected from governmental intrusion"); *Stanley* v. *Georgia*, 394 U. S. 557, 559, 568 (1969); *California Bankers Assn.* v. *Shultz*, 416 U. S. 21, 79 (1974) (Douglas, J., dissenting); and *id.*, at 78 (Powell, J., concurring)).

[7] 429 U. S., at 599–600, and n. 26 (citing *Roe* v. *Wade*, 410 U. S. 113 (1973); *Doe* v. *Bolton*, 410 U. S. 179 (1973); *Loving* v. *Virginia*, 388 U. S. 1 (1967); *Griswold* v. *Connecticut*, *supra*; *Pierce* v. *Society of Sisters*, 268 U. S. 510 (1925); *Meyer* v. *Nebraska*, 262 U. S. 390 (1923); and *Allgeyer* v. *Louisiana*, 165 U. S. 587 (1897)).

Whalen argued that New York's statute "threaten[ed] to impair" both their "nondisclosure" interests and their interests in making healthcare decisions independently. *Id.*, at 600. The Court, however, upheld the statute as a "reasonable exercise of New York's broad police powers." *Id.*, at 598.

Whalen acknowledged that the disclosure of "private information" to the State was an "unpleasant invasio[n] of privacy," *id.*, at 602, but the Court pointed out that the New York statute contained "security provisions" that protected against "[p]ublic disclosure" of patients' information, *id.*, at 600–601. This sort of "statutory or regulatory duty to avoid unwarranted disclosures" of "accumulated private data" was sufficient, in the Court's view, to protect a privacy interest that "arguably ha[d] its roots in the Constitution." *Id.*, at 605–606. The Court thus concluded that the statute did not violate "any right or liberty protected by the Fourteenth Amendment." *Id.*, at 606.

Four months later, the Court referred again to a constitutional "interest in avoiding disclosure." *Nixon*, 433 U. S., at 457 (internal quotation marks omitted). Former President Nixon brought a challenge to the Presidential Recordings and Materials Preservation Act, 88 Stat. 1695, note following 44 U. S. C. §2111, a statute that required him to turn over his Presidential papers and tape recordings for archival review and screening. 433 U. S., at 455–465. In a section of the opinion entitled "Privacy," the Court addressed a combination of claims that the review required by this Act violated the former President's "Fourth and Fifth Amendmen[t]" rights. *Id.*, at 455, and n. 18, 458–459. The Court rejected those challenges after concluding that the Act at issue, like the statute in *Whalen*, contained protections against "undue dissemination of private materials." 433 U. S., at 458. Indeed, the Court observed that the former President's claim was "weaker" than the one "found wanting . . . [in] *Whalen*," as the Government was required to return immediately all "purely private papers and recordings" identified by the ar

chivists. *Id.*, at 458–459. Citing Fourth Amendment prec edent, the Court also stated that the public interest in pre serving Presidential papers outweighed any "legitimate expectation of privacy" that the former President may have enjoyed. *Id.*, at 458 (citing *Katz* v. *United States*, 389 U. S. 347 (1967); *Camara* v. *Municipal Court of City and County of San Francisco*, 387 U. S. 523 (1967); and *Terry* v. *Ohio*, 392 U. S. 1 (1968)).[8]

The Court announced the decision in *Nixon* in the waning days of October Term 1976. Since then, the Court has said little else on the subject of an "individual interest in avoiding disclosure of personal matters." *Whalen*, *supra*, at 599; *Nixon*, *supra*, at 457. A few opinions have mentioned the concept in passing and in other contexts. See *Department of Justice* v. *Reporters Comm. for Freedom of Press*, 489 U. S. 749, 762–763 (1989); *New York* v. *Ferber*, 458 U. S. 747, 759, n. 10 (1982). But no other decision has squarely ad dressed a constitutional right to informational privacy.[9]

[8] The Court continued its discussion of Fourth Amendment principles throughout the "Privacy" section of the opinion. See 433 U. S., at 459 (citing *United States* v. *Miller*, 425 U. S. 435 (1976), *United States* v. *Dio nisio*, 410 U. S. 1 (1973), and *Katz*, 389 U. S. 347); 433 U. S., at 460–462 (addressing the former President's claim that the Act was "tantamount to a general warrant" under *Stanford* v. *Texas*, 379 U. S. 476 (1965)); 433 U. S., at 463–465, and n. 26 (concluding that the challenged law was analo gous to the wiretapping provisions of Title III of the Omnibus Crime Con trol and Safe Streets Act of 1968, notwithstanding the lack of a "warrant requirement").

[9] State and lower federal courts have offered a number of different inter pretations of *Whalen* and *Nixon* over the years. Many courts hold that disclosure of at least some kinds of personal information should be subject to a test that balances the government's interests against the individual's interest in avoiding disclosure. *E. g.*, *Barry* v. *New York*, 712 F. 2d 1554, 1559 (CA2 1983); *Fraternal Order of Police* v. *Philadelphia*, 812 F. 2d 105, 110 (CA3 1987); *Woodland* v. *Houston*, 940 F. 2d 134, 138 (CA5 1991) *(per curiam); In re Crawford*, 194 F. 3d 954, 959 (CA9 1999); *State* v. *Russo*, 259 Conn. 436, 459–464, 790 A. 2d 1132, 1147–1150 (2002). The Sixth Cir cuit has held that the right to informational privacy protects only intru sions upon interests "that can be deemed fundamental or implicit in the concept of ordered liberty." *J. P.* v. *DeSanti*, 653 F. 2d 1080, 1090 (1981)

III

As was our approach in *Whalen*, we will assume for pres ent purposes that the Government's challenged inquiries im plicate a privacy interest of constitutional signi cance. 429 U. S., at 599, 605.[10] We hold, however, that, whatever the

(internal quotation marks omitted). The D. C. Circuit has expressed "grave doubts" about the existence of a constitutional right to informa tional privacy. *American Federation of Govt. Employees* v. *HUD*, 118 F. 3d 786, 791 (1997).

[10] The opinions concurring in the judgment disagree with this approach and would instead provide a de nitive answer to the question whether there is a constitutional right to informational privacy. *Post*, at 164–165 (opinion of [illegible] J.); *post*, at 169 (opinion of [illegible] J.). One of these opinions expresses concern that our failure to do so will "har[m] our image, if not our self-respect," *post*, at 165 ([illegible] J.), and will cause practical problems, *post*, at 167–168. There are sound reasons for eschewing the concurring opinions' recommended course.

"The premise of our adversarial system is that appellate courts do not sit as self-directed boards of legal inquiry and research, but essentially as arbiters of legal questions presented and argued by the parties before them." *Carducci* v. *Regan*, 714 F. 2d 171, 177 (CADC 1983) (opinion for the court by Scalia, J.). In this case, petitioners did not ask us to hold that there is no constitutional right to informational privacy, and respond ents and their *amici* thus understandably refrained from addressing that issue in detail. It is undesirable for us to decide a matter of this impor tance in a case in which we do not have the bene t of brie ng by the parties and in which potential *amici* had little notice that the matter might be decided. See Pet. for Cert. 15 ("no need in this case" for broad decision on "the scope of a constitutionally-based right to privacy for certain infor mation"). Particularly in cases like this one, where we have only the "scarce and open-ended" guideposts of substantive due process to show us the way, see *Collins* v. *Harker Heights*, 503 U. S. 115, 125 (1992), the Court has repeatedly recognized the bene ts of proceeding with caution. *E. g.*, *Herrera* v. *Collins*, 506 U. S. 390, 417 (1993) (joined by [illegible] J.) (assum ing "for the sake of argument . . . that in a capital case a truly persuasive demonstration of 'actual innocence'" made after conviction would render execution unconstitutional); *Cruzan* v. *Director, Mo. Dept. of Health*, 497 U. S. 261, 279 (1990) (joined by [illegible] J.) ("[W]e assume that the United States Constitution would grant a competent person a constitutionally pro tected right to refuse lifesaving hydration and nutrition"); *Regents of Univ. of Mich.* v. *Ewing*, 474 U. S. 214, 222–223 (1985) ("assum[ing], with out deciding, that federal courts can review an academic decision of a pub

scope of this interest, it does not prevent the Government from asking reasonable questions of the sort included on SF–85 and Form 42 in an employment background investiga tion that is subject to the Privacy Act's safeguards against public disclosure.

A

1

As an initial matter, judicial review of the Government's challenged inquiries must take into account the context in which they arise. When the Government asks respondents and their references to ll out SF–85 and Form 42, it does not exercise its sovereign power "to regulate or license." *Cafeteria & Restaurant Workers* v. *McElroy*, 367 U. S. 886, 896 (1961). Rather, the Government conducts the chal lenged background checks in its capacity "as proprietor" and manager of its "internal operation." *Ibid.* Time and again our cases have recognized that the Government has a much freer hand in dealing "with citizen employees than it does when it brings its sovereign power to bear on citizens at large." *Engquist* v. *Oregon Dept. of Agriculture*, 553 U. S. 591, 598 (2008); *Waters* v. *Churchill*, 511 U. S. 661, 674 (1994) (plurality opinion). This distinction is grounded on the

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lic educational institution under a substantive due process standard"); *Board of Curators of Univ. of Mo.* v. *Horowitz*, 435 U. S. 78, 91–92 (1978) (same); see also *New York State Club Assn., Inc.* v. *City of New York*, 487 U. S. 1, 20 (1988) (S A J., concurring in part and concurring in judg ment) (joining the Court's opinion on the understanding that it "assumes for purposes of its analysis, but does not hold, the existence of a constitu tional right of private association for other than expressive or religious purposes").

 A provides no support for his claim that our approach in this case will "dramatically increase the number of lawsuits claiming violations of the right to informational privacy," *post*, at 168, and will leave the lower courts at sea. We take the same approach here that the Court took more than three decades ago in *Whalen* and *Nixon*, and there is no evidence that those decisions have caused the sky to fall.

We therefore decide the case before us and leave broader issues for another day.

"common-sense realization" that if every "employment decision became a constitutional matter," the Government could not function. See *Connick* v. *Myers*, 461 U. S. 138, 143 (1983); see also *Bishop* v. *Wood*, 426 U. S. 341, 350 (1976) ("The Due Process Clause . . . is not a guarantee against incorrect or ill-advised personnel decisions").

An assessment of the constitutionality of the challenged portions of SF–85 and Form 42 must account for this distinction. The questions challenged by respondents are part of a standard employment background check of the sort used by millions of private employers. See Brief for Consumer Data Industry Association et al. as *Amici Curiae* 2 (hereinafter CDIA Brief) ("[M]ore than 88% of U. S. companies . . . perform background checks on their employees"). The Government itself has been conducting employment investigations since the earliest days of the Republic. L. White, The Federalists: A Study in Administrative History 262–263 (1948); see OPM, Biography of An Ideal: History of the Federal Civil Service 8 (2002) (noting that President Washington "set a high standard" for federal office and nalized appointments only after "investigating [candidates'] capabilities and reputations"). Since 1871, the President has enjoyed statutory authority to "ascertain the tness of applicants" for the civil service "as to age, health, character, knowledge and ability for the employment sought," Act of Mar. 3, 1871, Rev. Stat. § 1753, as amended, 5 U. S. C. § 3301(2), and that Act appears to have been regarded as a codification of established practice.[11] Standard background investigations similar to those at issue here became mandatory for all candi

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[11] The debate on the 1871 Act in the House of Representatives contained this exchange on Presidential authority to conduct background checks:

"Mr. P Has he not that power [to conduct the proposed investigations of candidates for the civil service] now?

"Mr. D He has all that power. If you will go up to the War Department or the Department of the Interior you will see pretty much all of this nailed up on the doors, in the form of rules and regulations." Cong. Globe, 41st Cong., 3d Sess., 1935 (1871).

dates for the federal civil service in 1953. Exec. Order No. 10450, 3 CFR 936. And the particular investigations challenged in this case arose from a decision to extend that requirement to federal contract employees requiring long term access to federal facilities. See HSPD–12, at 1765, App. 127; FIPS PUB 201–1, at iii–vi, 1–8, App. 131–150.

As this long history suggests, the Government has an interest in conducting basic employment background checks. Reasonable investigations of applicants and employees aid the Government in ensuring the security of its facilities and in employing a competent, reliable work force. See *Engquist*, *supra*, at 598–599. Courts must keep those interests in mind when asked to go line by line through the Government's employment forms and to scrutinize the choice and wording of the questions they contain.

Respondents argue that, because they are contract employees and not civil servants, the Government's broad authority in managing its affairs should apply with diminished force. But the Government's interest as "proprietor" in managing its operations, *Cafeteria & Restaurant Workers*, *supra*, at 896, does not turn on such formalities. See *Board of Comm'rs, Wabaunsee Cty.* v. *Umbehr*, 518 U. S. 668, 678, 679 (1996) (formal distinctions such as whether a "service provider" has a "contract of employment or a contract for services" with the government is a "very poor proxy" for constitutional interests at stake). The fact that respondents' direct employment relationship is with Cal Tech—which operates JPL under a Government contract—says very little about the interests at stake in this case. The record shows that, as a "practical matter," there are no "[r]elevant distinctions" between the duties performed by NASA's civil-service work force and its contractor work force. App. 221. The two classes of employees perform "functionally equivalent duties," and the extent of employees' "access to NASA . . . facilities" turns not on formal status but on the nature of "the jobs they perform." *Ibid.*

At JPL, in particular, the work that contract employees perform is critical to NASA's mission. Respondents in this case include the "lead trouble-shooter for . . . th[e] $568 [million]" Kepler space observatory, 7 Record 396; the leader of the program that "tests . . . all new technology that NASA will use in space," App. 60; and one of the lead "trajectory designers for . . . the Galileo Project and the Apollo Moon landings," *id.*, at 62. This is important work, and all of it is funded with a multibillion-dollar investment from the American taxpayer. See NASA, JPL Annual Report 09, p. 35 (2010), online at http://www.jpl.nasa.gov/annualreport/2009report.pdf. The Government has a strong interest in conducting basic background checks into the contract employees minding the store at JPL.[12]

2

With these interests in view, we conclude that the challenged portions of both SF–85 and Form 42 consist of reasonable, employment-related inquiries that further the Government's interests in managing its internal operations. See *Engquist*, 553 U. S., at 598–599; *Whalen*, 429 U. S., at 597–

[12] In their brief, respondents also rely on the fact that many of them have been working at JPL for years and that Cal Tech previously vetted them through standard "employment reference checks." Brief for Respondents 52–53. The record indicates that this may be wrong as a factual matter. *E. g.*, 7 Record 391 ("I have not been required to undergo any type of background investigation to maintain my position with JPL"); *id.*, at 397 ("I have never been required to undergo any type of background investigation to maintain my position with JPL other than . . . [one] which required that I provide only my name, social security number and current address" to facilitate a "check for outstanding warrants, arrests or convictions"); *id.*, at 356, 367, 386–387 (similar). Even if it were correct, the fact that Cal Tech once conducted a background check on respondents does not diminish the Government's interests in conducting its own standard background check to satisfy itself that contract employees should be granted continued access to the Government's facility. In any event, counsel abandoned this position at oral argument. Tr. of Oral Arg. 38.

598. As to SF–85, the only part of the form challenged here is its request for information about "any treatment or counseling received" for illegal-drug use within the previous year. The "treatment or counseling" question, however, must be considered in context. App. 94. It is a followup to SF–85's inquiry into whether the employee has "used, possessed, supplied, or manufactured illegal drugs" during the past year. *Ibid.* The Government has good reason to ask employees about their recent illegal-drug use. Like any employer, the Government is entitled to have its projects staffed by reliable, law-abiding persons who will "'efficiently and effectively'" discharge their duties. See *Engquist*, *supra*, at 598–599. Questions about illegal-drug use are a useful way of figuring out which persons have these characteristics. See, *e. g.*, Breen & Matusitz, An Updated Examination of the Effects of Illegal Drug Use in the Workplace, 19 J. Human Behavior in the Social Environment 434 (2009) (illicit drug use negatively correlated with workplace productivity).

In context, the followup question on "treatment or counseling" for recent illegal-drug use is also a reasonable, employment-related inquiry. The Government, recognizing that illegal-drug use is both a criminal and a medical issue, seeks to separate out those illegal-drug users who are taking steps to address and overcome their problems. The Government thus uses responses to the "treatment or counseling" question as a mitigating factor in determining whether to grant contract employees long-term access to federal facilities.[13]

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[13] Asking about treatment or counseling could also help the Government identify chronic drug abusers for whom, "despite counseling and rehabilitation programs, there is little chance for effective rehabilitation." 38 Fed. Reg. 33315 (1973). At oral argument, however, the Acting Solicitor General explained that NASA views treatment or counseling solely as a "mitigat[ing]" factor that ameliorates concerns about recent illegal-drug use. Tr. of Oral Arg. 19.

This is a reasonable, and indeed a humane, approach, and respondents do not dispute the legitimacy of the Government's decision to use drug treatment as a mitigating factor in its contractor credentialing decisions. Respondents' argument is that, if drug treatment is only used to mitigate, then the Government should change the mandatory phrasing of SF–85—"Include [in your answer] any treatment or counseling received"—so as to make a response optional. App. 94. As it stands, the mandatory "treatment or counseling" question is unconstitutional, in respondents' view, because it is "more intrusive than necessary to satisfy the government's objective." Brief for Respondents 26; 530 F. 3d, at 879 (holding that "treatment or counseling" question should be enjoined because the form "appears to *compel* disclosure").

We reject the argument that the Government, when it requests job-related personal information in an employment background check, has a constitutional burden to demonstrate that its questions are "necessary" or the least restrictive means of furthering its interests. So exacting a standard runs directly contrary to *Whalen*. The patients in *Whalen*, much like respondents here, argued that New York's statute was unconstitutional because the State could not "demonstrate the necessity" of its program. 429 U. S., at 596. The Court quickly rejected that argument, concluding that New York's collection of patients' prescription information could "not be held unconstitutional simply because" a court viewed it as "unnecessary, in whole or in part." *Id.*, at 596–597.

That analysis applies with even greater force where the Government acts, not as a regulator, but as the manager of its internal affairs. See *Engquist*, *supra*, at 598–599. SF–85's "treatment or counseling" question reasonably seeks to identify a subset of acknowledged drug users who are attempting to overcome their problems. The Government's considered position is that phrasing the question in more permissive terms would result in a lower response rate, and

the question's effectiveness in identifying illegal-drug users who are suitable for employment would be "materially reduced." Reply Brief for Petitioners 19. That is a reasonable position, falling within the "'wide latitude'" granted the Government in its dealings with employees. See *Engquist*, 553 U. S., at 600.

3

The Court of Appeals also held that the broad, "open ended questions" on Form 42 likely violate respondents' informational-privacy rights. Form 42 asks applicants' designated references and landlords for "information" bearing on "suitability for government employment or a security clearance." App. 97. In a series of questions, the Government asks if the reference has any "adverse information" about the applicant's "honesty or trustworthiness," "violations of the law," "financial integrity," "abuse of alcohol and/or drugs," "mental or emotional stability," "general behavior or conduct," or "other matters." *Ibid.*

These open-ended inquiries, like the drug-treatment question on SF–85, are reasonably aimed at identifying capable employees who will faithfully conduct the Government's business. See *Engquist*, *supra*, at 598–599. Asking an applicant's designated references broad, open-ended questions about job suitability is an appropriate tool for separating strong candidates from weak ones. It would be a truly daunting task to catalog all the reasons why a person might not be suitable for a particular job, and references do not have all day to answer a laundry list of specific questions. See CDIA Brief 6–7 (references "typically have limited time to answer questions from potential employers," and "open ended questions" yield more relevant information than narrow inquiries). Form 42, by contrast, takes just five minutes to complete. 75 Fed. Reg. 5359.

The reasonableness of such open-ended questions is illustrated by their pervasiveness in the public and private sectors. Form 42 alone is sent out by the Government over 1.8

million times annually. *Ibid.* In addition, the use of open-ended questions in employment background checks appears to be equally commonplace in the private sector. See, *e. g.*, S. Bock et al., Mandated Bene ts 2008 Compliance Guide, Exh. 20.1, A Sample Policy on Reference Checks on Job Ap plicants ("Following are the guidelines for conducting a tele phone reference check: . . . Ask open-ended questions, then wait for the respondent to answer"); M. Zweig, Human Re sources Management 87 (1991) ("Also ask, 'Is there anything else I need to know about [candidate's name]?' This kind of open-ended question may turn up all kinds of information you wouldn't have gotten any other way"). The use of simi lar open-ended questions by the Government is reasonable and furthers its interests in managing its operations.

B

1

Not only are SF–85 and Form 42 reasonable in light of the Government interests at stake, they are also subject to substantial protections against disclosure to the public. Both *Whalen* and *Nixon* recognized that government "accu mulation" of "personal information" for "public purposes" may pose a threat to privacy. *Whalen*, *supra*, at 605; see *Nixon*, 433 U. S., at 457–458, 462. But both decisions also stated that a "statutory or regulatory duty to avoid unwar ranted disclosures" generally allays these privacy concerns. *Whalen*, *supra*, at 605; *Nixon*, *supra*, at 458–459. The Court in *Whalen*, relying on New York's "security provi sions" prohibiting public disclosure, turned aside a challenge to the collection of patients' prescription information. 429 U. S., at 594, and n. 12, 600–601, 605. In *Nixon*, the Court rejected what it regarded as an even "weaker" claim by the former President because the Presidential Recordings and Materials Preservation Act "[n]ot only . . . mandate[d] regu lations" against "undue dissemination," but also required im

mediate return of any "purely private" materials agged by the Government's archivists. 433 U. S., at 458–459.

Respondents in this case, like the patients in *Whalen* and former President Nixon, attack only the Government's *col lection* of information on SF–85 and Form 42. And here, no less than in *Whalen* and *Nixon*, the information collected is shielded by statute from "unwarranted disclosur[e]." See *Whalen*, *supra*, at 605. The Privacy Act, which covers all information collected during the background-check process, allows the Government to maintain records "about an indi vidual" only to the extent the records are "relevant and necessary to accomplish" a purpose authorized by law. 5 U. S. C. § 552a(e)(1). The Act requires written consent be fore the Government may disclose records pertaining to any individual. § 552a(b). And the Act imposes criminal liabil ity for willful violations of its nondisclosure obligations. § 552a(i)(1). These requirements, as we have noted, give "forceful recognition" to a Government employee's interest in maintaining the "con dentiality of sensitive information . . . in his personnel les." *Detroit Edison Co.* v. *NLRB*, 440 U. S. 301, 318, n. 16 (1979). Like the protections against disclosure in *Whalen* and *Nixon*, they "evidence a proper concern" for individual privacy. *Whalen*, *supra*, at 605; *Nixon*, *supra*, at 458–459.

2

Notwithstanding these safeguards, respondents argue that statutory exceptions to the Privacy Act's disclosure bar, see §§ 552a(b)(1)–(12), leave its protections too porous to supply a meaningful check against "unwarranted disclosures," lx*Whalen*, *supra*, at 605. Respondents point in particular to what they describe as a "broad" exception for "routine use[s]," de ned as uses that are "compatible with the purpose for which the record was collected." §§ 552a(b)(3), (a)(7).

Respondents' reliance on these exceptions rests on an in correct reading of both our precedents and the terms of the

Privacy Act. As to our cases, the Court in *Whalen* and *Nixon* referred approvingly to statutory or regulatory protections against "*unwarranted* disclosures" and "*undue* dissemination" of personal information collected by the Government. *Whalen*, *supra*, at 605; *Nixon*, *supra*, at 458. Neither case suggested that an ironclad disclosure bar is needed to satisfy privacy interests that may be "root[ed] in the Constitution." *Whalen*, *supra*, at 605. In *Whalen*, the New York statute prohibiting "[p]ublic disclosure of the identity of patients" was itself subject to several exceptions. 429 U. S., at 594–595, and n. 12. In *Nixon*, the protections against "undue dissemination" mentioned in the opinion were not even before the Court, but were to be included in forthcoming regulations "mandate[d]" by the challenged Act. 433 U. S., at 458; see *id.*, at 437–439 (explaining that the Court was limiting its review to the Act's "facial validity" and was not considering the Administrator's forthcoming regulations). Thus, the mere fact that the Privacy Act's nondisclosure requirement is subject to exceptions does not show that the statute provides insufficient protection against public disclosure.

Nor does the substance of the "routine use" exception relied on by respondents create any undue risk of public dissemination. None of the authorized "routine use[s]" of respondents' background-check information allows for release to the public. 71 Fed. Reg. 45859–45860, 45862 (2006); 60 Fed. Reg. 63084 (1995), as amended, 75 Fed. Reg. 28307 (2010). Rather, the established "routine use[s]" consist of limited, reasonable steps designed to complete the background-check process in an efficient and orderly manner. See *Whalen*, *supra*, at 602 (approving disclosures to authorized New York Department of Health employees that were not "meaningfully distinguishable" from routine disclosures "associated with many facets of health care"). One routine use, for example, involves a limited disclosure to persons ll

ing out Form 42 so that designated references can "identify the individual" at issue and can understand the "nature and purpose of the investigation." App. 89. Authorized JPL employees also review each completed SF–85 to verify that all requested information has been provided. *Id.*, at 211. These designated JPL employees may not "disclose any information contained in the form to anyone else," *ibid.*, and Cal Tech is not given access to adverse information uncovered during the Government's background check, *id.*, at 207–208. The "remote possibility" of public disclosure created by these narrow "routine use[s]" does not undermine the Privacy Act's substantial protections. See *Whalen*, 429 U. S., at 601–602 ("remote possibility" that statutory security provisions will "provide inadequate protection against unwarranted disclosures" not a sufficient basis for striking down statute).

Citing past violations of the Privacy Act,[14] respondents note that it is possible that their personal information could be disclosed as a result of a similar breach. But data breaches are a possibility any time the Government stores information. As the Court recognized in *Whalen*, the mere possibility that security measures will fail provides no "proper ground" for a broad-based attack on government information-collection practices. *Ibid.* Respondents also cite a portion of SF–85 that warns of possible disclosure "[t]o the news media or the general public." App. 89. By its terms, this exception allows public disclosure only where release is "in the public interest" and would not result in "an unwarranted invasion of personal privacy." *Ibid.* Respondents have not cited any example of such a disclosure, nor have they identified any plausible scenario in which

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[14] *E. g.*, GAO, Personal Information: Data Breaches Are Frequent, but Evidence of Resulting Identity Theft Is Limited; However, the Full Extent Is Unknown 5, 20 (GAO 07–737, 2007) (over 3-year period, 788 data breaches occurred at 17 federal agencies).

their information might be unduly disclosed under this exception.[15]

In light of the protection provided by the Privacy Act's nondisclosure requirement, and because the challenged por tions of the forms consist of reasonable inquiries in an em ployment background check, we conclude that the Govern ment's inquiries do not violate a constitutional right to informational privacy. *Whalen*, *supra*, at 605.

* * *

For these reasons, 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.

K took no part in the consideration or deci sion of this case.

S with whom J joins, con curring in the judgment.

I agree with the Court, of course, that background checks of employees of Government contractors do not offend the Constitution. But rather than reach this conclusion on the basis of the never-explained assumption that the Constitu tion requires courts to "balance" the Government's interests in data collection against its contractor employees' interest in privacy, I reach it on simpler grounds. Like many other desirable things not included in the Constitution, "informa tional privacy" seems like a good idea—wherefore the People

[15] Respondents further contend that the Privacy Act's ability to deter unauthorized release of private information is signi cantly hampered by the fact that the statute provides only "an *ex post* money-damages action," not injunctive relief. Brief for Respondents 44 (citing *Doe* v. *Chao*, 540 U. S. 614, 635 (2004) (G J., dissenting)). Nothing in *Whalen* or *Nixon* suggests that any private right of action—for money damages or injunctive relief—is needed in order to provide suf cient protection against public disclosure.

have enacted laws at the federal level and in the States restricting government collection and use of information. But it is up to the People to enact those laws, to shape them, and, when they think it appropriate, to repeal them. A federal constitutional right to "informational privacy" does not exist.

Before addressing the constitutional issues, however, I must observe a remarkable and telling fact about this case, unique in my tenure on this Court: Respondents' brief, in arguing that the Federal Government violated the Constitution, does not once identify which provision of the Constitution that might be. The "Table of Authorities" contains citations of cases from federal and state courts, federal and state statutes, Rules of Evidence from four States, two Executive Orders, a House Report, and even more exotic sources of law, such as two reports of the Government Accountability Office and an Equal Employment Opportunity Commission document concerning "Enforcement Guidance." And yet it contains not a single citation of the sole document we are called upon to construe: the Constitution of the United States. The body of the brief includes a single, fleeting reference to the Due Process Clause, buried in a citation of the assuredly inapposite *Lawrence* v. *Texas*, 539 U. S. 558 (2003), Brief for Respondents 42; but no further attempt is made to argue that NASA's actions deprived respondents of liberty without due process of law. And this legal strategy was not limited to respondents' filing in this Court; in the Ninth Circuit respondents asserted in a footnote that "courts have grounded the right to informational privacy in various provisions of the Constitution," Brief for Appellants in No. 07–56424, p. 25, n. 18, but declined to identify which ones applied here.

To tell the truth, I found this approach refreshingly honest. One who asks us to invent a constitutional right out of whole cloth should spare himself and us the pretense of tying it to some words of the Constitution. Regrettably, this Lincolnesque honesty evaporated at oral argument, when counsel asserted, apparently for the first time in this litigation,

that the right to informational privacy emerged from the Due Process Clause of the Fifth Amendment. Tr. of Oral Arg. 28–29. That counsel invoked the infinitely plastic concept of "substantive" due process does not make this constitutional theory any less invented.

This case is easily resolved on the simple ground that the Due Process Clause does not "guarante[e] certain (unspecified) liberties"; rather, it "merely guarantees certain procedures as a prerequisite to deprivation of liberty." *Albright* v. *Oliver*, 510 U. S. 266, 275 (1994) (SCALIA, J., concurring). Respondents make no claim that the Government has deprived them of liberty without the requisite procedures, and their due process claim therefore must fail. Even under the formula we have adopted for identifying liberties entitled to protection under the faux "substantive" component of the Due Process Clause—that "the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition," *Washington* v. *Glucksberg*, 521 U. S. 702, 720–721 (1997) (internal quotation marks omitted)—respondents' claim would fail. Respondents do not even attempt to argue that the claim at issue in this case passes that test, perhaps recognizing the farcical nature of a contention that a right deeply rooted in our history and tradition bars the Government from ensuring that the Hubble Telescope is not used by recovering drug addicts.

The absurdity of respondents' position in this case should not, however, obscure the broader point: Our due process precedents, even our "substantive due process" precedents, do not support *any* right to informational privacy. First, we have held that a government act of defamation does not deprive a person "of any 'liberty' protected by the procedural guarantees of the Fourteenth Amendment." *Paul* v. *Davis*, 424 U. S. 693, 709 (1976). We reasoned that stigma, standing alone, does not "significantly alte[r]" a person's legal status so as to "justif[y] the invocation of procedural safe

guards." *Id.*, at 708–709. If outright defamation does not qualify, it is unimaginable that the mere disclosure of private information does.

Second, respondents challenge the Government's *collection* of their private information. But the Government's collection of private information is regulated by the Fourth Amendment, and "[w]here a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims." *County of Sacramento* v. *Lewis*, 523 U. S. 833, 842 (1998) (internal quotation marks omitted; alteration in original). Here, the Ninth Circuit rejected respondents' Fourth Amendment argument, correctly holding that the Form 42 inquiries to third parties were not Fourth Amendment "searches" under *United States* v. *Miller*, 425 U. S. 435 (1976), and that the Fourth Amendment does not prohibit the Government from asking questions about private information. 530 F. 3d 865, 876–877 (2008). That should have been the end of the matter. Courts should not use the Due Process Clause as putty to fill up gaps they deem unsightly in the protections provided by other constitutional provisions.

In sum, I would simply hold that there is no constitutional right to "informational privacy." Besides being consistent with constitutional text and tradition, this view has the attractive benefit of resolving this case without resort to the Court's exegesis on the Government's legitimate interest in identifying contractor drug abusers and the comfortingly narrow scope of NASA's "routine use" regulations. I shall not fill the U. S. Reports with further explanation of the incoherence of the Court's "substantive due process" doctrine in its many manifestations, since the Court does not play the substantive due process card. Instead, it states that it will "assume, without deciding" that there exists a right to informational privacy, *ante*, at 138.

The Court's sole justification for its decision to "assume, without deciding" is that the Court made the same mistake before—in two 33-year-old cases, *Whalen* v. *Roe*, 429 U. S. 589 (1977), and *Nixon* v. *Administrator of General Services*, 433 U. S. 425 (1977).* *Ante*, at 147. But *stare decisis* is simply irrelevant when the pertinent precedent assumed, without deciding, the existence of a constitutional right. "*Stare decisis* reflects a policy judgment that in most matters it is more important that the applicable rule of law be settled than that it be settled right." *State Oil Co.* v. *Khan*, 522 U. S. 3, 20 (1997) (internal quotation marks omitted). "It is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles." *Ibid.* (internal quotation marks omitted). Here, however, there *is* no applicable rule of law that is settled. To the contrary, *Whalen* and *Nixon* created an uncertainty that the text of the Constitution did not contain and that today's opinion perpetuates.

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*Contrary to the Court's protestation, *ante*, at 147–148, n. 10, the Court's failure to address whether there is a right to informational privacy cannot be blamed upon the Government's concession that such a right exists, and indeed the Government's startling assertion that *Whalen* and *Nixon* (which decided nothing on the constitutional point, and have not been so much as cited in our later opinions) were "seminal"—*seminal!*—decisions. Reply Brief for Petitioners 22. We are not bound by a litigant's concession on an issue of law. See, *e. g.*, *Grove City College* v. *Bell*, 465 U. S. 555, 562, n. 10 (1984). And it should not be thought that the concession by the United States is an entirely self-denying act. To be sure, it subjects the Executive Branch to constitutional limitations on the collection and use of information; but the Privacy Act of 1974, 5 U. S. C. § 552a (2006 ed. and Supp. IV), already contains extensive limitations not likely to be surpassed by constitutional improvisation. And because Congress's power under § 5 of the Fourteenth Amendment extends to the full scope of the Due Process Clause, see *City of Boerne* v. *Flores*, 521 U. S. 507 (1997), the United States has an incentive to give that Clause a broad reading, thus expanding the scope of federal legislation that it justifies. Federal laws preventing state disregard of "informational privacy" may be a twinkle in the Solicitor General's eye.

A further reason *Whalen* and *Nixon* are not entitled to *stare decisis* effect is that neither opinion supplied any coherent reason why a constitutional right to informational privacy might exist. As supporting authority, *Whalen* cited *Stanley* v. *Georgia*, 394 U. S. 557 (1969), a First Amendment case protecting private possession of obscenity; the deservedly infamous dictum in *Griswold* v. *Connecticut*, 381 U. S. 479, 483 (1965), concerning the "penumbra" of the First Amendment; and three concurring or dissenting opinions, none of which remotely intimated that there might be such a thing as a substantive due process right to informational privacy. 429 U. S., at 599, n. 25. *Nixon* provided even less support. After citing the observation in *Whalen* that "[o]ne element of privacy has been characterized as the individual interest in avoiding disclosure of personal matters," *Nixon*, *supra*, at 457 (quoting *Whalen*, *supra*, at 599; internal quotation marks omitted), it proceeded to conduct a straightforward *Fourth Amendment* analysis. It "assume[d]" that there was a "legitimate expectation of privacy" in the materials, and rejected the appellant's argument that the statute at issue was "precisely the kind of abuse that the Fourth Amendment was intended to prevent." *Nixon*, *supra*, at 457–458, 460. It is unfathomable why these cases' passing, barely explained reference to a right separate from the Fourth Amendment—an unenumerated right that they held to be *not* applicable—should be afforded *stare decisis* weight.

At this point the reader may be wondering: "What, after all, is the harm in being 'minimalist' and simply refusing to say that violation of a constitutional right of informational privacy can never exist? The outcome in this case is the same, so long as the Court holds that any such hypothetical right was not violated." Well, there is harm. The Court's never-say-never disposition does damage for several reasons.

1. It is in an important sense not actually minimalist. By substituting for one real constitutional question (whether there exists a constitutional right to informational privacy)

a different constitutional question (whether NASA's background checks would contravene a right to informational privacy if such a right existed), the Court gets to ponticate upon a matter that is none of its business: the appropriate balance between security and privacy. If I am correct that there exists no right to informational privacy, all that discussion is an exercise in judicial *maximalism*. Better simply to state and apply the law forthrightly than to hold our view of the law *in pectore*, so that we can inquire into matters beyond our charter, and probably beyond our ken.

If, on the other hand, the Court believes that there *is* a constitutional right to informational privacy, then I fail to see the minimalist virtues in delivering a lengthy opinion analyzing that right while coyly noting that the right is "assumed" rather than "decided." Thirty-three years have passed since the Court first suggested that the right may, or may not, exist. It is past time for the Court to abandon this Alfred Hitchcock line of our jurisprudence.

2. It harms our image, if not our self-respect, because it makes no sense. The Court decides that the Government did not violate the right to informational privacy without deciding whether there *is* a right to informational privacy, and without even describing what hypothetical standard should be used to assess whether the hypothetical right has been violated. As I explained last Term in objecting to another of the Court's never-say-never dispositions:

> "[The Court] cannot decide that [respondents'] claim fails without first deciding what a valid claim would consist of. . . . [A]greeing to or crafting a *hypothetical* standard for a *hypothetical* constitutional right is sufficiently unappealing . . . that [the Court] might as well acknowledge the right as well. Or [it] could avoid the need to agree with or craft a hypothetical standard by *denying* the right. But embracing a standard while being coy about the right is, well, odd; and deciding this case while addressing *neither* the standard *nor* the right is quite

impossible." *Stop the Beach Renourishment, Inc.* v. *Florida Dept. of Environmental Protection*, 560 U. S. 702, 717–718 (2010) (plurality opinion) (joined by SCALIA, J.)

Whatever the virtues of judicial minimalism, it cannot justify judicial incoherence.

The Court defends its approach by observing that "we have only the 'scarce and open-ended' " guideposts of substantive due process to show us the way." *Ante*, at 147, n. 10. I would have thought that this doctrinal obscurity should lead us to provide *more* clarity for lower courts; surely one vague opinion should not provide an excuse for another.

The Court observes that I have joined other opinions that have assumed the existence of constitutional rights. *Ibid.* It is of course acceptable to reserve difficult constitutional questions, so long as answering those questions is unnecessary to coherent resolution of the issue presented in the case. So in *Cruzan* v. *Director, Mo. Dept. of Health*, 497 U. S. 261, 279–280 (1990), we declined to decide whether a competent person had a constitutional right to refuse lifesaving hydration, because—under a constitutional standard we laid out in detail—such a right did not exist for an incompetent person. In *Herrera* v. *Collins*, 506 U. S. 390, 417–418 (1993), we declined to decide whether it would be unconstitutional to execute an innocent person, because Herrera had not shown that he was innocent. In *New York State Club Assn., Inc.* v. *City of New York*, 487 U. S. 1, 10–15 (1988), we declined to decide whether there was a constitutional right of private association for certain clubs, because the plaintiff had brought a facial challenge, which would fail if the statute was valid in many of its applications, making it unnecessary to decide whether an as-applied challenge as to some clubs could succeed. Here, however, the Court actually *applies* a constitutional informational privacy standard without giving a clue as to the rule of law it is applying.

3. It provides no guidance whatsoever for lower courts. Consider the sheer multiplicity of unweighted, relevant factors alluded to in today's opinion:

- It is relevant that the Government is acting "in its capacity 'as proprietor' and manager of its 'internal operation.'" *Ante*, at 148. Of course, given that we are told neither what the appropriate standard should be when the Government is acting as regulator nor what the appropriate standard should be when it is acting as proprietor, it is not clear *what* effect this fact has on the analysis; but at least we know that it is *something*.
- History and tradition have some role to play, *ante*, at 149–150, but how much is uncertain. The Court points out that the Federal Government has been conducting investigations of candidates for employment since the earliest days; but on the other hand it acknowledges that extension of those investigations to employees of contractors is of very recent vintage.
- The contract employees are doing important work. They are not mere janitors and maintenance men; they are working on a $568 million observatory. *Ante*, at 151. Can it possibly be that the outcome of today's case would be different for background checks of lower-level employees? In the spirit of minimalism we are never told.
- Questions about drug treatment are (hypothetically) constitutional because they are "reasonable," "useful," and "humane." *Ante*, at 151–153. And questions to third parties are constitutional because they are "appropriate" and "pervasiv[e]." *Ante*, at 154–155. Any or all of these adjectives may be the hypothetical standard by which violation of the hypothetical constitutional right to "informational privacy" is evaluated. *Ante*, at 159.
- The Court notes that a "'statutory or regulatory duty to avoid unwarranted disclosures' *generally* allays these privacy concerns," *ante*, at 155 (emphasis added), but it

gives no indication of what the exceptions to this general rule might be. It then discusses the provisions of the Privacy Act in detail, placing considerable emphasis on the limitations imposed by NASA's routine-use regulations. *Ante*, at 156–159. From the length of the discussion, I would bet that the Privacy Act is necessary to today's holding, but how much of it is necessary is a mystery.

4. It will dramatically increase the number of lawsuits claiming violations of the right to informational privacy. Rare will be the claim that is supported by none of the factors deemed relevant in today's opinion. Moreover, the utter silliness of respondents' position in this case leaves plenty of room for the possible success of future claims that are meritless, but slightly less absurd. Respondents claim that *even though* they are Government contractor employees, and *even though* they are working with highly expensive scientific equipment, and *even though* the Government is seeking only information about drug treatment and information from third parties that is standard in background checks, and *even though* the Government is liable for damages if that information is ever revealed, and *even though* NASA's Privacy Act regulations are very protective of private information, NASA's background checks are unconstitutional. Ridiculous. In carefully citing *all* of these factors as the basis for its decision, the Court makes the distinguishing of this case simple as pie.

In future cases filed under 42 U. S. C. § 1983 in those circuits that recognize (rather than merely hypothesize) a constitutional right to "informational privacy," lawyers will always (and I mean *always*) find some way around today's opinion: perhaps the plaintiff will be a receptionist or a janitor, or the protections against disclosure will be less robust. And oh yes, the fact that a losing defendant will be liable not only for damages but also for attorney's fees under § 1988 will greatly encourage lawyers to sue, and defendants—for

whom no safe harbor can be found in the many words of today's opinion—to settle. These plaintiffs' claims have failed today, but the Court makes a generous gift to the plaintiffs' bar.

* * *

Because I deem it the "duty of the judicial department to say what the law is," *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803), I concur only in the judgment.

concurring in the judgment.

I agree with that the Constitution does not protect a right to informational privacy. *Ante*, at 160 (opinion concurring in judgment). No provision in the Constitution mentions such a right. Cf. *Lawrence* v. *Texas*, 539 U. S. 558, 605–606 (2003) (J., dissenting) ("I can nd neither in the Bill of Rights nor any other part of the Constitution a general right of privacy . . . " (internal quotation marks and brackets omitted)). And the notion that the Due Process Clause of the Fifth Amendment is a wellspring of unenumerated rights against the Federal Government "strains credulity for even the most casual user of words." *McDonald* v. *Chicago*, 561 U. S. 742, 811 (2010) (J., concurring in part and concurring in judgment).

Syllabus

THOMPSON *v.* NORTH AMERICAN STAINLESS, LP

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

No. 09–291. Argued December 7, 2010—Decided January 24, 2011

After petitioner Thompson's ance, Miriam Regalado, led a sex discrimination charge with the Equal Employment Opportunity Commission against their employer, respondent North American Stainless (NAS), NAS red Thompson. He led his own charge and a subsequent suit under Title VII of the Civil Rights Act, claiming that NAS red him to retaliate against Regalado for ling her charge. The District Court granted NAS summary judgment on the ground that third-party retaliation claims were not permitted by Title VII, which prohibits discrimination against an employee "because he has made a [Title VII] charge," 42 U. S. C. § 2000e–3(a), and which permits, *inter alia*, a "person claiming to be aggrieved . . . by [an] alleged unlawful employment practice" to le a civil action, § 2000e–5(f)(1). The en banc Sixth Circuit af rmed, reasoning that Thompson was not entitled to sue NAS for retaliation because he had not engaged in any activity protected by the statute.

Held:

1. If the facts Thompson alleges are true, his ring by NAS constituted unlawful retaliation. Title VII's antiretaliation provision must be construed to cover a broad range of employer conduct. *Burlington N. & S. F. R. Co.* v. *White*, 548 U. S. 53. It prohibits any employer action that " 'well might have "dissuaded a reasonable worker from making or supporting a [discrimination] charge," ' " *id.*, at 68. That test must be applied in an objective fashion, to "avoi[d] the uncertainties and unfair discrepancies that can plague a judicial effort to determine a plaintiff's unusual subjective feelings." *Id.*, at 68–69. A reasonable worker obviously might be dissuaded from engaging in protected activity if she knew that her ance would be red. Pp. 173–175.

2. Title VII grants Thompson a cause of action. Pp. 175–178.

(a) For Title VII standing purposes, the term "person aggrieved" must be construed more narrowly than the outer boundaries of Article III. Dictum in *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U. S. 205, suggesting that Title VII's aggrievement requirement reaches as far as Article III permits, is too expansive and the Court declines to follow it. At the other extreme, limiting "person aggrieved" to the person who

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was the subject of unlawful retaliation is an arti cially narrow reading. A common usage of the term "person aggrieved" avoids both of these extremes. The Administrative Procedure Act, which authorizes suit to challenge a federal agency by any "person . . . adversely affected or aggrieved . . . within the meaning of a relevant statute," 5 U. S. C. § 702, establishes a regime under which a plaintiff may not sue unless he "falls within the 'zone of interests' sought to be protected by the statutory provision whose violation forms the legal basis for his complaint," *Lujan* v. *National Wildlife Federation*, 497 U. S. 871, 883. Title VII's term "aggrieved" incorporates that test, enabling suit by any plaintiff with an interest " 'arguably [sought] to be protected' by the statutes," *National Credit Union Admin.* v. *First Nat. Bank & Trust Co.*, 522 U. S. 479, 495, while excluding plaintiffs who might technically be injured in an Article III sense but whose interests are unrelated to Title VII's statutory pro hibitions. Pp. 175–178.

(b) Applying that test here, Thompson falls within the zone of in terests protected by Title VII. He was an employee of NAS, and Title VII's purpose is to protect employees from their employers' unlawful actions. Moreover, accepting the facts as alleged, Thompson is not an accidental victim of the retaliation. Hurting him was the unlawful act by which NAS punished Regalado. Thus, Thompson is a person ag grieved with standing to sue under Title VII. P. 178.

567 F. 3d 804, reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which all other Mem bers joined, except KAGAN, J., who took no part in the consideration or decision of the case. GINSBURG, J., led a concurring opinion, in which BREYER, J., joined, *post*, p. 179.

Eric Schnapper argued the cause for petitioner. With him on the briefs were *David O'Brien Suetholz*, *Lisa S. Blatt*, and *Anthony Franze*.

Acting Principal Deputy Solicitor General Kruger ar gued the cause for the United States as *amicus curiae* in support of petitioner. With her on the brief were *Acting Solicitor General Katyal*, *Assistant Attorney General Perez*, *Deputy Assistant Attorney General Bagenstos*, *Jo seph R. Palmore*, *P. David Lopez*, *Carolyn L. Wheeler*, and *Gail S. Coleman*.

Leigh Gross Latherow argued the cause for respondent. With her on the brief were *William H. Jones, Jr.*, *Gregory L. Monge*, and *Nathaniel K. Adams.**

JUSTICE SCALIA delivered the opinion of the Court.

Until 2003, both petitioner Eric Thompson and his ance, Miriam Regalado, were employees of respondent North American Stainless (NAS). In February 2003, the Equal Employment Opportunity Commission (EEOC) noti ed NAS that Regalado had led a charge alleging sex discrimination. Three weeks later, NAS red Thompson.

Thompson then led a charge with the EEOC. After con ciliation efforts proved unsuccessful, he sued NAS in the United States District Court for the Eastern District of Ken tucky under Title VII of the Civil Rights Act of 1964, 78 Stat. 253, 42 U. S. C. §2000e *et seq.*, claiming that NAS had red him in order to retaliate against Regalado for ling her charge with the EEOC. The District Court granted sum mary judgment to NAS, concluding that Title VII "does not permit third party retaliation claims." 435 F. Supp. 2d 633, 639 (ED Ky. 2006). After a panel of the Sixth Circuit re versed the District Court, the Sixth Circuit granted rehear ing en banc and af rmed by a 10-to-6 vote. 567 F. 3d 804 (2009). The court reasoned that because Thompson did not "engag[e] in any statutorily protected activity, either on his own behalf or on behalf of Miriam Regalado," he "is not in

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*Briefs of *amici curiae* urging reversal were led for the National Em ployment Lawyers Association et al. by *Michael L. Foreman*, *Rebecca M. Hamburg*, *Jeffrey R. White*, *Daniel B. Kohrman*, *Linda D. Kilb*, *Sarah C. Crawford*, and *Claudia Center;* and for the National Women's Law Center et al. by *Helen Norton*, *Marcia D. Greenberger*, and *Dina R. Lassow.*

Briefs of *amici curiae* urging af rmance were led for the Chamber of Commerce of the United States of America by *Patricia A. Millett*, *Robin S. Conrad*, and *Shane B. Kawka;* and for the Equal Employment Advisory Council et al. by *Rae T. Vann*, *Quentin Riegel*, *Karen R. Harned*, and *Elizabeth Milito.*

cluded in the class of persons for whom Congress created a retaliation cause of action." *Id.*, at 807–808.

We granted certiorari. 561 U. S. 1041 (2010).

I

Title VII provides that "[i]t shall be an unlawful employ ment practice for an employer to discriminate against any of his employees . . . because he has made a charge" under Title VII. 42 U. S. C. § 2000e–3(a). The statute permits "a per son claiming to be aggrieved" to le a charge with the EEOC alleging that the employer committed an unlawful employ ment practice, and, if the EEOC declines to sue the em ployer, it permits a civil action to "be brought . . . by the person claiming to be aggrieved . . . by the alleged unlawful employment practice." § 2000e–5(b), (f)(1).

It is undisputed that Regalado's ling of a charge with the EEOC was protected conduct under Title VII. In the procedural posture of this case, we are also required to as sume that NAS red Thompson in order to retaliate against Regalado for ling a charge of discrimination. This case therefore presents two questions: First, did NAS's ring of Thompson constitute unlawful retaliation? And second, if it did, does Title VII grant Thompson a cause of action?

II

With regard to the rst question, we have little dif culty concluding that if the facts alleged by Thompson are true, then NAS's ring of Thompson violated Title VII. In *Bur lington N. & S. F. R. Co.* v. *White*, 548 U. S. 53 (2006), we held that Title VII's antiretaliation provision must be con strued to cover a broad range of employer conduct. We reached that conclusion by contrasting the text of Title VII's antiretaliation provision with its substantive antidiscrimina tion provision. Title VII prohibits discrimination on the basis of race, color, religion, sex, and national origin " 'with respect to . . . compensation, terms, conditions, or privileges

of employment,'" and discriminatory practices that would "'deprive any individual of employment opportunities or otherwise adversely affect his status as an employee.'" *Id.*, at 62 (quoting 42 U. S. C. §2000e–2(a); emphasis deleted). In contrast, Title VII's antiretaliation provision prohibits an employer from "'discriminat[ing] against any of his employees'" for engaging in protected conduct, without specifying the employer acts that are prohibited. 548 U. S., at 62 (quoting §2000e–3(a); emphasis deleted). Based on this textual distinction and our understanding of the antiretaliation provision's purpose, we held that "the antiretaliation provision, unlike the substantive provision, is not limited to discriminatory actions that affect the terms and conditions of employment." *Id.*, at 64. Rather, Title VII's antiretaliation provision prohibits any employer action that "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." *Id.*, at 68 (internal quotation marks omitted).

We think it obvious that a reasonable worker might be dissuaded from engaging in protected activity if she knew that her ance would be red. Indeed, NAS does not dispute that Thompson's ring meets the standard set forth in *Burlington*. Tr. of Oral Arg. 30. NAS raises the concern, however, that prohibiting reprisals against third parties will lead to dif cult line-drawing problems concerning the types of relationships entitled to protection. Perhaps retaliating against an employee by ring his ance would dissuade the employee from engaging in protected activity, but what about ring an employee's girlfriend, close friend, or trusted co-worker? Applying the *Burlington* standard to third-party reprisals, NAS argues, will place the employer at risk any time it res any employee who happens to have a connection to a different employee who led a charge with the EEOC.

Although we acknowledge the force of this point, we do not think it justi es a categorical rule that third-party repri

sals do not violate Title VII. As explained above, we adopted a broad standard in *Burlington* because Title VII's antiretaliation provision is worded broadly. We think there is no textual basis for making an exception to it for third-party reprisals, and a preference for clear rules cannot justify departing from statutory text.

We must also decline to identify a xed class of relationships for which third-party reprisals are unlawful. We expect that ring a close family member will almost always meet the *Burlington* standard, and in icting a milder reprisal on a mere acquaintance will almost never do so, but beyond that we are reluctant to generalize. As we explained in *Burlington*, 548 U. S., at 69, "the signi cance of any given act of retaliation will often depend upon the particular circumstances." Given the broad statutory text and the variety of workplace contexts in which retaliation may occur, Title VII's antiretaliation provision is simply not reducible to a comprehensive set of clear rules. We emphasize, however, that "the provision's standard for judging harm must be objective," so as to "avoi[d] the uncertainties and unfair discrepancies that can plague a judicial effort to determine a plaintiff's unusual subjective feelings." *Id.*, at 68–69.

III

The more dif cult question in this case is whether Thompson may sue NAS for its alleged violation of Title VII. The statute provides that "a civil action may be brought . . . by the person claiming to be aggrieved." 42 U. S. C. § 2000e–5(f)(1). The Sixth Circuit concluded that this provision was merely a reiteration of the requirement that the plaintiff have Article III standing. 567 F. 3d, at 808, n. 1. We do not understand how that can be. The provision unquestionably permits a person "claiming to be aggrieved" to bring "a civil action." It is arguable that the aggrievement referred to is nothing more than the minimal Article III standing, which consists of injury in fact caused by the defendant

and remediable by the court. See *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560–561 (1992). But Thompson's claim undoubtedly meets those requirements, so if that is indeed all that aggrievement consists of, he may sue.

We have suggested in dictum that the Title VII aggrieve ment requirement conferred a right to sue on all who satis ed Article III standing. *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U. S. 205 (1972), involved the "person aggrieved" provision of Title VIII (the Fair Housing Act) rather than Title VII. In deciding the case, however, we relied upon, and cited with approval, a Third Circuit opinion involving Title VII, which, we said, "concluded that the words used showed 'a congressional intention to de ne standing as broadly as is permitted by Article III of the Constitution.'" *Id.*, at 209 (quoting *Hackett* v. *McGuire Bros., Inc.*, 445 F. 2d 442, 446 (1971)). We think that dictum regarding Title VII was too expansive. Indeed, the *Trafficante* opinion did not adhere to it in expressing its Title VIII holding that resi dents of an apartment complex could sue the owner for his racial discrimination against prospective tenants. The opin ion said that the "person aggrieved" of Title VIII was coex tensive with Article III "*insofar as tenants of the same housing unit that is charged with discrimination are con cerned.*" 409 U. S., at 209 (emphasis added). Later opin ions, we must acknowledge, reiterate that the term "ag grieved" in Title VIII reaches as far as Article III permits, see *Bennett* v. *Spear*, 520 U. S. 154, 165–166 (1997); *Glad stone, Realtors* v. *Village of Bellwood*, 441 U. S. 91, 109 (1979), though the holdings of those cases are compatible with the "zone of interests" limitation that we discuss below. In any event, it is Title VII rather than Title VIII that is before us here, and as to that we are surely not bound by the *Trafficante* dictum.

We now nd that this dictum was ill-considered, and we decline to follow it. If any person injured in the Article III sense by a Title VII violation could sue, absurd consequences

would follow. For example, a shareholder would be able to sue a company for firing a valuable employee for racially discriminatory reasons, so long as he could show that the value of his stock decreased as a consequence. At oral argument Thompson acknowledged that such a suit would not lie, Tr. of Oral Arg. 5–6. We agree, and therefore conclude that the term "aggrieved" must be construed more narrowly than the outer boundaries of Article III.

At the other extreme from the position that "person aggrieved" means anyone with Article III standing, NAS argues that it is a term of art that refers only to the employee who engaged in the protected activity. We know of no other context in which the words carry this artificially narrow meaning, and if that is what Congress intended it would more naturally have said "person claiming to have been discriminated against" rather than "person claiming to be aggrieved." We see no basis in text or prior practice for limiting the latter phrase to the person who was the subject of unlawful retaliation. Moreover, such a reading contradicts the very holding of *Trafficante*, which was that residents of an apartment complex were "person[s] aggrieved" by discrimination against prospective tenants. We see no reason why the same phrase in Title VII should be given a narrower meaning.

In our view there is a common usage of the term "person aggrieved" that avoids the extremity of equating it with Article III and yet is fully consistent with our application of the term in *Trafficante*. The Administrative Procedure Act, 5 U. S. C. § 551 *et seq.*, authorizes suit to challenge a federal agency by any "person . . . adversely affected or aggrieved . . . within the meaning of a relevant statute." § 702. We have held that this language establishes a regime under which a plaintiff may not sue unless he "falls within the 'zone of interests' sought to be protected by the statutory provision whose violation forms the legal basis for his complaint." *Lujan* v. *National Wildlife Federation*, 497 U. S. 871, 883

(1990). We have described the "zone of interests" test as denying a right of review "if the plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit." *Clarke* v. *Securities Industry Assn.*, 479 U. S. 388, 399–400 (1987). We hold that the term "aggrieved" in Title VII incorporates this test, enabling suit by any plaintiff with an interest "arguably [sought] to be protected by the statute," *National Credit Union Admin.* v. *First Nat. Bank & Trust Co.*, 522 U. S. 479, 495 (1998) (internal quotation marks omitted), while excluding plaintiffs who might technically be injured in an Article III sense but whose interests are unrelated to the statutory prohibitions in Title VII.

Applying that test here, we conclude that Thompson falls within the zone of interests protected by Title VII. Thompson was an employee of NAS, and the purpose of Title VII is to protect employees from their employers' unlawful actions. Moreover, accepting the facts as alleged, Thompson is not an accidental victim of the retaliation—collateral damage, so to speak, of the employer's unlawful act. To the contrary, injuring him was the employer's intended means of harming Regalado. Hurting him was the unlawful act by which the employer punished her. In those circumstances, we think Thompson well within the zone of interests sought to be protected by Title VII. He is a person aggrieved with standing to sue.

* * *

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

It is so ordered.

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

JUSTICE GINSBURG, with whom JUSTICE BREYER joins, concurring.

I join the Court's opinion, and add a fortifying observation: Today's decision accords with the longstanding views of the Equal Employment Opportunity Commission (EEOC), the federal agency that administers Title VII. In its Compli ance Manual, the EEOC counsels that Title VII "prohibit[s] retaliation against someone so closely related to or associ ated with the person exercising his or her statutory rights that it would discourage or prevent the person from pursuing those rights." Brief for United States as *Amicus Curiae* 12–13 (quoting EEOC Compliance Manual § 8–II(C)(3) (1998)). Such retaliation "can be challenged," the Manual af rms, "by both the individual who engaged in protected activity and the relative, where both are employees." *Id.*, at 25–26 (quoting Compliance Manual § 8–II(B)(3)(c)). The EEOC's statements in the Manual merit deference under *Skidmore* v. *Swift & Co.*, 323 U. S. 134 (1944). See *Federal Express Corp.* v. *Holowecki*, 552 U. S. 389, 399–400 (2008). The EEOC's interpretation of Title VII, I further note, is consistent with interpretations of analogous statutes by other federal agencies. See, *e. g.*, *NLRB* v. *Advertisers Mfg. Co.*, 823 F. 2d 1086, 1088–1089 (CA7 1987) (adopting NLRB's position that retaliation against a relative violates the Na tional Labor Relations Act); *Tasty Baking Co.* v. *NLRB*, 254 F. 3d 114, 127–128 (CADC 2001) (same), cited in Brief for United States as *Amicus Curiae* 11.

Syllabus

ORTIZ *v.* JORDAN ET AL.

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

No. 09–737. Argued November 1, 2010—Decided January 24, 2011

Petitioner Ortiz, a former inmate in an Ohio reformatory, brought a civil rights action under 42 U. S. C. § 1983 seeking a judgment for damages against superintending prison of cers. On two consecutive nights dur ing her incarceration, Ortiz stated, she was sexually assaulted by a cor rections of cer. Although she promptly reported the rst assault, she further alleged, respondent Jordan, a case manager in her living unit, did nothing to ward off the second sexual assault, despite Jordan's awareness of the substantial risk of that occurrence. Ortiz further charged that respondent Bright, a prison investigator, retaliated against Ortiz for her accusations by placing her, shackled and handcuffed, in solitary con nement in a cell without adequate heat, clothing, bedding, or blankets. The responses of both of cers, she said, violated her right, safeguarded by the Eighth and Fourteenth Amendments, to reasonable protection from violence while in custody.

Jordan and Bright moved for summary judgment on pleas of "quali ed immunity." The District Court, noting factual disputes material to Or tiz's claims and the of cers' quali ed immunity defenses, denied the summary-judgment motion. The of cers did not appeal that ruling. The case proceeded to trial, and the jury returned a verdict against Jordan and Bright. They sought judgment as a matter of law, pursuant to Federal Rule of Civil Procedure 50(a), both at the close of Ortiz's evidence and at the close of their own presentation. But they did not contest the jury's liability nding by renewing, under Rule 50(b), their request for judgment as a matter of law. Nor did they request a new trial under Rule 59(a). The District Court entered judgment for Ortiz. On appeal, Jordan and Bright urged, *inter alia*, that the District Court should have granted their motion for summary judgment based on their quali ed immunity defense. The Sixth Circuit agreed and reversed the judgment entered on the jury's verdict, holding that both defendants were sheltered from Ortiz's suit by quali ed immunity.

Held: A party may not appeal a denial of summary judgment after a dis trict court has conducted a full trial on the merits. A quali ed immu nity plea, not upheld at the summary-judgment stage, may be pursued at trial, but at that stage, the plea must be evaluated in light of the

character and quality of the evidence received in court. Ordinarily, orders denying summary judgment are interlocutory and do not qualify as "final decisions" subject to appeal under 28 U. S. C. § 1291. Because a qualified immunity plea can spare an official not only from liability but from trial, this Court has recognized a limited exception to the categorization of summary-judgment denials as nonappealable orders. *Mitchell* v. *Forsyth*, 472 U. S. 511, 525–526. The exception permits an immediate appeal when summary judgment is denied to a defendant who urges that qualified immunity shelters her from suit. *Id.*, at 527. Such an immediate appeal is not available, however, when the district court determines that factual issues genuinely in dispute preclude summary adjudication. *Johnson* v. *Jones*, 515 U. S. 304, 313. Here, Jordan and Bright sought no immediate appeal from the denial of their summary-judgment motion. Nor did they avail themselves of Rule 50(b), which permits the entry of judgment, postverdict, for the verdict loser if the court finds the evidence legally insufficient to sustain the verdict. Absent such a motion, an appellate court is "powerless" to review the sufficiency of the evidence after trial. *Unitherm Food Systems, Inc.* v. *Swift-Eckrich, Inc.*, 546 U. S. 394, 405. This Court need not address the officers' argument that a qualified immunity plea raising a "purely legal" issue is preserved for appeal by an unsuccessful summary-judgment motion even if the plea is not reiterated in a Rule 50(b) motion. Cases fitting that bill typically involve disputes about the substance and clarity of pre-existing law. In this case, however, what was controverted was not the pre-existing law, but the facts that could render Jordan and Bright answerable under § 1983, *e. g.*, whether Jordan was adequately informed, after the first assault, of the assailant's identity and of Ortiz's fear of a further assault. Because the dispositive facts were disputed, the officers' qualified immunity defenses did not present "'neat abstract issues of law.'" *Johnson*, 515 U. S., at 317. To the extent that Jordan and Bright urge Ortiz has not proved her case, they were, by their own account, obliged to raise that sufficiency-of-the-evidence issue by postverdict motion for judgment as a matter of law under Rule 50(b). They did not do so. The Sixth Circuit, therefore, had no warrant to upset the jury's decision on their liability. Pp. 188–192.

316 Fed. Appx. 449, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and BREYER, ALITO, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment, in which SCALIA and KENNEDY, JJ., joined, *post*, p. 192.

David E. Mills argued the cause and led briefs for petitioner. With him on the reply brief were *Andrew S. Pollis* and *Christian J. Grostic.*

Benjamin C. Mizer, Solicitor General of Ohio, argued the cause for respondents. With him on the brief were *Richard Cordray*, Attorney General, *Alexandra T. Schimmer*, Chief Deputy Solicitor General, *Stephen P. Carney* and *Emily S. Schlesinger*, Deputy Solicitors, and *Lori Weisman*, Assistant Solicitor.*

JUSTICE GINSBURG delivered the opinion of the Court.

We address in this case a procedural issue arising in a civil rights action brought under 42 U. S. C. § 1983 by Michelle Ortiz, a former inmate at the Ohio Reformatory for Women. Plaintiff below, petitioner here, Ortiz led a complaint in federal court stating key facts on which she based claims for damages against superintending prison of cers. On two consecutive nights during her one-year incarceration, Ortiz stated, she was sexually assaulted by a corrections of cer. Although she promptly reported the rst incident, she fur

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*A brief of *amici curiae* urging af rmance was led for the State of Texas et al. by *Greg Abbott*, Attorney General of Texas, *James C. Ho*, Solicitor General, *Daniel T. Hodge*, First Assistant Attorney General, *Bill Cobb*, Deputy Attorney General, and *James P. Sullivan*, Assistant Solicitor General, by *Irene S. Soroeta-Kodesh*, Solicitor General of Puerto Rico, and by the Attorneys General for their respective jurisdictions as follows: *Troy King* of Alabama, *Dustin McDaniel* of Arkansas, *John W. Suthers* of Colorado, *Peter J. Nickles* of the District of Columbia, *Bill McCollum* of Florida, *Thurbert E. Baker* of Georgia, *Mark J. Bennett* of Hawaii, *Lawrence G. Wasden* of Idaho, *Lisa Madigan* of Illinois, *Gregory F. Zoeller* of Indiana, *Tom Miller* of Iowa, *Steve Six* of Kansas, *Janet T. Mills* of Maine, *Douglas F. Gansler* of Maryland, *Michael A. Cox* of Michigan, *Jon Bruning* of Nebraska, *Catherine Cortez Masto* of Nevada, *Wayne Stenehjem* of North Dakota, *W. A. Drew Edmondson* of Oklahoma, *John R. Kroger* of Oregon, *Henry D. McMaster* of South Carolina, *Robert E. Cooper, Jr.*, of Tennessee, *Mark L. Shurtleff* of Utah, *William H. Sorrell* of Vermont, *Darrell V. McGraw, Jr.*, of West Virginia, and *Bruce A. Salzburg* of Wyoming.

ther alleged, prison authorities took no measures to protect her against the second assault. After that assault, Ortiz charged, and in retaliation for accounts she gave of the two episodes, prison of cials placed her, shackled and handcuffed, in solitary con nement in a cell without adequate heat, cloth ing, bedding, or blankets. The treatment to which she was exposed, Ortiz claimed, violated her right, safeguarded by the Eighth and Fourteenth Amendments, to reasonable pro tection from violence while in custody.

Principal defendants in the suit, Paula Jordan, a case man ager at Ortiz's living unit, and Rebecca Bright, a prison in vestigator, moved for summary judgment on their pleas of "quali ed immunity," a defense that shields of cials from suit if their conduct "d[id] not violate clearly established statu tory or constitutional rights of which a reasonable person would have known." *Harlow* v. *Fitzgerald*, 457 U. S. 800, 818 (1982). Finding that the quali ed immunity defense turned on material facts genuinely in dispute, see Fed. Rule Civ. Proc. 56(a), the District Judge denied summary judg ment. *Ortiz* v. *Voinovich*, 211 F. Supp. 2d 917, 923–930 (SD Ohio 2002).

The case then proceeded to trial, and the jury returned verdicts for Ortiz against both Jordan and Bright. The two of cers appealed to the United States Court of Appeals for the Sixth Circuit, targeting, *inter alia*, the denial of their pretrial motion for summary judgment. "[C]ourts normally do not review the denial of a summary judgment motion after a trial on the merits," the Court of Appeals recognized. 316 Fed. Appx. 449, 453 (2009). Nevertheless, the court con tinued, "denial of summary judgment based on quali ed im munity is an exception to this rule." *Ibid.* Reversing the judgment entered on the jury's verdict, the appeals court held that both defendants were sheltered from Ortiz's suit by quali ed immunity.

We granted review, 559 U. S. 1092 (2010), to decide a thresh old question on which the Circuits are split: May a party, as

the Sixth Circuit believed, appeal an order denying summary judgment after a full trial on the merits?[1] Our answer is no. The order retains its interlocutory character as simply a step along the route to final judgment. See *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U. S. 541, 546 (1949). Once the case proceeds to trial, the full record developed in court supersedes the record existing at the time of the summary-judgment motion. A qualified immunity defense, of course, does not vanish when a district court declines to rule on the plea summarily. The plea remains available to the defending officials at trial; but at that stage, the defense must be evaluated in light of the character and quality of the evidence received in court.

When summary judgment is sought on a qualified immunity defense, the court inquires whether the party opposing the motion has raised any triable issue barring summary adjudication. "[O]nce trial has been had," however, "the availability of official immunity should be determined by the trial record, not the pleadings nor the summary judgment record." 15A C. Wright, A. Miller, & E. Cooper, Federal Practice & Procedure § 3914.10, p. 684 (2d ed. 1992 and Supp. 2010). After trial, if defendants continue to urge qualified immunity, the decisive question, ordinarily, is whether the evidence favoring the party seeking relief is legally sufficient to overcome the defense. See Fed. Rule Civ. Proc. 50(a), (b) (stating conditions on which judgment may be granted as a matter of law).

In the case before us, the Court of Appeals, although purporting to review the District Court's denial of the prison

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[1] Compare, *e. g.*, *Black* v. *J. I. Case Co.*, 22 F. 3d 568, 570–571 (CA5 1994) (declining to review denial of summary judgment after trial); *Price* v. *Kramer*, 200 F. 3d 1237, 1243–1244 (CA9 2000) (no exception where summary judgment rejected assertion of qualified immunity), with *Goff* v. *Bise*, 173 F. 3d 1068, 1072 (CA8 1999) (denial of summary judgment based on qualified immunity reviewable after trial on the merits); 316 Fed. Appx. 449, 453 (CA6 2009) (case below) (same).

of cials' pretrial summary-judgment motion, 316 Fed. Appx., at 453, several times pointed to evidence presented only at the trial stage of the proceedings, see *id.*, at 453–454. The appeals court erred, but not fatally, by incorrectly placing its ruling under a summary-judgment headline. Its judgment was in rm, however, because Jordan's and Bright's failure to renew their motion for judgment as a matter of law under Federal Rule of Civil Procedure 50(b) left the appellate forum with no warrant to reject the appraisal of the evidence by "the judge who saw and heard the witnesses and ha[d] the feel of the case which no appellate printed transcript can impart." *Cone* v. *West Virginia Pulp & Paper Co.*, 330 U. S. 212, 216 (1947).

I

Michelle Ortiz, serving a sentence for aggravated assault against her husband,[2] maintained that she was sexually as saulted on consecutive days by Corrections Of cer Douglas Schultz. On Friday, November 8, 1996, Ortiz recounted, Schultz walked up behind her in the washroom of her living quarters and grabbed one of her breasts.[3] Ortiz fended off the assault, but Schultz returned later that day and threat ened to "see [her] tomorrow," Tr. 36.

The next day, Ortiz described the incident to Jordan. After assuring Ortiz that "no one has the right to touch you," 316 Fed. Appx., at 451 (internal quotation marks omitted), Jordan told Ortiz that Schultz had been reassigned to an other correctional facility and was serving his last day at the reformatory. Ortiz could le a written complaint, Jordan noted. She suggested, however, that Ortiz not do so, in view of Schultz's imminent departure. Jordan advised Ortiz that she "always ha[d] the right to defend [her]self," Tr. 43,

[2] Ortiz maintained in her criminal prosecution that she acted in retalia tion for multiple incidents of domestic violence to which she had been subjected over a span of several years. 316 Fed. Appx., at 450.

[3] The accounts of the episodes-in-suit described here recite facts the jury reasonably could have found from the testimony presented at trial.

and counseled her to "'hang out with [her] friends' for the rest of the day so that Schultz would not have the chance to be alone with her," 316 Fed. Appx., at 451 (alteration in original).

The day of her conversation with Ortiz, Jordan wrote an incident report describing her version of the encounter. In that account, Jordan stated that Ortiz had refused to name her assailant or provide any other information about the as sault. Jordan did not immediately notify her superiors of the assault Ortiz reported and Ortiz's consequent fears about her safety. Taking the incident report home in her workbag, Jordan submitted it upon her return to work two days later.

Ortiz endeavored to follow Jordan's advice about staying in the company of friends. But later in the day, feeling ill, she returned to her room and fell asleep. Three other in mates were in the room when Ortiz went to sleep. They were gone when she awoke to nd Schultz standing over her, one hand fondling her left breast, the ngers of the other hand inside her underwear penetrating her vagina.

Bright's investigation began two days after the second assault. During its course, Bright placed Ortiz in solitary con nement. Ortiz maintained that Bright isolated her in retaliation for her accusations against Schultz. Bright, however, testi ed that she segregated Ortiz because Ortiz continued to discuss the investigation with other inmates, disobeying Bright's repeated instructions to refrain from speaking about it.

In her § 1983 action, Ortiz claimed that Jordan did nothing to ward off Schultz's second sexual assault, despite Jor dan's awareness of the substantial risk of that occurrence. Bright, Ortiz charged, retaliated against her because she re sisted Bright's efforts to induce her to retract her accounts of Schultz's assaults. (Schultz, having resigned from state employment, could not be found and served with process.) The District Court, noting multiple factual disputes material to Ortiz's claims and the of cers' defense of quali ed immu

nity, denied summary judgment to Jordan and Bright, 211 F. Supp. 2d, at 923–930;[4] neither defendant appealed the District Court's denial of summary judgment.

The case proceeded to trial, and a jury returned a verdict of $350,000 in compensatory and punitive damages against Jordan and $275,000 against Bright. Jordan and Bright sought judgment as a matter of law, pursuant to Rule 50(a), both at the close of Ortiz's evidence and at the close of their own presentation. But they did not contest the jury's liability finding by renewing, under Rule 50(b), their request for judgment as a matter of law. Nor did they request a new trial under Rule 59(a). The District Court entered judgment for Ortiz in accordance with the jury's verdict.

On appeal, Jordan and Bright urged both that the District Court should have granted them summary judgment on their defense of qualified immunity and that the verdict was "against the weight of the evidence." Final Brief for Defendants-Appellants in No. 06–3627 (CA6), pp. 21, 26. Appraising the parties' evidence under a *de novo* standard of review, the Court of Appeals "reverse[d] the denial of qualified immunity to both Bright and Jordan." 316 Fed. Appx., at 455.[5]

We granted certiorari to resolve the conflict among the Circuits as to whether a party may appeal a denial of sum

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[4] As to Jordan, the District Court determined, *inter alia*, that "a jury could reasonably find . . . that Ortiz did inform Jordan of Schultz's identity," and that "Ortiz made Jordan aware that [Ortiz] reasonably feared a further sexual attack." 211 F. Supp. 2d, at 925. Concerning Bright, the court noted that "[a] jury could reasonably find that Bright['s] . . . purported reason for placing Ortiz in security control was pretextual." *Id.*, at 928.

[5] Judge Daughtrey dissented; in her view, the strength of the evidence against Jordan and Bright amply supported the jury's verdict. 316 Fed. Appx., at 456–457. Quoting *Kiphart* v. *Saturn Corp.*, 251 F. 3d 573, 581 (CA6 2001), she observed that appellate courts "do not weigh the evidence, evaluate the credibility of witnesses or substitute our own judgment for that of the jury." 316 Fed. Appx., at 457.

mary judgment after a district court has conducted a full trial on the merits. See n. 1, *supra.*

II

The jurisdiction of a Court of Appeals under 28 U. S. C. § 1291 extends only to "appeals from . . . nal decisions of the district courts." Ordinarily, orders denying summary judg ment do not qualify as " nal decisions" subject to appeal. Summary judgment must be denied when the court of rst instance determines that a "genuine dispute as to [a] material fact" precludes immediate entry of judgment as a matter of law. Fed. Rule Civ. Proc. 56(a). Such rulings, we have ob served, are "by their terms interlocutory." *Liberty Mut. Ins. Co.* v. *Wetzel,* 424 U. S. 737, 744 (1976).

Because a plea of quali ed immunity can spare an of cial not only from liability but from trial, we have recognized a limited exception to the categorization of summary-judgment denials as nonappealable orders. *Mitchell* v. *Forsyth,* 472 U. S. 511, 525–526 (1985). When summary judgment is de nied to a defendant who urges that quali ed immunity shel ters her from suit, the court's order " nally and conclusively [disposes of] the defendant's claim of right not to stand trial." *Id.,* at 527 (emphasis deleted). Therefore, *Mitchell* held, an immediate appeal may be pursued. *Ibid.*

We clari ed in *Johnson* v. *Jones,* 515 U. S. 304 (1995), that immediate appeal from the denial of summary judgment on a quali ed immunity plea is available when the appeal pre sents a "purely legal issue," illustratively, the determination of "what law was 'clearly established' " at the time the de fendant acted. *Id.,* at 313. However, instant appeal is not available, *Johnson* held, when the district court determines that factual issues genuinely in dispute preclude summary adjudication. *Ibid.*

Jordan and Bright sought no immediate appeal from the denial of their motion for summary judgment. In light of *Johnson,* that abstinence is unsurprising. Moreover, even

had instant appellate review been open to them, the time to seek that review expired well in advance of trial. See Fed. Rule App. Proc. 4(a)(1)(A) (notice of appeal must generally be filed "within 30 days after the judgment or order appealed from"). Nor did they avail themselves of Federal Rule of Civil Procedure 50(b), which permits the entry, postverdict, of judgment for the verdict loser if the court finds that the evidence was legally insufficient to sustain the verdict. See Rule 50(a), (b). Absent such a motion, we have repeatedly held, an appellate court is "powerless" to review the sufficiency of the evidence after trial. *Unitherm Food Systems, Inc.* v. *Swift-Eckrich, Inc.*, 546 U. S. 394, 405 (2006); see *Cone*, 330 U. S., at 218.[6]

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[6] Jordan and Bright contend that their failure to file a Rule 50(b) motion cannot be the basis for overturning the judgment of the Court of Appeals. Because Ortiz presented no argument about the absence of a Rule 50(b) motion in her brief to the Sixth Circuit or in her petition for certiorari, Jordan and Bright argue, she has forfeited the objection. Jordan and Bright are not well positioned to make this argument. They did not suggest that Ortiz had forfeited her Rule 50(b) objection, or argue that such an objection is forfeitable, until their merits brief to this Court. Ordinarily we do not consider "a nonjurisdictional argument not raised in a respondent's brief in opposition to a petition." *Baldwin* v. *Reese*, 541 U. S. 27, 34 (2004) (internal quotation marks omitted).

In any case, we do not see how Ortiz can be held to have forfeited her Rule 50(b) objection. The arguments Jordan and Bright made in the Court of Appeals invited no such objection. Jordan and Bright urged on appeal that the jury's verdict was "against the weight of the evidence." Final Brief for Defendants-Appellants in No. 06–3627 (CA6), pp. 21–43. A plea that a verdict is "against the weight of the evidence," of course, is not equivalent to a plea that the evidence submitted at trial was insufficient to warrant submission of the case to the jury. 11 C. Wright, A. Miller, & E. Cooper, Federal Practice & Procedure § 2806, pp. 65–67 (2d ed. 1995 and Supp. 2010). A determination that a verdict is against the weight of the evidence may gain a new trial for the verdict loser, but never a final judgment in that party's favor. *Montgomery Ward & Co.* v. *Duncan*, 311 U. S. 243, 250–251 (1940). Ortiz objected, accordingly, that Jordan and Bright had not asked the District Court for a new trial and were therefore "bar[red] [from] appeal on this ground." Final Brief for

"[Q]uestions going to the suf ciency of the evidence are not preserved for appellate review by a summary judgment motion alone," Jordan and Bright acknowledge; rather, chal lenges of that order "must be renewed post-trial under Rule 50." Brief for Respondents 11 (emphasis deleted). Jordan and Bright insist, however, in defense of the Sixth Circuit's judgment, that suf ciency of the evidence is not what is at stake in this case. A quali ed immunity plea raising an issue of a "purely legal nature," they urge, *ibid.*, is preserved for appeal by an unsuccessful motion for summary judgment, and need not be brought up again under Rule 50(b), *id.*, at 11–12 (citing as pathmarking *Rekhi* v. *Wildwood Industries, Inc.*, 61 F. 3d 1313, 1318 (CA7 1995)). Unlike an "evidence suf ciency" claim that necessarily "hinge[s] on the facts ad duced at trial," they maintain, a purely legal issue can be resolved "with reference only to undisputed facts." Brief for Respondents 16 (quoting *Mitchell*, 472 U. S., at 530, n. 10).

We need not address this argument, for the of cials' claims of quali ed immunity hardly present "purely legal" issues capable of resolution "with reference only to undisputed facts." Cases tting that bill typically involve contests not about what occurred, or why an action was taken or omitted, but disputes about the substance and clarity of pre-existing law. See *Behrens* v. *Pelletier*, 516 U. S. 299, 313 (1996); *Johnson*, 515 U. S., at 317.

Here, however, the pre-existing law was not in contro versy. See *Farmer* v. *Brennan*, 511 U. S. 825, 834, 847 (1994) (prison of cial may be held liable for "deliberate indif ference" to a prisoner's Eighth Amendment right to protec tion against violence while in custody if the of cial "knows that [the] inmat[e] face[s] a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it" (internal quotation marks omitted)); *Crawford-El* v. *Britton*, 523 U. S. 574, 592 (1998) (First

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Plaintiff-Appellee in No. 06–3627 (CA6), p. 23. Ortiz thus responded alto gether appropriately to the arguments Jordan and Bright made.

Amendment shields prisoners from "retaliation for protected speech").[7] What was controverted, instead, were the facts that could render Jordan and Bright answerable for crossing a constitutional line. Disputed facts relevant to resolving the of cials' immunity pleas included: Was Jordan adequately informed, after the rst assault, of the identity of the assail ant, see App. 4, and of Ortiz's fear of a further assault? What, if anything, could Jordan have done to distance Ortiz from the assailant, thereby insulating her against a second assault? See *id.*, at 4–5.[8] Did Bright place and retain Ortiz in solitary con nement as a retaliatory measure or as a con trol needed to safeguard the integrity of the investigation?[9]

In sum, the quali ed immunity defenses asserted by Jor dan and Bright do not present "neat abstract issues of law." See *Johnson*, 515 U. S., at 317 (quoting 15A C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3914.10, p. 644 (1992)). To the extent that the of cials urge Ortiz has not proved her case, they were, by their own ac count, obliged to raise that suf ciency-of-the-evidence issue

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[7] The Court of Appeals held that Ortiz's complaint had not properly tied her claim against Bright to the First Amendment. 316 Fed. Appx., at 455. "When an issue not raised by the pleadings is tried by the parties' express or implied consent," however, "it must be treated in all respects as if raised in the pleadings." Fed. Rule Civ. Proc. 15(b)(2). Bright, like the District Court, recognized the First Amendment interests at stake in Ortiz's claim against her. See App. 11 (District Court, in ruling on Rule 50(a) motion, inquired into Bright's authority to "regulat[e] speech of in mates"); *id.*, at 20 (Bright's counsel argued that Ortiz's segregation "would not have had a chilling effect" on her speech).

[8] Relevant to that matter, Bright testi ed at trial that, had Jordan "re ported the rst incident immediately, 'the proper people would have taken a role in protecting Mrs. Ortiz.'" 316 Fed. Appx., at 457 (Daughtrey, J., dissenting).

[9] Apart from Bright's testimony, the defense produced no evidence that Ortiz "continually" talked about the assaults or in any other way inter fered with the investigation. See Tr. 271, 397 (Bright's testimony ac knowledging absence of any documentation regarding Ortiz's conduct dur ing investigation).

by postverdict motion for judgment as a matter of law under Rule 50(b). See Brief for Respondents 11. They did not do so. The Court of Appeals, therefore, had no warrant to upset the jury's decision on the of cials' liability.

* * *

For the reasons stated, the judgment of the Court of Ap peals for the Sixth Circuit is reversed, and the case is re manded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, with whom JUSTICE SCALIA and JUSTICE KENNEDY join, concurring in the judgment.

We granted certiorari to decide the narrow question whether a party may appeal an order denying summary judgment after a full trial on the merits. I agree with the Court that the answer is no. See *ante*, at 183–184. The Court also reaches beyond that question, however, to ad dress the effect of Jordan and Bright's failure to renew their motion for judgment as a matter of law under Federal Rule of Civil Procedure 50(b). I would limit our decision to the question presented and remand for consideration of any addi tional issues.

As the Court concludes, a party ordinarily cannot appeal an order denying summary judgment after a full trial on the merits. See *ante*, at 188–189. Most such orders are not appealable at all, because they neither qualify as " nal deci sions" capable of appeal under 28 U. S. C. § 1291 nor come within the narrow class of appealable interlocutory orders under § 1292(a)(1). And for those that are appealable,* the time for ling an appeal will usually have run by the conclu sion of the trial. See § 2107(a) (providing that a notice of

*See *Mitchell* v. *Forsyth*, 472 U. S. 511, 524–530 (1985) (holding that some orders denying summary judgment constitute "' nal decisions'" under the collateral order doctrine).

appeal in a civil case generally must be filed "within thirty days" after entry of the relevant judgment or order); Fed. Rule App. Proc. 4(a)(1)(A).

This case is the ordinary case. Even if the order denying summary judgment qualified under the collateral order doctrine as an appealable "final decision" under § 1291, the time for filing that appeal expired long before trial. *Ante*, at 188–189. The Court of Appeals therefore lacked jurisdiction to review the order. I would reverse the judgment on that ground alone and remand for further proceedings.

The majority proceeds to consider the additional question whether Jordan and Bright's failure to file a Rule 50(b) motion deprived the Court of Appeals of the "'powe[r]'" to review the sufficiency of the trial evidence. See *ante*, at 185, 189 (quoting *Unitherm Food Systems, Inc.* v. *Swift-Eckrich, Inc.*, 546 U. S. 394, 405 (2006)). The Court does so because it concludes that the Court of Appeals did not confine itself to the pretrial record and instead reviewed the trial evidence. *Ante*, at 184–185.

I do not think it necessary to reach beyond the question presented. It is clear from the opinion that the appeals court reviewed the order denying summary judgment, and that was error. The Court of Appeals explained that "[a]lthough courts normally do not review the denial of a summary judgment motion after a trial on the merits," this case "is an exception to th[at] rule." 316 Fed. Appx. 449, 453 (CA6 2009). And to support that conclusion, the court cited *Goff* v. *Bise*, 173 F. 3d 1068 (1999), in which the Eighth Circuit reviewed an order denying summary judgment. Finally, the Court of Appeals equated its review in this case to the review of an "interlocutory appea[l] of qualified immunity," which suggests that the court saw itself as reviewing the interlocutory order denying summary judgment. 316 Fed. Appx., at 453. Whether, in erroneously reviewing the order denying summary judgment, the Court of Appeals considered the pretrial or full trial record is beside the point.

I also think it unwise to reach the Rule 50 issue and the questions that follow. Ortiz's opening brief at the merits stage focused on the question presented—whether the Court of Appeals lacked jurisdiction to review an order denying summary judgment. It was not until Jordan and Bright's response brief in this Court, in which they argued that they had not actually appealed the order denying summary judg ment, that the Rule 50 issues were addressed at any length. This Court normally proceeds more cautiously. Moreover, the Court of Appeals did not address these issues at all, and we are ordinarily "a court of nal review and not rst view." *Adarand Constructors, Inc.* v. *Mineta*, 534 U. S. 103, 110 (2001) *(per curiam)* (internal quotation marks omitted). This seems a good rule to follow in a case like this, which raises dif cult and far-reaching questions of civil procedure.

For these reasons, I would resolve only the question on which we granted certiorari. I concur in the judgment.

Syllabus

CHASE BANK USA, N. A. *v.* McCOY, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

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

No. 09–329. Argued December 8, 2010—Decided January 24, 2011

Regulation Z—promulgated by the Federal Reserve Board (Board) pursuant to its authority under the Truth in Lending Act—requires credit card issuers to disclose certain information to cardholders. The version of the regulation in effect at the time this dispute arose obliges issuers to provide to cardholders an "[i]nitial disclosure statement," 12 CFR § 226.6, specifying "each periodic rate that may be used to compute the nance charge," § 226.6(a)(2). It also imposes "[s]ubsequent disclosure requirements," § 226.9, including notice to cardholders "[w]henever any term required to be disclosed under § 226.6 is changed," § 226.9(c)(1). When "a periodic rate or other nance charge is increased because of the consumer's delinquency or default," notice must be given "before the effective date of the change." *Ibid.*

At the time respondent McCoy led suit, he was the holder of a credit card issued by petitioner Chase Bank. The cardholder agreement provided, in relevant part, that McCoy was eligible for "Preferred rates" as long as he met certain conditions. If any of those conditions were not met, Chase reserved the right to raise the rate, up to a preset maximum, and to apply the change to both existing and new balances. McCoy alleges that Chase increased his interest rate due to his delinquency or default and applied that increase retroactively, and that this action violated Regulation Z because Chase did not notify him of the increase until after it had taken effect. The District Court dismissed his complaint, holding that because the increase did not constitute a "change in terms" under § 226.9(c), Chase was not required to notify him of the increase before implementing it. The Ninth Circuit reversed in relevant part, holding that Regulation Z requires issuers to provide notice of an interest-rate increase prior to its effective date.

Held: At the time of the transactions at issue, Regulation Z did not require Chase to provide McCoy with a change-in-terms notice before implementing the agreement term allowing it to raise his interest rate, up to a preset maximum, following delinquency or default. Pp. 203–215.

(a) This case requires the Court to determine the meaning of a regulation promulgated by the Board under its statutory authority. However, Regulation Z's text is unclear with respect to the crucial interpre-

tive question at issue: whether a change to an interest rate, pursuant to previously disclosed contractual provision, constitutes a change to a "term required to be disclosed under § 226.6" requiring a subsequent disclosure under § 226.9(c)(1). Because of this ambiguity, the Court must look to the Board's own interpretation of the regulation for guidance in deciding this case. Pp. 203–208.

(b) The Board has made clear in its *amicus* brief to this Court that, in its view, Chase was not required to give McCoy notice of the interest-rate increase under the applicable version of Regulation Z. This Court defers to an agency's interpretation of its own regulation, advanced in a legal brief, unless that interpretation is "plainly erroneous or inconsistent with the regulation." *Auer* v. *Robbins*, 519 U. S. 452, 461 (internal quotation marks omitted). In *Auer*, the Court deferred to the Secretary of Labor's interpretation of his own regulation, presented in an *amicus* brief submitted by the agency at the Court's invitation. The Court held that the fact that the interpretation came in a legal brief did not, "in the circumstances of th[at] case, make it unworthy of deference." *Id.*, at 462. The interpretation was "in no sense a *post hoc* rationalization advanced by an agency seeking to defend past agency action against attack," *ibid.* (internal quotation marks and alteration omitted), and there was "no reason to suspect that the interpretation [did] not re ect the agency's fair and considered judgment on the matter in question," *ibid.* The brief submitted by the Board here, at the Court's invitation, is no different. As in *Auer*, there is no reason to believe that the Board's interpretation is a "*post hoc* rationalization" taken as a litigation position, for the Board is not a party to this case. And its interpretation is neither "plainly erroneous" nor "inconsistent with" the indeterminate text of Regulation Z. Thus, there is no reason to suspect that the Board's position in its *amicus* brief re ects anything other than its fair and considered judgment as to what the regulation required at the time this dispute arose. That Congress and the Board may currently hold a different view does not mean that deference is not warranted to the Board's understanding of what the applicable version of Regulation Z required. Under *Auer*, therefore, it is clear that deference to the interpretation in the agency *amicus* brief is warranted. Pp. 208–211.

(c) McCoy errs in arguing that deference to a legal brief is inappropriate because the interpretation of Regulation Z in the Of cial Staff Commentary commands a different result. While Commentary promulgated by the Board as an interpretation of Regulation Z may warrant deference as a general matter, the Commentary explaining the requirements at issue in this case largely replicates the ambiguity present in the regulatory text, and therefore offers no reason to disregard the interpretation advanced in the Board's *amicus* brief. Pp. 211–215.

559 F. 3d 963, reversed and remanded.

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

Seth P. Waxman argued the cause for petitioner. With him on the briefs were *Daniel S. Volchok*, *Christopher R. Lipsett*, and *Noah A. Levine*.

Joseph R. Palmore argued the cause for the United States as *amicus curiae* urging reversal. On the brief were *Acting Solicitor General Katyal*, *Assistant Attorney General West*, *Deputy Solicitor General Stewart*, *Acting Deputy Solicitor General Kruger*, *Michael S. Raab*, *Matthew M. Collette*, and *Katherine H. Wheatley*.

Gregory A. Beck argued the cause for respondent. With him on the brief were *Deepak Gupta* and *Allison M. Zieve*.*

JUSTICE SOTOMAYOR delivered the opinion of the Court.

As applicable to this case, Regulation Z—promulgated by the Board of Governors of the Federal Reserve System (Board) pursuant to its authority under the Truth in Lending Act (TILA), 82 Stat. 146, 15 U. S. C. § 1601 *et seq.*—requires that issuers of credit cards provide cardholders with an "[i]nitial disclosure statement" specifying, *inter alia*, "each periodic rate" associated with the account. 12 CFR § 226.6(a)(2) (2008). The regulation also imposes "[s]ubsequent disclosure requirements," including notice to cardholders "[w]henever any term required to be disclosed under § 226.6 is changed." § 226.9(c)(1). This case presents the question whether Regulation Z requires an issuer to notify a cardholder of an interest-rate increase instituted pursuant to a provision of the cardholder agreement giving the issuer discretion to increase the rate, up to a stated maximum, in the event of the cardholder's delinquency or default. We conclude that the version of Regulation Z applicable in this case does not require such notice.

**Gregory F. Taylor* led a brief for the American Bankers Association as *amicus curiae* urging reversal.

I

A

Congress passed TILA to promote consumers' "informed use of credit" by requiring "meaningful disclosure of credit terms," 15 U. S. C. § 1601(a), and granted the Board the authority to issue regulations to achieve TILA's purposes, § 1604(a). Pursuant to this authority, the Board promulgated Regulation Z, which requires credit card issuers to disclose certain information to consumers.[1] Two provisions of Regulation Z are at issue in this case. The first, 12 CFR § 226.6, explains what information credit card issuers are obliged to provide to cardholders in the "[i]nitial disclosure statement," including "each periodic rate that may be used to compute the finance charge." § 226.6(a)(2). The second, § 226.9, imposes upon issuers certain "[s]ubsequent disclosure requirements," including a requirement to provide notice "[w]henever any term required to be disclosed under § 226.6 is changed." § 226.9(c)(1). As a general matter, notice of a change in terms has to be provided 15 days in advance of the effective date of the change. *Ibid.* When "a periodic rate or other finance charge is increased because of the consumer's delinquency or default," however, notice only need be given "before the effective date of the change." *Ibid.* Regulation Z also explains that no notice is required under § 226.9 when the change in terms "results from . . . the consumer's default or delinquency (other than an increase in the periodic rate or other finance charge)." § 226.9(c)(2).

The official interpretation of Regulation Z (Official Staff Commentary or Commentary) promulgated by the Board explains these requirements further: Section 226.9(c)(1)'s

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[1] As discussed more fully below, see *infra*, at 200–201, in 2009 the Board amended Regulation Z, such that the provisions discussed in this opinion are no longer in effect. However, because the pre-2009 provisions are the ones applicable to the case before us, we will refer to them in the present tense.

notice-of-change requirement does not apply "if the speci c change is set forth initially, such as . . . an increase that occurs when the consumer has been under an agreement to maintain a certain balance in a savings account in order to keep a particular rate and the account balance falls below the speci ed minimum." 12 CFR pt. 226, Supp. I, Comment 9(c)–1, p. 506 (2008) (hereinafter Comment 9(c)–1). On the other hand, the Commentary explains, "notice must be given if the contract allows the creditor to increase the rate at its discretion but does not include speci c terms for an increase (for example, when an increase may occur under the creditor's contract reservation right to increase the periodic rate)." *Ibid.* As to the timing requirements, the Commentary states: "[A] notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change . . . [i]f there is an increased periodic rate or any other nance charge attributable to the consumer's delinquency or default." *Id.*, Comment 9(c)(1)–3, at 507 (hereinafter Comment 9(c)(1)–3).

At least as early as 2004, the Board began considering revisions to Regulation Z. The new regulations the Board eventually issued do not apply to the present case, but the details of their promulgation provide useful background in considering the parties' arguments with respect to the version of Regulation Z we address here. In 2004, the Board issued an advance notice of proposed rulemaking announcing its intent to consider revisions. 69 Fed. Reg. 70925 (2004). In so doing, the Board described how it understood the notice requirements to function at that time:

> "[A]dvance notice is not required in all cases. For example, if the interest rate or other nance charge increases due to a consumer's default or delinquency, notice is required, but need not be given in advance. 12 CFR 226.9(c)(1); comment 9(c)(1)–3. And no change-in-terms notice is required if the creditor speci es in advance the circumstances under which an increase to the

> nance charge or an annual fee will occur. Comment 9(c)–1. For example, some credit card account agreements permit the card issuer to increase the interest rate if the consumer pays late . . . . Under Regulation Z, because the circumstances are speci ed in advance in the account agreement, the creditor need not provide a change-in-terms notice 15 days in advance of the increase; the new rate will appear on the periodic statement for the cycle in which the increase occurs." *Id.*, at 70931–70932.

The Board asked for public comment on whether these "existing disclosure rules" were "adequate to enable consumers to make timely decisions about how to manage their accounts." *Id.*, at 70932.

Subsequently, in 2007, the Board published proposed amendments to Regulation Z and the Commentary. 72 Fed. Reg. 32948. One amendment would have required 45 days' advance written notice when "(i) [a] rate is increased due to the consumer's delinquency or default; or (ii) [a] rate is increased as a penalty for one or more events speci ed in the account agreement, such as making a late payment or obtaining an extension of credit that exceeds the credit limit." *Id.*, at 33058 (proposed 12 CFR §226.9(g)). The Board explained that, under the amendments, "creditors would no longer be permitted to provide for the immediate application of penalty pricing upon the occurrence of certain events speci ed in the contract." 72 Fed. Reg. 33012.

In January 2009, the Board promulgated a nal rule implementing many of the proposed changes, scheduled to be effective July 1, 2010. 74 Fed. Reg. 5244. Most saliently, the Board included a new provision, §226.9(g), which requires 45 days' advance notice of increases in rates due to cardholder delinquency or default, or as a penalty, including penalties for "events speci ed in the account agreement, such as making a late payment . . . ." 12 CFR §226.9(g) (2010). In May 2009, Congress enacted the Credit Card Accountability

Responsibility and Disclosure Act (Credit CARD Act or Act), 123 Stat. 1734. The Act amended TILA, in relevant part, to require 45 days' advance notice of most increases in credit card annual percentage rates. 15 U. S. C. § 1637(i) (2006 ed., Supp. IV). Because the Credit CARD Act's notice requirements with respect to interest-rate increases largely mirror the requirements in the new version of the regulation, the Board changed the effective date of those requirements to August 20, 2009, to coincide with the statutory schedule. See 74 Fed. Reg. 36077–36079. The transactions giving rise to the dispute at issue in this case, however, arose prior to enactment of the Act and the promulgation of the new regulatory provisions.

B

Respondent James A. McCoy brought this action in the Superior Court of Orange County, California, on behalf of himself and others similarly situated against petitioner Chase Bank USA, N. A.; Chase removed the action to the United States District Court for the Central District of California under 28 U. S. C. § 1441. At the time of the transactions at issue, McCoy was the holder of a credit card issued by Chase. The cardholder agreement between the parties (Agreement) provides, in relevant part, that McCoy is eligible for "Preferred rates," but that to keep such rates he has to meet certain conditions, including making "at least the required minimum payments when due on [his] Account and on all other loans or accounts with [Chase] and [his] other creditors." Brief for Respondent 8, n. 2; see also 559 F. 3d 963, 972, n. 1 (CA9 2009) (Cudahy, J., dissenting). If any of the conditions in the Agreement are not met, Chase reserves the right to "change [McCoy's] interest rate and impose a Non-Preferred rate up to the maximum Non-Preferred rate described in the Pricing Schedule" and to apply any changes "to existing as well as new balances . . . effective with the billing cycle ending on the review date." Brief for Respondent 8, n. 2.

McCoy's complaint alleges that Chase increased his interest rate due to his delinquency or default, and applied that increase retroactively. McCoy asserts that the rate increase violates Regulation Z because, pursuant to the Agreement, Chase did not notify him of the increase until after it had taken effect.[2] The District Court dismissed McCoy's complaint, holding that because the increase did not constitute a "change in terms" as contemplated by 12 CFR §226.9(c), Chase was not required to notify him of the increase before implementing it. See App. to Pet. for Cert. 37a–47a.

A divided panel of the United States Court of Appeals for the Ninth Circuit reversed in relevant part, holding that Regulation Z requires issuers to provide notice of an interest-rate increase prior to its effective date. See 559 F. 3d, at 969. Concluding that the text of Regulation Z is ambiguous and that the agency commentary accompanying the 2004 request for comments and the 2007 proposed amendments favors neither party's interpretation, the court relied primarily on the Of cial Staff Commentary; in particular, the court noted that Comment 9(c)–1 requires no notice of a change in terms if the "speci c change" at issue is set forth in the initial agreement. See *id.*, at 965–967. The court found, however, that because the Agreement vests Chase with discretion to impose any nonpreferred rate it chooses (up to the speci ed maximum) upon McCoy's default, the Agreement "provides McCoy with no basis for predicting in advance what retroactive interest rate Chase will choose to charge him if he defaults." *Id.*, at 967. Accordingly, the court held that because the Agreement does not alert McCoy to the "speci c change" that will occur if he defaults, Chase

[2] McCoy also asserted various state-law claims that are not before us. We note that McCoy's complaint provides little detail regarding the transactions at issue in this case. The parties, however, are in agreement as to the essential facts alleged.

was obliged to give notice of that change prior to its effective date. *Ibid.* Relying primarily on the 2004 notice of proposed rulemaking and the 2007 proposed amendments, the dissenting judge concluded that Regulation Z does not require notice of an interest-rate increase in the circumstances of this case. See *id.*, at 972–979 (opinion of Cudahy, J.).

After the Ninth Circuit's ruling, the United States Court of Appeals for the First Circuit decided the same question in Chase's favor. See *Shaner* v. *Chase Bank USA, N. A.*, 587 F. 3d 488 (2009). The First Circuit relied in part on an *amicus* brief submitted by the Board at the court's request, in which the agency advanced the same interpretation of Regulation Z that it now does before this Court. *Id.*, at 493. We granted certiorari to resolve this division in authority.[3] 561 U. S. 1005 (2010).

II

In order to decide this case, we must determine whether an interest-rate increase constitutes a "change in terms" under Regulation Z, when the change is made pursuant to a provision in the cardholder agreement allowing the issuer to increase the rate, up to a stated maximum, in the event of the cardholder's delinquency or default. Accordingly, this case calls upon us to determine the meaning of a regulation promulgated by the Board under its statutory authority. The parties dispute the proper interpretation of the regulation itself, as well as whether we should accord deference to the Board's interpretation of its regulation. As explained below, we conclude that the text of the regulation is ambiguous, and that deference is warranted to the interpretation of that text advanced by the Board in its *amicus* brief.

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[3] The United States Court of Appeals for the Seventh Circuit has also rejected the reasoning of the Ninth Circuit, though on a different question than the one presented in this case. See *Swanson* v. *Bank of America, N. A.*, 559 F. 3d 653, reh'g denied, 563 F. 3d 634 (2009) (disagreeing with the Ninth Circuit's interpretation of Regulation Z).

A

Our analysis begins with the text of Regulation Z in effect at the time this dispute arose. First, § 226.6 (2008) requires an "[i]nitial disclosure statement":

> "The creditor shall disclose to the consumer, in terminology consistent with that to be used on the periodic statement, each of the following items, to the extent applicable:
>
> "(a) *Finance charge.* The circumstances under which a nance charge will be imposed and an explanation of how it will be determined, as follows:
>
> . . . . .
>
> "(2) A disclosure of each periodic rate that may be used to compute the nance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate. When different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed." (Footnotes omitted.)

Second, § 226.9(c) requires certain "[s]ubsequent disclosure requirements":

> "*Change in terms*—(1) *Written notice required.* Whenever any term required to be disclosed under § 226.6 is changed or the required minimum periodic payment is increased, the creditor shall mail or deliver written notice of the change to each consumer who may be affected. The notice shall be mailed or delivered at least 15 days prior to the effective date of the change. The 15-day timing requirement does not apply if the change has been agreed to by the consumer, or if a periodic rate or other nance charge is increased because of the consumer's delinquency or default; the notice shall be given, however, before the effective date of the change.

> "(2) *Notice not required.* No notice under this section is required when the change . . . results from . . . the consumer's default or delinquency (other than an increase in the periodic rate or other nance charge)."

The question is whether the increase in McCoy's interest rate constitutes a change to a "term required to be disclosed under § 226.6," requiring a subsequent disclosure under § 226.9(c)(1). One of the initial terms that must be disclosed under § 226.6 is "each periodic rate that may be used to compute the nance charge . . . and the corresponding annual percentage rate." § 226.6(a)(2). McCoy argues that, because an increase in the interest rate increases the "periodic rate" applicable to his account, such an increase constitutes a change in terms within the meaning of § 226.9(c)(1). As further support, McCoy points to two provisions in § 226.9(c): rst, that notice of an increase in the interest rate must be provided "before the effective date of the change" when the increase is due to "the consumer's delinquency or default," § 226.9(c)(1); and second, that no notice is required of a change resulting "from the consumer's default or delinquency (other than an increase in the periodic rate or other nance charge)," § 226.9(c)(2). Accordingly, because § 226.9(c) includes interest-rate increases due to delinquency or default, McCoy argues that the plain text of the regulation indicates that a change in the periodic rate due to such default is a "change in terms" requiring notice under § 226.9(c)(1).

We recognize that McCoy's argument has some force; read in isolation, the language quoted above certainly suggests that credit card issuers must provide notice of an interest-rate increase imposed pursuant to cardholder delinquency or default. But McCoy's analysis begs the key question: whether the increase actually changed a "term" of the Agreement that was "required to be disclosed under § 226.6." If not, § 226.9(c)'s subsequent notice requirement with respect to a "change in terms" does not apply. Chase argues

precisely this: The increase did not change a term in the Agreement, but merely implemented one that had been initially disclosed, as required. This interpretation, though not commanded by the text of the regulation, is reasonable. Section 226.6(a)(2) requires initial disclosure of "each periodic rate that may be used to compute the nance charge." The Agreement itself discloses both the initial rate (preferred rate) and the maximum rate to be imposed in the event of default (nonpreferred rate). See Brief for Respondent 8, n. 2; Brief for Petitioner 13–14.[4] Accordingly, it is plausible to understand the Agreement to initially disclose "each periodic rate" to be applied to the account, and Chase arguably did not "change" those rates as a result of McCoy's default. Instead, Chase merely implemented the previously disclosed term specifying the nonpreferred rate.[5]

This reading still leaves the question why § 226.9(c)(1) refers to interest-rate increases resulting from delinquency or default if such increases do not constitute a "change in terms." One reasonable explanation Chase offers is that § 226.9(c)(1) refers to interest-rate increases that were not speci cally outlined in the agreement's initial terms (unlike those in the present Agreement). For example, credit card agreements routinely include a "reservation of rights" provi-

[4] The pricing schedule referred to in the Agreement is not contained in the case record, nor are its contents apparent from the parties' briefs, but neither side disputes that it speci ed a maximum nonpreferred rate applicable to the Agreement.

[5] We are not persuaded by McCoy's argument that, although Chase did not change a "contract term" when it raised his interest rate pursuant to the terms of the Agreement, it changed a "credit term," thereby triggering § 226.9(c)'s notice requirement. The relevant text of Regulation Z does not refer to, let alone distinguish between, "contract terms" and "credit terms," and McCoy's repeated citations to TILA's broad policy statement do not convince us that such a distinction is warranted. See 15 U. S. C. § 1601(a) ("It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit").

sion giving the issuer discretion to change the terms of the contract, often as a means of responding to events that raise doubts about the cardholder's creditworthiness. An issuer may exercise this general contract-modi cation authority and raise the interest rate applicable to the account to address any heightened risk. See Brief for Petitioner 6. In such a case, § 226.9(c)(1) is best read to require that notice must be given prior to the effective date of the increase, because the unilateral increase instituted by the issuer actually changed a term—the interest rate—in a manner not speci cally contemplated by the agreement.[6] See Comment 9(c)–1 (providing that notice is required if the agreement "does not include speci c terms for an increase (for example, when an increase may occur under the creditor's contract reservation right to increase the periodic rate)").

In short, Regulation Z is unclear with respect to the crucial interpretive question: whether the interest-rate increase at issue in this case constitutes a "change in terms" requiring notice. We need not decide which party's interpretation is more persuasive, however; both are plausible, and the text alone does not permit a more de nitive reading. Accordingly, we nd Regulation Z to be ambiguous as to the question presented, and must therefore look to the Board's own interpretation of the regulation for guidance in deciding this case. See *Coeur Alaska, Inc.* v. *Southeast Alaska Conservation Council*, 557 U. S. 261, 278 (2009) (stating that when an agency's regulations construing a statute "are ambiguous . . . we next turn to the agencies' subsequent interpretation of those regulations" for guidance); *Ford Motor Credit Co.* v.

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[6] The Government offers an alternative example. Assume that the agreement is similar to the one at issue here, with a speci ed maximum level to which the interest rate can be increased if the cardholder defaults. If default occurs but the issuer raises the rate above the contractual maximum, notice must be given prior to the effective date because the issuer actually changed the term of the contract initially specifying the maximum rate possible. See Brief for United States as *Amicus Curiae* 14–15.

Milhollin, 444 U. S. 555, 560 (1980) (stating that when the question presented "is not governed by clear expression in the . . . regulation . . . it is appropriate to defer to the Federal Reserve Board and staff in determining what resolution of that issue" is appropriate).

B

The Board has made clear in the *amicus* brief it has submitted to this Court that, in the Board's view, Chase was not required to give McCoy notice of the interest-rate increase under the version of Regulation Z applicable at the time. Under *Auer* v. *Robbins*, 519 U. S. 452 (1997), we defer to an agency's interpretation of its own regulation, advanced in a legal brief, unless that interpretation is "plainly erroneous or inconsistent with the regulation." *Id.*, at 461 (internal quotation marks omitted). Because the interpretation the Board presents in its brief is consistent with the regulatory text, we need look no further in deciding this case.[7]

In its brief to this Court, the Board explains that the Ninth Circuit "erred in concluding that, at the time of the transactions at issue in this case, Regulation Z required credit card issuers to provide a change-in-terms notice before implementing a contractual default-rate provision." See Brief for United States as *Amicus Curiae* 11; see also *ibid.* (stating that when a term of an agreement authorized the credit provider "to increase a consumer's interest rate if the consumer failed to make timely payments . . . any resulting rate increase did not represent a 'change in terms,' but rather the implementation of terms already set forth in the

[7] We note that, in reaching its decision, the Ninth Circuit did not have the bene t of brie ng from the Board. The Ninth Circuit apparently did not solicit the views of the Board in the proceedings below, see Brief for Petitioner 16, and the First Circuit did not solicit the Board's views in *Shaner* v. *Chase Bank USA, N. A.*, 587 F. 3d 488 (2009), until after the Ninth Circuit issued its opinion in this case, see Order in No. 09–1157 (CA1, Aug. 4, 2009).

initial disclosure statement"); *id.*, at 15–16 (stating that "[w]hen a cardholder agreement identi es a contingency that triggers a rate increase, and the maximum possible rate that the issuer may charge if that contingency occurs," then "no change-in-terms notice is required" under Regulation Z).[8] Under the principles set forth in *Auer*, we give deference to this interpretation.

In *Auer*, we deferred to the Secretary of Labor's interpretation of his own regulation, presented in an *amicus* brief submitted by the agency at our invitation. 519 U. S., at 461–462. Responding to the petitioners' objection that the agency's interpretation came in a legal brief, we held that this fact did not, "in the circumstances of this case, make it unworthy of deference." *Id.*, at 462. We observed that "[t]he Secretary's position is in no sense a '*post hoc* rationalizatio[n]' advanced by an agency seeking to defend past agency action against attack." *Ibid.* (quoting *Bowen* v. *Georgetown Univ. Hospital*, 488 U. S. 204, 212 (1988)). We added: "There is simply no reason to suspect that the interpretation does not re ect the agency's fair and considered judgment on the matter in question." *Auer*, 519 U. S., at 462.

The brief submitted by the Board in the present case, at our invitation, is no different. As in *Auer*, there is no reason to believe that the interpretation advanced by the Board is a "*post hoc* rationalization" taken as a litigation position. The Board is not a party to this case. And as is evident from our discussion of Regulation Z itself, see Part II–A, *supra*,

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[8] This is consistent with the view the Board advanced in its *amicus* brief to the First Circuit, in which the Board noted that it "has interpreted the applicable provisions of Regulation Z not to require a pre-effective date change-in-terms notice for an increase in annual percentage rate when the contingency that will trigger a rate increase and the speci c consequences for the consumer's rate are set forth in the initial card member agreement." App. to Brief for United States 2a.

the Board's interpretation is neither "plainly erroneous" nor "inconsistent with" the indeterminate text of the regulation. In short, there is no reason to suspect that the position the Board takes in its *amicus* brief re ects anything other than the agency's fair and considered judgment as to what the regulation required at the time this dispute arose.

McCoy may well be correct in asserting that it is better policy to oblige credit card issuers to give advance notice of a rate increase; after all, both Congress and the Board have recently indicated that such a requirement is warranted. See Credit CARD Act, § 101(a)(1), 123 Stat. 1735–1736; 12 CFR § 226.9(g) (2009). That Congress and the Board may currently hold such views does not mean, however, that deference is not warranted to the Board's different understanding of what the pre-2009 version of Regulation Z required. To the contrary, the interpretation the Board advances in its *amicus* brief is entirely consistent with its past views. The 2004 notice of rulemaking and the 2007 proposed amendments to Regulation Z make clear that, prior to 2009, the Board's fair and considered judgment was that "no change-in-terms notice is required if the creditor speci es in advance the circumstances under which an increase . . . will occur," 69 Fed. Reg. 70931, and "immediate application of penalty pricing upon the occurrence of certain events speci ed in the contract" was permissible, 72 Fed. Reg. 33012.

Under *Auer*, therefore, it is clear that deference to the interpretation in the Board's *amicus* brief is warranted. The cases McCoy cites in which we declined to apply *Auer* do not suggest that deference is unwarranted here. In *Gon zales* v. *Oregon*, 546 U. S. 243 (2006), we declined to defer because—in sharp contrast to the present case—the regulation in question did "little more than restate the terms of the statute" pursuant to which the regulation was promulgated. *Id.*, at 257. Accordingly, no deference was warranted to an agency interpretation of what were, in fact, Congress' words.

Ibid. In contrast, at the time of the transactions in this case, TILA itself included no requirements with respect to the disclosure of a change in credit terms. In *Christensen* v. *Harris County*, 529 U. S. 576 (2000), we declined to apply *Auer* deference because the regulation in question was unambiguous, and adopting the agency's contrary interpretation would "permit the agency, under the guise of interpreting a regulation, to create *de facto* a new regulation." 529 U. S., at 588. In light of Regulation Z's ambiguity, there is no such danger here. And our statement in *Christensen* that "deference is warranted only when the language of the regulation is ambiguous," *ibid.*, is perfectly consonant with *Auer* itself; if the text of a regulation is unambiguous, a conicting agency interpretation advanced in an *amicus* brief will necessarily be "plainly erroneous or inconsistent with the regulation" in question. *Auer*, 519 U. S., at 461 (internal quotation marks omitted). Accordingly, under our precedent deference to the Board's interpretation of its own regulation, as presented in the agency's *amicus* brief, is wholly appropriate.

C

McCoy further argues that deference to a legal brief is inappropriate because the interpretation of Regulation Z in the Of cial Staff Commentary commands a different result. To be sure, the Of cial Staff Commentary promulgated by the Board as an interpretation of Regulation Z may warrant deference as a general matter. See *Anderson Bros. Ford* v. *Valencia*, 452 U. S. 205, 219 (1981) (holding that "the Board's interpretation of its own regulation" should generally "be accepted by the courts"); *Milhollin*, 444 U. S., at 565 ("Unless demonstrably irrational, Federal Reserve Board staff opinions construing [TILA] or Regulation [Z] should be dispositive"). We nd, however, that the Commentary at issue here largely replicates the ambiguity present in the regulatory text, and therefore it offers us nothing to which we can defer with respect to the precise interpretive question before

us.[9] Cf. *Smith* v. *City of Jackson*, 544 U. S. 228, 248 (2005) (O'Connor, J., concurring in judgment) (noting that deference is not warranted when "there is no reasoned agency reading of the text to which we might defer").

The Ninth Circuit relied primarily on Comment 9(c)(1)–3, which states in relevant part that "a notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change . . . [i]f there is an increased periodic rate or any other nance charge attributable to the consumer's delinquency or default." This exposition of the regulation does not add any clarity to the regulatory text, which expresses the same requirement. See § 226.9(c)(1) (2008) ("[I]f a periodic rate or other nance charge is increased because of the consumer's delinquency or default . . . notice shall be given . . . before the effective date of the change"). And like § 226.9(c), Comment 9(c) is entitled "Change in terms." Accordingly, Chase's plausible interpretation of § 226.9(c)(1) is equally applicable to Comment 9(c)(1)–3: On Chase's view, because the interest-rate increase at issue in this case did not constitute a "change in terms," the disclosure requirements in the regulation and Commentary simply do not come into play. See *supra*, at 206–207.

[9] We are not persuaded by McCoy's argument that the Board's own regulations make the Of cial Staff Commentary "the *exclusive* source of authorized staff opinion." Brief for Respondent 36 (emphasis added). In the regulations McCoy cites the Board has indicated only that the central purpose of the Commentary is to present agency interpretations that, if relied upon, provide the basis for invoking the good-faith defense to liability under TILA. See 15 U. S. C. § 1640(f) (precluding liability for "any act done or omitted in good faith in conformity . . . with any interpretation . . . by an of cial or employee . . . duly authorized by the Board to issue such interpretations . . . under such procedures as the Board may prescribe"); 12 CFR pt. 226, App. C (2008) ("[O]f cial staff interpretations of this regulation . . . provide the protection afforded under [§ 1640(f)]"); *id.*, Supp. I, Introduction ¶ 1, p. 451 (same); 46 Fed. Reg. 50288 (1981) (same). McCoy cites no authority indicating that, in promulgating the Commentary and establishing certain statutory safe harbors, the Board intended to limit its ability to issue authoritative interpretations for other purposes.

Comment 9(c)–1 is also ambiguous, though the most plausible reading supports Chase's position more than it does McCoy's. The Comment begins: "No notice of a change in terms need be given if the speci c change is set forth initially" in the agreement. We do not nd that the Comment's addition of the modi er "speci c" to the word "change" enables us to determine, any more than we could in light of the text of the regulation, see *supra*, at 207, whether the interest-rate increase at issue in this case was a "change in terms" requiring notice. According to Chase, as long as the agreement explains that delinquency or default might trigger an increased interest rate and states the maximum level to which the rate could be increased, the "speci c change" that ensues upon default has been set forth initially and no additional notice is required before implementation. McCoy argues to the contrary: Under Comment 9(c)–1, any new rate imposed after delinquency or default must be disclosed prior to the effective date, if the particular rate (rather than the maximum rate) was not speci cally mentioned in the agreement. On the whole, then, the Of cial Staff Commentary's explanation of Regulation Z does not resolve the uncertainty in the regulatory text, and offers us no reason to disregard the interpretation advanced in the Board's *amicus* brief.[10]

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[10] In concluding otherwise, the Ninth Circuit focused on the examples Comment 9(c)–1 provides of changes that, if set forth initially, require no further disclosure when put into effect:

"No notice of a change in terms need be given if the speci c change is set forth initially, such as: Rate increases under a properly disclosed variable-rate plan, a rate increase that occurs when an employee has been under a preferential rate agreement and terminates employment, or an increase that occurs when the consumer has been under an agreement to maintain a certain balance in a savings account in order to keep a particular rate and the account balance falls below the speci ed minimum."

The Ninth Circuit concluded that, in contrast to each of these three examples, "the increase here occurs at Chase's discretion." 559 F. 3d 963, 966 (2009). That is, once the triggering event—McCoy's default—oc-

McCoy further contends that our reliance here on an agency interpretation presented outside the four corners of the Official Staff Commentary will require future litigants, as well as the Board, to expend time and resources "to comb through . . . correspondence, publications, and the agency's website to determine the agency's position." Brief for Respondent 37–38. We are not convinced. McCoy may be correct that the Board established the Official Staff Commentary so as to centralize its opinionmaking process and avoid "overburdening the industry with excessive detail and multiple research sources." 46 Fed. Reg. 50288. But his suggestion that, if we accord deference to an *amicus* brief, all other "unofficial" sources will be fair game is of no moment. Today we decide only that the *amicus* brief submitted by the Board is entitled to deference in light of "the circumstances of this case." *Auer*, 519 U. S., at 462.

Accordingly, we conclude that, at the time of the transactions at issue in this case, Regulation Z did not require Chase

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curred, Chase had the latitude to increase the interest rate as it saw fit (up to the limit specified in the Pricing Schedule).

We are not persuaded by the Ninth Circuit's reasoning. Certainly, under a "variable-rate" plan the interest rate fluctuates according to an external variable easily discernable by the cardholder (like the federal prime rate), and the issuer has no discretion. See *ibid.* But the Comment's second and third examples do not appear to be significantly different from this case: The agreement contains a preset rate, but it also provides that, on the occurrence of a predefined event (terminating employment or a low account balance), the rate will increase.

Moreover, Comment 9(c)–1 further states that notice is needed "if the contract allows the creditor to increase the rate at its discretion but does not include specific terms for an increase"—for example, "when an increase may occur under the creditor's contract reservation right to increase the periodic rate." It would seem that the narrower latitude Chase had under the Agreement to set the precise new rate within a specified range after McCoy defaulted is not the kind of "discretion" the last example of Comment 9(c)–1 contemplates. In short, analogizing to the Comment's examples suggests that Chase's action in setting a new rate was most likely a "specific change" that the Agreement itself contemplated, and subsequent disclosure was not clearly required.

to provide McCoy with a change-in-terms notice before it implemented the Agreement term allowing it to raise his interest rate following delinquency or default.

* * *

For the foregoing reasons, the judgment of the United States 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.

Per Curiam

SWARTHOUT, WARDEN *v.* COOKE

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

No. 10–333. Decided January 24, 2011*

Respondents Cooke and Clay both sought federal habeas relief challenging decisions by California authorities denying them parole. The Ninth Circuit granted habeas relief in each case, holding that California's parole statute created a liberty interest protected by the Due Process Clause; that the statute's standard of review—that "some evidence" of current dangerousness support the denial—was a component of that federally protected right; and that the standard's application in each case was an "unreasonable determination of the facts in light of the evidence" under 28 U. S. C. § 2254(d)(2).

Held: The Ninth Circuit erred in granting habeas relief in these cases. Federal courts may not grant federal habeas relief to state prisoners "'for errors of state law.'" *Estelle* v. *McGuire*, 502 U. S. 62, 67. The Ninth Circuit's holding that California law creates a liberty interest in parole is a reasonable application of this Court's cases, see, *e. g.*, *Greenholtz* v. *Inmates of Neb. Penal and Correctional Complex*, 442 U. S. 1, 12, but the fair procedures required to vindicate that interest in the parole context are minimal, *id.*, at 16. Here, respondents received at least this amount of process—they were allowed to speak at their hearings and contest the evidence against them, were afforded access to their records in advance, and were notified of the reasons why parole was denied. Subjecting to federal-court merits review the application of state-prescribed procedures in cases involving liberty and property interests is contrary to the long recognized principle that "a 'mere error of state law' is not a denial of due process," *Engle* v. *Isaac*, 456 U. S. 107, 121, n. 21.

Certiorari granted; 606 F. 3d 1206 and 384 Fed. Appx. 544, reversed.

PER CURIAM.

I

California's parole statute provides that the Board of Prison Terms "shall set a release date unless it determines

*Together with *Cate, Secretary, California Department of Corrections and Rehabilitation* v. *Clay* (see this Court's Rule 12.4), also on certiorari to the same court.

that . . . consideration of the public safety requires a more lengthy period of incarceration." Cal. Penal Code Ann. §3041(b) (West Supp. 2010). If the board denies parole, the prisoner can seek judicial review in a state habeas petition. The California Supreme Court has explained that "the standard of review properly is characterized as whether 'some evidence' supports the conclusion that the inmate is unsuitable for parole because he or she currently is dangerous." *In re Lawrence*, 44 Cal. 4th 1181, 1191, 190 P. 3d 535, 539 (2008). See also *In re Shaputis*, 44 Cal. 4th 1241, 1253–1254, 190 P. 3d 573, 580 (2008); *In re Rosenkrantz*, 29 Cal. 4th 616, 625–626, 59 P. 3d 174, 183 (2002).

A

Respondent Damon Cooke was convicted of attempted first-degree murder in 1991, and a California court sentenced him to an indeterminate term of seven years to life in prison with the possibility of parole. In November 2002, the board determined that Cooke was not yet suitable for parole, basing its decision on the "especially cruel and callous manner" of his commitment offense, App. to Pet. for Cert. 50a; his failure to participate fully in rehabilitative programs; his failure to develop marketable skills; and three incidents of misconduct while in prison. The board admitted that Cooke had received a favorable psychological report, but it dismissed the report as not credible because it included several inconsistent and erroneous statements.

Cooke filed a petition for a writ of habeas corpus in State Superior Court. The court denied his petition. "The record indicates," it said, "that there was some evidence, including but certainly not limited to the life offense, to support the board's denial." *Id.*, at 42a. Cooke subsequently filed a habeas petition with the California Court of Appeal and a petition for direct review by the California Supreme Court. Both were denied.

In October 2004, Cooke filed a federal habeas petition pursuant to 28 U. S. C. § 2254 challenging the parole board's determination. The District Court denied his petition. The Ninth Circuit reversed, holding that California's parole statute created a liberty interest protected by the Due Process Clause, and that "California's 'some evidence' requirement" was a "component" of that federally protected liberty interest. *Cooke* v. *Solis*, 606 F. 3d 1206, 1213 (2010). It then concluded that the state court had made an "unreasonable determination of the facts in light of the evidence" under § 2254(d)(2) by finding any evidence at all that Cooke would pose a threat to public safety if released. *Id.*, at 1216 (internal quotation marks omitted).

B

Respondent Elijah Clay was convicted of first-degree murder in 1978, and a California court sentenced him to imprisonment for seven years to life with the possibility of parole. In 2003, the board found Clay suitable for parole, but the Governor exercised his authority to review the case and found Clay unsuitable for parole. See Cal. Const., Art. 5, § 8(b); Cal. Penal Code Ann. § 3041.2 (West 2000). The Governor cited the gravity of Clay's crime; his extensive criminal history, which reflected "the culmination of a life of crime," App. to Pet. for Cert. 116a; his failure to participate fully in self-help programs; and his unrealistic plans for employment and housing after being paroled. Regarding the last factor, the Governor concluded that Clay would be likely to return to crime, given his propensity for substance abuse and lack of a viable means of employment.

Clay filed a petition for a writ of habeas corpus in State Superior Court. That court denied Clay's petition, as did the California Court of Appeal. The California Supreme Court denied review.

Clay subsequently filed a federal petition for a writ of habeas corpus, which the District Court granted. The District

Court concluded that the Governor's reliance on the nature of Clay's long-past commitment offense violated Clay's right to due process, and dismissed each of the other factors the Governor cited as unsupported by the record. The Ninth Circuit af rmed, agreeing with the District Court's conclu sion that "the Governor's decision was an unreasonable ap plication of California's 'some evidence' rule and was an un reasonable determination of the facts in light of the evidence presented." *Clay* v. *Kane*, 384 Fed. Appx. 544, 546 (2010).

II

In granting habeas relief based on its conclusion that the state courts had misapplied California's "some evidence" rule, the Ninth Circuit must have assumed either that fed eral habeas relief is available for an error of state law, or that correct application of the State's "some evidence" standard is required by the federal Due Process Clause. Neither as sumption is correct.

As to the rst: The habeas statute "unambiguously pro vides that a federal court may issue a writ of habeas corpus to a state prisoner 'only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.'" *Wilson* v. *Corcoran*, *ante*, at 5 *(per curiam)* (quoting 28 U. S. C. § 2254(a)). "We have stated many times that 'federal habeas corpus relief does not lie for errors of state law.'" *Estelle* v. *McGuire*, 502 U. S. 62, 67 (1991) (quoting *Lewis* v. *Jeffers*, 497 U. S. 764, 780 (1990)).

As for the Due Process Clause, standard analysis under that provision proceeds in two steps: We rst ask whether there exists a liberty or property interest of which a person has been deprived, and if so we ask whether the procedures followed by the State were constitutionally suf cient. *Ken tucky Dept. of Corrections* v. *Thompson*, 490 U. S. 454, 460 (1989). Here, the Ninth Circuit held that California law cre ates a liberty interest in parole, see 606 F. 3d, at 1213. While we have no need to review that holding here, it is a

reasonable application of our cases. See *Board of Pardons* v. *Allen*, 482 U. S. 369, 373–381 (1987); *Greenholtz* v. *Inmates of Neb. Penal and Correctional Complex*, 442 U. S. 1, 12 (1979).

Whatever liberty interest exists is, of course, a *state* interest created by California law. There is no right under the Federal Constitution to be conditionally released before the expiration of a valid sentence, and the States are under no duty to offer parole to their prisoners. *Id.*, at 7. When, however, a State creates a liberty interest, the Due Process Clause requires fair procedures for its vindication—and federal courts will review the application of those constitutionally required procedures. In the context of parole, we have held that the procedures required are minimal. In *Greenholtz*, we found that a prisoner subject to a parole statute similar to California's received adequate process when he was allowed an opportunity to be heard and was provided a statement of the reasons why parole was denied. *Id.*, at 16. "The Constitution," we held, "does not require more." *Ibid.* Cooke and Clay received at least this amount of process: They were allowed to speak at their parole hearings and to contest the evidence against them, were afforded access to their records in advance, and were notified as to the reasons why parole was denied. 606 F. 3d, at 1208–1212; App. to Pet. for Cert. 69a–80a; Cal. Penal Code Ann. §§3041, 3041.5 (West Supp. 2010).

That should have been the beginning and the end of the federal habeas courts' inquiry into whether Cooke and Clay received due process. Instead, however, the Court of Appeals reviewed the state courts' decisions on the merits and concluded that they had unreasonably determined the facts in light of the evidence. See 606 F. 3d, at 1213–1216; 384 Fed. Appx., at 545–546. Other Ninth Circuit cases have done the same. See, *e. g.*, *Pearson* v. *Muntz*, 606 F. 3d 606, 611 (2010) *(per curiam)*. No opinion of ours supports converting California's "some evidence" rule into a substantive

federal requirement. The liberty interest at issue here is the interest in receiving parole when the California standards for parole have been met, and the minimum procedures adequate for due process protection of that interest are those set forth in *Greenholtz*.* See *Hayward* v. *Marshall*, 603 F. 3d 546, 559 (CA9 2010) (en banc). *Greenholtz* did not inquire into whether the constitutionally requisite procedures provided by Nebraska produced the result that the evidence required; *a fortiori* it is no federal concern here whether California's "some evidence" rule of judicial review (a procedure beyond what the Constitution demands) was correctly applied.

It will not do to pronounce California's "some evidence" rule to be "a component" of the liberty interest, 606 F. 3d, at 1213. Such reasoning would subject to federal-court merits review the application of all state-prescribed procedures in cases involving liberty or property interests, including (of course) those in criminal prosecutions. That has never

*Cooke and Clay argue that the greater protections afforded to the revocation of good-time credits should apply, citing *In re Rosenkrantz*, 29 Cal. 4th 616, 657–658, 59 P. 3d 174, 205 (2002), a California Supreme Court case that refers to our good-time-credits decision in *Superintendent, Mass. Correctional Institution at Walpole* v. *Hill*, 472 U. S. 445 (1985). But *Rosenkrantz* did not purport to equate California's parole system with good-time credits. It cites *Hill* twice. The first citation merely observes that the court relied upon *Hill* in an earlier opinion adopting the "some evidence" test for decisions to *revoke* parole that had previously been granted. 29 Cal. 4th, at 656, 59 P. 3d, at 204. The second citation, which does occur in the part of the opinion discussing the need for "some evidence" review in parole decisions, simply borrows language from *Hill* to support the proposition that "'[r]equiring a modicum of evidence'" can "'help to prevent arbitrary deprivations.'" 29 Cal. 4th, at 658, 59 P. 3d, at 205 (quoting *Hill*, 472 U. S., at 455). In any event, the question of which due process requirements apply is one of federal law, not California law; and neither of these citations comes close to addressing that question. Any doubt on that score is resolved by a subsequent footnote stating that the court's decision is premised only on state law. 29 Cal. 4th, at 658, n. 12, 59 P. 3d, at 205, n. 12.

been the law. To the contrary, we have long recognized that "a 'mere error of state law' is not a denial of due process." *Engle* v. *Isaac*, 456 U. S. 107, 121, n. 21 (1982); see also *Estelle*, 502 U. S., at 67–68. Because the only federal right at issue is procedural, the relevant inquiry is what process Cooke and Clay received, not whether the state court de cided the case correctly.

The Ninth Circuit's questionable nding that there was *no* evidence in the record supporting the parole denials is irrele vant unless there is a federal right at stake, as § 2254(a) re quires. See *id.*, at 67. The short of the matter is that the responsibility for ensuring that the constitutionally adequate procedures governing California's parole system are prop erly applied rests with California courts, and is no part of the Ninth Circuit's business.

The petition for a writ of certiorari and respondents' mo tions for leave to proceed *in forma pauperis* are granted.

The judgments below are

Reversed.

JUSTICE GINSBURG, concurring.

In *Superintendent, Mass. Correctional Institution at Walpole* v. *Hill*, 472 U. S. 445, 455 (1985), this Court held that, to comply with due process, revocation of a prisoner's good time credits must be supported by "some evidence." If California law entitled prisoners to parole upon satisfac tion of speci ed criteria, then *Hill* would be closely in point. See *In re Rosenkrantz*, 29 Cal. 4th 616, 657–658, 59 P. 3d 174, 205 (2002). The Ninth Circuit, however, has determined that for California's parole system, as for Nebraska's, *Green holtz* v. *Inmates of Neb. Penal and Correctional Complex*, 442 U. S. 1 (1979), is the controlling precedent. *Hayward* v. *Marshall*, 603 F. 3d 546, 559–561 (2010) (en banc). Given that determination, I agree that today's summary disposition is in order.

Syllabus

BRUESEWITZ ET AL. *v.* WYETH LLC, FKA WYETH, INC., ET AL.

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

No. 09–152. Argued October 12, 2010—Decided February 22, 2011

The National Childhood Vaccine Injury Act of 1986 (NCVIA or Act) created a no-fault compensation program to stabilize a vaccine market adversely affected by an increase in vaccine-related tort litigation and to facilitate compensation to claimants who found pursuing legitimate vaccine-inflicted injuries too costly and difficult. The Act provides that a party alleging a vaccine-related injury may file a petition for compensation in the Court of Federal Claims, naming the Health and Human Services Secretary as the respondent; that the court must resolve the case by a specified deadline; and that the claimant can then decide whether to accept the court's judgment or reject it and seek tort relief from the vaccine manufacturer. Awards are paid out of a fund created by an excise tax on each vaccine dose. As a *quid pro quo*, manufacturers enjoy significant tort-liability protections. Most importantly, the Act eliminates manufacturer liability for a vaccine's unavoidable, adverse side effects.

Hannah Bruesewitz's parents filed a vaccine injury petition in the Court of Federal Claims, claiming that Hannah became disabled after receiving a diphtheria, tetanus, and pertussis (DTP) vaccine manufactured by Lederle Laboratories (now owned by respondent Wyeth). After that court denied their claim, they elected to reject the unfavorable judgment and filed suit in Pennsylvania state court, alleging, *inter alia*, that the defective design of Lederle's DTP vaccine caused Hannah's disabilities, and that Lederle was subject to strict liability and liability for negligent design under Pennsylvania common law. Wyeth removed the suit to the Federal District Court. It granted Wyeth summary judgment, holding that the relevant Pennsylvania law was preempted by 42 U. S. C. § 300aa–22(b)(1), which provides that "[n]o vaccine manufacturer shall be liable in a civil action for damages arising from a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, if the injury or death resulted from side effects that were unavoidable even though the vaccine was properly prepared and was accompanied by proper directions and warnings." The Third Circuit affirmed.

Syllabus

Held: The NCVIA pre-empts all design-defect claims against vaccine manufacturers brought by plaintiffs seeking compensation for injury or death caused by a vaccine's side effects. Pp. 231–243.

(a) Section 300aa–22(b)(1)'s text suggests that a vaccine's design is not open to question in a tort action. If a manufacturer could be held liable for failure to use a different design, the "even though" clause would do no work. A vaccine side effect could always have been avoidable by use of a different vaccine not containing the harmful element. The language of the provision thus suggests the design is not subject to question in a tort action. What the statute establishes as a complete defense must be unavoidability (given safe manufacture and warning) with respect to the particular design. This conclusion is supported by the fact that, although products-liability law establishes three grounds for liability—defective manufacture, inadequate directions or warnings, and defective design—the Act mentions only manufacture and warnings. It thus seems that the Act's failure to mention design-defect liability is "by deliberate choice, not inadvertence." *Barnhart* v. *Peabody Coal Co.*, 537 U. S. 149, 168. Pp. 231–233.

(b) Contrary to petitioners' argument, there is no reason to believe that § 300aa–22(b)(1)'s term "unavoidable" is a term of art incorporating Restatement (Second) of Torts § 402A, Comment *k*, which exempts from strict-liability rules "unavoidably unsafe products." "Unavoidable" is hardly a rarely used word, and cases interpreting comment *k* attach special signi cance only to the term "unavoidably unsafe products," not the word "unavoidable" standing alone. Moreover, reading the phrase "side effects that were unavoidable" to exempt injuries caused by awed design would require treating "even though" as a coordinating conjunction linking independent ideas when it is a concessive, subordinating conjunction conveying that one clause weakens or quali es the other. The canon against super uity does not undermine this Court's interpretation because petitioners' competing interpretation has super uity problems of its own. Pp. 233–237.

(c) The structure of the NCVIA and of vaccine regulation in general reinforces what § 300aa–22(b)(1)'s text suggests. Design defects do not merit a single mention in the Act or in Food and Drug Administration regulations that pervasively regulate the drug manufacturing process. This lack of guidance for design defects, combined with the extensive guidance for the two liability grounds speci cally mentioned in the Act, strongly suggests that design defects were not mentioned because they are not a basis for liability. The Act's mandates lead to the same conclusion. It provides for federal agency improvement of vaccine design and for federally prescribed compensation, which are other means for achieving the two bene cial effects of design-defect torts—prompting

Syllabus

the development of improved designs, and providing compensation for in icted injuries. The Act's structural *quid pro quo* also leads to the same conclusion. The vaccine manufacturers fund an informal, ef cient compensation program for vaccine injuries in exchange for avoiding costly tort litigation and the occasional disproportionate jury verdict. Taxing their product to fund the compensation program, while leaving their liability for design defect virtually unaltered, would hardly coax them back into the market. Pp. 237–240.

561 F. 3d 233, af rmed.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, BREYER, and ALITO, JJ., joined. BREYER, J., led a concurring opinion, *post*, p. 243. SOTOMAYOR, J., led a dissenting opinion, in which GINSBURG, J., joined, *post*, p. 250. KAGAN, J., took no part in the consideration or decision of the case.

David C. Frederick argued the cause for petitioners. With him on the briefs were *Derek T. Ho*, *Brendan J. Crim mins*, *John Eddie Williams*, and *Collyn A. Peddie.*

Kathleen M. Sullivan argued the cause for respondent. With her on the brief were *Faith E. Gay*, *Sanford I. Weis burst*, *William B. Adams*, *Daniel J. Thomasch*, *Richard W. Mark*, *E. Joshua Rosenkranz*, *Lauren J. Elliot*, and *John L. Ewald.*

Benjamin J. Horwich argued the cause for the United States as *amicus curiae* urging af rmance. With him on the brief were *Acting Solicitor General Katyal*, *Assistant Attorney General West*, *Deputy Solicitor General Kneedler*, *Michael S. Raab*, *Irene M. Solet*, and *David Benor.**

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*Briefs of *amici curiae* urging reversal were led for the American Association for Justice et al. by *Valerie M. Nannery* and *Leslie Brueck ner;* for the National Vaccine Information Center et al. by *Robert J. Krakow* and *Mary S. Holland;* for the Vaccine Injured Petitioners Bar Association et al. by *Jennifer Anne Gore Maglio* and *Peter H. Meyers;* for Mark A. Geistfeld by *Mr. Geistfeld*, *pro se;* and for Kenneth W. Starr et al. by *Jonathan S. Massey.*

Briefs of *amici curiae* urging af rmance were led for the American Academy of Pediatrics et al. by *Lorane F. Hebert* and *Stephan E. Lawton;* for the Chamber of Commerce of the United States of America by *David M. Gossett*, *Robin S. Conrad*, and *Amar D. Sarwal;* for GlaxoSmithKline

JUSTICE SCALIA delivered the opinion of the Court.

We consider whether a pre-emption provision enacted in the National Childhood Vaccine Injury Act of 1986 (NCVIA)[1] bars state-law design-defect claims against vaccine manufacturers.

I

A

For the last 66 years, vaccines have been subject to the same federal premarket approval process as prescription drugs, and compensation for vaccine-related injuries has been left largely to the States.[2] Under that regime, the elimination of communicable diseases through vaccination became "one of the greatest achievements" of public health in the 20th century.[3] But in the 1970's and 1980's vaccines became, one might say, victims of their own success. They had been so effective in preventing infectious diseases that the public became much less alarmed at the threat of those diseases,[4] and much more concerned with the risk of injury from the vaccines themselves.[5]

LLC et al. by *Paul D. Clement*, *Daryl Joseffer*, *Dino S. Sangiamo*, *David S. Gray*, *M. Diane Owens*, and *Bradley S. Wolff;* for the Washington Legal Foundation by *Daniel J. Popeo* and *Cory L. Andrews;* and for Patricia A. Buf er et al. by *Martin S. Kaufman.*

Ann M. Lipton led a brief for Marguerite Willner as *amicus curiae.*

[1] 42 U. S. C. § 300aa–22(b)(1).

[2] See P. Hutt, R. Merrill, & L. Grossman, Food and Drug Law 912–913, 1458 (3d ed. 2007).

[3] Centers for Disease Control, Achievements in Public Health, 1900–1999: Impact of Vaccines Universally Recommended for Children, 48 Mor bidity and Mortality Weekly Report 243, 247 (Apr. 2, 1999).

[4] See Mortimer, Immunization Against Infectious Disease, 200 Science 902, 906 (1978).

[5] See National Vaccine Advisory Committee, A Comprehensive Review of Federal Vaccine Safety Programs and Public Health Activities 2–3 (Dec. 2008) (hereinafter NVAC), http://www.hhs.gov/nvpo/nvac/documents/vaccine-safety-review.pdf (as visited Feb. 18, 2011, and available in Clerk of Court's case le).

Much of the concern centered around vaccines against diphtheria, tetanus, and pertussis (DTP), which were blamed for children's disabilities and developmental delays. This led to a massive increase in vaccine-related tort litigation. Whereas between 1978 and 1981 only nine products-liability suits were led against DTP manufacturers, by the mid 1980's the suits numbered more than 200 each year.[6] This destabilized the DTP vaccine market, causing two of the three domestic manufacturers to withdraw; and the remain ing manufacturer, Lederle Laboratories, estimated that its potential tort liability exceeded its annual sales by a factor of 200.[7] Vaccine shortages arose when Lederle had production problems in 1984.[8]

Despite the large number of suits, there were many com plaints that obtaining compensation for legitimate vaccine- in icted injuries was too costly and dif cult.[9] A signi cant number of parents were already declining vaccination for their children,[10] and concerns about compensation threatened to depress vaccination rates even further.[11] This was a source of concern to public health of cials, since vaccines are effective in preventing outbreaks of disease only if a large percentage of the population is vaccinated.[12]

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[6] See Sing & Willian, Supplying Vaccines: An Overview of the Market and Regulatory Context, in Supplying Vaccines: An Economic Analysis of Critical Issues 45, 51–52 (M. Pauly, C. Robinson, S. Sepe, M. Sing, & M. Willian eds. 1996).

[7] See *id.*, at 52.

[8] See Centers for Disease Control, Diphtheria-Tetanus-Pertussis Vaccine Shortage, 33 Morbidity and Mortality Weekly Report 695–696 (Dec. 14, 1984).

[9] See Apolinsky & Van Detta, Rethinking Liability for Vaccine Injury, 19 Cornell J. L. & Pub. Pol'y 537, 550–551 (2010); T. Burke, Lawyers, Law suits, and Legal Rights: The Battle Over Litigation in American Society 146 (2002).

[10] Mortimer, *supra*, at 906.

[11] See Hagan, Vaccine Compensation Schemes, 45 Food Drug Cosm. L. J. 477, 479 (1990).

[12] See R. Merrill, Introduction to Epidemiology 65–68 (5th ed. 2010).

To stabilize the vaccine market and facilitate compensation, Congress enacted the NCVIA in 1986. The Act establishes a no-fault compensation program "designed to work faster and with greater ease than the civil tort system." *Shalala* v. *Whitecotton*, 514 U. S. 268, 269 (1995). A person injured by a vaccine, or his legal guardian, may file a petition for compensation in the United States Court of Federal Claims, naming the Secretary of Health and Human Services as the respondent.[13] A special master then makes an informal adjudication of the petition within (except for two limited exceptions) 240 days.[14] The Court of Federal Claims must review objections to the special master's decision and enter final judgment under a similarly tight statutory deadline.[15] At that point, a claimant has two options: to accept the court's judgment and forgo a traditional tort suit for damages, or to reject the judgment and seek tort relief from the vaccine manufacturer.[16]

Fast, informal adjudication is made possible by the Act's Vaccine Injury Table, which lists the vaccines covered under the Act; describes each vaccine's compensable, adverse side effects; and indicates how soon after vaccination those side effects should first manifest themselves.[17] Claimants who show that a listed injury first manifested itself at the appropriate time are prima facie entitled to compensation.[18] No showing of causation is necessary; the Secretary bears the burden of disproving causation.[19] A claimant may also recover for unlisted side effects, and for listed side effects that occur at times other than those specified in the Table, but

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[13] See 42 U. S. C. §300aa–11(a)(1).

[14] See §300aa–12(d)(3).

[15] See §300aa–12(e), (g).

[16] See §300aa–21(a).

[17] See §300aa–14(a); 42 CFR §100.3 (2009) (current Vaccine Injury Table).

[18] See 42 U. S. C. §§300aa–11(c)(1), 300aa–13(a)(1)(A).

[19] See §300aa–13(a)(1)(B).

for those the claimant must prove causation.[20] Unlike in tort suits, claimants under the Act are not required to show that the administered vaccine was defectively manufactured, labeled, or designed.

Successful claimants receive compensation for medical, rehabilitation, counseling, special education, and vocational training expenses; diminished earning capacity; pain and suffering; and $250,000 for vaccine-related deaths.[21] Attorney's fees are provided, not only for successful cases, but even for unsuccessful claims that are not frivolous.[22] These awards are paid out of a fund created by an excise tax on each vaccine dose.[23]

The *quid pro quo* for this, designed to stabilize the vaccine market, was the provision of significant tort-liability protections for vaccine manufacturers. The Act requires claimants to seek relief through the compensation program before filing suit for more than $1,000.[24] Manufacturers are generally immunized from liability for failure to warn if they have complied with all regulatory requirements (including but not limited to warning requirements) and have given the warning either to the claimant or the claimant's physician.[25] They are immunized from liability for punitive damages absent failure to comply with regulatory requirements, "fraud," "intentional and wrongful withholding of information," or other "criminal or illegal activity."[26] And most relevant to

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[20] See § 300aa–11(c)(1)(C)(ii).

[21] See § 300aa–15(a).

[22] See § 300aa–15(e).

[23] See § 300aa–15(i)(2); 26 U. S. C. §§ 4131, 9510.

[24] See 42 U. S. C. § 300aa–11(a)(2).

[25] See § 300aa–22(b)(2), (c). The immunity does not apply if the plaintiff establishes by clear and convincing evidence that the manufacturer was negligent, or was guilty of fraud, intentional and wrongful withholding of information, or other unlawful activity. See §§ 300aa–22(b)(2), 300aa–23(d)(2).

[26] § 300aa–23(d)(2).

the present case, the Act expressly eliminates liability for a vaccine's unavoidable, adverse side effects:

> "No vaccine manufacturer shall be liable in a civil action for damages arising from a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, if the injury or death resulted from side effects that were unavoidable even though the vaccine was properly prepared and was accompanied by proper directions and warnings."[27]

B

The vaccine at issue here is a DTP vaccine manufactured by Lederle Laboratories. It first received federal approval in 1948 and received supplemental approvals in 1953 and 1970. Respondent Wyeth purchased Lederle in 1994 and stopped manufacturing the vaccine in 1998.

Hannah Bruesewitz was born on October 20, 1991. Her pediatrician administered doses of the DTP vaccine according to the Center for Disease Control's recommended childhood immunization schedule. Within 24 hours of her April 1992 vaccination, Hannah started to experience seizures.[28] She suffered over 100 seizures during the next month, and her doctors eventually diagnosed her with "residual seizure disorder" and "developmental delay."[29] Hannah, now a teenager, is still diagnosed with both conditions.

In April 1995, Hannah's parents, Russell and Robalee Bruesewitz, filed a vaccine injury petition in the United States Court of Federal Claims, alleging that Hannah suffered from on-Table residual seizure disorder and encephalopathy injuries.[30] A Special Master denied their claims on various grounds, though they were awarded $126,800 in at

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[27] § 300aa–22(b)(1).

[28] See *Bruesewitz* v. *Secretary of Dept. of Health and Human Servs.*, No. 95–0266V, 2002 WL 31965744, *3 (Ct. Cl., Dec. 20, 2002).

[29] 561 F. 3d 233, 236 (CA3 2009).

[30] See *Bruesewitz*, *supra*, at *1.

torney's fees and costs. The Bruesewitzes elected to reject the unfavorable judgment, and in October 2005 led this law suit in Pennsylvania state court. Their complaint alleged (as relevant here) that defective design of Lederle's DTP vaccine caused Hannah's disabilities, and that Lederle was subject to strict liability, and liability for negligent design, under Pennsylvania common law.[31]

Wyeth removed the suit to the United States District Court for the Eastern District of Pennsylvania, which granted Wyeth summary judgment on the strict-liability and negligence design-defect claims, holding that the Pennsylva nia law providing those causes of action was pre-empted by 42 U. S. C. § 300aa–22(b)(1).[32] The United States Court of Appeals for the Third Circuit af rmed.[33] We granted cer tiorari. 559 U. S. 991 (2010).

II

A

We set forth again the statutory text at issue:

> "No vaccine manufacturer shall be liable in a civil ac tion for damages arising from a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, if the injury or death resulted from side effects that were unavoidable even though the vaccine was properly prepared and was accompanied by proper directions and warnings."[34]

The "even though" clause clari es the word that precedes it. It delineates the preventative measures that a vaccine manufacturer *must* have taken for a side effect to be consid ered "unavoidable" under the statute. Provided that there

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[31] See 561 F. 3d, at 237. The complaint also made claims based upon failure to warn and defective manufacture. These are no longer at issue.

[32] See *id.*, at 237–238.

[33] *Id.*, at 235.

[34] 42 U. S. C. § 300aa–22(b)(1).

was proper manufacture and warning, any remaining side effects, including those resulting from design defects, are deemed to have been unavoidable. State-law design-defect claims are therefore pre-empted.

If a manufacturer could be held liable for failure to use a different design, the word "unavoidable" would do no work. A side effect of a vaccine could *always* have been avoidable by use of a differently designed vaccine not containing the harmful element. The language of the provision thus suggests that the *design* of the vaccine is a given, not subject to question in the tort action. What the statute establishes as a complete defense must be unavoidability (given safe manufacture and warning) *with respect to the particular design.* Which plainly implies that the design itself is not open to question.[35]

A further textual indication leads to the same conclusion. Products-liability law establishes a classic and well known triumvirate of grounds for liability: defective manufacture, inadequate directions or warnings, and defective design.[36] If all three were intended to be preserved, it would be strange to mention specifically only two, and leave the third to implication. It would have been much easier (and much more natural) to provide that manufacturers would be liable

[35] The dissent advocates for another possibility: "[A] side effect is 'unavoidable' . . . where there is no feasible alternative design that would eliminate the side effect of the vaccine without compromising its cost and utility." *Post,* at 263 (opinion of SOTOMAYOR, J.). The dissent makes no effort to ground that position in the text of § 300aa–22(b)(1). We doubt that Congress would introduce such an amorphous test by implication when it otherwise micromanages vaccine manufacturers. See *infra,* at 238. We have no idea how much more expensive an alternative design can be before it "compromis[es]" a vaccine's cost or how much efficacy an alternative design can sacrifice to improve safety. Neither does the dissent. And neither will the judges who must rule on motions to dismiss, motions for summary judgment, and motions for judgment as a matter of law. Which means that the test would probably have no real-world effect.

[36] W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts 695 (5th ed. 1984); Restatement (Third) of Torts § 2 (1999).

for "defective manufacture, defective directions or warning, and defective design." It seems that the statute fails to mention design-defect liability "by deliberate choice, not inadvertence." *Barnhart* v. *Peabody Coal Co.*, 537 U. S. 149, 168 (2003). *Expressio unius, exclusio alterius.*

B

The dissent's principal textual argument is mistaken. We agree with its premise that "'side effects that were unavoidable' must refer to side effects caused by a vaccine's *design.*"[37] We do not comprehend, however, the second step of its reasoning, which is that the use of the conditional term "if" in the introductory phrase "if the injury or death resulted from side effects that were unavoidable" "plainly implies that some side effects stemming from a vaccine's design are 'unavoidable,' while others are avoidable."[38] That is not so. The "if" clause makes total sense whether the design to which "unavoidable" refers is (as the dissent believes) any feasible design (making the side effects of the design used for the vaccine at issue avoidable), or (as we believe) the particular design used for the vaccine at issue (making its side effects unavoidable). Under the latter view, the condition established by the "if" clause is that the vaccine have been properly labeled and manufactured; and under the former, that it have been properly *designed*, labeled, and manufactured. Neither view renders the "if" clause a nullity. Which of the two variants must be preferred is addressed by our textual analysis, and is in no way determined by the "if" clause.

Petitioners' and the dissent's textual argument also rests upon the proposition that the word "unavoidable" in § 300aa–22(b)(1) is a term of art that incorporates comment *k* to Restatement (Second) of Torts § 402A (1963–1964).[39] The Re

[37] *Post*, at 252.

[38] *Ibid.*

[39] See Brief for Petitioners 29.

statement generally holds a manufacturer strictly liable for harm to person or property caused by "any product in a de fective condition unreasonably dangerous to the user."[40] Comment *k* exempts from this strict-liability rule "unavoid ably unsafe products." An unavoidably unsafe product is de ned by a hodge-podge of criteria and a few examples, such as the Pasteur rabies vaccine and experimental phar maceuticals. Despite this lack of clarity, petitioners seize upon one phrase in the comment *k* analysis, and assert that by 1986 a majority of courts had made this a *sine qua non* requirement for an "unavoidably unsafe product": a case-speci c showing that the product was "quite incapable of being made safe for [its] intended . . . use."[41]

We have no need to consider the ner points of comment *k*. Whatever consistent judicial gloss that comment may have been given in 1986, there is no reason to believe that § 300aa–22(b)(1) was invoking it. The comment creates a special category of "unavoidably unsafe products," while the statute refers to "side effects that were unavoidable." That the latter uses the adjective "unavoidable" and the former the adverb "unavoidably" does not establish that Congress

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[40] Restatement § 402A, at 347.

[41] *Id.*, Comment *k*, at 353; petitioners cite, *inter alia*, *Kearl* v. *Lederle Labs.*, 172 Cal. App. 3d 812, 828–830, 218 Cal. Rptr. 453, 463–464 (1985); *Belle Bonfils Mem. Blood Bank* v. *Hansen*, 665 P. 2d 118, 122 (Colo. 1983).

Though it is not pertinent to our analysis, we point out that a large number of courts disagreed with that reading of comment *k*, and took it to say that manufacturers did not face strict liability for side effects of properly manufactured prescription drugs that were accompanied by ade quate warnings. See, *e. g.*, *Brown* v. *Superior Court*, 227 Cal. Rptr. 768, 772–775 (Cal. App. 1986) (of cially depublished), aff'd 44 Cal. 3d 1049, 751 P. 2d 470 (1988); *McKee* v. *Moore*, 648 P. 2d 21, 23 (Okla. 1982); *Stone* v. *Smith, Kline & French Labs.*, 447 So. 2d 1301, 1303–1304 (Ala. 1984); *Lind say* v. *Ortho Pharmaceutical Corp.*, 637 F. 2d 87, 90–91 (CA2 1980) (apply ing N. Y. law); *Wolfgruber* v. *Upjohn Co.*, 72 App. Div. 2d 59, 61, 423 N. Y. S. 2d 95, 96 (1979); *Chambers* v. *G. D. Searle & Co.*, 441 F. Supp. 377, 380–381 (Md. 1975); *Basko* v. *Sterling Drug, Inc.*, 416 F. 2d 417, 425 (CA2 1969) (applying Conn. law).

had comment *k* in mind. "Unavoidable" is hardly a rarely used word. Even the cases petitioners cite as putting a de nitive gloss on comment *k* use the precise phrase "unavoid ably unsafe product";[42] none attaches special signi cance to the term "unavoidable" standing alone.

The textual problems with petitioners' interpretation do not end there. The phrase "even though" in the clause "even though the vaccine was properly prepared and [la beled]" is meant to signal the unexpected: unavoidable side effects persist *despite* best manufacturing and labeling prac tices.[43] But petitioners' reading eliminates any opposition between the "even though" clause—called a concessive sub ordinate clause by grammarians—and the word "unavoid able."[44] Their reading makes pre-emption turn equally on unavoidability, proper preparation, and proper labeling. Thus, the dissent twice refers to the requirements of proper preparation and proper labeling as "two additional prerequi sites" for pre-emption independent of unavoidability.[45] The primary textual justi cation for the dissent's position de

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[42] See, *e. g.*, *Johnson* v. *American Cyanamid Co.*, 239 Kan. 279, 285, 718 P. 2d 1318, 1323 (1986); *Feldman* v. *Lederle Labs.*, 97 N. J. 429, 440, 446–447, 479 A. 2d 374, 380, 383–384 (1984); *Belle Bonfils Mem. Blood Bank*, *supra*, at 121–123; *Cassisi* v. *Maytag Co.*, 396 So. 2d 1140, 1144, n. 4, 1146 (Fla. App. 1981); *Racer* v. *Utterman*, 629 S. W. 2d 387, 393 (Mo. App. 1981).

[43] The dissent's assertion that we treat "even though" as a synonym for "because" misses the subtle distinction between "because" and "despite." See *post*, at 265, n. 14. "Even though" is a close cousin of the latter. See Webster's New International Dictionary 709, 2631 (2d ed. 1957). The statement "the car accident was unavoidable despite his quick re exes" indicates that quick re exes could not avoid the accident, and leaves open two unstated possibilities: (1) that other, unstated means of avoiding the accident besides quick re exes existed, but came up short as well; or (2) that quick re exes were the only possible way to avoid the accident. Our interpretation of § 300aa–22(b)(1) explains why we think Congress meant the latter in this context. (Incidentally, the statement "the car accident was unavoidable because of his quick re exes" makes no sense.)

[44] See W. Follett, Modern American Usage: A Guide 61 (1966).

[45] *Post*, at 258, 265.

pends on that independence.[46] But linking independent ideas is the job of a coordinating junction like "and," not a subordinating junction like "even though."[47]

Petitioners and the dissent contend that the interpretation we propose would render part of §300aa–22(b)(1) superfluous: Congress could have more tersely and more clearly preempted design-defect claims by barring liability "if . . . the vaccine was properly prepared and was accompanied by proper directions and warnings." The intervening passage ("the injury or death resulted from side effects that were unavoidable even though") is unnecessary. True enough. But the rule against giving a portion of text an interpretation which renders it superfluous does not prescribe that a passage which could have been more terse does not mean what it says. The rule applies only if verbosity and prolixity can be eliminated by giving the offending passage, or the remainder of the text, a competing interpretation. That is not the case here.[48] To be sure, petitioners' and the dissent's interpretation gives independent meaning to the intervening passage (the supposed meaning of comment *k*); but it does so only at the expense of rendering the remainder of the provision superfluous. Since a vaccine is not "quite incapable of being made safer for [its] intended use" if manufacturing defects could have been eliminated or better warnings pro

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[46] *Post*, at 251–253.

[47] The dissent responds that these "additional prerequisites" act "in a concessive, subordinating fashion," *post*, at 265, n. 14 (internal quotation marks and brackets omitted). But that is no more true of the dissent's conjunctive interpretation of the present text than it is of *all* provisions that set forth additional requirements—meaning that we could eliminate "even though" from our English lexicon, its function being entirely performed by "and." No, we think "even though" has a distinctive concessive, subordinating role to play.

[48] Because the dissent has a superfluity problem of its own, its reliance on *Bates* v. *Dow Agrosciences LLC*, 544 U. S. 431 (2005), is misplaced. See *id.*, at 449 (adopting an interpretation that was "the only one that makes sense of each phrase" in the relevant statute).

vided, the entire "even though" clause is a useless append age.[49] It would suf ce to say "if the injury or death resulted from side effects that were unavoidable"—full stop.

III

The structure of the NCVIA and of vaccine regulation in general reinforces what the text of § 300aa–22(b)(1) suggests. A vaccine's license spells out the manufacturing method that must be followed and the directions and warnings that must accompany the product.[50] Manufacturers ordinarily must obtain the Food and Drug Administration's (FDA) approval before modifying either.[51] Deviations from the license thus provide objective evidence of manufacturing defects or inad equate warnings. Further objective evidence comes from the FDA's regulations—more than 90 of them[52]—that perva sively regulate the manufacturing process, down to the re quirements for plumbing and ventilation systems at each manufacturing facility.[53] Material noncompliance with any one of them, or with any other FDA regulation, could cost the manufacturer its regulatory-compliance defense.[54]

Design defects, in contrast, do not merit a single mention in the NCVIA or the FDA's regulations. Indeed, the FDA has never even spelled out in regulations the criteria it uses to decide whether a vaccine is safe and effective for its in tended use.[55] And the decision is surely not an easy one. Drug manufacturers often could trade a little less ef cacy

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[49] That is true regardless of whether § 300aa–22(b)(1) incorporates com ment *k*. See Restatement § 402A, Comment *k*, at 353, 354 (noting that "unavoidably unsafe products" are exempt from strict liability "with the quali cation that they are properly prepared and marketed, and proper warning is given").

[50] See 42 U. S. C. § 262(a), (j); 21 CFR §§ 601.2(a), 314.105(b) (2010).

[51] See § 601.12.

[52] See §§ 211.1 *et seq.*, 600.10–600.15, 600.21–600.22, 820.1 *et seq.*

[53] See §§ 211.46, 211.48.

[54] See 42 U. S. C. § 300aa–22(b)(2).

[55] Hutt, Merrill, & Grossman, Food and Drug Law, at 685, 891.

for a little more safety, but the safest design is not always the best one. Striking the right balance between safety and ef cacy is especially dif cult with respect to vaccines, which affect public as well as individual health. Yet the Act, which in every other respect micromanages manufacturers, is silent on how to evaluate competing designs. Are manufacturers liable only for failing to employ an alternative design that the FDA has approved for distribution (an approval it takes years to obtain[56])? Or does it suf ce that a vaccine design has been approved in other countries? Or could there be liability for failure to use a design that exists only in a lab? Neither the Act nor the FDA regulations provide an answer, leaving the universe of alternative designs to be limited only by an expert's imagination.

Jurors, of course, often decide similar questions with little guidance, and we do not suggest that the absence of guidance alone suggests pre-emption. But the lack of guidance for design defects combined with the extensive guidance for the two grounds of liability speci cally mentioned in the Act strongly suggests that design defects were not mentioned because they are not a basis for liability.

The mandates contained in the Act lead to the same con clusion. Design-defect torts, broadly speaking, have two bene cial effects: (1) prompting the development of improved designs, and (2) providing compensation for in icted injuries. The NCVIA provides other means for achieving both effects. We have already discussed the Act's generous compensation scheme. And the Act provides many means of improving vaccine design. It directs the Secretary of Health and Human Services to promote "the development of childhood vaccines that result in fewer and less serious adverse reac tions."[57] It establishes a National Vaccine Program, whose Director is "to achieve optimal prevention of human infec tious diseases . . . and to achieve optimal prevention against

[56] See Sing & Willian, Supplying Vaccines, at 66–67.

[57] 42 U. S. C. § 300aa–27(a)(1).

adverse reactions."[58] The Program is to set priorities for federal vaccine research, and to coordinate federal vaccine safety and ef cacy testing.[59] The Act requires vaccine man ufacturers and healthcare providers to report adverse side effects,[60] and provides for monitoring of vaccine safety through a collaboration with eight managed-care organiza tions.[61] And of course whenever the FDA concludes that a vaccine is unsafe, it may revoke the license.[62]

These provisions for federal agency improvement of vac cine design, and for federally prescribed compensation, once again suggest that § 300aa–22(b)(1)'s silence regarding design-defect liability was not inadvertent. It instead re ects a sensible choice to leave complex epidemiological judgments about vaccine design to the FDA and the Na tional Vaccine Program rather than juries.[63]

And nally, the Act's structural *quid pro quo* leads to the same conclusion: The vaccine manufacturers fund from their sales an informal, ef cient compensation program for vaccine injuries;[64] in exchange they avoid costly tort litigation and

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[58] § 300aa–1.

[59] See §§ 300aa–2(a)(1)–(3), 300aa–3.

[60] See § 300aa–25(b).

[61] See NVAC 18–19.

[62] See 21 CFR § 601.5(b)(1)(vi) (2010).

[63] The dissent quotes just part of this sentence, to make it appear that we believe complex epidemiological judgments ought to be assigned in that fashion. See *post*, at 274. We do not state our preference, but merely note that it is Congress's expressed preference—and in order to preclude the argument that it is absurd to think Congress enacted such a thing, we assert that the choice is reasonable and express some of the reasons why. Leaving it to the jury may (or may not) be reasonable as well; we express no view.

[64] See 42 U. S. C. § 300aa–15(i)(2); § 323(a), 100 Stat. 3784. The dissent's unsupported speculation that demand in the vaccine market is inelastic, see *post*, at 272–273, n. 22, sheds no light on whether Congress regarded the tax as a *quid pro quo*, most Members of Congress being neither profes sional economists nor law-and-economics scholars.

the occasional disproportionate jury verdict.[65] But design-defect allegations are the most speculative and difficult type of products-liability claim to litigate. Taxing vaccine manufacturers' product to fund the compensation program, while leaving their liability for design defect virtually unaltered, would hardly coax manufacturers back into the market.

The dissent believes the Act's mandates are irrelevant because they do not spur innovation in precisely the same way as state-law tort systems.[66] That is a novel suggestion. Although we previously have expressed doubt that Congress would quietly pre-empt products-liability claims without providing a federal substitute, see *Medtronic, Inc.* v. *Lohr*, 518 U. S. 470, 486–488 (1996) (plurality opinion), we have never suggested we would be skeptical of pre-emption unless the congressional substitute operated like the tort system. We decline to adopt that stance today. The dissent's belief that the FDA and the National Vaccine Program cannot alone spur adequate vaccine innovation is probably questionable, but surely beside the point.

IV

Since our interpretation of § 300aa–22(b)(1) is the only interpretation supported by the text and structure of the NCVIA, even those of us who believe legislative history is a legitimate tool of statutory interpretation have no need to resort to it. In any case, the dissent's contention that it would contradict our conclusion is mistaken.

The dissent's legislative history relies on the following syllogism: A 1986 House Committee Report states that § 300aa–22(b)(1) "sets forth the principle contained in Comment k of Section 402A of the Restatement of Torts (Second);"[67] in 1986 comment *k* was "commonly understood" to require a

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[65] See 42 U. S. C. §§ 300aa–11(a)(2), 300aa–22.

[66] See *post*, at 269–272.

[67] H. R. Rep. No. 99–908, pt. 1, p. 25 (1986) (hereinafter 1986 Report).

case-speci c showing that "no feasible alternative design" existed; Congress therefore must have intended § 300aa–22(b)(1) to require that showing.[68] The syllogism ignores unhelpful statements in the 1986 Report and relies upon a term of art that did not exist in 1986.

Immediately after the language quoted by the dissent, the 1986 Report notes the dif culty a jury would have in faithfully assessing whether a feasible alternative design exists when an innocent "young child, often badly injured or killed," is the plaintiff.[69] Eliminating that concern is why the 1986 Report's authors "strongly believ[e] that Com ment k is appropriate and necessary as the policy for civil actions seeking damages in tort."[70] The dissent's interpre tation of § 300aa–22(b)(1) and its version of "the principle in Comment K" adopted by the 1986 Report leave that con cern unaddressed.

The dissent buries another unfavorable piece of legislative history. Because the 1986 Report believes that § 300aa–22(b)(1) should incorporate "the principle in Comment K" and because the Act provides a generous no-fault compen sation scheme, the 1986 Report counsels injured parties who cannot prove a manufacturing or labeling defect to "pursue recompense in the compensation system, not the tort system."[71] That counsel echoes our interpretation of § 300aa–22(b)(1).

Not to worry, the dissent retorts, a Committee Report by a later Congress "authoritative[ly]" vindicates its interpreta

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[68] *Post,* at 255–257.

[69] 1986 Report, at 26; see *ibid.* ("[E]ven if the defendant manufacturer may have made as safe a vaccine as anyone reasonably could expect, a court or jury undoubtedly will nd it dif cult to rule in favor of the 'inno cent' manufacturer if the equally 'innocent' child has to bear the risk of loss with no other possibility of recompense").

[70] *Ibid.*

[71] *Ibid.*

tion.[72] Post-enactment legislative history (a contradiction in terms) is not a legitimate tool of statutory interpretation. See *Jones* v. *United States*, 526 U. S. 227, 238 (1999); *United States* v. *Mine Workers*, 330 U. S. 258, 281–282 (1947). Real (pre-enactment) legislative history is persuasive to some be cause it is thought to shed light on what legislators under stood an ambiguous statutory text to mean when they voted to enact it into law. See *Exxon Mobil Corp.* v. *Allapattah Services, Inc.*, 545 U. S. 546, 568 (2005). But post-enactment legislative history by de nition "could have had no effect on the congressional vote," *District of Columbia* v. *Heller*, 554 U. S. 570, 605 (2008).

It does not matter that § 300aa–22(b)(1) did not take effect until the later Congress passed the excise tax that funds the compensation scheme,[73] and that the supposedly dispositive Committee Report is attached to that funding legislation.[74] Those who voted on the relevant statutory language were not necessarily the same persons who crafted the statements in the later Committee Report; or if they were did not neces sarily have the same views at that earlier time; and no one voting at that earlier time could possibly have been informed by those later statements. Permitting the legislative his tory of subsequent funding legislation to alter the meaning of a statute would set a dangerous precedent. Many provi sions of federal law depend on appropriations or include sun set provisions;[75] they cannot be made the device for un enacted statutory revision.

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[72] *Post*, at 261. This is a courageous adverb since we have previously held that the only authoritative source of statutory meaning is the text that has passed through the Article I process. See *Exxon Mobil Corp.* v. *Allapattah Services, Inc.*, 545 U. S. 546, 568 (2005).

[73] § 323(a), 100 Stat. 3784.

[74] H. R. Rep. No. 100–391, pt. 1, p. 701 (1987).

[75] See, *e. g.*, §§ 401, 403(a), 110 Stat. 3009–655 to 3009–656, 3009–659 to 3009–662, as amended, note following 8 U. S. C. § 1324a (2006 ed., Supp. III) (E-Verify program expires Sept. 30, 2012).

That brings us to the second aw in the dissent's syllogism: Comment *k* did not have a "commonly understood mean ing"[76] in the mid-1980's. Some courts thought it required a case-speci c showing that a product was "unavoidably un safe"; many others thought it categorically exempted certain types of products from strict liability.[77] When "all (or nearly all) of the" relevant judicial decisions have given a term or concept a consistent judicial gloss, we presume Congress in tended the term or concept to have that meaning when it incorporated it into a later-enacted statute. *Merck & Co.* v. *Reynolds*, 559 U. S. 633, 659 (2010) (SCALIA, J., concurring in part and concurring in judgment). The consistent gloss represents the public understanding of the term. We cannot make the same assumption when widespread disagreement exists among the lower courts. We must make do with giv ing the term its most plausible meaning using the traditional tools of statutory interpretation. That is what we have done today.

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For the foregoing reasons, we hold that the National Childhood Vaccine Injury Act pre-empts all design-defect claims against vaccine manufacturers brought by plaintiffs who seek compensation for injury or death caused by vac cine side effects. The judgment of the Court of Appeals is af rmed.

It is so ordered.

JUSTICE KAGAN took no part in the consideration or deci sion of this case.

JUSTICE BREYER, concurring.

I join the Court's judgment and opinion. In my view, the Court has the better of the purely textual argument. But the textual question considered alone is a close one. Hence,

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[76] *Post*, at 257.

[77] See n. 39, *supra; post*, at 256, n. 5.

like the dissent, I would look to other sources, including legislative history, statutory purpose, and the views of the federal administrative agency, here supported by expert medical opinion. Unlike the dissent, however, I believe these other sources reinforce the Court's conclusion.

I

House Committee Report No. 99–908 contains an "authoritative" account of Congress' intent in drafting the preemption clause of the National Childhood Vaccine Injury Act of 1986 (NCVIA or Act). See *Garcia* v. *United States*, 469 U. S. 70, 76 (1984) ("[T]he authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill"). That Report says that "if" vaccine-injured persons

> "cannot demonstrate under applicable law either that a vaccine was improperly prepared or that it was accompanied by improper directions or inadequate warnings [they] should pursue recompense in the compensation system, not the tort system." H. R. Rep. No. 99–908, pt. 1, p. 26 (1986) (hereinafter H. R. Rep. or Report).

The Report lists two specific kinds of tort suits that the clause does not pre-empt (suits based on improper manufacturing and improper labeling), while going on to state that compensation for other tort claims, *e. g.*, design-defect claims, lies in "the [NCVIA's no-fault] compensation system, not the tort system." *Ibid.*

The strongest contrary argument rests upon the Report's earlier description of the statute as "set[ting] forth the principle contained in Comment k" (of the Restatement Second of Torts' *strict liability* section, 402A) that "a vaccine manufacturer should not be liable for injuries or deaths resulting from *unavoidable* side effects." *Id.*, at 25 (emphasis added). But the appearance of the word "unavoidable" in this last-mentioned sentence cannot provide petitioners with much help. That is because nothing in the Report suggests that

the statute means the word "unavoidable" to summon up an otherwise unmentioned third exception encompassing suits based on design defects. Nor can the Report's reference to comment *k* fill the gap. The Report itself refers, not to comment *k*'s details, but only to its "*principle*," namely, that vaccine manufacturers should *not* be held liable for unavoidable injuries. It says nothing at all about who—judge, jury, or federal safety agency—should decide whether a safer vaccine could have been designed. Indeed, at the time Congress wrote this Report, different state courts had come to very different conclusions about that matter. See Cupp, Rethinking Conscious Design Liability for Prescription Drugs: The *Restatement (Third)* Standard Versus a Negligence Approach, 63 Geo. Wash. L. Rev. 76, 79 (1994–1995) ("[C]ourts [had] adopted a broad range of conflicting interpretations" of comment *k*). Neither the word "unavoidable" nor the phrase "the principle of Comment k" tells us which courts' view Congress intended to adopt. Silence cannot tell us to follow those States where juries decided the design-defect question.

II

The legislative history describes the statute more generally as trying to protect the lives of children, in part by ending "the instability and unpredictability of the childhood vaccine market." H. R. Rep., at 7; see *ante*, at 227–228. As the Report makes clear, routine vaccination is "one of the most spectacularly effective public health initiatives this country has ever undertaken." H. R. Rep., at 4. Before the development of routine whooping cough vaccination, for example, "nearly all children" in the United States caught the disease and more than 4,000 people died annually, most of them infants. U. S. Dept. of Health and Human Services, Centers for Disease Control and Prevention, What Would Happen if We Stopped Vaccinations? http://www.cdc.gov/vaccines/vac-gen/whatifstop.htm (all Internet materials as visited Feb. 17, 2011, and available in Clerk of Court's case file);

Preventing Tetanus, Diphtheria, and Pertussis Among Adolescents: Use of Tetanus Toxoid, Reduced Diphtheria Toxoid and Acellular Pertussis Vaccines, 55 Morbidity and Mortality Weekly Report, No. RR–3, p. 2 (Mar. 24, 2006) (hereinafter Preventing Tetanus) (statistics for 1934–1943), http://www.cdc.gov/mmwr/PDF/rr/rr5503.pdf; U. S. Dept. of Health and Human Services, Centers for Disease Control and Prevention, Epidemiology and Prevention of Vaccine-Preventable Diseases 200 (11th ed. rev. May 2009). After vaccination became common, the number of annual cases of whooping cough declined from over 200,000 to about 2,300, and the number of deaths from about 4,000 to about 12. Preventing Tetanus 2; House Committee on Energy and Commerce, Childhood Immunizations, 99th Cong., 2d Sess., 10 (Comm. Print 1986) (hereinafter Childhood Immunizations).

But these gains are fragile; "[t]he causative agents for these preventable childhood illnesses are ever present in the environment, waiting for the opportunity to attack the unprotected individual." Hearing on S. 827 before the Senate Committee on Labor and Human Resources, 99th Cong., 1st Sess., pt. 2, pp. 20–21 (1985) (hereinafter Hearings) (testimony of the American Academy of Pediatrics); see California Dept. of Public Health, Pertussis Report (Jan. 7, 2011), www.cdph.ca.gov/programs/immunize/Documents/PertussisReport2011–01–07.pdf (In 2010, 8,383 people in California caught whooping cough, and 10 infants died). Even a brief period when vaccination programs are disrupted can lead to children's deaths. Hearings 20–21; see Gangarosa et al., Impact of Anti-Vaccine Movements on Pertussis Control: The Untold Story, 351 Lancet 356–361 (Jan. 31, 1998) (when vaccination programs are disrupted, the number of cases of whooping cough skyrockets, increasing by orders of magnitude).

In considering the NCVIA, Congress found that a sharp increase in tort suits brought against whooping cough and other vaccine manufacturers between 1980 and 1985 had

"prompted manufacturers to question their continued participation in the vaccine market." H. R. Rep., at 7; Childhood Immunizations 85–86. Indeed, two whooping cough vaccine manufacturers withdrew from the market, and other vaccine manufacturers, "fac[ing] great difficulty in obtaining [products liability] insurance," told Congress that they were considering "a similar course of action." H. R. Rep., at 6; Childhood Immunizations 68–70. The Committee Report explains that, since there were only one or two manufacturers of many childhood vaccines, "[t]he loss of any of the existing manufacturers of childhood vaccines . . . could create a genuine public health hazard"; it "would present the very real possibility of vaccine shortages, and, in turn, increasing numbers of unimmunized children, and, perhaps, a resurgence of preventable diseases." H. R. Rep., at 5. At the same time, Congress sought to provide generous compensation to those whom vaccines injured—as determined by an expert compensation program. *Id.*, at 5, 24.

Given these broad general purposes, to read the preemption clause as preserving design-defect suits seems anomalous. The Department of Health and Human Services (HHS) decides when a vaccine is safe enough to be licensed and which licensed vaccines, with which associated injuries, should be placed on the Vaccine Injury Table. 42 U. S. C. §300aa–14; *ante*, at 228; A Comprehensive Review of Federal Vaccine Safety Programs and Public Health Activities 13–15, 32–34 (Dec. 2008), http://www.hhs.gov/nvpo/nvac/documents/vaccine-safety-review.pdf. A special master in the Act's compensation program determines whether someone has suffered an injury listed on the Injury Table and, if not, whether the vaccine nonetheless caused the injury. *Ante*, at 228; §300aa–13. To allow a jury in effect to second-guess those determinations is to substitute less expert for more expert judgment, thereby threatening manufacturers with liability (indeed, strict liability) in instances where any conflict between experts and nonexperts is likely

to be particularly severe—instances where Congress intended the contrary. That is because potential tort plaintiffs are unlikely to bring suit unless the specialized compensation program has determined that they are not entitled to compensation (say, because it concludes that the vaccine did not cause the injury). Brief for United States as *Amicus Curiae* 28 ("99.8% of successful Compensation Program claimants have accepted their awards, foregoing any tort remedies against vaccine manufacturers"). It is difficult to reconcile these potential conflicts and the resulting tort liabilities with a statute that seeks to diminish manufacturers' products liability while simultaneously augmenting the role of experts in making compensation decisions.

III

The United States, reflecting the views of HHS, urges the Court to read the Act as I and the majority would do. It notes that the compensation program's listed vaccines have survived rigorous administrative safety review. It says that to read the Act as permitting design-defect lawsuits could lead to a recurrence of "exactly the crisis that precipitated the Act," namely, withdrawals of vaccines or vaccine manufacturers from the market, "disserv[ing] the Act's central purposes," and hampering the ability of the agency's "expert regulators, in conjunction with the medical community, [to] control the availability and withdrawal of a given vaccine." Brief for United States as *Amicus Curiae* 30, 31.

The United States is supported in this claim by leading public health organizations, including the American Academy of Pediatrics, the American Academy of Family Physicians, the American College of Preventive Medicine, the American Public Health Association, the American Medical Association, the March of Dimes Foundation, the Pediatric Infectious Diseases Society, and 15 other similar organizations. Brief for American Academy of Pediatrics et al. as *Amici*

Curiae (hereinafter AAP Brief). The American Academy of Pediatrics has also supported the retention of vaccine manufacturer tort liability (provided that federal law structured state-law liability conditions in ways that would take proper account of federal agency views about safety). Hearings 14–15. But it nonetheless tells us here, in respect to the specific question before us, that the petitioners' interpretation of the Act would undermine its basic purposes by threatening to "halt the future production and development of childhood vaccines in this country," *i. e.*, by "threaten[ing] a resurgence of the very problems which . . . caused Congress to intervene" by enacting this statute. AAP Brief 24 (internal quotation marks omitted).

I would give significant weight to the views of HHS. The law charges HHS with responsibility for overseeing vaccine production and safety. It is "likely to have a thorough understanding" of the complicated and technical subject matter of immunization policy, and it is comparatively more "qualified to comprehend the likely impact of state requirements." *Geier* v. *American Honda Motor Co.*, 529 U. S. 861, 883 (2000) (internal quotation marks omitted); see *Medtronic, Inc.* v. *Lohr*, 518 U. S. 470, 506 (1996) (BREYER, J., concurring in part and concurring in judgment) (the agency is in the best position to determine "whether (or the extent to which) state requirements may interfere with federal objectives"). HHS' position is particularly persuasive here because expert public health organizations support its views and the matter concerns a medical and scientific question of great importance: how best to save the lives of children. See *Skidmore* v. *Swift & Co.*, 323 U. S. 134 (1944).

In sum, congressional reports and history, the statute's basic purpose as revealed by that history, and the views of the expert agency along with those of relevant medical and scientific associations, all support the Court's conclusions. I consequently agree with the Court.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, dissenting.

Vaccine manufacturers have long been subject to a legal duty, rooted in basic principles of products liability law, to improve the designs of their vaccines in light of advances in science and technology. Until today, that duty was enforceable through a traditional state-law tort action for defective design. In holding that § 22(b)(1) of the National Childhood Vaccine Injury Act of 1986 (Vaccine Act or Act), 42 U. S. C. § 300aa–22(b)(1), pre-empts all design defect claims for injuries stemming from vaccines covered under the Act, the Court imposes its own bare policy preference over the considered judgment of Congress. In doing so, the Court excises 13 words from the statutory text, misconstrues the Act's legislative history, and disturbs the careful balance Congress struck between compensating vaccine-injured children and stabilizing the childhood vaccine market. Its decision leaves a regulatory vacuum in which no one ensures that vaccine manufacturers adequately take account of scientific and technological advancements when designing or distributing their products. Because nothing in the text, structure, or legislative history of the Vaccine Act remotely suggests that Congress intended such a result, I respectfully dissent.

I

A

Section 22 of the Vaccine Act provides "[s]tandards of responsibility" to govern civil actions against vaccine manufacturers. 42 U. S. C. § 300aa–22. Section 22(a) sets forth the "[g]eneral rule" that "State law shall apply to a civil action brought for damages for a vaccine-related injury or death." § 300aa–22(a). This baseline rule that state law applies is subject to three narrow exceptions, one of which, § 22(b)(1), is at issue in this case. Section 22(b)(1) provides:

> "No vaccine manufacturer shall be liable in a civil action for damages arising from a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, if the injury or death resulted from side effects that were unavoidable even though the vaccine was properly prepared and was accompanied by proper directions and warnings." § 300aa–22(b)(1).

The provision contains two key clauses: "if the injury or death resulted from side effects that were unavoidable" (the "if" clause), and "even though the vaccine was properly prepared and was accompanied by proper directions and warnings" (the "even though" clause).

Blackletter products liability law generally recognizes three different types of product defects: design defects, manufacturing defects, and labeling defects (*e. g.*, failure to warn).[1] The reference in the "even though" clause to a "properly prepared" vaccine "accompanied by proper directions and warnings" is an obvious reference to two such defects—manufacturing and labeling defects. The plain terms of the "even though" clause thus indicate that § 22(b)(1) applies only where neither kind of defect is present. Because § 22(b)(1) is invoked by vaccine manufacturers as a defense to tort liability, it follows that the "even though" clause requires a vaccine manufacturer in each civil action to demonstrate that its vaccine is free from manufacturing and labeling defects to fall within the liability exemption of § 22(b)(1).[2]

Given that the "even though" clause requires the absence of manufacturing and labeling defects, the "if" clause's reference to "side effects that were unavoidable" must refer to

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[1] W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts 695 (5th ed. 1984).

[2] See *Silkwood* v. *Kerr-McGee Corp.*, 464 U. S. 238, 255 (1984); *Brown* v. *Earthboard Sports USA, Inc.*, 481 F. 3d 901, 912 (CA6 2007) ("'[F]ederal preemption is an affirmative defense upon which the defendants bear the burden of proof'" (quoting *Fifth Third Bank* v. *CSX Corp.*, 415 F. 3d 741, 745 (CA7 2005))).

side effects caused by something other than manufacturing and labeling defects. The only remaining kind of product defect recognized under traditional products liability law is a design defect. Thus, "side effects that were unavoidable" must refer to side effects caused by a vaccine's *design* that were "unavoidable." Because § 22(b)(1) uses the conditional term "if," moreover, the text plainly implies that some side effects stemming from a vaccine's design are "unavoidable," while others are avoidable. See Webster's Third New International Dictionary 1124 (2002) ("if" means "in the event that," "so long as," or "on condition that"). Accordingly, because the "if" clause (like the "even though" clause) sets forth a condition to invoke § 22(b)(1)'s defense to tort liability, Congress must also have intended a vaccine manufacturer to demonstrate in each civil action that the particular side effects of a vaccine's design were "unavoidable."

Congress' use of conditional "if" clauses in two other provisions of the Vaccine Act supports the conclusion that § 22(b)(1) requires an inquiry in each case in which a manufacturer seeks to invoke the provision's exception to state tort liability. In § 22(b)(2), Congress created a presumption that, for purposes of § 22(b)(1), "a vaccine shall be presumed to be accompanied by proper directions and warnings if the vaccine manufacturer shows that it complied in all material respects with" federal labeling requirements. 42 U. S. C. § 300aa–22(b)(2). Similarly, in § 23(d)(2), Congress created an exemption from punitive damages "[i]f . . . the manufacturer shows that it complied, in all material respects," with applicable federal laws, unless it engages in "fraud," "intentional and wrongful withholding of information" from federal regulators, or "other criminal or illegal activity." § 300aa–23(d)(2). It would be highly anomalous for Congress to use a conditional "if" clause in §§ 22(b)(2) and 23(d)(2) to require a specific inquiry in each case while using the same

conditional "if" clause in § 22(b)(1) to denote a categorical exemption from liability. Cf. *Erlenbaugh* v. *United States*, 409 U. S. 239, 243 (1972) ("[A] legislative body generally uses a particular word with a consistent meaning in a given context").

Indeed, when Congress intends to pre-empt design defect claims categorically, it does so using categorical (*e. g.*, "all") and/or declarative language (*e. g.*, "shall"), rather than a conditional term ("if"). For example, in a related context, Congress has authorized the Secretary of Health and Human Services to designate a vaccine designed to prevent a pandemic or epidemic as a "covered countermeasure." 42 U. S. C. §§ 247d–6d(b), (i)(1), (i)(7)(A)(i). With respect to such "covered countermeasure[s]," Congress provided that subject to certain exceptions, "a covered person *shall* be immune from suit and liability under Federal and State law with respect to *all* claims for loss caused by, arising out of, relating to, or resulting from the administration to or the use by an individual of a covered countermeasure," § 247d–6d(a)(1) (emphasis added), including specifically claims relating to "the design" of the countermeasure, § 247d–6d(a)(2)(B).

The plain text and structure of the Vaccine Act thus compel the conclusion that § 22(b)(1) pre-empts some—but not all—design defect claims. Contrary to the majority's and respondent's categorical reading, petitioners correctly contend that, where a plaintiff has proved that she has suffered an injury resulting from a side effect caused by a vaccine's design, a vaccine manufacturer may invoke § 22(b)(1)'s liability exemption only if it demonstrates that the side effect stemming from the particular vaccine's design is "unavoidable," and that the vaccine is otherwise free from manufacturing and labeling defects.[3]

[3] This leaves the question of what precisely § 22(b)(1) means by "unavoidable" side effects, which I address in the next section.

B

The legislative history con rms petitioners' interpretation of § 22(b)(1) and sheds further light on its pre-emptive scope. The House Energy and Commerce Committee Report accom panying the Vaccine Act, H. R. Rep. No. 99–908, pt. 1 (1986) (hereinafter 1986 Report), explains in relevant part:

> "*Subsection (b)—Unavoidable Adverse Side Effects; Direct Warnings.*—This provision sets forth the princi ple contained in Comment k of Section 402A of the Re statement of Torts (Second) that a vaccine manufacturer should not be liable for injuries or deaths resulting from unavoidable side effects even though the vaccine was properly prepared and accompanied by proper directions and warnings.
>
> "The Committee has set forth Comment K in this bill because it intends that the principle in Comment K re garding 'unavoidably unsafe' products, i. e., those prod ucts which in the present state of human skill and knowledge cannot be made safe, apply to the vaccines covered in the bill and that such products not be the subject of liability in the tort system." *Id.*, at 25–26.

The 1986 Report expressly adopts comment *k* of § 402A of the Restatement of Torts (Second) (1963–1964) (hereinafter Restatement), which provides that "unavoidably unsafe" products—*i. e.*, those that "in the present state of human knowledge, are quite incapable of being made safe for their intended and ordinary use"—are not defective.[4] As "[a]n

[4] Comment *k* provides as follows:

"*Unavoidably unsafe products.* There are some products which, in the present state of human knowledge, are quite incapable of being made safe for their intended and ordinary use. These are especially common in the eld of drugs. An outstanding example is the vaccine for the Pasteur treatment of rabies, which not uncommonly leads to very serious and dam aging consequences when it is injected. Since the disease itself invariably leads to a dreadful death, both the marketing and the use of the vaccine are fully justi ed, notwithstanding the unavoidable high degree of risk

outstanding example" of an "[u]navoidably unsafe" product, comment *k* cites "the vaccine for the Pasteur treatment of rabies, which not uncommonly leads to very serious and damaging consequences when it is injected"; "[s]ince the dis ease itself invariably leads to a dreadful death, both the mar keting and the use of the vaccine are fully justi ed, notwith standing the unavoidable high degree of risk which they involve." *Id.*, at 353. Comment *k* thus provides that "sell er[s]" of "[u]navoidably unsafe" products are "not to be held to strict liability" provided that such products "are properly prepared and marketed, and proper warning is given." *Ibid.*

As the 1986 Report explains, Congress intended that the "principle in Comment K regarding 'unavoidably unsafe' products" apply to the vaccines covered in the bill. 1986 Report 26. That intent, in turn, is manifested in the plain text of §22(b)(1)—in particular, Congress' use of the word "unavoidable," as well as the phrases "properly prepared" and "accompanied by proper directions and warnings," which were taken nearly verbatim from comment *k*. 42 U. S. C. §300aa–22(b)(1); see Restatement 353–354 ("Such a[n un avoidably unsafe] product, properly prepared, and accompa

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which they involve. Such a product, properly prepared, and accompanied by proper directions and warning, is not defective, nor is it *unreasonably* dangerous. The same is true of many other drugs, vaccines, and the like, many of which for this very reason cannot legally be sold except to physi cians, or under the prescription of a physician. It is also true in particular of many new or experimental drugs as to which, because of lack of time and opportunity for suf cient medical experience, there can be no assur ance of safety, or perhaps even of purity of ingredients, but such experi ence as there is justi es the marketing and use of the drug notwithstand ing a medically recognizable risk. The seller of such products, again with the quali cation that they are properly prepared and marketed, and proper warning is given, where the situation calls for it, is not to be held to strict liability for unfortunate consequences attending their use, merely because he has undertaken to supply the public with an apparently useful and desirable product, attended with a known but apparently reasonable risk." Restatement 353–354.

nied by proper directions and warning, is not defective"). By the time of the Vaccine Act's enactment in 1986, numer ous state and federal courts had interpreted comment *k* to mean that a product is "unavoidably unsafe" when, given proper manufacture and labeling, no feasible alternative de sign would reduce the safety risks without compromising the product's cost and utility.[5] Given Congress' expressed in

[5] See, *e. g.*, *Smith ex rel. Smith* v. *Wyeth Labs., Inc.*, No. Civ. A 84–2002, 1986 WL 720792, *5 (SD W. Va., Aug. 21, 1986) ("[A] prescription drug is not 'unavoidably unsafe' when its dangers can be eliminated through de sign changes that do not unduly affect its cost or utility"); *Kearl* v. *Lederle Labs.*, 172 Cal. App. 3d 812, 830, 218 Cal. Rptr. 453, 464 (1985) ("unavoid ability" turns on "(i) whether the product was designed to minimize—to the extent scienti cally knowable at the time it was distributed—the risk inherent in the product, and (ii) the availability . . . of any alternative product that would have *as effectively* accomplished the *full intended pur pose* of the subject product"), disapproved in part by *Brown* v. *Superior Ct.*, 44 Cal. 3d 1049, 751 P. 2d 470 (1988); *Belle Bonfils Memorial Blood Bank* v. *Hansen*, 665 P. 2d 118, 122 (Colo. 1983) ("[A]pplicability of com ment k . . . depends upon the co-existence of several factors," including that "the product's bene ts must not be achievable in another manner; and the risk must be unavoidable under the present state of knowledge"); see also 1 L. Frumer & M. Friedman, Products Liability §§ 8.07[1]–[2], pp. 8–277 to 8–278 (2010) (comment *k* applies "only to defects in design," and there "must be no feasible alternative design which on balance accom plishes the subject product's purpose with a lesser risk" (internal quota tion marks omitted)). To be sure, a number of courts at the time of the Vaccine Act's enactment had interpreted comment *k* to preclude design defect claims categorically for certain kinds of products, see *Hill* v. *Searle Labs.*, 884 F. 2d 1064, 1068 (CA8 1989) (collecting cases), but as indicated by the sources cited above, the courts that had construed comment *k* to apply on a case-speci c basis generally agreed on the basic elements of what constituted an "unavoidably unsafe" product. See also n. 8, *infra*. The majority's suggestion that "judges who must rule on motions to dis miss, motions for summary judgment, and motions for judgment as a mat ter of law" are incapable of adjudicating claims alleging "unavoidable" side effects, *ante*, at 232, n. 35, is thus belied by the experience of the many courts that had adjudicated such claims for years by the time of the Vac cine Act's enactment.

tent to codify the "principle in Comment K," 1986 Report 26, the term "unavoidable" in § 22(b)(1) is best understood as a term of art, which incorporates the commonly understood meaning of "unavoidably unsafe" products under comment *k* at the time of the Act's enactment in 1986. See *McDermott Int'l, Inc.* v. *Wilander*, 498 U. S. 337, 342 (1991) ("[W]e assume that when a statute uses . . . a term [of art], Congress intended it to have its established meaning"); *Morissette* v. *United States*, 342 U. S. 246, 263 (1952) (same).[6] Similarly, courts applying comment *k* had long required manufacturers invoking the defense to demonstrate that their products were not only "unavoidably unsafe" but also properly manufactured and labeled.[7] By requiring "prope[r] prepar[ation]" and "proper directions and warnings" in § 22(b)(1), Congress plainly intended to incorporate these additional comment *k* requirements.

The 1986 Report thus confirms petitioners' interpretation of § 22(b)(1). The 1986 Report makes clear that "side effects that were unavoidable" in § 22(b)(1) refers to side effects stemming from a vaccine's design that were "unavoidable." By explaining what Congress meant by the term "unavoid

[6] The majority refuses to recognize that "unavoidable" is a term of art derived from comment *k*, suggesting that "'[u]navoidable' is hardly a rarely used word." *Ante*, at 235. In fact, however, "unavoidable" is an extremely rare word in the relevant context. It appears exactly *once* (*i. e.*, in § 300aa–22(b)(1)) in the entirety of Title 42 of the U. S. Code ("Public Health and Welfare"), which governs, *inter alia*, Social Security, see 42 U. S. C. § 301 *et seq.*, Medicare, see § 1395 *et seq.*, and several other of the Federal Government's largest entitlement programs. The singular rarity in which Congress used the term supports the conclusion that "unavoidable" is a term of art.

[7] See, *e. g.*, *Brochu* v. *Ortho Pharmaceutical Corp.*, 642 F. 2d 652, 657 (CA1 1981); *Needham* v. *White Labs., Inc.*, 639 F. 2d 394, 402 (CA7 1981); *Reyes* v. *Wyeth Labs.*, 498 F. 2d 1264, 1274–1275 (CA5 1974); *Davis* v. *Wyeth Labs.*, 399 F. 2d 121, 127–129 (CA9 1968); *Feldman* v. *Lederle Labs.*, 97 N. J. 429, 448, 479 A. 2d 374, 384 (1984); see also *Toner* v. *Lederle Labs.*, 112 Idaho 328, 336, 732 P. 2d 297, 305 (1987).

able," moreover, the 1986 Report also con rms that whether a side effect is "unavoidable" for purposes of § 22(b)(1) in volves a speci c inquiry in each case as to whether the vac cine "in the present state of human skill and knowledge can not be made safe," 1986 Report 26—*i. e.*, whether a feasible alternative design existed that would have eliminated the adverse side effects of the vaccine without compromising its cost and utility. See Brief for Kenneth W. Starr et al. as *Amici Curiae* 14–15 ("If a particular plaintiff could show that her injury at issue was avoidable . . . through the use of a feasible alternative design for a speci c vaccine, then she would satisfy the [plain] language of the statute, because she would have demonstrated that the side effects were *not* un avoidable"). Finally, the 1986 Report con rms that the "even though" clause is properly read to establish two addi tional prerequisites—proper manufacturing and proper la beling—to qualify for § 22(b)(1)'s liability exemption.[8]

[8] Respondent suggests an alternative reading of the 1986 Report. Ac cording to respondent, "the principle in Comment K" is simply that of nonliability for "unavoidably unsafe" products, and thus Congress' stated intent in the 1986 Report to apply the "principle in Comment K" to "the vaccines covered in the bill" means that Congress viewed the covered vaccines as a class to be "'unavoidably unsafe.'" 1986 Report 25–26; Brief for Respondent 42. The concurrence makes a similar argument. *Ante*, at 244–245 (opinion of BREYER, J.). This interpretation nds some support in the 1986 Report, which states that "if [injured individuals] can not demonstrate under applicable law either that a vaccine was improperly prepared or that it was accompanied by improper directions or inadequate warnings [they] should pursue recompense in the compensation system, not the tort system." 1986 Report 26. It also nds some support in the pre-Vaccine Act case law, which re ected considerable disagreement in the courts over "whether comment k applies to pharmaceutical products across the board or only on a case-by-case basis." Ausness, Unavoidably Unsafe Products and Strict Products Liability: What Liability Rule Should Be Applied to the Sellers of Pharmaceutical Products? 78 Ky. L. J. 705, 708, and n. 11 (1989–1990) (collecting cases). This interpretation, however, is undermined by the fact that Congress has never directed the Food and Drug Administration (FDA) or any other federal agency to re

In addition to the 1986 Report, one other piece of the Act's legislative history provides further con rmation of the pe titioners' textual reading of § 22(b)(1). When Congress enacted the Vaccine Act in 1986, it did not initially include a source of payment for the no-fault compensation program the Act established. The Act thus "made the compensation pro gram and accompanying tort reforms contingent on the en actment of a tax to provide funding for the compensation." 1987 Report 690. In 1987, Congress passed legislation to fund the compensation program. The House Energy and Commerce Committee Report[9] accompanying that legisla tion speci cally stated that "the codi cation of Comment (k) of The Restatement (Second) of Torts was not intended to decide as a matter of law the circumstances in which a vaccine should be deemed unavoidably unsafe." *Id.*, at 691. The Committee noted that "[a]n amendment to establish . . . that a manufacturer's failure to develop [a] safer vaccine was not grounds for liability was rejected by the Committee dur

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view vaccines for optimal vaccine design, see *infra*, at 269–270, and n. 19, and thus it seems highly unlikely that Congress intended to eliminate the traditional mechanism for such review (*i. e.*, design defect liability), partic ularly given its express retention of state tort law in the Vaccine Act, see 42 U. S. C. § 300aa–22(a). In any event, to the extent there is ambiguity as to how precisely Congress intended the "principle in Comment K" to apply to the covered vaccines, that ambiguity is explicitly resolved in peti tioners' favor by the 1987 House Energy and Commerce Committee Re port, H. R. Rep. No. 100–391, pt. 1, pp. 690–691 (hereinafter 1987 Report). See *infra* this page and 260–261.

[9] The Third Circuit's opinion below expressed uncertainty as to whether the 1987 Report was authored by the House Budget Committee or the House Energy and Commerce Committee. See 561 F. 3d 233, 250 (2009). As petitioners explain, although the Budget Committee compiled and is sued the Report, the Energy and Commerce Committee wrote and ap proved the relevant language. Title IV of the 1987 Report, entitled "Committee on Energy and Commerce," comprises "two Committee Prints approved by the Committee on Energy and Commerce for inclusion in the forthcoming reconciliation bill." 1987 Report 377, 380.

ing its original consideration of the Act." *Ibid.* In light of that rejection, the Committee emphasized that "there should be no misunderstanding that the Act undertook to decide as a matter of law whether vaccines were unavoidably unsafe or not," and that "[t]his question is left to the courts to determine in accordance with applicable law." *Ibid.*

To be sure, postenactment legislative history created by a subsequent Congress is ordinarily a hazardous basis from which to infer the intent of the enacting Congress. See *Sullivan* v. *Finkelstein*, 496 U. S. 617, 631–632 (1990) (SCALIA, J., concurring in part). But unlike ordinary postenactment legislative history, which is justifiably given little or no weight, the 1987 Report reflects the intent of the Congress that enacted the funding legislation necessary to give operative effect to the principal provisions of the Vaccine Act, including § 22(b)(1).[10] Congress in 1987 had a number of options before it, including adopting an entirely different compensation scheme, as the Reagan administration was proposing;[11] establishing different limitations on tort liability, including eliminating design defect liability, as pharmaceutical industry leaders were advocating;[12] or not funding the

[10] The majority suggests that the 1987 legislation creating the funding mechanism is akin to appropriations legislation and that giving weight to the legislative history of such legislation "would set a dangerous precedent." *Ante*, at 242. The difference, of course, is that appropriations legislation ordinarily funds congressional enactments that already have operative legal effect; in contrast, operation of the tort reforms in the 1986 Act, including § 22(b)(1), was expressly conditioned on the enactment of a separate tax to fund the compensation program. See § 323(a), 100 Stat. 3784. Accordingly, this Court's general reluctance to view appropriations legislation as modifying substantive legislation, see, *e. g.*, *TVA* v. *Hill*, 437 U. S. 153, 190 (1978), has no bearing here.

[11] See 1987 Report 700 (describing the administration's alternative proposal).

[12] See, *e. g.*, Hearings on Funding of the Childhood Vaccine Program before the Subcommittee on Select Revenue Measures of the House Committee on Ways and Means, 100th Cong., 1st Sess., 85 (1987) ("[T]he liability

compensation program at all, which would have effectively nulli ed the relevant portions of the Act. Because the tort reforms in the 1986 Act, including § 22(b)(1), had no operative legal effect unless and until Congress provided funding for the compensation program, the views of the Congress that enacted that funding legislation are a proper and, indeed, authoritative guide to the meaning of § 22(b)(1). Those views, as re ected in the 1987 Report, provide unequivocal con rmation of petitioners' reading of § 22(b)(1).

In sum, the text, structure, and legislative history of the Vaccine Act are fully consistent with petitioners' reading of § 22(b)(1). Accordingly, I believe § 22(b)(1) exempts vaccine manufacturers from tort liability only upon a showing by the manufacturer in each case that the vaccine was prop erly manufactured and labeled, and that the side effects stemming from the vaccine's design could not have been prevented by a feasible alternative design that would have eliminated the adverse side effects without compromising the vaccine's cost and utility.

II

In contrast to the interpretation of § 22(b)(1) set forth above, the majority's interpretation does considerable vio lence to the statutory text, misconstrues the legislative his tory, and draws the wrong conclusions from the structure of the Vaccine Act and the broader federal scheme regulating vaccines.

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provisions of the 1986 Act should be amended to assure that manufactur ers will not be found liable in the tort system if they have fully complied with applicable government regulations. In particular, manufacturers should not face liability under a 'design defect' theory in cases where plain tiffs challenge the decisions of public health authorities and federal regula tors that the licensed vaccines are the best available way to protect chil dren from deadly diseases" (statement of Robert B. Johnson, President, Lederle Labs. Div., American Cyanamid Co.)).

A

As a textual matter, the majority's interpretation of § 22(b)(1) is fundamentally flawed in three central respects. First, the majority's categorical reading rests on a faulty and untenable premise. Second, its reading functionally excises 13 words from the statutory text, including the key term "unavoidable." And third, the majority entirely ignores the Vaccine Act's default rule preserving state tort law.

To begin, the majority states that "[a] side effect of a vaccine could *always* have been avoidable by use of a differently designed vaccine not containing the harmful element." *Ante*, at 232. From that premise, the majority concludes that the statute must mean that "the *design* of the vaccine is a given, not subject to question in the tort action," because construing the statute otherwise would render § 22(b)(1) a nullity. *Ibid.* A tort claimant, according to the majority, will always be able to point to a differently designed vaccine not containing the "harmful element," and if that were sufficient to show that a vaccine's side effects were not "unavoidable," the statute would pre-empt nothing.

The starting premise of the majority's interpretation, however, is fatally flawed. Although in the most literal sense, as the majority notes, a side effect can always be avoided "by use of a differently designed vaccine not containing the harmful element," *ibid.*, this interpretation of "unavoidable" would effectively read the term out of the statute, and Congress could not have intended that result. Indeed, § 22(b)(1) specifically uses the conditional phrase "if the injury or death resulted from side effects that were unavoidable," which plainly indicates that Congress contemplated that there would be some instances in which a vaccine's side effects are "unavoidable" and other instances in which they are not. See *supra*, at 252. The majority's premise that a vaccine's side effects can always be "avoid[ed] by use of a differently designed vaccine not containing the harmful element," *ante*, at 232, entirely ignores the fact that removing the "harmful

element" will often result in a less effective (or entirely inef fective) vaccine. A vaccine, by its nature, ordinarily em ploys a killed or weakened form of a bacteria or virus to stimulate antibody production;[13] removing that bacteria or virus might remove the "harmful element," but it would also necessarily render the vaccine inert. As explained above, the legislative history of the Vaccine Act and the cases inter preting comment *k* make clear that a side effect is "unavoid able" for purposes of § 22(b)(1) only where there is no feasible alternative design that would eliminate the side effect of the vaccine without compromising its cost and utility. See *supra*, at 256. The majority's premise—that side effects stemming from a vaccine's design are always avoidable—is thus belied by the statutory text and legislative history of § 22(b)(1). And because its starting premise is invalid, its conclusion—that the design of a vaccine is not subject to challenge in a tort action—is also necessarily invalid.

The majority's reading suffers from an even more funda mental defect. If Congress intended to exempt vaccine manufacturers categorically from all design defect liability, it more logically would have provided: "No vaccine manufac turer shall be liable in a civil action for damages arising from a vaccine-related injury or death associated with the admin istration of a vaccine after October 1, 1988, if the vaccine was properly prepared and was accompanied by proper di rections and warnings." There would have been no need for Congress to include the additional 13 words "the injury or death resulted from side effects that were unavoidable even though." See *TRW Inc.* v. *Andrews*, 534 U. S. 19, 31 (2001) (noting "cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall

[13] See American Academy of Pediatrics, Questions and Answers About Vaccine Ingredients (Oct. 2008), http://www.aap.org/immunization/families/faq/Vaccineingredients.pdf (all Internet materials as visited Feb. 18, 2011, and available in Clerk of Court's case le).

be super uous, void, or insigni cant" (internal quotation marks omitted)).

In *Bates* v. *Dow Agrosciences LLC*, 544 U. S. 431 (2005), this Court considered an analogous situation where an ex press pre-emption provision stated that certain States "'shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter.'" *Id.*, at 436 (quoting 7 U. S. C. § 136v(b) (2000 ed.)). The *Bates* Court stated:

> "Conspicuously absent from the submissions by [re spondent] and the United States is any plausible alterna tive interpretation of 'in addition to or different from' that would give that phrase meaning. Instead, they ap pear to favor reading those words out of the statute, which would leave the following: 'Such State shall not impose or continue in effect any requirements for label ing or packaging.' This amputated version of [the stat ute] would no doubt have clearly and succinctly com manded the pre-emption of *all* state requirements concerning labeling. That Congress added the remain der of the provision is evidence of its intent to draw a distinction between state labeling requirements that are pre-empted and those that are not." 544 U. S., at 448–449.

As with the statutory interpretation rejected by this Court in *Bates*, the majority's interpretation of § 22(b)(1) function ally excises 13 words out of the statute, including the key term "unavoidable." See *Duncan* v. *Walker*, 533 U. S. 167, 174 (2001) ("We are especially unwilling" to treat a statutory term as surplusage "when the term occupies so pivotal a place in the statutory scheme"). Although the resulting "amputated version" of the statutory provision "would no doubt have clearly and succinctly commanded the pre emption of *all* state" design defect claims, the fact "[t]hat

Congress added the remainder of the provision" is strong evidence of its intent not to pre-empt design defect claims categorically. *Bates*, 544 U. S., at 449; see also *American Home Prods. Corp.* v. *Ferrari*, 284 Ga. 384, 393, 668 S. E. 2d 236, 242 (2008) ("'If Congress had intended to deprive injured parties of a long available form of compensation, it surely would have expressed that intent more clearly'" (quoting *Bates*, 544 U. S., at 449)), cert. pending, No. 08–1120.

Strikingly, the majority concedes that its interpretation renders 13 words of the statute entirely superfluous. See *ante*, at 236 ("The intervening passage ('the injury or death resulted from side effects that were unavoidable even though') is unnecessary. True enough"). Nevertheless, the majority contends that "the rule against giving a portion of text an interpretation which renders it superfluous . . . applies only if verbosity and prolixity can be eliminated by giving the offending passage, or the remainder of the text, a competing interpretation." *Ibid.* According to the majority, petitioners' reading of § 22(b)(1) renders the "even though" clause superfluous because, to reach petitioners' desired outcome, "[i]t would suffice to say 'if the injury or death resulted from side effects that were unavoidable'—full stop." *Ante*, at 237. As explained above, however, the "even though" clause establishes two additional prerequisites—proper manufacturing and proper labeling—to qualify for § 22(b)(1)'s exemption from liability. Contrary to the majority's contention, then, the "even though" clause serves an important function by limiting the scope of the pre-emption afforded by the preceding "if" clause.[14]

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[14] In this manner, the "even though" clause functions in a "concessive subordinat[ing]" fashion, *ante*, at 235, in accord with normal grammatical usage. According to the majority, however, the "even though" clause "clarifies the word that precedes it" by "delineat[ing]" the conditions that make a side effect "unavoidable" under the statute. *Ante*, at 231. The majority's interpretation hardly treats the clause as "concessive," and indeed

The majority's only other textual argument is based on the *expressio unius, exclusio alterius* canon. According to the majority, because blackletter products liability law generally recognizes three different types of product defects, "[i]f all three were intended to be preserved, it would be strange [for Congress] to mention speci cally only two"—namely, manufacturing and labeling defects in the "even though" clause—"and leave the third to implication." *Ante*, at 232. The majority's argument, however, ignores that the default rule under the Vaccine Act is that state law is preserved. As explained above, § 22(a) expressly provides that the "[g]eneral rule" is that "State law shall apply to a civil action brought for damages for a vaccine-related injury or death." 42 U. S. C. § 300aa–22(a). Because § 22(a) already preserves state-law design defect claims (to the extent the exemption in § 22(b)(1) does not apply), there was no need for Congress separately and expressly to preserve design defect claims in § 22(b)(1). Indeed, Congress' principal aim in enacting § 22(b)(1) was not to preserve manufacturing and labeling claims (those, too, were already preserved by § 22(a)), but rather, to federalize comment *k*-type protection for "unavoid ably unsafe" vaccines. The "even though" clause simply functions to limit the applicability of that defense. The lack of express language in § 22(b)(1) speci cally preserv ing design defect claims thus cannot fairly be understood as impliedly (and categorically) pre-empting such traditional

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strains the meaning of "even though." In the majority's view, proper manufacturing and labeling are the sole prerequisites that render a vac cine's side effects unavoidable. Thus, an injurious side effect is unavoid able *because* the vaccine was properly prepared and labeled, not "even though" it was. The two conjunctions are not equivalent: The sentence "I am happy *even though* it is raining" can hardly be read to mean that "I am happy *because* it is raining." In any event, the more fundamental point is that petitioners' interpretation actually gives meaning to the words "even though," whereas the majority concedes that its interpreta tion effectively reads those words entirely out of the statute. See *supra* this page.

state tort claims, which had already been preserved by § 22(a).[15]

The majority also suggests that if Congress wished to pre serve design defect claims, it could have simply provided that manufacturers would be liable for "defective manufac ture, defective directions or warning, and defective design." *Ante*, at 233 (internal quotation marks omitted). Putting aside the fact that § 22(a) already preserves design defect claims (to the extent § 22(b)(1) does not apply), the majority's proposed solution would not have fully effectuated Congress' intent. As the legislative history makes clear, Congress used the term "unavoidable" to effectuate its intent that the "principle in Comment K regarding 'unavoidably unsafe' products . . . apply to the vaccines covered in the bill." 1986 Report 26; see also 1987 Report 691. At the time of the Vaccine Act's enactment in 1986, at least one State had ex pressly rejected comment *k*,[16] while many others had not ad

[15] This Court, moreover, has long operated on "the assumption that the historic police powers of the States are not to be superseded by the Fed eral Act unless that was the clear and manifest purpose of Congress." *Altria Group, Inc.* v. *Good*, 555 U. S. 70, 77 (2008) (internal quotation marks and alteration omitted). Given the long history of state regulation of vaccines, see Brief for Petitioners 3–6, the presumption provides an additional reason not to read § 22(b)(1) as pre-empting all design defect claims, especially given Congress' inclusion of an express saving clause in the same statutory section, see 42 U. S. C. § 300aa–22(a), and its use of the conditional "if" clause in de ning the pre-emptive scope of the provision. See *Bates* v. *Dow Agrosciences LLC*, 544 U. S. 431, 449 (2005) ("In areas of traditional state regulation, we assume that a federal statute has not supplanted state law unless Congress has made such an intention clear and manifest" (internal quotation marks omitted)).

[16] See *Collins* v. *Eli Lilly Co.*, 116 Wis. 2d 166, 197, 342 N. W. 2d 37, 52 (1984) ("We conclude that the rule embodied in comment k is too restric tive and, therefore, not commensurate with strict products liability law in Wisconsin"). *Collins* did, however, "recognize that in some exigent circumstances it may be necessary to place a drug on the market before adequate testing can be done." *Ibid.* It thus adopted a narrower de fense (based on "exigent circumstances") than that recognized in other jurisdictions that had expressly adopted comment *k*.

dressed the applicability of comment *k* specifically to vaccines or applied comment *k* to civil actions proceeding on a theory other than strict liability (*e. g.*, negligence[17]). A statute that simply stated that vaccine manufacturers would be liable for "defective design" would be silent as to the availability of a comment *k*-type defense for "unavoidably unsafe" vaccines, and thus would not have fully achieved Congress' aim of extending greater liability protection to vaccine manufacturers by providing comment *k*-type protection in all civil actions as a matter of federal law.

B

The majority's structural arguments fare no better than its textual ones. The principal thrust of the majority's position is that, since nothing in the Vaccine Act or the FDA's regulations governing vaccines expressly mentions design defects, Congress must have intended to remove issues concerning the design of FDA-licensed vaccines from the tort system. *Ante*, at 237. The flaw in that reasoning, of course, is that the FDA's silence on design defects existed long before the Vaccine Act was enacted. Indeed, the majority itself concedes that the "FDA has never even spelled out in regulations the criteria it uses to decide whether a vaccine is safe and effective for its intended use."[18] *Ibid.* And yet it is undisputed that prior to the Act, vaccine manufacturers

[17] See, *e. g.*, *Kearl*, 172 Cal. App. 3d, at 831, n. 15, 218 Cal. Rptr., at 465, n. 15 ("[T]he unavoidably dangerous product doctrine merely exempts the product from a strict liability design defect analysis; a plaintiff remains free to pursue his design defect theory on the basis of negligence"); *Toner*, 112 Idaho, at 340, 732 P. 2d, at 309–310 ("The authorities universally agree that where a product is deemed unavoidably unsafe, the plaintiff is deprived of the advantage of a strict liability cause of action, but may proceed under a negligence cause of action").

[18] See 42 U. S. C. § 262(a)(2)(C)(i)(I) ("The Secretary shall approve a biologics license application . . . on the basis of a demonstration that . . . the biological product that is the subject of the application is safe, pure, and potent").

had long been subject to liability under state tort law for defective vaccine design. That the Vaccine Act did not itself set forth a comprehensive regulatory scheme with respect to design defects is thus best understood to mean not that Congress suddenly decided to change course *sub silentio* and pre-empt a longstanding, traditional category of state tort law, but rather, that Congress intended to leave the status quo alone (except, of course, with respect to those aspects of state tort law that the Act expressly altered). See 1987 Report 691 ("It is not the Committee's intention to preclude court actions under applicable law. The Committee's intent at the time of considering the Act . . . was . . . to leave otherwise applicable law unaffected, except as expressly altered by the Act").

The majority also suggests that Congress necessarily intended to pre-empt design defect claims since the aim of such tort suits is to promote the development of improved designs and provide compensation for injured individuals, and the Vaccine Act "provides other means for achieving both effects"—most notably through the no-fault compensation program and the National Vaccine Program. *Ante*, at 238–239, and nn. 57–60 (citing 42 U. S. C. §§ 300aa–1, 300aa–2(a)(1)–(3), 300aa–3, 300aa–25(b), 300aa–27(a)(1)). But the majority's position elides a significant difference between state tort law and the federal regulatory scheme. Although the Vaccine Act charges the Secretary of Health and Human Services with the obligation to "promote the development of childhood vaccines" and "make or assure improvements in . . . vaccines, and research on vaccines," § 300aa–27(a), neither the Act nor any other provision of federal law places a legal *duty* on vaccine manufacturers to improve the design of their vaccines to account for scientific and technological advances. Indeed, the FDA does not condition approval of a vaccine on it being the most optimally designed among reasonably available alternatives, nor does it (or any other federal entity) ensure that licensed vaccines keep pace with technological and sci

enti c advances.[19] Rather, the function of ensuring that vaccines are optimally designed in light of existing science and technology has traditionally been left to the States through the imposition of damages for design defects. Cf. *Bates*, 544 U. S., at 451 (" '[T]he specter of damage actions may provide manufacturers with added dynamic incentives to continue to keep abreast of all possible injuries stemming from use of their product[s] so as to forestall such actions

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[19] See, *e. g.*, *Hurley* v. *Lederle Labs.*, 863 F. 2d 1173, 1177 (CA5 1988) ("[T]he FDA is a passive agency: it considers whether to approve vaccine designs only if and when manufacturers come forward with a proposal"); *Jones* v. *Lederle Labs.*, 695 F. Supp. 700, 711 (EDNY 1988) ("[T]he agency takes the drugs and manufacturers as it nds them. While its goal is to oversee inoculation with the best possible vaccine, it is limited to review ing only those drugs submitted by various manufacturers, regardless of their aws"). Although the FDA has authority under existing regulations to revoke a manufacturer's biologics licenses, that authority can be exer cised only where (as relevant here) "[t]he licensed product is not safe and effective for all of its intended uses." 21 CFR § 601.5(b)(1)(vi) (2010); see § 600.3(p) (de ning "safety" as "relative freedom from harmful effect to persons affected, directly or indirectly, by a product when prudently ad ministered, taking into consideration the character of the product in rela tion to the condition of the recipient at the time"). The regulation does not authorize the FDA to revoke a biologics license for a manufacturer's failure to adopt an optimal vaccine design in light of existing science and technology. See Conk, Is There a Design Defect in the *Restatement (Third) of Torts: Products Liability?* 109 Yale L. J. 1087, 1128–1129 (1999–2000) ("The FDA does not claim to review products for optimal design . . . . FDA review thus asks less of drug . . . manufacturers than the common law of products liability asks of other kinds of manufacturers"). At oral argument, counsel for *amicus* United States stated that the Centers for Disease Control and Prevention (CDC) routinely performs comparative analyses of vaccines that are already on the market. See Tr. of Oral Arg. 44–45; *id.*, at 52–53 (describing CDC's comparison of Sabin and Salk polio vaccines). Neither the United States nor any of the parties, however, has represented that CDC examines whether a safer alternative vaccine *could have been designed* given practical and scienti c limits, the central inquiry in a state tort law action for design defect. CDC does not issue biologics licenses, moreover, and thus has no authority to require a manufacturer to adopt a different vaccine design.

through product improvement' "); *Wyeth* v. *Levine*, 555 U. S. 555, 578–579 (2009) (noting that the FDA has "traditionally regarded state law as a complementary form of drug regulation" as "[s]tate tort suits uncover unknown drug hazards and provide incentives for drug manufacturers to disclose safety risks promptly").[20] The importance of the States' traditional regulatory role is only underscored by the unique features of the vaccine market, in which there are "only one or two manufacturers for a majority of the vaccines listed on the routine childhood immunization schedule." Brief for Respondent 55. The normal competitive forces that spur innovation and improvements to existing product lines in other markets thus operate with less force in the vaccine market, particularly for vaccines that have already been released and marketed to the public. Absent a clear statutory mandate to the contrary, there is no reason to think that Congress intended in the vaccine context to eliminate the traditional incentive and deterrence functions served by state tort liability in favor of a federal regulatory scheme providing only carrots and no sticks.[21] See *Levine*, 555 U. S., at 575 ("The

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[20] Indeed, we observed in *Levine* that the FDA is perpetually understaffed and underfunded, see 555 U. S., at 578, n. 11, and the agency has been criticized in the past for its slow response in failing to withdraw or warn about potentially dangerous products, see, *e. g.,* L. Leveton, H. Sox, & M. Stoto, Institute of Medicine, HIV and the Blood Supply: An Analysis of Crisis Decisionmaking (1995) (criticizing FDA response to transmission of AIDS through blood supply). These practical shortcomings reinforce the conclusion that "state law offers an additional, and important, layer of consumer protection that complements FDA regulation." *Levine*, 555 U. S., at 579.

[21] The majority mischaracterizes my position as expressing a general "skeptic[ism] of pre-emption unless the congressional substitute operate[s] like the tort system." *Ante,* at 240. Congress could, of course, adopt a regulatory regime that operates differently from state tort systems, and such a difference is not necessarily a reason to question Congress' preemptive intent. In the specific context of the Vaccine Act, however, the relevant point is that this Court should not lightly assume that Congress intended *sub silentio* to displace a longstanding species of state tort liabil

case for federal pre-emption is particularly weak where Con gress has indicated its awareness of the operation of state law in a eld of federal interest, and has nonetheless decided to stand by both concepts and to tolerate whatever tension there is between them" (internal quotation marks and alter ation omitted)).

III

In enacting the Vaccine Act, Congress established a care fully wrought federal scheme that balances the competing interests of vaccine-injured persons and vaccine manufactur ers. As the legislative history indicates, the Act addressed "two overriding concerns": "(a) the inadequacy—from both the perspective of vaccine-injured persons as well as vaccine manufacturers—of the current approach to compensating those who have been damaged by a vaccine; and (b) the insta bility and unpredictability of the childhood vaccine market." 1986 Report 7. When viewed in the context of the Vaccine Act as a whole, § 22(b)(1) is just one part of a broader stat utory scheme that balances the need for compensating vaccine-injured children with added liability protections for vaccine manufacturers to ensure a stable childhood vaccine market.

The principal innovation of the Act was the creation of the no-fault compensation program—a scheme funded entirely through an excise tax on vaccines.[22] Through that program,

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ity where, as here, Congress speci cally included an express saving clause preserving state law, there is a long history of state-law regulation of vaccine design, and pre-emption of state law would leave an important regulatory function—*i. e.*, ensuring optimal vaccine design—entirely unad dressed by the congressional substitute.

[22] The majority's suggestion that "vaccine manufacturers fund from their sales" the compensation program is misleading. *Ante*, at 239. Although the manufacturers nominally pay the tax, the amount of the tax is speci cally included in the vaccine price charged to purchasers. See CDC Vac cine Price List (Feb. 15, 2011), http://www.cdc.gov/vaccines/programs/vfc/cdc-vac-price-list.htm. Accordingly, the only way the vaccine manufactur ers can be said to actually "fund" the compensation program is if the cost

Congress relieved vaccine manufacturers of the burden of compensating victims of vaccine-related injuries in the vast majority of cases[23]—an extremely signi cant economic bene t that "functionally creat[es] a valuable insurance policy for vaccine-related injuries." Reply Brief for Petitioners 10. The structure and legislative history, moreover, point clearly to Congress' intention to divert would-be tort claim ants into the compensation program, rather than eliminate a longstanding category of traditional tort claims. See 1986 Report 13 ("The Committee anticipates that the speed of the compensation program, the low transaction costs of the sys tem, the no-fault nature of the required ndings, and the relative certainty and generosity of the system's awards will divert a signi cant number of potential plaintiffs from liti gation"). Indeed, although complete pre-emption of tort claims would have eliminated the principal source of the "un predictability" in the vaccine market, Congress speci cally chose *not* to pre-empt state tort claims categorically. See 42 U. S. C. § 300aa–22(a) (providing as a "[g]eneral rule" that "State law shall apply to a civil action brought for damages for a vaccine-related injury or death"). That decision re ects Congress' recognition that court actions are essential because they provide injured persons with signi cant proce dural tools—including, most importantly, civil discovery—that are not available in administrative proceedings under the compensation program. See §§ 300aa–12(d)(2)(E), (d)(3).

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of the excise tax has an impact on the number of vaccines sold by the vaccine manufacturer. The majority points to no evidence that the excise tax—which ordinarily amounts to 75 cents per dose, 26 U. S. C. § 4131(b)—has any impact whatsoever on the demand for vaccines.

[23] See Brief for United States as *Amicus Curiae* 28 ("Department of Justice records indicate that 99.8% of successful Compensation Program claimants have accepted their awards, forgoing any tort remedies against vaccine manufacturers"); S. Plotkin, W. Orenstein, & P. Of t, Vaccines 1673 (5th ed. 2008) (noting that "[v]irtually all . . . petitioners, even those who were not awarded compensation" under the compensation program, choose to accept the program's determination).

Congress thus clearly believed there was still an important function to be played by state tort law.

Instead of eliminating design defect liability entirely, Con gress enacted numerous measures to reduce manufacturers' liability exposure, including a limited regulatory compliance presumption of adequate warnings, see § 300aa–22(b)(2), elimination of claims based on failure to provide direct warn ings to patients, § 300aa–22(c), a heightened standard for pu nitive damages, § 300aa–23(d)(2), and, of course, immunity from damages for "unavoidable" side effects, § 300aa–22(b)(1). Considered in light of the Vaccine Act as a whole, § 22(b)(1)'s exemption from liability for unavoidably unsafe vaccines is just one part of a broader statutory scheme that re ects Congress' careful balance between providing ade quate compensation for vaccine-injured children and confer ring substantial bene ts on vaccine manufacturers to ensure a stable and predictable childhood vaccine supply.

The majority's decision today disturbs that careful balance based on a bare policy preference that it is better "to leave complex epidemiological judgments about vaccine design to the FDA and the National Vaccine Program rather than ju ries." *Ante*, at 239.[24] To be sure, reasonable minds can dis agree about the wisdom of having juries weigh the relative costs and bene ts of a particular vaccine design. But what ever the merits of the majority's policy preference, the deci sion to bar all design defect claims against vaccine manufac turers is one that Congress must make, not this Court.[25] By

[24] JUSTICE BREYER's separate concurrence is even more explicitly policy driven, re ecting his own preference for the "more expert judgment" of federal agencies over the "less expert" judgment of juries. *Ante*, at 247.

[25] Respondent notes that there are some 5,000 petitions alleging a causal link between certain vaccines and autism spectrum disorders that are cur rently pending in an omnibus proceeding in the Court of Federal Claims (Vaccine Court). Brief for Respondent 56–57. According to respondent, a ruling that § 22(b)(1) does not pre-empt design defect claims could un leash a "crushing wave" of tort litigation that would bankrupt vaccine manufacturers and deplete vaccine supply. *Id.*, at 28. This concern un

construing §22(b)(1) to pre-empt all design defect claims against vaccine manufacturers for covered vaccines, the majority's decision leaves a regulatory vacuum in which no one—neither the FDA nor any other federal agency, nor state and federal juries—ensures that vaccine manufacturers adequately take account of scientific and technological advancements. This concern is especially acute with respect to vaccines that have already been released and marketed to

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derlies many of the policy arguments in respondent's brief and appears to underlie the majority and concurring opinions in this case. In the absence of any empirical data, however, the prospect of an onslaught of autism-related tort litigation by claimants denied relief by the Vaccine Court seems wholly speculative. As an initial matter, the Special Masters in the autism cases have thus far uniformly rejected the alleged causal link between vaccines and autism. See Brief for American Academy of Pediatrics et al. as *Amici Curiae* 20–21, n. 4 (collecting cases). To be sure, those rulings do not necessarily mean that no such causal link exists, cf. Brief for United States as *Amicus Curiae* 29 (noting that injuries have been added to the Vaccine Injury Table for existing vaccines), or that claimants will not ultimately be able to prove such a link in a state tort action, particularly with the added tool of civil discovery. But these rulings do highlight the substantial hurdles to recovery a claimant faces. See *Schafer* v. *American Cyanamid Co.*, 20 F. 3d 1, 5 (CA1 1994) ("[A] petitioner to whom the Vaccine Court gives nothing may see no point in trying to overcome tort law's yet more serious obstacles to recovery"). Trial courts, moreover, have considerable experience in efficiently handling and disposing of meritless products liability claims, and decades of tort litigation (including for design defect) in the prescription-drug context have not led to shortages in prescription drugs. Despite the doomsday predictions of respondent and the various *amici* cited by the concurrence, *ante*, at 248–249, the possibility of a torrent of meritless lawsuits bankrupting manufacturers and causing vaccine shortages seems remote at best. More fundamentally, whatever the merits of these policy arguments, the issue in this case is what Congress has decided, and as to that question, the text, structure, and legislative history compel the conclusion that Congress intended to leave the courthouse doors open for children who have suffered severe injuries from defectively designed vaccines. The majority's policy-driven decision to the contrary usurps Congress' role and deprives such vaccine-injured children of a key remedy that Congress intended them to have.

the public. Manufacturers, given the lack of robust competition in the vaccine market, will often have little or no incentive to improve the designs of vaccines that are already generating significant profit margins. Nothing in the text, structure, or legislative history remotely suggests that Congress intended that result.

I respectfully dissent.

Syllabus

CSX TRANSPORTATION, INC. *v.* ALABAMA DEPARTMENT OF REVENUE ET AL.

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

No. 09–520. Argued November 10, 2010—Decided February 22, 2011

Petitioner (CSX) is an interstate rail carrier that operates, and pays taxes, in Alabama. The State imposes sales and use taxes on railroads when they purchase or consume diesel fuel, but exempts their main competitors—interstate motor and water carriers. CSX sued respondents, the Alabama Department of Revenue and its Commissioner (Alabama), claiming that this tax scheme discriminates against railroads in violation of the Railroad Revitalization and Regulatory Reform Act of 1976 (4–R Act or Act), which bars four forms of discriminatory taxation, 49 U. S. C. § 11501(b). Three of the delineated prohibitions deal with property taxes, §§ 11501(b)(1)–(3), and the fourth is a catch-all provision that forbids a State to "[i]mpose another tax that discriminates against a rail carrier," § 11501(b)(4). The District Court dismissed CSX's suit as not cognizable under the 4–R Act on the basis of this Court's decision in *Department of Revenue of Ore.* v. *ACF Industries, Inc.*, 510 U. S. 332, and the Eleventh Circuit af rmed.

Held: CSX may challenge Alabama's sales and use taxes under § 11501(b)(4). Pp. 283–297.

(a) CSX is challenging "another tax" within subsection (b)(4)'s plain meaning. The Act does not de ne "tax." Thus, this Court looks to the word's ordinary de nition, which is expansive. A State seeking to raise revenue may choose among multiple forms of taxation on property, income, transactions, or activities. "[A]nother tax" is thus best understood to encompass any tax a State might impose, on any asset or transaction, except the property taxes already addressed in subsections (b)(1)–(3). There is no reason to interpret subsection (b)(4) as applying only to the gross-receipts taxes that some States imposed in lieu of property taxes at the time of the Act's passage. Moreover, CSX's complaint, contrary to the Eleventh Circuit's apparent view, does protest Alabama's imposition of taxes on its fuel. The exemptions the State has given may play a central role in CSX's argument, but the complaint's essential subject remains the taxes imposed.

The key question thus becomes whether a tax might be said to "discriminate" against a railroad under subsection (b)(4) where the State has granted exemptions from the tax to other entities (here, the rail-

road's competitors). Because the statute does not de ne "discriminates," the Court again looks to the term's ordinary meaning, which is to fail to treat all persons equally when no reasonable distinction can be found between those favored and those not favored. To charge one group of taxpayers a 2% rate and another group a 4% rate, if the groups are the same in all relevant respects, is to discriminate against the latter. That discrimination continues if the favored group's rate goes down to 0%, which is all an exemption is. To say that such a tax does not "discriminate" is to adopt a de nition at odds with the word's natural meaning. This Court has repeatedly recognized that tax schemes with exemptions may be discriminatory. See, *e. g.*, *Davis* v. *Michigan Dept. of Treasury*, 489 U. S. 803. And even *ACF Industries*, on which the Eleventh Circuit heavily relied in dismissing CSX's suit, made clear that tax exemptions "could be a variant of tax discrimination." 510 U. S., at 343. In addition, the statute's prohibition of discrimination applies regardless of whether the favored entities are interstate or local. The distinctions drawn in the statute are not between interstate and local actors, as Alabama suggests, but between railroads and all other actors, whether interstate or local. Pp. 283–288.

(b) *ACF Industries* does not require a different result. There, the Court held that railroads could not contest property tax exemptions under subsection (b)(4), reasoning that it would be illogical to permit such a challenge when subsections (b)(1)–(3)—the § 11501 provisions speci cally addressing property taxes—permitted States to grant property tax exemptions. Such a reading would "subvert the statutory plan" and "contravene the 'elementary canon of construction that a statute should be interpreted so as not to render one part inoperative.'" 510 U. S., at 340. Contrary to Alabama's argument, this structural analysis does not apply here. Subsections (b)(1)–(3) speci cally allow property tax exemptions, but neither they nor any other provision of the Act speaks to non-property exemptions like those at issue here. Because Congress has expressed no intent to "allo[w] the States to grant" non-property exemptions, *id.*, at 343, reading subsection (b)(4) to encompass them poses no danger of "nullify[ing]" a congressional policy choice or otherwise "subvert[ing] the statutory plan," *id.*, at 340, 343. Alabama's other efforts to borrow from *ACF Industries*' analysis similarly fail. Also unavailing is Alabama's argument that, even if *ACF Industries*' reasoning is limited to property tax exemptions, its holding must extend to non-property tax exemptions in order to prevent inconsistent or anomalous results in the treatment of property and non-property taxes. Pp. 289–296.

Syllabus

350 Fed. Appx. 318, reversed and remanded.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, BREYER, ALITO, and SOTOMAYOR, JJ., joined. THOMAS, J., led a dissenting opinion, in which GINSBURG, J., joined, *post*, p. 297.

Carter G. Phillips argued the cause for petitioner. With him on the briefs were *James W. McBride*, *Stephen D. Good win*, *Ellen M. Fitzsimmons*, *Joel W. Pangborn*, and *Peter J. Shudtz*.

Melissa Arbus Sherry argued the cause for the United States as *amicus curiae* in support of petitioner. With her on the brief were *Acting Solicitor General Katyal*, *Assist ant Attorney General West*, *Deputy Solicitor General Stew art*, *Anthony J. Steinmeyer*, *Mark W. Pennak*, *Paul M. Geier*, and *Peter J. Plocki*.

Corey L. Maze, Solicitor General of Alabama, argued the cause for respondents. With him on the brief were *Troy King*, Attorney General, *Misty S. Fairbanks* and *William G. Parker, Jr.*, Assistant Attorneys General, and *Margaret Johnson McNeill*.*

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*Briefs of *amici curiae* urging reversal were led for the Association of American Railroads by *Betty Jo Christian*, *Timothy M. Walsh*, and *Janet Bartelmay;* and for the Tax Foundation by *James N. Markels*.

Briefs of *amici curiae* urging af rmance were led for the State of Washington et al. by *Robert M. McKenna*, Attorney General of Washington, *Cameron G. Comfort*, Senior Assistant Attorney General, and *Donald F. Cofer*, and by the Attorneys General for their respective States as follows: *Joseph R. Biden III* of Delaware, *Thurbert E. Baker* of Georgia, *Gregory F. Zoeller* of Indiana, *Tom Miller* of Iowa, *Douglas F. Gansler* of Maryland, *Michael A. Cox* of Michigan, *Lori Swanson* of Minnesota, *Steve Bullock* of Montana, *Catherine Cortez Masto* of Nevada, *Richard Cordray* of Ohio, *Patrick C. Lynch* of Rhode Island, *Marty J. Jackley* of South Dakota, *Robert E. Cooper, Jr.*, of Tennessee, *Mark L. Shurtleff* of Utah, *Kenneth T. Cuccinelli II* of Virginia, *Darrell V. McGraw, Jr.*, of West Virginia, *J. B. Van Hollen* of Wisconsin, and *Bruce A. Salzburg* of Wyoming; for the Alabama Education Association et al. by *Susan E. Kennedy*,

JUSTICE KAGAN delivered the opinion of the Court.

The Railroad Revitalization and Regulatory Reform Act of 1976 restricts the ability of state and local governments to levy discriminatory taxes on rail carriers. We consider here whether a railroad may invoke this statute to challenge sales and use taxes that apply to rail carriers (among others), but exempt their competitors in the transportation industry. We conclude that the railroad may do so.

I

A

Congress enacted the Railroad Revitalization and Regulatory Reform Act of 1976 (Act or 4–R Act) to "restore the nancial stability of the railway system of the United States," among other purposes. § 101(a), 90 Stat. 33. To help achieve this goal, Congress targeted state and local taxation schemes that discriminate against rail carriers. *Bur lington Northern R. Co.* v. *Oklahoma Tax Comm'n*, 481 U. S. 454, 457 (1987). The provision of the Act at issue here, now codi ed at 49 U. S. C. § 11501,[1] bars States and localities from engaging in four forms of discriminatory taxation. 90 Stat. 54.

Section 11501(b) describes the prohibited practices. It begins with three provisions addressed speci cally to prop-

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Kenneth L. Thomas, *Lee F. Armstrong*, *Michael Spearing*, *N. J. Cervera*, *Robert M. Hill, Jr.*, and *Jean Walker Tucker;* and for the American Trucking Associations, Inc., by *Robert S. Digges, Jr.*

Briefs of *amici curiae* were led for the Council on State Taxation by *Todd A. Lard*, *Douglas L. Lindholm*, and *Fredrick J. Nicely;* and for the Multistate Tax Commission by *Joe Huddleston* and *Shirley Sicilian.*

[1] This provision was originally codi ed at 49 U. S. C. § 26c (1976 ed.). In 1978, Congress recodi ed it at § 11503 (1976 ed., Supp. II), with slightly altered language but "without substantive change," § 3(a), 92 Stat. 1466. In 1995, Congress again recodi ed the section without substantive change, this time at 49 U. S. C. § 11501. This opinion refers to the statute's current text.

erty taxes; it concludes with a catch-all provision concerning other taxes. According to § 11501(b), States (or their subdivisions) "may not":

> "(1) Assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.
>
> "(2) Levy or collect a tax on an assessment that may not be made under paragraph (1) of this subsection.
>
> "(3) Levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.
>
> "(4) Impose another tax that discriminates against a rail carrier."

The following subsection confers jurisdiction on federal courts to "prevent a violation" of § 11501(b) notwithstanding the Tax Injunction Act, 28 U. S. C. § 1341, which ordinarily prohibits federal courts from enjoining the collection of state taxes when a remedy is available in state court. § 11501(c).[2]

B

Petitioner CSX Transportation, Inc. (CSX) is an interstate rail carrier that operates in Alabama and pays taxes there.

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[2] The first sentence of subsection (c) provides: "Notwithstanding section 1341 of title 28 . . . a district court of the United States has jurisdiction . . . to prevent a violation of subsection (b) of this section." The next sentence concerns the relief available for violations of §§ 11501(b)(1) and (2): "Relief may be granted under this subsection only if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction."

Alabama imposes a sales tax of 4% on the gross receipts of retail businesses, Ala. Code § 40–23–2(1) (2010 Cum. Supp.), and a use tax of 4% on the storage, use, or consumption of tangible personal property, § 40–23–61(a) (2003). Railroads pay these taxes when they purchase or consume diesel fuel. But railroads' main competitors—interstate motor and water carriers—are generally exempt from paying sales and use taxes on their fuel (although fuel for motor carriers is subject to a separate excise tax).[3]

Alleging that Alabama's tax scheme discriminates against railroads in violation of § 11501(b)(4) of the 4–R Act, CSX sued respondents, the Alabama Department of Revenue and its Commissioner (Alabama or State), in Federal District Court. In particular, CSX complained that the State could not impose sales and use taxes on railroads' purchase and consumption of diesel fuel while exempting motor and water carriers from those taxes. App. 22 (Complaint ¶ 26).

The District Court dismissed CSX's suit as not cognizable under the 4–R Act, and the United States Court of Appeals for the Eleventh Circuit af rmed in a brief *per curiam* decision. 350 Fed. Appx. 318 (2009). The Eleventh Circuit rested on its earlier decision in *Norfolk Southern R. Co.* v. *Alabama Dept. of Revenue*, 550 F. 3d 1306 (2008), which involved a nearly identical challenge to the application of Alabama's sales and use taxes.

In *Norfolk Southern*, the Eleventh Circuit rejected the plaintiff railroad's challenge, principally in reliance on this Court's decision in *Department of Revenue of Ore.* v. *ACF*

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[3] State law provides that motor carriers need not pay sales or use taxes on diesel fuel so long as they pay a different excise tax of $0.19 per gallon. Ala. Code § 40–17–2(1) (2003) (primary tax of $0.13 per gallon); § 40–17–220(e) (2010 Cum. Supp.) (additional tax of $0.06 per gallon). State law wholly exempts interstate water carriers from sales and use taxes on diesel fuel. § 40–23–4(a)(10); § 40–23–62(12). Nor do these water carriers pay any other tax on the fuel they purchase or consume. Brief for Respondents 16.

Industries, Inc., 510 U. S. 332 (1994). In that case, we held that a railroad could not invoke § 11501(b)(4) to challenge a generally applicable property tax on the basis that certain non-railroad property was exempt from the tax. *Id.*, at 335. The Eleventh Circuit recognized that the case before it involved sales and use taxes—not property taxes, which the statutory scheme separately addresses. *Norfolk Southern*, 550 F. 3d, at 1314. The court concluded, however, that this difference was immaterial, and accordingly held that a railroad could not object to Alabama's sales and use taxes simply because the State provides exemptions from them. *Id.*, at 1316.

CSX petitioned for a writ of certiorari, arguing that the Eleventh Circuit had misunderstood *ACF Industries* and noting a split of authority concerning whether railroads may bring a challenge under § 11501(b)(4) to non-property taxes from which their competitors are exempt.[4] We granted certiorari, 560 U. S. 964 (2010), and now reverse.

II

We begin, as in any case of statutory interpretation, with the language of the statute. *Hardt* v. *Reliance Standard Life Ins. Co.*, 560 U. S. 242, 251 (2010). Section 11501(b)(4) provides that a State may not "[i]mpose another tax that discriminates against a rail carrier." CSX wishes to bring an action under this provision because rail carriers, but not motor or water carriers, must pay Alabama's sales and use taxes on diesel fuel. To determine whether this suit may go

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[4] Compare *Norfolk Southern R. Co.* v. *Alabama Dept. of Revenue*, 550 F. 3d 1306, 1316 (CA11 2008), and *Atchison, T. & S. F. R. Co.* v. *Arizona*, 78 F. 3d 438, 443 (CA9 1996) (rejecting a railroad's challenge to a use tax that exempted motor carriers), with *Burlington N., S. F. R. Co.* v. *Loh man*, 193 F. 3d 984, 986 (CA8 1999) (entertaining a challenge to a sales and use tax that exempted rail carriers' competitors), *Burlington Northern R. Co.* v. *Commissioner of Revenue*, 606 N. W. 2d 54, 58–59 (Minn. 2000) (same), and *Atchison, T. & S. F. R. Co.* v. *Bair*, 338 N. W. 2d 338, 348 (Iowa 1983) (same).

forward, we must therefore answer two questions. Is CSX challenging "another tax" within the meaning of the statute? And, if so, might that tax "discriminate" against rail carriers by exempting their competitors? [5]

An excise tax, like Alabama's sales and use tax, is "another tax" under subsection (b)(4).[6] The 4–R Act does not de ne "tax"; nor does the statute otherwise place any matters within, or exclude any matters from, the term's ambit. In these circumstances, we look to the word's ordinary de nition, *Asgrow Seed Co.* v. *Winterboer*, 513 U. S. 179, 187 (1995), and we note what taxpayers have long since discovered—that the meaning of "tax" is expansive. A State (or other

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[5] We consider here only questions relating to whether CSX can bring a claim for discrimination based on the State's pattern of tax exemptions. We do not consider any issues concerning whether these exemptions actually discriminate against CSX. See *infra*, at 288, n. 8, and 297. Alabama has raised two such issues in this Court. First, Alabama contends that in deciding CSX's claim, a federal court must consider not only the speci c taxes challenged, but also the broader tax scheme. Brief for Respondents 58–60. Second, the State argues that the court must compare the taxation of CSX not merely to direct competitors but to other commercial entities as well. *Id.*, at 48, n. 7. Most of the dissenting opinion is devoted to supporting the State's argument on this second question. But we leave these and all other issues relating to whether Alabama actually has discriminated against CSX to the trial court on remand to address as and when it wishes. No court in this case has previously considered these questions, and the parties' briefs in this Court have only sketchily addressed them. In addition, the parties dispute whether Alabama waived its claim on the second issue by initially agreeing that "the comparison class consists of motor carriers and water carriers," App. to Pet. for Cert. 12a (internal quotation marks omitted), and proceeding with the litigation on that basis. We think this question of waiver is also best considered by the trial court.

[6] As originally enacted, the provision that is now 49 U. S. C. § 11501(b)(4) prohibited the imposition of "any other tax" that discriminates against a railroad. § 26c (1976 ed.). The substitution of "another tax" occurred when Congress rst recodi ed the Act. In line with Congress's statement that revisions made at that time should not be construed as having substantive effect, see n. 1, *supra*, we treat the two terms as synonymous.

governmental entity) seeking to raise revenue may choose among multiple forms of taxation on property, income, transactions, or activities. "[A]nother tax," as used in subsection (b)(4), is best understood to refer to all of these—more precisely, to encompass any form of tax a State might impose, on any asset or transaction, except the taxes on property previously addressed in subsections (b)(1)–(3). See *Burlington Northern R. Co.* v. *Superior*, 932 F. 2d 1185, 1186 (CA7 1991) (Subsection (b)(4) includes "an income tax, a gross-receipts tax, a use tax, an occupation tax . . . —whatever"). The phrase "another tax" is a catch-all.

In particular, we see no reason to interpret subsection (b)(4) as applying only to the gross-receipts taxes—known as "in lieu" taxes—that some States imposed instead of property taxes at the time of the Act's passage. See Brief for Respondents 53–55; Brief for State of Washington et al. as *Amici Curiae* 20–22. The argument in favor of this construction relies on the House Report concerning the bill, which described subsection (b)(4) as prohibiting "the imposition of . . . the so-called 'in lieu tax.'" H. R. Rep. No. 94–725, p. 77 (1975). But the Conference Report on the nal bill abandoned the House Report's narrowing language and described the subsection as it was written—as prohibiting, without limitation, "the imposition of any other tax which results in the discriminatory treatment of any" railroad. S. Conf. Rep. No. 94–595, pp. 165–166 (1976); accord, S. Rep. No. 94–499, p. 65 (1975). And the statutory language is the real crux of the matter: Subsection (b)(4) speaks both clearly and broadly, and a legislative report misdescribing the provision cannot succeed in altering it.[7]

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[7] Alabama also invokes the remedial provision of subsection (c), n. 2, *supra*, to urge that we read § 11501 as effectively limited to property or "in lieu" taxes. According to Alabama, that provision entitles federal courts to grant relief only when States overvalue railroad property under subsections (b)(1) and (b)(2): Federal courts, the State avers, "have no power to enjoin the granting of tax exemptions as a violation of subsection

Nor do we agree with the Eleventh Circuit's apparent view that CSX does not challenge "another tax" because its complaint relies on the exemptions the State has given. See *Norfolk Southern*, 550 F. 3d, at 1315 ("The language of section (b)(4) prohibits a discriminatory 'tax' not a discriminatory tax exemption"); Brief for American Trucking Associations, Inc., as *Amicus Curiae* 9. What the complaint protests is Alabama's imposition of taxes on the fuel CSX uses; what the complaint requests is that Alabama cease to collect those taxes from CSX. App. 23. The exemptions, no doubt, play a central role in CSX's argument: They demonstrate, in CSX's view, that the State's sales and use taxes discriminate against railroads. See *id.*, at 22, ¶¶ 24–26. But the essential subject of the complaint remains the taxes Alabama levies on CSX.

The key question thus becomes whether a tax might be said to "discriminate" against a railroad under subsection (b)(4) because the State has granted exemptions from the tax to other entities (here, the railroad's competitors). The statute does not de ne "discriminates," and so we again look to the ordinary meaning of the word. See *supra*, at 284. "Discrimination" is the "failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favored." Black's Law Dictionary 534 (9th ed. 2009); accord, *id.*, at 420 (5th ed. 1979); see also Webster's Third New International Dictionary 648 (1976) ("discriminates" means "to make a difference in treatment or

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(b)(4), or, apparently [to remedy] *any* violation of subsection (b)(4)." Brief for Respondents 37. But that interpretation of subsection (c)'s remedial provision cannot be right, because it would nullify subsection (b)(4) (and, for that matter, subsection (b)(3) as well). We understand subsection (c)'s remedial provision neither as limiting the broad grant of jurisdiction to federal courts to prevent violations of subsection (b) nor as otherwise restricting the scope of that subsection. The remedial provision simply limits the availability of relief when a State discriminates in assessing the value of railroad property, as proscribed by subsections (b)(1) and (b)(2). That kind of discrimination is not at issue here.

favor on a class or categorical basis in disregard of individual merit"). To charge one group of taxpayers a 2% rate and another group a 4% rate, if the groups are the same in all relevant respects, is to discriminate against the latter. That discrimination continues (indeed, it increases) if the State takes the favored group's rate down to 0%. And that is all an exemption is. See *West Lynn Creamery, Inc.* v. *Healy*, 512 U. S. 186, 210–211 (1994) (SCALIA, J., concurring in judgment) (noting that an " 'exemption' from . . . a 'neutral' tax" for favored persons "is no different in principle" than "a discriminatory tax . . . imposing a higher liability" on disfavored persons). To say that such a tax (with such an exemption) does not "discriminate"—assuming the groups are similarly situated and there is no justi cation for the difference in treatment—is to adopt a de nition of the term at odds with its natural meaning.

In line with this understanding, our decisions have repeatedly recognized that tax schemes with exemptions may be discriminatory. In *Davis* v. *Michigan Dept. of Treasury*, 489 U. S. 803 (1989), for example, we reviewed a state income tax provision that exempted retirement bene ts given by the State, but not those paid by the Federal Government. We held that the tax "discriminate[d]" against federal employees under 4 U. S. C. § 111, which serves to protect those employees from discriminatory state taxation. Similarly, our dormant Commerce Clause cases have often held that tax exemptions given to local businesses discriminate against interstate actors. See, *e. g.*, *Bacchus Imports, Ltd.* v. *Dias*, 468 U. S. 263, 268–269 (1984) (holding that a state excise tax on alcohol "discriminate[d]" against interstate businesses because of exemptions granted to local producers); *Camps Newfound/Owatonna, Inc.* v. *Town of Harrison*, 520 U. S. 564, 588–589 (1997) (invalidating as "discriminatory" a state property tax that exempted organizations operating for the bene t of residents, but not organizations aimed at nonresidents). And even our decision in *ACF Industries*, on which

the Eleventh Circuit relied in dismissing CSX's suit, made clear that tax exemptions "could be a variant of tax discrimination." 510 U. S., at 343.

Nor does the 4–R Act limit the prohibited discrimination to state tax schemes that unjusti ably exempt local actors, as opposed to interstate entities. Alabama argues for this result, claiming that § 11501(b) is designed "to protect interstate carriers against discrimination *vis-à-vis* local businesses." Brief for Respondents 29. But the text of § 11501(b) tells a different story. Consistent with the Act's purpose of restoring the nancial stability of railroads (not of interstate carriers generally), *supra*, at 280, each of subsection (b)'s provisions proscribes taxes that specially burden a *rail carrier's* property or otherwise discriminate against a *rail carrier*. And not a single provision of the Act (including the references in subsections (b)(1)–(3) to "commercial and industrial property") distinguishes between local and non-local taxpayers who receive favorable tax treatment. The distinctions drawn in § 11501(b) are not between interstate and local actors, as the State contends, but rather between railroads and other actors, whether interstate or local. Accordingly, a state excise tax that applies to railroads but exempts their interstate competitors is subject to challenge under subsection (b)(4) as a "tax that discriminates against a rail carrier."[8]

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[8] This conclusion does not, as Alabama and the dissent contend, turn railroads into "most-favored-taxpayers," entitled to any exemption (or other tax break) that a State gives to another entity. See Brief for Respondents 23; *post*, at 305 (opinion of THOMAS, J.). We hold only that § 11501(b)(4) enables a railroad to challenge an excise or other nonproperty tax as discriminatory on the basis of the tax scheme's exemptions—as the dissent apparently agrees, *post*, at 297. Whether the railroad will prevail—that is, whether it can prove the alleged discrimination—depends on whether the State offers a suf cient justi cation for declining to provide the exemption at issue to rail carriers. See *supra*, at 286; Brief for United States as *Amicus Curiae* 25–26; *Richmond, F. & P. R. Co.* v. *Department of Taxation of Va.*, 762 F. 2d 375, 380–381, and

III

As against the plain language of subsection (b)(4), Alabama offers two arguments based on our decision in *ACF Industries*. The first claim, which the Eleventh Circuit accepted, rests on the reasoning we adopted in *ACF Industries:* We concluded there that railroads could not challenge property tax exemptions under subsection (b)(4), and Alabama asserts that the same analysis applies to excise (and other non-property) tax exemptions. The second contention focuses on alleged problems that would emerge in the application of § 11501(b) if the rule of *ACF Industries* did not govern all tax exemptions. On this view, even if *ACF Industries*' reasoning is irrelevant to cases involving excise taxes, its holding must extend to those cases to prevent inconsistent or

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n. 4 (CA4 1985). So if, to use the dissent's example, a railroad challenged a scheme in which "every person and business in the State of Alabama paid a $1 annual tax, and *one person* was exempt," *post,* at 305, for some reason having nothing to do with railroads, we presume the suit would be promptly dismissed. Nothing in this application of § 11501(b)(4) offers a "windfall" to railroads. *Ibid.*

The dissent argues in addition that a State should prevail against any claim of discrimination brought under subsection (b)(4) if it can demonstrate that a tax does not "target" or "single out" a railroad, *post,* at 297, 300; that showing, without more, would justify the tax (although the dissent declines to say just what it means to "target," *post,* at 303, n. 3). This argument primarily concerns the question whether Alabama's tax scheme in fact discriminates under subsection (b)(4)—a question we have explained is inappropriate to address, see n. 5, *supra.* We note, however, that the dissent's argument about subsection (b)(4) rests entirely on the premise that subsections (b)(1)–(3) prohibit only property taxes that "target" or "single out" railroads, see *post,* at 300; so, the dissent would say, a State may impose a 4% property tax on railroads (assuming some unspecified number of other taxpayers also pay that rate) while levying only a 2% property tax on railroad competitors. But we have never decided, in *ACF Industries* or any other case, whether subsections (b)(1)–(3) should be interpreted in this manner. And even accepting the dissent's unexplained premise, a serious question would remain about whether to transplant this construction of subsections (b)(1)–(3) to subsection (b)(4)'s very different terrain, see *infra,* at 294–296.

anomalous results. We reject each of these arguments. We stand foursquare behind our decision in *ACF Industries*, but we will not extend it in the way the State wishes.

A

In *ACF Industries*, we considered whether a railroad could sue a State under subsection (b)(4) for taxing railroad property while exempting certain other commercial property. We held that the railroad could not do so. We noted that the language of subsection (b)(4), when viewed in isolation, could be read to allow such a challenge. But we reasoned that the structure of § 11501 required the opposite result. 510 U. S., at 343. The Eleventh Circuit considered *ACF Industries* "determinative" of the question here, *Norfolk Southern*, 550 F. 3d, at 1313, and Alabama agrees, Brief for Respondents 18. We think they misread that decision.

We began our analysis in *ACF Industries* by explaining that railroads could not challenge property tax exemptions under subsections (b)(1)–(3)—the provisions of § 11501 specifically addressing property taxes. As noted earlier, subsections (b)(1)–(3) prohibit a State from imposing higher property tax rates or assessment ratios on "rail transportation property" than on "other commercial and industrial property." The statute defines "commercial and industrial property" as including only "property . . . subject to a property tax levy." § 11501(a)(4). We interpreted that phrase to mean "property that is taxed," rather than property that is potentially taxable. 510 U. S., at 341–342. As a result, we determined that exempt (*i. e.*, non-taxed) property fell outside the category of "other commercial and industrial property" against which the taxation of railroad property is measured. *Ibid.* The conclusion followed: Subsections (b)(1)–(3) permitted States to impose property taxes on railroads while exempting other entities. *Ibid.*

And because that was so, we stated, still another conclusion followed: Subsection (b)(4)'s prohibition on discrimina-

tion likewise could not encompass property tax exemptions. *Id.*, at 343. We viewed this holding as a matter of simple deduction: "It would be illogical to conclude that Congress, having allowed the States to grant property tax exemptions in subsections (b)(1)–(3), would turn around and nullify its own choice in subsection (b)(4)." *Ibid.* Or stated otherwise: "[R]eading subsection (b)(4) to prohibit what" other parts of the statute were "designed to allow" would "subvert the statutory plan" and "contravene the 'elementary canon of construction that a statute should be interpreted so as not to render one part inoperative.' " *Id.*, at 340. The structure of § 11501 thus compelled our conclusion that property tax exemptions—even if "a variant of tax discrimination," *id.*, at 343—fell outside subsection (b)(4)'s reach.

But this structural analysis—the core of *ACF Industries*—has no bearing on the question here. Subsections (b)(1)–(3) speci cally address—and allow—property tax exemptions. But neither those subsections nor any other provision of the 4–R Act speaks to *non*-property tax exemptions like those at issue in this case. Congress has expressed no intent to "allo[w] the States to grant" these exemptions. *Ibid.* Reading subsection (b)(4) as written—to encompass non-property tax exemptions—therefore poses no danger of "nullify[ing]" a congressional policy choice or otherwise "subvert[ing] the statutory plan." *Id.*, at 340, 343. To the contrary: Giving subsection (b)(4) something other than its ordinary meaning, absent any structural reason to do so, would itself contravene the expressed will of Congress.

Implicitly acknowledging that *ACF Industries*' central theory is irrelevant here, Alabama focuses on what that decision called "[o]ther considerations reinforc[ing]" its structural analysis. *Id.*, at 343. Most notably, Alabama underscores the following sentence from *ACF Industries:* "Given the prevalence of property tax exemptions when Congress enacted the 4–R Act, [§ 11501's] silence on the subject—in light of the explicit prohibition of tax rate and assessment

ratio discrimination—re ects a determination to permit the States to leave their exemptions in place." *Id.*, at 344. Alabama asserts that this statement "holds just as true" for sales and use taxes. Brief for Respondents 41.

That claim rings hollow. To be sure, *ACF Industries* noted that Congress had declined to speak "with any degree of particularity to" the permissibility of property tax exemptions, even though States often granted them. 510 U. S., at 343. But we thought that fact relevant only because Congress *had* spoken with particularity in proscribing other forms of discriminatory property taxes. The very sentence Alabama highlights makes our reasoning clear: Congress's silence as to the practice of granting property tax exemptions re ected its acquiescence in that practice "*in light of* the explicit prohibition [in subsections (b)(1)–(3)] of [property] tax rate and assessment ratio discrimination." *Id.*, at 344 (emphasis added). If that explicit prohibition had not existed—if § 11501(b) had consisted only of subsection (b)(4)'s broad ban on tax discrimination—we could not have gleaned what we did from congressional silence. After all, the very purpose of a catch-all provision like subsection (b)(4) is to avoid the necessity of listing each matter (here, each kind of tax discrimination) falling within it. And with respect to *non*-property taxes (like Alabama's sales and use taxes), subsection (b)(4) is all there is. So here again, our analysis in *ACF Industries* does not apply because it rested on subsections (b)(1)–(3)—that is, on the highly reticulated scheme in the 4–R Act relating solely to property taxes.

Alabama also emphasizes our statement in *ACF Indus tries* that "'[p]rinciples of federalism'" supported our holding, Brief for Respondents 41–43 (quoting 510 U. S., at 345), but this nal effort to borrow from that decision's analysis similarly fails. We indeed recognized in *ACF Industries* that the 4–R Act limits the traditional taxing power of the States. Because that is so, we expressed "hesitan[ce] to extend the statute beyond its evident scope." 510 U. S., at 345.

But here, for all the reasons already noted, we are not "extend[ing] the statute"; we are merely giving effect to its clear meaning. To reiterate: The 4–R Act distinguishes between property taxes and other taxes. Congress expressed its intent to insulate property tax exemptions from challenge; against that background, *ACF Industries* stated that permitting such suits would intrude on the States' rightful authority. By contrast, Congress drafted § 11501 to enable railroads to contest all other tax exemptions; and when Congress speaks in such preemptive terms, its decision must govern. Principles of federalism cannot narrow § 11501's clear scope. See, *e. g.*, *CSX Transp., Inc.* v. *Georgia State Bd. of Equalization*, 552 U. S. 9, 20 (2007) (rejecting the idea that federalism principles preclude challenges to state valuation methodologies when § 11501 "clearly authorized" such actions). Nothing in *ACF Industries* suggested otherwise.

B

Alabama additionally makes a subtler argument involving *ACF Industries*. Given that decision, Alabama contends, a ruling in CSX's favor here would create troubling inconsistencies. Alabama claims that subsection (b)(4)'s singular prohibition on "discriminat[ion]" would then mean one thing for property taxes (according to *ACF Industries*) and another for non-property taxes, even though nothing in the statute supports "morphing definitions." Brief for Respondents 32. And still worse than the difference in meaning would be the difference in result: A ruling for CSX, Alabama argues, would give railroads more protection against non-property taxes than against property taxes, even though no good reason exists for this distinction.

Alabama's one-word-two-meanings argument collapses because it again rests on a misunderstanding of *ACF Industries*. That decision did not define "discriminat[e]" or say that a tax exemption could not fall within that term. Quite to the contrary: As noted earlier, *ACF Industries* frankly

acknowledged that tax exemptions, including property tax exemptions, "could be a variant of tax discrimination." 510 U. S., at 343; *supra*, at 287–288. We held that property tax exemptions were immune from challenge under subsection (b)(4) for structural, rather than linguistic, reasons. Even assuming these exemptions "discriminate[d]," they did so in a way that the speci c provisions of §§ 11501(b)(1)–(3) allow, and accordingly § 11501(b)(4)'s prohibition could not include them. That reasoning, once more, does not apply here, because subsections (b)(1)–(3) do not permit—indeed, in no way address—non-property tax exemptions. We therefore do not adopt a new de nition of "discriminate" in this case; in the context of the 4–R Act, that word has, and has always had, just one meaning.

What remains is Alabama's complaint that a ruling in CSX's favor, when combined with our decision in *ACF In dustries*, will result in divergent treatment of property and non-property taxes. At times, Alabama dresses up this objection in Latin: It contends that the canon of *ejusdem gene ris*, which "limits general terms [that] follow speci c ones to matters similar to those speci ed," *Gooch* v. *United States*, 297 U. S. 124, 128 (1936), has a role to play in interpreting § 11501(b). More particularly, Alabama contends that this canon supports reading into § 11501(b)(4) every limitation contained in §§ 11501(b)(1)–(3), including the exclusion of tax exemptions from the class of state actions subject to challenge. See Brief for Respondents 26–27. That interpretive move, Alabama rightly notes, would ensure equal treatment of property tax and non-property tax exemptions.

But we think *ejusdem generis* is not relevant here. As an initial matter, subsection (b)(4), "[a]lthough something of a catchall, . . . is *not* a general or collective term following a list of speci c items to which a particular statutory command is applicable (*e. g.*, ' shing rods, nets, hooks, bobbers, sinkers, and other equipment')." *United States* v. *Aguilar*, 515 U. S. 593, 615 (1995) (SCALIA, J., concurring in part and dissenting

in part). Rather, that subsection is "one of . . . several distinct and independent prohibitions." *Ibid.* Related to this structural point is a functional one. We typically use *ejusdem generis* to ensure that a general word will not render specific words meaningless. *E. g., Circuit City Stores, Inc.* v. *Adams*, 532 U. S. 105, 114–115 (2001); see 2A N. Singer, Sutherland on Statutes and Statutory Construction § 47:17 (7th ed. 2007). But that concern is absent here. Reading subsection (b)(4) to cover non-property tax exemptions will not deprive subsections (b)(1)–(3) of effect, because those subsections are addressed only to property taxes. A canon meaning literally "of the same kind" has no application to provisions directed toward dissimilar subject matter.

The better version of Alabama's claim reads entirely in English; it is simply that distinguishing between property tax exemptions and other tax exemptions makes not a whit of sense. We are not much inclined to disagree. Neither CSX nor the United States as *amicus curiae* has offered a satisfying reason for why Congress drew this line—why in §§ 11501(b)(1)–(3) it barred challenges based on property tax exemptions, but then turned around in § 11501(b)(4) to allow challenges based on, say, excise tax exemptions. See Tr. of Oral Arg. 4–5, 24–25. CSX, for example, has not presented any evidence that different tax exemptions posed different levels of threat to railroads' financial stability. So even if Congress had a good reason for distinguishing between property and non-property tax exemptions, we acknowledge that it eludes us.

But this admission does not take us far in Alabama's direction. Even if the 4–R Act were ambiguous, we doubt we would interpret subsection (b)(4) to replicate each facet of subsections (b)(1)–(3). Treating property tax exemptions and other tax exemptions equivalently might make sense, as Alabama argues. But so too might allowing railroads to challenge all taxes (property or non-property) that contain exemptions. After all, as we noted earlier, tax exemptions

are an obvious form of tax discrimination. See *supra*, at 287–288. It is hardly self-evident why Congress would prohibit a State from charging a railroad a 4% tax and a competitor a 2% tax, but allow the State to charge the railroad a 4% tax and the competitor nothing. The latter situation would frustrate the purposes of the Act even more than the former. In *ACF Industries*, we accepted that anomaly because the terms and structure of the Act demanded that we do so. But we could say no more in favor of the result than that it was "not so bizarre that Congress could not have intended it." 510 U. S., at 347 (internal quotation marks omitted). That was not a glowing recommendation, and we see no reason today to view the matter differently. Accordingly, even assuming that statutory ambiguity permitted us to do so, we would hesitate to extend the distinction between tax exemptions and differential tax rates in order to avoid a distinction between property and non-property taxes. That would seem a poor trade of statutory anomalies.

In any event, and more importantly, the choice is not ours to make. Congress wrote the statute it wrote, and that statute draws a sharp line between property taxes and other taxes. Congress drafted §§ 11501(b)(1)–(3) to exclude tax exemptions from the sphere of prohibited property tax discrimination. But it drafted § 11501(b)(4) more broadly, without any of the prior subsections' limitations, to proscribe other "tax[es] that discriminat[e]," including through the use of exemptions. That congressional election settles this case. Alabama's preference for symmetry cannot trump an asymmetrical statute. And its preference for the greatest possible latitude to levy taxes cannot trump Congress's decision to restrict discriminatory taxation of rail carriers.

IV

Our decision in this case is limited. We hold that CSX may challenge Alabama's sales and use taxes as "tax[es] that discriminat[e] against . . . rail carrier[s]" under § 11501(b)(4).

We do not address whether CSX should prevail in that challenge—whether, that is, Alabama's taxes in fact discriminate against railroads by exempting interstate motor and water carriers. Alabama argues, in support of barring CSX's challenge at the outset, that this inquiry into discrimination may pose dif culties. Brief for Respondents 35–37. We cannot deny that assertion, but neither can we respond to it by precluding CSX's claim. Discrimination cases sometimes do raise knotty questions about whether and when dissimilar treatment is adequately justi ed. In the context of the 4–R Act, those hard calls can arise when States charge different tax rates to different entities in a practice the statute speci cally subjects to challenge. See § 11501(b)(3). So too, dif cult issues can emerge when, as here, States provide certain entities with tax exemptions. In either case, Congress has directed the federal courts to review a railroad's challenge; and in either case, we would out the congressional command were we to declare the matter beyond us.

For the reasons stated, we reverse the judgment of the Eleventh Circuit and remand the case for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, with whom JUSTICE GINSBURG joins, dissenting.

I agree with the Court that Alabama's sales and use taxes are "another tax" within the meaning of 49 U. S. C. § 11501(b)(4) and that a scheme of tax exemptions is capable of making a tax discriminatory. *Ante*, at 284–287. As a general matter, therefore, I agree that Alabama's sales and use taxes could potentially violate subsection (b)(4), and would do so if their exemptions "discriminate[d] against a rail carrier." § 11501(b)(4). The majority's holding stops there, see *ante*, at 288–289, n. 8, but I would go on.

I would hold that, to violate § 11501(b)(4), a tax exemption scheme must target or single out railroads by comparison

to general commercial and industrial taxpayers. Although parts of the majority's discussion appear to question this standard, see *ante*, at 286–288, the limited holding does not foreclose it. Because CSX cannot prove facts that would satisfy that standard in this case, I would af rm.

I

In my view, "another tax that discriminates against a rail carrier" in § 11501(b)(4) means a tax—or tax exemption scheme—that targets or singles out railroads as compared to other commercial and industrial taxpayers. That reading settles the ambiguity in the word "discriminates" by reference to the rest of the statute and gives subsection (b)(4) a reach consistent with the problem the statute addressed.

A

"Discriminates," standing alone, is a exible word. Compare, *e. g.*, *Clackamas Gastroenterology Associates, P. C.* v. *Wells*, 538 U. S. 440, 446 (2003) ("[T]he statutory purpose of [the Americans with Disabilities Act of 1990 is] ridding the Nation of the evil of discrimination"), with *Davis* v. *Bande mer*, 478 U. S. 109, 132 (1986) (plurality opinion) ("[U]nconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' in uence"); and *United Haulers Assn., Inc.* v. *Oneida-Herkimer Solid Waste Management Authority*, 550 U. S. 330, 338 (2007) ("In this context, 'discrimination' simply means differential treatment of in-state and out-of-state economic interests that bene ts the former and burdens the latter" (some internal quotation marks omitted)).

Even though "discriminate" has a general legal meaning relating to differential treatment, its precise contours still depend on its context. See *Guardians Assn.* v. *Civil Serv. Comm'n of New York City*, 463 U. S. 582, 592 (1983) (opinion of White, J.) ("The language of Title VI on its face is ambigu-

ous; the word 'discrimination' is inherently so"); *Regents of Univ. of Cal.* v. *Bakke*, 438 U. S. 265, 284 (1978) (opinion of Powell, J.) ("The concept of 'discrimination' . . . is susceptible of varying interpretations"). Here, the word "discriminates" in subsection (b)(4) is ambiguous as to the appropriate comparison class. *Burlington Northern R. Co.* v. *Commissioner of Revenue*, 509 N. W. 2d 551, 553 (Minn. 1993) ("To be discriminatory, a tax must be discriminatory as compared to someone else"). It is also ambiguous as to what type of difference is required to violate the statute—*e. g.*, any distinction, singling out, or something in between.

Therefore, I would use the context to resolve the meaning of the word as it is used in subsection (b)(4). See *Robinson* v. *Shell Oil Co.*, 519 U. S. 337, 341 (1997) (statutory interpretation focuses on "the language itself, the speci c context in which that language is used, and the broader context of the statute as a whole"). We did precisely that in *Department of Revenue of Ore.* v. *ACF Industries, Inc.*, 510 U. S. 332 (1994), where we similarly faced a question about the meaning of subsection (b)(4). In that case, our structural analysis of § 11501(b) was "central to the interpretation of subsection (b)(4)." *Id.*, at 340.

1

The structure of § 11501(b) is straightforward. Subsections (b)(1) through (3) instruct that States may not assess railroad property at "a higher ratio to the true market value . . . than . . . other commercial and industrial property," 49 U. S. C. § 11501(b)(1), collect taxes based on those in ated assessments, § 11501(b)(2), or set property tax rates for railroad property higher than that "applicable to commercial and industrial property" in the same assessment jurisdiction, § 11501(b)(3). Subsection (b)(4) then forbids "[i]mpos[ing] another tax that discriminates against a rail carrier."

I would look to subsections (b)(1) through (3) to determine the meaning of "discriminates" in (b)(4). As many lower courts have correctly recognized, subsection (b)(4) is a re-

sidual clause, naturally appurtenant to subsections (b)(1) through (3).[1] Moreover, the phrase "another tax that discriminates" in subsection (b)(4) suggests that the previous subsections all describe taxes that "discriminate" in a manner similar to that forbidden by subsection (b)(4). See *Washington State Dept. of Social and Health Servs.* v. *Guardianship Estate of Keffeler*, 537 U. S. 371, 384 (2003) (reading the phrase "other legal process" restrictively because "where general words follow speci c words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding speci c words" (internal quotation marks and brackets omitted)).

Subsections (b)(1) through (3) each prohibit particular types of state taxes that target or single out railroad property for less favorable tax treatment than other commercial and industrial property. First, the "discriminat[ion]" addressed in subsections (b)(1) through (3) can only be described as taxes that target or single out railroad property. Those subsections speci cally concern taxes that affect railroad property differently from the way they affect a larger class of comparative taxpayers' property. See §§ 11501(b)(1)–(3); cf. *ante*, at 288 ("[E]ach of subsection (b)'s provisions proscribes taxes that specially burden a rail carrier's property or otherwise discriminate against a rail carrier" (emphasis deleted)). Second, each subsection refers to the same comparison class—other "commercial and industrial property." §§ 11501(b)(1)–(3).

I think it follows that, under subsection (b)(4), a tax "discriminates against a rail carrier" if it similarly targets railroads for tax treatment less favorable than other commercial and industrial taxpayers. As we found in *ACF Industries*,

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[1] See, *e. g.*, *Kansas City Southern R. Co.* v. *McNamara*, 817 F. 2d 368, 373–374 (CA5 1987); *Burlington Northern R. Co.* v. *Superior*, 932 F. 2d 1185, 1186 (CA7 1991); *Alabama Great Southern R. Co.* v. *Eagerton*, 663 F. 2d 1036, 1041 (CA11 1981).

the structure of the statute provides a light by which to navigate the meaning of subsection (b)(4).

2

The background of § 11501(b) also supports this understanding of subsection (b)(4). In previous cases, we have identi ed the problem that made subsection (b) necessary. At the time the Railroad Revitalization and Regulatory Reform Act was enacted, it was clear that "railroads '"are easy prey for State and local tax assessors" in that they are "nonvoting, often nonresident, targets for local taxation," who cannot easily remove themselves from the locality.'" *ACF Industries*, *supra*, at 336 (quoting *Western Air Lines, Inc.* v. *Board of Equalization of S. D.*, 480 U. S. 123, 131 (1987), in turn quoting S. Rep. No. 91–630, p. 3 (1969)). The "temptation to excessively tax nonvoting, nonresident businesses . . . made federal legislation in this area necessary." *Western Air Lines*, *supra*, at 131; see also *Burlington Northern R. Co.* v. *Oklahoma Tax Comm'n*, 481 U. S. 454, 457 (1987) (noting that "[a]fter an extended period of congressional investigation, Congress concluded that 'railroads are over-taxed by at least $50 million each year'" (quoting H. R. Rep. No. 94–725, p. 78 (1975))).

In other words, § 11501(b) responded primarily to what its text describes—property taxes that soaked the railroads. The obvious rationale supporting subsections (b)(1) through (3) is that the "way to prevent tax discrimination against the railroads is to tie their tax fate to the fate of a large and local group of taxpayers." *Kansas City Southern R. Co.* v. *McNamara*, 817 F. 2d 368, 375 (CA5 1987); see also *Atchison, T. & S. F. R. Co.* v. *Arizona*, 78 F. 3d 438, 441 (CA9 1996). In this way, subsections (b)(1) through (3) establish a political check on the taxation of railroads. States cannot impose excessive property taxes on the nonvoting, nonresident railroads without imposing the same taxes more generally on voting, resident local businesses.

Absent any indication that subsection (b)(4), as a residual clause, has any different aim, it is reasonable to conclude that it shares the same one as subsections (b)(1) through (3). See, *e. g.*, *Kansas City Southern R. Co.*, *supra*, at 373–374 (Congress included subsection (b)(4) "to ensure that states did not shift to new forms of tax discrimination outside the letter of the first three subsections"); *Burlington Northern R. Co.* v. *Superior*, 932 F. 2d 1185, 1186 (CA7 1991) ("Subsection (b)(4) is . . . designed to prevent the state from accomplishing the forbidden end of discriminating against railroads by substituting another type of tax"). Subsection (b)(4) should be understood to tackle the issue of systemic railroad overtaxation the same way that the other subsections do—by linking the taxation of railroads to the taxation of businesses with local political influence. Thus, a "tax that discriminates against a rail carrier" is a tax that targets or singles out rail carriers compared to commercial and industrial taxpayers.

B

Under this test, CSX's complaint was properly dismissed. CSX has not alleged that Alabama's sales and use taxes target railroads compared to general commercial and industrial taxpayers. See *ACF Industries*, 510 U. S., at 346–347 (leaving open a case in which "railroads—either alone or as part of some isolated and targeted group—are the only commercial entities" subject to a tax); *Norfolk Southern R. Co.* v. *Alabama Dept. of Revenue*, 550 F. 3d 1306, 1316 (CA11 2008). CSX alleges that it paid a tax on its fuel that certain rail competitors did not have to pay. But it concedes, as it must, that the sales and use taxes are "generally applicable." Pet. for Cert. i; see Ala. Code § 40–23–2(1) (2010 Cum. Supp.) (imposing a four percent sales tax on "every person, firm, or corporation . . . selling at retail any tangible personal property whatsoever"); § 40–23–61(a) (2003); see also *Norfolk Southern R. Co.*, *supra*, at 1316; Tr. of Oral Arg. 36.

Discrete exemptions for certain railroad competitors—namely, fuel exemptions for interstate motor carriers and interstate ships and barges—do not make a generally applicable tax "discriminat[ory]" under subsection (b)(4). Widespread exemptions could theoretically cause a facially general tax to target railroads, but the limited exemptions at issue here do not suggest that, and CSX has not argued it.[2] Accordingly, CSX has not stated a cognizable claim for discrimination under § 11501(b)(4).

II

The Court does not settle the ambiguity in the word "discriminates" in subsection (b)(4)—leaving open both the appropriate comparison class and the type of differential treatment required to constitute discrimination.[3] The majority "hold[s] only that § 11501(b)(4) enables a railroad to challenge an excise or other non-property tax as discriminatory on the basis of the tax scheme's exemptions." *Ante*, at 288, n. 8. Thus, when the majority says that "a state excise tax that applies to railroads but exempts their interstate competitors is subject to challenge under subsection (b)(4)," *ante*, at 288,

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[2] Although the majority rightly observes that whether a given tax is discriminatory may often be a dif cult question, see *ante*, at 297, this is not a close case. I therefore need not de ne the exact boundaries of what constitutes targeting or singling out. See, *e. g.*, *Norfolk Southern R. Co.* v. *Alabama Dept. of Revenue*, 550 F. 3d 1306, 1316, n. 16 (CA11 2008) (listing examples of courts nding railroads targeted by various state tax schemes).

[3] The majority declines to reach the comparison class issue. But the question presented was: "Whether a State's exemptions of rail carrier competitors, but not rail carriers, from generally applicable sales and use taxes on fuel subject the taxes to challenge under 49 U. S. C. § 11501(b)(4) as 'another tax that discriminates against a rail carrier.'" App. to Pet. for Cert. (i). The question presented thus asks whether CSX can challenge a "generally applicable" tax based on exemptions granted to rail competitors—a straightforward comparison class issue. The lower courts have split over the proper scope of the comparison class, and the issue was presented in this case. I would decide it.

it must mean only that a tax exemption scheme could potentially violate subsection (b)(4).

As I understand it, the majority does not decide whether CSX has stated a claim even in this case but instead leaves that issue for remand. Accordingly, States remain free to argue—and lower courts to hold—that complaints like CSX's should be dismissed for failing to state a "discriminat[ion]" claim under § 11501(b)(4) when they do not allege that railroads are targeted or singled out compared to commercial and industrial taxpayers generally.

Nonetheless, despite the majority's assertion that it is "inappropriate" to address whether Alabama's tax scheme actually discriminates within the meaning of § 11501(b)(4), *ante*, at 289, n. 8, parts of its opinion suggest an answer to that question that I believe is incorrect. Relying on the second de nition in Black's Law Dictionary, the majority de nes "discriminates" as " 'failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favored.' " *Ante*, at 286. This de nition of "discriminate," combined with the majority's insistence that the "distinctions drawn in § 11501(b) are . . . between railroads and other actors, whether interstate or local," suggests that the comparison class could be *anyone*.[4] *Ante*, at 288. The majority ultimately implies that "another tax that discriminates against a rail carrier" is any tax that draws a distinction between a rail carrier and anyone else without suf cient justi cation. See *ante*, at 288, n. 8 ("Whether the

[4] A comparison class of "anyone" is broader than either of the sides in the lower courts' split on this issue. Courts usually disagree over whether to use commercial and industrial taxpayers or railroad competitors as the comparison class. Compare *Burlington Northern, S. F. R. Co.* v. *Lohman*, 193 F. 3d 984, 985–986 (CA8 1999) (applying a comparison class of rail competitors); *Burlington Northern R. Co.* v. *Commissioner of Revenue*, 509 N. W. 2d 551, 553 (Minn. 1993) (same), with *Kansas City Southern R. Co.*, 817 F. 2d, at 375 (using commercial and industrial taxpayers as the comparison class); *Atchison, T. & S. F. R. Co.* v. *Arizona*, 78 F. 3d 438, 441 (CA9 1996) (same).

railroad will prevail . . . depends on whether the State offers a suf cient justi cation for declining to provide the exemption at issue to rail carriers").

I do not read subsection (b)(4) so independently of (b)(1) through (3). Perhaps, as the majority asserts, subsection (b)(4) is not an ideal candidate for *ejusdem generis*. *Ante*, at 294–295. But given the ambiguity of subsection (b)(4), (b)(1) through (3) are the best guides for understanding its proper scope—something we recognized in *ACF Industries*. 510 U. S., at 343. It is more reasonable to discern the meaning of "discriminates" in subsection (b)(4) using the preceding subsections than to pluck from the dictionary a de nition for such a context-dependent term.

Detaching subsection (b)(4) from the rest of the section would expand its meaning well beyond the scope of the problem that necessitated § 11501(b). Instead of simply eliminating the particular vulnerability of railroads by tying their tax fate to that of general commercial and industrial taxpayers, railroads would receive a surprising windfall: most-favored-taxpayer status. This would convert subsection (b)(4) from a shield into a sword.

The implication of the majority opinion is that if every person and business in the State of Alabama paid a $1 annual tax, and *one person* was exempt, CSX could sue under subsection (b)(4) and require the State to either exempt CSX also or "offe[r] a suf cient justi cation" for the distinction. See *ante*, at 288, n. 8. Although the majority denies that this would provide railroads most-favored-taxpayer status, see *ibid.*, it acknowledges that States would have to justify any tax distinction that railroads argue may disfavor them.

The only bulwark against requiring States to give railroads every tax exemption that anyone else gets would be open-ended judicial determinations of what is "suf cient justi cation" for such distinctions. *Ibid.* Unsurprisingly, the statute provides no guidance for what "suf cient justi cation" might mean, but neither does the majority. There are

all sorts of reasons that might lead a State to distinguish between railroads and others for tax purposes. See Tr. of Oral Arg. 58. For instance, in this case, Alabama points out that motor carriers and interstate water carriers pay a separate—and frequently higher—tax on fuel from which railroads are effectively exempt. Brief for Respondents 12–16, 59–60. That might be a "suf cient justi cation" for their exemptions from the taxes here, but the majority expressly disclaims reaching that question. *Ante*, at 284, n. 5.[5] Of course, logically extending the meaning of "discriminates" from subsections (b)(1) through (3) would avoid this problem, as there is no need for "justi cation" at all: A tax either targets railroads by comparison to commercial and industrial taxpayers or it does not.

* * *

I disagree with the meaning of "discriminat[e]" in subsection (b)(4) that the majority seems to imply. The rest of § 11501(b) provides a logical and coherent way to determine what subsection (b)(4) means, and we have used that methodology before. See *ACF Industries*, *supra*, at 340. The best way to read subsection (b)(4) is as prohibiting taxes that target or single out railroads as compared to general commercial and industrial taxpayers. That is the test I would establish, and I do not understand the majority to foreclose the lower courts from utilizing it. Under that test, CSX's challenge to Alabama's sales and use taxes was properly dismissed. Accordingly, I respectfully dissent.

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[5] The majority appears to consider "suf cient justi cation" as a potential defense for the State, see *ante*, at 288, n. 8, but since it derives from the meaning of "discriminates," a lack of suf cient justi cation would seem to be a part of what a railroad would have to plead in order to state a claim for a violation of § 11501(b)(4).

Syllabus

WALKER, WARDEN, ET AL. *v.* MARTIN

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

No. 09–996. Argued November 29, 2010—Decided February 23, 2011

While most States set determinate time limits for collateral relief applications, California courts "appl[y] a general 'reasonableness' standard" to judge whether a habeas petition is timely filed, *Carey* v. *Saffold*, 536 U. S. 214, 222. Under that standard, "a [habeas] petition should be filed as promptly as the circumstances allow . . . ," *In re Clark*, 5 Cal. 4th 750, 765, n. 5, 855 P. 2d 729, 738, n. 5. Three decisions, *Clark*, *In re Robbins*, 18 Cal. 4th 770, 959 P. 2d 311, and *In re Gallego*, 18 Cal. 4th 825, 959 P. 2d 290, describe California's timeliness requirement. A prisoner must seek habeas relief without "substantial delay," *e. g.*, *Robbins*, 18 Cal. 4th, at 780, 959 P. 2d, at 317, as "measured from the time the petitioner or counsel knew, or reasonably should have known, of the information offered in support of the claim and the legal basis for the claim," *id.*, at 787, 959 P. 2d, at 322. All California courts have "original jurisdiction in habeas corpus proceedings." Cal. Const., Art. VI, § 10. Because a habeas petitioner may skip over the lower courts and file directly in the California Supreme Court, that court rules on a staggering number of habeas petitions each year. A summary denial citing *Clark* and *Robbins* means that the petition is rejected as untimely. California courts, however, have discretion to bypass a timeliness issue and, instead, summarily reject the petition for want of merit.

Respondent Martin was convicted of murder and robbery, and was sentenced to life in prison without parole. After the California Supreme Court denied Martin's first state habeas petition, he filed a federal habeas petition. The District Court ordered a stay to permit Martin to return to state court to raise ineffective-assistance-of-counsel claims he had not previously aired. Martin raised those claims in his second habeas petition in the California Supreme Court, but gave no reason for his failure to assert the additional claims until nearly five years after his sentence and conviction became final. The California Supreme Court denied the petition, citing *Clark* and *Robbins*. Having exhausted his state-court remedies, Martin filed an amended federal habeas petition. The District Court dismissed his belatedly asserted claims as untimely under California law. The Ninth Circuit vacated that order and directed the District Court to determine the "adequacy" of the State's time bar. Again rejecting Martin's petition, the District

Court found California's bar an adequate state ground for denying Martin's new pleas. Concluding that the time bar was not firmly defined or consistently applied, the Ninth Circuit remanded for a determination of the merits of Martin's claims.

Held: California's timeliness requirement qualifies as an independent state ground adequate to bar habeas corpus relief in federal court. Pp. 315–322.

(a) Absent showings of "cause" and "prejudice," see *Wainwright* v. *Sykes*, 433 U. S. 72, 84–85, federal habeas relief will be unavailable when (1) "a state court [has] declined to address a prisoner's federal claims because the prisoner had failed to meet a state procedural requirement," and (2) "the state judgment rests on independent and adequate state procedural grounds," *Coleman* v. *Thompson*, 501 U. S. 722, 729–730. Pp. 315–316.

(b) A "rule can be 'firmly established' and 'regularly followed,'" and therefore adequate, "even if the appropriate exercise of discretion may permit consideration of a federal claim in some cases but not others." *Beard* v. *Kindler*, 558 U. S. 53, 60–61. California's time rule, although discretionary, meets this "firmly established" criterion. The California Supreme Court framed the requirement in a trilogy of cases, instructing habeas petitioners to "alleg[e] with specificity" the absence of substantial delay, good cause for delay, or eligibility for one of four exceptions to the time bar. *Gallego*, 18 Cal. 4th, at 838, 959 P. 2d, at 299. And California's case law made it plain that Martin's nearly five-year delay was "substantial." See, *e. g.*, *id.*, at 829–831, 838, and n. 13, 959 P. 2d, at 293–294, 299, and n. 13. The Court finds unpersuasive Martin's argument that the terms "reasonable time" period and "substantial delay" make California's rule too vague to be regarded as "firmly established." While indeterminate language is typical of discretionary rules, application of those rules in particular circumstances can supply the requisite clarity. Congressional statutes and this Court's decisions have employed time limitations that are not stated in precise, numerical terms. For example, current federal habeas prescriptions limit the time for filing a petition to one year. The clock runs from "the date on which the [supporting] facts . . . could have been discovered through . . . due diligence." 28 U. S. C. §2255(f)(4). Although "'due diligence' is an inexact measure of how much delay is too much," *Johnson* v. *United States*, 544 U. S. 295, 309, n. 7, "use of an imprecise standard is no justification for depriving [a rule's] language of any meaning," *ibid.* Nor is California's time rule vulnerable on the ground that it is not regularly followed. Each year, the California State Supreme Court summarily denies hundreds of habeas petitions by citing *Clark* and *Robbins*. Contrary to

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Martin's argument, California's time bar is not in rm simply because a court may opt to bypass the *Clark*/*Robbins* assessment and summarily dismiss a petition on the merits, if that is the easier path. Nor should a discretionary rule be disregarded automatically upon a showing that outcomes under the rule vary from case to case. Discretion enables a court to home in on case-speci c considerations and to avoid the harsh results that may attend consistent application of an unyielding rule. A state ground may be found inadequate when a court has exercised its discretion in a surprising or unfair manner, but Martin makes no such contention here. Pp. 316–321.

(c) This decision leaves unaltered the Court's repeated recognition that federal courts must carefully examine state procedural require ments to ensure that they do not operate to discriminate against claims of federal rights. See, *e. g.*, *Brown* v. *Western R. Co. of Ala.*, 338 U. S. 294, 298–299. On the record here, however, there is no basis for con cluding that California's rule operates in such a discriminatory man ner. P. 321.

357 Fed. Appx. 793, reversed.

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

R. Todd Marshall, Deputy Attorney General of California, argued the cause for petitioners. With him on the briefs were *Edmund G. Brown, Jr.*, former Attorney General, *Dane R. Gillette*, Chief Assistant Attorney General, *Donald E. de Nicola*, Deputy State Solicitor General, *Michael P. Far rell*, Senior Assistant Attorney General, and *Eric L. Chris toffersen*, Deputy Attorney General.

Michael B. Bigelow, by appointment of the Court, *post*, p. 821, argued the cause for respondent. With him on the brief was *Gary T. Ragghianti.**

**Kent S. Scheidegger* led a brief for the Criminal Justice Legal Foundation as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging af rmance were led for the Habeas Cor pus Resource Center by *Michael Laurence*, *Christina Sandidge*, and *Bar bara Saavedra;* and for Federal Defenders for the Central District of Cali fornia et al. by *Joseph Schlesinger*, *Hilary Sheard*, *Carolyn Wiggin*, *Sean K. Kennedy*, *Daniel J. Broderick*, *Barry J. Portman*, and *Reuben C. Cahn.*

Briefs of *amici curiae* were led for Federal Courts Scholars by *Michael C. Dorf, pro se;* and for Cory R. Maples by *Gregory G. Garre* and *J. Scott Ballenger.*

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns California's time limitation on applications for postconviction (habeas corpus) relief. The question presented: Does California's timeliness requirement qualify as an independent state ground adequate to bar habeas corpus relief in federal court?

California does not employ fixed statutory deadlines to determine the timeliness of a state prisoner's petition for habeas corpus. Instead, California directs petitioners to file known claims "as promptly as the circumstances allow." *In re Clark*, 5 Cal. 4th 750, 765, n. 5, 855 P. 2d 729, 738, n. 5 (1993). Petitioners are further instructed to state when they first learned of the asserted claims and to explain why they did not seek postconviction relief sooner. *In re Robbins*, 18 Cal. 4th 770, 780, 959 P. 2d 311, 317–318 (1998). Claims substantially delayed without justification may be denied as untimely. *Ibid.*; *Clark*, 5 Cal. 4th, at 765, n. 5, 855 P. 2d, at 738, n. 5.

California courts signal that a habeas petition is denied as untimely by citing the controlling decisions, *i. e.*, *Clark* and *Robbins*. A spare order denying a petition without explanation or citation ordinarily ranks as a disposition on the merits. Tr. of Oral Arg. 7; see *Harrington* v. *Richter, ante*, at 99. California courts may elect to pretermit the question whether a petition is timely and simply deny the petition, thereby signaling that the petition lacks merit.

Petitioner below, respondent here, Charles W. Martin, presented the claims at issue—all alleging ineffective assistance of counsel—in a habeas petition filed in the California Supreme Court nearly five years after his conviction became final. He stated no reason for the long delay. Citing *Clark* and *Robbins*, the court denied Martin's petition. In turn, the U. S. District Court for the Eastern District of California dismissed Martin's federal habeas petition raising the same ineffective-assistance claims. Denial of Martin's state-court petition as untimely, the District Court held, rested on an

adequate and independent state ground, *i. e.*, Martin's failure to seek relief in state court "without substantial delay." See *Robbins*, 18 Cal. 4th, at 787, 959 P. 2d, at 322.

The U. S. Court of Appeals for the Ninth Circuit reversed the District Court's decision. Contrasting the precision of " xed statutory deadlines" with California's proscription of "substantial delay," the appeals court held that California's standard lacked the clarity and certainty necessary to consti tute an adequate state bar. 357 Fed. Appx. 793, 794 (2009) (relying on *Townsend* v. *Knowles*, 562 F. 3d 1200 (CA9 2009)).

In a recent decision, *Beard* v. *Kindler*, 558 U. S. 53 (2009), this Court clari ed that a state procedural bar may count as an adequate and independent ground for denying a federal habeas petition even if the state court had discretion to reach the merits despite the default. Guided by that decision, we hold that California is not put to the choice of imposing a speci c deadline for habeas petitions (which would al most certainly rule out Martin's nearly ve-year delay) or preserving the exibility of current practice, "but only at the cost of undermining the nality of state court judg ments." *Id.*, at 61. In so ruling, we stress that Martin has not alleged that California's time bar, either by design or in operation, discriminates against federal claims or claimants.

I

A

While most States set determinate time limits for collat eral relief applications, in California, neither statute nor rule of court does so. Instead, California courts "appl[y] a gen eral 'reasonableness' standard" to judge whether a habeas petition is timely led. *Carey* v. *Saffold*, 536 U. S. 214, 222 (2002). The basic instruction provided by the California Su preme Court is simply that "a [habeas] petition should be led as promptly as the circumstances allow . . . ." *Clark*, 5 Cal. 4th, at 765, n. 5, 855 P. 2d, at 738, n. 5.

Three leading decisions describe California's timeliness requirement: *Robbins*, *Clark*, and *In re Gallego*, 18 Cal. 4th 825, 959 P. 2d 290 (1998). A prisoner must seek habeas relief without "substantial delay," *Robbins*, 18 Cal. 4th, at 780, 959 P. 2d, at 317; *Gallego*, 18 Cal. 4th, at 833, 959 P. 2d, at 296; *Clark*, 5 Cal. 4th, at 783, 855 P. 2d, at 750, as "measured from the time the petitioner or counsel knew, or reasonably should have known, of the information offered in support of the claim and the legal basis for the claim," *Robbins*, 18 Cal. 4th, at 787, 959 P. 2d, at 322. Petitioners in noncapital cases have "the burden of establishing (i) absence of substantial delay, (ii) good cause for the delay, or (iii) that the claim falls within an exception to the bar of untimeliness." *Id.*, at 780, 959 P. 2d, at 317.[1]

California's collateral review regime differs from that of other States in a second notable respect: All California courts "have original jurisdiction in habeas corpus proceedings," Cal. Const., Art. VI, § 10, thus "no appeal lies from the denial of a petition for writ of habeas corpus," *Clark*, 5 Cal. 4th, at 767, n. 7, 855 P. 2d, at 740, n. 7. "[A] prisoner whose petition has been denied by the superior court can obtain review of his claims only by the filing of a new petition in the Court of Appeal." *Ibid.* The new petition, however, must be confined to claims raised in the initial petition. See *In re Martinez*, 46 Cal. 4th 945, 956, 209 P. 3d 908, 915 (2009).

Because a habeas petitioner may skip over the lower courts and file directly in the California Supreme Court, *In re Kler*, 188 Cal. App. 4th 1399, 1403, 115 Cal. Rptr. 3d 889, 891–892 (2010), that court rules on a staggering number

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[1] A petition for habeas relief in a capital case is "presumed to be filed without substantial delay if it is filed within 180 days after the final due date for the filing of [an] appellant's reply brief on the direct appeal . . . ." California Supreme Court Policies Regarding Cases Arising From Judgments of Death, Policy 3, Standard 1–1.1 (2010).

of habeas petitions each year.[2] The court issues generally unelaborated "summary denials" of petitions that "d[o] not state a prima facie case for relief" or that contain "claims [that] are all procedurally barred." *People* v. *Romero*, 8 Cal. 4th 728, 737, 883 P. 2d 388, 391 (1994) (internal quotation marks omitted). A summary denial citing *Clark* and *Robbins* means that the petition is rejected as untimely. See, *e. g.*, Brief for Habeas Corpus Resource Center as *Amicus Curiae* 20, and n. 23. California courts have discretion, however, to bypass a timeliness issue and, instead, summarily reject the petition for want of merit. See *Robbins*, 18 Cal. 4th, at 778, n. 1, 959 P. 2d, at 316, n. 1. See also *Saffold*, 536 U. S., at 225–226.

B

In December 1986, Charles Martin participated in a robbery and murder in California. Martin fled the State, but eight years later he was extradited to California to stand trial. Convicted in state court of murder and robbery, Martin was sentenced to life in prison without the possibility of parole. In 1997, the California Court of Appeal affirmed his conviction and sentence, and the California Supreme Court denied review.

Martin initiated his first round of state habeas proceedings in 1998, and the next year, the California Supreme Court denied his petition. He then filed a habeas petition in the appropriate U. S. District Court. Finding that Martin's federal petition included ineffective-assistance-of-counsel claims

[2] In fiscal year 2008–2009, the California Supreme Court issued dispositions in 3,258 original habeas actions. Judicial Council of California, 2010 Court Statistics Report, Statewide Caseload Trends, 1999–2000 Through 2008–2009, p. 6, http://www.courtinfo.ca.gov/reference/documents/csr2010.pdf (as visited Feb. 15, 2011, and in Clerk of Court's case file). During a similar time period, a total of 2,210 habeas cases were on this Court's docket. See October Term 2008 Filings by Case Type (available in Clerk of Court's case file).

he had not aired in state court, the District Court stayed the federal proceedings pending Martin's return to state court to exhaust his remedies there.[3]

In March 2002, Martin filed his second habeas petition in the California Supreme Court, raising the federal ineffective-assistance claims his earlier filing omitted. He gave no reason for his failure to assert the additional claims until nearly five years after his sentence and conviction became final. Tr. of Oral Arg. 36, 39. In September 2002, the California Supreme Court denied Martin's petition in an order typical of that court's summary dispositions for failure to file "as promptly as the circumstances allow." *Clark*, 5 Cal. 4th, at 765, n. 5, 855 P. 2d, at 738, n. 5. The order read in its entirety: "Petition for writ of habeas corpus is DENIED. (See *In re Clark* (1993) 5 Cal. 4th 750, *In re Robbins* (1998) 18 Cal. 4th 770, 780.)." See App. to Pet. for Cert. 60.

Having exhausted state postconviction remedies, Martin returned to federal court and filed an amended petition. Based upon the California Supreme Court's time-bar disposition, the District Court dismissed Martin's belatedly asserted claims as procedurally precluded. *Id.*, at 27, 57. The Ninth Circuit vacated the dismissal order and remanded the case, directing the District Court to determine the "adequacy" of the State's time bar. *Martin* v. *Hubbard*, 192 Fed. Appx. 616, 618 (2006). The District Court again rejected Martin's petition, stating that "[t]he California timeliness bar as set forth in . . . *Clark*/*Robbins* is clearly defined, well established and consistently applied." App. to Pet. for Cert. 4.

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[3] Rather than dismiss a petition containing both exhausted and unexhausted claims, "a district court might stay the petition and hold it in abeyance while the petitioner returns to state court to exhaust his previously unexhausted claims. Once the petitioner exhausts his state remedies, the district court will lift the stay and allow the petitioner to proceed in federal court." *Rhines* v. *Weber*, 544 U. S. 269, 275–276 (2005).

The Ninth Circuit again disagreed. Controlled by its prior decision in *Townsend*, 562 F. 3d, at 1207–1208, the Court of Appeals held that California's time bar "has yet to be rmly de ned" and was not shown by the State to be "consistently applied." 357 Fed. Appx., at 794. The remand order directed the District Court to determine the merits of the claims Martin asserted in his second petition to the California Supreme Court.

We granted certiorari, 561 U. S. 1005 (2010), to determine the "adequacy" of California's practice under which a prisoner may be barred from collaterally attacking his conviction when he has "substantially delayed" ling his habeas petition. Martin does not here dispute that the time limitation is an "independent" state ground. See Brief in Opposition 5–6. See also *Bennett* v. *Mueller*, 322 F. 3d 573, 582–583 (CA9 2003). Nor does he contend that he established "cause" and "prejudice," *i. e.*, cause for the delay in asserting his claims and actual prejudice resulting from the State's alleged violation of his constitutional rights. See *Wainwright* v. *Sykes*, 433 U. S. 72, 87–91 (1977).

II

A

"A federal habeas court will not review a claim rejected by a state court 'if the decision of [the state] court rests on a state law ground that is independent of the federal question and adequate to support the judgment.'" *Kindler*, 558 U. S., at 55 (quoting *Coleman* v. *Thompson*, 501 U. S. 722, 729 (1991)). The state-law ground may be a substantive rule dispositive of the case, or a procedural barrier to adjudication of the claim on the merits. See *Sykes*, 433 U. S., at 81–82, 90.

Ordinarily, a state prisoner seeking federal habeas relief must rst "exhaus[t] the remedies available in the courts of the State," 28 U. S. C. § 2254(b)(1)(A), thereby affording those courts "the rst opportunity to address and correct

alleged violations of [the] prisoner's federal rights," *Coleman*, 501 U. S., at 731. The adequate and independent state ground doctrine furthers that objective, for without it, "habeas petitioners would be able to avoid the exhaustion requirement by defaulting their federal claims in state court." *Id.*, at 732. Accordingly, absent showings of "cause" and "prejudice," see *Sykes*, 433 U. S., at 84–85, federal habeas relief will be unavailable when (1) "a state court [has] declined to address a prisoner's federal claims because the prisoner had failed to meet a state procedural requirement," and (2) "the state judgment rests on independent and adequate state procedural grounds." *Coleman*, 501 U. S., at 729–730.

B

To qualify as an "adequate" procedural ground, a state rule must be " rmly established and regularly followed." *Kindler*, 558 U. S., at 60–61 (internal quotation marks omitted).[4] "[A] discretionary state procedural rule," we held in *Kindler*, "can serve as an adequate ground to bar federal habeas review." *Id.*, at 60. A "rule can be ' rmly established' and 'regularly followed,' " *Kindler* observed, "even if the appropriate exercise of discretion may permit consideration of a federal claim in some cases but not others." *Id.*, at 60–61.

[4] We have also recognized a "limited category" of "exceptional cases in which exorbitant application of a generally sound rule renders the state ground inadequate to stop consideration of a federal question." *Lee* v. *Kemna*, 534 U. S. 362, 376 (2002). In *Lee*, for example, the defendant unsuccessfully moved for a continuance when, for reasons unknown to him, his alibi witnesses left the courthouse the day they were scheduled to testify. This Court held inadequate to bar federal review a state court's persnickety application of a rule detailing formal requirements for continuance motions. The defendant had substantially complied with the rule's key requirement and awless compliance would have been unavailing given the trial court's reason for denying the motion. See *id.*, at 381–382. Martin does not suggest that the application of California's timeliness rule in his case falls within the exceptional category *Lee* described and illustrated. See Brief for Respondent 28, 29, 54.

California's time rule, although discretionary, meets the " rmly established" criterion, as *Kindler* comprehended that requirement. The California Supreme Court, as earlier noted, framed the timeliness requirement for habeas peti tioners in a trilogy of cases. See *supra*, at 312. Those deci sions instruct habeas petitioners to "alleg[e] with speci city" the absence of substantial delay, good cause for delay, or eli gibility for one of four exceptions to the time bar. *Gallego*, 18 Cal. 4th, at 838, 959 P. 2d, at 299; see *Robbins*, 18 Cal. 4th, at 780, 959 P. 2d, at 317.[5] And California's case law made it altogether plain that Martin's delay of nearly ve years ranked as "substantial." See *Gallego*, 18 Cal. 4th, at 829–831, 838, and n. 13, 959 P. 2d, at 293–294, 299, and n. 13 (delay of four years barred claim); *In re Tsaturyan*, No. B156012, 2002 WL 1614107, *3 (Cal. App., July 23, 2002) (delay of 16 months barred claim). See also *In re Miller*, No. B186447, 2006 WL 1980385, *2–*3 (Cal. App., July 17, 2006) (delay of two years and six months barred claim).

Martin nevertheless urges that California's rule is too vague to be regarded as " rmly established." "[R]eason able time" period and "substantial delay," he maintains, are "meaningless terms." Brief for Respondent 48 (internal quotation marks omitted). We disagree. Indeterminate language is typical of discretionary rules. Application of those rules in particular circumstances, however, can supply the requisite clarity.

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[5] An untimely petition "will be entertained on the merits if the peti tioner demonstrates (i) that error of constitutional magnitude led to a trial that was so fundamentally unfair that absent the error no reasonable judge or jury would have convicted the petitioner; (ii) that the petitioner is actu ally innocent of the crime or crimes of which he or she was convicted; (iii) that the death penalty was imposed by a sentencing authority that had such a grossly misleading pro le of the petitioner before it that, absent the trial error or omission, no reasonable judge or jury would have im posed a sentence of death; or (iv) that the petitioner was convicted or sentenced under an invalid statute." *In re Robbins*, 18 Cal. 4th 770, 780–781, 959 P. 2d 311, 318 (1998).

Congressional statutes and this Court's decisions, we note, have employed time limitations that are not stated in precise, numerical terms. Former Federal Habeas Corpus Rule 9(a), for example, set no fixed time limit on submission of habeas petitions. The Rule permitted dismissal of a state prisoner's petition when it appeared that delay in commencing litigation "prejudiced [the State] in its ability to respond." 28 U. S. C. § 2254 Rule 9(a) (1994 ed.). To stave off dismissal, the petitioner had to show that he could not earlier have known, "by the exercise of reasonable diligence," the grounds on which he based the petition. *Ibid.* In *Rhines* v. *Weber*, 544 U. S. 269 (2005), we instructed district courts, when employing stay and abeyance procedure, see *supra*, at 314, n. 3, to "place reasonable time limits on a petitioner's trip to state court and back," 544 U. S., at 278.

Current federal habeas prescriptions limit the time for filing a petition to one year. The clock runs from "the date on which the [supporting] facts . . . could have been discovered through the exercise of due diligence." 28 U. S. C. § 2255(f)(4) (2006 ed., Supp. III) (applicable to federal prisoners); see § 2244(d)(1)(D) (2006 ed.) (similar provision applicable to state prisoners). "[D]ue diligence," we have observed, "is an inexact measure of how much delay is too much." *Johnson* v. *United States*, 544 U. S. 295, 309, n. 7 (2005) (internal quotation marks omitted). But "use of an imprecise standard," we immediately added, "is no justification for depriving [a rule's] language of any meaning." *Ibid.* "[I]t would seem particularly strange to disregard state procedural rules that are substantially similar to those to which we give full force in our own courts." *Kindler*, 558 U. S., at 62.

Nor is California's time rule vulnerable on the ground that it is not regularly followed. Each year, the California Supreme Court summarily denies hundreds of habeas petitions by citing *Clark* and *Robbins*. Brief for Appellant in

No. 08–15752 (CA9), pp. 31–32. On the same day the court denied Martin's petition, it issued 21 other *Clark*/*Robbins* summary denials. See Brief for Habeas Corpus Resource Center as *Amicus Curiae* 20. In reasoned opinions, too, California courts regularly invoke *Clark*, *Robbins*, and *Gallego* to determine whether a habeas petition is time barred.[6]

Martin argued below that California's time bar is not regularly followed in this sense: Use of summary denials makes it "impossible to tell" why the California Supreme Court "decides some delayed petitions on the merits and rejects others as untimely." Brief for Appellant in No. 08–15752 (CA9), pp. 37–38. We see no reason to reject California's time bar simply because a court may opt to bypass the *Clark*/*Robbins* assessment and summarily dismiss a petition on the merits, if that is the easier path. See, *e. g.*, *Strickland* v. *Washington*, 466 U. S. 668, 697 (1984) ("[A] court need not determine whether counsel's performance was deficient . . . [i]f it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice . . . ."); cf. *Ruhrgas AG* v. *Marathon Oil Co.*, 526 U. S. 574, 585 (1999) ("It is hardly novel for a federal court to choose among threshold grounds for denying audience to a case on the merits.").

The Ninth Circuit concluded that California's time bar is not consistently applied because outcomes under the rule vary from case to case. See 357 Fed. Appx., at 794. For example, in *People* v. *Fairbanks*, No. C047810, 2006 WL 950267, *2–*3 (Cal. App., Apr. 11, 2006), a one-year delay was found substantial, while in *In re Little*, No. D047468, 2008 WL 142832, *4, n. 6 (Cal. App., Jan. 16, 2008), a delay of 14 months was determined to be insubstantial.

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[6] See, *e. g.*, *In re Sanders*, 21 Cal. 4th 697, 703, 981 P. 2d 1038, 1042 (1999); *In re Hamilton*, 20 Cal. 4th 273, 283, n. 5, 975 P. 2d 600, 605, n. 5 (1999); *In re Watson*, 104 Cal. Rptr. 3d 403, 407 (App. 2010) (officially unpublished); *In re Nuñez*, 173 Cal. App. 4th 709, 723, 93 Cal. Rptr. 3d 242, 252 (2009).

A discretionary rule ought not be disregarded automatically upon a showing of seeming inconsistencies.[7] Discretion enables a court to home in on case-specific considerations and to avoid the harsh results that sometimes attend consistent application of an unyielding rule. See *Prihoda* v. *McCaughtry*, 910 F. 2d 1379, 1385 (CA7 1990) ("Uncertainty is not enough to disqualify a state's procedural ground as one 'adequate' under federal law. If it were, states would be induced to make their rules draconian . . . .").

A state ground, no doubt, may be found inadequate when "discretion has been exercised to impose novel and unforeseeable requirements without fair or substantial support in prior state law . . . ." 16B C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4026, p. 386 (2d ed. 1996) (hereinafter Wright & Miller); see *Prihoda*, 910 F. 2d, at 1383 (state ground "applied infrequently, unexpectedly, or freakishly" may "discriminat[e] against the federal rights asserted" and therefore rank as "inadequate"). Martin does not contend, however, that in his case, the California Supreme Court exercised its discretion in a surprising or unfair manner.

"[S]ound procedure often requires discretion to exact or excuse compliance with strict rules," 16B Wright & Miller § 4028, p. 403, and we have no cause to discourage standards allowing courts to exercise such discretion. As this Court

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[7] Closer inspection may reveal that "seeming 'inconsistencie[s]' . . . are not necessarily . . . arbitrar[y] or irrationa[l]." *Thornburgh* v. *Abbott*, 490 U. S. 401, 417, n. 15 (1989). *Fairbanks* and *Little* are illustrative. In *Fairbanks*, the court found that petitioner did not act diligently when she waited to withdraw her guilty plea until one year after learning that revocation of her driver's license was irreversible. 2006 WL 950267, *2–*3. In *Little*, a *pro se* prisoner claimed that his trial counsel should have raised a posttraumatic stress disorder defense. Although the ling delay was 14 months, the court entertained it on the merits. 2008 WL 142832, *4, *14. Given the discrete context in which each case arose, the two decisions present no square con ict.

observed in *Kindler*, if forced to choose between mandatory rules certain to be found "adequate," or more supple prescriptions that federal courts may disregard as "inadequate," "many States [might] opt for mandatory rules to avoid the high costs that come with plenary federal review." 558 U. S., at 61. "Th[at] result would be particularly unfortunate for [habeas petitioners], who would lose the opportunity to argue that a procedural default should be excused through the exercise of judicial discretion." *Ibid.*[8]

C

Today's decision, trained on California's timeliness rule for habeas petitions, leaves unaltered this Court's repeated recognition that federal courts must carefully examine state procedural requirements to ensure that they do not operate to discriminate against claims of federal rights. See *Brown* v. *Western R. Co. of Ala.*, 338 U. S. 294, 298–299 (1949); *Davis* v. *Wechsler*, 263 U. S. 22, 24–25 (1923); 16B Wright & Miller § 4026, p. 386 (noting "risk that discretionary procedural sanctions may be invoked more harshly against disfavored federal rights, . . . deny[ing] [litigants] a fair opportunity to present federal claims"). See also *Kindler*, 558 U. S., at 65 (KENNEDY, J., concurring) (a state procedural ground would be inadequate if the challenger shows a "purpose or pattern to evade constitutional guarantees"). On the record before us, however, there is no basis for concluding that California's timeliness rule operates to the particular disadvantage of petitioners asserting federal rights.

* * *

For the reasons stated, we find no inadequacy in California's timeliness rule generally or as applied in Martin's case.

[8] See also 16B Wright & Miller § 4026, pp. 385–386 ("Precisely defined rules cannot take account of the gravity of a procedural failure, the strength of the excuses offered, or the importance of the procedural and substantive consequences of excusing or punishing the failure.").

The judgment of the United States Court of Appeals for the Ninth Circuit is therefore

Reversed.

Syllabus

WILLIAMSON ET AL. *v.* MAZDA MOTOR OF AMERICA, INC., ET AL.

CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION THREE

No. 08–1314. Argued November 3, 2010—Decided February 23, 2011

The 1989 version of Federal Motor Vehicle Safety Standard 208 (FMVSS 208) requires, as relevant here, auto manufacturers to install seatbelts on the rear seats of passenger vehicles. They must install lap-and shoulder belts on seats next to a vehicle's doors or frames, but may install either those belts or simple lap belts on rear inner seats, *e. g.*, those next to a minivan's aisle.

The Williamson family and Thanh Williamson's estate brought this California tort suit, claiming that Thanh died in an accident because the rear aisle seat of the Mazda minivan in which she was riding had a lap belt instead of lap-and-shoulder belts. The state trial court dismissed their claim on the pleadings. The State Court of Appeal af rmed, rely ing on *Geier* v. *American Honda Motor Co.*, 529 U. S. 861, in which this Court found that an earlier (1984) version of FMVSS 208—which re quired installation of passive restraint devices—pre-empted a state tort suit against an auto manufacturer on a failure to install airbags.

Held: FMVSS 208 does not pre-empt state tort suits claiming that manu facturers should have installed lap-and-shoulder belts, instead of lap belts, on rear inner seats. Pp. 328–337.

(a) Because this case involves (1) the same statute as *Geier*, (2) a later version of the same regulation, and (3) a somewhat similar claim that a state tort action con icts with the federal regulation, the answers to two of the subsidiary questions posed in *Geier* apply directly here. Thus, the statute's express pre-emption clause cannot pre-empt the common-law tort action here; but neither can its saving clause foreclose or limit the operation of ordinary con ict pre-emption principles. The Court consequently turns to *Geier*'s third subsidiary question, whether, in fact, the state tort action con icts with the federal regulation. Pp. 328–330.

(b) Under ordinary con ict pre-emption principles a state law that "stands as an obstacle to the accomplishment" of a federal law is pre empted. *Hines* v. *Davidowitz*, 312 U. S. 52, 67. In *Geier*, the state law stood as an obstacle to the accomplishment of a signi cant federal regulatory objective, namely, giving manufacturers a choice among dif ferent kinds of passive restraint systems. This conclusion was sup

Syllabus

ported by the regulation's history, the agency's contemporaneous expla nation, and the Government's current understanding of the regulation. The history showed that the Department of Transportation (DOT) had long thought it important to leave manufacturers with a choice of sys tems. DOT's contemporaneous explanation of the regulation made clear that manufacturer choice was an important means for achieving DOT's basic objectives. It phased in passive restraint requirements to give manufacturers time to improve airbag technology and develop bet ter systems; it worried that requiring airbags would cause a public back lash; and it was concerned about airbag safety and cost. Finally, the Government's current understanding was that a tort suit insisting upon airbag use would "'"stan[d] as an obstacle to the accomplishment and execution of these objectives."'" 529 U. S., at 883. Pp. 330–332.

(c) Like the regulation in *Geier*, the instant regulation leaves the manufacturer with a choice, and the tort suit here would restrict that choice. But in contrast to *Geier*, the choice here is not a signi cant regulatory objective. The regulation's history resembles the history of airbags to some degree. DOT rejected a regulation requiring lap-and shoulder belts in rear seats in 1984. But by 1989, changed circum stances led DOT to require manufacturers to install lap-and-shoulder belts for rear outer seats but to retain a manufacturer choice for rear inner seats. Its reasons for doing so differed considerably from its 1984 reasons for permitting a choice of passive restraint. It was not con cerned about consumer acceptance; it thought that lap-and-shoulder belts would increase safety and did not pose additional safety risks; and it was not seeking to use the regulation to spur development of alternative safety devices. Instead, DOT thought that the requirement would not be cost effective. That fact alone cannot show that DOT sought to forbid common-law tort suits. For one thing, DOT did not believe that costs would remain frozen. For another, many federal safety regulations embody a cost-effectiveness judgment. To infer pre-emptive intent from the mere existence of such a cost-effectiveness judgment would eliminate the possibility that the agency seeks only to set forth a minimum standard. Finally, the Solicitor General repre sents that DOT's regulation does not pre-empt this tort suit. As in *Geier*, "the agency's own views should make a difference," 529 U. S., at 883, and DOT has not expressed inconsistent views on this subject. Pp. 332–336.

167 Cal. App. 4th 905, 84 Cal. Rptr. 3d 545, reversed.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, GINSBURG, ALITO, and SOTOMAYOR, JJ., joined. SOTOMAYOR, J., led a concurring opinion, *post*, p. 337. THOMAS, J., led

an opinion concurring in the judgment, *post*, p. 339. KAGAN, J., took no part in the consideration or decision of the case.

Martin N. Buchanan argued the cause for petitioners. With him on the briefs were *David J. Bennion*, *David R. Lira*, and *Allison M. Zieve*.

William M. Jay argued the cause for the United States as *amicus curiae* in support of petitioners. With him on the brief were *Acting Solicitor General Katyal*, *Assistant Attorney General West*, *Deputy Solicitor General Kneedler*, *Douglas N. Letter*, *Paul M. Geier*, *Peter J. Plocki*, *Lloyd S. Guerci*, and *Timothy H. Goodman*.

Gregory G. Garre argued the cause for respondents. With him on the brief were *Maureen E. Mahoney*, *J. Scott Ballenger*, *Shawn W. Murphy*, *Charles S. Kim*, *Erika Z. Jones*, *Dan Himmelfarb*, *Mark V. Berry*, and *Malcolm E. Wheeler*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Illinois et al. by *Lisa Madigan*, Attorney General of Illinois, *Michael A. Scodro*, Solicitor General, and *Jane Elinor Notz*, Deputy Solicitor General, and by the Attorneys General for their respective jurisdictions as follows: *Terry Goddard* of Arizona, *Dustin McDaniel* of Arkansas, *Edmund G. Brown, Jr.*, of California, *Peter J. Nickles* of the District of Columbia, *Mark J. Bennett* of Hawaii, *Tom Miller* of Iowa, *Steve Six* of Kansas, *James D. "Buddy" Caldwell* of Louisiana, *Douglas F. Gansler* of Maryland, *Lori Swanson* of Minnesota, *Jim Hood* of Mississippi, *Steve Bullock* of Montana, *Catherine Cortez Masto* of Nevada, *Michael A. Delaney* of New Hampshire, *Gary K. King* of New Mexico, *Richard Cordray* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *Robert E. Cooper, Jr.*, of Tennessee, *Mark L. Shurtleff* of Utah, *William H. Sorrell* of Vermont, *Darrell V. McGraw, Jr.*, of West Virginia, *J. B. Van Hollen* of Wisconsin, and *Bruce A. Salzburg* of Wyoming; for the American Association for Justice by *Jeffrey R. White;* for the Constitutional Accountability Center by *Douglas T. Kendall* and *Elizabeth B. Wydra;* and for Public Justice, P. C., by *Matthew W. H. Wessler*, *Leslie A. Brueckner*, and *Arthur H. Bryant*.

Briefs of *amici curiae* urging affirmance were filed for the Alliance of Automobile Manufacturers et al. by *Paul D. Clement* and *Jeffrey S. Bucholtz;* for the Chamber of Commerce of the United States of America by *Alan Untereiner*, *Robin S. Conrad*, and *Amar D. Sarwal;* for DRI—The Voice of the Defense Bar by *Mary Massaron Ross* and *Hilary Ann Ballentine;* for the Grocery Manufacturers Association et al. by *Robert*

JUSTICE BREYER delivered the opinion of the Court.

Federal Motor Vehicle Safety Standard 208 (1989 version) requires, among other things, that auto manufacturers install seatbelts on the rear seats of passenger vehicles. They must install lap-and-shoulder belts on seats next to a vehicle's doors or frames. But they have a choice about what to install on rear inner seats (say, middle seats or those next to a minivan's aisle). There they can install either (1) simple lap belts or (2) lap-and-shoulder belts. 54 Fed. Reg. 46257–46258 (1989); 49 CFR § 571.208 (1993), promulgated pursuant to the National Traffic and Motor Vehicle Safety Act of 1966 (Act), 80 Stat. 718, 15 U. S. C. § 1381 *et seq.* (1988 ed.) (recodified without substantive change at 49 U. S. C. § 30101 *et seq.* (2006 ed.)).

The question presented here is whether this federal regulation pre-empts a state tort suit that, if successful, would deny manufacturers a choice of belts for rear inner seats by imposing tort liability upon those who choose to install a simple lap belt. We conclude that providing manufacturers with this seatbelt choice is not a significant objective of the federal regulation. Consequently, the regulation does not pre-empt the state tort suit.

I

In 2002, the Williamson family, riding in their 1993 Mazda minivan, was struck head on by another vehicle. Thanh Williamson was sitting in a rear aisle seat, wearing a lap belt; she died in the accident. Delbert and Alexa Williamson were wearing lap-and-shoulder belts; they survived. They, along with Thanh's estate, subsequently brought this Cali-

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R. Gasaway, Jeffrey A. Rosen, Jeffrey Bossert Clark, and *Tracy K. Genesen;* for the Juvenile Products Manufacturers Association by *H. Christopher Bartolomucci;* and for the Product Liability Advisory Council, Inc., by *Charles H. Moellenberg, Jr.,* and *Leon F. DeJulius, Jr.*

Larry E. Coben filed a brief for the Attorneys Information Exchange Group as *amicus curiae.*

fornia tort suit against Mazda. They claimed that Mazda should have installed lap-and-shoulder belts on rear aisle seats, and that Thanh died because Mazda equipped her seat with a lap belt instead.

The California trial court dismissed this tort claim on the basis of the pleadings. And the California Court of Appeal af rmed. The appeals court noted that in *Geier* v. *Ameri can Honda Motor Co.*, 529 U. S. 861 (2000), this Court consid ered whether a different portion of (an older version of) Fed eral Motor Vehicle Safety Standard 208 (FMVSS 208)—a portion that required installation of passive restraint de vices—pre-empted a state tort suit that sought to hold an auto manufacturer liable for failure to install a particular kind of passive restraint, namely, airbags. We found that the federal regulation intended to assure manufacturers that they would retain a choice of installing any of several differ ent passive restraint devices. And the regulation sought to assure them that they would not have to exercise this choice in favor of airbags. For that reason we thought that the federal regulation pre-empted a state tort suit that, by pre mising tort liability on a failure to install airbags, would have deprived the manufacturers of the choice that the federal regulation had assured them. *Id.*, at 874–875.

The court saw considerable similarity between this case and *Geier*. The federal regulation at issue here gives manu facturers a choice among two different kinds of seatbelts for rear inner seats. And a state lawsuit that premises tort lia bility on a failure to install a particular kind of seatbelt, namely, lap-and-shoulder belts, would in effect deprive the manufacturer of that choice. The court concluded that, as in *Geier*, the federal regulation pre-empts the state tort suit. 167 Cal. App. 4th 905, 84 Cal. Rptr. 3d 545 (2008).

The Williamsons sought certiorari. And we granted cer tiorari in light of the fact that several courts have inter preted *Geier* as indicating that FMVSS 208 pre-empts state tort suits claiming that manufacturers should have installed

lap-and-shoulder belts, not lap belts, on rear inner seats. *Carden* v. *General Motors Corp.*, 509 F. 3d 227 (CA5 2007); *Roland* v. *General Motors Corp.*, 881 N. E. 2d 722 (Ind. App. 2008); *Heinricher* v. *Volvo Car Corp.*, 61 Mass. App. 313, 809 N. E. 2d 1094 (2004).

II

In *Geier*, we considered a portion of an earlier (1984) version of FMVSS 208. That regulation required manufacturers to equip their vehicles with passive restraint systems, thereby providing occupants with automatic accident protection. 49 Fed. Reg. 28983 (1984). But that regulation also gave manufacturers a choice among several different passive restraint systems, including airbags and automatic seatbelts. *Id.*, at 28996. The question before the Court was whether the Act, together with the regulation, pre-empted a state tort suit that would have held a manufacturer liable for not installing airbags. 529 U. S., at 865. By requiring manufacturers to install airbags (in order to avoid tort liability) the tort suit would have deprived the manufacturers of the choice among passive restraint systems that the federal regulation gave them. See *Hillsborough County* v. *Automated Medical Laboratories, Inc.*, 471 U. S. 707, 713 (1985) ("[S]tate laws can be pre-empted by federal regulations as well as by federal statutes").

We divided this basic pre-emption question into three subsidiary questions. 529 U. S., at 867. First, we asked whether the statute's *express* pre-emption provision pre-empted the state tort suit. That statutory clause says that "no State" may "establish, or . . . continue in effect . . . *any safety standard* applicable to the same aspect of performance" of a motor vehicle or item of equipment "which is not identical to the Federal standard." 15 U. S. C. § 1392(d) (1988 ed.) (emphasis added). We had previously held that a word somewhat similar to "standard," namely, "requirements" (found in a similar statute), included within its scope state "common-law duties," such as duties created by state

tort law. *Medtronic, Inc.* v. *Lohr*, 518 U. S. 470, 502–503 (1996) (plurality opinion); *id.*, at 503–505 (BREYER, J., concurring in part and concurring in judgment); *id.*, at 509–512 (O'Connor, J., concurring in part and dissenting in part). But we nonetheless held that the state tort suit in question fell *outside* the scope of this particular pre-emption clause. That is primarily because the statute also contains a saving clause, which says that "[c]ompliance with" a federal safety standard "does not exempt any person *from any liability under common law.*" 15 U. S. C. § 1397(k) (emphasis added). Since tort law is ordinarily "common law," we held that "the presence of the saving clause" makes clear that Congress intended state tort suits to fall outside the scope of the express pre-emption clause. *Geier*, 529 U. S., at 868.

Second, we asked the converse question: The saving clause *at least* removes tort actions from the scope of the express pre-emption clause. *Id.*, at 869. But does it do more? Does it foreclose or limit "the operation of ordinary pre emption principles insofar as those principles instruct us to read" federal statutes as pre-empting state laws (including state common-law standards) that "actually con ict" with the federal statutes (or related regulations)? *Ibid.* (internal quotation marks omitted). We concluded that the saving clause does not foreclose or limit the operation of "ordinary pre-emption principles, grounded in longstanding prece dent." *Id.*, at 874.

These two holdings apply directly to the case before us. We here consider (1) the same statute, 15 U. S. C. § 1381 *et seq.;* (2) a later version of the same regulation, FMVSS 208; and (3) a somewhat similar claim that a state tort action con icts with the federal regulation. In light of *Geier*, the statute's express pre-emption clause cannot pre-empt the common-law tort action; but neither can the statute's saving clause foreclose or limit the operation of ordinary con ict pre-emption principles. We consequently turn our attention

to *Geier*'s third subsidiary question, whether, in fact, the state tort action con icts with the federal regulation.

III

Under ordinary con ict pre-emption principles a state law that "stands as an obstacle to the accomplishment and execu tion of the full purposes and objectives" of a federal law is pre-empted. *Hines* v. *Davidowitz*, 312 U. S. 52, 67 (1941). See *ibid.* (federal statute can pre-empt a state statute); *Ci pollone* v. *Liggett Group, Inc.*, 505 U. S. 504 (1992) (federal statute can pre-empt a state tort suit); *Fidelity Fed. Sav. & Loan Assn.* v. *De la Cuesta*, 458 U. S. 141 (1982) (federal regulation can pre-empt a state statute); *Geier*, *supra* (fed eral regulation can pre-empt a state tort suit). In *Geier*, we found that the state law stood as an "'obstacle' to the accomplishment" of a signi cant federal regulatory objective, namely, the maintenance of manufacturer choice. 529 U. S., at 886. We must decide whether the same is true here.

A

At the heart of *Geier* lies our determination that giving auto manufacturers a choice among different kinds of passive restraint devices was a *signi cant objective* of the federal regulation. We reached this conclusion on the basis of our examination of the regulation, including its history, the promulgating agency's contemporaneous explanation of its objectives, and the agency's current views of the regulation's pre-emptive effect.

The history showed that the Department of Transporta tion (DOT) had long thought it important to leave manufac turers with a choice. In 1967, DOT required manufacturers to install manual seat belts. *Id.*, at 875; 32 Fed. Reg. 2408, 2415 (1967). Because many car occupants did not "buckle up," DOT began to require passive protection, such as air bags or automatic seatbelts, but without "favor[ing]" or "ex pect[ing]" the use of airbags. *Geier*, *supra*, at 875 (internal

quotation marks omitted); 35 Fed. Reg. 16927 (1970). DOT subsequently approved the use of ignition interlocks, which froze the ignition until the occupant buckled the belt, as a substitute for passive restraints. *Geier*, *supra*, at 876; 37 Fed. Reg. 3911 (1972). But the interlock devices were unpopular with the public, and Congress soon forbade the agency to make them a means of compliance. *Geier*, *supra*, at 876; Motor Vehicle and Schoolbus Safety Amendments of 1974, § 109, 88 Stat. 1482 (previously codified at 15 U. S. C. § 1410b (1988 ed.)). DOT then temporarily switched to the use of demonstration projects, but later it returned to mandating passive restraints, again leaving manufacturers with a choice of systems. *Geier*, *supra*, at 876–877; see 49 Fed. Reg. 28962.

DOT's contemporaneous explanation of its 1984 regulation made clear that manufacturer choice was an important means for achieving its basic objectives. The 1984 regulation gradually phased in passive restraint requirements, initially requiring manufacturers to equip only 10% of their new fleets with passive restraints. DOT explained that it intended its phasing period partly to give manufacturers time to improve airbag technology and to develop "other, better" passive restraint systems. *Geier*, 529 U. S., at 879. DOT further explained that it had rejected an "'all airbag'" system. *Ibid.* It was worried that requiring airbags in most or all vehicles would cause a public backlash, like the backlash against interlock devices. *Ibid.* DOT also had concerns about the safety of airbags, for they could injure out-of-place occupants, particularly children. *Id.*, at 877–878. And, given the cost of airbags, vehicle owners might not replace them when necessary, leaving occupants without passive protection. *Ibid.* The regulation therefore "deliberately sought variety—a mix of several different passive restraint systems." *Id.*, at 878. DOT hoped that this mix would lead to better information about the devices' comparative effectiveness and to the eventual development of "alter

native, cheaper, and safer passive restraint systems." *Id.*, at 879.

Finally, the Solicitor General told us that a tort suit that insisted upon use of airbags, as opposed to other federally permissible passive restraint systems, would "stan[d] as an obstacle to the accomplishment and execution of these objec tives." *Id.*, at 883 (quoting Brief for United States as *Ami cus Curiae* in *Geier* v. *American Honda Motor Co.*, O. T. 1999, No. 98–1811, pp. 25–26 (hereinafter United States Brief in *Geier*); internal quotation marks omitted). And we gave weight to the Solicitor General's view in light of the fact that it "'embodie[d] the Secretary's policy judgment that safety would best be promoted if manufacturers installed *alterna tive* protection systems in their eets rather than one partic ular system in every car.'" 529 U. S., at 881 (quoting United States Brief in *Geier* 25–26).

Taken together, this history, the agency's contemporane ous explanation, and the Government's current understand ing of the regulation convinced us that manufacturer choice was an important regulatory objective. And since the tort suit stood as an obstacle to the accomplishment of that objec tive, we found the tort suit pre-empted.

B

We turn now to the present case. Like the regulation in *Geier*, the regulation here leaves the manufacturer with a choice. And, like the tort suit in *Geier*, the tort suit here would restrict that choice. But unlike *Geier*, we do not be lieve here that choice is a signi cant regulatory objective.

We concede that the history of the regulation before us resembles the history of airbags to some degree. In 1984, DOT rejected a regulation that would have required the use of lap-and-shoulder belts in rear seats. 49 Fed. Reg. 15241. Nonetheless, by 1989 when DOT promulgated the present regulation, it had "concluded that several factors had changed." 54 Fed. Reg. 46258.

DOT then required manufacturers to install a particular kind of belt, namely, lap-and-shoulder belts, for rear outer seats. In respect to rear inner seats, it retained manufacturer choice as to which kind of belt to install. But its 1989 reasons for retaining that choice differed considerably from its 1984 reasons for permitting manufacturers a choice in respect to airbags. DOT here was not concerned about consumer acceptance; it was convinced that lap-and-shoulder belts would increase safety; it did not fear additional safety risks arising from use of those belts; it had no interest in ensuring a mix of devices; and, though it was concerned about additional costs, that concern was diminishing.

In respect to consumer acceptance, DOT wrote that if

> "people who are familiar with and in the habit of wearing lap/shoulder belts in the front seat and lap/shoulder belts in the rear seat, it stands to reason that they would be more likely to wear those belts when riding in the rear seat." 53 Fed. Reg. 47983 (1988).

In respect to safety, DOT wrote that, because an increasing number of rear seat passengers wore seatbelts, rear seat lap-and-shoulder belts would have "progressively greater actual safety benefits." 54 Fed. Reg. 46257.

It added:

> "[S]tudies of occupant protection from 1968 forward show that the lap-only safety belts installed in rear seating positions are effective in reducing the risk of death and injury. . . . However, the agency believes that rear-seat lap/shoulder safety belts would be even more effective." *Ibid.*

Five years earlier, DOT had expressed concern that lap-and-shoulder belts might negatively impact child safety by interfering with the use of certain child car seats that relied upon a tether. But by 1989, DOT found that car-seat designs "had shifted away" from tethers. 53 Fed. Reg. 47983. And rear lap-and-shoulder belts could therefore offer safety

bene ts for children old enough to use them without dimin ishing the safety of smaller children in car seats. *Id.*, at 47988–47989 ("[T]he agency believes that this proposal for rear seat lap/shoulder belts would offer bene ts for children riding in some types of booster seats, would have no positive or negative effects on children riding in most designs of car seats and children that are too small to use shoulder belts, and would offer older children the same incremental safety protection [as adults]"). Nor did DOT seek to use its regulation to spur the development of alternative kinds of rear aisle or middle seat safety devices. See 54 Fed. Reg. 46257.

Why then did DOT not require lap-and-shoulder belts in these seats? We have found some indication that it thought use of lap-and-shoulder belts in rear aisle seats could cause "entry and exit problems for occupants of seating positions to the rear" by "stretch[ing] the shoulder belt across the aisleway," *id.*, at 46258. However, DOT encouraged manu facturers to address this issue through innovation:

> "[I]n those cases where manufacturers are able to de sign and install lap/shoulder belts at seating positions adjacent to aisleways without interfering with the aisle way's purpose of allowing access to more rearward seat ing positions[, the agency] encourages the manufacturers to do so." *Ibid.*

And there is little indication that DOT considered this matter a signi cant safety concern. Cf. Letter from Philip R. Recht, Chief Counsel, National Highway Traf c Safety Admin., to Roger Matoba (Dec. 28, 1994), App. to Reply Brief for Petitioners 2 ("With respect to your concerns about the safety of shoulder safety belts which cross an aisle, I note that such belts do not in fact prevent rearward passen gers from exiting the vehicle. Such passengers may . . . g[o] under or over the belt. They may also move the belt aside").

The more important reason why DOT did not require lap and-shoulder belts for rear inner seats was that it thought that this requirement would not be cost effective. The agency explained that it would be signi cantly more expen sive for manufacturers to install lap-and-shoulder belts in rear middle and aisle seats than in seats next to the car doors. 54 Fed. Reg. 46258. But that fact—the fact that DOT made a negative judgment about cost-effectiveness—cannot by itself show that DOT sought to forbid common-law tort suits in which a judge or jury might reach a different conclusion.

For one thing, DOT did not believe that costs would re main frozen. Rather it pointed out that costs were falling as manufacturers were "voluntarily equipping more and more of their vehicles with rear seat lap/shoulder belts." *Ibid.* For another thing, many, perhaps most, federal safety regulations embody some kind of cost-effectiveness judg ment. While an agency could base a decision to pre-empt on its cost-effectiveness judgment, we are satis ed that the rulemaking record at issue here discloses no such pre emptive intent. And to infer from the mere existence of such a cost-effectiveness judgment that the federal agency intends to bar States from imposing stricter standards would treat all such federal standards as if they were *maximum* standards, eliminating the possibility that the federal agency seeks only to set forth a *minimum* standard potentially sup plemented through state tort law. We cannot reconcile this consequence with a statutory saving clause that foresees the likelihood of a continued meaningful role for state tort law. *Supra*, at 328–329.

Finally, the Solicitor General tells us that DOT's regula tion does not pre-empt this tort suit. As in *Geier*, "the agency's own views should make a difference." 529 U. S., at 883.

> "Congress has delegated to DOT authority to implement the statute; the subject matter is technical; and the rele

> vant history and background are complex and extensive. The agency is likely to have a thorough understanding of its own regulation and its objectives and is 'uniquely quali ed' to comprehend the likely impact of state re quirements." *Ibid.*

There is "no reason to suspect that the Solicitor General's representation of DOT's views re ects anything other than 'the agency's fair and considered judgment on the matter.'" *Id.*, at 884 (quoting *Auer* v. *Robbins*, 519 U. S. 452, 462 (1997)).

Neither has DOT expressed inconsistent views on this sub ject. In *Geier*, the Solicitor General pointed out that "state tort law does not con ict with a federal 'minimum standard' merely because state law imposes a more stringent require ment." United States Brief in *Geier* 21 (citation omitted). And the Solicitor General explained that a standard giving manufacturers "multiple options for the design of" a device would not pre-empt a suit claiming that a manufacturer should have chosen one particular option, where "the Secre tary did not determine that the availability of options was necessary to promote safety." *Id.*, at 22; see Brief for United States as *Amicus Curiae* in *Wood* v. *General Motors Corp.*, O. T. 1989, No. 89–46, p. 15. This last statement de scribes the present case.

In *Geier*, then, the regulation's history, the agency's con temporaneous explanation, and its consistently held interpre tive views indicated that the regulation sought to maintain manufacturer choice in order to further signi cant regula tory objectives. Here, these same considerations indicate the contrary. We consequently conclude that, even though the state tort suit may restrict the manufacturer's choice, it does not "stan[d] as an obstacle to the accomplishment . . . of the full purposes and objectives" of federal law. *Hines*, 312 U. S., at 67. Thus, the regulation does not pre-empt this tort action.

The judgment of the California Court of Appeal is reversed.

It is so ordered.

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

JUSTICE SOTOMAYOR, concurring.

As the Court notes, this is not the first case in which the Court has encountered the express pre-emption provision and saving clause of the National Traffic and Motor Vehicle Safety Act of 1966, 80 Stat. 718, 15 U. S. C. § 1381 *et seq.* (1988 ed.) (recodified without substantive change at 49 U. S. C. § 30101 *et seq.* (2006 ed.). In *Geier* v. *American Honda Motor Co.*, 529 U. S. 861 (2000), the Court concluded that the "saving clause (like the express pre-emption provision) does *not* bar the ordinary working of conflict pre-emption principles," *id.*, at 869, and therefore engaged in an implied pre emption analysis. The majority and dissent in *Geier* agreed that "a court should not find pre-emption too readily in the absence of clear evidence of a conflict." *Id.*, at 885.

I agree with the majority's resolution of this case and with its reasoning. I write separately only to emphasize the Court's rejection of an overreading of *Geier* that has developed since that opinion was issued.

Geier does not stand, as the California Court of Appeal, 167 Cal. App. 4th 905, 918–919, 84 Cal. Rptr. 3d 545, 555–556 (2008), other courts, and some of respondents' *amici* seem to believe, for the proposition that any time an agency gives manufacturers a choice between two or more options, a tort suit that imposes liability on the basis of one of the options is an obstacle to the achievement of a federal regulatory objective and may be pre-empted.* Rather, *Geier* turned on

*See, *e. g.*, *Carden* v. *General Motors Corp.*, 509 F. 3d 227, 230–232 (CA5 2007); *Griffith* v. *General Motors Corp.*, 303 F. 3d 1276, 1282 (CA11 2002); *Heinricher* v. *Volvo Car Corp.*, 61 Mass. App. 313, 318–319, 809 N. E. 2d 1094, 1098 (2004).

the fact that the agency, via Federal Motor Vehicle Safety Standard 208, "deliberately sought variety—a mix of several different passive restraint systems." 529 U. S., at 878; *ante*, at 331. As the United States notes, "a con ict results only when the Safety Act (or regulations implementing the Safety Act) does not just set out options for compliance, but also provides that the regulated parties must remain free to choose among those options." Brief for United States as *Amicus Curiae* 8. In other words, the mere fact that an agency regulation allows manufacturers a choice be tween options is insuf cient to justify implied pre-emption; courts should only nd pre-emption where evidence exists that an agency has a regulatory objective—*e. g.*, obtaining a mix of passive restraint mechanisms, as in *Geier*—whose achievement depends on manufacturers having a choice be tween options. A link between a regulatory objective and the need for manufacturer choice to achieve that objective is the linchpin of implied pre-emption when there is a saving clause.

Absent strong indications from the agency that it needs manufacturers to have options in order to achieve a "signi cant . . . regulatory objective," *ante*, at 330, state tort suits are not "obstacle[s] to the accomplishment . . . of the full purposes and objectives" of federal law, *Hines* v. *Davidowitz*, 312 U. S. 52, 67 (1941). As the majority explains, the agency here gave no indication that its safety goals required the mixture of seatbelt types that resulted from manufacturers' ability to choose different options. *Ante*, at 332–336 (distin guishing the regulatory record in this case from that in *Geier*).

Especially in light of the "statutory saving clause that foresees the likelihood of a continued meaningful role for state tort law," *ante*, at 335, respondents have not carried their burden of establishing that the agency here "deliber ately sought variety" to achieve greater safety, *Geier*, 529 U. S., at 878. Therefore, the Williamsons' tort suit does not

present an obstacle to any "signi cant federal regulatory ob jective," *ante*, at 330, and may not be pre-empted.

For these reasons, I concur.

JUSTICE THOMAS, concurring in the judgment.

The Court concludes that the National Traf c and Motor Vehicle Safety Act of 1966 (Safety Act) and Federal Motor Vehicle Safety Standard 208 (FMVSS 208) do not pre-empt the Williamsons' state tort lawsuit. I agree. But I reach this result by a more direct route: the Safety Act's saving clause, which speaks directly to this question and answers it. See 49 U. S. C. § 30103(e).

I

The plain text of the Safety Act resolves this case. Con gress has instructed that "[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not ex empt a person from liability at common law." *Ibid.* This saving clause "explicitly preserv[es] state common-law ac tions." *Wyeth* v. *Levine*, 555 U. S. 555, 599 (2009) (THOMAS, J., concurring in judgment). Here, Mazda complied with FMVSS 208 when it chose to install a simple lap belt. Ac cording to Mazda, the Williamsons' lawsuit alleging that it should have installed a lap-and-shoulder seatbelt instead is pre-empted. That argument is foreclosed by the saving clause; the Williamsons' state tort action is not pre-empted.

The majority does not rely on the Safety Act's saving clause because this Court effectively read it out of the stat ute in *Geier* v. *American Honda Motor Co.*, 529 U. S. 861 (2000). In *Geier*, the Court interpreted the saving clause as simply canceling out the statute's express pre-emption clause with respect to common-law tort actions. This left the Court free to consider the effect of con ict pre-emption prin ciples on such tort actions. See *id.*, at 869.

But it makes no sense to read the express pre-emption clause in conjunction with the saving clause. See *id.*, at 898 (Stevens, J., dissenting). The express pre-emption clause

bars States from having any safety "standard applicable to the same aspect of performance" as a federal standard unless it is "identical" to the federal one. § 30103(b). That clause pre-empts States from establishing "objective rule[s] prescribed by a legislature or an administrative agency" in competition with the federal standards; it says nothing about the tort lawsuits that are the focus of the saving clause. *Id.*, at 896.* Read independently of the express pre-emption clause, the saving clause simply means what it says: FMVSS 208 does not pre-empt state common-law actions.

II

As in *Geier*, rather than following the plain text of the statute, the majority's analysis turns on whether the tort lawsuit here "'stands as an obstacle to the accomplishment and execution of the full purposes and objectives'" of FMVSS 208. *Ante*, at 330 (quoting *Hines* v. *Davidowitz*, 312 U. S. 52, 67 (1941)). I have rejected purposes-and-objectives pre-emption as inconsistent with the Constitution because it turns entirely on extratextual "judicial suppositions." *Wyeth*, *supra*, at 603 (opinion concurring in judgment); see also *Haywood* v. *Drown*, 556 U. S. 729, 756–759 (2009) (dissenting opinion).

Pre-emption occurs "by direct operation of the Supremacy Clause," *Brown* v. *Hotel Employees*, 468 U. S. 491, 501 (1984), which "requires that pre-emptive effect be given only to those federal standards and policies that are set forth in, or necessarily follow from, the statutory text that was produced through the constitutionally required bicameral and presentment procedures." *Wyeth*, 555 U. S., at 586 (opinion of THOMAS, J.). In short, pre-emption must turn on

*See also *Sprietsma* v. *Mercury Marine*, 537 U. S. 51, 63–64 (2002) (addressing a similar express pre-emption clause and saving clause in the Federal Boat Safety Act, and holding that it is "perfectly rational" for Congress to bar state "administrative and legislative regulations" while allowing "private damages remedies" to compensate accident victims).

the text of a federal statute or the regulations it authorizes. See *id.*, at 587; see also *Geier*, *supra*, at 911 (Stevens, J., dissenting).

Purposes-and-objectives pre-emption—which by design roams beyond statutory or regulatory text—is thus wholly illegitimate. It instructs courts to pre-empt state laws based on judges' "conceptions of a policy which Congress has not expressed and which is not plainly to be inferred from the legislation which it has enacted." *Hines*, *supra*, at 75 (Stone, J., dissenting); *Geier*, *supra*, at 907 (opinion of Stevens, J.) (expressing concern about judges "running amok with our potentially boundless (and perhaps inadequately considered) [purposes-and-objectives pre-emption doctrine]"); see also *Wyeth*, *supra*, at 594–602 (opinion of THOMAS, J.) (recounting the history of the doctrine).

The majority's purposes-and-objectives pre-emption analysis displays the inherent constitutional problem with the doctrine. The Court begins with FMVSS 208, which allowed manufacturers to install either simple lap or lap-and-shoulder seatbelts in the rear aisle seat of 1993 minivans. The majority then turns to what it considers the primary issue: whether "that choice [was] a *significant* regulatory objective." *Ante*, at 332 (emphasis added). Put more plainly, the question is whether the regulators *really* wanted manufacturers to have a choice or did not really want them to have a choice but gave them one anyway.

To answer that question, the majority engages in a "free-wheeling, extratextual, and broad evaluatio[n] of the 'purposes and objectives'" of FMVSS 208. *Wyeth*, *supra*, at 604 (opinion of THOMAS, J.). The Court wades into a sea of agency musings and Government litigating positions and finishes for what the agency may have been thinking 20 years ago when it drafted the relevant provision. After scrutinizing the 1989 Federal Register, a letter written in 1994, and the Solicitor General's present-day assurances, the Court finds that the Department of Transportation liked the idea

of lap-and-shoulder seatbelts in all seats, but did not require them, primarily for cost-ef ciency reasons and also because of some concern for ingress-egress around the belt mounts. *Ante*, at 332–336. From all of this, the majority determines that although the regulators speci cally and intentionally gave manufacturers a choice between types of seatbelts, that choice was not a "signi cant regulatory objective" and so does not pre-empt state tort lawsuits.

That the Court in *Geier* reached an opposite conclusion reveals the utterly unconstrained nature of purposes-and objectives pre-emption. There is certainly "considerable similarity between this case and *Geier*." *Ante*, at 327. Just as in this case, *Geier* involved a choice offered to car manu facturers in FMVSS 208: whether to install airbags. *Ante*, at 332. And just as in this case, the Court in *Geier* relied on "history, the agency's contemporaneous explanation, and the Government's current understanding" to determine the signi cance of that choice. *Ante*, at 332. Yet the *Geier* Court concluded that "giving auto manufacturers a choice among different kinds of passive restraint devices was a *sig ni cant objective* of the federal regulation," *ante*, at 330, and thus found the Geiers' lawsuit pre-empted.

The dispositive difference between this case and *Geier*—indeed, the only difference—is the majority's "psychoanal ysis" of the regulators. *United States* v. *Public Util. Comm'n of Cal.*, 345 U. S. 295, 319 (1953) (Jackson, J., concur ring) (describing reliance on legislative history). The ma jority cites no difference on the face of FMVSS 208 between the airbag choice addressed in *Geier* and the seatbelt choice at issue in this case.

According to the majority, to determine whether FMVSS 208 pre-empts a tort suit, courts apparently must embark on the same expedition undertaken here: sifting through the Federal Register, examining agency ruminations, and asking the Government what it currently thinks. Pre-emption is then proper if the court decides that the regulators thought

the choice especially important, but not if the choice was only somewhat important. This quest roves far from the Safety Act and analyzes pre-emption based on a formless inquiry into how strongly an agency felt about the regulation it enacted 20 years ago.

"[F]reeranging speculation about what the purposes of the [regulation] must have been" is not constitutionally proper in any case. *Wyeth*, 555 U. S., at 595 (opinion of THOMAS, J.). The Supremacy Clause commands that the "[l]aws of the United States," not the unenacted hopes and dreams of the Department of Transportation, "shall be the supreme Law of the Land." U. S. Const., Art. VI, cl. 2. The impro priety is even more obvious here because the plain text of the Safety Act resolves this case.

For these reasons, I concur in the judgment.

Syllabus

MICHIGAN *v.* BRYANT

CERTIORARI TO THE SUPREME COURT OF MICHIGAN

No. 09–150. Argued October 5, 2010—Decided February 28, 2011

Michigan police dispatched to a gas station parking lot found Anthony Covington mortally wounded. Covington told them that he had been shot by respondent Bryant outside Bryant's house and had then driven himself to the lot. At trial, which occurred before *Crawford* v. *Washington*, 541 U. S. 36, and *Davis* v. *Washington*, 547 U. S. 813, were decided, the officers testified about what Covington said. Bryant was found guilty of, *inter alia*, second-degree murder. Ultimately, the Michigan Supreme Court reversed his conviction, holding that the Sixth Amendment's Confrontation Clause, as explained in *Crawford* and *Davis*, rendered Covington's statements inadmissible testimonial hearsay.

Held: Covington's identification and description of the shooter and the location of the shooting were not testimonial statements because they had a "primary purpose . . . to enable police assistance to meet an ongoing emergency." *Davis*, 547 U. S., at 822. Therefore, their admission at Bryant's trial did not violate the Confrontation Clause. Pp. 352–378.

(a) In *Crawford*, this Court held that in order for testimonial evidence to be admissible, the Sixth Amendment "demands . . . unavailability and a prior opportunity for cross-examination." 541 U. S., at 68. *Crawford* did not "spell out a comprehensive definition of 'testimonial,'" but it noted that testimonial evidence includes, among other things, "police interrogations." *Ibid.* Thus, Sylvia Crawford's statements during a station-house interrogation about a stabbing were testimonial, and their admission when her husband, the accused, had "no opportunity" for cross-examination due to spousal privilege made out a Sixth Amendment violation. In *Davis* and *Hammon* v. *Indiana*, both domestic violence cases, the Court explained that "[s]tatements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the [interrogation's] primary purpose . . . is to enable police assistance to meet an ongoing emergency," but they "are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the [interrogation's] primary purpose is to establish or prove past events potentially relevant to later criminal prosecution." 547 U. S., at 822. Thus, a recording of a 911 call describing an ongoing domestic disturbance was nontestimonial in *Davis*, where the victim's "elicited statements were necessary to be able

to *resolve* [the ongoing] emergency," and the statements were not for mal. *Id.*, at 827. But the statements in *Hammon* were testimonial, where the victim was interviewed after the event in a room separate from her husband and "deliberately recounted, in response to police questioning," the past events. *Id.*, at 830. Here, the context is a non-domestic dispute, with the "ongoing emergency" extending beyond an initial victim to a potential threat to the responding police and the pub lic. This context requires additional clari cation of what *Davis* meant by "the primary purpose of the interrogation is to enable police assist ance to meet an ongoing emergency." *Id.*, at 822. Pp. 352–359.

(b) To make the "primary purpose" determination, the Court must objectively evaluate the circumstances in which the encounter between the individual and the police occurs and the parties' statements and actions. Pp. 359–370.

(1) The primary purpose inquiry is objective. The circumstances in which an encounter occurs—*e. g.*, at or near a crime scene versus at a police station, during an ongoing emergency or afterwards—are clearly matters of objective fact. And the relevant inquiry into the parties' statements and actions is not the subjective or actual purpose of the particular parties, but the purpose that reasonable participants would have had, as ascertained from the parties' statements and actions and the circumstances in which the encounter occurred. P. 360.

(2) The existence of an "ongoing emergency" at the time of the encounter is among the most important circumstances informing the interrogation's "primary purpose." See, *e. g.*, *Davis*, 547 U. S., at 828–830. An emergency focuses the participants not on "prov[ing] past events potentially relevant to later criminal prosecution," *id.*, at 822, but on "end[ing] a threatening situation," *id.*, at 832. The Michigan Supreme Court failed to appreciate that whether an emergency exists and is ongoing is a highly context-dependent inquiry. An assessment of whether an emergency threatening the police and public is ongoing cannot narrowly focus on whether the threat to the rst victim has been neutralized because the threat to the rst responders and public may continue. The State Supreme Court also did not appreciate that an emergency's duration and scope may depend in part on the type of weapon involved; the court below relied on *Davis* and *Hammon*, where the assailants used their sts, as controlling the scope of an emergency involving a gun. A victim's medical condition is important to the pri mary purpose inquiry to the extent that it sheds light on the victim's ability to have any purpose at all in responding to police questions and on the likelihood that any such purpose would be a testimonial one. It also provides important context for rst responders to judge the exist ence and magnitude of a continuing threat to the victim, themselves,

and the public. This does not mean that an emergency lasts the entire time that a perpetrator is on the loose, but trial courts can determine in the first instance when an interrogation transitions from nontestimonial to testimonial. Finally, whether an ongoing emergency exists is simply one factor informing the ultimate inquiry regarding an interrogation's "primary purpose." Another is the encounter's *informality*. Formality suggests the absence of an emergency, but informality does not necessarily indicate the presence of an emergency or the lack of testimonial intent. The facts here—the questioning occurred in an exposed, public area, before emergency medical services arrived, and in a disorganized fashion—distinguish this case from *Crawford*'s formal station-house interrogation. Pp. 361–366.

(3) The statements and actions of both the declarant and interrogators also provide objective evidence of the interrogation's primary purpose. Looking to the contents of both the questions and the answers ameliorates problems that could arise from looking solely to one participant, since both interrogators and declarants may have mixed motives. Police officers' dual responsibilities as both first responders and criminal investigators may lead them to act with different motives simultaneously or in quick succession. And during an ongoing emergency, victims may want the threat to end, but may not envision prosecution. Alternatively, a severely injured victim may have no purpose at all in answering questions. Taking into account such injuries does not make the inquiry subjective. The inquiry still focuses on the understanding and purpose of a reasonable victim in the actual victim's circumstances, which prominently include the victim's physical state. Objectively ascertaining the primary purpose of the interrogation by examining the statements and actions of all participants is also consistent with this Court's prior holdings. *E. g.*, *Davis*, 547 U. S., at 822–823, n. 1. Pp. 367–370.

(c) Here, the circumstances of the encounter as well as the statements and actions of Covington and the police objectively indicate that the interrogation's "primary purpose" was "to enable police assistance to meet an ongoing emergency," 547 U. S., at 822. The circumstances of the interrogation involved an armed shooter, whose motive for and location after the shooting were unknown and who had mortally wounded Covington within a few blocks and a few minutes of the location where police found Covington. Unlike the emergencies in *Davis* and *Hammon*, this dispute's potential scope and thus the emergency encompassed a potential threat to the police and the public. And since this case involved a gun, the physical separation that was sufficient to end the emergency in *Hammon* was not necessarily sufficient to end the threat

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here. Informed by the circumstances of the ongoing emergency, the Court now turns to determining the "primary purpose of the interroga tion" as evidenced by the statements and actions of Covington and the police. The circumstances of the encounter provide important context for understanding Covington's statements to the police. When he re sponded to their questions, he was lying in a gas station parking lot bleeding from a mortal gunshot wound, and his answers were punctu ated with questions about when emergency medical services would ar rive. Thus, this Court cannot say that a person in his situation would have had a "primary purpose" "to establish or prove past events poten tially relevant to later criminal prosecution." *Ibid.* For their part, the police responded to a call that a man had been shot. They did not know why, where, or when the shooting had occurred; the shooter's location; or anything else about the crime. They asked exactly the type of ques tions necessary to enable them "to meet an ongoing emergency." *Ibid.* Nothing in Covington's responses indicated to the police that there was no emergency or that the emergency had ended. Finally, this situation is more similar to the informal, harried 911 call in *Davis* than to the structured, station-house interview in *Crawford.* The of cers all ar rived at different times; asked, upon arrival, what had happened; and generally did not conduct a structured interrogation. The informality suggests that their primary purpose was to address what they consid ered to be an ongoing emergency, and the circumstances lacked a formal ity that would have alerted Covington to or focused him on the possible future prosecutorial use of his statements. Pp. 370–378.

483 Mich. 132, 768 N. W. 2d 65, vacated and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, BREYER, and ALITO, JJ., joined. THOMAS, J., led an opinion concurring in the judgment, *post*, p. 378. SCALIA, J., *post*, p. 379, and GINSBURG, J., *post*, p. 395, led dissenting opinions. KAGAN, J., took no part in the consideration or decision of the case.

Lori Baughman Palmer argued the cause for petitioner. With her on the briefs were *Kym L. Worthy* and *Timothy A. Baughman.*

Acting Deputy Solicitor General Kruger argued the cause for the United States as *amicus curiae* in support of peti tioner. With her on the brief were former *Solicitor General Kagan*, *Assistant Attorney General Breuer*, *Deputy Solici tor General Dreeben*, and *David E. Hollar.*

Peter Jon Van Hoek argued the cause and filed a brief for respondent.*

JUSTICE SOTOMAYOR delivered the opinion of the Court.

At respondent Richard Bryant's trial, the court admitted statements that the victim, Anthony Covington, made to police officers who discovered him mortally wounded in a gas station parking lot. A jury convicted Bryant of, *inter alia*, second-degree murder. 483 Mich. 132, 137, 768 N. W. 2d 65, 67–68 (2009). On appeal, the Supreme Court of Michigan held that the Sixth Amendment's Confrontation Clause, as explained in our decisions in *Crawford* v. *Washington*, 541 U. S. 36 (2004), and *Davis* v. *Washington*, 547 U. S. 813 (2006), rendered Covington's statements inadmissible testimonial hearsay, and the court reversed Bryant's conviction. 483 Mich., at 157, 768 N. W. 2d, at 79. We granted the

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*A brief of *amici curiae* urging reversal was filed for the State of Maryland et al. by *Douglas F. Gansler*, Attorney General, and *Robert Taylor, Jr.*, and *Brian S. Kleinbord*, Assistant Attorneys General, by *Kevin T. Kane*, Chief State's Attorney of Connecticut, and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *Daniel S. Sullivan* of Alaska, *Terry Goddard* of Arizona, *Dustin McDaniel* of Arkansas, *John Suthers* of Colorado, *Joseph R. Biden III* of Delaware, *Bill McCollum* of Florida, *Mark J. Bennett* of Hawaii, *Lawrence G. Wasden* of Idaho, *Lisa Madigan* of Illinois, *Gregory F. Zoeller* of Indiana, *Steve Six* of Kansas, *James D. "Buddy" Caldwell* of Louisiana, *Janet T. Mills* of Maine, *Martha Coakley* of Massachusetts, *Lori Swanson* of Minnesota, *Jim Hood* of Mississippi, *Steve Bullock* of Montana, *Jon Bruning* of Nebraska, *Catherine Cortez Masto* of Nevada, *Michael A. Delaney* of New Hampshire, *Gary K. King* of New Mexico, *Richard Cordray* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Henry D. McMaster* of South Carolina, *Marty J. Jackley* of South Dakota, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *William H. Sorrell* of Vermont, *Kenneth T. Cuccinelli II* of Virginia, *Robert M. McKenna* of Washington, *J. B. Van Hollen* of Wisconsin, and *Bruce A. Salzburg* of Wyoming.

Briefs of *amici curiae* urging affirmance were filed for the National Association of Criminal Defense Lawyers by *Robert K. Kry* and *Barbara E. Bergman;* and for Richard D. Friedman by *Mr. Friedman, pro se.*

State's petition for a writ of certiorari to consider whether the Confrontation Clause barred the admission at trial of Covington's statements to the police. We hold that the circumstances of the interaction between Covington and the police objectively indicate that the "primary purpose of the interrogation" was "to enable police assistance to meet an ongoing emergency." *Davis*, 547 U. S., at 822. Therefore, Covington's identification and description of the shooter and the location of the shooting were not testimonial statements, and their admission at Bryant's trial did not violate the Confrontation Clause. We vacate the judgment of the Supreme Court of Michigan and remand.

I

Around 3:25 a.m. on April 29, 2001, Detroit, Michigan, police officers responded to a radio dispatch indicating that a man had been shot. At the scene, they found the victim, Anthony Covington, lying on the ground next to his car in a gas station parking lot. Covington had a gunshot wound to his abdomen, appeared to be in great pain, and spoke with difficulty.

The police asked him "what had happened, who had shot him, and where the shooting had occurred." 483 Mich., at 143, 768 N. W. 2d, at 71. Covington stated that "Rick" shot him at around 3 a.m. *Id.*, at 136, and n. 1, 768 N. W. 2d, at 67, and n. 1. He also indicated that he had a conversation with Bryant, whom he recognized based on his voice, through the back door of Bryant's house. Covington explained that when he turned to leave, he was shot through the door and then drove to the gas station, where police found him.

Covington's conversation with the police ended within 5 to 10 minutes when emergency medical services arrived. Covington was transported to a hospital and died within hours. The police left the gas station after speaking with Covington, called for backup, and traveled to Bryant's house. They

did not find Bryant there but did find blood and a bullet on the back porch and an apparent bullet hole in the back door. Police also found Covington's wallet and identification outside the house.

At trial, which occurred prior to our decisions in *Crawford*, 541 U. S. 36, and *Davis*, 547 U. S. 813, the police officers who spoke with Covington at the gas station testified about what Covington had told them. The jury returned a guilty verdict on charges of second-degree murder, being a felon in possession of a firearm, and possession of a firearm during the commission of a felony.

Bryant appealed, and the Michigan Court of Appeals affirmed his conviction. No. 247039, 2004 WL 1882661 (Aug. 24, 2004) *(per curiam)*. Bryant then appealed to the Supreme Court of Michigan, arguing that the trial court erred in admitting Covington's statements to the police. The Supreme Court of Michigan eventually remanded the case to the Court of Appeals for reconsideration in light of our 2006 decision in *Davis*. 477 Mich. 902, 722 N. W. 2d 797 (2006). On remand, the Court of Appeals again affirmed, holding that Covington's statements were properly admitted because they were not testimonial. No. 247039, 2007 WL 675471 (Mar. 6, 2007) *(per curiam)*. Bryant again appealed to the Supreme Court of Michigan, which reversed his conviction. 483 Mich. 132, 768 N. W. 2d 65.

Before the Supreme Court of Michigan, Bryant argued that Covington's statements to the police were testimonial under *Crawford* and *Davis* and were therefore inadmissible. The State, on the other hand, argued that the statements were admissible as "excited utterances" under the Michigan Rules of Evidence. 483 Mich., at 142, and n. 6, 768 N. W. 2d, at 70, and n. 6. There was no dispute that Covington was unavailable at trial and Bryant had no prior opportunity to cross-examine him. The court therefore assessed whether Covington's statements to the police identifying and describ

ing the shooter and the time and location of the shooting were testimonial hearsay for purposes of the Confrontation Clause. The court concluded that the circumstances "clearly indicate that the 'primary purpose' of the questioning was to establish the facts of an event that had *already* occurred; the 'primary purpose' was not to enable police assistance to meet an ongoing emergency." *Id.*, at 143, 768 N. W. 2d, at 71. The court explained that, in its view, Covington was describ ing past events and as such, his "primary purpose in making these statements to the police . . . was . . . to tell the police who had committed the crime against him, where the crime had been committed, and where the police could nd the criminal." *Id.*, at 144, 768 N. W. 2d, at 71. Noting that the of cers' actions did not suggest that they perceived an ongo ing emergency at the gas station, the court held that there was in fact no ongoing emergency. *Id.*, at 145–147, 768 N. W. 2d, at 71–73. The court distinguished the facts of this case from those in *Davis*, where we held a declarant's statements in a 911 call to be nontestimonial. It instead analogized this case to *Hammon* v. *Indiana*, which we decided jointly with *Davis* and in which we found testimonial a declarant's state ments to police just after an assault. See 547 U. S., at 829–832. Based on this analysis, the Supreme Court of Michigan held that the admission of Covington's statements consti tuted prejudicial plain error warranting reversal and or dered a new trial. 483 Mich., at 151–153, 768 N. W. 2d, at 75–76. The court did not address whether, absent a Con frontation Clause bar, the statements' admission would have been otherwise consistent with Michigan's hearsay rules or due process.[1]

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[1] The Supreme Court of Michigan held that the question whether the victim's statements would have been admissible as "dying declarations" was not properly before it because at the preliminary examination, the prosecution, after rst invoking both the dying declaration and excited utterance hearsay exceptions, established the factual foundation only for

The majority's opinion provoked two dissents, both of which would have held Covington's statements admissible because they were made in circumstances indicating that their "primary purpose" was to assist police in addressing an ongoing emergency. *Id.*, at 157, 768 N. W. 2d, at 79 (opinion of Weaver, J.); *id.*, at 157–159, 768 N. W. 2d, at 79 (opinion of Corrigan, J.). Justice Corrigan's dissent explained that the time and space between "the onset of an emergency and statements about that emergency clearly must be considered in context." *Id.*, at 161, 768 N. W. 2d, at 80. Justice Corrigan concluded that the objective circumstances of Covington's interaction with police rendered this case more similar to the nontestimonial statements in *Davis* than to the testimonial statements in *Crawford*. 483 Mich., at 164, 768 N. W. 2d, at 82.

We granted certiorari to determine whether the Confrontation Clause barred admission of Covington's statements. 559 U. S. 970 (2010).

II

The Confrontation Clause of the Sixth Amendment states: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." The Fourteenth Amendment renders the Clause binding on the States. *Pointer* v. *Texas*, 380 U. S. 400, 403 (1965). In

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admission of the statements as excited utterances. The trial court ruled that the statements were admissible as excited utterances and did not address their admissibility as dying declarations. 483 Mich., at 153–154, 768 N. W. 2d, at 76–77. This occurred prior to our 2004 decision in *Crawford* v. *Washington*, 541 U. S. 36, where we first suggested that dying declarations, even if testimonial, might be admissible as a historical exception to the Confrontation Clause. *Id.*, at 56, n. 6; see also *Giles* v. *California*, 554 U. S. 353, 358–359 (2008). We noted in *Crawford* that we "need not decide in this case whether the Sixth Amendment incorporates an exception for testimonial dying declarations." 541 U. S., at 56, n. 6. Because of the State's failure to preserve its argument with regard to dying declarations, we similarly need not decide that question here. See also *post*, p. 395 (GINSBURG, J., dissenting).

Ohio v. *Roberts*, 448 U. S. 56, 66 (1980), we explained that the confrontation right does not bar admission of statements of an unavailable witness if the statements "bea[r] adequate 'indicia of reliability.' " We held that reliability can be es tablished if "the evidence falls within a rmly rooted hearsay exception," or if it does not fall within such an exception, then if it bears "particularized guarantees of trustworthi ness." *Ibid.*

Nearly a quarter century later, we decided *Crawford* v. *Washington*, 541 U. S. 36. Petitioner Michael Crawford was prosecuted for stabbing a man who had allegedly attempted to rape his wife, Sylvia. Sylvia witnessed the stabbing, and later that night, after she and her husband were both ar rested, police interrogated her about the incident. At trial, Sylvia Crawford claimed spousal privilege and did not tes tify, but the State introduced a tape recording of Sylvia's statement to the police in an effort to prove that the stabbing was not in self-defense, as Michael Crawford claimed. The Washington Supreme Court af rmed Crawford's conviction because it found Sylvia's statement to be reliable, as required under *Ohio* v. *Roberts*. We reversed, overruling *Ohio* v. *Roberts*. 541 U. S., at 60–68; see also *Davis*, 547 U. S., at 825, n. 4.

Crawford examined the common-law history of the con frontation right and explained that "the principal evil at which the Confrontation Clause was directed was the civil-law mode of criminal procedure, and particularly its use of *ex parte* examinations as evidence against the accused." 541 U. S., at 50. We noted that in England, pretrial exami nations of suspects and witnesses by government of cials "were sometimes read in court in lieu of live testimony." *Id.*, at 43. In light of this history, we emphasized the word "witnesses" in the Sixth Amendment, de ning it as "those who 'bear testimony.' " *Id.*, at 51 (quoting 2 N. Webster, An American Dictionary of the English Language (1828)). We de ned "testimony" as " '[a] solemn declaration or af rma

tion made for the purpose of establishing or proving some fact.'" 541 U. S., at 51 (quoting Webster). We noted that "[a]n accuser who makes a formal statement to government officers bears testimony in a sense that a person who makes a casual remark to an acquaintance does not." *Ibid.* We therefore limited the Confrontation Clause's reach to testimonial statements and held that in order for testimonial evidence to be admissible, the Sixth Amendment "demands what the common law required: unavailability and a prior opportunity for cross-examination." *Id.*, at 68. Although "leav[ing] for another day any effort to spell out a comprehensive definition of 'testimonial,'" *Crawford* noted that "at a minimum" it includes "prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and . . . police interrogations." *Ibid.* Under this reasoning, we held that Sylvia Crawford's statements in the course of police questioning were testimonial and that their admission when Michael Crawford "had no opportunity to cross-examine her" due to spousal privilege was "sufficient to make out a violation of the Sixth Amendment." *Ibid.*

In 2006, the Court in *Davis* v. *Washington* and *Hammon* v. *Indiana*, 547 U. S. 813, took a further step to "determine more precisely which police interrogations produce testimony" and therefore implicate a Confrontation Clause bar. *Id.*, at 822. We explained that when *Crawford* said that

> "'interrogations by law enforcement officers fall squarely within [the] class' of testimonial hearsay, we had immediately in mind (for that was the case before us) interrogations solely directed at establishing the facts of a past crime, in order to identify (or provide evidence to convict) the perpetrator. The product of such interrogation, whether reduced to a writing signed by the declarant or embedded in the memory (and perhaps notes) of the interrogating officer, is testimonial." *Davis*, 547 U. S., at 826.

We thus made clear in *Davis* that not all those questioned by the police are witnesses and not all "interrogations by law enforcement of cers," *Crawford*, 541 U. S., at 53, are sub ject to the Confrontation Clause.[2]

Davis and *Hammon* were both domestic violence cases. In *Davis*, Michelle McCottry made the statements at issue to a 911 operator during a domestic disturbance with Adrian Davis, her former boyfriend. McCottry told the operator, "'He's here jumpin' on me again,'" and, "'He's usin' his sts.'" 547 U. S., at 817. The operator then asked McCot try for Davis' rst and last names and middle initial, and at that point in the conversation McCottry reported that Davis had ed in a car. *Id.*, at 818. McCottry did not appear at Davis' trial, and the State introduced the recording of her conversation with the 911 operator. *Id.*, at 819.

In *Hammon*, decided along with *Davis*, police responded to a domestic disturbance call at the home of Amy and Her shel Hammon, where they found Amy alone on the front porch. *Ibid.* She appeared "'somewhat frightened,'" but told them "'nothing was the matter.'" *Ibid.* (quoting *Ham mon* v. *State*, 829 N. E. 2d 444, 446–447 (Ind. 2005)). She gave the police permission to enter the house, where they saw a gas heating unit with the glass front shattered on the oor. One of cer remained in the kitchen with Hershel, while another of cer talked to Amy in the living room about what had happened. Hershel tried several times to partici pate in Amy's conversation with the police and became angry when the police required him to stay separated from Amy. 547 U. S., at 819–820. The police asked Amy to ll out and sign a battery af davit. She wrote: "'Broke our Furnace &

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[2] We noted in *Crawford* that "[w]e use the term 'interrogation' in its colloquial, rather than any technical legal, sense," and that "[j]ust as vari ous de nitions of 'testimonial' exist, one can imagine various de nitions of 'interrogation,' and we need not select among them in this case." 541 U. S., at 53, n. 4. *Davis* did not abandon those quali cations; nor do we do so here.

shoved me down on the oor into the broken glass. Hit me in the chest and threw me down. Broke our lamps & phone. Tore up my van where I couldn't leave the house. Attacked my daughter.'" *Id.*, at 820. Amy did not appear at Her shel's trial, so the police of cers who spoke with her testi ed as to her statements and authenticated the af davit. *Ibid.* The trial court admitted the af davit as a present sense im pression and admitted the oral statements as excited utter ances under state hearsay rules. *Ibid.* The Indiana Su preme Court af rmed Hammon's conviction, holding that Amy's oral statements were not testimonial and that the ad mission of the af davit, although erroneous because the af davit was testimonial, was harmless. *Hammon* v. *State*, 829 N. E. 2d, at 458–459.

To address the facts of both cases, we expanded upon the meaning of "testimonial" that we rst employed in *Crawford* and discussed the concept of an ongoing emergency. We explained:

> "Statements are nontestimonial when made in the course of police interrogation under circumstances ob jectively indicating that the primary purpose of the in terrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events poten tially relevant to later criminal prosecution." *Davis*, 547 U. S., at 822.

Examining the *Davis* and *Hammon* statements in light of those de nitions, we held that the statements at issue in *Davis* were nontestimonial and the statements in *Hammon* were testimonial. We distinguished the statements in *Davis* from the testimonial statements in *Crawford* on sev eral grounds, including that the victim in *Davis* was "speak ing about events *as they were actually happening*, rather

than 'describ[ing] past events,'" that there was an ongoing emergency, that the "elicited statements were necessary to be able to *resolve* the present emergency," and that the statements were not formal. 547 U. S., at 827. In *Hammon*, on the other hand, we held that, "[i]t is entirely clear from the circumstances that the interrogation was part of an investigation into possibly criminal past conduct." *Id.*, at 829. There was "no emergency in progress." *Ibid.* The officer questioning Amy "was not seeking to determine . . . 'what is happening,' but rather 'what happened.'" *Id.*, at 830. It was "formal enough" that the police interrogated Amy in a room separate from her husband where, "some time after the events described were over," she "deliberately recounted, in response to police questioning, how potentially criminal past events began and progressed." *Ibid.* Because her statements "were neither a cry for help nor the provision of information enabling officers immediately to end a threatening situation," *id.*, at 832, we held that they were testimonial.

Davis did not "attemp[t] to produce an exhaustive classification of all conceivable statements—or even all conceivable statements in response to police interrogation—as either testimonial or nontestimonial." *Id.*, at 822.[3] The basic pur

[3] *Davis* explained that 911 operators "may at least be agents of law enforcement when they conduct interrogations of 911 callers," and therefore "consider[ed] their acts to be acts of the police" for purposes of the opinion. 547 U. S., at 823, n. 2. *Davis* explicitly reserved the question "whether and when statements made to someone other than law enforcement personnel are 'testimonial.'" *Ibid.* We have no need to decide that question in this case either because Covington's statements were made to police officers. JUSTICE SCALIA also claims to reserve this question, see *post*, at 381, n. 1 (dissenting opinion) (hereinafter dissent), but supports one of its arguments by relying on *King* v. *Brasier*, 1 Leach 199, 200, 168 Eng. Rep. 202, 202–203 (K. B. 1779), which involved statements made by a child to her mother—a private citizen—just after the child had been sexually assaulted. See also *Crawford*, 541 U. S., at 69–70 (Rehnquist, C. J., concurring in judgment) (citing *King* v. *Brasier* for the different proposition that "out-of-court statements made by someone other than the accused and not

pose of the Confrontation Clause was to "targe[t]" the sort of "abuses" exempli ed at the notorious treason trial of Sir Walter Raleigh. *Crawford*, 541 U. S., at 51. Thus, the most important instances in which the Clause restricts the intro duction of out-of-court statements are those in which state actors are involved in a formal, out-of-court interrogation of a witness to obtain evidence for trial.[4] See *id.*, at 43–44. Even where such an interrogation is conducted with all good faith, introduction of the resulting statements at trial can be unfair to the accused if they are untested by cross-examination. Whether formal or informal, out-of-court statements can evade the basic objective of the Confronta tion Clause, which is to prevent the accused from being de prived of the opportunity to cross-examine the declarant about statements taken for use at trial. When, as in *Davis*, the primary purpose of an interrogation is to respond to an "ongoing emergency," its purpose is not to create a record for trial and thus is not within the scope of the Clause. But there may be *other* circumstances, aside from ongoing emer gencies, when a statement is not procured with a primary purpose of creating an out-of-court substitute for trial tes timony. In making the primary purpose determination, standard rules of hearsay, designed to identify some state-

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taken under oath, unlike *ex parte* depositions or af davits, were generally not considered substantive evidence upon which a conviction could be based").

[4] Contrary to the dissent's excited suggestion, nothing in this opinion casts "favorable light," *post*, at 389, on the conduct of Sir Walter Raleigh's trial or other 16th- and 17th-century English treason trials. The dissent is correct that such trials are "unquestionably infamous," *post*, at 390, and our decision here con rms, rather than undermines, that assessment. See also n. 17, *infra*. For all of the reasons discussed in JUSTICE THOMAS' opinion concurring in the judgment, the situation presented in this case is nothing like the circumstances presented by Sir Walter Raleigh's trial. See *post*, p. 378.

ments as reliable, will be relevant. Where no such primary purpose exists, the admissibility of a statement is the con cern of state and federal rules of evidence, not the Confron tation Clause.[5]

Deciding this case also requires further explanation of the "ongoing emergency" circumstance addressed in *Davis*. Be cause *Davis* and *Hammon* arose in the domestic violence context, that was the situation "we had immediately in mind (for that was the case before us)." 547 U. S., at 826. We now face a new context: a nondomestic dispute, involving a victim found in a public location, suffering from a fatal gun shot wound, and a perpetrator whose location was unknown at the time the police located the victim. Thus, we confront for the rst time circumstances in which the "ongoing emer gency" discussed in *Davis* extends beyond an initial victim to a potential threat to the responding police and the public at large. This new context requires us to provide additional clari cation with regard to what *Davis* meant by "the pri mary purpose of the interrogation is to enable police assist ance to meet an ongoing emergency." *Id.*, at 822.

III

To determine whether the "primary purpose" of an inter rogation is "to enable police assistance to meet an ongoing emergency," *ibid.*, which would render the resulting state ments nontestimonial, we objectively evaluate the circum stances in which the encounter occurs and the statements and actions of the parties.

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[5] See *Davis* v. *Washington*, 547 U. S. 813, 823–824 (2006) (explaining the question before the Court as "whether the Confrontation Clause applies only to testimonial hearsay" and answering in the af rmative because "[a] limitation so clearly re ected in the text of the constitutional provision must fairly be said to mark out not merely its 'core,' but its perimeter"). See also *post*, at 380–381 (SCALIA, J., dissenting).

A

The Michigan Supreme Court correctly understood that this inquiry is objective.[6] 483 Mich., at 142, 768 N. W. 2d, at 70. *Davis* uses the word "objective" or "objectively" no fewer than eight times in describing the relevant inquiry. See 547 U. S., at 822, 826–828, 830–831, and n. 5; see, *e. g.*, *id.*, at 826 ("The question before us in *Davis*, then, is whether, objectively considered, the interrogation that took place in the course of the 911 call produced testimonial statements"). "Objectively" also appears in the de nitions of both testimo nial and nontestimonial statements that *Davis* established. *Id.*, at 822.

An objective analysis of the circumstances of an encounter and the statements and actions of the parties to it provides the most accurate assessment of the "primary purpose of the interrogation." The circumstances in which an encounter occurs—*e. g.*, at or near the scene of the crime versus at a police station, during an ongoing emergency or afterwards—are clearly matters of objective fact. The statements and actions of the parties must also be objectively evaluated. That is, the relevant inquiry is not the subjective or actual purpose of the individuals involved in a particular encounter, but rather the purpose that reasonable participants would have had, as ascertained from the individuals' statements and actions and the circumstances in which the encounter occurred.[7]

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[6] Bryant suggests that Michigan is arguing for "a subjective analysis of the intent of the interrogator's questioning." Brief for Respondent 12. We do not read Michigan's brief to be arguing for a subjective inquiry, and any such argument would be in error. We do not understand the dissent to disagree that the inquiry is objective.

[7] This approach is consistent with our rejection of subjective inquiries in other areas of criminal law. See, *e. g.*, *Whren* v. *United States*, 517 U. S. 806, 813 (1996) (refusing to evaluate Fourth Amendment reasonableness subjectively in light of the of cers' actual motivations); *New York* v. *Quarles*, 467 U. S. 649, 655–656, and n. 6 (1984) (holding that an of cer's subjective motivation is irrelevant to determining the applicability of the

B

As our recent Confrontation Clause cases have explained, the existence of an "ongoing emergency" at the time of an encounter between an individual and the police is among the most important circumstances informing the "primary purpose" of an interrogation. See *id.*, at 828–830; *Crawford*, 541 U. S., at 65. The existence of an ongoing emergency is relevant to determining the primary purpose of the interrogation because an emergency focuses the participants on something other than "prov[ing] past events potentially relevant to later criminal prosecution."[8] *Davis*, 547 U. S., at 822. Rather, it focuses them on "end[ing] a threatening situation." *Id.*, at 832. Implicit in *Davis* is the idea that because the prospect of fabrication in statements given for the primary purpose of resolving that emergency is presumably significantly diminished, the Confrontation Clause does not require such statements to be subject to the crucible of cross-examination.

This logic is not unlike that justifying the excited utterance exception in hearsay law. Statements "relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition," Fed. Rule Evid. 803(2); see also Mich. Rule Evid. 803(2) (2010), are considered reliable because the declarant, in the excitement, presumably cannot form a falsehood. See *Idaho*

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public safety exception to *Miranda* v. *Arizona*, 384 U. S. 436 (1966)); *Rhode Island* v. *Innis*, 446 U. S. 291, 301–302 (1980) (holding that a police officer's subjective intent to obtain incriminatory statements is not relevant to determining whether an interrogation has occurred).

[8] The existence of an ongoing emergency must be objectively assessed from the perspective of the parties to the interrogation at the time, not with the benefit of hindsight. If the information the parties knew at the time of the encounter would lead a reasonable person to believe that there was an emergency, even if that belief was later proved incorrect, that is sufficient for purposes of the Confrontation Clause. The emergency is relevant to the "primary purpose of the interrogation" because of the effect it has on the parties' purpose, not because of its actual existence.

v. *Wright*, 497 U. S. 805, 820 (1990) ("The basis for the 'excited utterance' exception . . . is that such statements are given under circumstances that eliminate the possibility of fabrication, coaching, or confabulation . . . "); 5 J. Weinstein & M. Berger, Weinstein's Federal Evidence § 803.04[1] (J. McLaughlin ed., 2d ed. 2010) (same); Advisory Committee's Notes on Fed. Rule Evid. 803(2), 28 U. S. C. App., p. 371 (same). An ongoing emergency has a similar effect of focusing an individual's attention on responding to the emergency.[9]

Following our precedents, the court below correctly began its analysis with the circumstances in which Covington interacted with the police. 483 Mich., at 143, 768 N. W. 2d, at 71. But in doing so, the court construed *Davis* to have decided more than it did and thus employed an unduly narrow understanding of "ongoing emergency" that *Davis* does not require.

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[9] Many other exceptions to the hearsay rules similarly rest on the belief that certain statements are, by their nature, made for a purpose other than use in a prosecution and therefore should not be barred by hearsay prohibitions. See, *e. g.*, Fed. Rules Evid. 801(d)(2)(E) (statement by a coconspirator during and in furtherance of the conspiracy); 803(4) (statements for purposes of medical diagnosis or treatment); 803(6) (records of regularly conducted activity); 803(8) (public records and reports); 803(9) (records of vital statistics); 803(11) (records of religious organizations); 803(12) (marriage, baptismal, and similar certificates); 803(13) (family records); 804(b)(3) (statement against interest); see also *Melendez-Diaz* v. *Massachusetts*, 557 U. S. 305, 324 (2009) ("Business and public records are generally admissible absent confrontation not because they qualify under an exception to the hearsay rules, but because—having been created for the administration of an entity's affairs and not for the purpose of establishing or proving some fact at trial—they are not testimonial"); *Giles* v. *California*, 554 U. S., at 376 (noting in the context of domestic violence that "[s]tatements to friends and neighbors about abuse and intimidation and statements to physicians in the course of receiving treatment would be excluded, if at all, only by hearsay rules"); *Crawford*, 541 U. S., at 56 ("Most of the hearsay exceptions covered statements that by their nature were not testimonial—for example, business records or statements in furtherance of a conspiracy").

First, the Michigan Supreme Court repeatedly and incorrectly asserted that *Davis* "de ned" "'ongoing emergency.'" 483 Mich., at 147, 768 N. W. 2d, at 73; see also *id.*, at 144, 768 N. W. 2d, at 71–72. In fact, *Davis* did not even de ne the extent of the emergency in that case. The Michigan Supreme Court erroneously read *Davis* as deciding that "the statements made after the defendant stopped assaulting the victim and left the premises did *not* occur during an 'ongoing emergency.'" 483 Mich., at 150, n. 15, 768 N. W. 2d, at 75, n. 15. We explicitly explained in *Davis*, however, that we were asked to review only the testimonial nature of Michelle McCottry's initial statements during the 911 call; we therefore merely *assumed* the correctness of the Washington Supreme Court's holding that admission of her other statements was harmless, without deciding whether those subsequent statements were also made for the primary purpose of resolving an ongoing emergency. 547 U. S., at 829.

Second, by assuming that *Davis* de ned the outer bounds of "ongoing emergency," the Michigan Supreme Court failed to appreciate that whether an emergency exists and is ongoing is a highly context-dependent inquiry. See Brief for United States as *Amicus Curiae* 20. *Davis* and *Hammon* involved domestic violence, a known and identi ed perpetrator, and, in *Hammon*, a neutralized threat. Because *Davis* and *Hammon* were domestic violence cases, we focused only on the threat to the victims and assessed the ongoing emergency from the perspective of whether there was a continuing threat *to them*. 547 U. S., at 827, 829–830.

Domestic violence cases like *Davis* and *Hammon* often have a narrower zone of potential victims than cases involving threats to public safety. An assessment of whether an emergency that threatens the police and public is ongoing cannot narrowly focus on whether the threat solely to the rst victim has been neutralized because the threat to the rst responders and public may continue. See 483 Mich., at

164, 768 N. W. 2d, at 82 (Corrigan, J., dissenting) (examining the threat to the victim, police, and the public); Brief for United States as *Amicus Curiae* 19–20 ("An emergency posed by an unknown shooter who remains at large does not automatically abate just because the police can provide secu rity to his rst victim").

The Michigan Supreme Court also did not appreciate that the duration and scope of an emergency may depend in part on the type of weapon employed. The court relied on *Davis* and *Hammon*, in which the assailants used their sts, as con trolling the scope of the emergency here, which involved the use of a gun. The problem with that reasoning is clear when considered in light of the assault on Amy Hammon. Hershel Hammon was armed only with his sts when he attacked his wife, so removing Amy to a separate room was suf cient to end the emergency. 547 U. S., at 830–832. If Hershel had been reported to be armed with a gun, however, separation by a single household wall might not have been suf cient to end the emergency. *Id.*, at 819.

The Michigan Supreme Court's failure to focus on the context-dependent nature of our *Davis* decision also led it to conclude that the medical condition of a declarant is irrele vant. 483 Mich., at 149, 768 N. W. 2d, at 74 ("The Court said nothing at all that would remotely suggest that whether the victim was in need of medical attention was in any way rele vant to whether there was an 'ongoing emergency' "). But *Davis* and *Hammon* did not present medical emergencies, despite some injuries to the victims. 547 U. S., at 818, 820. Thus, we have not previously considered, much less ruled out, the relevance of a victim's severe injuries to the primary purpose inquiry.

Taking into account the victim's medical state does not, as the Michigan Supreme Court below thought, "rende[r] non-testimonial" "all statements made while the police are ques tioning a seriously injured complainant." 483 Mich., at 149, 768 N. W. 2d, at 74. The medical condition of the victim is

important to the primary purpose inquiry to the extent that it sheds light on the ability of the victim to have any purpose at all in responding to police questions and on the likelihood that any purpose formed would necessarily be a testimonial one. The victim's medical state also provides important context for rst responders to judge the existence and mag nitude of a continuing threat to the victim, themselves, and the public.

As the Solicitor General's brief observes, Brief for United States as *Amicus Curiae* 20, and contrary to the Michigan Supreme Court's claims, 483 Mich., at 147, 768 N. W. 2d, at 73, none of this suggests that an emergency is ongoing in every place or even just surrounding the victim for the entire time that the perpetrator of a violent crime is on the loose. As we recognized in *Davis*, "a conversation which begins as an interrogation to determine the need for emergency assist ance" can "evolve into testimonial statements." 547 U. S., at 828 (internal quotation marks omitted). This evolution may occur if, for example, a declarant provides police with information that makes clear that what appeared to be an emergency is not or is no longer an emergency or that what appeared to be a public threat is actually a private dispute. It could also occur if a perpetrator is disarmed, surrenders, is apprehended, or, as in *Davis*, ees with little prospect of posing a threat to the public. Trial courts can determine in the rst instance when any transition from nontestimonial to testimonial occurs,[10] and exclude "the portions of any state

[10] Recognizing the evolutionary potential of a situation in criminal law is not unique to the Confrontation Clause context. We noted in *Davis* that "[j]ust as, for Fifth Amendment purposes, 'police of cers can and will distinguish almost instinctively between questions necessary to secure their own safety or the safety of the public and questions designed solely to elicit testimonial evidence from a suspect,' . . . trial courts will recognize the point at which, for Sixth Amendment purposes, statements in response to interrogations become testimonial." 547 U. S., at 829 (quoting *New York* v. *Quarles*, 467 U. S., at 658–659).

ment that have become testimonial, as they do, for example, with unduly prejudicial portions of otherwise admissible evi dence." *Id.*, at 829.

Finally, our discussion of the Michigan Supreme Court's misunderstanding of what *Davis* meant by "ongoing emer gency" should not be taken to imply that the existence *vel non* of an ongoing emergency is dispositive of the testimonial inquiry. As *Davis* made clear, whether an ongoing emer gency exists is simply one factor—albeit an important fac tor—that informs the ultimate inquiry regarding the "pri mary purpose" of an interrogation. Another factor the Michigan Supreme Court did not suf ciently account for is the importance of *informality* in an encounter between a victim and police. Formality is not the sole touchstone of our primary purpose inquiry because, although formality suggests the absence of an emergency and therefore an in creased likelihood that the purpose of the interrogation is to "establish or prove past events potentially relevant to later criminal prosecution," *id.*, at 822, informality does not neces sarily indicate the presence of an emergency or the lack of testimonial intent. Cf. *id.*, at 826 (explaining that Confron tation Clause requirements cannot "readily be evaded" by the parties deliberately keeping the written product of an interrogation informal "instead of having the declarant sign a deposition"). The court below, however, too readily dis missed the informality of the circumstances in this case in a single brief footnote and in fact seems to have suggested that the encounter in this case was formal. 483 Mich., at 150, n. 16, 768 N. W. 2d, at 75, n. 16. As we explain further below, the questioning in this case occurred in an exposed, public area, prior to the arrival of emergency medical serv ices, and in a disorganized fashion. All of those facts make this case distinguishable from the formal station-house inter rogation in *Crawford.* See *Davis,* 547 U. S., at 827.

C

In addition to the circumstances in which an encounter oc curs, the statements and actions of both the declarant and interrogators provide objective evidence of the primary pur pose of the interrogation. See, *e. g.*, *ibid.* ("[T]he nature of what was *asked and answered* in *Davis*, again viewed objec tively, was such that the elicited statements were necessary to be able to *resolve* the present emergency, rather than sim ply to learn (as in *Crawford*) what had happened in the past" (rst emphasis added)). The Michigan Supreme Court did, at least brie y, conduct this inquiry. 483 Mich., at 144–147, 768 N. W. 2d, at 71–73.

As the Michigan Supreme Court correctly recognized, *id.*, at 140, n. 5, 768 N. W. 2d, at 69, n. 5, *Davis* requires a com bined inquiry that accounts for both the declarant and the interrogator.[11] In many instances, the primary purpose of

[11] Some portions of *Davis*, however, have caused confusion about whether the inquiry prescribes examination of one participant to the ex clusion of the other. *Davis*' language indicating that a statement's testi monial or nontestimonial nature derives from "the primary purpose *of the interrogation*," 547 U. S., at 822 (emphasis added), could be read to sug gest that the relevant purpose is that of the interrogator. In contrast, footnote 1 in *Davis* explains, "it is in the nal analysis the declarant's statements, not the interrogator's questions, that the Confrontation Clause requires us to evaluate." *Id.*, at 822–823, n. 1. Bryant draws on the footnote to argue that the primary purpose inquiry must be conducted solely from the perspective of the declarant, and argues against adoption of a purpose-of-the-interrogator perspective. Brief for Respondent 10–13; see also Brief for Richard D. Friedman as *Amicus Curiae* 5–15. But this statement in footnote 1 of *Davis* merely acknowledges that the Confrontation Clause is not implicated when statements are offered "for purposes other than establishing the truth of the matter asserted." *Crawford*, 541 U. S., at 60, n. 9. An interrogator's questions, unlike a de clarant's answers, do not assert the truth of any matter. The language in the footnote was not meant to determine *how* the courts are to assess the nature of the declarant's purpose, but merely to remind readers that it is the statements, and not the questions, that must be evaluated under the Sixth Amendment.

the interrogation will be most accurately ascertained by looking to the contents of both the questions and the answers. To give an extreme example, if the police say to a victim, "Tell us who did this to you so that we can arrest and prosecute them," the victim's response that "Rick did it" appears purely accusatory because by virtue of the phrasing of the question, the victim necessarily has prosecution in mind when she answers.

The combined approach also ameliorates problems that could arise from looking solely to one participant. Predominant among these is the problem of mixed motives on the part of both interrogators and declarants. Police officers in our society function as both first responders and criminal investigators. Their dual responsibilities may mean that they act with different motives simultaneously or in quick succession. See *New York* v. *Quarles*, 467 U. S. 649, 656 (1984) ("Undoubtedly most police officers [deciding whether to give *Miranda* warnings in a possible emergency situation] would act out of a host of different, instinctive, and largely unverifiable motives—their own safety, the safety of others, and perhaps as well the desire to obtain incriminating evidence from the suspect"); see also *Davis*, 547 U. S., at 839 (THOMAS, J., concurring in judgment in part and dissenting in part) ("In many, if not most, cases where police respond to a report of a crime, whether pursuant to a 911 call from the victim or otherwise, the purposes of an interrogation, viewed from the perspective of the police, are *both* to respond to the emergency situation *and* to gather evidence").

Victims are also likely to have mixed motives when they make statements to the police. During an ongoing emergency, a victim is most likely to want the threat to her and to other potential victims to end, but that does not necessarily mean that the victim wants or envisions prosecution of the assailant. A victim may want the attacker to be incapacitated temporarily or rehabilitated. Alternatively, a severely injured victim may have no purpose at all in answer

ing questions posed; the answers may be simply re exive. The victim's injuries could be so debilitating as to prevent her from thinking suf ciently clearly to understand whether her statements are for the purpose of addressing an ongoing emergency or for the purpose of future prosecution.[12] Tak ing into account a victim's injuries does not transform this objective inquiry into a subjective one. The inquiry is still objective because it focuses on the understanding and pur pose of a reasonable victim in the circumstances of the actual victim—circumstances that prominently include the victim's physical state.

The dissent suggests, *post*, at 381–382, that we intend to give controlling weight to the "intentions of the police," *post*, at 382. That is a misreading of our opinion. At trial, the de clarant's statements, not the interrogator's questions, will be introduced to "establis[h] the truth of the matter asserted," *Crawford*, 541 U. S., at 60, n. 9, and must therefore pass the Sixth Amendment test. See n. 11, *supra*. In determining whether a declarant's statements are testimonial, courts should look to all of the relevant circumstances. Even JUSTICE SCALIA concedes that the interrogator is relevant to this evaluation, *post*, at 382, and we agree that "[t]he identity of an interrogator, and the content and tenor of his ques tions," *ibid.*, can illuminate the "primary purpose of the in terrogation." The dissent, see *post*, at 382–384, criticizes the complexity of our approach, but we, at least, are unwilling to sacri ce accuracy for simplicity. Simpler is not always better, and courts making a "primary purpose" assessment

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[12] In such a situation, the severe injuries of the victim would undoubt edly also weigh on the credibility and reliability that the trier of fact would afford to the statements. Cf. Advisory Committee's Notes on Fed. Rule Evid. 803(2), 28 U. S. C. App., p. 371 (noting that although the "theory" of the excited utterance exception "has been criticized on the ground that excitement impairs [the] accuracy of observation as well as eliminating conscious fabrication," it " nds support in cases without number" (citing 6 J. Wigmore, Evidence § 1750 (J. Chadbourn rev. 1976))).

should not be unjusti ably restrained from consulting all rel evant information, including the statements and actions of interrogators.

Objectively ascertaining the primary purpose of the inter rogation by examining the statements and actions of all par ticipants is also the approach most consistent with our past holdings. *E. g.*, *Davis*, 547 U. S., at 822–823, n. 1 (noting that "volunteered testimony" is still testimony and remains sub ject to the requirements of the Confrontation Clause).

IV

As we suggested in *Davis*, when a court must determine whether the Confrontation Clause bars the admission of a statement at trial, it should determine the "primary purpose of the interrogation" by objectively evaluating the state ments and actions of the parties to the encounter, in light of the circumstances in which the interrogation occurs. The existence of an emergency or the parties' perception that an emergency is ongoing is among the most important circum stances that courts must take into account in determining whether an interrogation is testimonial because statements made to assist police in addressing an ongoing emergency presumably lack the testimonial purpose that would subject them to the requirement of confrontation.[13] As the context of this case brings into sharp relief, the existence and dura

[13] Of course the Confrontation Clause is not the only bar to admissibility of hearsay statements at trial. State and federal rules of evidence pro hibit the introduction of hearsay, subject to exceptions. Consistent with those rules, the Due Process Clauses of the Fifth and Fourteenth Amend ments may constitute a further bar to admission of, for example, unreliable evidence. See *Montana* v. *Egelhoff*, 518 U. S. 37, 53 (1996) (plurality opin ion) ("[E]rroneous evidentiary rulings can, in combination, rise to the level of a due process violation"); *Dutton* v. *Evans*, 400 U. S. 74, 96–97 (1970) (Harlan, J., concurring in result) ("[T]he Fifth and Fourteenth Amend ments' commands that federal and state trials, respectively, must be con ducted in accordance with due process of law" are the "standard" by which to "test federal and state rules of evidence").

tion of an emergency depend on the type and scope of danger posed to the victim, the police, and the public.

Applying this analysis to the facts of this case is more dif cult than in *Davis* because we do not have the luxury of reviewing a transcript of the conversation between the vic tim and the police of cers. Further complicating our task is the fact that the trial in this case occurred before our deci sions in *Crawford* and *Davis*. We therefore review a record that was not developed to ascertain the "primary purpose of the interrogation."

We rst examine the circumstances in which the interroga tion occurred. The parties disagree over whether there was an emergency when the police arrived at the gas station. Bryant argues, and the Michigan Supreme Court accepted, 483 Mich., at 147, 768 N. W. 2d, at 73, that there was no ongoing emergency because "there . . . was no criminal conduct occurring. No shots were being red, no one was seen in possession of a rearm, nor were any witnesses seen cowering in fear or running from the scene." Brief for Respondent 27. Bryant, while conceding that "a serious or life-threatening injury creates a medical emergency for a victim," *id.*, at 30, further argues that a declarant's medi cal emergency is not relevant to the ongoing emergency determination.

In contrast, Michigan and the Solicitor General explain that when the police responded to the call that a man had been shot and found Covington bleeding on the gas station parking lot, "they did not know who Covington was, whether the shooting had occurred at the gas station or at a different location, who the assailant was, or whether the assailant posed a continuing threat to Covington or others." Brief for United States as *Amicus Curiae* 15; Brief for Petitioner 16; see also *id.*, at 15 ("[W]hen an of cer arrives on the scene and does not know where the perpetrator is, whether he is armed, whether he might have other targets, and whether the violence might continue at the scene or elsewhere, inter

rogation that has the primary purpose of establishing those facts to assess the situation is designed to meet the ongoing emergency and is nontestimonial").

The Michigan Supreme Court stated that the police asked Covington, "what had happened, who had shot him, and where the shooting had occurred." 483 Mich., at 143, 768 N. W. 2d, at 71. The joint appendix contains the transcripts of the preliminary examination, suppression hearing, and trial testimony of five officers who responded to the scene and found Covington. The officers' testimony is essentially consistent but, at the same time, not specific. The officers basically agree on what information they learned from Covington, but not on the order in which they learned it or on whether Covington's statements were in response to general or detailed questions. They all agree that the first question was "what happened?" The answer was either "I was shot" or "Rick shot me."[14]

As explained above, the scope of an emergency in terms of its threat to individuals other than the initial assailant and victim will often depend on the type of dispute involved. Nothing Covington said to the police indicated that the cause of the shooting was a purely private dispute or that the threat from the shooter had ended. The record reveals little about the motive for the shooting. The police officers who spoke with Covington at the gas station testified that Covington did not tell them what words Covington and Rick had

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[14] See App. 76 (testimony of Officer McCallister); *id.*, at 101, 113–114 (testimony of Sgt. Wenturine); *id.*, at 127, 131–133 (testimony of Officer Stuglin). Covington told them that Rick had shot him through the back door of Rick's house, *id.*, at 127–128 (testimony of Officer Stuglin), located at the corner of Pennsylvania and Laura, *id.*, at 102 (testimony of Sgt. Wenturine), and that Covington recognized Rick by his voice, *id.*, at 128 (testimony of Officer Stuglin). Covington also gave them a physical description of Rick. *Id.*, at 84–85, 93–94 (testimony of Officer McCallister); *id.*, at 103, 115 (testimony of Sgt. Wenturine); *id.*, at 134 (testimony of Officer Stuglin).

exchanged prior to the shooting.[15] What Covington did tell the of cers was that he ed Bryant's back porch, indicating that he perceived an ongoing threat.[16] The police did not know, and Covington did not tell them, whether the threat was limited to him. The potential scope of the dispute and therefore the emergency in this case thus stretches more broadly than those at issue in *Davis* and *Hammon* and en compasses a threat potentially to the police and the public.

This is also the rst of our post-*Crawford* Confrontation Clause cases to involve a gun. The physical separation that was suf cient to end the emergency in *Hammon* was not necessarily suf cient to end the threat in this case; Coving ton was shot through the back door of Bryant's house. Bry ant's argument that there was no ongoing emergency be cause "[n]o shots were being red," Brief for Respondent 27, surely construes ongoing emergency too narrowly. An emergency does not last only for the time between when the assailant pulls the trigger and the bullet hits the victim. If an out-of-sight sniper pauses between shots, no one would

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[15] See *id.*, at 114 (testimony of Sgt. Wenturine) ("Q Did he tell you what Rick said? A He said they were having a conversation. Q Did he tell you what Rick said? A He did not" (paragraph breaks omitted)); see also *id.*, at 79 (testimony of Of cer McCallister); *id.*, at 128 (testimony of Of cer Stuglin).

[16] See *id.*, at 127–128 (testimony of Of cer Stuglin) ("A He said he'd went up, he went up to the back door of a house; that a person he said he knew, and he was knocking and he was knocking on the door he said he'd talked to somebody through the door. He said he recognized the voice. Q Did he say who it was that he recognized the voice of? A That's [when] he told me it was, he said it was Rick a/k/a Buster. Q And did he say what the conversation was about at the door? A I don't, I don't believe so. Q All right. And did he say what happened there, whether or not they had a conversation or not, did he say what ended up happening? A He said what happened was that he heard a shot and then he started to turn to get off the porch and then another one and then that's when he was hit by a gunshot" (paragraph breaks omitted)). Unlike the dissent's apparent ability to read Covington's mind, *post*, at 384–385, we rely on the available evidence, which suggests that Covington perceived an ongoing threat.

say that the emergency ceases during the pause. That is an extreme example and not the situation here, but it serves to highlight the implausibility, at least as to certain weapons, of construing the emergency to last only precisely as long as the violent act itself, as some have construed our opinion in *Davis*. See Brief for Respondent 23–25.

At no point during the questioning did either Covington or the police know the location of the shooter. In fact, Bry ant was not at home by the time the police searched his house at approximately 5:30 a.m. 483 Mich., at 136, 768 N. W. 2d, at 67. At some point between 3 a.m. and 5:30 a.m., Bryant left his house. At bottom, there was an ongoing emergency here where an armed shooter, whose motive for and location after the shooting were unknown, had mortally wounded Covington within a few blocks and a few minutes of the location where the police found Covington.[17]

This is not to suggest that the emergency continued until Bryant was arrested in California a year after the shooting. *Id.*, at 137, 768 N. W. 2d, at 67. We need not decide precisely when the emergency ended because Covington's encounter with the police and all of the statements he made during that interaction occurred within the rst few minutes of the po lice of cers' arrival and well before they secured the scene of the shooting—the shooter's last known location.

We reiterate, moreover, that the existence *vel non* of an ongoing emergency is not the touchstone of the testimonial inquiry; rather, the ultimate inquiry is whether the "primary purpose of the interrogation [was] to enable police assistance to meet [the] ongoing emergency." *Davis*, 547 U. S., at 822. We turn now to that inquiry, as informed by the circum stances of the ongoing emergency just described. The cir cumstances of the encounter provide important context for

[17] It hardly bears mention that the emergency situation in this case is readily distinguishable from the "treasonous conspiracies of unknown scope, aimed at killing or overthrowing the King," *post*, at 389, about which the dissent is quite concerned.

understanding Covington's statements to the police. When the police arrived at Covington's side, their first question to him was "What happened?"[18] Covington's response was either "Rick shot me" or "I was shot," followed very quickly by an identification of "Rick" as the shooter. App. 76. In response to further questions, Covington explained that the shooting occurred through the back door of Bryant's house and provided a physical description of the shooter. When he made the statements, Covington was lying in a gas station parking lot bleeding from a mortal gunshot wound to his abdomen. His answers to the police officers' questions were punctuated with questions about when emergency medical services would arrive. *Id.*, at 56–57 (suppression hearing testimony of Officer Brown). He was obviously in considerable pain and had difficulty breathing and talking. *Id.*, at 75, 83–84 (testimony of Officer McCallister); *id.*, at 101, 110–111 (testimony of Sgt. Wenturine); *id.*, at 126, 137 (testimony of Officer Stuglin). From this description of his condition and report of his statements, we cannot say that a person in Covington's situation would have had a "primary purpose" "to establish or prove past events potentially relevant to later criminal prosecution." *Davis*, 547 U. S., at 822.

For their part, the police responded to a call that a man had been shot. As discussed above, they did not know why,

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[18] Although the dissent claims otherwise, *post*, at 385, at least one officer asked Covington something akin to "how was he doing." App. 131 (testimony of Officer Stuglin) ("A I approached the subject, the victim, Mr. Covington, on the ground and had asked something like what happened or are you okay, something to that line. . . . Q So you asked this man how are you, how are you doing? A Well, basically it's, you know, what's wrong, you know" (paragraph breaks omitted)). The officers also testified about their assessment of Covington's wounds. See *id.*, at 35 (suppression hearing testimony of Officer Brown) ("[H]e had blood . . . on the front of his body"); *id.*, at 75 (testimony of Officer McCallister) ("It appeared he had a stomach wound of a gunshot"); *id.*, at 132 (testimony of Officer Stuglin) ("Q Did you see the wound? A Yes, I did. Q You had to move some clothing to do that? A Yes" (paragraph breaks omitted)).

where, or when the shooting had occurred. Nor did they know the location of the shooter or anything else about the circumstances in which the crime occurred.[19] The questions they asked—"what had happened, who had shot him, and where the shooting had occurred," 483 Mich., at 143, 768 N. W. 2d, at 71—were the exact type of questions necessary to allow the police to "'assess the situation, the threat to their own safety, and possible danger to the potential vic tim'" and to the public, *Davis*, 547 U. S., at 832 (quoting *Hii bel* v. *Sixth Judicial Dist. Court of Nev., Humboldt Cty.*, 542 U. S. 177, 186 (2004)), including to allow them to ascertain "whether they would be encountering a violent felon,"[20] *Davis*, 547 U. S., at 827. In other words, they solicited the information necessary to enable them "to meet an ongoing emergency." *Id.*, at 822.

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[19] Contrary to the dissent's suggestion, *post*, at 386, and despite the fact that the record was developed prior to *Davis*' focus on the existence of an "ongoing emergency," the record contains some testimony to support the idea that the police of cers were concerned about the location of the shooter when they arrived on the scene and thus to suggest that the pur pose of the questioning of Covington was to determine the shooter's loca tion. See App. 136 (testimony of Of cer Stuglin) (stating that upon ar rival of cers questioned the gas station clerk about whether the shooting occurred in the gas station parking lot and about concern for safety); see also *ibid.* (testimony of Of cer Stuglin) ("Q . . . So you have some concern, there may be a person with a gun or somebody, a shooter right there in the immediate area? A Sure, yes. Q And you want to see that that area gets secured? A Correct. Q For your safety as well as everyone else? A Correct" (paragraph breaks omitted)); *id.*, at 82 (testimony of Of cer McCallister). But see *id.*, at 83 (cross-examination of Of cer McCallister) ("Q You didn't, you didn't look around and say, gee, there might be a shooter around here, I better keep an eye open? A I did not, no. That could have been my partner I don't know" (paragraph breaks omitted)).

[20] *Hiibel*, like our post-*Crawford* Confrontation Clause cases, involved domestic violence, which explains the Court's focus on the security of the victim and the police: They were the only parties potentially threatened by the assailant. 542 U. S., at 186 (noting that the case involved a "domes tic assault").

Nothing in Covington's responses indicated to the police that, contrary to their expectation upon responding to a call reporting a shooting, there was no emergency or that a prior emergency had ended. Covington did indicate that he had been shot at another location about 25 minutes earlier, but he did not know the location of the shooter at the time the police arrived and, as far as we can tell from the record, he gave no indication that the shooter, having shot at him twice, would be satis ed that Covington was only wounded. In fact, Covington did not indicate any possible motive for the shooting, and thereby gave no reason to think that the shooter would not shoot again if he arrived on the scene. As we noted in *Davis*, "initial inquiries" may "*often* . . . produce nontestimonial statements." *Id.*, at 832. The initial inquir ies in this case resulted in the type of nontestimonial state ments we contemplated in *Davis*.

Finally, we consider the informality of the situation and the interrogation. This situation is more similar, though not identical, to the informal, harried 911 call in *Davis* than to the structured, station-house interview in *Crawford*. As the of cers' trial testimony re ects, the situation was uid and somewhat confused: The of cers arrived at different times; apparently each, upon arrival, asked Covington "what happened?"; and, contrary to the dissent's portrayal, *post*, at 386–387, they did not conduct a structured interrogation. App. 84 (testimony of Of cer McCallister) (explaining dupli cate questioning, especially as to "what happened?"); *id.*, at 101–102 (testimony of Sgt. Wenturine) (same); *id.*, at 126–127 (testimony of Of cer Stuglin) (same). The informality sug gests that the interrogators' primary purpose was simply to address what they perceived to be an ongoing emergency, and the circumstances lacked any formality that would have alerted Covington to or focused him on the possible future prosecutorial use of his statements.

Because the circumstances of the encounter as well as the statements and actions of Covington and the police objec

tively indicate that the "primary purpose of the interroga tion" was "to enable police assistance to meet an ongoing emergency," *Davis*, 547 U. S., at 822, Covington's identi ca tion and description of the shooter and the location of the shooting were not testimonial hearsay. The Confrontation Clause did not bar their admission at Bryant's trial.

* * *

For the foregoing reasons, we hold that Covington's state ments were not testimonial and that their admission at Bry ant's trial did not violate the Confrontation Clause. We leave for the Michigan courts to decide on remand whether the statements' admission was otherwise permitted by state hearsay rules. The judgment of the Supreme Court of Michigan is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE KAGAN took no part in the consideration or deci sion of this case.

JUSTICE THOMAS, concurring in the judgment.

I agree with the Court that the admission of Covington's out-of-court statements did not violate the Confrontation Clause, but I reach this conclusion because Covington's ques tioning by police lacked suf cient formality and solemnity for his statements to be considered "testimonial." See *Craw ford* v. *Washington*, 541 U. S. 36, 68 (2004).

In determining whether Covington's statements to police implicate the Confrontation Clause, the Court evaluates the "'primary purpose'" of the interrogation. *Ante*, at 359. The majority's analysis which relies on, *inter alia*, what the police knew when they arrived at the scene, the speci c questions they asked, the particular information Covington conveyed, the weapon involved, and Covington's medical con dition illustrates the uncertainty that this test creates for

law enforcement and the lower courts. *Ante*, at 371–378. I have criticized the primary-purpose test as "an exercise in ction" that is "disconnected from history" and "yields no predictable results." *Davis* v. *Washington*, 547 U. S. 813, 839, 838 (2006) (opinion concurring in judgment in part and dissenting in part).

Rather than attempting to reconstruct the "primary pur pose" of the participants, I would consider the extent to which the interrogation resembles those historical practices that the Confrontation Clause addressed. See, *e. g.*, *id.*, at 835–836 (describing "practices that occurred under the Eng lish bail and committal statutes passed during the reign of Queen Mary"). As the majority notes, Covington interacted with the police under highly informal circumstances, while he bled from a fatal gunshot wound. *Ante*, at 366, 367. The police questioning was not "a formalized dialogue," did not result in "formalized testimonial materials" such as a deposition or af davit, and bore no "indicia of solemnity." *Davis*, *supra*, at 840, 837 (opinion of THOMAS, J.); see also *Giles* v. *California*, 554 U. S. 353, 377–378 (2008) (THOMAS, J., concurring). Nor is there any indication that the state ments were offered at trial "in order to evade confrontation." *Davis*, *supra*, at 840. This interrogation bears little if any resemblance to the historical practices that the Confronta tion Clause aimed to eliminate. Covington thus did not "bea[r] testimony" against Bryant, *Crawford*, *supra*, at 51, and the introduction of his statements at trial did not impli cate the Confrontation Clause. I concur in the judgment.

JUSTICE SCALIA, dissenting.

Today's tale—a story of ve of cers conducting successive examinations of a dying man with the primary purpose, not of obtaining and preserving his testimony regarding his killer, but of protecting him, them, and others from a mur derer somewhere on the loose—is so transparently false that professing to believe it demeans this institution. But reach

ing a patently incorrect conclusion on the facts is a relatively benign judicial mischief; it affects, after all, only the case at hand. In its vain attempt to make the incredible plausible, however—or perhaps as an intended second goal—today's opinion distorts our Confrontation Clause jurisprudence and leaves it in a shambles. Instead of clarifying the law, the Court makes itself the obfuscator of last resort. Because I continue to adhere to the Confrontation Clause that the People adopted, as described in *Crawford* v. *Washington*, 541 U. S. 36 (2004), I dissent.

I

A

The Confrontation Clause of the Sixth Amendment, made binding on the States by the Fourteenth Amendment, *Pointer* v. *Texas*, 380 U. S. 400, 403 (1965), provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." In *Crawford*, we held that this provision guarantees a defendant his common-law right to confront those "who 'bear testimony'" against him. 541 U. S., at 51. A witness must deliver his testimony against the defendant in person, or the prosecution must prove that the witness is unavailable to appear at trial and that the defendant has had a prior opportunity for cross-examination. *Id.*, at 53–54.

Not all hearsay falls within the Confrontation Clause's grasp. At trial a witness "bears testimony" by providing "'[a] solemn declaration or affirmation . . . for the purpose of establishing or proving some fact.'" *Id.*, at 51 (quoting 2 N. Webster, An American Dictionary of the English Language (1828)). The Confrontation Clause protects defendants only from hearsay statements that do the same. *Davis* v. *Washington*, 547 U. S. 813, 823–824 (2006). In *Davis*, we explained how to identify testimonial hearsay prompted by police questioning in the field. A statement is testimonial "when the circumstances objectively indicate . . . that the

primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." *Id.*, at 822. When, however, the circumstances objectively indicate that the declarant's statements were "a cry for help [o]r the provision of information enabling officers immediately to end a threatening situation," *id.*, at 832, they bear little resemblance to in-court testimony. "No 'witness' goes into court to proclaim an emergency and seek help." *Id.*, at 828.

Crawford and *Davis* did not address whose perspective matters—the declarant's, the interrogator's, or both—when assessing "the primary purpose of [an] interrogation." In those cases the statements were testimonial from any perspective. I think the same is true here, but because the Court picks a perspective so will I: The declarant's intent is what counts. In-court testimony is more than a narrative of past events; it is a solemn declaration made in the course of a criminal trial. For an out-of-court statement to qualify as testimonial, the declarant must intend the statement to be a solemn declaration rather than an unconsidered or offhand remark; and he must make the statement with the understanding that it may be used to invoke the coercive machinery of the State against the accused.[1] See Friedman, Grappling With the Meaning of "Testimonial," 71 Brooklyn L. Rev. 241, 259 (2005). That is what distinguishes a narrative told to a friend over dinner from a statement to the police. See *Crawford*, *supra*, at 51. The hidden purpose of an interrogator cannot substitute for the declarant's intentional solemnity or his understanding of how his words may be used.

A declarant-focused inquiry is also the only inquiry that would work in every fact pattern implicating the Confrontation Clause. The Clause applies to volunteered testimony

[1] I remain agnostic about whether and when statements to nonstate actors are testimonial. See *Davis* v. *Washington*, 547 U. S. 813, 823, n. 2 (2006).

as well as statements solicited through police interrogation. See *Davis*, *supra*, at 822–823, n. 1. An inquiry into an of cer's purposes would make no sense when a declarant blurts out "Rick shot me" as soon as the of cer arrives on the scene. I see no reason to adopt a different test—one that accounts for an of cer's intent—when the of cer asks "what hap pened" before the declarant makes his accusation. (This does not mean the interrogator is irrelevant. The identity of an interrogator, and the content and tenor of his questions, can bear upon whether a declarant intends to make a solemn statement, and envisions its use at a criminal trial. But none of this means that the interrogator's purpose matters.)

In an unsuccessful attempt to make its nding of emer gency plausible, the Court instead adopts a test that looks to the purposes of both the police and the declarant. It claims that this is demanded by necessity, fretting that a domestic-violence victim may want her abuser brie y arrested—pre sumably to teach him a lesson—but not desire prosecution. See *ante*, at 368. I do not need to probe the purposes of the police to solve that problem. Even if a victim speaks to the police "to establish or prove past events" solely for the pur pose of getting her abuser arrested, she surely knows her account is "potentially relevant to later criminal prosecution" should one ensue. *Davis*, *supra*, at 822.

The Court also wrings its hands over the possibility that "a severely injured victim" may lack the capacity to form a purpose, and instead answer questions "re exive[ly]." *Ante*, at 368–369. How to assess whether a declarant with diminished capacity bore testimony is a dif cult question, and one I do not need to answer today. But the Court's proposed answer—to substitute the intentions of the police for the missing intentions of the declarant—cannot be the correct one. When the declarant has diminished capacity, focusing on the interrogators makes less sense, not more. The inquiry under *Crawford* turns in part on the actions and statements of a declarant's audience only because they shape

the declarant's perception of why his audience is listening and therefore in uence *his purpose* in making the declara tion. See 541 U. S., at 51. But a person who cannot per ceive his own purposes certainly cannot perceive why a lis tener might be interested in what he has to say. As far as I can tell, the Court's substituted-intent theory "has nothing to be said for it except that it can sometimes make our job easier," *Jerman* v. *Carlisle, McNellie, Rini, Kramer & Ul rich, L. P. A.*, 559 U. S. 573, 607 (2010) (SCALIA, J., concurring in part and concurring in judgment).

The Court claims one af rmative virtue for its focus on the purposes of both the declarant and the police: It "ameliorates problems that . . . arise" when declarants have "mixed mo tives." *Ante*, at 368. I am at a loss to know how. Sorting out the primary purpose of a declarant with mixed motives is sometimes dif cult. But adding in the mixed motives of the police only compounds the problem. Now courts will have to sort through two sets of mixed motives to determine the primary purpose of an interrogation. And the Court's solution creates a mixed-motive problem where (under the proper theory) it does not exist—viz., where the police and the declarant each have one motive, but those motives con ict. The Court does not provide an answer to this glaringly obvious problem, probably because it does not have one.

The only virtue of the Court's approach (if it can be mis named a virtue) is that it leaves judges free to reach the "fairest" result under the totality of the circumstances. If the dastardly police trick a declarant into giving an incrimi nating statement against a sympathetic defendant, a court can focus on the police's intent and declare the statement testimonial. If the defendant "deserves" to go to jail, then a court can focus on whatever perspective is necessary to declare damning hearsay nontestimonial. And when all else fails, a court can mix and match perspectives to reach its desired outcome. Unfortunately, under this malleable

approach "the guarantee of confrontation is no guarantee at all." *Giles* v. *California*, 554 U. S. 353, 375 (2008) (plural ity opinion).

B

Looking to the declarant's purpose (as we should), this is an absurdly easy case. Roughly 25 minutes after Anthony Covington had been shot, Detroit police responded to a 911 call reporting that a gunshot victim had appeared at a neigh borhood gas station. They quickly arrived at the scene, and in less than 10 minutes ve different Detroit police of cers questioned Covington about the shooting. Each asked him a similar battery of questions: "what happened" and when, App. 39, 126, "who shot" the victim," *id.*, at 22, and "where" did the shooting take place, *id.*, at 132. See also *id.*, at 113. After Covington would answer, they would ask followup questions, such as "how tall is" the shooter, *id.*, at 134, "[h]ow much does he weigh," *ibid.*, what is the exact address or physical description of the house where the shooting took place, and what chain of events led to the shooting. The battery relented when the paramedics arrived and began tending to Covington's wounds.

From Covington's perspective, his statements had little value except to ensure the arrest and eventual prosecution of Richard Bryant. He knew the "threatening situation," *Davis*, 547 U. S., at 832, had ended six blocks away and 25 minutes earlier when he ed from Bryant's back porch. See 483 Mich. 132, 135–136, 768 N. W. 2d 65, 67 (2009); App. 105. Bryant had not confronted him face to face before he was mortally wounded, instead shooting him through a door. See 483 Mich., at 136–137, 768 N. W. 2d, at 67. Even if Bry ant had pursued him (unlikely), and after seeing that Coving ton had ended up at the gas station was unable to confront him there before the police arrived (doubly unlikely), it was entirely beyond imagination that Bryant would again open re while Covington was surrounded by ve armed police of cers. And Covington knew the shooting was the work of

a drug dealer, not a spree killer who might randomly threaten others. *Id.*, at 135, 137, 768 N. W. 2d, at 67.

Covington's knowledge that he had nothing to fear differs signi cantly from Michelle McCottry's state of mind during her "frantic" statements to a 911 operator at issue in *Davis*, 547 U. S., at 827. Her "call was plainly a call for help against a bona de physical threat" describing "events *as they were actually happening*." *Ibid.* She did not have the luxuries of police protection and of time and space separating her from immediate danger that Covington enjoyed when he made his statements. See *id.*, at 831.

Covington's pressing medical needs do not suggest that he was responding to an emergency, but to the contrary rein force the testimonial character of his statements. He under stood the police were focused on investigating a past crime, not his medical needs. None of the of cers asked Covington how he was doing, attempted more than super cially to as sess the severity of his wounds, or attempted to administer rst aid.[2] They instead primarily asked questions with lit tle, if any, relevance to Covington's dire situation. Police, paramedics, and doctors do not need to know the address where a shooting took place, the name of the shooter, or the shooter's height and weight to provide proper medical care. Underscoring that Covington understood the of cers' inves tigative role, he interrupted their interrogation to ask "when is EMS coming?" App. 57. When, in other words, would the focus shift to his medical needs rather than Bryant's crime?

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[2] Of cer Stuglin's testimony does not undermine my assessment of the of cers' behavior, although the Court suggests otherwise. See *ante*, at 375, n. 18. Of cer Stuglin rst testi ed that he "asked something like what happened or are you okay, something to that line." App. 131. When pressed on whether he asked "how are you doing," he responded, "Well, basically . . . what's wrong." *Ibid.* Other of cers were not so equivocal: They admitted they had no need to "ask him how he was doing. . . . It was very obvious how he was doing." *Id.*, at 110; see also *id.*, at 19.

Neither Covington's statements nor the colloquy between him and the of cers would have been out of place at a trial; it would have been a routine direct examination. See *Davis*, 547 U. S., at 830. Like a witness, Covington recounted in detail how a past criminal event began and progressed, and like a prosecutor, the police elicited that account through structured questioning. Preventing the admission of "weaker substitute[s] for live testimony at trial" such as this, *id.*, at 828 (internal quotation marks omitted), is precisely what motivated the Framers to adopt the Confrontation Clause and what motivated our decisions in *Crawford* and in *Hammon* v. *Indiana*, decided with *Davis*. *Ex parte* exami nations raise the same constitutional concerns whether they take place in a gas-station parking lot or in a police interro gation room.

C

Worse still for the repute of today's opinion, this is an ab surdly easy case even if one (erroneously) takes the interro gating of cers' purpose into account. The ve of cers inter rogated Covington primarily to investigate past criminal events. None—absolutely none—of their actions indicated that they perceived an imminent threat. They did not draw their weapons, and indeed did not immediately search the gas station for potential shooters.[3] To the contrary, all ve testi ed that they questioned Covington *before conducting any investigation at the scene*. Would this have made any sense if they feared the presence of a shooter? Most tell ingly, none of the of cers started his interrogation by asking

[3] The Court cites Of cer Stuglin's testimony that "I think [Of cers Brown and Pellerito] did a little bit of both" joining the interrogation and helping to secure the scene. *Id.*, at 135–136. But the point is not whether they did both; it is whether they moved to secure the area *rst*. No of cer's testimony suggests this. Pellerito testi ed that he, Stuglin, and Brown arrived at the scene at roughly the same time and all three immediately went to Covington. See *id.*, at 17–18. The testimony of Brown and McCallister corroborate that account. See *id.*, at 34–36, 79–82.

what would have been the obvious first question if any hint of such a fear existed: Where is the shooter?

But do not rely solely on my word about the officers' primary purpose. Listen to Sergeant Wenturine, who candidly admitted that he interrogated Covington because he "ha[d] a man here that [he] believe[d] [was] dying [so he was] gonna find out who did this, period." App. 112. In short, he needed to interrogate Covington to solve a crime. Wenturine never mentioned an interest in ending an ongoing emergency.

At the very least, the officers' intentions *turned* investigative during their 10-minute encounter with Covington, and the conversation "evolve[d] into testimonial statements." *Davis*, 547 U. S., at 828 (internal quotation marks omitted). The fifth officer to arrive at the scene did not need to run straight to Covington and ask a battery of questions "to determine the need for emergency assistance." *Ibid.* He could have asked his fellow officers, who presumably had a better sense of that than Covington—and a better sense of what he could do to assist. No, the value of asking the same battery of questions a fifth time was to ensure that Covington told a consistent story and to see if any new details helpful to the investigation and eventual prosecution would emerge. Having the testimony of five officers to recount Covington's consistent story undoubtedly helped obtain Bryant's conviction. (Which came, I may note, after the first jury could not reach a verdict. See 483 Mich., at 137, 768 N. W. 2d, at 67.)

D

A final word about the Court's active imagination. The Court invents a world where an ongoing emergency exists whenever "an armed shooter, whose motive for and location after the shooting [are] unknown, . . . mortally wound[s]" one individual "within a few blocks and [25] minutes of the location where the police" ultimately find that victim. *Ante*, at 374. Breathlessly, it worries that a shooter could leave the scene armed and ready to pull the trigger again. See *ante*,

at 364–365, 373–374, 377. Nothing suggests the five officers in this case shared the Court's dystopian[4] view of Detroit, where drug dealers hunt their shooting victim down and fire into a crowd of police officers to finish him off, see *ante*, at 377, or where spree killers shoot through a door and then roam the streets leaving a trail of bodies behind. Because almost 90 percent of murders involve a single victim,[5] it is much more likely—indeed, I think it certain—that the officers viewed their encounter with Covington for what it was: an investigation into a past crime with no ongoing or immediate consequences.

The Court's distorted view creates an expansive exception to the Confrontation Clause for violent crimes. Because Bryant posed a continuing threat to public safety in the Court's imagination, the emergency persisted for confrontation purposes at least until the police learned his "motive for and location after the shooting." *Ante*, at 374. It may have persisted in this case until the police "secured the scene of the shooting" 2½ hours later. *Ibid.* (The relevance of securing the scene is unclear so long as the killer is still at large—especially if, as the Court speculates, he may be a spree killer.) This is a dangerous definition of emergency. Many individuals who testify against a defendant at trial first offer their accounts to police in the hours after a violent act. If the police can plausibly claim that a "potential threat to . . . the public" persisted through those first few hours, *ante*, at 359 (and if the claim is plausible here it is always plausible), a defendant will have no constitutionally pro

[4] The opposite of utopian. The word was coined by John Stuart Mill as a caustic description of British policy. See 190 Hansard's Parliamentary Debates, Third Series 1517 (1868); 5 Oxford English Dictionary 13 (2d ed. 1989).

[5] See Federal Bureau of Investigation, Crime in the United States, 2009: Expanded Homicide Data Table 4, Murder by Victim/Offender Situations, 2009 (Sept. 2010), online at http://www2.fbi.gov/ucr/cius2009/offenses/expanded_information/data/shrtable_04.html (as visited Feb. 25, 2011, and available in Clerk of Court's case file).

tected right to exclude the uncross-examined testimony of such witnesses. His conviction could rest (as perhaps it did here) solely on the of cers' recollection at trial of the wit nesses' accusations.

The Framers could not have envisioned such a hollow con stitutional guarantee. No framing-era confrontation case that I know of, neither here nor in England, took such an enfeebled view of the right to confrontation. For example, *King* v. *Brasier*, 1 Leach 199, 200, 168 Eng. Rep. 202, 202–203 (K. B. 1779), held inadmissible a mother's account of her young daughter's statements "immediately on her coming home" after being sexually assaulted. The daughter needed to testify herself. But today's majority presumably would hold the daughter's account to her mother a nontestimonial statement made during an ongoing emergency. She could not have known whether her attacker might reappear to at tack again or attempt to silence the lone witness against him. Her mother likely listened to the account to assess the threat to her own safety and to decide whether the rapist posed a threat to the community that required the immediate inter vention of the local authorities. Cf. *ante,* at 375–376. Utter nonsense.

The 16th- and 17th-century English treason trials that helped inspire the Confrontation Clause show that today's decision is a mistake. The Court's expansive de nition of an "ongoing emergency" and its willingness to consider the perspective of the interrogator and the declarant cast a more favorable light on those trials than history or our past deci sions suggest they deserve. Royal of cials conducted many of the *ex parte* examinations introduced against Sir Walter Raleigh and Sir John Fenwick while investigating alleged treasonous conspiracies of unknown scope, aimed at killing or overthrowing the King. See Brief for National Associa tion of Criminal Defense Lawyers as *Amicus Curiae* 21–22, and n. 11. Social stability in 16th- and 17th-century Eng land depended mainly on the continuity of the ruling mon

arch, cf. 1 J. Stephen, A History of the Criminal Law of England 354 (1883), so such a conspiracy posed the most pressing emergency imaginable. Presumably, the royal officials investigating it would have understood the gravity of the situation and would have focused their interrogations primarily on ending the threat, not on generating testimony for trial. I therefore doubt that under the Court's test English officials acted improperly by denying Raleigh and Fenwick the opportunity to confront their accusers "face to face," *id.*, at 326.

Under my approach, in contrast, those English trials remain unquestionably infamous. Lord Cobham did not speak with royal officials to end an ongoing emergency. He was a traitor! He spoke, as Raleigh correctly observed, to establish Raleigh's guilt and to save his own life. See 1 D. Jardine, Criminal Trials 435 (1832). Cobham's statements, when assessed from his perspective, had only a testimonial purpose. The same is true of Covington's statements here.

II

A

But today's decision is not only a gross distortion of the facts. It is a gross distortion of the law—a revisionist narrative in which reliability continues to guide our Confrontation Clause jurisprudence, at least where emergencies and faux emergencies are concerned.

According to today's opinion, the *Davis* inquiry into whether a declarant spoke to end an ongoing emergency or rather to "prove past events potentially relevant to later criminal prosecution," 547 U. S., at 822, is *not* aimed at answering whether the declarant acted as a witness. Instead, the *Davis* inquiry probes the *reliability* of a declarant's statements, "[i]mplicit[ly]" importing the excited-utterances hearsay exception into the Constitution. *Ante*, at 361–362. A statement during an ongoing emergency is sufficiently reliable, the Court says, "because the prospect of fabrication . . . is presumably significantly diminished," so it "does not [need]

to be subject to the crucible of cross-examination." *Ante*, at 361.

Compare that with the holding of *Crawford:* "Where testi monial statements are at issue, the only indicium of reliabil ity suf cient to satisfy constitutional demands is the one the Constitution actually prescribes: confrontation." 541 U. S., at 68–69. Today's opinion adopts, for emergencies and faux emergencies at least, the discredited logic of *White* v. *Illi nois*, 502 U. S. 346, 355–356, and n. 8 (1992), and *Idaho* v. *Wright*, 497 U. S. 805, 819–820 (1990). *White* is, of course, the decision that both *Crawford* and *Davis* found most in compatible with the text and history of the Confrontation Clause. See *Davis*, *supra*, at 825; *Crawford*, *supra*, at 58, n. 8. (This is not to say that "reliability" logic can actu ally justify today's result: Twenty- ve minutes is plenty of time for a shooting victim to re ect and fabricate a false story.)

The Court announces that in future cases it will look to "standard rules of hearsay, designed to identify some state ments as reliable," when deciding whether a statement is testimonial. *Ante*, at 358–359. *Ohio* v. *Roberts*, 448 U. S. 56 (1980), said something remarkably similar: An out-of court statement is admissible if it "falls within a rmly rooted hearsay exception" or otherwise "bears adequate 'in dicia of reliability.'" *Id.*, at 66. We tried that approach to the Confrontation Clause for nearly 25 years before *Craw ford rejected* it as an unworkable standard unmoored from the text and the historical roots of the Confrontation Clause. See 541 U. S., at 54, 60, 63–65, 67–68. The arguments in Raleigh's infamous 17th-century treason trial contained full debate about the reliability of Lord Cobham's *ex parte* accu sations, see *Raleigh's Case*, 2 How. St. Tr. 1, 14, 17, 19–20, 22–23, 29 (1603); that case remains the canonical example of a Confrontation Clause violation, not because Raleigh should have won the debate but because he should have been al lowed cross-examination.

The Court attempts to fit its resurrected interest in reliability into the *Crawford* framework, but the result is incoherent. Reliability, the Court tells us, is a good indicator of whether "a statement is . . . an out-of-court substitute for trial testimony." *Ante*, at 358. That is patently false. Reliability tells us *nothing* about whether a statement is testimonial. Testimonial and nontestimonial statements alike come in varying degrees of reliability. An eyewitness's statements to the police after a fender-bender, for example, are both reliable and testimonial. Statements to the police from one driver attempting to blame the other would be similarly testimonial but rarely reliable.

The Court suggests otherwise because it "misunderstands the relationship" between qualification for one of the standard hearsay exceptions and exemption from the confrontation requirement. *Melendez-Diaz* v. *Massachusetts*, 557 U. S. 305, 324 (2009). That relationship is not a causal one. Hearsay law exempts business records, for example, because businesses have a financial incentive to keep reliable records. See Fed. Rule Evid. 803(6). The Sixth Amendment also generally admits business records into evidence, but not because the records are reliable or because hearsay law says so. It admits them "because—having been created for the administration of an entity's affairs and not for the purpose of establishing or proving some fact at trial—they are not" weaker substitutes for live testimony. *Melendez-Diaz*, 557 U. S., at 324. Moreover, the scope of the exemption from confrontation and that of the hearsay exceptions also are not always coextensive. The reliability logic of the business-record exception would extend to records maintained by neutral parties providing litigation-support services, such as evidence testing. The Confrontation Clause is not so forgiving. Business records prepared specifically for use at a criminal trial are testimonial and require confrontation. See *ibid.*

Is it possible that the Court does not recognize the contradiction between its focus on reliable statements and *Craw*

ford's focus on testimonial ones? Does it not realize that the two cannot coexist? Or does it intend, by following today's illogical roadmap, to resurrect *Roberts* by a thousand unprincipled distinctions without ever explicitly overruling *Crawford?* After all, honestly overruling *Crawford* would destroy the illusion of judicial minimalism and restraint. And it would force the Court to explain how the Justices' preference comports with the meaning of the Confrontation Clause that the People adopted—or to confess that only the Justices' preference really matters.

B

The Court recedes from *Crawford* in a second significant way. It requires judges to conduct "open-ended balancing tests" and "amorphous, if not entirely subjective," inquiries into the totality of the circumstances bearing upon reliability. 541 U. S., at 63, 68. Where the prosecution cries "emergency," the admissibility of a statement now turns on "a highly context-dependent inquiry," *ante*, at 363, into the type of weapon the defendant wielded, see *ante*, at 364; the type of crime the defendant committed, see *ante*, at 359, 364; the medical condition of the declarant, see *ante*, at 364–365; if the declarant is injured, whether paramedics have arrived on the scene, see *ante*, at 366; whether the encounter takes place in an "exposed, public area," *ibid.;* whether the encounter appears disorganized, see *ibid.;* whether the declarant is capable of forming a purpose, see *ante*, at 368–369; whether the police have secured the scene of the crime, see *ante*, at 374; the formality of the statement, see *ante*, at 366; and finally, whether the statement strikes us as reliable, see *ante*, at 358–359, 361–362. This is no better than the nine-factor balancing test we rejected in *Crawford*, 541 U. S., at 63. I do not look forward to resolving conflicts in the future over whether knives and poison are more like guns or clubs for Confrontation Clause purposes, or whether rape and armed robbery are more like murder or domestic violence.

It can be said, of course, that under *Crawford* analysis of whether a statement is testimonial requires consideration of all the circumstances, and so is also something of a multifac tor balancing test. But the "reliability" test does not re place that analysis; it supplements it. As I understand the Court's opinion, even when it is determined that no emer gency exists (or perhaps before that determination is made) the statement would be found admissible as far as the Con frontation Clause is concerned if it is not testimonial.

In any case, we did not disavow multifactor balancing for reliability in *Crawford* out of a preference for rules over standards. We did so because it "d[id] violence to" the Framers' design. *Id.*, at 68. It was judges' open-ended de termination of what was reliable that violated the trial rights of Englishmen in the political trials of the 16th and 17th cen turies. See, *e. g.*, *Throckmorton's Case*, 1 How. St. Tr. 869, 875–876 (1554); *Raleigh's Case*, 2 How. St. Tr., at 15–16, 24. The Framers placed the Confrontation Clause in the Bill of Rights to ensure that those abuses (and the abuses by the Admiralty courts in colonial America) would not be repeated in this country. Not even the least dangerous branch can be trusted to assess the reliability of uncross-examined testi mony in politically charged trials or trials implicating threats to national security. See *Crawford*, *supra*, at 67–68; cf. *Hamdi* v. *Rumsfeld*, 542 U. S. 507, 576–578 (2004) (SCA-LIA, J., dissenting).

* * *

Judicial decisions, like the Constitution itself, are nothing more than "parchment barriers," 5 Writings of James Madi son 269, 272 (G. Hunt ed. 1901). Both depend on a judicial culture that understands its constitutionally assigned role, has the courage to persist in that role when it means an nouncing unpopular decisions, and has the modesty to persist when it produces results that go against the judges' policy

preferences. Today's opinion falls far short of living up to that obligation—short on the facts, and short on the law.

For all I know, Bryant has received his just deserts. But he surely has not received them pursuant to the procedures that our Constitution requires. And what has been taken away from him has been taken away from us all.

JUSTICE GINSBURG, dissenting.

I agree with JUSTICE SCALIA that Covington's statements were testimonial and that "[t]he declarant's intent is what counts." *Ante*, at 381 (dissenting opinion). Even if the interrogators' intent were what counts, I further agree, Covington's statements would still be testimonial. *Ante*, at 386. It is most likely that "the officers viewed their encounter with Covington [as] an investigation into a past crime with no ongoing or immediate consequences." *Ante*, at 388. Today's decision, JUSTICE SCALIA rightly notes, "creates an expansive exception to the Confrontation Clause for violent crimes." *Ibid.* In so doing, the decision confounds our recent Confrontation Clause jurisprudence, *ante*, at 390–391, which made it plain that "[r]eliability tells us nothing about whether a statement is testimonial," *ante*, at 392 (emphasis deleted).

I would add, however, this observation. In *Crawford* v. *Washington*, 541 U. S. 36, 56, n. 6 (2004), this Court noted that, in the law we inherited from England, there was a well-established exception to the confrontation requirement: The cloak protecting the accused against admission of out-of-court testimonial statements was removed for dying declarations. This historic exception, we recalled in *Giles* v. *California*, 554 U. S. 353, 358 (2008); see *id.*, at 361–362, 368, applied to statements made by a person about to die and aware that death was imminent. Were the issue properly tendered here, I would take up the question whether the exception for dying declarations survives our recent Con

frontation Clause decisions. The Michigan Supreme Court, however, held, as a matter of state law, that the prosecutor had abandoned the issue. See 483 Mich. 132, 156–157, 768 N. W. 2d 65, 78 (2009). The matter, therefore, is not one the Court can address in this case.

Syllabus

FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* AT&T INC. ET AL.

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

No. 09–1279. Argued January 19, 2011—Decided March 1, 2011

The Freedom of Information Act requires federal agencies to make records and documents publicly available upon request, subject to several statutory exemptions. One of those exemptions, Exemption 7(C), covers law enforcement records the disclosure of which "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U. S. C. § 552(b)(7)(C). CompTel, a trade association, submitted a FOIA request for documents AT&T had provided to the Federal Communications Commission Enforcement Bureau during an investigation of that company. The Bureau found that Exemption 7(C) applied to individuals identified in AT&T's submissions but not to the company itself, concluding that corporations do not have "personal privacy" interests as required by the exemption. The FCC agreed with the Bureau, but the Court of Appeals for the Third Circuit did not. It held that Exemption 7(C) extends to the "personal privacy" of corporations, reasoning that "personal" is the adjective form of the term "person," which Congress has defined, as applicable here, to include corporations, § 551(2).

Held: Corporations do not have "personal privacy" for the purposes of Exemption 7(C). Pp. 402–410.

(a) AT&T argues that the word "personal" in Exemption 7(C) incorporates the statutory definition of "person," which includes corporations, § 551(2). But adjectives do not always reflect the meaning of corresponding nouns. "Person" is a defined term in the statute; "personal" is not. When a statute does not define a term, the Court typically "give[s] the phrase its ordinary meaning." *[illegible]* v. *[illegible]*, 559 U. S. 133, 138. "Personal" ordinarily refers to individuals. People do not generally use terms such as personal characteristics or personal correspondence to describe the characteristics or correspondence of corporations. In fact, "personal" is often used to mean precisely the opposite of business related: We speak of personal expenses and business expenses, personal life and work life, personal opinion and a company's view. Dictionary definitions also suggest that "personal" does not ordinarily relate to artificial "persons" like corporations.

Syllabus

AT&T contends that its reading of "personal" is supported by the common legal usage of the word "person." Yet while "person," in a legal setting, often refers to artificial entities, AT&T's effort to ascribe a corresponding legal meaning to "personal" again elides the difference between "person" and "personal." AT&T provides scant support for the proposition that "personal" denotes corporations, even in a legal context.

Regardless of whether "personal" can carry a legal meaning apart from its ordinary one, statutory language should be construed "in light of the terms surrounding it." *Leocal* v. *Ashcroft*, 543 U. S. 1, 9. Exemption 7(C) refers not just to the word "personal," but to the term "personal privacy." "Personal" in that phrase conveys more than just "of a person"; it suggests a type of privacy evocative of human concerns—not the sort usually associated with an entity like AT&T. AT&T does not cite any other instance in which a court has expressly referred to a corporation's "personal privacy." Nor does it identify any other statute that does so. While AT&T argues that this Court has recognized "privacy" interests of corporations in the Fourth Amendment and double jeopardy contexts, this case does not call for the Court to pass on the scope of a corporation's "privacy" interests as a matter of constitutional or common law. AT&T contends that the FCC has not demonstrated that the phrase "personal privacy" necessarily excludes corporations' privacy. But construing statutory language is not merely an exercise in ascertaining "the outer limits of [a word's] definitional possibilities," *Dolan* v. *Postal Service*, 546 U. S. 481, 486, and AT&T has provided no sound reason in the statutory text or context to disregard the ordinary meaning of the phrase. Pp. 402–407.

(b) The meaning of "personal privacy" in Exemption 7(C) is further clarified by two pre-existing FOIA exemptions. Exemption 6, which Congress enacted eight years before Exemption 7(C), covers "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." § 552(b)(6). This Court has regularly referred to Exemption 6 as involving an "individual's right of privacy," *Department of State* v. *Washington Post Co.*, 502 U. S. 164, 175, and Congress used in Exemption 7(C) the same phrase—"personal privacy"—used in Exemption 6. In contrast, FOIA Exemption 4, which protects "trade secrets and commercial or financial information obtained from a person and privileged or confidential," § 552(b)(4), clearly applies to corporations. Congress did not use any language similar to that in Exemption 4 in Exemption 7(C). Pp. 407–410.

582 F. 3d 490, reversed.

ROBERTS, C. J., delivered the opinion of the Court, in which all other Members joined, except KAGAN, J., who took no part in the consideration or decision of the case.

A. G. Y. argued the cause for petitioners. With him on the briefs were *A. S.* and *M. A.* and *C. M. C.* led briefs for respondent CompTel in support of petitioners.

M. K. argued the cause for respondent AT&T Inc. With him on the brief was *J.*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The Freedom of Information Act requires federal agencies to make records and documents publicly available upon re

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*Briefs of amici curiae urging reversal were led for the Collaboration on Government Secrecy by *D. J.* for the Constitutional Accountability Center by *T.* and *B.* and *H.* for Free Press by *A.* and *S.* for the Project on Government Oversight et al. by *N.* and *C.* and for the Reporters Committee for Freedom of the Press et al. by *A.* *M.* *H.* *D.* *A.* *S.* and *N.*

Briefs of amici curiae urging affirmance were led for the Business Roundtable by *E.* and *D.* for the Chamber of Commerce of the United States of America by *A.* and *S.* and for the National Association of Manufacturers by *P.* *S.* *N.* and *R.*

Briefs of amici curiae were led for Citizens for Responsibility and Ethics in Washington et al. by *L.* and *L.* and for the Electronic Privacy Information Center et al. by *M.*

quest, unless they fall within one of several statutory exemp tions. One of those exemptions covers law enforcement rec ords, the disclosure of which "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U. S. C. § 552(b)(7)(C). The question presented is whether corporations have "personal privacy" for the purposes of this exemption.

I

The Freedom of Information Act request at issue in this case relates to an investigation of respondent AT&T Inc., conducted by the Federal Communications Commission. AT&T participated in an FCC-administered program—the E-Rate (or Education-Rate) program—that was created to enhance access for schools and libraries to advanced tele communications and information services. In August 2004, AT&T voluntarily reported to the FCC that it might have overcharged the Government for services it provided as part of the program.

The FCC's Enforcement Bureau launched an investigation. As part of that investigation, AT&T provided the Bureau various documents, including responses to interrogatories, invoices, e-mails with pricing and billing information, names and job descriptions of employees involved, and AT&T's as sessment of whether those employees had violated the com pany's code of conduct. 582 F. 3d 490, 492–493 (CA3 2009). The FCC and AT&T resolved the matter in December 2004 through a consent decree in which AT&T—without conced ing liability—agreed to pay the Government $500,000 and to institute a plan to ensure compliance with the program. See 19 FCC Rcd. 24014, 24016–24019.

Several months later, CompTel—"a trade association rep resenting some of AT&T's competitors"—submitted a FOIA request seeking "'[a]ll pleadings and correspondence'" in the Bureau's le on the AT&T investigation. 582 F. 3d, at 493. AT&T opposed CompTel's request, and the Bureau issued a letter-ruling in response.

The Bureau concluded that some of the information AT&T had provided (including cost and pricing data, billing-related information, and identifying information about staff, contractors, and customer representatives) should be protected from disclosure under FOIA Exemption 4, which relates to "trade secrets and commercial or financial information," 5 U. S. C. § 552(b)(4). App. to Pet. for Cert. 40a–41a. The Bureau also decided to withhold other information under FOIA Exemption 7(C). Exemption 7(C) exempts "records or information compiled for law enforcement purposes" that "could reasonably be expected to constitute an unwarranted invasion of personal privacy." § 552(b)(7)(C). The Bureau concluded that "individuals identified in [AT&T's] submissions" have "privacy rights" that warrant protection under Exemption 7(C). *Id.* at 43a. The Bureau did not, however, apply that exemption to the corporation itself, reasoning that "businesses do not possess 'personal privacy' interests as required" by the exemption. *Id.* at 42a–43a.

On review the FCC agreed with the Bureau. The Commission found AT&T's position that it is "a 'private corporate citizen' with personal privacy rights that should be protected from disclosure that would 'embarrass' it . . . within the meaning of Exemption 7(C) . . . at odds with established [FCC] and judicial precedent." 23 FCC Rcd. 13704, 13707 (2008). It therefore concluded that "Exemption 7(C) has no applicability to corporations such as [AT&T]." *Id.* at 13710.

AT&T sought review in the Court of Appeals for the Third Circuit, and that court rejected the FCC's reasoning. Noting that Congress had defined the word "person" to include corporations as well as individuals, 5 U. S. C. § 551(2), the court held that Exemption 7(C) extends to the "personal privacy" of corporations, since "the root from which the statutory word [personal] . . . is derived" is the defined term "person." 582 F. 3d, at 497. As the court explained, "[i]t would be very odd indeed for an adjectival form of a defined term not to refer back to that defined term." *Id.* The court

accordingly ruled "that FOIA's text unambiguously indicates that a corporation may have a 'personal privacy' interest within the meaning of Exemption 7(C)." *Id.* at 498.

The FCC petitioned this Court for review of the Third Circuit's decision, and CompTel filed as a respondent supporting petitioners. We granted certiorari, 561 U. S. 1057 (2010), and now reverse.

II

Like the Court of Appeals below, AT&T relies on the argument that the word "personal" in Exemption 7(C) incorporates the statutory definition of the word "person." See Brief for Respondent AT&T 8–9, 14–15 (AT&T Brief); 582 F. 3d, at 497. The Administrative Procedure Act defines "person" to include "an individual, partnership, corporation, association, or public or private organization other than an agency." 5 U. S. C. § 551(2). Because that definition applies here, the argument goes, "personal" must mean relating to those "person[s]": namely, corporations and other entities as well as individuals. This reading, we are told, is dictated by a "basic principle of grammar and usage." AT&T Brief 8; see *id.* at 14–15; see also 582 F. 3d, at 497 (citing *Word Pharmacy, Inc.* v. *Barnes*, 440 F. 3d 615, 623 (CA3 2006) (Fisher, J., concurring), for "[t]he grammatical imperativ[e]" that "a statute which defines a noun has thereby defined the adjectival form of that noun"). According to AT&T, "[b]y expressly defining the noun 'person' to include corporations, Congress thereby defined the adjective form of that noun—'personal'—also to include corporations." AT&T Brief 14 (emphasis added).

We disagree. Adjectives typically reflect the meaning of corresponding nouns, but not always. Sometimes they acquire distinct meanings of their own. The noun "crab" refers variously to a crustacean and a type of apple, while the related adjective "crabbed" can refer to handwriting that is "difficult to read," Webster's Third New International Dictionary 527 (2002); "corny" can mean "using familiar and ste

reotyped formulas believed to appeal to the unsophisti cated," *id.* at 509, which has little to do with "corn," *id.* at 507 ("the seeds of any of the cereal grasses used for food"); and while "crank" is "a part of an axis bent at right angles," "cranky" can mean "given to fretful fussiness," *id.* at 530.

Even in cases such as these there may well be a link be tween the noun and the adjective. "Cranky" describes a person with a "wayward" or "capricious" temper, see 3 Ox ford English Dictionary 1117 (2d ed. 1989) (OED), which might bear some relation to the distorted or crooked angular shape from which a "crank" takes its name. That is not the point. What is signi cant is that, in ordinary usage, a noun and its adjective form may have meanings as disparate as any two unrelated words. The FCC's argument that "per sonal" does not, in fact, derive from the English word "per son," but instead developed along its own etymological path, Reply Brief for Petitioners 6, simply highlights the short comings of AT&T's proposed rule.

"Person" is a de ned term in the statute; "personal" is not. When a statute does not de ne a term, we typically "give the phrase its ordinary meaning." *[illegible]* v. *[illegible]* 559 U. S. 133, 138 (2010). "Personal" ordinarily re fers to individuals. We do not usually speak of personal characteristics, personal effects, personal correspondence, personal in uence, or personal tragedy as referring to cor porations or other arti cial entities. This is not to say that corporations do not have correspondence, in uence, or tragedies of their own, only that we do not use the word "personal" to describe them.

Certainly, if the chief executive of cer of a corporation ap proached the chief nancial of cer and said, "I have some thing personal to tell you," we would not assume the CEO was about to discuss company business. Responding to a request for information, an individual might say, "that's per sonal." A company spokesman, when asked for information about the company, would not. In fact, we often use the

word "personal" to mean precisely the opposite of business related: We speak of personal expenses and business expenses, personal life and work life, personal opinion and a company's view.

Dictionaries also suggest that "personal" does not ordinarily relate to artificial "persons" such as corporations. See, *e.g.*, 7 OED 726 (1933) ("[1] [o]f, pertaining to . . . the individual person or self," "individual; private; one's own"; "[3] [o]f or pertaining to one's person, body, or figure"; "[5] [o]f, pertaining to, or characteristic of a person or self-conscious being, as opposed to a thing or abstraction"); 11 OED 599–600 (2d ed. 1989) (same); Webster's Third New International Dictionary 1686 (1976) ("[3] relating to the person or body"; "[4] relating to an individual, his character, conduct, motives, or private affairs"; "[5] relating to or characteristic of human beings as distinct from things"); *id.*, (2002) (same).

AT&T dismisses these definitions, correctly noting that "personal"—at its most basic level—simply means "[o]f or pertaining to a particular person." Webster's New International Dictionary 1828 (2d ed. 1954). The company acknowledges that "in non-legal usage, where a 'person' is a human being, it is entirely unsurprising that the word 'personal' is used to refer to human beings." AT&T Brief 8. But in a watered-down version of the "grammatical imperative" argument, AT&T contends that "person"—in common legal usage—is understood to include a corporation. "Personal" in the same context therefore can and should have the same scope, especially here in light of the statutory definition. See *id.*, at 8–9, 16.

The construction of statutory language often turns on context, see, *e.g.*, *id.*, at 139, which certainly may include the definitions of related words. But here the context to which AT&T points does not dissuade us from the ordinary meaning of "personal." We have no doubt that "person," in a legal setting, often refers to artificial entities.

The Dictionary Act makes that clear. 1 U. S. C. § 1 (de ning "person" to include "corporations, companies, associations, rms, partnerships, societies, and joint stock companies, as well as individuals"). But AT&T's effort to ascribe a corresponding legal meaning to "personal" again elides the difference between "person" and "personal."

When it comes to the word "personal," there is little support for the notion that it denotes corporations, even in the legal context. AT&T notes that corporations are "protected by the doctrine of 'personal' jurisdiction," AT&T Brief 19, but that phrase refers to jurisdiction *in personam* as opposed to *in rem* not the jurisdiction "of a person." The only other example AT&T cites is an 1896 case that referred to the "'personal privilege'" of a corporation. *Id.* (quoting *Metropolitan R. Co.* v. *Moore*, 161 U. S. 161, 171 (1896); emphasis deleted). These examples fall far short of establishing that "personal" here has a legal meaning apart from its ordinary one, even if "person" does. Cf. *Merck & Co.* v. *Reynolds*, 559 U. S. 633, 644–646 (2010) (noting that "'discovery' is often used as a term of art in connection with the 'discovery rule'" and describing the judicial and legislative codi cation of that meaning over time); *Cooper Industries, Inc.* v. *Aviall Services, Inc.*, 543 U. S. 157, 166–167 (2004) ("'Punitive damages' is a legal term of art that has a widely accepted common-law meaning; . . . this Court's decisions make clear that the concept . . . has a long pedigree in the law").

Regardless of whether "personal" can carry a special meaning in legal usage, "when interpreting a statute . . . we construe language . . . in light of the terms surrounding it." *Leocal* v. *Ashcroft*, 543 U. S. 1, 9 (2004). Exemption 7(C) refers not just to the word "personal," but to the term "personal privacy." § 552(b)(7)(C); cf. *Federal Election Comm'n* v. *Akins*, 524 U. S. 11, 19–20 (1998); *Brown* v. *Gardner*, 513 U. S. 115, 118 (1994); *Department of Defense* v. *FLRA*, 510 U. S. 487, 494–495 (1994); *Dole* v. *Steelworkers*, 494 U. S. 26, 35 (1990); *Pierce County* v. *Guillen*, 537 U. S. 129, 143–144 (2003); *Smith* v. *United States*, 508 U. S. 223, 233 (1993); *Bailey* v. *United States*, 516 U. S. 137, 145 (1995); *Bailey* v. *United States*, 523 U. S. 653, 657 (1998) ("It is not the meaning of 'for' we are seeking here, but the meaning of '[s]uits for violation of contracts'"). AT&T's effort to attribute a special legal

meaning to the word "personal" in this particular context is wholly unpersuasive.

AT&T's argument treats the term "personal privacy" as simply the sum of its two words: the privacy of a person. Under that view, the de ned meaning of the noun "person," or the asserted specialized legal meaning, takes on greater signi cance. But two words together may assume a more particular meaning than those words in isolation. We understand a golden cup to be a cup made of or resembling gold. A golden boy, on the other hand, is one who is charming, lucky, and talented. A golden opportunity is one not to be missed. "Personal" in the phrase "personal privacy" conveys more than just "of a person." It suggests a type of privacy evocative of human concerns—not the sort usually associated with an entity like, say, AT&T.

Despite its contention that "[c]ommon legal usage" of the word "person" supports its reading of the term "personal privacy," AT&T Brief 9, 13, 18, AT&T does not cite a single instance in which this Court or any other (aside from the Court of Appeals below) has expressly referred to a corporation's "personal privacy." Nor does it identify any other statute that does so. See Tr. of Oral Arg. 26. On the contrary, treatises in print around the time that Congress drafted the exemptions at hand re ect the understanding that the speci c concept of "personal privacy," at least as a matter of common law, did not apply to corporations. See Restatement (Second) of Torts § 652I, Comment *c* (1976) ("A corporation, partnership or unincorporated association has no personal right of privacy"); W. Prosser, Law of Torts § 97, pp. 641–642 (2d ed. 1955) ("A corporation or a partnership as such can have no personal privacy, although it seems clear that it may have an exclusive right to its name and its business prestige" (footnotes omitted)); cf. *id.*, § 112, at 843–844 (3d ed. 1964) ("It seems to be generally agreed that the right of privacy is one pertaining only to individuals, and that a corporation or a partnership cannot claim it as

such" (footnotes omitted)); *id.*, § 117, at 815 (4th ed. 1971) (same).

AT&T contends that this Court has recognized "privacy" interests of corporations in the Fourth Amendment and double jeopardy contexts, and that the term should be similarly construed here. See AT&T Brief 20–25. But this case does not call upon us to pass on the scope of a corporation's "privacy" interests as a matter of constitutional or common law. The discrete question before us is instead whether Congress used the term "personal privacy" to refer to the privacy of artificial persons in FOIA Exemption 7(C); the cases AT&T cites are too far afield to be of help here.

AT&T concludes that the FCC has simply failed to demonstrate that the phrase "personal privacy" "necessarily *excludes* the privacy of corporations." *Id.*, at 31–32 (emphasis added). But construing statutory language is not merely an exercise in ascertaining "the outer limits of [a word's] definitional possibilities," *Dolan* v. *Postal Service*, 546 U. S. 481, 486 (2006). AT&T has given us no sound reason in the statutory text or context to disregard the ordinary meaning of the phrase "personal privacy."

III

The meaning of "personal privacy" in Exemption 7(C) is further clarified by the rest of the statute. Congress enacted Exemption 7(C) against the backdrop of pre-existing FOIA exemptions, and the purpose and scope of Exemption 7(C) becomes even more apparent when viewed in this context. See *Abuelhawa* v. *United States*, 556 U. S. 418, 426 (2009) ("statutory interpretation turns on 'the language itself, the specific context in which that language is used, and the broader context of the statute as a whole'" (quoting *Robinson* v. *Shell Oil Co.*, 519 U. S. 337, 341 (1997))). Two of those other exemptions are particularly relevant here.

The phrase "personal privacy" first appeared in the FOIA exemptions in Exemption 6, enacted in 1966, eight years be-

fore Congress enacted Exemption 7(C). See 80 Stat. 250, codified as amended at 5 U. S. C. § 552(b)(6). Exemption 6 covers "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." § 552(b)(6). Not only did Congress choose the same term in drafting Exemption 7(C), it also used the term in a nearly identical manner.

Although the question whether Exemption 6 is limited to individuals has not come to us directly, we have regularly referred to that exemption as involving an "individual's right of privacy." *Department of State* v. *Ray*, 502 U. S. 164, 175 (1991) (quoting *Department of Air Force* v. *Rose*, 425 U. S. 352, 372 (1976); internal quotation marks omitted); see also *Department of State* v. *Washington Post Co.*, 456 U. S. 595, 599 (1982).

AT&T does not dispute that "identical words and phrases within the same statute should normally be given the same meaning," *Powerex Corp.* v. *Reliant Energy Services, Inc.*, 551 U. S. 224, 232 (2007), but contends that "if Exemption 6 does not protect corporations, it is because [it] applies only to 'personnel and medical files and similar files,'" not because of the term "personal privacy." AT&T Brief 36 (quoting § 552(b)(6)). Yet the significance of the pertinent phrase—"the disclosure of which would constitute a clearly unwarranted invasion of personal privacy," § 552(b)(6)—cannot be so readily dismissed. Without it, Exemption 6 would categorically exempt "personnel and medical files" as well as any "similar" file. Even if the scope of Exemption 6 is also limited by the types of files it protects, the "personal privacy" phrase importantly defines the particular subset of that information Congress sought to exempt. See *Washington Post Co.*, *supra*, at 599. And because Congress used the same phrase in Exemption 7(C), the reach of that phrase in Exemption 6 is pertinent in construing Exemption 7(C).

In drafting Exemption 7(C), Congress did not, on the other hand, use language similar to that in Exemption 4. Exemp

tion 4 pertains to "trade secrets and commercial or nancial information obtained from a person and privileged or con dential." 5 U. S. C. § 552(b)(4). This clearly applies to corporations—it uses the de ned term "person" to describe the source of the information—and we far more readily think of corporations as having "privileged or con dential" documents than personally private ones. So at the time Congress enacted Exemption 7(C), it had in place an exemption that plainly covered a corporation's commercial and nancial information, and another that we have described as relating to "individuals." The language of Exemption 7(C) tracks the latter.

The Government has long interpreted the phrase "personal privacy" in Exemption 7(C) accordingly. Shortly after Congress passed the 1974 amendments that enacted Exemption 7(C), the Attorney General issued a memorandum to executive departments and agencies explaining that "personal privacy" in that exemption "pertains to the privacy interests of individuals." U. S. Dept. of Justice, Attorney General's Memorandum on the 1974 Amendments to the Freedom of Information Act 9, reprinted in House Committee on Government Operations and Senate Committee on the Judiciary, Freedom of Information Act and Amendments of 1974 (Pub. L. 93–502), 94th Cong., 1st Sess., 507, 519 (Joint Comm. Print 1975). The exemption, the Attorney General noted, "does not seem applicable to corporations or other entities." *Id.* We have previously viewed this Memorandum as a reliable guide in interpreting FOIA, see *W* *d* *R* v. *F* 541 U. S. 157, 169 (2004); *B* v. 456 U. S. 615, 622, n. 5 (1982), and we agree with its conclusion here.

* * *

We reject the argument that because "person" is de ned for purposes of FOIA to include a corporation, the phrase "personal privacy" in Exemption 7(C) reaches corporations as well. The protection in FOIA against disclosure of law

enforcement information on the ground that it would constitute an unwarranted invasion of personal privacy does not extend to corporations. We trust that AT&T will not take it personally.

The judgment of the Court of Appeals is reversed.

It is so ordered.

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

Syllabus

STAUB *v.* PROCTOR HOSPITAL

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

No. 09–400. Argued November 2, 2010—Decided March 1, 2011

While employed as an angiography technician by respondent Proctor Hospital, petitioner Staub was a member of the United States Army Reserve. Both his immediate supervisor (Mulally) and Mulally's supervisor (Korenchuk) were hostile to his military obligations. Mulally gave Staub a disciplinary warning which included a directive requiring Staub to report to her or Korenchuk when his cases were completed. After receiving a report from Korenchuk that Staub had violated the Corrective Action, Proctor's vice president of human resources (Buck) reviewed Staub's personnel file and decided to fire him. Staub filed a grievance, claiming that Mulally had fabricated the allegation underlying the warning out of hostility toward his military obligations, but Buck adhered to her decision. Staub sued Proctor under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), which forbids an employer to deny "employment, reemployment, retention in employment, promotion, or any benefit of employment" based on a person's "membership" in or "obligation to perform service in a uniformed service," 38 U. S. C. § 4311(a), and provides that liability is established "if the person's membership . . . is a motivating factor in the employer's action," § 4311(c). He contended not that Buck was motivated by hostility to his military obligations, but that Mulally and Korenchuk were, and that their actions influenced Buck's decision. A jury found Proctor liable and awarded Staub damages, but the Seventh Circuit reversed, holding that Proctor was entitled to judgment as a matter of law because the decisionmaker had relied on more than Mulally's and Korenchuk's advice in making her decision.

Held:

1. If a supervisor performs an act motivated by antimilitary animus that is intended by the supervisor to cause an adverse employment action, and if that act is a proximate cause of the ultimate employment action, then the employer is liable under USERRA. In construing the phrase "motivating factor in the employer's action," this Court starts from the premise that when Congress creates a federal tort it adopts the background of general tort law. See, *e. g.*, *Burlington N. & S. F. R. Co.* v. *United States*, 556 U. S. 599, 613–614. Intentional torts such as the one here "generally require that the actor intend 'the consequences of an act,' not simply 'the act itself.'" *Kawaauhau* v. *Geiger*, 523 U. S.

Syllabus

57, 61–62. However, Proctor errs in contending that an employer is not liable unless the *de facto* decisionmaker is motivated by discriminatory animus. So long as the earlier agent intended, for discriminatory rea sons, that the adverse action occur, he has the scienter required for USERRA liability. Moreover, it is axiomatic under tort law that the decisionmaker's exercise of judgment does not prevent the earlier agent's action from being the proximate cause of the harm. See *Hemi Group, LLC* v. *City of New York*, 559 U. S. 1, 9. Nor can the ultimate decisionmaker's judgment be deemed a superseding cause of the harm. See *Exxon Co., U. S. A.* v. *Sofec, Inc.*, 517 U. S. 830, 837. Proctor's ap proach would have an improbable consequence: If an employer isolates a personnel of cial from its supervisors, vests the decision to take adverse employment actions in that of cial, and asks that of cial to review the employee's personnel le before taking the adverse action, then the em ployer will be effectively shielded from discriminatory acts and recom mendations of supervisors that were designed and intended to produce the adverse action. Proctor also errs in arguing that a decisionmaker's independent investigation, and rejection, of an employee's discrimina tory animus allegations should negate the effect of the prior discrimina tion. Pp. 416–422.

2. Applying this analysis here, the Seventh Circuit erred in holding that Proctor was entitled to judgment as a matter of law. Both Mulally and Korenchuk acted within the scope of their employment when they took the actions that allegedly caused Buck to re Staub. There was also evidence that their actions were motivated by hostility toward Staub's military obligations, and that those actions were causal factors underlying Buck's decision. Finally, there was evidence that both Mu lally and Korenchuk had the speci c intent to cause Staub's termination. The Seventh Circuit is to consider in the rst instance whether the vari ance between the jury instruction given at trial and the rule adopted here was harmless error or should mandate a new trial. Pp. 422–423.

560 F. 3d 647, reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, and SOTOMAYOR, JJ., joined. ALITO, J., led an opinion concurring in the judgment, in which THOMAS, J., joined, *post*, p. 424. KAGAN, J., took no part in the consideration or decision of the case.

Eric Schnapper argued the cause for petitioner. With him on the briefs were *Julie L. Galassi* and *Patricia Ann Millett.*

Eric D. Miller argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were

Acting Solicitor General Katyal, *Assistant Attorney General Perez*, *Deputy Assistant Attorney General Bagenstos*, *Dennis J. Dimsey*, *Teresa Kwong*, and *P. David Lopez.*

Roy G. Davis argued the cause for respondent. With him on the brief were *Richard A. Russo* and *Abby J. Clark.**

JUSTICE SCALIA delivered the opinion of the Court.

We consider the circumstances under which an employer may be held liable for employment discrimination based on the discriminatory animus of an employee who in uenced, but did not make, the ultimate employment decision.

I

Petitioner Vincent Staub worked as an angiography tech nician for respondent Proctor Hospital until 2004, when he was red. Staub and Proctor hotly dispute the facts sur rounding the ring, but because a jury found for Staub in his claim of employment discrimination against Proctor, we describe the facts viewed in the light most favorable to him.

While employed by Proctor, Staub was a member of the United States Army Reserve, which required him to attend drill one weekend per month and to train full time for two to

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*Briefs of *amici curiae* urging reversal were led for the American Association for Justice by *Jeffrey Needle;* for the American Federation of Labor and Congress of Industrial Organizations by *Lynn K. Rhinehart*, *James B. Coppess*, and *Laurence Gold;* for the Lawyers' Committee for Civil Rights Under Law et al. by *Michael B. de Leeuw*, *Michael L. Foreman*, *Sarah Crawford*, *Daniel B. Kohrman*, *Melvin R. Radowitz*, and *Reginald T. Shuford;* and for the Reserve Of cers Association of America by *Samuel F. Wright.*

Briefs of *amici curiae* urging af rmance were led for the Chamber of Commerce of the United States of America by *Glen D. Nager*, *Samuel Estreicher*, *Robin S. Conrad*, and *Shane B. Kawka;* for the Equal Employ ment Advisory Council by *Rae T. Vann* and *Laura A. Giantris;* for the National Federation of Independent Business Small Business Legal Cen ter by *Manesh K. Rath*, *Karen R. Harned*, and *Elizabeth Milito;* and for the National School Boards Association by *Francisco M. Negrón, Jr.*, and *Lisa E. Soronen.*

three weeks a year. Both Janice Mulally, Staub's immediate supervisor, and Michael Korenchuk, Mulally's supervisor, were hostile to Staub's military obligations. Mulally scheduled Staub for additional shifts without notice so that he would "'pa[y] back the department for everyone else having to bend over backwards to cover [his] schedule for the Reserves.'" 560 F. 3d 647, 652 (CA7 2009). She also informed Staub's co-worker, Leslie Sweborg, that Staub's "'military duty had been a strain on the[ ] department,'" and asked Sweborg to help her "'get rid of him.'" *Ibid.* Korenchuk referred to Staub's military obligations as "'a b[u]nch of smoking and joking and [a] waste of taxpayers[']' money.'" *Ibid.* He was also aware that Mulally was "'out to get'" Staub. *Ibid.*

In January 2004, Mulally issued Staub a "Corrective Action" disciplinary warning for purportedly violating a company rule requiring him to stay in his work area whenever he was not working with a patient. The Corrective Action included a directive requiring Staub to report to Mulally or Korenchuk "'when [he] ha[d] no patients and [the angio] cases [we]re complete[d].'" *Id.*, at 653. According to Staub, Mulally's justification for the Corrective Action was false for two reasons: First, the company rule invoked by Mulally did not exist; and second, even if it did, Staub did not violate it.

On April 2, 2004, Angie Day, Staub's co-worker, complained to Linda Buck, Proctor's vice president of human resources, and Garrett McGowan, Proctor's chief operating officer, about Staub's frequent unavailability and abruptness. McGowan directed Korenchuk and Buck to create a plan that would solve Staub's "'availability' problems." *Id.*, at 654. But three weeks later, before they had time to do so, Korenchuk informed Buck that Staub had left his desk without informing a supervisor, in violation of the January Corrective Action. Staub now contends this accusation was false: He had left Korenchuk a voice-mail notification that he was

leaving his desk. Buck relied on Korenchuk's accusation, however, and after reviewing Staub's personnel file, she decided to fire him. The termination notice stated that Staub had ignored the directive issued in the January 2004 Corrective Action.

Staub challenged his firing through Proctor's grievance process, claiming that Mulally had fabricated the allegation underlying the Corrective Action out of hostility toward his military obligations. Buck did not follow up with Mulally about this claim. After discussing the matter with another personnel officer, Buck adhered to her decision.

Staub sued Proctor under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U. S. C. § 4301 *et seq.*, claiming that his discharge was motivated by hostility to his obligations as a military reservist. His contention was not that Buck had any such hostility but that Mulally and Korenchuk did, and that their actions influenced Buck's ultimate employment decision. A jury found that Staub's "military status was a motivating factor in [Proctor's] decision to discharge him," App. 68a, and awarded $57,640 in damages.

The Seventh Circuit reversed, holding that Proctor was entitled to judgment as a matter of law. 560 F. 3d 647. The court observed that Staub had brought a "'cat's paw' case," meaning that he sought to hold his employer liable for the animus of a supervisor who was not charged with making the ultimate employment decision. *Id.*, at 655–656.[1] It ex

[1] The term "cat's paw" derives from a fable conceived by Aesop, put into verse by La Fontaine in 1679, and injected into United States employment discrimination law by Judge Posner in 1990. See *Shager* v. *Upjohn Co.*, 913 F. 2d 398, 405 (CA7). In the fable, a monkey induces a cat by flattery to extract roasting chestnuts from the fire. After the cat has done so, burning its paws in the process, the monkey makes off with the chestnuts and leaves the cat with nothing. A coda to the fable (relevant only marginally, if at all, to employment law) observes that the cat is similar to princes who, flattered by the king, perform services on the king's behalf and receive no reward.

plained that under Seventh Circuit precedent, a "cat's paw" case could not succeed unless the nondecisionmaker exercised such "'singular influence'" over the decisionmaker that the decision to terminate was the product of "blind reliance." *Id.*, at 659. It then noted that "Buck looked beyond what Mulally and Korenchuk said," relying in part on her conversation with Day and her review of Staub's personnel file. *Ibid.* The court "admit[ted] that Buck's investigation could have been more robust," since it "failed to pursue Staub's theory that Mulally fabricated the write-up." *Ibid.* But the court said that the "'singular influence'" rule "does not require the decisionmaker to be a paragon of independence": "It is enough that the decisionmaker is not wholly dependent on a single source of information and conducts her own investigation into the facts relevant to the decision." *Ibid.* (internal quotation marks omitted). Because the undisputed evidence established that Buck was not wholly dependent on the advice of Korenchuk and Mulally, the court held that Proctor was entitled to judgment. *Ibid.*

We granted certiorari. 559 U. S. 1066 (2010).

II

The Uniformed Services Employment and Reemployment Rights Act (USERRA) provides in relevant part as follows:

> "A person who is a member of . . . or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, . . . or obligation." 38 U. S. C. § 4311(a).

It elaborates further:

> "An employer shall be considered to have engaged in actions prohibited . . . under subsection (a), if the person's membership . . . is a motivating factor in the employer's action, unless the employer can prove that the

> action would have been taken in the absence of such membership." § 4311(c).

The statute is very similar to Title VII, which prohibits employment discrimination "because of . . . race, color, religion, sex, or national origin" and states that such discrimination is established when one of those factors "was a motivating factor for any employment practice, even though other factors also motivated the practice." 42 U. S. C. § 2000e–2(a), (m).

The central difficulty in this case is construing the phrase "motivating factor in the employer's action." When the company official who makes the decision to take an adverse employment action is personally acting out of hostility to the employee's membership in or obligation to a uniformed service, a motivating factor obviously exists. The problem we confront arises when that official has no discriminatory animus but is influenced by previous company action that is the product of a like animus in someone else.

In approaching this question, we start from the premise that when Congress creates a federal tort it adopts the background of general tort law. See *Burlington N. & S. F. R. Co.* v. *United States*, 556 U. S. 599, 613–614 (2009); *Safeco Ins. Co. of America* v. *Burr*, 551 U. S. 47, 68–69 (2007); *Burlington Industries, Inc.* v. *Ellerth*, 524 U. S. 742, 764 (1998). Intentional torts such as this, "as distinguished from negligent or reckless torts[,] . . . generally require that the actor intend 'the *consequences*' of an act,' not simply 'the act itself.'" *Kawaauhau* v. *Geiger*, 523 U. S. 57, 61–62 (1998).

Staub contends that the fact that an unfavorable entry on the plaintiff's personnel record was caused to be put there, with discriminatory animus, by Mulally and Korenchuk, suffices to establish the tort, even if Mulally and Korenchuk did not intend to cause his dismissal. But discrimination was no part of Buck's reason for the dismissal; and while Korenchuk and Mulally acted with discriminatory animus, the act they committed—the mere making of the reports—was not

a denial of "initial employment, reemployment, retention in employment, promotion, or any bene t of employment," as liability under USERRA requires. If dismissal was not the object of Mulally's and Korenchuk's reports, it may have been their result, or even their foreseeable conse quence, but that is not enough to render Mulally or Koren chuk responsible.

Here, however, Staub is seeking to hold liable not Mulally and Korenchuk, but their employer. Perhaps, therefore, the discriminatory motive of one of the employer's agents (Mu lally or Korenchuk) can be aggregated with the act of an other agent (Buck) to impose liability on Proctor. Again we consult general principles of law, agency law, which form the background against which federal tort laws are enacted. See *Meyer* v. *Holley*, 537 U. S. 280, 285 (2003); *Burlington Industries*, *supra*, at 754–755. Here, however, the answer is not so clear. The Restatement of Agency suggests that the malicious mental state of one agent cannot generally be combined with the harmful action of another agent to hold the principal liable for a tort that requires both. See Re statement (Second) of Agency § 275, Illustration 4 (1957). Some of the cases involving federal torts apply that rule. See *United States* v. *Science Applications Int'l Corp.*, 626 F. 3d 1257, 1273–1276 (CADC 2010); *Chaney* v. *Dreyfus Service Corp.*, 595 F. 3d 219, 241 (CA5 2010); *United States* v. *Philip Morris USA Inc.*, 566 F. 3d 1095, 1122 (CADC 2009). But another case involving a federal tort, and one involving a federal crime, hold to the contrary. See *United States ex rel. Harrison* v. *Westinghouse Savannah River Co.*, 352 F. 3d 908, 918–919 (CA4 2003); *United States* v. *Bank of New England, N. A.*, 821 F. 2d 844, 856 (CA1 1987). Ultimately, we think it unnecessary in this case to decide what the back ground rule of agency law may be, since the former line of authority is suggested by the governing text, which requires that discrimination be "a motivating factor" *in the adverse action*. When a decision to re is made with no unlawful

animus on the part of the firing agent, but partly on the basis of a report prompted (unbeknownst to that agent) by discrimination, discrimination might perhaps be called a "factor" or a "causal factor" in the decision; but it seems to us a considerable stretch to call it "a motivating factor."

Proctor, on the other hand, contends that the employer is not liable unless the *de facto* decisionmaker (the technical decisionmaker or the agent for whom he is the "cat's paw") is motivated by discriminatory animus. This avoids the aggregation of animus and adverse action, but it seems to us not the only application of general tort law that can do so. Animus and responsibility for the adverse action can both be attributed to the earlier agent (here, Staub's supervisors) if the adverse action is the intended consequence of that agent's discriminatory conduct. So long as the agent intends, for discriminatory reasons, that the adverse action occur, he has the scienter required to be liable under USERRA. And it is axiomatic under tort law that the exercise of judgment by the decisionmaker does not prevent the earlier agent's action (and hence the earlier agent's discriminatory animus) from being the proximate cause of the harm. Proximate cause requires only "some direct relation between the injury asserted and the injurious conduct alleged," and excludes only those "link[s] that [are] too remote, purely contingent, or indirect." *Hemi Group, LLC* v. *City of New York*, 559 U. S. 1, 9 (2010) (internal quotation marks and brackets omitted).[2] We do not think that the ultimate decisionmaker's exercise of judgment automatically renders the link to the supervisor's bias "remote" or "purely contingent."

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[2] Under the traditional doctrine of proximate cause, a tortfeasor is sometimes, but not always, liable when he intends to cause an adverse action and a different adverse action results. See Restatement (Second) of Torts §§435, 435B and Comment *a* (1963 and 1964). That issue is not presented in this case since the record contains no evidence that Mulally or Korenchuk intended any particular adverse action other than Staub's termination.

The decisionmaker's exercise of judgment is *also* a proximate cause of the employment decision, but it is common for injuries to have multiple proximate causes. See *Sosa* v. *Alvarez-Machain,* 542 U. S. 692, 704 (2004). Nor can the ultimate decisionmaker's judgment be deemed a superseding cause of the harm. A cause can be thought "superseding" only if it is a "cause of independent origin that was not foreseeable." *Exxon Co., U. S. A.* v. *Sofec, Inc.*, 517 U. S. 830, 837 (1996) (internal quotation marks omitted).

Moreover, the approach urged upon us by Proctor gives an unlikely meaning to a provision designed to prevent employer discrimination. An employer's authority to reward, punish, or dismiss is often allocated among multiple agents. The one who makes the ultimate decision does so on the basis of performance assessments by other supervisors. Proctor's view would have the improbable consequence that if an employer isolates a personnel official from an employee's supervisors, vests the decision to take adverse employment actions in that official, and asks that official to review the employee's personnel file before taking the adverse action, then the employer will be effectively shielded from discriminatory acts and recommendations of supervisors that were *designed and intended* to produce the adverse action. That seems to us an implausible meaning of the text, and one that is not compelled by its words.

Proctor suggests that even if the decisionmaker's mere exercise of independent judgment does not suffice to negate the effect of the prior discrimination, at least the decisionmaker's independent investigation (and rejection) of the employee's allegations of discriminatory animus ought to do so. We decline to adopt such a hard-and-fast rule. As we have already acknowledged, the requirement that the biased supervisor's action be a causal factor of the ultimate employment action incorporates the traditional tort-law concept of proximate cause. See, *e. g.*, *Anza* v. *Ideal Steel Supply Corp.*, 547 U. S. 451, 457–458 (2006); *Sosa*, *supra*, at 703.

Thus, if the employer's investigation results in an adverse action for reasons unrelated to the supervisor's original bi ased action (by the terms of USERRA it is the employer's burden to establish that), then the employer will not be lia ble. But the supervisor's biased report may remain a causal factor if the independent investigation takes it into account without determining that the adverse action was, apart from the supervisor's recommendation, entirely justi ed. We are aware of no principle in tort or agency law under which an employer's mere conduct of an independent investigation has a claim-preclusive effect. Nor do we think the independent investigation somehow relieves the employer of "fault." The employer is at fault because one of its agents committed an action based on discriminatory animus that was intended to cause, and did in fact cause, an adverse employment decision.

JUSTICE ALITO claims that our failure to adopt a rule im munizing an employer who performs an independent investi gation re ects a "stray[ing] from the statutory text." *Post*, at 424 (opinion concurring in judgment). We do not under stand this accusation. Since a supervisor is an agent of the employer, when he causes an adverse employment action the employer causes it; and when discrimination is a motivating factor in his doing so, it is a "motivating factor in the employ er's action," precisely as the text requires. JUSTICE ALITO suggests that the employer should be held liable only when it "should be regarded as having delegated part of the decision-making power" to the biased supervisor. *Post*, at 425. But if the independent investigation relies on facts provided by the biased supervisor—as is necessary in any case of cat's-paw liability—then the employer (either directly or through the ultimate decisionmaker) will have effectively delegated the fact nding portion of the investigation to the biased supervi sor. Contrary to JUSTICE ALITO's suggestion, the biased su pervisor is not analogous to a witness at a bench trial. The mere witness is not an actor in the events that are the sub

ject of the trial. The biased supervisor and the ultimate decisionmaker, however, acted as agents of the entity that the plaintiff seeks to hold liable; each of them possessed su pervisory authority delegated by their employer and exer cised it in the interest of their employer. In sum, we do not see how " delity to the statutory text," *ibid.*, requires the adoption of an independent-investigation defense that ap pears nowhere in the text. And we nd both speculative and implausible JUSTICE ALITO's prediction that our Na tion's employers will systematically disfavor members of the armed services in their hiring decisions to avoid the possibility of cat's-paw liability, a policy that would violate USERRA in any event.

We therefore hold that if a supervisor performs an act mo tivated by antimilitary animus that is *intended* by the super visor to cause an adverse employment action,[3] and if that act is a proximate cause of the ultimate employment action, then the employer is liable under USERRA.[4]

III

Applying our analysis to the facts of this case, it is clear that the Seventh Circuit's judgment must be reversed. Both Mulally and Korenchuk were acting within the scope of their employment when they took the actions that allegedly

[3] Under traditional tort law, "'intent' . . . denote[s] that the actor desires to cause consequences of his act, or that he believes that the consequences are substantially certain to result from it." *Id.*, § 8A.

[4] Needless to say, the employer would be liable only when the supervisor acts within the scope of his employment, or when the supervisor acts out side the scope of his employment and liability would be imputed to the employer under traditional agency principles. See *Burlington Industries, Inc.* v. *Ellerth*, 524 U. S. 742, 758 (1998). We express no view as to whether the employer would be liable if a co-worker, rather than a super visor, committed a discriminatory act that in uenced the ultimate employ ment decision. We also observe that Staub took advantage of Proctor's grievance process, and we express no view as to whether Proctor would have an af rmative defense if he did not. Cf. *Pennsylvania State Police* v. *Suders*, 542 U. S. 129, 148–149 (2004).

caused Buck to fire Staub. A "reprimand . . . for workplace failings" constitutes conduct within the scope of an agent's employment. *Faragher* v. *Boca Raton*, 524 U. S. 775, 798–799 (1998). As the Seventh Circuit recognized, there was evidence that Mulally's and Korenchuk's actions were motivated by hostility toward Staub's military obligations. There was also evidence that Mulally's and Korenchuk's actions were causal factors underlying Buck's decision to fire Staub. Buck's termination notice expressly stated that Staub was terminated because he had "ignored" the directive in the Corrective Action. Finally, there was evidence that both Mulally and Korenchuk had the specific intent to cause Staub to be terminated. Mulally stated she was trying to "'get rid of'" Staub, and Korenchuk was aware that Mulally was "'out to get'" Staub. Moreover, Korenchuk informed Buck, Proctor's personnel officer responsible for terminating employees, of Staub's alleged noncompliance with Mulally's Corrective Action, and Buck fired Staub immediately thereafter; a reasonable jury could infer that Korenchuk intended that Staub be fired. The Seventh Circuit therefore erred in holding that Proctor was entitled to judgment as a matter of law.

It is less clear whether the jury's verdict should be reinstated or whether Proctor is entitled to a new trial. The jury instruction did not hew precisely to the rule we adopt today; it required only that the jury find that "military status was a motivating factor in [Proctor's] decision to discharge him." App. 68a. Whether the variance between the instruction and our rule was harmless error or should mandate a new trial is a matter the Seventh Circuit may consider in the first instance.

* * *

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

It is so ordered.

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

JUSTICE ALITO, with whom JUSTICE THOMAS joins, concurring in the judgment.

I agree with the Court that the decision of the Court of Appeals must be reversed, but I would do so based on the statutory text, rather than principles of agency and tort law that do not speak directly to the question presented here.

The relevant statutory provision states:

> "An employer shall be considered to have engaged in [prohibited discrimination against a member of one of the uniformed services] if the person's membership . . . is *a motivating factor in the employer's action*, unless the employer can prove that the action would have been taken in the absence of such membership . . . ." 38 U. S. C. § 4311(c)(1) (emphasis added).

For present purposes, the key phrase is "a motivating factor in the employer's action." A "motivating factor" is a factor that "provide[s] . . . a motive." See Webster's Third New International Dictionary 1475 (1971) (defining "motivate"). A "motive," in turn, is "something within a person . . . that incites him to action." *Ibid.* Thus, in order for discrimination to be "a motivating factor in [an] employer's action," discrimination must be present "within," *i. e.*, in the mind of, the person who makes the decision to take that action. And "the employer's action" here is the decision to remove petitioner. Thus, petitioner, in order to recover, was required to show that discrimination motivated *that* action.

The Court, however, strays from the statutory text by holding that it is enough for an employee to show that discrimination motivated *some other action* and that this latter action, in turn, caused the termination decision. That is simply not what the statute says.

The Court fears this interpretation of the statute would allow an employer to escape liability by assigning formal de cisionmaking authority to an of cer who may merely rubberstamp the recommendation of others who are motivated by antimilitary animus. See *ante,* at 420. But delity to the statutory text does not lead to this result. Where the of cer with formal decisionmaking authority merely rubberstamps the recommendation of others, the employer, I would hold, has actually delegated the decisionmaking responsi bility to those whose recommendation is rubberstamped. I would reach a similar conclusion where the of cer with the formal decisionmaking authority is put on notice that adverse information about an employee may be based on antimilitary animus but does not undertake an independent investigation of the matter. In that situation, too, the em ployer should be regarded as having delegated part of the decisionmaking power to those who are responsible for me morializing and transmitting the adverse information that is accepted without examination. The same cannot be said, however, where the of cer with formal decisionmaking re sponsibility, having been alerted to the possibility that ad verse information may be tainted, undertakes a reasonable investigation and nds insuf cient evidence to dispute the accuracy of that information.

Nor can the employer be said to have "effectively dele gated" decisionmaking authority any time a decisionmaker "relies on facts provided by [a] biased supervisor." *Ante,* at 421. A decisionmaker who credits information provided by another person—for example, a judge who credits the tes timony of a witness in a bench trial—does not thereby dele gate a portion of the decisionmaking authority to the person who provides the information.

This interpretation of § 4311(c)(1) heeds the statutory text and would provide fair treatment for both employers and employees who are members of the uniformed services. It

would also encourage employers to establish internal grievance procedures similar to those that have been adopted following our decisions in *Burlington Industries, Inc.* v. *Ellerth*, 524 U. S. 742 (1998), and *Faragher* v. *Boca Raton*, 524 U. S. 775 (1998). Such procedures would often provide relief for employees without the need for litigation, and they would provide protection for employers who proceed in good faith.

The Court's contrary approach, by contrast, is almost certain to lead to confusion and is likely to produce results that will not serve the interests of either employers or employees who are members of the uniformed services. The Court's holding will impose liability unfairly on employers who make every effort to comply with the law, and it may have the perverse effect of discouraging employers from hiring applicants who are members of the Reserves or the National Guard. In addition, by leaving open the possibility that an employer may be held liable if it innocently takes into account adverse information provided, not by a supervisor, but by a low-level employee, see *ante*, at 422, n. 4, the Court increases the confusion that its decision is likely to produce.

For these reasons, I cannot accept the Court's interpretation of § 4311(c)(1), but I nevertheless agree that the decision below must be reversed. There was sufficient evidence to support a finding that at least Korenchuk was actually delegated part of the decisionmaking authority in this case. Korenchuk was the head of the unit in which Staub worked, and it was Korenchuk who told Buck that Staub left his work area without informing his supervisors. There was evidence that Korenchuk's accusation formed the basis of Buck's decision to fire Staub, and that Buck simply accepted the accusation at face value. According to one version of events, Buck fired Staub immediately after Korenchuk informed her of Staub's alleged misconduct, and she cited only that misconduct in the termination notice provided to Staub. See 5 Record 128–129, 267–268, 380–386; App. 74a. All of this is

enough to show that Korenchuk was in effect delegated some of Buck's termination authority. There was also evidence from which it may be inferred that displeasure with Staub's Reserve responsibilities was a motivating factor in Koren chuk's actions.*

*See 5 Record 343–344 (testimony that Korenchuk made negative re marks about Staub's Reserve duties before ring him in 1998); *id.*, at 124–126, 352 (testimony that Korenchuk informed Staub of the revenue lost while he was on Active Duty in 2003, that Korenchuk was aware in Janu ary 2004 that Staub might be called to Active Duty again, and that "[b]udget was a big issue with [Korenchuk]").

Syllabus

HENDERSON, AUTHORIZED REPRESENTATIVE OF HENDERSON, DECEASED *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS

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

No. 09–1036. Argued December 6, 2010—Decided March 1, 2011

The Department of Veterans Affairs (VA) has a two-step process for adjudicating veterans' benefits claims for service-connected disabilities: A VA regional office makes an initial decision on the claim; and a veteran dissatisfied with the decision may then seek *de novo* review in the Board of Veterans' Appeals. Before 1988, a veteran whose claim was denied by the Board generally could not obtain further review, but the Veterans' Judicial Review Act (VJRA) created the Court of Appeals for Veterans Claims (Veterans Court), an Article I tribunal, to review Board decisions adverse to veterans. A veteran must file a notice of appeal with that court within 120 days of the date when the Board's final decision is properly mailed. 38 U. S. C. § 7266(a).

After the VA denied David Henderson's claim for supplemental disability benefits, he filed a notice of appeal in the Veterans Court, missing the 120-day filing deadline by 15 days. Henderson argued that his failure to timely file should be excused under equitable tolling principles. While his appeal was pending, this Court decided *Bowles* v. *Russell*, 551 U. S. 205, which held that the statutory limitation on the length of an extension of time to file a notice of appeal in an ordinary civil case is "jurisdictional," so that a party's failure to file within that period could not be excused. The Veterans Court concluded that *Bowles* compelled jurisdictional treatment of the 120-day deadline and dismissed Henderson's untimely appeal. The Federal Circuit affirmed.

Held: The deadline for filing a notice of appeal with the Veterans Court does not have jurisdictional consequences. Pp. 434–442.

(a) Branding a procedural rule as going to a court's subject-matter jurisdiction alters the normal operation of the adversarial system. Federal courts have an independent obligation to ensure that they do not exceed the scope of their subject-matter jurisdiction and thus must raise and decide jurisdictional questions that the parties either overlook or elect not to press. Jurisdictional rules may also cause a waste of judicial resources and may unfairly prejudice litigants, since objections may be raised at any time, even after trial. Because of these drastic consequences, this Court has urged that a rule should not be referred

to as jurisdictional unless it governs a court's adjudicatory capacity, *i. e.*, its subject-matter or personal jurisdiction. *E. g., Reed Elsevier, Inc.* v. *Muchnick*, 559 U. S. 154, 161. Among the rules that should not be described as jurisdictional are "claim-processing rules," which seek to promote the orderly progress of litigation by requiring parties to take certain procedural steps at specified times. Although filing deadlines are quintessential claim-processing rules, Congress is free to attach jurisdictional consequences to such rules. *Arbaugh* v. *Y & H Corp.*, 546 U. S. 500, applied a "readily administrable bright line" rule to determine whether Congress has done so: There must be a "clear" indication that Congress wanted the rule to be "jurisdictional." *Id.*, at 515–516. "[C]ontext, including this Court's interpretation of similar provisions in many years past, is relevant," *Reed Elsevier*, *supra*, at 168, to whether Congress has spoken clearly on this point. Pp. 434–436.

(b) Congress did not clearly prescribe that the 120-day deadline here be jurisdictional. Pp. 436–441.

(1) None of the precedents cited by the parties controls here. All of the cases they cite—*e. g., Bowles*, *supra; Stone* v. *INS*, 514 U. S. 386; and *Bowen* v. *City of New York*, 476 U. S. 467—involved review by Article III courts. This case, by contrast, involves review by an Article I tribunal as part of a unique administrative scheme. Instead of applying a categorical rule regarding review of administrative decisions, this Court attempts to ascertain Congress' intent regarding the particular type of review at issue. Pp. 436–438.

(2) Several factors indicate that the 120-day deadline was not meant to be jurisdictional. The terms of § 7266(a), which sets the deadline, provide no clear indication that the provision was meant to carry jurisdictional consequences. It neither speaks in "jurisdictional terms" nor refers "in any way to the jurisdiction of the [Veterans Court]," *Zipes* v. *Trans World Airlines, Inc.*, 455 U. S. 385, 394. Nor does § 7266's placement within the VJRA provide such an indication. Its placement in a subchapter entitled "Procedure," and not in the subchapter entitled "Organization and Jurisdiction," suggests that Congress regarded the 120-day limit as a claim-processing rule. Most telling, however, are the singular characteristics of the review scheme that Congress created for adjudicating veterans' benefits claims. Congress' longstanding solicitude for veterans, *United States* v. *Oregon*, 366 U. S. 643, 647, is plainly reflected in the VJRA and in subsequent laws that place a thumb on the scale in the veteran's favor in the course of administrative and judicial review of VA decisions. The contrast between ordinary civil litigation—which provided the context in *Bowles*—and the system Congress created for veterans is dramatic. In ordinary civil litigation suits must generally be commenced within a specified limitations period; the litiga

tion is adversarial; plaintiffs must gather the evidence supporting their claims and generally bear the burden of production and persuasion; both parties may appeal an adverse decision; and a nal judgment may be reopened only in narrow circumstances. By contrast, a veteran need not le an initial bene ts claim within any xed period; the VA proceed ings are informal and nonadversarial; and the VA assists veterans in developing their supporting evidence and must give them the bene t of any doubt in evaluating that evidence. A veteran who loses before the Board may obtain review in the Veterans Court, but a Board decision in the veteran's favor is nal. And a veteran may reopen a claim simply by presenting new and material evidence. Rigid jurisdictional treat ment of the 120-day period would clash sharply with this scheme. Par ticularly in light of "the canon that provisions for bene ts to members of the Armed Services are to be construed in the bene ciaries' favor," *King* v. *St. Vincent's Hospital*, 502 U. S. 215, 220–221, n. 9, this Court sees no clear indication that the 120-day limit was intended to carry the harsh consequences that accompany the jurisdiction tag. Contrary to the Government's argument, the lack of review opportunities for veter ans before 1988 is of little help in interpreting § 7266(a). Section 7266(a) was enacted as part of the VJRA, and that legislation was decidedly favorable to veterans. Pp. 438–441.

589 F. 3d 1201, reversed and remanded.

ALITO, J., delivered the opinion of the Court, in which all other Members joined, except KAGAN, J., who took no part in the consideration or decision of the case.

Lisa S. Blatt argued the cause for petitioner. With her on the briefs were *Anthony Franze* and *Thomas W. Stoever, Jr.*

Eric D. Miller argued the cause for respondent. With him on the brief were *Acting Solicitor General Katyal*, *Assistant Attorney General West*, *Deputy Solicitor General Stewart*, *Todd M. Hughes*, and *Will A. Gunn.**

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*Briefs of *amici curiae* urging reversal were led for the American Legion by *Paul M. Smith* and *Philip B. Onderdonk, Jr.;* for the Federal Circuit Bar Association by *Paul D. Clement* and *Daryl L. Joseffer;* for the National Organization of Veterans' Advocates, Inc., et al. by *Gregory G. Garre*, *Richard Paul Cohen*, and *Douglas J. Rosinski;* for the National Veterans Legal Services Program by *Eric A. Shumsky*, *Kathleen M. Mueller*, and *Barton F. Stichman;* for Paralyzed Veterans of America et al. by *Linda E. Blauhut*, *William S. Mailander*, *Michael P. Horan*,

JUSTICE ALITO delivered the opinion of the Court.

A veteran whose claim for federal bene ts is denied by the Board of Veterans' Appeals may appeal to the United States Court of Appeals for Veterans Claims (Veterans Court). To do so, the veteran must le a notice of appeal with the Veterans Court within 120 days after the date when the Board's nal decision is properly mailed. 38 U. S. C. § 7266(a). This case presents the question whether a veteran's failure to le a notice of appeal within the 120-day period should be regarded as having "jurisdictional" consequences. We hold that it should not.

I

A

The Department of Veterans Affairs (VA) administers the federal program that provides bene ts to veterans with service-connected disabilities. The VA has a two-step process for the adjudication of these claims. First, a VA regional of ce receives and processes veterans' claims and makes an initial decision on whether to grant or deny bene ts. Second, if a veteran is dissatis ed with the regional of ce's decision, the veteran may obtain *de novo* review by the Board of Veterans' Appeals. The Board is a body within the VA that makes the agency's nal decision in cases appealed to it. §§ 7101, 7104(a).

The VA's adjudicatory "process is designed to function throughout with a high degree of informality and solicitude for the claimant." *Walters* v. *National Assn. of Radiation Survivors*, 473 U. S. 305, 311 (1985). A veteran faces no time limit for ling a claim, and once a claim is led, the VA's process for adjudicating it at the regional of ce and the Board is *ex parte* and nonadversarial, 38 CFR §§ 3.103(a), 20.700(c) (2010). The VA has a statutory duty to assist vet-

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Barbara A. Jones, and *Michael Schuster;* for the United Spinal Association by *Lara C. Kelley;* and for Allan G. Halseth by *Martin V. Totaro* and *Jeffrey A. Lamken.*

erans in developing the evidence necessary to substantiate their claims. 38 U. S. C. §§ 5103(a) (2006 ed., Supp. III), 5103A (2006 ed.). And when evaluating claims, the VA must give veterans the "bene t of the doubt" whenever positive and negative evidence on a material issue is roughly equal. § 5107(b). If a regional of ce denies a claim, the veteran has a generous 1-year time limit to initiate an appeal to the Board. § 7105(b)(1); 38 CFR § 20.302(a). A veteran may also reopen a previously denied claim at any time by present ing "new and material evidence," 38 U. S. C. § 5108, and deci sions by a regional of ce or the Board are subject to chal lenge at any time based on "clear and unmistakable error," §§ 5109A, 7111.

Before 1988, a veteran whose claim was rejected by the VA was generally unable to obtain further review. 38 U. S. C. § 211(a) (1988 ed.).[1] But the Veterans' Judicial Re view Act (VJRA), 102 Stat. 4105 (codi ed, as amended, in various sections of 38 U. S. C. (2006 ed. and Supp. III)), cre ated the Veterans Court, an Article I tribunal, and author ized that court to review Board decisions adverse to veter ans.[2] §§ 7251, 7252(a) (2006 ed.). While proceedings before the Veterans Court are adversarial, see § 7263, veterans have a remarkable record of success before that tribunal. Statis tics compiled by the Veterans Court show that in the last decade, the court ordered some form of relief in around 79 percent of its "merits decisions."[3]

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[1] Section 211(a) did not foreclose judicial review of constitutional chal lenges to veterans' bene ts legislation, *Johnson* v. *Robison*, 415 U. S. 361, 366–374 (1974), or of challenges to VA bene ts regulations based on later-in-time statutes that the VA did not administer exclusively, *Traynor* v. *Turnage*, 485 U. S. 535, 541–545 (1988).

[2] When such an appeal is taken, the Veterans Court's scope of review, § 7261, is similar to that of an Article III court reviewing agency action under the Administrative Procedure Act, 5 U. S. C. § 706.

[3] See United States Court of Appeals for Veterans Claims, Annual Reports 2000–2009, http://uscourts.cavc.gov/documents/Annual_Report_FY_2009_October_1_2008_to_September_30_2009.pdf (as visited Feb. 25, 2011, and available in Clerk of Court's case le).

Review of Veterans Court decisions on certain issues of law is available in the United States Court of Appeals for the Federal Circuit. § 7292. Federal Circuit decisions may in turn be reviewed by this Court by writ of certiorari.

B

David Henderson served in the military during the Korean War. In 1992, the VA gave Henderson a 100-percent disabil ity rating for paranoid schizophrenia, and in 2001, he led a claim for supplemental bene ts based on his need for in-home care. After a VA regional of ce and the Board denied his claim, he led a notice of appeal with the Veterans Court, but he missed the 120-day ling deadline by 15 days. See § 7266(a).

The Veterans Court initially dismissed Henderson's appeal as untimely. It concluded that Henderson was not entitled to equitable tolling of the deadline because he had not shown that his illness had caused his tardy ling. Later, the court granted Henderson's motion for reconsideration, revoked the dismissal, and set the case for argument. While Hender son's appeal was pending, however, we decided *Bowles* v. *Russell*, 551 U. S. 205 (2007). In *Bowles*, we held that the statutory limitation on the length of an extension of the time to le a notice of appeal in an ordinary civil case, 28 U. S. C. § 2107(c) (2006 ed., Supp. III), is "jurisdictional," and we therefore held that a party's failure to le a notice of appeal within that period could not be excused based on equitable factors, or on the opposing party's forfeiture or waiver of any objection to the late ling. *Bowles*, *supra*, at 213–214.

After we announced our decision in *Bowles*, the Veterans Court directed the parties to brief that decision's effect on prior Federal Circuit precedent that allowed the equitable tolling of the 120-day deadline for ling a notice of appeal in the Veterans Court. A divided panel of the Veterans Court concluded that *Bowles* compelled jurisdictional treatment of the 120-day deadline and dismissed Henderson's untimely ap

peal for lack of jurisdiction. *Henderson* v. *Peake*, 22 Vet. App. 217 (2008).

Henderson then appealed to the Federal Circuit, and a di vided en banc court af rmed. 589 F. 3d 1201 (2009). We granted certiorari. 561 U. S. 1024 (2010).

II

In this case, as in others that have come before us in recent years, we must decide whether a procedural rule is "jurisdic tional." See *Reed Elsevier, Inc.* v. *Muchnick*, 559 U. S. 154 (2010); *Union Paci c R. Co.* v. *Locomotive Engineers*, 558 U. S. 67 (2009); *Bowles*, *supra; Arbaugh* v. *Y & H Corp.*, 546 U. S. 500 (2006); *Eberhart* v. *United States*, 546 U. S. 12 (2005) *(per curiam); Scarborough* v. *Principi*, 541 U. S. 401 (2004); *Kontrick* v. *Ryan*, 540 U. S. 443 (2004). This ques tion is not merely semantic but one of considerable practical importance for judges and litigants. Branding a rule as going to a court's subject-matter jurisdiction alters the nor mal operation of our adversarial system. Under that sys tem, courts are generally limited to addressing the claims and arguments advanced by the parties. See *Sanchez-Llamas* v. *Oregon*, 548 U. S. 331, 356–357 (2006). Courts do not usually raise claims or arguments on their own. But federal courts have an independent obligation to ensure that they do not exceed the scope of their jurisdiction, and there fore they must raise and decide jurisdictional questions that the parties either overlook or elect not to press. See *Ar baugh*, *supra*, at 514.

Jurisdictional rules may also result in the waste of judicial resources and may unfairly prejudice litigants. For pur poses of ef ciency and fairness, our legal system is replete with rules requiring that certain matters be raised at partic ular times. See *Sanchez-Llamas*, *supra*, at 356–357. Ob jections to subject-matter jurisdiction, however, may be raised at any time. Thus, a party, after losing at trial, may move to dismiss the case because the trial court lacked

subject-matter jurisdiction. *Arbaugh*, 546 U. S., at 508. Indeed, a party may raise such an objection even if the party had previously acknowledged the trial court's jurisdiction. *Ibid.* And if the trial court lacked jurisdiction, many months of work on the part of the attorneys and the court may be wasted.

Because the consequences that attach to the jurisdictional label may be so drastic, we have tried in recent cases to bring some discipline to the use of this term. We have urged that a rule should not be referred to as jurisdictional unless it governs a court's adjudicatory capacity, that is, its subject-matter or personal jurisdiction. *Reed Elsevier*, *supra*, at 161; *Kontrick*, *supra*, at 455. Other rules, even if important and mandatory, we have said, should not be given the jurisdictional brand. See *Union Paci c*, 558 U. S., at 81.

Among the types of rules that should not be described as jurisdictional are what we have called "claim-processing rules." These are rules that seek to promote the orderly progress of litigation by requiring that the parties take cer tain procedural steps at certain speci ed times. *Id.*, at 83–84; *Eberhart*, *supra*, at 19; *Scarborough*, *supra*, at 413–414; *Kontrick*, *supra*, at 455–456. Filing deadlines, such as the 120-day ling deadline at issue here, are quintessential claim-processing rules. Accordingly, if we were simply to apply the strict de nition of jurisdiction that we have recom mended in our recent cases, we would reverse the decision of the Federal Circuit, and this opinion could end at this point.

Unfortunately, the question before us is not quite that sim ple because Congress is free to attach the conditions that go with the jurisdictional label to a rule that we would prefer to call a claim-processing rule. See *Bowles*, *supra*, at 212–213. The question here, therefore, is whether Congress mandated that the 120-day deadline be "jurisdictional." In *Arbaugh*, we applied a "readily administrable bright line" rule for de ciding such questions. 546 U. S., at 515–516. Under *Ar*

baugh, we look to see if there is any "clear" indication that Congress wanted the rule to be "jurisdictional." *Ibid.* This approach is suited to capture Congress' likely intent and also provides helpful guidance for courts and litigants, who will be "duly instructed" regarding a rule's nature. See *id.*, at 514–515, and n. 11.

Congress, of course, need not use magic words in order to speak clearly on this point. "[C]ontext, including this Court's interpretation of similar provisions in many years past, is relevant." *Reed Elsevier*, *supra*, at 168. When "a long line of this Court's decisions left undisturbed by Con gress," *Union Paci c*, *supra*, at 82, has treated a similar requirement as "jurisdictional," we will presume that Con gress intended to follow that course. See *John R. Sand & Gravel Co.* v. *United States*, 552 U. S. 130, 133–134, 139 (2008).

III

With these principles in mind, we consider whether Con gress clearly prescribed that the deadline for ling a notice of appeal with the Veterans Court should be "jurisdictional."

A

Contending that the 120-day ling deadline was meant to be jurisdictional, the Government maintains that *Bowles* is controlling. The Government reads *Bowles* to mean that all statutory deadlines for taking appeals in civil cases are juris dictional. Since § 7266(a) establishes a statutory deadline for taking an appeal in a civil case, the Government reasons, that deadline is jurisdictional.

We reject the major premise of this syllogism. *Bowles* did not hold categorically that every deadline for seeking judicial review in civil litigation is jurisdictional. Instead, *Bowles* concerned an appeal from one court to another court. The "century's worth of precedent and practice in American courts" on which *Bowles* relied involved appeals of that type. See 551 U. S., at 209–210, and n. 2.

Contending that *Bowles'* reasoning extends to the judicial review of administrative decisions, the Government relies on *Stone* v. *INS*, 514 U. S. 386 (1995). There, without elaboration, we described as "'mandatory and jurisdictional'" the deadline for seeking review in the courts of appeals of final removal orders of the Board of Immigration Appeals. *Id.*, at 405 (quoting *Missouri* v. *Jenkins*, 495 U. S. 33, 45 (1990)). The Government also notes that lower court decisions have uniformly held that the Hobbs Act's 60-day time limit for filing a petition for review of certain final agency decisions, 28 U. S. C. § 2344, is jurisdictional. Brief for Respondent 18.

Petitioner correctly observes, however, that Veterans Court review of a VA decision denying benefits differs in many respects from court of appeals review of an agency decision under the Hobbs Act. Cf. *Shinseki* v. *Sanders*, 556 U. S. 396, 412 (2009) ("Congress has made clear that the VA is not an ordinary agency"). And there is force to petitioner's argument that a more appropriate analog is judicial review of an administrative decision denying Social Security disability benefits. The Social Security disability benefits program, like the veterans benefits program, is "unusually protective" of claimants, *Heckler* v. *Day*, 467 U. S. 104, 106–107 (1984). See also *Sims* v. *Apfel*, 530 U. S. 103, 110–112 (2000) (plurality opinion). Indeed, the Government acknowledges that "the Social Security and veterans-benefit review mechanisms share significant common attributes." Brief for Respondent 16. And long before Congress enacted the VJRA, we held that the deadline for obtaining review of Social Security benefits decisions in district court, 42 U. S. C. § 405(g), is not jurisdictional. *Bowen* v. *City of New York*, 476 U. S. 467, 478, and n. 10 (1986); *Mathews* v. *Eldridge*, 424 U. S. 319, 328, n. 9 (1976); *Weinberger* v. *Salfi*, 422 U. S. 749, 763–764 (1975).

In the end, however, none of the precedents cited by the parties controls our decision here. All of those cases involved review by Article III courts. This case, by contrast,

involves review by an Article I tribunal as part of a unique administrative scheme. Instead of applying a categorical rule regarding review of administrative decisions, we attempt to ascertain Congress' intent regarding the particular type of review at issue in this case.

B

Several factors convince us that the 120-day deadline for seeking Veterans Court review was not meant to have jurisdictional attributes.

The terms of the provision setting that deadline, 38 U. S. C. § 7266(a), do not suggest, much less provide clear evidence, that the provision was meant to carry jurisdictional consequences. Section 7266(a) provides:

> "In order to obtain review by the Court of Appeals for Veterans Claims of a final decision of the Board of Veterans' Appeals, a person adversely affected by such decision shall file a notice of appeal with the Court within 120 days after the date on which notice of the decision is mailed pursuant to section 7104(e) of this title."

This provision "does not speak in jurisdictional terms or refer in any way to the jurisdiction of the [Veterans Court]," *Zipes* v. *Trans World Airlines, Inc.*, 455 U. S. 385, 394 (1982). If Congress had wanted the 120-day time to be treated as jurisdictional, it could have cast that provision in language like that in the provision of the VJRA that governs Federal Circuit review of decisions of the Veterans Court. This latter provision states that Federal Circuit review must be obtained "within the time and in the manner prescribed for appeal to United States courts of appeals from United States district courts." § 7292(a). Because the time for taking an appeal from a district court to a court of appeals in a civil case has long been understood to be jurisdictional, see *Bowles, supra,* at 209–210, and n. 2, this language clearly

signals an intent to impose the same restrictions on appeals from the Veterans Court to the Federal Circuit. But the 120-day limit at issue in this case is not framed in comparable terms. It is true that § 7266 is cast in mandatory language, but we have rejected the notion that "all mandatory pre scriptions, however emphatic, are . . . properly typed juris dictional." *Union Paci c*, 558 U. S., at 81 (quoting *Arbaugh*, 546 U. S., at 510; internal quotation marks omitted). Thus, the language of § 7266 provides no clear indication that Con gress wanted that provision to be treated as having jurisdic tional attributes.

Nor does § 7266's placement within the VJRA provide such an indication. Congress placed § 7266, numbered § 4066 in the enacting legislation, in a subchapter entitled "Proce dure." See VJRA § 301, 102 Stat. 4113, 4115–4116. That placement suggests Congress regarded the 120-day limit as a claim-processing rule. Cf. *INS* v. *National Center for Im migrants' Rights, Inc.*, 502 U. S. 183, 189 (1991) ("[T]he title of a statute or section can aid in resolving an ambiguity in the legislation's text"). Congress elected not to place the 120-day limit in the VJRA subchapter entitled "Organization and Jurisdiction." See 102 Stat. 4113–4115.

Within that subchapter, a separate provision, captioned "Jurisdiction; nality of decisions," prescribes the jurisdic tion of the Veterans Court. *Id.*, at 4113–4114. Subsection (a) of that provision, numbered § 4052 in the enacting legisla tion, grants the Veterans Court "exclusive jurisdiction to re view decisions of the Board of Veterans' Appeals" and the "power to af rm, modify, or reverse a decision of the Board or to remand the matter, as appropriate." *Id.*, at 4113. It also prohibits the court from hearing appeals by the VA Sec retary. Subsection (b) limits the court's review to "the rec ord of proceedings before the [VA]," speci es the scope of that review, and precludes review of the VA's disability rat ings schedule. *Ibid.* Nothing in this provision or in the

"Organization and Jurisdiction" subchapter addresses the time for seeking Veterans Court review.

While the terms and placement of § 7266 provide some indication of Congress' intent, what is most telling here are the singular characteristics of the review scheme that Congress created for the adjudication of veterans' benefits claims. "The solicitude of Congress for veterans is of long standing." *United States* v. *Oregon*, 366 U. S. 643, 647 (1961); see also *Sanders*, 556 U. S., at 412. And that solicitude is plainly reflected in the VJRA, as well as in subsequent laws that "place a thumb on the scale in the veteran's favor in the course of administrative and judicial review of VA decisions," *id.*, at 416 (Souter, J., dissenting). See, *e. g.*, Veterans Claims Assistance Act of 2000, 114 Stat. 2096; Act of Nov. 21, 1997, 111 Stat. 2271; VJRA § 103, 102 Stat. 4106–4107.

The contrast between ordinary civil litigation—which provided the context of our decision in *Bowles*—and the system that Congress created for the adjudication of veterans' benefits claims could hardly be more dramatic. In ordinary civil litigation, plaintiffs must generally commence their suits within the time specified in a statute of limitations, see 28 U. S. C. § 1658, and the litigation is adversarial. Plaintiffs must gather the evidence that supports their claims and generally bear the burden of production and persuasion. Both parties may appeal an adverse trial-court decision, see § 1291, and a final judgment may be reopened only in narrow circumstances. See Fed. Rule Civ. Proc. 60.

By contrast, a veteran seeking benefits need not file an initial claim within any fixed period after the alleged onset of disability or separation from service. When a claim is filed, proceedings before the VA are informal and nonadversarial. The VA is charged with the responsibility of assisting veterans in developing evidence that supports their claims, and in evaluating that evidence, the VA must give the veteran the benefit of any doubt. If a veteran is unsuc

cessful before a regional of ce, the veteran may obtain *de novo* review before the Board, and if the veteran loses before the Board, the veteran can obtain further review in the Vet erans Court. A Board decision in the veteran's favor, on the other hand, is nal. And even if a veteran is denied bene ts after exhausting all avenues of administrative and judicial review, a veteran may reopen a claim simply by presenting "new and material evidence." Rigid jurisdictional treat ment of the 120-day period for ling a notice of appeal in the Veterans Court would clash sharply with this scheme.

We have long applied "the canon that provisions for bene ts to members of the Armed Services are to be construed in the bene ciaries' favor." *King* v. *St. Vincent's Hospital*, 502 U. S. 215, 220–221, n. 9 (1991); see also *Coffy* v. *Republic Steel Corp.*, 447 U. S. 191, 196 (1980); *Fishgold* v. *Sullivan Drydock & Repair Corp.*, 328 U. S. 275, 285 (1946). Particu larly in light of this canon, we do not nd any clear indication that the 120-day limit was intended to carry the harsh conse quences that accompany the jurisdiction tag.

The Government argues that there is no reason to think that jurisdictionally time-limited review is inconsistent with a pro-veteran administrative scheme because, prior to the enactment of the VJRA in 1988, VA decisions were not sub ject to any further review at all. Brief for Respondent 29. The provision at issue here, however, was enacted as part of the VJRA, and that legislation was decidedly favorable to veterans. Accordingly, the review opportunities available to veterans before the VJRA was enacted are of little help in interpreting 38 U. S. C. § 7266(a).

IV

We hold that the deadline for ling a notice of appeal with the Veterans Court does not have jurisdictional attributes. The 120-day limit is nevertheless an important procedural

rule. Whether this case falls within any exception to the rule is a question to be considered on remand.[4]

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

It is so ordered.

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

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[4] The parties have not asked us to address whether the 120-day deadline in 38 U. S. C. § 7266(a) is subject to equitable tolling, nor has the Government disputed that the deadline is subject to equitable tolling if it is not jurisdictional. See Brief for Petitioner 18. Accordingly, we express no view on this question.

Syllabus

SNYDER *v.* PHELPS ET AL.

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

No. 09–751. Argued October 6, 2010—Decided March 2, 2011

For the past 20 years, the congregation of the Westboro Baptist Church has picketed military funerals to communicate its belief that God hates the United States for its tolerance of homosexuality, particularly in America's military. The church's picketing has also condemned the Catholic Church for scandals involving its clergy. Fred Phelps, who founded the church, and six Westboro Baptist parishioners (all relatives of Phelps) traveled to Maryland to picket the funeral of Marine Lance Corporal Matthew Snyder, who was killed in Iraq in the line of duty. The picketing took place on public land approximately 1,000 feet from the church where the funeral was held, in accordance with guidance from local law enforcement of cers. The picketers peacefully displayed their signs—stating, *e. g.*, "Thank God for Dead Soldiers," "Fags Doom Nations," "America is Doomed," "Priests Rape Boys," and "You're Going to Hell"—for about 30 minutes before the funeral began. Mat thew Snyder's father (Snyder), petitioner here, saw the tops of the picketers' signs when driving to the funeral, but did not learn what was written on the signs until watching a news broadcast later that night.

Snyder led a diversity action against Phelps, his daughters—who participated in the picketing—and the church (collectively Westboro) al leging, as relevant here, state tort claims of intentional in iction of emo tional distress, intrusion upon seclusion, and civil conspiracy. A jury held Westboro liable for millions of dollars in compensatory and punitive damages. Westboro challenged the verdict as grossly excessive and sought judgment as a matter of law on the ground that the First Amend ment fully protected its speech. The District Court reduced the puni tive damages award, but left the verdict otherwise intact. The Fourth Circuit reversed, concluding that Westboro's statements were entitled to First Amendment protection because those statements were on mat ters of public concern, were not provably false, and were expressed solely through hyperbolic rhetoric.

Held: The First Amendment shields Westboro from tort liability for its picketing in this case. Pp. 451–461.

(a) The Free Speech Clause of the First Amendment can serve as a defense in state tort suits, including suits for intentional in iction of

emotional distress. *Hustler Magazine, Inc.* v. *Falwell*, 485 U. S. 46, 50–51. Whether the First Amendment prohibits holding Westboro liable for its speech in this case turns largely on whether that speech is of public or private concern, as determined by all the circumstances of the case. "[S]peech on public issues occupies the '"highest rung of the hierarchy of First Amendment values"' and is entitled to special protection." *Connick* v. *Myers*, 461 U. S. 138, 145. Although the boundaries of what constitutes speech on matters of public concern are not well defined, this Court has said that speech is of public concern when it can "be fairly considered as relating to any matter of political, social, or other concern to the community," *id.*, at 146, or when it "is a subject of general interest and of value and concern to the public," *San Diego* v. *Roe*, 543 U. S. 77, 83–84. A statement's arguably "inappropriate or controversial character . . . is irrelevant to the question whether it deals with a matter of public concern." *Rankin* v. *McPherson*, 483 U. S. 378, 387. Pp. 451–453.

To determine whether speech is of public or private concern, this Court must independently examine the "'content, form, and context'" of the speech "'as revealed by the whole record.'" *Dun & Bradstreet, Inc.* v. *Greenmoss Builders, Inc.*, 472 U. S. 749, 761. In considering content, form, and context, no factor is dispositive, and it is necessary to evaluate all aspects of the speech. Pp. 453–454.

The "content" of Westboro's signs plainly relates to public, rather than private, matters. The placards highlighted issues of public import—the political and moral conduct of the United States and its citizens, the fate of the Nation, homosexuality in the military, and scandals involving the Catholic clergy—and Westboro conveyed its views on those issues in a manner designed to reach as broad a public audience as possible. Even if a few of the signs were viewed as containing messages related to a particular individual, that would not change the fact that the dominant theme of Westboro's demonstration spoke to broader public issues. P. 454.

The "context" of the speech—its connection with Matthew Snyder's funeral—cannot by itself transform the nature of Westboro's speech. The signs reflected Westboro's condemnation of much in modern society, and it cannot be argued that Westboro's use of speech on public issues was in any way contrived to insulate a personal attack on Snyder from liability. Westboro had been actively engaged in speaking on the subjects addressed in its picketing long before it became aware of Matthew Snyder, and there can be no serious claim that the picketing did not represent Westboro's honestly held beliefs on public issues. Westboro may have chosen the picket location to increase publicity for its views, and its speech may have been particularly hurtful to Snyder. That does

not mean that its speech should be afforded less than full First Amendment protection under the circumstances of this case. Pp. 454–456.

That said, "'[e]ven protected speech is not equally permissible in all places and at all times.'" *Frisby* v. *Schultz*, 487 U. S. 474, 479. Westboro's choice of where and when to conduct its picketing is not beyond the Government's regulatory reach—it is "subject to reasonable time, place, or manner restrictions." *Clark* v. *Community for Creative Non-Violence*, 468 U. S. 288, 293. The facts here are quite different, however, both with respect to the activity being regulated and the means of restricting those activities, from the few limited situations where the Court has concluded that the location of targeted picketing can be properly regulated under provisions deemed content neutral. *Frisby*, *supra*, at 477; *Madsen* v. *Women's Health Center, Inc.*, 512 U. S. 753, 768, distinguished. Maryland now has a law restricting funeral picketing, but that law was not in effect at the time of these events, so this Court has no occasion to consider whether that law is a "reasonable time, place, or manner restrictio[n]" under the standards announced by this Court. *Clark, supra*, at 293. Pp. 456–457.

The "special protection" afforded to what Westboro said, in the whole context of how and where it chose to say it, cannot be overcome by a jury finding that the picketing was "outrageous" for purposes of applying the state law tort of intentional infliction of emotional distress. That would pose too great a danger that the jury would punish Westboro for its views on matters of public concern. For all these reasons, the jury verdict imposing tort liability on Westboro for intentional infliction of emotional distress must be set aside. Pp. 458–459.

(b) Snyder also may not recover for the tort of intrusion upon seclusion. He argues that he was a member of a captive audience at his son's funeral, but the captive audience doctrine—which has been applied sparingly, see *Rowan* v. *Post Office Dept.*, 397 U. S. 728, 736–738; *Frisby*, *supra*, at 484–485—should not be expanded to the circumstances here. Westboro stayed well away from the memorial service, Snyder could see no more than the tops of the picketers' signs, and there is no indication that the picketing interfered with the funeral service itself. Pp. 459–460.

(c) Because the First Amendment bars Snyder from recovery for intentional infliction of emotional distress or intrusion upon seclusion—the allegedly unlawful activity Westboro conspired to accomplish—Snyder also cannot recover for civil conspiracy based on those torts. P. 460.

(d) Westboro addressed matters of public import on public property, in a peaceful manner, in full compliance with the guidance of local officials. It did not disrupt Matthew Snyder's funeral, and its choice to picket at that time and place did not alter the nature of its speech.

Syllabus

Because this Nation has chosen to protect even hurtful speech on public issues to ensure that public debate is not sti ed, Westboro must be shielded from tort liability for its picketing in this case. Pp. 460–461.

580 F. 3d 206, af rmed.

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. BREYER, J., led a concurring opinion, *post*, p. 461. ALITO, J., led a dissenting opinion, *post*, p. 463.

Sean E. Summers argued the cause for petitioner. With him on the briefs were *Alex E. Snyder* and *Craig T. Trebilcock*.

Margie J. Phelps argued the cause and led a brief for respondents.*

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*Briefs of *amici curiae* urging reversal were led for the State of Kansas et al. by *Steve Six*, Attorney General of Kansas, *Stephen R. McAllister*, Solicitor General, and *Kristafer R. Ailslieger*, Deputy Solicitor General, and by the Attorneys General for their respective jurisdictions as follows: *Troy King* of Alabama, *Daniel S. Sullivan* of Alaska, *Terry Goddard* of Arizona, *Dustin McDaniel* of Arkansas, *Edmund G. Brown, Jr.*, of California, *John W. Suthers* of Colorado, *Richard Blumenthal* of Connecticut, *Joseph R. Biden III* of Delaware, *Peter J. Nickles* of the District of Columbia, *Bill McCollum* of Florida, *Thurbert E. Baker* of Georgia, *Mark J. Bennett* of Hawaii, *Lawrence G. Wasden* of Idaho, *Lisa Madigan* of Illinois, *Gregory F. Zoeller* of Indiana, *Tom Miller* of Iowa, *Jack Conway* of Kentucky, *James D. "Buddy" Caldwell* of Louisiana, *Douglas F. Gansler* of Maryland, *Martha Coakley* of Massachusetts, *Michael A. Cox* of Michigan, *Lori Swanson* of Minnesota, *Jim Hood* of Mississippi, *Chris Koster* of Missouri, *Steve Bullock* of Montana, *Jon Bruning* of Nebraska, *Catherine Cortez Masto* of Nevada, *Michael A. Delaney* of New Hampshire, *Paula T. Dow* of New Jersey, *Gary K. King* of New Mexico, *Andrew Cuomo* of New York, *Roy A. Cooper* of North Carolina, *Wayne Stenehjem* of North Dakota, *Richard Cordray* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *John R. Kroger* of Oregon, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Patrick C. Lynch* of Rhode Island, *Henry D. McMaster* of South Carolina, *Marty J. Jackley* of South Dakota, *Robert E. Cooper, Jr.*, of Tennessee, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *William H. Sorrell* of Vermont, *Robert M. McKenna* of Washington, *Darrell V. McGraw, Jr.*, of West Virginia, *J. B. Van Hollen* of Wisconsin, and *Bruce A. Salzburg* of Wyoming; for the American Legion by *Gene C. Schaerr, Steffen N. John-*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

A jury held members of the Westboro Baptist Church liable for millions of dollars in damages for picketing near a soldier's funeral service. The picket signs reflected the church's view that the United States is overly tolerant of sin and that God kills American soldiers as punishment. The question presented is whether the First Amendment shields the church members from tort liability for their speech in this case.

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son, *Linda T. Coberly*, and *Phil Onderdonk;* for the Center for Constitutional Jurisprudence by *David L. Llewellyn, Jr.;* for the Veterans of Foreign Wars of the United States by *Timothy J. Nieman* and *Lawrence M. Maher;* and for Senator Harry Reid et al. by *Walter Dellinger* and *Jonathan D. Hacker.* A brief of *amicus curiae* urging vacation was filed for the American Center for Law and Justice by *Jay Alan Sekulow*, *Stuart J. Roth*, *Colby M. May*, and *Walter M. Weber.*

Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *Joel Kleinman*, *David Schur*, *Steven R. Shapiro*, and *Deborah A. Jeon;* for the Foundation for Individual Rights in Education et al. by *Greg Lukianoff* and *Eugene Volokh*, *pro se;* for the Reporters Committee for Freedom of the Press et al. by *Robert Corn-Revere*, *John R. Eastburg*, *Thomas R. Burke*, *Bruce E. H. Johnson*, *Lucy A. Dalglish*, *Gregg P. Leslie*, *Kevin M. Goldberg*, *Jonathan Bloom*, *David Ardia*, *David M. Giles*, *Peter Scheer*, *Eve Burton*, *Jonathan R. Donnellan*, *Mickey H. Osterreicher*, *George Freeman*, *René P. Milam*, *Barbara L. Camens*, *Bruce W. Sanford*, *Bruce D. Brown*, *Laurie A. Babinski*, and *David S. Bralow;* for the Rutherford Institute by *John W. Whitehead* and *James J. Knicely;* and for the Thomas Jefferson Center for the Protection of Free Expression et al. by *J. Joshua Wheeler*, *Clay Calvert*, *Joan E. Bertin*, and *Robert D. Richards.*

Briefs of *amici curiae* were filed for the Anti-Defamation League by *Leonard M. Niehoff*, *Martin E. Karlinsky*, *Mark S. Finkelstein*, *Steven M. Freeman*, and *Steven C. Sheinberg;* for the John Marshall Law School Veterans Legal Support Center & Clinic et al. by *Michael Seng;* for Liberty Counsel by *Mathew D. Staver*, *Anita L. Staver*, *Stephen M. Crampton*, and *Mary E. McAlister;* and for Scholars of First Amendment Law by *Charles F. Smith.*

I

A

Fred Phelps founded the Westboro Baptist Church in Topeka, Kansas, in 1955. The church's congregation believes that God hates and punishes the United States for its tolerance of homosexuality, particularly in America's military. The church frequently communicates its views by picketing, often at military funerals. In the more than 20 years that the members of Westboro Baptist have publicized their message, they have picketed nearly 600 funerals. Brief for Rutherford Institute as *Amicus Curiae* 7, n. 14.

Marine Lance Corporal Matthew Snyder was killed in Iraq in the line of duty. Lance Corporal Snyder's father selected the Catholic church in the Snyders' hometown of Westminster, Maryland, as the site for his son's funeral. Local newspapers provided notice of the time and location of the service.

Phelps became aware of Matthew Snyder's funeral and decided to travel to Maryland with six other Westboro Baptist parishioners (two of his daughters and four of his grandchildren) to picket. On the day of the memorial service, the Westboro congregation members picketed on public land adjacent to public streets near the Maryland State House, the United States Naval Academy, and Matthew Snyder's funeral. The Westboro picketers carried signs that were largely the same at all three locations. They stated, for instance: "God Hates the USA/Thank God for 9/11," "America is Doomed," "Don't Pray for the USA," "Thank God for IEDs," "Thank God for Dead Soldiers," "Pope in Hell," "Priests Rape Boys," "God Hates Fags," "You're Going to Hell," and "God Hates You."

The church had notified the authorities in advance of its intent to picket at the time of the funeral, and the picketers complied with police instructions in staging their demonstration. The picketing took place within a 10- by 25-foot plot of public land adjacent to a public street, behind a temporary

fence. App. to Brief for Appellants in No. 08–1026 (CA4), pp. 2282–2285 (hereinafter App.). That plot was approxi mately 1,000 feet from the church where the funeral was held. Several buildings separated the picket site from the church. *Id.*, at 3758. The Westboro picketers displayed their signs for about 30 minutes before the funeral began and sang hymns and recited Bible verses. None of the picketers entered church property or went to the cemetery. They did not yell or use profanity, and there was no violence associ ated with the picketing. *Id.*, at 2168, 2371, 2286, 2293.

The funeral procession passed within 200 to 300 feet of the picket site. Although Snyder testi ed that he could see the tops of the picket signs as he drove to the funeral, he did not see what was written on the signs until later that night, while watching a news broadcast covering the event. *Id.*, at 2084–2086.[1]

B

Snyder led suit against Phelps, Phelps's daughters, and the Westboro Baptist Church (collectively Westboro or the

[1] A few weeks after the funeral, one of the picketers posted a message on Westboro's Web site discussing the picketing and containing religiously oriented denunciations of the Snyders, interspersed among lengthy Bible quotations. Snyder discovered the posting, referred to by the parties as the "epic," during an Internet search for his son's name. The epic is not properly before us and does not factor in our analysis. Although the epic was submitted to the jury and discussed in the courts below, Snyder never mentioned it in his petition for certiorari. See Pet. for Cert. *i* ("Snyder's claim arose out of Phelps' intentional acts *at Snyder's son's funeral*" (em phasis added)); this Court's Rule 14.1(g) (petition must contain statement "setting out the facts material to consideration of the question presented"). Nor did Snyder respond to the statement in the opposition to certiorari that "[t]hough the epic was asserted as a basis for the claims at trial, the petition . . . appears to be addressing only claims based on the picketing." Brief in Opposition 9. Snyder devoted only one paragraph in the argu ment section of his opening merits brief to the epic. Given the foregoing and the fact that an Internet posting may raise distinct issues in this context, we decline to consider the epic in deciding this case. See *Ontario* v. *Quon*, 560 U. S. 746, 759–760 (2010).

church) in the United States District Court for the District of Maryland under that court's diversity jurisdiction. Snyder alleged five state tort law claims: defamation, publicity given to private life, intentional infliction of emotional distress, intrusion upon seclusion, and civil conspiracy. Westboro moved for summary judgment contending, in part, that the church's speech was insulated from liability by the First Amendment. See 533 F. Supp. 2d 567, 570 (2008).

The District Court awarded Westboro summary judgment on Snyder's claims for defamation and publicity given to private life, concluding that Snyder could not prove the necessary elements of those torts. *Id.*, at 572–573. A trial was held on the remaining claims. At trial, Snyder described the severity of his emotional injuries. He testified that he is unable to separate the thought of his dead son from his thoughts of Westboro's picketing, and that he often becomes tearful, angry, and physically ill when he thinks about it. *Id.*, at 588–589. Expert witnesses testified that Snyder's emotional anguish had resulted in severe depression and had exacerbated pre-existing health conditions.

A jury found for Snyder on the intentional infliction of emotional distress, intrusion upon seclusion, and civil conspiracy claims, and held Westboro liable for $2.9 million in compensatory damages and $8 million in punitive damages. Westboro filed several post-trial motions, including a motion contending that the jury verdict was grossly excessive and a motion seeking judgment as a matter of law on all claims on First Amendment grounds. The District Court remitted the punitive damages award to $2.1 million, but left the jury verdict otherwise intact. *Id.*, at 597.

In the Court of Appeals, Westboro's primary argument was that the church was entitled to judgment as a matter of law because the First Amendment fully protected Westboro's speech. The Court of Appeals agreed. 580 F. 3d 206, 221 (CA4 2009). The court reviewed the picket signs and concluded that Westboro's statements were entitled to First

Amendment protection because those statements were on matters of public concern, were not provably false, and were expressed solely through hyperbolic rhetoric. *Id.*, at 222–224.[2]

We granted certiorari. 559 U. S. 990 (2010).

II

To succeed on a claim for intentional in iction of emotional distress in Maryland, a plaintiff must demonstrate that the defendant intentionally or recklessly engaged in extreme and outrageous conduct that caused the plaintiff to suffer severe emotional distress. See *Harris* v. *Jones*, 281 Md. 560, 565–566, 380 A. 2d 611, 614 (1977). The Free Speech Clause of the First Amendment—"Congress shall make no law . . . abridging the freedom of speech"—can serve as a defense in state tort suits, including suits for intentional in iction of emotional distress. See, *e. g.*, *Hustler Magazine, Inc.* v. *Falwell*, 485 U. S. 46, 50–51 (1988).[3]

Whether the First Amendment prohibits holding West boro liable for its speech in this case turns largely on whether that speech is of public or private concern, as determined by all the circumstances of the case. "[S]peech on 'matters of public concern' . . . is 'at the heart of the First Amendment's

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[2] One judge concurred in the judgment on the ground that Snyder had failed to introduce suf cient evidence at trial to support a jury verdict on any of his tort claims. 580 F. 3d, at 227 (opinion of Shedd, J.). The Court of Appeals majority determined that the picketers had "voluntarily waived" any such contention on appeal. *Id.*, at 216. Like the court below, we proceed on the unexamined premise that respondents' speech was tortious.

[3] The dissent attempts to draw parallels between this case and hy pothetical cases involving defamation or ghting words. *Post*, at 471–472 (opinion of ALITO, J.). But, as the court below noted, there is "no sugges tion that the speech at issue falls within one of the categorical exclusions from First Amendment protection, such as those for obscenity or ' ghting words.'" 580 F. 3d, at 218, n. 12; see *United States* v. *Stevens*, 559 U. S. 460, 468–469 (2010).

protection.'" *Dun & Bradstreet, Inc.* v. *Greenmoss Builders, Inc.*, 472 U. S. 749, 758–759 (1985) (opinion of Powell, J.) (quoting *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 776 (1978)). The First Amendment reflects "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 270 (1964). That is because "speech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison* v. *Louisiana*, 379 U. S. 64, 74–75 (1964). Accordingly, "speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Connick* v. *Myers*, 461 U. S. 138, 145 (1983) (internal quotation marks omitted).

"'[N]ot all speech is of equal First Amendment importance,'" however, and where matters of purely private significance are at issue, First Amendment protections are often less rigorous. *Hustler*, *supra*, at 56 (quoting *Dun & Bradstreet*, *supra*, at 758); see *Connick*, *supra*, at 145–147. That is because restricting speech on purely private matters does not implicate the same constitutional concerns as limiting speech on matters of public interest: "[T]here is no threat to the free and robust debate of public issues; there is no potential interference with a meaningful dialogue of ideas"; and the "threat of liability" does not pose the risk of "a reaction of self-censorship" on matters of public import. *Dun & Bradstreet*, *supra*, at 760 (internal quotation marks omitted).

We noted a short time ago, in considering whether public employee speech addressed a matter of public concern, that "the boundaries of the public concern test are not well defined." *San Diego* v. *Roe*, 543 U. S. 77, 83 (2004) (*per curiam*). Although that remains true today, we have articulated some guiding principles, principles that accord broad protection to speech to ensure that courts themselves do not become inadvertent censors.

Speech deals with matters of public concern when it can "be fairly considered as relating to any matter of political, social, or other concern to the community," *Connick*, *supra*, at 146, or when it "is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public," *San Diego*, *supra*, at 83–84. See *Cox Broadcasting Corp.* v. *Cohn*, 420 U. S. 469, 492–494 (1975); *Time, Inc.* v. *Hill*, 385 U. S. 374, 387–388 (1967). The arguably "in appropriate or controversial character of a statement is irrel evant to the question whether it deals with a matter of public concern." *Rankin* v. *McPherson*, 483 U. S. 378, 387 (1987).

Our opinion in *Dun & Bradstreet*, on the other hand, pro vides an example of speech of only private concern. In that case we held, as a general matter, that information about a particular individual's credit report "concerns no public issue." 472 U. S., at 762. The content of the report, we ex plained, "was speech solely in the individual interest of the speaker and its speci c business audience." *Ibid.* That was con rmed by the fact that the particular report was sent to only ve subscribers to the reporting service, who were bound not to disseminate it further. *Ibid.* To cite another example, we concluded in *San Diego* v. *Roe* that, in the con text of a government employer regulating the speech of its employees, videos of an employee engaging in sexually ex plicit acts did not address a public concern; the videos "did nothing to inform the public about any aspect of the [employ ing agency's] functioning or operation." 543 U. S., at 84.

Deciding whether speech is of public or private concern requires us to examine the "'content, form, and context'" of that speech, "'as revealed by the whole record.'" *Dun & Bradstreet*, *supra*, at 761 (quoting *Connick*, *supra*, at 147–148). As in other First Amendment cases, the court is obli gated "to 'make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the eld of free expres sion.'" *Bose Corp.* v. *Consumers Union of United States*,

Inc., 466 U. S. 485, 499 (1984) (quoting *New York Times*, *supra*, at 284–286). In considering content, form, and con text, no factor is dispositive, and it is necessary to evaluate all the circumstances of the speech, including what was said, where it was said, and how it was said.

The "content" of Westboro's signs plainly relates to broad issues of interest to society at large, rather than matters of "purely private concern." *Dun & Bradstreet*, *supra*, at 759. The placards read "God Hates the USA/Thank God for 9/11," "America is Doomed," "Don't Pray for the USA," "Thank God for IEDs," "Fag Troops," "Semper Fi Fags," "God Hates Fags," "Maryland Taliban," "Fags Doom Nations," "Not Blessed Just Cursed," "Thank God for Dead Soldiers," "Pope in Hell," "Priests Rape Boys," "You're Going to Hell," and "God Hates You." App. 3781–3787. While these messages may fall short of re ned social or political commentary, the issues they highlight—the political and moral conduct of the United States and its citizens, the fate of our Nation, homo sexuality in the military, and scandals involving the Catholic clergy—are matters of public import. The signs certainly convey Westboro's position on those issues, in a manner de signed, unlike the private speech in *Dun & Bradstreet*, to reach as broad a public audience as possible. And even if a few of the signs—such as "You're Going to Hell" and "God Hates You"—were viewed as containing messages related to Matthew Snyder or the Snyders speci cally, that would not change the fact that the overall thrust and dominant theme of Westboro's demonstration spoke to broader public issues.

Apart from the content of Westboro's signs, Snyder con tends that the "context" of the speech—its connection with his son's funeral—makes the speech a matter of private rather than public concern. The fact that Westboro spoke in connection with a funeral, however, cannot by itself trans form the nature of Westboro's speech. Westboro's signs, displayed on public land next to a public street, re ect the fact that the church nds much to condemn in modern

society. Its speech is "fairly characterized as constituting speech on a matter of public concern," *Connick*, 461 U. S., at 146, and the funeral setting does not alter that conclusion.

Snyder argues that the church members in fact mounted a personal attack on Snyder and his family, and then attempted to "immunize their conduct by claiming that they were actually protesting the United States' tolerance of homosexuality or the supposed evils of the Catholic Church." Reply Brief for Petitioner 10. We are not concerned in this case that Westboro's speech on public matters was in any way contrived to insulate speech on a private matter from liability. Westboro had been actively engaged in speaking on the subjects addressed in its picketing long before it became aware of Matthew Snyder, and there can be no serious claim that Westboro's picketing did not represent its "honestly believed" views on public issues. *Garrison*, 379 U. S., at 73. There was no pre-existing relationship or conflict between Westboro and Snyder that might suggest Westboro's speech on public matters was intended to mask an attack on Snyder over a private matter. Contrast *Connick*, 461 U. S., at 153 (finding public employee speech a matter of private concern when it was "no coincidence that [the speech] followed upon the heels of [a] transfer notice" affecting the employee).

Snyder goes on to argue that Westboro's speech should be afforded less than full First Amendment protection "not only because of the words" but also because the church members exploited the funeral "as a platform to bring their message to a broader audience." Brief for Petitioner 44, 40. There is no doubt that Westboro chose to stage its picketing at the Naval Academy, the Maryland State House, and Matthew Snyder's funeral to increase publicity for its views and because of the relation between those sites and its views—in the case of the military funeral, because Westboro believes that God is killing American soldiers as punishment for the Nation's sinful policies.

Westboro's choice to convey its views in conjunction with Matthew Snyder's funeral made the expression of those views particularly hurtful to many, especially to Matthew's father. The record makes clear that the applicable legal term—"emotional distress"—fails to capture fully the an guish Westboro's choice added to Mr. Snyder's already incal culable grief. But Westboro conducted its picketing peace fully on matters of public concern at a public place adjacent to a public street. Such space occupies a "special position in terms of First Amendment protection." *United States* v. *Grace*, 461 U. S. 171, 180 (1983). "[W]e have repeatedly referred to public streets as the archetype of a traditional public forum," noting that " '[t]ime out of mind' public streets and sidewalks have been used for public assembly and de bate." *Frisby* v. *Schultz*, 487 U. S. 474, 480 (1988).[4]

That said, "[e]ven protected speech is not equally permissi ble in all places and at all times." *Id.*, at 479 (quoting *Cornelius* v. *NAACP Legal Defense & Ed. Fund, Inc.*, 473 U. S. 788, 799 (1985)). Westboro's choice of where and when to conduct its picketing is not beyond the Government's regu latory reach—it is "subject to reasonable time, place, or manner restrictions" that are consistent with the standards announced in this Court's precedents. *Clark* v. *Community for Creative Non-Violence*, 468 U. S. 288, 293 (1984). Mary land now has a law imposing restrictions on funeral picket ing, Md. Crim. Law Code Ann. § 10–205 (Lexis Supp. 2010), as do 43 other States and the Federal Government. See Brief for American Legion as *Amicus Curiae* 18–19, n. 2

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[4] The dissent is wrong to suggest that the Court considers a public street "a free- re zone in which otherwise actionable verbal attacks are shielded from liability." *Post*, at 472. The fact that Westboro conducted its pick eting adjacent to a public street does not insulate the speech from liability, but instead heightens concerns that what is at issue is an effort to commu nicate to the public the church's views on matters of public concern. That is why our precedents so clearly recognize the special signi cance of this traditional public forum.

(listing statutes). To the extent these laws are content neutral, they raise very different questions from the tort verdict at issue in this case. Maryland's law, however, was not in effect at the time of the events at issue here, so we have no occasion to consider how it might apply to facts such as those before us, or whether it or other similar regulations are constitutional.[5]

We have identi ed a few limited situations where the loca tion of targeted picketing can be regulated under provisions that the Court has determined to be content neutral. In *Frisby*, for example, we upheld a ban on such picketing "be fore or about" a particular residence, 487 U. S., at 477. In *Madsen* v. *Women's Health Center, Inc.*, we approved an in junction requiring a buffer zone between protesters and an abortion clinic entrance. 512 U. S. 753, 768 (1994). The facts here are obviously quite different, both with respect to the activity being regulated and the means of restricting those activities.

Simply put, the church members had the right to be where they were. Westboro alerted local authorities to its funeral protest and fully complied with police guidance on where the picketing could be staged. The picketing was conducted under police supervision some 1,000 feet from the church, out of the sight of those at the church. The protest was not unruly; there was no shouting, profanity, or violence.

The record con rms that any distress occasioned by West boro's picketing turned on the content and viewpoint of the message conveyed, rather than any interference with the funeral itself. A group of parishioners standing at the very spot where Westboro stood, holding signs that said "God Bless America" and "God Loves You," would not have been subjected to liability. It was what Westboro said that ex posed it to tort damages.

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[5] The Maryland law prohibits picketing within 100 feet of a funeral serv ice or funeral procession; Westboro's picketing would have complied with that restriction.

Given that Westboro's speech was at a public place on a matter of public concern, that speech is entitled to "special protection" under the First Amendment. Such speech can not be restricted simply because it is upsetting or arouses contempt. "If there is a bedrock principle underlying the First Amendment, it is that the government may not pro hibit the expression of an idea simply because society nds the idea itself offensive or disagreeable." *Texas* v. *Johnson*, 491 U. S. 397, 414 (1989). Indeed, "the point of all speech protection . . . is to shield just those choices of content that in someone's eyes are misguided, or even hurtful." *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U. S. 557, 574 (1995).

The jury here was instructed that it could hold Westboro liable for intentional in iction of emotional distress based on a nding that Westboro's picketing was "outrageous." "Out rageousness," however, is a highly malleable standard with "an inherent subjectiveness about it which would allow a jury to impose liability on the basis of the jurors' tastes or views, or perhaps on the basis of their dislike of a particular expression." *Hustler*, 485 U. S., at 55 (internal quotation marks omitted). In a case such as this, a jury is "unlikely to be neutral with respect to the content of [the] speech," posing "a real danger of becoming an instrument for the sup pression of . . . 'vehement, caustic, and sometimes unpleas an[t]'" expression. *Bose Corp.*, 466 U. S., at 510 (quoting *New York Times*, 376 U. S., at 270). Such a risk is unaccept able; "in public debate [we] must tolerate insulting, and even outrageous, speech in order to provide adequate 'breathing space' to the freedoms protected by the First Amendment." *Boos* v. *Barry*, 485 U. S. 312, 322 (1988) (some internal quota tion marks omitted). What Westboro said, in the whole con text of how and where it chose to say it, is entitled to "special protection" under the First Amendment, and that protection cannot be overcome by a jury nding that the picketing was outrageous.

For all these reasons, the jury verdict imposing tort liability on Westboro for intentional infliction of emotional distress must be set aside.

III

The jury also found Westboro liable for the state law torts of intrusion upon seclusion and civil conspiracy. The Court of Appeals did not examine these torts independently of the intentional infliction of emotional distress tort. Instead, the Court of Appeals reversed the District Court wholesale, holding that the judgment wrongly "attache[d] tort liability to constitutionally protected speech." 580 F. 3d, at 226.

Snyder argues that even assuming Westboro's speech is entitled to First Amendment protection generally, the church is not immunized from liability for intrusion upon seclusion because Snyder was a member of a captive audience at his son's funeral. Brief for Petitioner 45–46. We do not agree. In most circumstances, "the Constitution does not permit the government to decide which types of otherwise protected speech are sufficiently offensive to require protection for the unwilling listener or viewer. Rather, . . . the burden normally falls upon the viewer to avoid further bombardment of [his] sensibilities simply by averting [his] eyes." *Erznoznik* v. *Jacksonville*, 422 U. S. 205, 210–211 (1975) (internal quotation marks omitted). As a result, "[t]he ability of government, consonant with the Constitution, to shut off discourse solely to protect others from hearing it is . . . dependent upon a showing that substantial privacy interests are being invaded in an essentially intolerable manner." *Cohen* v. *California*, 403 U. S. 15, 21 (1971).

As a general matter, we have applied the captive audience doctrine only sparingly to protect unwilling listeners from protected speech. For example, we have upheld a statute allowing a homeowner to restrict the delivery of offensive mail to his home, see *Rowan* v. *Post Office Dept.*, 397 U. S. 728, 736–738 (1970), and an ordinance prohibiting picketing

"before or about" any individual's residence, *Frisby*, 487 U. S., at 477, 484–485.

Here, Westboro stayed well away from the memorial service. Snyder could see no more than the tops of the signs when driving to the funeral. And there is no indication that the picketing in any way interfered with the funeral service itself. We decline to expand the captive audience doctrine to the circumstances presented here.

Because we find that the First Amendment bars Snyder from recovery for intentional infliction of emotional distress or intrusion upon seclusion—the alleged unlawful activity Westboro conspired to accomplish—we must likewise hold that Snyder cannot recover for civil conspiracy based on those torts.

IV

Our holding today is narrow. We are required in First Amendment cases to carefully review the record, and the reach of our opinion here is limited by the particular facts before us. As we have noted, "the sensitivity and significance of the interests presented in clashes between First Amendment and [state law] rights counsel relying on limited principles that sweep no more broadly than the appropriate context of the instant case." *Florida Star* v. *B. J. F.*, 491 U. S. 524, 533 (1989).

Westboro believes that America is morally flawed; many Americans might feel the same about Westboro. Westboro's funeral picketing is certainly hurtful and its contribution to public discourse may be negligible. But Westboro addressed matters of public import on public property, in a peaceful manner, in full compliance with the guidance of local officials. The speech was indeed planned to coincide with Matthew Snyder's funeral, but did not itself disrupt that funeral, and Westboro's choice to conduct its picketing at that time and place did not alter the nature of its speech.

Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and—as it did here—

in ict great pain. On the facts before us, we cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not sti e public debate. That choice requires that we shield Westboro from tort liabil ity for its picketing in this case.

The judgment of the United States Court of Appeals for the Fourth Circuit is af rmed.

It is so ordered.

JUSTICE BREYER, concurring.

I agree with the Court and join its opinion. That opinion restricts its analysis here to the matter raised in the petition for certiorari, namely, Westboro's picketing activity. The opinion does not examine in depth the effect of television broadcasting. Nor does it say anything about Internet post ings. The Court holds that the First Amendment protects the picketing that occurred here, primarily because the pick eting addressed matters of "public concern."

While I agree with the Court's conclusion that the picket ing addressed matters of public concern, I do not believe that our First Amendment analysis can stop at that point. A State can sometimes regulate picketing, even picketing on matters of public concern. See *Frisby* v. *Schultz*, 487 U. S. 474 (1988). Moreover, suppose that A were physically to as sault B, knowing that the assault (being newsworthy) would provide A with an opportunity to transmit to the public his views on a matter of public concern. The constitutionally protected nature of the end would not shield A's use of un lawful, unprotected means. And in some circumstances the use of certain words as means would be similarly unpro tected. See *Chaplinsky* v. *New Hampshire*, 315 U. S. 568 (1942) (" ghting words").

The dissent recognizes that the means used here consist of speech. But it points out that the speech, like an assault, seriously harmed a private individual. Indeed, the state

tort of "intentional in iction of emotional distress" forbids only conduct that produces distress "so severe that no rea sonable man could be expected to endure it," and which itself is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be re garded as atrocious, and utterly intolerable in a civilized community." *Post*, at 464 (opinion of ALITO, J.) (quoting *Harris* v. *Jones*, 281 Md. 560, 567, 571, 380 A. 2d 611, 614, 616 (1977); internal quotation marks omitted). The dissent requires us to ask whether our holding unreasonably limits liability for intentional in iction of emotional distress—to the point where A (in order to draw attention to his views on a public matter) might launch a verbal assault upon B, a private person, publicly revealing the most intimate details of B's private life, while knowing that the revelation will cause B severe emotional harm. Does our decision leave the State powerless to protect the individual against invasions of, *e. g.*, personal privacy, even in the most horrendous of such circumstances?

As I understand the Court's opinion, it does not hold or imply that the State is always powerless to provide private individuals with necessary protection. Rather, the Court has reviewed the underlying facts in detail, as will some times prove necessary where First Amendment values and state-protected (say, privacy-related) interests seriously con ict. Cf. *Florida Star* v. *B. J. F.*, 491 U. S. 524, 533 (1989); *Bose Corp.* v. *Consumers Union of United States, Inc.*, 466 U. S. 485, 499 (1984). That review makes clear that West boro's means of communicating its views consisted of picket ing in a place where picketing was lawful and in compliance with all police directions. The picketing could not be seen or heard from the funeral ceremony itself. And Snyder tes ti ed that he saw no more than the tops of the picketers' signs as he drove to the funeral. To uphold the application of state law in these circumstances would punish Westboro for seeking to communicate its views on matters of public

concern without proportionately advancing the State's interest in protecting its citizens against severe emotional harm. Consequently, the First Amendment protects Westboro. As I read the Court's opinion, it holds no more.

JUSTICE ALITO, dissenting.

Our profound national commitment to free and open debate is not a license for the vicious verbal assault that occurred in this case.

Petitioner Albert Snyder is not a public figure. He is simply a parent whose son, Marine Lance Corporal Matthew Snyder, was killed in Iraq. Mr. Snyder wanted what is surely the right of any parent who experiences such an incalculable loss: to bury his son in peace. But respondents, members of the Westboro Baptist Church, deprived him of that elementary right. They first issued a press release and thus turned Matthew's funeral into a tumultuous media event. They then appeared at the church, approached as closely as they could without trespassing, and launched a malevolent verbal attack on Matthew and his family at a time of acute emotional vulnerability. As a result, Albert Snyder suffered severe and lasting emotional injury.[1] The Court now holds that the First Amendment protected respondents' right to brutalize Mr. Snyder. I cannot agree.

I

Respondents and other members of their church have strong opinions on certain moral, religious, and political issues, and the First Amendment ensures that they have almost limitless opportunities to express their views. They may write and distribute books, articles, and other texts; they may create and disseminate video and audio recordings; they may circulate petitions; they may speak to individuals and groups in public forums and in any private venue that

[1] See 580 F. 3d 206, 213–214, 216 (CA4 2009).

wishes to accommodate them; they may picket peacefully in countless locations; they may appear on television and speak on the radio; they may post messages on the Internet and send out e-mails. And they may express their views in terms that are "uninhibited," "vehement," and "caustic." *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 270 (1964).

It does not follow, however, that they may intentionally in ict severe emotional injury on private persons at a time of intense emotional sensitivity by launching vicious verbal attacks that make no contribution to public debate. To pro tect against such injury, "most if not all jurisdictions" permit recovery in tort for the intentional in iction of emotional dis tress (or IIED). *Hustler Magazine, Inc.* v. *Falwell*, 485 U. S. 46, 53 (1988).

This is a very narrow tort with requirements that "are rigorous, and dif cult to satisfy." W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts § 12, p. 61 (5th ed. 1984). To recover, a plaintiff must show that the conduct at issue caused harm that was truly severe. See *Figueiredo-Torres* v. *Nickel*, 321 Md. 642, 653, 584 A. 2d 69, 75 (1991) ("[R]ecovery will be meted out sparingly, its balm reserved for those wounds that are truly severe and incapable of healing themselves" (internal quotation marks omitted)); *Harris* v. *Jones*, 281 Md. 560, 571, 380 A. 2d 611, 616 (1977) (the distress must be "'so severe that no reason able man could be expected to endure it'" (quoting Restate ment (Second) of Torts § 46, Comment *j* (1963–1964))).

A plaintiff must also establish that the defendant's conduct was "'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" *Harris*, *supra*, at 567, 380 A. 2d, at 614 (quot ing Restatement (Second) of Torts § 46, Comment *d*).

Although the elements of the IIED tort are dif cult to meet, respondents long ago abandoned any effort to show

that those tough standards were not satis ed here. On ap peal, they chose not to contest the suf ciency of the evidence. See 580 F. 3d 206, 216 (CA4 2009). They did not dispute that Mr. Snyder suffered "'wounds that are truly severe and incapable of healing themselves.'" *Figueiredo-Torres*, *supra*, at 653, 584 A. 2d, at 75. Nor did they dispute that their speech was "'so outrageous in character, and so ex treme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intol erable in a civilized community.'" *Harris*, *supra*, at 567, 380 A. 2d, at 614. Instead, they maintained that the First Amendment gave them a license to engage in such conduct. They are wrong.

II

It is well established that a claim for the intentional in ic tion of emotional distress can be satis ed by speech. In deed, what has been described as "[t]he leading case" rec ognizing this tort involved speech. Prosser and Keeton, *supra*, § 12, at 60 (citing *Wilkinson* v. *Downton*, [1897] 2 Q. B. 57); see also Restatement (Second) of Torts § 46, Illus tration 1. And although this Court has not decided the question, I think it is clear that the First Amendment does not entirely preclude liability for the intentional in iction of emotional distress by means of speech.

This Court has recognized that words may "by their very utterance in ict injury" and that the First Amendment does not shield utterances that form "no essential part of any ex position of ideas, and are of such slight social value as a step to truth that any bene t that may be derived from them is clearly outweighed by the social interest in order and moral ity." *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 572 (1942); see also *Cantwell* v. *Connecticut*, 310 U. S. 296, 310 (1940) ("[P]ersonal abuse is not in any proper sense commu nication of information or opinion safeguarded by the Consti tution"). When grave injury is intentionally in icted by

means of an attack like the one at issue here, the First Amendment should not interfere with recovery.

III

In this case, respondents brutally attacked Matthew Snyder, and this attack, which was almost certain to inflict injury, was central to respondents' well-practiced strategy for attracting public attention.

On the morning of Matthew Snyder's funeral, respondents could have chosen to stage their protest at countless locations. They could have picketed the United States Capitol, the White House, the Supreme Court, the Pentagon, or any of the more than 5,600 military recruiting stations in this country. They could have returned to the Maryland State House or the United States Naval Academy, where they had been the day before. They could have selected any public road where pedestrians are allowed. (There are more than 4,000,000 miles of public roads in the United States.[2]) They could have staged their protest in a public park. (There are more than 20,000 public parks in this country.[3]) They could have chosen any Catholic church where no funeral was taking place. (There are nearly 19,000 Catholic churches in the United States.[4]) But of course, a small group picketing at any of these locations would have probably gone unnoticed.

The Westboro Baptist Church, however, has devised a strategy that remedies this problem. As the Court notes, church members have protested at nearly 600 military funerals. *Ante*, at 448. They have also picketed the funerals of

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[2] See Dept. of Transp., Federal Highway Administration, Highway Statistics 2008, Table HM–12M, http://www.fhwa.dot.gov/policyinformation/statistics/2008/hm12m.cfm (all Internet materials as visited Feb. 25, 2011, and available in Clerk of Court's case file).

[3] See Trust for Public Land, 2010 City Park Facts, http://www.tpl.org/content_documents/CityParkFacts_2010.pdf.

[4] See United States Conference of Catholic Bishops, Catholic Information Project, http://www.usccb.org/comm/cip.shtml#toc4.

police of cers,[5] re ghters,[6] and the victims of natural disas ters,[7] accidents,[8] and shocking crimes.[9] And in advance of these protests, they issue press releases to ensure that their protests will attract public attention.[10]

This strategy works because it is expected that respond ents' verbal assaults will wound the family and friends of the deceased and because the media is irresistibly drawn to the sight of persons who are visibly in grief. The more outra geous the funeral protest, the more publicity the Westboro Baptist Church is able to obtain. Thus, when the church recently announced its intention to picket the funeral of a 9-year-old girl killed in the shooting spree in Tucson—pro claiming that she was "better off dead"[11]—their announce ment was national news,[12] and the church was able to obtain

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[5] See http://www.godhatesfags.com/ iers/20110124_St-Petersburg-FL Dead-Police.pdf.

[6] See http://www.godhatesfags.com/fliers/20110120_Dead-Volunteer Fire ghter-Connecting_the_Dots-Baltimore-MD.pdf.

[7] See http://www.godhatesfags.com/ iers/20110104_Newburg-and-Rolla MO-Tornado-Connecting-the-Dots.pdf.

[8] See http://www.godhatesfags.com/ iers/20101218_Wichita-KS-Two Dead-Wichita-Bikers.pdf.

[9] See http://www.godhatesfags.com/fliers/20110129_Tampa-FL-God Sent-Military-Mom-Shooter-to-Kill-Kids.pdf.

[10] See nn. 5–9, *supra*.

[11] See http://www.godhatesfags.com/fliers/20110109_AZ-Shooter Connecting-the-Dots-Day-2.pdf.

[12] See, *e. g.*, Stanglin, Anti-Gay Church Group Plans To Picket Tucson Fu nerals, USA Today, Jan. 10, 2011, http://content.usatoday.com/communities/ ondeadline/post/2011/01/anti-gay-church-group-plans-to-picket-tucston funerals/1; Mohanani, Group To Picket 9-Year-Old Tucson Victim's Fu neral, Palm Beach Post, Jan. 11, 2011, http://www.palmbeachpost.com/news/ nation/group-to-picket-9-year-old-tucson-victims-1177921.html; Mehta & Santa Cruz, Tucson Rallies To Protect Girl's Family From Protesters, L. A. Times, Jan. 11, 2011, http://articles.latimes.com/2011/jan/11/nation/ la-na-funeral-protest-20110112; Medrano, Funeral Protest: Arizona Rallies To Foil Westboro Baptist Church, Christian Science Monitor, Jan. 11, 2011, http://www.csmonitor.com/USA/2011/0111/Funeral-protest-Arizona rallies-to-foil-Westboro-Baptist-Church.

free air time on the radio in exchange for canceling its protest.[13] Similarly, in 2006, the church got air time on a talk radio show in exchange for canceling its threatened protest at the funeral of ve Amish girls killed by a crazed gunman.[14]

In this case, respondents implemented the Westboro Bap tist Church's publicity-seeking strategy. Their press re lease stated that they were going "to picket the funeral of Lance Cpl. Matthew A. Snyder" because "God Almighty killed Lance Cpl. Snyder. He died in shame, not honor—for a fag nation cursed by God . . . . Now in Hell—sine die." Supp. App. in No. 08–1026 (CA4), p. 158a. This announce ment guaranteed that Matthew's funeral would be trans formed into a raucous media event and began the wounding process. It is well known that anticipation may heighten the effect of a painful event.

On the day of the funeral, respondents, true to their word, displayed placards that conveyed the message promised in their press release. Signs stating "God Hates You" and "Thank God for Dead Soldiers" reiterated the message that God had caused Matthew's death in retribution for his sins. App. to Brief for Appellants in No. 08–1026 (CA4), pp. 3787, 3788. Others, stating "You're Going to Hell" and "Not Blessed Just Cursed," conveyed the message that Matthew was "in Hell—sine die." *Id.*, at 3783.

Even if those who attended the funeral were not alerted in advance about respondents' intentions, the meaning of these signs would not have been missed. Since respondents chose to stage their protest at Matthew Snyder's funeral and not

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[13] See Santa Cruz & Mehta, Westboro Church Agrees Not To Take Protest to Shooting Victims' Funerals, L. A. Times, Jan. 13, 2011, http://articles.latimes.com/2011/jan/13/nation/la-na-funeral-protest 20110113; http://www.godhatesfags.com/ iers/20110112_AZ-Shooter-Mike Gallagher-Radio-Exchange.pdf.

[14] See Steinberg, Air Time Instead of Funeral Protest, N. Y. Times, Oct. 6, 2006, p. A14.

at any of the other countless available venues, a reasonable person would have assumed that there was a connection between the messages on the placards and the deceased. Moreover, since a church funeral is an event that naturally brings to mind thoughts about the afterlife, some of respondents' signs—*e. g.*, "God Hates You," "Not Blessed Just Cursed," and "You're Going to Hell"—would have likely been interpreted as referring to God's judgment of the deceased.

Other signs would most naturally have been understood as suggesting—falsely—that Matthew was gay. Homosexuality was the theme of many of the signs. There were signs reading "God Hates Fags," "Semper Fi Fags," "Fags Doom Nations," and "Fag Troops." *Id.*, at 3781–3787. Another placard depicted two men engaging in anal intercourse. A reasonable bystander seeing those signs would have likely concluded that they were meant to suggest that the deceased was a homosexual.

After the funeral, the Westboro picketers reaffirmed the meaning of their protest. They posted an online account entitled "The Burden of Marine Lance Cpl. Matthew A. Snyder. The Visit of Westboro Baptist Church to Help the Inhabitants of Maryland Connect the Dots!" *Id.*, at 3788.[15] Belying any suggestion that they had simply made general comments about homosexuality, the Catholic Church, and the

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[15] The Court refuses to consider the epic because it was not discussed in Snyder's petition for certiorari. *Ante*, at 449, n. 1. The epic, however, is not a distinct claim but a piece of evidence that the jury considered in imposing liability for the claims now before this Court. The protest and the epic are parts of a single course of conduct that the jury found to constitute intentional infliction of emotional distress. See 580 F. 3d, at 225 ("[T]he Epic cannot be divorced from the general context of the funeral protest"). The Court's strange insistence that the epic "is not properly before us," *ante*, at 449, n. 1, means that the Court has not actually made "an independent examination of the whole record," *ante*, at 453 (internal quotation marks omitted). And the Court's refusal to consider the epic contrasts sharply with its willingness to take notice of Westboro's protest activities at other times and locations. See *ante*, at 455.

United States military, the "epic" addressed the Snyder family directly:

> "God blessed you, Mr. and Mrs. Snyder, with a resource and his name was Matthew. He was an arrow in your quiver! In thanks to God for the comfort the child could bring you, you had a DUTY to prepare that child to serve the LORD his GOD—PERIOD! You did JUST THE OPPOSITE—you raised him for the devil.
>
> . . . . .
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> "Albert and Julie RIPPED that body apart and taught Matthew to defy his Creator, to divorce, and to commit adultery. They taught him how to support the largest pedophile machine in the history of the entire world, the Roman Catholic monstrosity. Every dime they gave the Roman Catholic monster they condemned their own souls. They also, in supporting satanic Catholicism, taught Matthew to be an idolater.
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> . . . . .
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> "Then after all that they sent him to ght for the United States of Sodom, a lthy country that is in lock step with his evil, wicked, and sinful manner of life, putting him in the cross hairs of a God that is so mad He has smoke coming from his nostrils and re from his mouth! How dumb was that?" *Id.*, at 3791.

In light of this evidence, it is abundantly clear that respondents, going far beyond commentary on matters of public concern, specifically attacked Matthew Snyder because (1) he was a Catholic and (2) he was a member of the United States military. Both Matthew and petitioner were private figures,[16] and this attack was not speech on a matter of public concern. While commentary on the Catholic Church or the United States military constitutes speech on matters of public concern, speech regarding Matthew Snyder's purely private conduct does not.

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[16] See 533 F. Supp. 2d 567, 577 (Md. 2008).

JUSTICE BREYER provides an apt analogy to a case in which the First Amendment would permit recovery in tort for a verbal attack:

> "[S]uppose that A were physically to assault B, knowing that the assault (being newsworthy) would provide A with an opportunity to transmit to the public his views on a matter of public concern. The constitutionally protected nature of the end would not shield A's use of unlawful, unprotected means. And in some circumstances the use of certain words as means would be similarly unprotected." *Ante*, at 461 (concurring opinion).

This captures what respondents did in this case. Indeed, this is the strategy that they have routinely employed—and that they will now continue to employ—in inflicting severe and lasting emotional injury on an ever growing list of innocent victims.

IV

The Court concludes that respondents' speech was protected by the First Amendment for essentially three reasons, but none is sound.

First—and most important—the Court finds that "the overall thrust and dominant theme of [their] demonstration spoke to" broad public issues. *Ante*, at 454. As I have attempted to show, this portrayal is quite inaccurate; respondents' attack on Matthew was of central importance. But in any event, I fail to see why actionable speech should be immunized simply because it is interspersed with speech that is protected. The First Amendment allows recovery for defamatory statements that are interspersed with nondefamatory statements on matters of public concern, and there is no good reason why respondents' attack on Matthew Snyder and his family should be treated differently.

Second, the Court suggests that respondents' personal attack on Matthew Snyder is entitled to First Amendment protection because it was not motivated by a private grudge,

see *ante*, at 455, but I see no basis for the strange distinction that the Court appears to draw. Respondents' motivation—"to increase publicity for its views," *ibid.*—did not transform their statements attacking the character of a private gure into statements that made a contribution to debate on mat ters of public concern. Nor did their publicity-seeking moti vation soften the sting of their attack. And as far as culpa bility is concerned, one might well think that wounding statements uttered in the heat of a private feud are less, not more, blameworthy than similar statements made as part of a cold and calculated strategy to slash a stranger as a means of attracting public attention.

Third, the Court nds it signi cant that respondents' pro test occurred on a public street, but this fact alone should not be enough to preclude IIED liability. To be sure, state ments made on a public street may be less likely to satisfy the elements of the IIED tort than statements made on pri vate property, but there is no reason why a public street in close proximity to the scene of a funeral should be regarded as a free- re zone in which otherwise actionable verbal at tacks are shielded from liability. If the First Amendment permits the States to protect their residents from the harm in icted by such attacks—and the Court does not hold other-wise—then the location of the tort should not be dispositive. A physical assault may occur without trespassing; it is no defense that the perpetrator had "the right to be where [he was]." See *ante*, at 457. And the same should be true with respect to unprotected speech. Neither classic " ghting words" nor defamatory statements are immunized when they occur in a public place, and there is no good reason to treat a verbal assault based on the conduct or character of a pri vate gure like Matthew Snyder any differently.

One nal comment about the opinion of the Court is in order. The Court suggests that the wounds in icted by vi cious verbal assaults at funerals will be prevented or at least mitigated in the future by new laws that restrict picketing

within a speci ed distance of a funeral. See *ante*, at 456–457. It is apparent, however, that the enactment of these laws is no substitute for the protection provided by the es tablished IIED tort; according to the Court, the verbal at tacks that severely wounded petitioner in this case complied with the new Maryland law regulating funeral picketing. See *ante*, at 457, n. 5. And there is absolutely nothing to suggest that Congress and the state legislatures, in enacting these laws, intended them to displace the protection pro vided by the well-established IIED tort.

The real signi cance of these new laws is not that they obviate the need for IIED protection. Rather, their enact ment dramatically illustrates the fundamental point that fu nerals are unique events at which special protection against emotional assaults is in order. At funerals, the emotional well-being of bereaved relatives is particularly vulnerable. See *National Archives and Records Admin.* v. *Favish*, 541 U. S. 157, 168 (2004). Exploitation of a funeral for the pur pose of attracting public attention "intrud[es] upon their . . . grief," *ibid.*, and may permanently stain their memories of the nal moments before a loved one is laid to rest. Allow ing family members to have a few hours of peace without harassment does not undermine public debate. I would therefore hold that, in this setting, the First Amendment permits a private gure to recover for the intentional in ic tion of emotional distress caused by speech on a matter of private concern.

V

In reversing the District Court judgment in favor of pe titioner, the Court of Appeals relied on several grounds not discussed in the opinion of this Court or in the separate opinion supporting af rmance. I now turn brie y to those issues.

First, the Court of Appeals held that the District Court erred by allowing the jury to decide whether respondents' speech was "'directed speci cally at the Snyder family.'"

580 F. 3d, at 221. It is not clear whether the Court of Appeals thought that this was a question for the trial judge alone or a question on which the judge had to make a preliminary ruling before sending it to the jury. In either event, however, the submission of this question to the jury was not reversible error because, as explained above, it is clear that respondents' statements targeted the Snyders.

Second, the Court of Appeals held that the trial judge went astray in allowing the jury to decide whether respondents' speech was so "'offensive and shocking as to not be entitled to First Amendment protection.'" *Ibid.* This instruction also did respondents no harm. Because their speech did not relate to a matter of public concern, it was not protected from liability by the First Amendment, and the only question for the jury was whether the elements of the IIED tort were met.

Third, the Court of Appeals appears to have concluded that the First Amendment does not permit an IIED plaintiff to recover for speech that cannot reasonably be interpreted as stating actual facts about an individual. See *id.*, at 222. In reaching this conclusion, the Court of Appeals relied on two of our cases—*Milkovich* v. *Lorain Journal Co.*, 497 U. S. 1 (1990), and *Hustler*, 485 U. S. 46—but neither supports the broad proposition that the Court of Appeals adopted.

Milkovich was a defamation case, and falsity is an element of defamation. Nothing in *Milkovich* even hints that the First Amendment requires that this defamation element be engrafted onto the IIED tort.

Hustler did involve an IIED claim, but the plaintiff there was a public figure, and the Court did not suggest that its holding would also apply in a case involving a private figure. Nor did the Court suggest that its holding applied across the board to all types of IIED claims. Instead, the holding was limited to "publications such as the one here at issue," namely, a caricature in a magazine. 485 U. S., at 56. Unless a caricature of a public figure can reasonably be interpreted

as stating facts that may be proved to be wrong, the carica ture does not have the same potential to wound as a personal verbal assault on a vulnerable private gure.

Because I cannot agree either with the holding of this Court or the other grounds on which the Court of Appeals relied, I would reverse the decision below and remand for further proceedings.[17]

VI

Respondents' outrageous conduct caused petitioner great injury, and the Court now compounds that injury by depriv ing petitioner of a judgment that acknowledges the wrong he suffered.

In order to have a society in which public issues can be openly and vigorously debated, it is not necessary to allow the brutalization of innocent victims like petitioner. I therefore respectfully dissent.

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[17] The Court af rms the decision of the Fourth Circuit with respect to petitioner's claim of intrusion upon seclusion on a ground not addressed by the Fourth Circuit. I would not reach out to decide that issue but would instead leave it for the Fourth Circuit to decide on remand. I would likewise allow the Fourth Circuit on remand to decide whether the judgment on the claim of civil conspiracy can survive in light of the ultimate disposition of the IIED and intrusion upon seclusion claims.

Syllabus

PEPPER *v.* UNITED STATES

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

No. 09–6822. Argued December 6, 2010—Decided March 2, 2011

After pleading guilty to drug charges, petitioner Pepper was sentenced under the Federal Sentencing Guidelines to 24 months' imprisonment, a nearly 75-percent downward departure from the low end of the Guide lines range based in part on his substantial assistance, followed by ve years of supervised release. In *Pepper I*, the Eighth Circuit reversed and remanded for resentencing in light of, *inter alia*, *United States* v. *Booker*, 543 U. S. 220. Pepper, who had begun serving his supervised release, testi ed at his resentencing hearing that he was no longer a drug addict, having completed a 500-hour drug treatment program while in prison; that he was enrolled in community college and had achieved very good grades; and that he was working part time. Pep per's father testi ed that he and his son were no longer estranged, and Pepper's probation of cer testi ed that a 24-month sentence would be reasonable in light of Pepper's substantial assistance, postsentencing re habilitation, and demonstrated low recidivism risk. The District Court again sentenced Pepper to 24 months, granting a 40-percent downward departure based on Pepper's substantial assistance and a further down ward variance based on, *inter alia*, Pepper's rehabilitation since his ini tial sentencing. In *Pepper II*, the Eighth Circuit again reversed and remanded for resentencing, concluding that Pepper's postsentencing re habilitation could not be considered as a factor supporting a downward variance, and directing that the case be assigned to a different district judge. After this Court vacated and remanded the *Pepper II* judgment in light of *Gall* v. *United States*, 552 U. S. 38, the Eighth Circuit, in *Pepper III*, reversed and remanded once more. At the second resen tencing hearing, Pepper informed the new District Judge that he was still in school, was about to be promoted at his job, and had married and was supporting his new family. Noting the nearly identical remand language of *Pepper II* and *Pepper III*, the court observed that it was not bound to reduce Pepper's range by 40 percent for substantial assistance. Instead, it found him entitled to a 20-percent reduction and refused to grant a further downward variance for, *inter alia*, postsentencing reha bilitation. It imposed a 65-month prison term and 12 months of super vised release. In *Pepper IV*, the Eighth Circuit once again rejected Pepper's postsentencing rehabilitation argument. It also rejected his

claim that the law of the case from *Pepper II* and *Pepper III* required the District Court to reduce the applicable Guidelines range by at least 40 percent.

Held:

1. When a defendant's sentence has been set aside on appeal, a district court at resentencing may consider evidence of the defendant's postsentencing rehabilitation, and such evidence may, in appropriate cases, support a downward variance from the now-advisory Guidelines range. Pp. 487–505.

(a) Consistent with the principle that "the punishment should fit the offender and not merely the crime," *Williams* v. *New York*, 337 U. S. 241, 247, this Court has observed a consistent and uniform policy "under which a sentencing judge could exercise a wide discretion in the sources and types of evidence used to assist him in determining the kind and extent of punishment to be imposed within limits fixed by law," *id.*, at 246, particularly "the fullest information possible concerning the defendant's life and characteristics," *id.*, at 247. That principle is codified at 18 U. S. C. § 3661, which provides that "[n]o limitation shall be placed on the information" a sentencing court may consider "concerning the [defendant's] background, character, and conduct," and at § 3553(a), which specifies that sentencing courts must consider, among other things, a defendant's "history and characteristics," § 3553(a)(1). The Guidelines, which *Booker* made "effectively advisory," 543 U. S., at 245, "should be the starting point and the initial benchmark," but district courts may impose sentences within statutory limits based on appropriate consideration of all of the § 3553(a) factors, subject to appellate review for "reasonableness," *Gall*, 552 U. S., at 49–51. This sentencing framework applies both at initial sentencing and at any subsequent resentencing after a sentence has been set aside on appeal. Pp. 487–490.

(b) Postsentencing rehabilitation evidence may support a downward variance from the advisory Guidelines range. The plain language of § 3661 makes clear that there is "[n]o limitation . . . on . . . background, character, and conduct" information, and it makes no distinction between an initial sentencing and a subsequent resentencing. In addition, postsentencing rehabilitation evidence may be highly relevant to several § 3553(a) factors that district courts are required to consider at sentencing. The extensive evidence of Pepper's rehabilitation since his initial sentencing is clearly relevant to the selection of an appropriate sentence here. Most fundamentally, that evidence provides the most up-to-date picture of his "history and characteristics." § 3553(a)(1). At the time of his initial sentencing, he was an unemployed drug addict who was

estranged from his family and sold drugs. By his second resentencing, he had been drug free for nearly five years, was attending college, was a top employee slated for promotion, had reestablished a relationship with his father, and was married and supporting a family. His postsentencing conduct also sheds light on the likelihood that he will engage in future criminal conduct, a central factor that sentencing courts must consider. See §§ 3553(a)(2)(B)–(C). Pp. 490–493.

(c) The contrary arguments advanced by *amicus* appointed to defend the judgment are unpersuasive. Pp. 493–504.

(1) While § 3742(g)(2)—which prohibits a district court at resentencing from imposing a sentence outside the Guidelines range except upon a ground it relied upon at the prior sentencing—effectively precludes a court from considering postsentencing rehabilitation, that provision is invalid after *Booker*. Like the provisions invalidated in *Booker*—§§ 3553(b)(1) and 3742(e)—§ 3742(g)(2) requires district courts effectively to treat the Guidelines as mandatory in an entire set of cases. Thus, the proper remedy is to invalidate the provision. While applying § 3742(g)(2) at resentencing would not always result in a Sixth Amendment violation, this Court rejects a partial invalidation that would leave the Guidelines effectively mandatory in some cases and advisory in others. The fact that § 3742(g)(2) permits a resentencing court on remand to impose a non-Guidelines sentence where the prior sentence expressly relied on a departure upheld by the court of appeals also does not cure the constitutional infirmity. And the argument that any constitutional infirmity in § 3742(g)(2) can be remedied by invalidating § 3742(j)(1)(B) is rejected. Pp. 493–499.

(2) This Court finds unpersuasive *amicus*' arguments focusing on Congress' sentencing objectives under § 3553(a). Contrary to *amicus*' contention, § 3742(g)(2) does not reflect a congressional purpose to preclude consideration of postsentencing rehabilitation evidence. Thus, that provision has no bearing on this Court's analysis of whether § 3553(a) permits consideration of such evidence. Nor is the consideration of postsentencing rehabilitation inconsistent with the sentencing factor in § 3553(a)(5)—which directs sentencing courts to consider "any pertinent policy statement" of the Sentencing Commission—particularly as the pertinent policy statement in this case is based on unconvincing policy rationales not reflected in the relevant sentencing statutes. Consideration of postsentencing rehabilitation is also not inconsistent with § 3553(a)(6)—which requires courts to consider "the need to avoid unwarranted sentenc[ing] disparities among defendants with similar records who have been found guilty of similar conduct"—as any disparity arises only from the normal trial and sentencing process. The differ

ences in procedural opportunity that may result because some defendants are inevitably sentenced in error and must be resentenced are not the kinds of "unwarranted" sentencing disparities that Congress sought to eliminate under § 3553(a)(6). Pp. 499–504.

(d) On remand, the District Court should consider and give appropriate weight to the postsentencing rehabilitation evidence, as well as any additional evidence concerning Pepper's conduct since his last sentencing. Pp. 504–505.

2. Because the Eighth Circuit in *Pepper III* set aside Pepper's entire sentence and remanded for *de novo* resentencing, the District Court was not bound by the law of the case doctrine to apply the same 40-percent departure applied by the original sentencing judge. To avoid undermining a district court's original sentencing intent, an appellate court when reversing one part of a sentence "may vacate the entire sentence . . . so that, on remand, the trial court can reconfigure the sentencing plan . . . to satisfy [§ 3553(a)'s] sentencing factors." *Greenlaw* v. *United States*, 554 U. S. 237, 253. That is what the Eighth Circuit did here. Pp. 505–508.

570 F. 3d 958, vacated in part, affirmed in part, and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, and GINSBURG, JJ., joined, and in which BREYER and ALITO, JJ., joined as to Part III. BREYER, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. 508. ALITO, J., filed an opinion concurring in part, concurring in the judgment in part, and dissenting in part, *post*, p. 515. THOMAS, J., filed a dissenting opinion, *post*, p. 518. KAGAN, J., took no part in the consideration or decision of the case.

Alfredo Parrish, by appointment of the Court, *post*, p. 821, argued the cause for petitioner. With him on the briefs was *Leon F. Spies*.

Acting Deputy Solicitor General McLeese argued the cause for the United States in support of petitioner. With him on the brief were *Acting Solicitor General Katyal*, *Assistant Attorney General Breuer*, *Jeffrey B. Wall*, *William C. Brown*, and *Nina Goodman*.

Adam G. Ciongoli, by invitation of the Court, 561 U. S. 1042, argued the cause and filed a brief as *amicus curiae* in

support of the judgment below. With him on the brief were *William A. Burck* and *Lisa R. Eskow.**

JUSTICE SOTOMAYOR delivered the opinion of the Court.

This Court has long recognized that sentencing judges "exercise a wide discretion" in the types of evidence they may consider when imposing sentence and that "[h]ighly relevant—if not essential—to [the] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics." *Williams* v. *New York*, 337 U. S. 241, 246–247 (1949). Congress codified this principle at 18 U. S. C. § 3661, which provides that "[n]o limitation shall be placed on the information" a sentencing court may consider "concerning the [defendant's] background, character, and conduct," and at § 3553(a), which sets forth certain factors that sentencing courts must consider, including "the history and characteristics of the defendant," § 3553(a)(1). The United States Court of Appeals for the Eighth Circuit concluded in this case that the District Court, when resentencing petitioner after his initial sentence had been set aside on appeal, could not consider evidence of petitioner's rehabilitation since his initial sentencing. That conclusion conflicts with longstanding principles of federal sentencing law and Congress' express directives in §§ 3661 and 3553(a). Although a separate statutory provision, § 3742(g)(2), prohibits a district court at resentencing from imposing a sentence outside the Federal Sentencing Guidelines range except upon a ground it relied upon at the prior sentencing—thus effectively precluding the court from considering postsentencing rehabilitation for purposes of im

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*Briefs of *amici curiae* urging reversal were filed for Families Against Mandatory Minimums by *Mary Price* and *Margaret Colgate Love;* for the Federal Public and Community Defenders et al. by *Amy Baron-Evans*, *Jennifer Niles Coffin*, and *Frances H. Pratt;* and for the National Association of Criminal Defense Lawyers by *Matthew M. Shors* and *Jonathan D. Hacker*.

posing a non-Guidelines sentence—that provision did not survive our holding in *United States* v. *Booker*, 543 U. S. 220 (2005), and we expressly invalidate it today.

We hold that when a defendant's sentence has been set aside on appeal, a district court at resentencing may consider evidence of the defendant's postsentencing rehabilitation and that such evidence may, in appropriate cases, support a downward variance from the now-advisory Federal Sentencing Guidelines range. Separately, we affirm the Court of Appeals' ruling that the law of the case doctrine did not require the District Court in this case to apply the same percentage departure from the Guidelines range for substantial assistance that had been applied at petitioner's prior sentencing.

I

In October 2003, petitioner Jason Pepper was arrested and charged with conspiracy to distribute 500 grams or more of methamphetamine in violation of 21 U. S. C. § 846. After pleading guilty, Pepper appeared for sentencing before then-Chief Judge Mark W. Bennett of the U. S. District Court for the Northern District of Iowa. Pepper's sentencing range under the Guidelines was 97 to 121 months.[1] The Government moved for a downward departure pursuant to USSG § 5K1.1 based on Pepper's substantial assistance and recommended a 15-percent downward departure.[2] The District Court, however, sentenced Pepper to a 24-month prison

[1] Although the charge to which Pepper pleaded guilty carried a mandatory minimum of 120 months' imprisonment, the mandatory minimum did not apply because he was eligible for safety-valve relief pursuant to 18 U. S. C. § 3553(f) (2000 ed.) and § 5C1.2 of the United States Sentencing Commission, Guidelines Manual (Nov. 2003) (USSG).

[2] USSG § 5K1.1 provides that a court may depart from the Guidelines "[u]pon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense." Pepper provided information to Government investigators and a grand jury concerning two other individuals involved with illegal drugs and guns.

term, resulting in an approximately 75-percent downward departure from the low end of the Guidelines range, to be followed by five years of supervised release. The Government appealed Pepper's sentence, and in June 2005, the Court of Appeals for the Eighth Circuit reversed and remanded for resentencing in light of our intervening decision in *Booker* (and for another reason not relevant here). See *United States* v. *Pepper*, 412 F. 3d 995, 999 *(Pepper I)*. Pepper completed his 24-month sentence three days after *Pepper I* was issued and began serving his term of supervised release.

In May 2006, the District Court conducted a resentencing hearing and heard from three witnesses. In his testimony, Pepper first recounted that while he had previously been a drug addict, he successfully completed a 500-hour drug treatment program while in prison and he no longer used any drugs. App. 104–105. Pepper then explained that since his release from prison, he had enrolled at a local community college as a full-time student and had earned A's in all of his classes in the prior semester. *Id.*, at 106–107. Pepper also testified that he had obtained employment within a few weeks after being released from custody and was continuing to work part time while attending school. *Id.*, at 106–110. Pepper confirmed that he was in compliance with all the conditions of his supervised release and described his changed attitude since his arrest. See *id.*, at 111 ("[M]y life was basically headed to either where—I guess where I ended up, in prison, or death. Now I have some optimism about my life, about what I can do with my life. I'm glad that I got this chance to try again I guess you could say at a decent life. . . . My life was going nowhere before, and I think that it's going somewhere now").

Pepper's father testified that he had virtually no contact with Pepper during the 5-year period leading up to his arrest. *Id.*, at 117. Pepper's drug treatment program, according to his father, "truly sobered him up" and "made his

way of thinking change." *Id.*, at 121. He explained that Pepper was now "much more mature" and "serious in terms of planning for the future," *id.*, at 119, and that as a conse quence, he had reestablished a relationship with his son, *id.*, at 118–119.

Finally, Pepper's probation of cer testi ed that, in his view, a 24-month sentence would be reasonable in light of Pepper's substantial assistance, postsentencing rehabilita tion, and demonstrated low risk of recidivism. *Id.*, at 126–131. The probation of cer also prepared a sentencing mem orandum that further set forth the reasons supporting his recommendation for a 24-month sentence.

The District Court adopted as its ndings of fact the tes timony of the three witnesses and the probation of cer's sentencing memorandum. The court granted a 40-percent downward departure based on Pepper's substantial assist ance, reducing the bottom of the Guidelines range from 97 to 58 months. The court then granted a further 59-percent downward variance based on, *inter alia*, Pepper's rehabilita tion since his initial sentencing. *Id.*, at 143–148.[3] The court sentenced Pepper to 24 months of imprisonment, concluding that "it would [not] advance any purpose of federal sentenc ing policy or any other policy behind the federal sentencing guidelines to send this defendant back to prison." *Id.*, at 149–150.

The Government again appealed Pepper's sentence, and the Court of Appeals again reversed and remanded for re-sentencing. See *United States* v. *Pepper*, 486 F. 3d 408, 410, 413 (CA8 2007) *(Pepper II)*. The court concluded that, while it was "a close call, [it could not] say the district court abused its discretion" by granting the 40-percent downward de parture for substantial assistance. *Id.*, at 411. The court found the further 59-percent downward variance, however,

[3] The court also cited Pepper's lack of a violent history and, to a lesser extent, the need to avoid unwarranted sentencing disparity with Pepper's co-conspirators. App. 144–145.

to be an abuse of discretion. *Id.*, at 412–413. In doing so, the court held that Pepper's "post-sentencing rehabilitation was an impermissible factor to consider in granting a downward variance." *Id.*, at 413. The court stated that evidence of postsentencing rehabilitation "'is not relevant and will not be permitted at resentencing because the district court could not have considered that evidence at the time of the original sentencing,'" and permitting courts to consider postsentencing rehabilitation at resentencing "would create unwarranted sentencing disparities and inject blatant inequities into the sentencing process." *Ibid.*[4] The Court of Appeals directed that the case be assigned to a different district judge for resentencing. *Ibid.*

After the Court of Appeals' mandate issued, Pepper's case was reassigned on remand to Chief Judge Linda R. Reade. In July 2007, Chief Judge Reade issued an order on the scope of the remand from *Pepper II*, stating that "[t]he court will not consider itself bound to reduce [Pepper's] advisory Sentencing Guidelines range by 40% pursuant to USSG § 5K1.1." *United States* v. *Pepper*, No. 03–CR–4113–LRR, 2007 WL 2076041, *4 (ND Iowa). In the meantime, Pepper petitioned this Court for a writ of certiorari, and in January 2008, we granted the petition, vacated the judgment in *Pepper II*, and remanded the case to the Court of Appeals for further consideration in light of *Gall* v. *United States*, 552 U. S. 38 (2007). See *Pepper* v. *United States*, 552 U. S. 1089 (2008).

On remand, the Court of Appeals held that *Gall* did not alter its prior conclusion that "post-sentence rehabilitation is an impermissible factor to consider in granting a downward

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[4] The Court of Appeals also held that the District Court "further erred by considering Pepper's lack of violent history, which history had already been accounted for in the sentencing Guidelines calculation, and by considering sentencing disparity among Pepper's co-defendants without adequate foundation and explanation." *Pepper II*, 486 F. 3d, at 413.

variance." 518 F. 3d 949, 953 (CA8 2008) *(Pepper III)*. The court again reversed the sentence and remanded for resentencing.

In October 2008, Chief Judge Reade convened Pepper's second resentencing hearing. Pepper informed the court that he was still attending school and was now working as a supervisor for the night crew at a warehouse retailer, where he was recently selected by management as "associate of the year" and was likely to be promoted the following January. App. 320, 323. Pepper also stated that he had recently married and was now supporting his wife and her daughter. *Id.*, at 321. Pepper's father reiterated that Pepper was moving forward in both his career and his family life and that he remained in close touch with his son. See *id.*, at 300–304.

In December 2008, Chief Judge Reade issued a sentencing memorandum. Noting that the remand language of *Pepper III* was nearly identical to the language in *Pepper II*, the court again observed that it was "not bound to reduce [Pepper's] advisory Sentencing Guidelines range by 40%" for substantial assistance and concluded that Pepper was entitled only to a 20-percent downward departure because the assistance was "timely, helpful and important" but "in no way extraordinary." Sealed Sentencing Memorandum in No. 03–CR–4113–LRR (ND Iowa), Record, Doc. 198, pp. 7, 10. The court also rejected Pepper's request for a downward variance based on, *inter alia*, his postsentencing rehabilitation. *Id.*, at 16.

The District Court reconvened Pepper's resentencing hearing in January 2009. The court's decision to grant a 20-percent downward departure for substantial assistance resulted in an advisory Guidelines range of 77 to 97 months. The court also granted the Government's motion under Rule 35(b) of the Federal Rules of Criminal Procedure to account for investigative assistance Pepper provided after he was

initially sentenced. The court imposed a 65-month term of imprisonment, to be followed by 12 months of supervised release.[5]

The Court of Appeals af rmed Pepper's 65-month sen tence. 570 F. 3d 958 (CA8 2009) *(Pepper IV)*. As relevant here, the Court of Appeals rejected Pepper's argument that the District Court erred in refusing to consider his postsen tencing rehabilitation. The court acknowledged that "Pep per made signi cant progress during and following his initial period of imprisonment" and "commend[ed] Pepper on the positive changes he has made in his life," but concluded that Pepper's argument was foreclosed by Circuit precedent hold ing that "post-sentencing rehabilitation is not a permissible factor to consider in granting a downward variance." *Id.*, at 964–965 (citing *United States* v. *Jenners*, 473 F. 3d 894, 899 (CA8 2007); *United States* v. *McMannus*, 496 F. 3d 846, 852, n. 4 (CA8 2007)).

The Court of Appeals also rejected Pepper's claim that the scope of the remand and the law of the case from *Pepper II* and *Pepper III* required the District Court to reduce the applicable Guidelines range by at least 40 percent pursuant to USSG §5K1.1. The court noted that its remand orders in *Pepper II* and *Pepper III* were "general remand[s] for resentencing," which "did not place any limitations on the discretion of the newly assigned district court judge in re-sentencing." 570 F. 3d, at 963. The court further noted that, although issues decided by an appellate court become law of the case on remand to the sentencing court, its earlier decisions merely held that a 40-percent downward departure for substantial assistance was not an abuse of discretion, not that the District Court would be bound by the 40-percent departure previously granted. *Id.*, at 963–964.

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[5] After the District Court resentenced Pepper to 65 months' imprison ment, Pepper was returned to federal custody. On July 22, 2010, after we granted Pepper's petition for a writ of certiorari, the District Court granted his motion for release pending disposition of the case here.

We granted Pepper's petition for a writ of certiorari, 561 U. S. 1024 (2010), to decide two questions: (1) whether a district court, after a defendant's sentence has been set aside on appeal, may consider evidence of a defendant's postsentencing rehabilitation to support a downward variance when resentencing the defendant, a question that has divided the Courts of Appeals;[6] and (2) whether the resentencing court was required, under the law of the case doctrine, to apply the same percentage departure from the Guidelines range for substantial assistance that had been applied at Pepper's prior sentencing. Because the United States has confessed error in the Court of Appeals' ruling on the first question, we appointed an *amicus curiae* to defend the Court of Appeals' judgment.[7] We now vacate the Eighth Circuit's ruling on the first question and affirm its ruling on the second.

II

A

"It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue." *Koon* v. *United States*, 518 U. S. 81, 113 (1996). Underlying this tradition is the principle that "the punishment should

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[6] Compare, *e. g.*, *United States* v. *Lorenzo*, 471 F. 3d 1219, 1221 (CA11 2006) *(per curiam)* (precluding consideration of postsentencing rehabilitative conduct); *United States* v. *Sims*, 174 F. 3d 911, 913 (CA8 1999) (same), with *United States* v. *Lloyd*, 469 F. 3d 319, 325 (CA3 2006) (permitting consideration of postsentencing rehabilitation in exceptional cases); *United States* v. *Hughes*, 401 F. 3d 540, 560, n. 19 (CA4 2005) (instructing District Court to adjust Guidelines calculation on remand "if new circumstances have arisen or events occurred since [defendant] was sentenced that impact the range prescribed by the guidelines").

[7] We appointed Adam G. Ciongoli to brief and argue the case, as *amicus curiae*, in support of the Court of Appeals' judgment. 561 U. S. 1042 (2010). Mr. Ciongoli has ably discharged his assigned responsibilities.

t the offender and not merely the crime." *Williams*, 337 U. S., at 247; see also *Pennsylvania ex rel. Sullivan* v. *Ashe*, 302 U. S. 51, 55 (1937) ("For the determination of sen tences, justice generally requires consideration of more than the particular acts by which the crime was committed and that there be taken into account the circumstances of the offense together with the character and propensities of the offender").

Consistent with this principle, we have observed that "both before and since the American colonies became a na tion, courts in this country and in England practiced a policy under which a sentencing judge could exercise a wide discre tion in the sources and types of evidence used to assist him in determining the kind and extent of punishment to be im posed within limits xed by law." *Williams*, 337 U. S., at 246. In particular, we have emphasized that "[h]ighly rele vant—if not essential—to [the] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics." *Id.*, at 247. Permitting sentencing courts to consider the widest possible breadth of information about a defendant "ensures that the punishment will suit not merely the offense but the individual defendant." *Wasman* v. *United States*, 468 U. S. 559, 564 (1984).

In 1970, Congress codi ed the "longstanding principle that sentencing courts have broad discretion to consider various kinds of information" at 18 U. S. C. § 3577 (1970 ed.). *United States* v. *Watts*, 519 U. S. 148, 151 (1997) *(per curiam)*. Sec tion 3577 provided:

> "*No limitation* shall be placed on the information con cerning the background, character, and conduct of a per son convicted of an offense which a court of the United States may receive and consider for the purpose of im posing an appropriate sentence." (Emphasis added.)

In the Sentencing Reform Act of 1984 (SRA), 18 U. S. C. § 3551 *et seq.*, Congress effected fundamental changes to

federal sentencing by creating the Federal Sentencing Com mission and introducing the Guidelines scheme. In doing so, however, Congress recodi ed § 3577 without change at § 3661. The Sentencing Commission, moreover, expressly incorporated § 3661 in the Guidelines:

> "In determining the sentence to impose within the guide line range, or whether a departure from the guide lines is warranted, the court may consider, *without limi tation*, any information concerning the background, character and conduct of the defendant, unless other wise prohibited by law. *See* 18 U. S. C. § 3661." USSG § 1B1.4 (Nov. 2010) (emphasis added).

Both Congress and the Sentencing Commission thus ex pressly preserved the traditional discretion of sentencing courts to "conduct an inquiry broad in scope, largely unlim ited either as to the kind of information [they] may consider, or the source from which it may come." *United States* v. *Tucker*, 404 U. S. 443, 446 (1972).[8]

The SRA did constrain sentencing courts' discretion in im portant respects, most notably by making the Guidelines mandatory, see 18 U. S. C. § 3553(b)(1) (2000 ed., Supp. IV), and by specifying various factors that courts must consider in exercising their discretion, see § 3553(a). In our seminal decision in *Booker*, we held that where facts found by a judge by a preponderance of the evidence increased the applicable Guidelines range, treating the Guidelines as mandatory in those circumstances violated the Sixth Amendment right of criminal defendants to be tried by a jury and to have every element of an offense proved by the Government beyond a reasonable doubt. 543 U. S., at 243–244. Our remedial opinion in *Booker* invalidated two offending provisions in the

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[8] Of course, sentencing courts' discretion under § 3661 is subject to con stitutional constraints. See, *e. g., United States* v. *Leung*, 40 F. 3d 577, 586 (CA2 1994) ("A defendant's race or nationality may play no adverse role in the administration of justice, including at sentencing").

SRA, see *id.*, at 245 (invalidating 18 U. S. C. §§ 3553(b)(1), 3742(e)), and instructed the district courts to treat the Guide lines as "effectively advisory," 543 U. S., at 245.

Our post-*Booker* opinions make clear that, although a sen tencing court must "give respectful consideration to the Guidelines, *Booker* permits the court to tailor the sentence in light of other statutory concerns as well." *Kimbrough* v. *United States*, 552 U. S. 85, 101 (2007) (internal quotation marks and citation omitted). Accordingly, although the "Guidelines should be the starting point and the initial benchmark," district courts may impose sentences within statutory limits based on appropriate consideration of all of the factors listed in § 3553(a), subject to appellate review for "reasonableness." *Gall*, 552 U. S., at 49–51. This sentenc ing framework applies both at a defendant's initial sentenc ing and at any subsequent resentencing after a sentence has been set aside on appeal. See 18 U. S. C. § 3742(g) ("A district court to which a case is remanded . . . shall resen tence a defendant in accordance with section 3553"); see also *Dillon* v. *United States*, 560 U. S. 817, 828, 827 (2010) (distin guishing between "sentence-modi cation proceedings" under 18 U. S. C. § 3582(c)(2), which "do not implicate the interests identi ed in *Booker*," and "plenary resentencing proceed ings," which do).

B

In light of the federal sentencing framework described above, we think it clear that when a defendant's sentence has been set aside on appeal and his case remanded for resen tencing, a district court may consider evidence of a defend ant's rehabilitation since his prior sentencing and that such evidence may, in appropriate cases, support a downward variance from the advisory Guidelines range.

Preliminarily, Congress could not have been clearer in di recting that "[n]o limitation . . . be placed on the information concerning the background, character, and conduct" of a defendant that a district court may "receive and consider

for the purpose of imposing an appropriate sentence." 18 U. S. C. § 3661. The plain language of § 3661 makes no distinction between a defendant's initial sentencing and a subsequent resentencing after a prior sentence has been set aside on appeal. We have recognized that "the broad language of § 3661" does not provide "any basis for the courts to invent a blanket prohibition against considering certain types of evidence at sentencing." *Watts*, 519 U. S., at 152. A categorical bar on the consideration of postsentencing rehabilitation evidence would directly contravene Congress' expressed intent in § 3661.

In addition, evidence of postsentencing rehabilitation may be highly relevant to several of the § 3553(a) factors that Congress has expressly instructed district courts to consider at sentencing. For example, evidence of postsentencing rehabilitation may plainly be relevant to "the history and characteristics of the defendant." § 3553(a)(1). Such evidence may also be pertinent to "the need for the sentence imposed" to serve the general purposes of sentencing set forth in § 3553(a)(2)—in particular, to "afford adequate deterrence to criminal conduct," "protect the public from further crimes of the defendant," and "provide the defendant with needed educational or vocational training . . . or other correctional treatment in the most effective manner." §§ 3553(a)(2)(B)–(D); see *McMannus*, 496 F. 3d, at 853 (Melloy, J., concurring) ("In assessing . . . deterrence, protection of the public and rehabilitation, 18 U. S. C. § 3553(a)(2)(B)(C) & (D), there would seem to be no better evidence than a defendant's post-incarceration conduct"). Postsentencing rehabilitation may also critically inform a sentencing judge's overarching duty under § 3553(a) to "impose a sentence sufficient, but not greater than necessary," to comply with the sentencing purposes set forth in § 3553(a)(2).

As the original sentencing judge recognized, the extensive evidence of Pepper's rehabilitation since his initial sentencing is clearly relevant to the selection of an appropriate sen

tence in this case. Most fundamentally, evidence of Pepper's conduct since his release from custody in June 2005 provides the most up-to-date picture of Pepper's "history and characteristics." § 3553(a)(1); see *United States* v. *Bryson*, 229 F. 3d 425, 426 (CA2 2000) *(per curiam)* ("[A] court's duty is always to sentence the defendant as he stands before the court on the day of sentencing"). At the time of his initial sentencing in 2004, Pepper was a 25-year-old drug addict who was unemployed, estranged from his family, and had recently sold drugs as part of a methamphetamine conspiracy. By the time of his second resentencing in 2009, Pepper had been drug free for nearly five years, had attended college and achieved high grades, was a top employee at his job slated for a promotion, had reestablished a relationship with his father, and was married and supporting his wife's daughter. There is no question that this evidence of Pepper's conduct since his initial sentencing constitutes a critical part of the "history and characteristics" of a defendant that Congress intended sentencing courts to consider. § 3553(a).

Pepper's postsentencing conduct also sheds light on the likelihood that he will engage in future criminal conduct, a central factor that district courts must assess when imposing sentence. See §§ 3553(a)(2)(B)–(C); *Gall*, 552 U. S., at 59 ("Gall's self-motivated rehabilitation . . . lends strong support to the conclusion that imprisonment was not necessary to deter Gall from engaging in future criminal conduct or to protect the public from his future criminal acts" (citing §§ 3553(a)(2)(B)–(C))). As recognized by Pepper's probation officer, Pepper's steady employment, as well as his successful completion of a 500-hour drug treatment program and his drug-free condition, also suggest a diminished need for "educational or vocational training . . . or other correctional treatment." § 3553(a)(2)(D). Finally, Pepper's exemplary postsentencing conduct may be taken as the most accurate indicator of "his present purposes and tendencies and significantly to suggest the period of restraint and the kind of

discipline that ought to be imposed upon him." *Ashe*, 302 U. S., at 55. Accordingly, evidence of Pepper's postsentencing rehabilitation bears directly on the District Court's overarching duty to "impose a sentence sufficient, but not greater than necessary," to serve the purposes of sentencing. § 3553(a).

In sum, the Court of Appeals' ruling prohibiting the District Court from considering any evidence of Pepper's postsentencing rehabilitation at resentencing conflicts with longstanding principles of federal sentencing law and contravenes Congress' directives in §§ 3661 and 3553(a).

C

Amicus nevertheless advances two principal arguments in defense of the Court of Appeals' ruling: (1) 18 U. S. C. § 3742(g)(2), which restricts the discretion of a resentencing court on remand to impose a non-Guidelines sentence, effectively forecloses consideration of a defendant's postsentencing rehabilitation; and (2) permitting district courts to consider postsentencing rehabilitation would defeat Congress' objectives under § 3553(a). We are not persuaded.

1

Amicus' main argument relies on 18 U. S. C. § 3742(g)(2), a provision that the Court of Appeals did not cite below. That provision states that when a sentence is set aside on appeal, the district court to which the case is remanded:

> "shall not impose a sentence outside the applicable guidelines range except upon a ground that—
>
> "(A) was specifically and affirmatively included in the written statement of reasons required by section 3553(c) in connection with the previous sentencing of the defendant prior to the appeal; and
>
> "(B) was held by the court of appeals, in remanding the case, to be a permissible ground of departure."

In operation, § 3742(g)(2) restricts the discretion of a district court on remand by precluding the court from imposing a sentence outside the Guidelines range except upon a "ground of departure" that was expressly relied upon in the prior sentencing and upheld on appeal. *Amicus* thus correctly contends that, on its face, § 3742(g)(2) effectively forecloses a resentencing court from considering evidence of a defend ant's postsentencing rehabilitation for purposes of imposing a non-Guidelines sentence because, as a practical matter, such evidence did not exist at the time of the prior sentenc ing. As the Government concedes, however, § 3742(g)(2) is invalid after *Booker*.

As we have explained, *Booker* held that where judicial fact nding increases a defendant's applicable Sentencing Guidelines range, treating the Guidelines as mandatory in those circumstances would violate the defendant's Sixth Amendment right to be tried by a jury and to have every element of an offense proved by the Government beyond a reasonable doubt. See *supra*, at 489–490. We recognized in *Booker* that, although the SRA permitted departures from the applicable Guidelines range in limited circumstances,[9] "departures are not available in every case, and in fact are unavailable in most." 543 U. S., at 234. Because in those instances, "the judge is bound to impose a sentence within the Guidelines range," we concluded that the availability of departures in certain circumstances "does not avoid the con stitutional issue." *Ibid.*

To remedy the constitutional problem, we rendered the Guidelines effectively advisory by invalidating two provi sions of the SRA: 18 U. S. C. § 3553(b)(1) (2000 ed., Supp. IV), which generally required sentencing courts to impose a sen tence within the applicable Guidelines range, and § 3742(e)

[9] See 18 U. S. C. § 3553(b)(1) (2000 ed., Supp. IV) (permitting departures where the judge " nds that there exists an aggravating or mitigating cir cumstance of a kind, or to a degree, not adequately taken into consider ation by the Sentencing Commission").

(2000 ed. and Supp. IV), which prescribed the standard of appellate review, including *de novo* review of Guidelines departures. 543 U. S., at 259. We invalidated these provisions even though we recognized that mandatory application of the Guidelines would not always result in a Sixth Amendment violation.[10] Indeed, although the Government suggested in *Booker* that we render the Guidelines advisory only in cases in which the Constitution prohibits judicial fact-finding, we rejected that two-track proposal, reasoning that "Congress would not have authorized a mandatory system in some cases and a nonmandatory system in others, given the administrative complexities that such a system would create." *Id.*, at 266; see *Dillon*, 560 U. S., at 829–830 ("The incomplete remedy we rejected in *Booker* would have required courts to treat the Guidelines differently in similar proceedings, leading potentially to unfair results and considerable administrative challenges").

We did not expressly mention § 3742(g)(2) in *Booker*,[11] but the rationale we set forth in that opinion for invalidating §§ 3553(b)(1) and 3742(e) applies equally to § 3742(g)(2). As with those provisions, § 3742(g)(2) requires district courts effectively to treat the Guidelines as mandatory in an entire set of cases. Specifically, § 3742(g)(2) precludes a district court on remand from imposing a sentence "outside the applicable guidelines range" except upon a "ground of departure" that was expressly relied upon by the court at the prior sentencing and upheld by the court of appeals. In circumstances in which the district court did not rely upon such a departure ground at the prior sentencing, § 3742(g)(2) would

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[10] For example, in the pre-*Booker* regime, if the applicable Guidelines range depended solely on facts found by a jury beyond a reasonable doubt, requiring a judge to sentence within that range would not run afoul of the Sixth Amendment.

[11] See *Dillon*, 560 U. S., at 839, n. 5 (Stevens, J., dissenting) (citing § 3742(g)(2) as "one additional provision of the [SRA that] should have been excised, but was not, in order to accomplish the Court's remedy").

require the court on remand to impose a sentence within the applicable Guidelines range, thus rendering the Guidelines effectively mandatory. Because in a large set of cases, judicial fact finding will increase the applicable Guidelines range beyond that supported solely by the facts established by the jury verdict (or guilty plea), requiring a sentencing judge on remand to apply the Guidelines range, as § 3742(g)(2) does, will often result in a Sixth Amendment violation for the reasons we explained in *Booker*. Accordingly, as with the provisions in *Booker*, the proper remedy here is to invalidate § 3742(g)(2).

The sentencing proceeding at issue in *Booker* itself illustrates why § 3742(g)(2) cannot withstand Sixth Amendment scrutiny. The District Court in *Booker* increased the defendant's then-mandatory Guidelines range based on a drug-quantity finding that it, rather than the jury, made. 543 U. S., at 227. After we held that the Guidelines must be treated as advisory, we remanded the case for resentencing. *Id.*, at 267. Had § 3742(g)(2) remained valid after *Booker*, the District Court on remand would have been required to sentence within the Guidelines range because it did not depart from the Guidelines at the original sentencing. Accordingly, the resentencing judge in *Booker* would have been required under § 3742(g)(2) to impose a Guidelines sentence based on judge-found facts concerning drug quantity, the precise result that *Booker* forbids.

The same result would occur in any sentencing in which a district court erroneously refuses to impose a sentence outside the Guidelines range "based on a misunderstanding of its authority to depart under or vary from the Guidelines." Reply Brief for United States 16. For example, if § 3742(g)(2) remained valid, there would be no remedy at resentencing if a district court erroneously believed the Guidelines were presumptively reasonable, see *Nelson* v. *United States*, 555 U. S. 350, 352 (2009) *(per curiam)*, or if it mistak

enly thought that a non-Guidelines sentence required ex traordinary circumstances, see *Gall*, 552 U. S., at 47, or if it incorrectly concluded that it could not vary from the Guide lines based on a policy disagreement with their disparate treatment of crack and powder cocaine, see *Kimbrough*, 552 U. S., at 101. In such cases, the district court at the initial sentencing proceeding will necessarily have imposed a sen tence within the Guidelines range, and thus § 3742(g)(2) would require the imposition of a Guidelines sentence on re mand. See Reply Brief for Petitioner 3–5 (describing fur ther categories of cases where "the *Booker* remedy would be entirely unavailable if § 3742(g)(2) were valid").

To be sure, applying § 3742(g)(2) at resentencing would not always result in a Sixth Amendment violation. For exam ple, where the applicable Guidelines range rests solely on facts found by a jury beyond a reasonable doubt, application of § 3742(g)(2) at resentencing would not render the sentence constitutionally in rm. But, as explained above, that possi bility was equally true with respect to the sentencing provi sions we invalidated in *Booker*. See *supra*, at 495. As with those provisions, "we cannot assume that Congress, if faced with the statute's invalidity in key applications, would have preferred to apply the statute in as many other instances as possible." 543 U. S., at 248. Just as we rejected a two-track system in *Booker* that would have made the Guidelines mandatory in some cases and advisory in others, we reject a partial invalidation of § 3742(g)(2) that would leave us with the same result.

The fact that § 3742(g)(2) permits a resentencing court on remand to impose a non-Guidelines sentence in cases where the prior sentence expressly relied upon a departure upheld by the court of appeals also does not cure the constitutional in rmity. As explained above, we observed in *Booker* that the availability of departures from the applicable Guidelines ranges in speci ed circumstances "does not avoid the consti

tutional issue." *Id.*, at 234. Because "departures are not available in every case, and in fact are unavailable in most," *ibid.*, we held that remedying the Sixth Amendment problem required invalidation of § 3553(b)(1). That same remedial approach requires us to invalidate § 3742(g)(2).[12]

Amicus contends that any constitutional infirmity in § 3742(g)(2) can be remedied by invalidating § 3742(j)(1)(B) rather than § 3742(g)(2). Brief for *Amicus Curiae* in Support of Judgment Below 21–22. Section 3742(j)(1)(B) provides that a "ground of departure" is "permissible" for purposes of § 3742(g)(2)(B) only if it is, *inter alia*, "authorized under section 3553(b)." In *Booker*, we noted that "statutory cross-references" to the SRA provisions we invalidated were also constitutionally infirm. 543 U. S., at 259. Because § 3742(j)(1)(B) incorporates a cross-reference to § 3553(b)(1), one of the provisions we invalidated in *Booker*, *amicus* suggests that invalidating § 3742(j)(1)(B) would cure any constitutional defect in § 3742(g)(2)(B). As the Government explains, however, even if § 3742(j)(1)(B) were invalidated and a district court could depart on any ground at an initial sentencing, the district court would not be able to depart on any new ground at resentencing so long as § 3742(g)(2) remains

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[12] *Amicus* National Association of Criminal Defense Lawyers (NACDL) argues that, because § 3742(g)(2)(B) permits a non-Guidelines sentence only with respect to certain "departures," that provision "appears to preclude sentencing courts on remand from granting any and all *variances* under Section 3553(a)." Brief for NACDL 11 (emphasis added). In *Irizarry* v. *United States*, 553 U. S. 708 (2008), we held that a "'[d]eparture' is a term of art under the Guidelines and refers only to non-Guidelines sentences imposed under the framework set out in the Guidelines"; in contrast, a "variance" refers to a non-Guidelines sentence outside the Guidelines framework. *Id.*, at 714. *Irizarry*'s holding construed the term "departure" in Rule 32(h) of the Federal Rules of Criminal Procedure. Because we conclude that § 3742(g)(2) is constitutionally infirm and must be invalidated, we need not decide whether its reference to "departure[s]" includes variances.

in force. Because *amicus*' proposed solution would still result in the Guidelines being effectively mandatory at resentencing in an entire set of cases, it fails to remedy the fundamental constitutional defect of § 3742(g)(2).

2

Amicus' next cluster of arguments focuses on Congress' sentencing objectives under § 3553(a). Preliminarily, *amicus* contends that even if § 3742(g)(2) is constitutionally invalid, that provision reflects a congressional policy determination that only information available at the time of original sentencing should be considered, and that this policy determination should inform our analysis of whether § 3553(a) permits consideration of postsentencing rehabilitation evidence. This argument, however, is based on a faulty premise.

Contrary to *amicus*' contention, § 3742(g)(2) does not reflect a congressional purpose to preclude consideration of evidence of postsentencing rehabilitation at resentencing. To be sure, § 3742(g)(2) has the incidental effect of limiting the weight a sentencing court may place on postsentencing rehabilitation by precluding the court from resentencing outside the Guidelines range on a "ground of departure" on which it did not previously rely. But on its face, nothing in § 3742(g)(2) prohibits a district court from considering postsentencing developments—including postsentencing rehabilitation—in selecting a sentence *within* the applicable Guidelines range. Section 3742(g)(2) also does not apply to resentencings that occur for reasons other than when a sentence is overturned on appeal and the case is remanded (*e. g.*, when a sentence is set aside on collateral review under 28 U. S. C. § 2255). In such circumstances, § 3742(g)(2) does not restrict a district court at all, much less with respect to consideration of postsentencing developments. Accordingly, because we see no general congressional policy reflected in § 3742(g)(2) to preclude resentencing courts from considering

postsentencing information,[13] that provision has no bearing on our analysis of whether § 3553(a) permits consideration of evidence of postsentencing rehabilitation.

As we explained above, evidence of postsentencing rehabilitation may be highly relevant to several of the sentencing factors that Congress has specifically instructed district courts to consider. See *supra*, at 491–493 (discussing §§ 3553(a), (a)(1), (a)(2)(B)–(D)). *Amicus*, however, argues that consideration of postsentencing rehabilitation is inconsistent with two sentencing factors: § 3553(a)(5), which directs sentencing courts to consider "any pertinent policy statement" of the Sentencing Commission, and § 3553(a)(6), which requires courts to consider "the need to avoid unwarranted sentenc[ing] disparities among defendants with similar records who have been found guilty of similar conduct."

With regard to § 3553(a)(5), *amicus* points to the Sentencing Commission's policy statement in USSG § 5K2.19, which provides that "[p]ost-sentencing rehabilitative efforts, even if exceptional, undertaken by a defendant after imposition of a term of imprisonment for the instant offense[,] are not an appropriate basis for a downward departure when resentencing the defendant for that offense." According to *amicus*, that policy statement is "clear and unequivocal," and as an

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[13] For those of us for whom it is relevant, the legislative history of § 3742(g)(2) confirms that the provision, enacted as part of the PROTECT Act of 2003, § 401(e), 117 Stat. 671, was not aimed at prohibiting district courts from considering postsentencing developments. Rather, it was meant to ensure that under the then-mandatory Guidelines system, when a particular departure was reversed on appeal, the district court could not impose the same sentence on remand on the basis of a different departure. See H. R. Conf. Rep. No. 108–66, pp. 58–59 (2003) (noting that § 401 of the PROTECT Act, *inter alia*, "prevent[s] sentencing courts, upon remand, from imposing the same illegal departure on a different theory"). Like the provisions invalidated in *Booker*, then, the purpose of § 3742(g)(2) was "to make Guidelines sentencing even more mandatory than it had been." *United States* v. *Booker*, 543 U. S. 220, 261 (2005). As we recognized in *Booker*, that purpose has "ceased to be relevant." *Ibid.*

exercise of the Sentencing Commission's "core function," should be given effect. Brief for *Amicus Curiae* in Support of Judgment Below 31–32.

To be sure, we have recognized that the Commission post-*Booker* continues to " l[l] an important institutional role" because "[i]t has the capacity courts lack to base its deter minations on empirical data and national experience, guided by a professional staff with appropriate expertise." *Kim brough*, 552 U. S., at 109 (internal quotation marks omitted). Accordingly, we have instructed that district courts must still give "respectful consideration" to the now-advisory Guidelines (and their accompanying policy statements). *Id.*, at 101. As *amicus* acknowledges, however, our post-*Booker* decisions make clear that a district court may in appropriate cases impose a non-Guidelines sentence based on a disagree ment with the Commission's views. See *id.*, at 109–110. That is particularly true where, as here, the Commission's views rest on wholly unconvincing policy rationales not re ected in the sentencing statutes Congress enacted.

The commentary to USSG § 5K2.19 expresses the Com mission's view that departures based on postsentencing rehabilitation would "(1) be inconsistent with the policies established by Congress under 18 U. S. C. § 3624(b) [govern ing good time credit] and other statutory provisions for re ducing the time to be served by an imprisoned person; and (2) inequitably bene t only those who gain the opportunity to be resentenced *de novo*." With regard to the rst proffered rationale, a sentencing reduction based on postsentencing re habilitation can hardly be said to be "inconsistent with the policies" underlying an award of good time credit under § 3624(b) because the two serve distinctly different penologi cal interests.[14] Indeed, the difference between the two is

[14] An award of good time credit by the Bureau of Prisons (BOP) does not affect the length of a court-imposed sentence; rather, it is an adminis trative reward "to provide an incentive for prisoners to 'compl[y] with institutional disciplinary regulations.'" *Barber* v. *Thomas*, 560 U. S. 474,

re ected most obviously in the fact that the BOP has no authority to award good time credit where, as in this case, the defendant's good behavior occurs after a sentence has already been served.[15] The Commission's second proffered rationale fares no better. To be sure, allowing district courts to consider evidence of postsentencing rehabilitation may result in disparate treatment between those defendants who are sentenced properly and those who must be resen tenced. But that disparity arises not because of arbitrary or random sentencing practices, but because of the ordinary operation of appellate sentencing review.

In a closely related vein, *amicus* argues that consider ation of postsentencing rehabilitation is inconsistent with § 3553(a)(6), which requires sentencing courts to consider the need to avoid unwarranted sentencing disparities. The Court of Appeals also rested its holding on this ground, rea

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482 (2010) (quoting 18 U. S. C. § 3624(b); alteration in original). Such cred its may be revoked at any time before the date of a prisoner's release. See § 3624(b)(2). In contrast, a court's imposition of a reduced sentence based on postsentencing rehabilitation changes the very terms of impris onment and "recognizes that the [defendant's] conduct since his initial sen tencing warrants a less severe criminal punishment." Brief for United States 50. Once imposed, a sentence may be modi ed only in very limited circumstances. See § 3582(c).

[15] *Amicus* points to two other procedural mechanisms that may shorten a defendant's sentence—early termination of a term of supervised release, see § 3583(e)(1), and the potential for sentencing reductions based on post-sentencing substantial assistance, see Fed. Rule Crim. Proc. 35(b)—but neither presents an adequate substitute for a district court's consideration of postsentencing rehabilitation. Supervised release follows a term of im prisonment and serves an entirely different purpose than the sentence imposed under § 3553(a). See *United States* v. *Johnson*, 529 U. S. 53, 59 (2000) ("Supervised release ful lls rehabilitative ends, distinct from those served by incarceration"). Rule 35(b) departures address only postsen tencing cooperation with the Government, not postsentencing rehabilita tion generally, and thus a defendant with nothing to offer the Government can gain no bene t from Rule 35(b).

soning that "'allowing [postsentencing rehabilitation] evi dence to in uence [defendant's] sentence would be grossly unfair to the vast majority of defendants who receive no sentencing-court review of any positive post-sentencing re habilitative efforts.'" 570 F. 3d, at 965 (quoting *McMannus*, 496 F. 3d, at 852, n. 4). But *amicus* points to no evidence, nor are we aware of any, suggesting that Congress enacted § 3553(a)(6) out of a concern with disparities resulting from the normal trial and sentencing process.[16] The differences in procedural opportunity that may result because some defendants are inevitably sentenced in error and must be resentenced are not the kinds of "unwarranted" sentencing disparities that Congress sought to eliminate under § 3553(a)(6). Cf. *United States* v. *LaBonte*, 520 U. S. 751, 761–762 (1997) (disparity arising from exercise of prosecuto rial discretion not unwarranted); *United States* v. *Rhodes*, 145 F. 3d 1375, 1381 (CADC 1998) ("Distinguishing between prisoners whose convictions are reversed on appeal and all other prisoners hardly seems 'unwarranted'").

As the Government explains, moreover, the logic of the Court of Appeals' approach below—*i. e.*, that "post-sentence rehabilitation is not relevant . . . because the district court could not have considered that evidence at the time of the original sentencing," 570 F. 3d, at 965 (internal quotation marks omitted)—would require sentencing courts categori cally to ignore not only postsentencing rehabilitation, but

[16] Indeed, some defendants will have a longer period of time between initial custody and trial, or between trial and sentencing, and those de fendants—particularly if they are released on bail—will have a greater opportunity to demonstrate postoffense, presentencing rehabilitation. Even before *Booker*, the lower courts uniformly held that evidence of such rehabilitation could provide a basis for departing from the applicable Guidelines. See USSG App. C, Amdt. 602, comment., p. 74 (Nov. 2003) ("[D]epartures based on extraordinary post-offense rehabilitative efforts prior to sentencing . . . have been allowed by every circuit that has ruled on the matter").

any postsentencing information, including, for example, evi dence that a defendant had committed postsentencing of fenses. Our precedents, however, provide no basis to sup port such a categorical bar. See, *e. g.*, *Wasman*, 468 U. S., at 572 ("[A] sentencing authority may justify an increased sentence by af rmatively identifying relevant conduct or events that occurred subsequent to the original sentencing proceedings"); cf. *North Carolina* v. *Pearce*, 395 U. S. 711, 723 (1969). Indeed, even the Court of Appeals below does not accept the logical consequence of its approach as it per mits district courts to consider postsentencing conduct that would support a higher sentence. See *United States* v. *Sta pleton*, 316 F. 3d 754, 757 (CA8 2003). Nothing in §§ 3553(a) and 3661, however, remotely suggests that Congress in tended district courts to consider only postsentencing evi dence detrimental to a defendant while turning a blind eye to favorable evidence of a defendant's postsentencing rehabil itation. Cf. *United States* v. *Jones*, 460 F. 3d 191, 196 (CA2 2006) ("Obviously, the discretion that *Booker* accords sen tencing judges to impose non-Guidelines sentences cannot be an escalator that only goes up").

Finally, we note that §§ 3553(a)(5) and (a)(6) describe only two of the seven sentencing factors that courts must consider in imposing sentence. At root, *amicus* effectively invites us to elevate two § 3553(a) factors above all others. We reject that invitation. See *Gall*, 552 U. S., at 49–50 (instructing sentencing courts to "consider *all* of the § 3553(a) factors" (emphasis added)).

D

For the reasons stated above, we hold that the Court of Appeals erred in categorically precluding the District Court from considering evidence of Pepper's postsentencing reha bilitation after his initial sentence was set aside on appeal. District courts post-*Booker* may consider evidence of a de fendant's postsentencing rehabilitation at resentencing and

such evidence may, in appropriate cases, support a downward variance from the advisory Guidelines range.[17]

The Government informs us that, in granting Pepper's motion for release pending disposition of this appeal, see n. 5, *supra*, the District Court stated that it would not have exercised its discretion to grant Pepper a downward variance based on postsentencing rehabilitation. That statement, however, was made in light of the Court of Appeals' erroneous views regarding postsentencing rehabilitation evidence. Because we expressly reject those views today, it is unclear from the record whether the District Court would have imposed the same sentence had it properly considered the extensive evidence of Pepper's postsentencing rehabilitation. On remand, the District Court should consider and give appropriate weight to that evidence, as well as any additional evidence concerning Pepper's conduct since his last sentencing in January 2009. Accordingly, we vacate the Eighth Circuit's judgment in respect to Pepper's sentence and remand the case for resentencing consistent with this opinion.

III

The second question presented in this case merits only a brief discussion. As noted above, the original sentencing judge in this case granted Pepper a 40-percent downward departure pursuant to USSG §5K1.1 based on Pepper's substantial assistance and sentenced him to 24 months' imprisonment. When the Court of Appeals vacated that sentence in *Pepper II*, and again in *Pepper III*, the case was reassigned on remand to Chief Judge Reade. In resentencing

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[17] Of course, we do not mean to imply that a district court must reduce a defendant's sentence upon any showing of postsentencing rehabilitation. Nor do we mean to preclude courts of appeals from issuing limited remand orders, in appropriate cases, that may render evidence of postsentencing rehabilitation irrelevant in light of the narrow purposes of the remand proceeding. See, *e. g.*, *United States* v. *Bernardo Sanchez*, 569 F. 3d 995, 1000 (CA9 2009).

Pepper, Chief Judge Reade ruled that she was not bound by the prior sentencing judge's decision to grant a 40-percent downward departure and instead granted only a 20-percent downward departure, which the Court of Appeals upheld in *Pepper IV*. Pepper argues that the law of the case doctrine required Chief Judge Reade to apply the same 40-percent departure granted by the original sentencing judge. We disagree.

Preliminarily, we note that the mandates in *Pepper II* and *Pepper III* were "general remand[s] for resentencing," which "did not place any limitations on the discretion of the newly assigned district court judge in resentencing Pepper." 570 F. 3d, at 963. In his merits briefs to this Court, Pepper does not challenge the scope or validity of the Court of Appeals' mandate ordering *de novo* resentencing, and thus has abandoned any argument that the mandate itself restricted the District Court from imposing a different substantial assistance departure.[18] The only question before us is whether the law of the case doctrine required Chief Judge Reade to adhere to the original sentencing judge's decision granting a 40-percent downward departure.

Although we have described the "law of the case [a]s an amorphous concept," "[a]s most commonly defined, the doctrine posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *Arizona* v. *California*, 460 U. S. 605, 618 (1983). This doctrine "directs a court's discretion, it does not limit the tribunal's power." *Ibid.* Accordingly, the doctrine "does not apply if the court is 'convinced that [its prior decision] is clearly erroneous and

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[18] In any event, as the Court of Appeals recognized, neither *Pepper II* nor *Pepper III* held that a 40-percent downward departure was the only reasonable departure that a sentencing court could grant for Pepper's substantial assistance; rather, the only issue those opinions actually decided was that a "40% downward departure was not an abuse of discretion." 570 F. 3d, at 963–964.

would work a manifest injustice.'" *Agostini* v. *Felton*, 521 U. S. 203, 236 (1997) (quoting *Arizona*, 460 U. S., at 618, n. 8; alteration in original).

Pepper argues that, because the original sentencing judge's decision to grant the 40-percent departure was never set aside by the Court of Appeals or this Court, it constituted the law of the case. As such, Pepper contends that Chief Judge Reade should not have disturbed that ruling absent "compelling justi cation" for overturning it. Brief for Peti tioner 56. According to Pepper, because Chief Judge Reade identi ed no such justi cation, the law of the case doctrine required her to adhere to the 40-percent departure granted by the original sentencing judge.

As the Government explains, however, the Court of Ap peals in *Pepper III* set aside Pepper's entire sentence and remanded for a *de novo* resentencing. See 518 F. 3d, at 949, 953. Thus, even assuming, *arguendo*, that the original sen tencing court's decision to impose a 40-percent departure was at one point law of the case, *Pepper III* effectively wiped the slate clean. To be sure, *Pepper III* vacated Pepper's 24-month sentence on grounds unrelated to the substantial assistance departure, but that fact does not affect our conclu sion. "A criminal sentence is a package of sanctions that the district court utilizes to effectuate its sentencing intent." *United States* v. *Stinson*, 97 F. 3d 466, 469 (CA11 1996) *(per curiam)*. Because a district court's "original sentencing in tent may be undermined by altering one portion of the calcu lus," *United States* v. *White*, 406 F. 3d 827, 832 (CA7 2005), an appellate court when reversing one part of a defendant's sentence "may vacate the entire sentence . . . so that, on remand, the trial court can recon gure the sentencing plan . . . to satisfy the sentencing factors in 18 U. S. C. § 3553(a)," *Greenlaw* v. *United States*, 554 U. S. 237, 253 (2008). That is precisely what the Eighth Circuit did here.

Accordingly, because the Court of Appeals in *Pepper III* remanded for *de novo* resentencing, we conclude that Chief

Judge Reade was not bound by the law of the case doctrine to apply the same 40-percent departure that had been applied at Pepper's prior sentencing.

* * *

For the reasons stated above, the judgment of the United States Court of Appeals for the Eighth Circuit is vacated in part and affirmed in part, and the case is remanded for resentencing consistent with this opinion.

It is so ordered.

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

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

I join Part III of the Court's opinion as to the second question presented. As to the first question presented, I agree with the Court's conclusion. And I agree with its opinion to the extent that it is consistent with this concurrence.

Like the majority, I believe *Booker* requires us to hold 18 U. S. C. § 3742(g)(2) unconstitutional. See *ante*, at 493–499; *United States* v. *Booker*, 543 U. S. 220 (2005); see also *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). And, like the majority, I believe that the law does not require a sentencing court to follow a Guidelines policy statement that forbids taking account of postsentencing rehabilitation. United States Sentencing Commission, Guidelines Manual § 5K2.19 (Nov. 2010) (USSG). I would emphasize, however, that this conclusion does not leave a sentencing court free to disregard the Guidelines at will. To the contrary, the law permits the court to disregard the Guidelines only where it is "reasonable" for a court to do so. *Booker*, *supra*, at 261–262; *Gall* v. *United States*, 552 U. S. 38, 51–52 (2007); *Kimbrough* v. *United States*, 552 U. S. 85, 109 (2007). And an appellate court must be guided by the basic sentencing objectives of the statutes that create the Guidelines in determining

whether, in disregarding the Guidelines, the sentencing court has acted unreasonably.

I

The Guideline in question consists of a policy statement that sets forth an exception to normal Guidelines rules. Normally, the Guidelines authorize a sentencing judge to consider a departure from an ordinary Guidelines sentence in any case "where conduct significantly differs from the norm" to which "a particular guideline linguistically applies." USSG ch. 1, pt. A1, § 4(b) (discussing the Guidelines' general approach to departures). The policy statement at issue is one of a handful of Guidelines rules that nonetheless forbid departure. It says that a defendant's "[p]ost-sentencing rehabilitative efforts, even if exceptional, . . . are not an appropriate basis for a downward departure when resentencing." § 5K2.19. The policy statement thereby adds "Post-Sentencing Rehabilitative Efforts" to such factors as race, sex, national origin, creed, religion, and socioeconomic status, which the Guidelines absolutely prohibit the sentencing judge from taking into account. *Id.*, ch. 1, pt. A1, § 4(b).

II

Can a sentencing court, despite this policy statement, take account of postsentencing rehabilitation in the particular circumstances that this case presents? I cannot find the answer to this question in the language of the sentencing statutes, in sentencing traditions, in the pre-Guidelines case of *Williams* v. *New York*, 337 U. S. 241 (1949), or in this Court's use of the word "advisory." As the majority points out, a sentencing statute forbids any "'limitation'" on the "'information concerning the background, character, and conduct'" that "'a court . . . may . . . consider.'" *Ante*, at 488 (quoting 18 U. S. C. § 3661; emphasis deleted). But this provision must refer to all *relevant* information. See USSG § 1B1.4 and comment. (generally incorporating § 3661, but noting that there are certain factors that should not be considered

for any purpose). *If* the Guidelines policy statement's absolute prohibition on consideration of postsentencing rehabilitation were legally binding, then information on that score (like information about race, religion, sex, or national origin) would fall outside the scope of this provision, for it would not be *relevant*. Thus, reference to the statute begs the question.

Nor can I find much help in the majority's reference to a sentencing "'tradition'" that considers "'every convicted person as an individual.'" *Ante*, at 487 (quoting *Koon* v. *United States*, 518 U. S. 81, 113 (1996)). That is because individualized sentencing is not the only relevant tradition. A just legal system seeks not only to treat different cases differently but also to treat like cases alike. Fairness requires sentencing uniformity as well as efforts to recognize relevant sentencing differences. Indeed, when Congress enacted the sentencing statutes before us, it focused upon the unfair way in which federal sentencing failed to treat similar offenders similarly. And Congress wrote statutes designed primarily (though not exclusively) to bring about greater uniformity in sentencing. See, *e. g.*, *Booker*, *supra*, at 253–254. The statutes do so in large part through the creation of a system of Guidelines written by a Sentencing Commission, which Congress intended the courts to follow. See *Mistretta* v. *United States*, 488 U. S. 361 (1989) (Sentencing Commission constitutional); *Rita* v. *United States*, 551 U. S. 338, 348–349 (2007); 18 U. S. C. § 3553(a) (identifying relevant factors in sentencing, including uniformity).

The *Williams* case is similarly unhelpful. That is because Congress in the Sentencing Reform Act of 1984—the law before us—disavowed the individualized approach to sentencing that that case followed. *Williams* emphasized the importance of a sentencing court's legal power to tailor punishment ability to fit the circumstances of each individual offender. 337 U. S., at 247 (emphasizing "modern concepts individualizing punishment"). But Congress, concerned

that individualized sentencing had gone too far, wrote a new sentencing law designed to help correct "disparities" among similar defendants sentenced by different judges. See S. Rep. No. 98–225, p. 45 (1983) ("Sentencing disparities" are "unfair both to offenders and to the public"); *id.*, at 38 (disparities "can be traced directly to the unfettered discretion the law confers on those judges and parole authorities responsible for imposing and implementing the sentence").

Booker's description of the Guidelines as "advisory" offers somewhat greater assistance—but only if that word is read in light of the Sixth Amendment analysis that precedes it. This Court has held that the Sixth Amendment forbids Congress (through the Commission) to create Guidelines that both (1) require judges (without juries) to find sentencing facts and also (2) tie those facts to the mandatory imposition of particular sentences. 543 U. S., at 226, 244; see also *Apprendi*, 530 U. S., at 490 (Sixth Amendment requires jury findings in respect to factual matters that require judge to increase sentence); *Blakely* v. *Washington*, 542 U. S. 296, 303–304 (2004) (same in respect to a State's mandatory guidelines). In light of this Sixth Amendment prohibition, the Court, believing that Congress would not have intended to introduce new juries into each sentencing proceeding, excised the few particular provisions of the sentencing statutes that specified that application of the Guidelines was mandatory. *Booker*, 543 U. S., at 259. The Court believed that the relevant statutes remained workable without those few provisions, that their excision could further Congress' basic sentencing intentions, and that excision was more likely to do so than invalidation of the entire statutory scheme. With an occasional exception (such as the statutory provision we strike down today), there is no reason to think that the sentencing statutes as limited in *Booker* run afoul of the Sixth Amendment. *Ibid.*

Booker made clear that the remaining statutory provisions, while leading us to call the Guidelines "advisory"

(rather than "mandatory"), do not give a sentencing judge *carte blanche* to apply, or not to apply, the Guidelines as that judge chooses. Rather, the "district courts, while not bound to apply the Guidelines, must consult those Guidelines and take them into account when sentencing." *Id.*, at 264. Moreover, *Booker* held that appellate court review of sentencing is valid. *Booker* explained that the "statutory language, the structure of the [Sentencing Reform Act], and the sound administration of justice," taken together, require appellate courts to apply "reasonableness standard[s]" of review. *Id.*, at 260–261, 262 (internal quotation marks omitted). Reasonableness standards, we added, are "not foreign to sentencing law." *Id.*, at 262. And the "Act has long required their use in important sentencing circum stances—both on review of departures . . . and on review of sentences imposed where there was no applicable Guide line." *Ibid.* See also *id.*, at 261 (appellate courts will apply "a practical standard of review already familiar to appel late courts: review for 'unreasonable[ness]' "); *id.*, at 264 ("[C]ourts of appeals" will "review sentencing decisions for unreasonableness").

We have also indicated that, in applying reasonableness standards, the appellate courts should take account of sen tencing policy as embodied in the statutes and Guidelines, as well as of the comparative expertise of trial and appellate courts. Thus, in *Kimbrough*, we observed that in light of the "discrete institutional strengths" of the Sentencing Com mission and sentencing judges, "a district court's decision to vary from the advisory Guidelines may attract greatest re spect when the sentencing judge nds a particular case 'outside the "heartland" to which the Commission intends individual Guidelines to apply.' " 552 U. S., at 109 (quoting *Rita*, *supra*, at 351). We noted, however, that "while the Guidelines are no longer binding, closer review may be in order when the sentencing judge varies from the Guidelines based solely on the judge's view that the Guidelines range

'fails properly to re ect §3553(a) considerations' even in a mine-run case." 552 U. S., at 109.

III

Unlike the majority, I would decide the question *Kimbrough* left open. And I would follow its suggested framework for evaluating "reasonableness." As *Kimbrough* suggests, doing so takes proper account of the comparative institutional abilities of trial courts, appellate courts, and the Sentencing Commission. The trial court typically better understands the individual circumstances of particular cases before it, while the Commission has comparatively greater ability to gather information, to consider a broader national picture, to compare sentences attaching to different offenses, and ultimately to write more coherent overall standards that re ect nationally uniform, not simply local, sentencing policies.

Applying *Kimbrough*'s suggested framework, I would reason very much as does the majority. The rst question is whether a sentencing judge might *sometimes* take account of a (resentenced) offender's postsentencing rehabilitation—despite a Guidelines policy statement that says *never*. I would nd that it is reasonable for the judge to disregard the Guidelines' absolute prohibition, despite the Commission's comparatively greater policy-formation abilities. That is because the Guidelines policy statement itself runs counter to ordinary Guidelines sentencing policy, which rarely forbids departures and then for very strong policy reasons. *Supra*, at 509. See USSG ch. 1, pt. A1, §4(b).

The Commission offers no convincing justi cation for creating this exception with respect to postsentencing rehabilitation. The Commission's commentary says that for a judge at resentencing to lower a sentence for this reason (re ecting good behavior while the case is on appeal) would con ict with the use of other mechanisms, such as "good-time" credits, for that purpose. But how is that so? A defendant,

after sentencing but while his case is on appeal, may or may not be entitled to "good time." That may depend upon whether he remains on bail or upon particular "good-time" rules. Regardless, the resentencing judge can take account of any such matter. See also *ante*, at 503–504.

The Commission's commentary also suggests it would be *inequitable* to allow an offender who is being resentenced to receive any kind of credit for his good behavior, say, while his case was on appeal. But why is that so? After all, the Guidelines permit a judge to take account of an offender's good behavior after arrest but before initial sentencing. That time period could last longer than the time taken up on appeal. Why should pretrial behavior count but appeal time behavior not count? Like the majority, I find this justification for the policy statement unconvincing. See *ante*, at 500–502.

The second question is whether, given the sentencing court's power to disregard the policy statement forbidding departures based on postsentencing rehabilitation, the facts and circumstances here could warrant a departure (or variance) for that reason. And the answer, in my view, is yes. This case presents unusual rehabilitative circumstances. As the majority observes: "By the time of his second resentencing in 2009, Pepper had been drug free for nearly five years, had attended college and achieved high grades, was a top employee at his job slated for a promotion, had reestablished a relationship with his father, and was married and supporting his wife's daughter." *Ante*, at 492. These are case-specific facts and circumstances, and they are of the kind that should lead appellate courts to show their "greatest respect" for a sentencing decision, including a departure or variance, that rests upon them.

IV

In sum, the sentencing statutes, as we have interpreted them, require courts of appeals to review sentences for rea

sonableness, including sentences that depart or vary from a speci c Guideline. The appellate courts should review those decisions more closely when they rest upon disagreement with Guidelines policy. *Kimbrough*, 552 U. S., at 109. They should review those decisions with greater deference when they rest upon case-speci c circumstances that place the case outside a speci c Guideline's "heartland." See *ibid.; Rita*, 551 U. S., at 351; *Koon*, 518 U. S., at 98–99.

By interpreting the sentencing statutes in this way, we can remain faithful to Congress' basic intent in writing them—despite the need to invalidate statutory provisions that con ict with the Sixth Amendment. The statutes create a Sentencing Commission with authority to develop sentencing policy embodied in the Guidelines. The Guidelines are to further the statutes' basic objective, namely, greater sentenc ing uniformity, while also taking account of special individual circumstances, primarily by permitting the sentencing court to depart in nontypical cases. By collecting trial courts' reasons for departure (or variance), by examining appellate court reactions, by developing statistical and other empirical information, by considering the views of expert penologists and others, the Commission can revise the Guidelines accord ingly. See USSG ch. 1, pt. A1, § 3. Trial courts, appellate courts, and the Commission all have a role to play in what is meant to be an iterative, cooperative institutional effort to bring about a more uniform and a more equitable sentencing system. See *id.*, ch. 1, pt. A. I would interpret the statutes before us accordingly.

JUSTICE ALITO, concurring in part, concurring in the judg ment in part, and dissenting in part.

I join Part III of the opinion of the Court. I agree with the Court that the decision below cannot be af rmed on the basis of 18 U. S. C. § 3742(g), as *amicus* suggests. This pro vision was designed to function as part of the mandatory Guidelines scheme that the Court struck down in *United*

States v. *Booker*, 543 U. S. 220, 258–265 (2005). Although *amicus*' argument is ingenious, even the sort of surgery sanctioned in *Booker* cannot transform this provision into one that can survive in the post-*Booker* world.

I also concur in the judgment to the extent that it holds that the decision below regarding evidence of postsentencing rehabilitation must be reversed. That decision, which entirely precluded consideration of such evidence, was consistent with the policy statement in §5K2.19 of the United States Sentencing Guidelines, but "[t]he *Booker* remedial decision . . . does not permit a court of appeals to treat the Guidelines' policy decisions as binding." *Kimbrough* v. *United States*, 552 U. S. 85, 116 (2007) (ALITO, J., dissenting).

Under *Booker*, however, district judges are still required in almost all cases to give significant weight to the policy decisions embodied in the Federal Sentencing Guidelines. See *Kimbrough*, *supra*, at 116; *Gall* v. *United States*, 552 U. S. 38, 61–67 (2007) (ALITO, J., dissenting). Congress delegated to the Sentencing Commission the authority to make policy decisions regarding federal sentencing, see 18 U. S. C. §§3553(a)(4), (5), and requiring judges to give significant weight to the Commission's policy decisions does not run afoul of the Sixth Amendment right that the mandatory Guidelines system was found to violate, *i. e.*, the right to have a jury make certain factual findings that are relevant to sentencing.

While I continue to believe that sentencing judges should be required to give significant weight to all Guidelines provisions and policy statements, see *Kimbrough*, 552 U. S., at 116 (opinion of ALITO, J.), the Court in *Kimbrough* held that sentencing judges may not be required to give weight to some unusual policy decisions, see *id.*, at 109–110 (majority opinion). And JUSTICE BREYER now makes a reasonable case that the particular policy statement involved in this case is distinguishable from almost all of the other rules that the Commission has adopted. See *ante*, p. 508 (opinion concur

ring in part and concurring in judgment). His position seems to me more consistent with *Kimbrough* than the Court's. It would at least prevent us from sliding all the way down the slippery slope that leads back to the regime of entirely discretionary federal sentencing that preceded the enactment of the Sentencing Reform Act of 1984, 98 Stat. 1987.

Anyone familiar with the history of criminal sentencing in this country cannot fail to see the irony in the Court's praise for the sentencing scheme exempli ed by *Williams* v. *New York*, 337 U. S. 241 (1949), and 18 U. S. C. § 3661.* By the time of the enactment of the Sentencing Reform Act in 1984, this scheme had fallen into widespread disrepute. See, *e. g.*, *Mistretta* v. *United States*, 488 U. S. 361, 366 (1989) (not ing "[f]undamental and widespread dissatisfaction with the uncertainties and the disparities" of this scheme); *United States* v. *DiFrancesco*, 449 U. S. 117, 142 (1980) ("It has been observed . . . that sentencing is one of the areas of the criminal justice system most in need of reform"); S. Rep. No. 98–223, p. 62 (1983) ("The shameful disparity in criminal sentences is a major aw in the existing criminal justice sys tem"). Under this system, each federal district judge was free to implement his or her individual sentencing philoso phy, and therefore the sentence imposed in a particular case often depended heavily on the spin of the wheel that deter mined the judge to whom the case was assigned. See *Bull ington* v. *Missouri*, 451 U. S. 430, 444, n. 16 (1981) ("There has been no attempt to separate policymaking from individ ual sentencing determinations" (internal quotation marks

*Insofar as § 3661 permitted a sentencing judge to consider evidence of postsentencing rehabilitation, that provision was effectively modi ed by the subsequent enactment of the Sentencing Reform Act, which instructed the Sentencing Commission to adopt guidelines and policy statements that avoid "unwarranted sentencing disparities," 28 U. S. C. § 991(b)(1)(B); see also § 994(f), and which provided that sentencing courts "shall consider . . . any pertinent policy statement," 18 U. S. C. § 3553(a)(5).

omitted)); M. Frankel, Criminal Sentences: Law Without Order 5 (1973) ("[T]he almost wholly unchecked and sweeping powers we give to judges in the fashioning of sentences are terrifying and intolerable for a society that professes devotion to the rule of law").

Some language in today's opinion reads like a paean to that old regime, and I fear that it may be interpreted as sanctioning a move back toward the system that prevailed prior to 1984. If that occurs, I suspect that the day will come when the irrationality of that system is once again seen, and perhaps then the entire *Booker* line of cases will be reexamined.

JUSTICE THOMAS, dissenting.

I would affirm the Court of Appeals and uphold Pepper's sentence. As written, the Federal Sentencing Guidelines do not permit district courts to impose a sentence below the Guidelines range based on the defendant's postsentencing rehabilitation.[1] See United States Sentencing Commission, Guidelines Manual § 5K2.19 (Nov. 2010) (USSG). Therefore, I respectfully dissent.

In *United States* v. *Booker*, 543 U. S. 220, 258–265 (2005), the Court rendered the entire Guidelines scheme advisory, a remedy that was "far broader than necessary to correct constitutional error." *Kimbrough* v. *United States*, 552 U. S. 85, 114 (2007) (THOMAS, J., dissenting). Because there is "no principled way to apply the *Booker* remedy," I have explained that it is "best to apply the statute as written, including 18 U. S. C. § 3553(b), which makes the Guidelines mandatory," unless doing so would actually violate the Sixth Amendment. *Id.*, at 116; see *Booker*, *supra*, at 313–326 (THOMAS, J., dissenting in part); *Gall* v. *United States*, 552 U. S. 38, 61 (2007) (THOMAS, J., dissenting); *Irizarry* v. *United States*, 553 U. S. 708, 717 (2008) (THOMAS, J., concurring).

[1] I agree with the Court that the law of the case doctrine did not control Pepper's resentencing. See *ante*, at 505–508.

I would apply the Guidelines as written in this case because doing so would not violate the Sixth Amendment. The constitutional problem arises only when a judge makes "a nding that raises the sentence beyond the sentence that could have lawfully been imposed by reference to facts found by the jury or admitted by the defendant." *Booker*, *supra*, at 313 (opinion of THOMAS, J.). Pepper admitted in his plea agreement to involvement with between 1,500 and 5,000 grams of methamphetamine mixture, which carries a sentence of 10 years to life under 21 U. S. C. § 841(b)(1)(A)(viii).[2] *United States* v. *Pepper*, 412 F. 3d 995, 996 (CA8 2005). Because Pepper has admitted facts that would support a much longer sentence than the 65 months he received, there is no Sixth Amendment problem in this case.

Under a mandatory Guidelines regime, Pepper's sentence was proper. The District Court correctly calculated the Guidelines range, incorporated a USSG § 5K1.1 departure and the Government's motion under Federal Rule of Criminal Procedure 35(b), and settled on a 65-month sentence. Guideline § 5K2.19 expressly prohibits downward departures based on "[p]ost-sentencing rehabilitative efforts, even if exceptional." Nor is there any provision in the Guidelines for the "variance" Pepper seeks, as such variances are creations of the *Booker* remedy. I would therefore affirm the Court of Appeals' decision to uphold Pepper's sentence.

Although this outcome would not represent my own policy choice, I am bound by the choices made by Congress and the Federal Sentencing Commission. Like the majority, I believe that postsentencing rehabilitation can be highly relevant to meaningful resentencing. See *ante*, at 491–493. In light of Pepper's success in escaping drug addiction and becoming a productive member of society, I do not see what purpose further incarceration would serve. But Congress

[2] Pepper also stated that he understood both the 10-year statutory minimum and that the Government was making no promises about any exceptions.

made the Guidelines mandatory, see 18 U. S. C. § 3553(b)(1), and authorized USSG § 5K2.19. I am constrained to apply those provisions unless the Constitution prohibits me from doing so, and it does not here.

Syllabus

SKINNER *v.* SWITZER, DISTRICT ATTORNEY FOR 31ST JUDICIAL DISTRICT OF TEXAS

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

No. 09–9000. Argued October 13, 2010—Decided March 7, 2011

District Attorney's Of ce for Third Judicial Dist. v. *Osborne*, 557 U. S. 52, 65–67, left unresolved the question whether a convicted state prisoner seeking DNA testing of crime-scene evidence may assert that claim in a civil rights action under 42 U. S. C. § 1983 or may assert the claim in federal court only in a petition for a writ of habeas corpus under 28 U. S. C. § 2254.

A Texas jury convicted petitioner Skinner and sentenced him to death for murdering his girlfriend and her sons. He claimed that a potent alcohol and drug mix rendered him physically unable to commit the brutal murders, and he identi ed his girlfriend's uncle as the likely perpetrator. In preparation for trial, the State tested some of the physical evidence, but left untested several items, including knives found on the premises, an axe handle, vaginal swabs, ngernail clippings, and certain hair samples. More than six years later, Texas enacted Article 64, which allows prisoners to gain postconviction DNA testing in limited circumstances. Invoking Article 64, Skinner twice moved in state court for DNA testing of the untested biological evidence. Both motions were denied. The Texas Court of Criminal Appeals (CCA) af rmed the rst denial of relief on the ground that Skinner had not shown, as required by Article 64.03(a)(2), that he "would not have been convicted if exculpatory results had been obtained through DNA testing." The CCA af rmed the second denial of relief on the ground that Skinner had not shown, as required by Article 64.01(b)(1)(B), that the evidence was not previously tested "through no fault" on his part.

Skinner next led the instant federal action for injunctive relief under § 1983, naming as defendant respondent Switzer, the District Attorney who has custody of the evidence that Skinner would like to have tested. Skinner alleged that Texas violated his Fourteenth Amendment right to due process by refusing to provide for the DNA testing he requested. The Magistrate Judge recommended dismissal of the complaint for failure to state a claim, reasoning that postconviction requests for DNA evidence are cognizable only in habeas corpus, not under § 1983. Adopting that recommendation, the District Court dismissed Skinner's suit. The Fifth Circuit af rmed.

Syllabus

Held: There is federal-court subject-matter jurisdiction over Skinner's complaint, and the claim he presses is cognizable under § 1983. Pp. 529–537.

(a) Federal Rule of Civil Procedure 8(a)(2) generally requires only a plausible "short and plain" statement of the plaintiff's claim, not an exposition of his legal argument. Skinner stated his due process claim in a paragraph alleging that the State's refusal "to release the biological evidence for testing . . . deprived [him] of his liberty interests in utilizing state procedures to obtain reversal of his conviction and/or to obtain a pardon or reduction of his sentence . . . ." His counsel has clari ed that Skinner does not challenge the prosecutor's conduct or the CCA's decisions; instead, he challenges Texas' postconviction DNA statute "as construed" by the Texas courts. Pp. 529–531.

(b) The *Rooker-Feldman* doctrine does not bar Skinner's suit. This Court has applied the doctrine only in the two cases from which it takes its name, *Rooker* v. *Fidelity Trust Co.*, 263 U. S. 413, and *District of Columbia Court of Appeals* v. *Feldman*, 460 U. S. 462. See *Exxon Mobil Corp.* v. *Saudi Basic Industries Corp.*, 544 U. S. 280. Given "the narrow ground" the doctrine occupies, *id.*, at 284, the Court has con ned *Rooker-Feldman* "to cases . . . brought by state-court losers . . . inviting district court review and rejection of [a state court's] judgments," 544 U. S., at 284. Skinner's complaint encounters no *Rooker-Feldman* shoal. "If a federal plaintiff 'present[s] [an] independent claim,' " it is not an impediment to the exercise of federal jurisdiction that the "same or a related question" was earlier aired between the parties in state court. 544 U. S., at 292–293. A state-court decision is not reviewable by lower federal courts, but a statute or rule governing the decision may be challenged in a federal action. See, *e. g.*, *Feldman*, 460 U. S., at 487. Because Skinner's federal case—which challenges not the adverse state-court decisions but the Texas statute they authoritatively construed—falls within the latter category, there was no lack of subject-matter jurisdiction over his federal suit. Pp. 531–533.

(c) Measured against this Court's prior holdings, Skinner has properly invoked § 1983. This Court has several times considered when a state prisoner, complaining of unconstitutional state action, may pursue a civil rights claim under § 1983, and when habeas corpus is the prisoner's sole remedy. The pathmarking decision, *Heck* v. *Humphrey*, 512 U. S. 477, concerned a state prisoner who brought a § 1983 action for damages, alleging that he had been unlawfully investigated, arrested, tried, and convicted. This Court held that § 1983 was not an available remedy because any award in the plaintiff's favor would "necessarily imply" the invalidity of his conviction. See *id.*, at 487. In contrast, in *Wilkinson* v. *Dotson*, 544 U. S. 74, the Court held that prisoners who challenged the constitutionality of administrative decisions denying them parole eli-

Syllabus

gibility could proceed under § 1983, for they sought no "injunction ordering . . . immediate or speedier release into the community," *id.*, at 82, and "a favorable judgment [would] not 'necessarily imply' the invalidity of [their] conviction[s] or sentence[s]," *ibid.* Here, success in Skinner's suit for DNA testing would not "necessarily imply" the invalidity of his conviction. Test results might prove exculpatory, but that outcome is hardly inevitable, for those results could also prove inconclusive or incriminating. Switzer argues that, although Skinner's immediate aim is DNA testing, his ultimate aim is to use the test results as a platform for attacking his conviction. But she has found no case in which the Court has recognized habeas as the sole remedy where the relief sought would not terminate custody, accelerate the date of release, or reduce the custody level. Contrary to the fears of Switzer and her *amici*, in the Circuits that currently allow § 1983 claims for DNA testing, there has been no ood of litigation seeking postconviction discovery of evidence associated with the questions of guilt or punishment. The projected toll on federal courts is all the more implausible regarding DNA testing claims, for *Osborne* has rejected substantive due process as a basis for such claims. More generally, in the Prison Litigation Reform Act of 1995, Congress has placed constraints on prisoner suits in order to prevent sportive federal-court lings. Nor is there cause for concern that the instant ruling will spill over to claims relying on *Brady* v. *Maryland*, 373 U. S. 83. *Brady*, which announced a constitutional requirement addressed to the prosecution's conduct pretrial, proscribes withholding evidence "favorable to an accused" and "material to [his] guilt or to punishment." *Cone* v. *Bell*, 556 U. S. 449, 451. Unlike DNA testing, which may yield exculpatory, incriminating, or inconclusive results, a successful *Brady* claim necessarily yields evidence undermining a conviction: *Brady* claims therefore rank within the traditional core of habeas corpus and outside the province of § 1983. Pp. 533–537.

(d) Switzer's several arguments why Skinner's complaint should fail for lack of merit, unaddressed by the courts below, are ripe for consideration on remand. P. 537.

363 Fed. Appx. 302, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., led a dissenting opinion, in which KENNEDY and ALITO, JJ., joined, *post*, p. 537.

Robert C. Owen, by appointment of the Court, 561 U. S. 1057, argued the cause for petitioner. With him on the briefs were *Douglas G. Robinson* and *Maria Cruz Melendez.*

Gregory S. Coleman argued the cause for respondent. With him on the brief were *Edward C. Dawson*, *Richard B. Farrer*, and *Mark D. White*.*

JUSTICE GINSBURG delivered the opinion of the Court.

We granted review in this case to decide a question presented, but left unresolved, in *District Attorney's Of ce for Third Judicial Dist.* v. *Osborne*, 557 U. S. 52, 65–67 (2009): May a convicted state prisoner seeking DNA testing of crime-scene evidence assert that claim in a civil rights action under 42 U. S. C. § 1983, or is such a claim cognizable in federal court only when asserted in a petition for a writ of habeas corpus under 28 U. S. C. § 2254? The Courts of Appeals have returned diverse responses. Compare *McKithen* v. *Brown*, 481 F. 3d 89, 99 (CA2 2007) (claim seeking DNA testing is cognizable under § 1983); *Savory* v. *Lyons*, 469 F. 3d 667, 669 (CA7 2006) (same); and *Bradley* v. *Pryor*, 305 F. 3d 1287, 1290–1291 (CA11 2002) (same), with *Harvey* v. *Horan*, 278 F. 3d 370, 375 (CA4 2002) (claim is not cognizable under

*Briefs of *amici curie* urging af rmance were led for the State of Alaska et al. by *Daniel S. Sullivan*, Attorney General of Alaska, and *Rich ard A. Svobodny*, Deputy Attorney General, and by the Attorneys General for their respective jurisdictions as follows: *Terry Goddard* of Arizona, *John W. Suthers* of Colorado, *Joseph R. Biden III* of Delaware, *Bill McCollum* of Florida, *Thurbert E. Baker* of Georgia, *Mark J. Bennett* of Hawaii, *Steve Six* of Kansas, *James D. Caldwell* of Louisiana, *Douglas F. Gansler* of Maryland, *Jim Hood* of Mississippi, *Jon Bruning* of Nebraska, *Gary K. King* of New Mexico, *Wayne Stenehjem* of North Dakota, *Edward T. Buckingham* of the Northern Mariana Islands, *W. A. Drew Edmondson* of Oklahoma, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Henry D. McMaster* of South Carolina, *Marty J. Jackley* of South Dakota, *Robert E. Cooper, Jr.*, of Tennessee, *Greg Abbott* of Texas, *Robert M. McKenna* of Washington, and *Bruce A. Salzburg* of Wyoming; for the Tarrant County, Texas, Criminal District Attorney et al. by *Joe Shannon, Jr.*, *Russell A. Friemel*, *John M. Bradley*, and *Barry L. Macha;* for the National Crime Victim Law Institute by *Paul G. Cassell;* and for the National District Attorneys Association by *Evan A. Young*.

§ 1983); and *Kutzner* v. *Montgomery County*, 303 F. 3d 339, 341 (CA5 2002) *(per curiam)* (same).

In *Wilkinson* v. *Dotson*, 544 U. S. 74 (2005), we comprehensively surveyed this Court's decisions on the respective provinces of § 1983 civil rights actions and § 2254 federal habeas petitions. Habeas is the exclusive remedy, we reaf- rmed, for the prisoner who seeks "immediate or speedier release" from con nement. *Id.*, at 82. Where the prisoner's claim would not "necessarily spell speedier release," however, suit may be brought under § 1983. *Ibid.* Adhering to our opinion in *Dotson*, we hold that a postconviction claim for DNA testing is properly pursued in a § 1983 action. Success in the suit gains for the prisoner only access to the DNA evidence, which may prove exculpatory, inculpatory, or inconclusive. In no event will a judgment that simply orders DNA tests "necessarily impl[y] the unlawfulness of the State's custody." *Id.*, at 81. We note, however, that the Court's decision in *Osborne* severely limits the federal action a state prisoner may bring for DNA testing. *Osborne* rejected the extension of substantive due process to this area, 557 U. S., at 72, and left slim room for the prisoner to show that the governing state law denies him procedural due process, see *id.*, at 71.

I

In 1995, a Texas jury convicted petitioner Henry Skinner and sentenced him to death for murdering his live-in girlfriend, Twila Busby, and her two sons. Busby was bludgeoned and choked with an axe handle and her sons were stabbed to death; the murders were committed in the house Busby shared with Skinner.

Skinner never denied his presence in the house when the killings occurred. He claimed, however, that he was incapacitated by large quantities of alcohol and codeine. The potent alcohol and drug mix, Skinner maintained at trial, rendered him physically unable to commit the brutal murders charged against him. Skinner identi ed, as a likely

perpetrator, Busby's uncle, Robert Donnell (now deceased), an ex-convict with a history of physical and sexual abuse.[1] On direct appeal, the Texas Court of Criminal Appeals (CCA) af rmed Skinner's conviction and sentence. *Skinner* v. *State*, 956 S. W. 2d 532, 546 (1997). The CCA's opinion described the crime-scene evidence in detail:

> "As they approached the house . . . , the police noticed a trail of blood spots on the ground running from the front porch to the fence line. There was a blood smear on the glass storm door and a knife on the front porch. Upon entering the residence, the police found Twila's dead body on the living room oor. . . . An ax handle stained with blood and hair was leaning against the couch near her body and a black plastic trash bag containing a knife and a towel with wet brownish stains on it was laying between the couch and the coffee table.
>
> "[One of cer] proceeded to the bedroom where [Busby's two sons] usually slept in bunk beds. [The of cer] found [one] dead body laying face down on the upper bunk, covered by a blood spotted blanket. . . . A door leading out of the bedroom and into a utility room yielded further evidence. [He] noticed a bloody handprint located about 24 inches off the oor on the frame of this door. He also noted a bloody handprint on the door knob of the door leading from the kitchen to the utility room and a handprint on the knob of the door exiting from the utility room into the backyard.
>
> "[When] police arrested [Skinner] . . . [t]hey found him standing in a closet wearing blood-stained socks and blood-stained blue jeans." *Id.*, at 536.

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[1] At trial, a defense witness testi ed that, on the evening of the killings, Busby had spurned Donnell's "rude sexual advances." *Skinner* v. *State*, 956 S. W. 2d 532, 535 (Tex. Crim. App. 1997). A neighbor related at a federal postconviction hearing that she observed Donnell, a day or two after the murders, thoroughly cleaning the carpets and inside of his pickup truck. See *Skinner* v. *Quarterman*, 528 F. 3d 336, 345 (CA5 2008).

Investigators also retained vaginal swabs taken from Busby.

In preparation for trial, "the State tested the blood on [Skinner's] clothing, blood and hair from a blanket that partially covered one of the victims, and hairs on one of the victim's back and cheeks." *Skinner* v. *State*, 122 S. W. 3d 808, 810 (Tex. Crim. App. 2003). The State also tested n-gerprint evidence. Some of this evidence—including bloody palm prints in the room where one victim was killed—implicated Skinner, but " ngerprints on a bag containing one of the knives" did not. *Ibid.* Items left untested included the knives found on the premises, the axe handle, vaginal swabs, ngernail clippings, and additional hair samples. See *ibid.*[2]

In the decade following his conviction, Skinner unsuccessfully sought state and federal postconviction relief. See *Skinner* v. *Quarterman*, 576 F. 3d 214 (CA5 2009), cert. denied, 559 U. S. 975 (2010). He also pursued informal efforts to gain access to untested biological evidence the police had collected at the scene of the crime.[3]

In 2001, more than six years after Skinner's conviction, Texas enacted Article 64, a statute allowing prisoners to gain postconviction DNA testing in limited circumstances. Tex. Code Crim. Proc. Ann., Art. 64.01(a) (Vernon Supp. 2010). To obtain DNA testing under Article 64, a prisoner must meet one of two threshold criteria. He may show that, at trial, testing either was "not available" or was "available, but

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[2] After Skinner's conviction, the State performed DNA tests on certain additional materials, but Skinner took no part in the selection of those materials or their testing. Skinner maintains that these *ex parte* tests were inconclusive. See Complaint ¶ 19, App. 12 (this "testing raised more questions than it answered"). But see *Skinner* v. *State*, 122 S. W. 3d 808, 811 (Tex. Crim. App. 2003) (some ndings were "inculpatory").

[3] Skinner's trial counsel, although aware that biological evidence remained untested, did not request further testing. Postconviction, Skinner sought DNA testing of vaginal swabs and ngernail clippings taken from Busby, blood and hairs on a jacket found next to Busby's body, and biological material on knives and a dish towel recovered at the crime scene. Complaint ¶ 22, App. 14–15.

not technologically capable of providing probative results." Art. 64.01(b)(1)(A). Alternatively, he may show that the evidence was not previously tested "through no fault" on his part, and that "the interests of justice" require a postconviction order for testing. Art. 64.01(b)(1)(B). To grant a motion for postconviction testing, a court must make further findings, prime among them, the movant "would not have been convicted if exculpatory results had been obtained through DNA testing," and "the [Article 64] request . . . [was] not made to unreasonably delay the execution of sentence or administration of justice." Art. 64.03(a)(2).

Invoking Article 64, Skinner twice moved in state court, first in 2001 and again in 2007, for DNA testing of yet untested biological evidence. See *supra*, at 527, n. 3. Both motions were denied. Affirming the denial of Skinner's first motion, the CCA held that he had failed to demonstrate a "reasonable probability . . . that he would not have been . . . convicted if the DNA test results were exculpatory." *Skinner* v. *State*, 122 S. W. 3d, at 813.

Skinner's second motion was bolstered by discovery he had obtained in the interim.[4] The CCA again affirmed the denial of relief under Article 64, this time on the ground that Skinner failed to meet the "no fault" requirement. See *Skinner* v. *State*, 293 S. W. 3d 196, 200 (2009).[5] During postconviction proceedings, the CCA noted, trial counsel testified that he had not "ask[ed] for testing because he was afraid the

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[4] On the basis of discovery in a federal postconviction proceeding, an expert retained by Skinner concluded that Skinner, Busby, and her two sons could be excluded as sources of a hair collected from Busby's right hand after the killings. See Record 190. See also Complaint ¶ 27, App. 18.

[5] The District Attorney, in response to Skinner's second motion, informed the Texas District Court that "[t]o the best of the State's information, knowledge, and belief, the items sought to be tested are still available for testing, the chain of custody is intact, and the items are in a condition to be tested although the State has not sought expert opinion in that regard." Record 202. See also Complaint ¶ 29, App. 19.

DNA would turn out to be [Skinner's]." *Id.*, at 202. That decision, the CCA concluded, constituted "a reasonable trial strategy" that the court had no cause to second-guess. *Id.*, at 209.

Skinner next filed the instant federal action for injunctive relief under § 1983, naming as defendant respondent Lynn Switzer, the District Attorney whose office prosecuted Skinner and has custody of the evidence Skinner would like to have DNA tested. Skinner's federal-court complaint alleged that Texas violated his Fourteenth Amendment right to due process by refusing to provide for the DNA testing he requested. Complaint ¶ 33, App. 20–21. The Magistrate Judge recommended dismissal of the complaint for failure to state a claim upon which relief can be granted. App. 24–41. Under the governing Circuit precedent, *Kutzner* v. *Montgomery County*, 303 F. 3d 339, the Magistrate Judge observed, postconviction requests for DNA evidence are cognizable only in habeas corpus, not under § 1983. App. 39. Adopting the Magistrate Judge's recommendation, the District Court dismissed Skinner's suit. *Id.*, at 44–45.

On appeal, the United States Court of Appeals for the Fifth Circuit affirmed, 363 Fed. Appx. 302 (2010) *(per curiam)*, reiterating that "an action by a prisoner for postconviction DNA testing is not cognizable under § 1983 and must instead be brought as a petition for writ of habeas corpus," *id.*, at 303. On Skinner's petition,[6] we granted certiorari, 560 U. S. 924 (2010), and now reverse the Fifth Circuit's judgment.

II

A

Because this case was resolved on a motion to dismiss for failure to state a claim, the question below was "not whether

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[6] The State of Texas scheduled Skinner's execution for March 24, 2010. We granted Skinner's application to stay his execution until further action of this Court. 559 U. S. 1033 (2010).

[Skinner] will ultimately prevail" on his procedural due process claim, see *Scheuer* v. *Rhodes*, 416 U. S. 232, 236 (1974), but whether his complaint was suf cient to cross the federal court's threshold, see *Swierkiewicz* v. *Sorema N. A.*, 534 U. S. 506, 514 (2002). Skinner's complaint is not a model of the careful drafter's art, but under the Federal Rules of Civil Procedure, a complaint need not pin plaintiff's claim for relief to a precise legal theory. Rule 8(a)(2) of the Federal Rules of Civil Procedure generally requires only a plausible "short and plain" statement of the plaintiff's claim, not an exposition of his legal argument. See 5 C. Wright & A. Miller, Federal Practice & Procedure § 1219, pp. 277–278 (3d ed. 2004 and Supp. 2010).

Skinner stated his due process claim in a paragraph alleging that the State's refusal "to release the biological evidence for testing . . . has deprived [him] of his liberty interests in utilizing state procedures to obtain reversal of his conviction and/or to obtain a pardon or reduction of his sentence . . . ." Complaint ¶ 33, App. 20–21. As earlier recounted, see *supra*, at 528–529, Skinner had twice requested and failed to obtain DNA testing under the only state-law procedure then available to him. See Complaint ¶¶ 22–31, App. 14–20.[7] At oral argument in this Court, Skinner's counsel clari ed the gist of Skinner's due process claim: He does not challenge the prosecutor's conduct or the decisions reached by the CCA in applying Article 64 to his motions; instead, he challenges, as denying him procedural due process, Texas' postconviction DNA statute "as construed" by the Texas courts. Tr. of Oral Arg. 56. See also *id.*, at 52–53 (Texas courts, Skinner's counsel argued, have "construed the statute to completely foreclose any prisoner who could have sought DNA testing prior to trial[,] but did not[,] from seeking testing" postconviction).[8]

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[7] He also persistently sought the State's voluntary testing of the materials he identi ed. See Complaint ¶ 31, App. 20.

[8] Unlike the respondent in *District Attorney's Of ce for Third Judicial Dist.* v. *Osborne*, 557 U. S. 52 (2009), who "attempt[ed] to sidestep state

The merits of Skinner's federal-court complaint assailing the Texas statute as authoritatively construed, and particularly the vitality of his claim in light of *Osborne*, see *supra*, at 525—unaddressed by the District Court or the Fifth Circuit—are not ripe for review. We take up here only the questions whether there is federal-court subject-matter jurisdiction over Skinner's complaint, and whether the claim he presses is cognizable under § 1983.

B

Respondent Switzer asserts that Skinner's challenge is "[j]urisdictionally [b]arred" by what has come to be known as the *Rooker-Feldman* doctrine. Brief for Respondent 48–49 (boldface deleted). In line with the courts below, we conclude that *Rooker-Feldman* does not bar Skinner's suit.

As we explained in *Exxon Mobil Corp.* v. *Saudi Basic Industries Corp.*, 544 U. S. 280 (2005), the *Rooker-Feldman* doctrine has been applied by this Court only twice, *i. e.*, only in the two cases from which the doctrine takes its name: first, *Rooker* v. *Fidelity Trust Co.*, 263 U. S. 413 (1923), then 60 years later, *District of Columbia Court of Appeals* v. *Feldman*, 460 U. S. 462 (1983). Both cases fit this pattern: The losing party in state court[9] filed suit in a U. S. District Court after the state proceedings ended, complaining of an injury caused by the state-court judgment and seeking federal-court review and rejection of that judgment. Alleging federal-question jurisdiction, the plaintiffs in *Rooker* and *Feldman* asked the District Court to overturn the injurious state-court judgment. We held, in both cases, that the District Courts lacked subject-matter jurisdiction over such

process through . . . a federal lawsuit," *id.*, at 71, Skinner first resorted to state court, see *supra*, at 528–529. In this respect, Skinner is better positioned to urge in federal court "the inadequacy of the state-law procedures available to him in state postconviction relief." *Osborne*, 557 U. S., at 71.

[9] The judgment assailed in *Feldman* was rendered by the District of Columbia Court of Appeals, equivalent for this purpose to a State's highest court.

claims, for 28 U. S. C. § 1257 "vests authority to review a state court's judgment solely in this Court." See *Exxon*, 544 U. S., at 292.

We observed in *Exxon* that the *Rooker-Feldman* doctrine had been construed by some federal courts "to extend far beyond the contours of the *Rooker* and *Feldman* cases." 544 U. S., at 283. Emphasizing "the narrow ground" occupied by the doctrine, *id.*, at 284, we clari ed in *Exxon* that *Rooker-Feldman* "is con ned to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers . . . inviting district court review and rejection of [the state court's] judgments," 544 U. S., at 284.

Skinner's litigation, in light of *Exxon*, encounters no *Rooker-Feldman* shoal. "If a federal plaintiff 'present[s] [an] independent claim,' " it is not an impediment to the exercise of federal jurisdiction that the "same or a related question" was earlier aired between the parties in state court. 544 U. S., at 292–293 (quoting *GASH Assocs.* v. *Rosemont*, 995 F. 2d 726, 728 (CA7 1993); rst alteration in original); see *In re Smith*, 349 Fed. Appx. 12, 18 (CA6 2009) (Sutton, J., concurring in part and dissenting in part) (a defendant's federal challenge to the adequacy of state-law procedures for postconviction DNA testing is not within the "limited grasp" of *Rooker-Feldman*).

As earlier noted, see *supra*, at 530, Skinner does not challenge the adverse CCA decisions themselves; instead, he targets as unconstitutional the Texas statute they authoritatively construed. As the Court explained in *Feldman*, 460 U. S., at 487, and reiterated in *Exxon*, 544 U. S., at 286, a state-court decision is not reviewable by lower federal courts, but a statute or rule governing the decision may be challenged in a federal action.[10] Skinner's federal case falls

[10] The Court further observed in *Exxon Mobil Corp.* v. *Saudi Basic Industries Corp.*, 544 U. S. 280, 292–293 (2005), that "[w]hen there is parallel state and federal litigation," state preclusion law may become decisive, but "[p]reclusion . . . is not a jurisdictional matter."

within the latter category. There was, therefore, no lack of subject-matter jurisdiction over Skinner's federal suit.[11]

C

When may a state prisoner, complaining of unconstitutional state action, pursue a civil rights claim under § 1983, and when is habeas corpus the prisoner's sole remedy? This Court has several times considered that question. Pathmarking here is *Heck* v. *Humphrey*, 512 U. S. 477 (1994). The plaintiff in that litigation was a state prisoner serving time for manslaughter. He brought a § 1983 action for damages, alleging that he had been unlawfully investigated, arrested, tried, and convicted. Although the complaint in *Heck* sought monetary damages only, not release from confinement, we ruled that the plaintiff could not proceed under § 1983. Any award in his favor, we observed, would "necessarily imply" the invalidity of his conviction. See *id.*, at 487. When "a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence," the Court held, § 1983 is not an available remedy. *Ibid.* "But if . . . the plaintiff's action, even if successful, will *not* demonstrate the invalidity of [his conviction or sentence], the [§ 1983] action should be allowed to proceed . . . ." *Ibid.*

We summarized the relevant case law most recently in *Wilkinson* v. *Dotson*, 544 U. S. 74 (2005). That case involved prisoners who challenged the constitutionality of administrative decisions denying them parole eligibility. They could proceed under § 1983, the Court held, for they sought no "injunction ordering . . . immediate or speedier release into the community," *id.*, at 82, and "a favorable judgment

[11] Switzer asserts that Skinner could have raised his federal claim in the Article 64 proceeding. See Tr. of Oral Arg. 48. Even if that were so, "*Rooker-Feldman* is not simply preclusion by another name," *Lance* v. *Dennis*, 546 U. S. 459, 466 (2006) *(per curiam)*, and questions of preclusion unresolved below are "best left for full airing and decision on remand," *id.*, at 467 (GINSBURG, J., concurring).

[would] not 'necessarily imply the invalidity of [their] conviction[s] or sentence[s],'" *ibid.* (quoting *Heck*, 512 U. S., at 487; rst alteration added).

Measured against our prior holdings, Skinner has properly invoked § 1983. Success in his suit for DNA testing would not "necessarily imply" the invalidity of his conviction. While test results might prove exculpatory, that outcome is hardly inevitable; as earlier observed, see *supra*, at 525, results might prove inconclusive or they might further incriminate Skinner. See *Nelson* v. *Campbell*, 541 U. S. 637, 647 (2004) ("[W]e were careful in *Heck* to stress the importance of the term 'necessarily.'").[12]

Respondent Switzer nevertheless argues, in line with Fifth Circuit precedent, see *Kutzner*, 303 F. 3d, at 341, that Skinner's request for DNA testing must be pursued, if at all, in an application for habeas corpus, not in a § 1983 action. The dissent echoes Switzer's argument. See *post*, at 539. Although Skinner's *immediate* plea is simply for an order requiring DNA testing, his *ultimate* aim, Switzer urges, is to use the test results as a platform for attacking his conviction. It suf ces to point out that Switzer has found no case, nor has the dissent, in which the Court has recognized habeas as the sole remedy, or even an available one, where the relief sought would "neither terminat[e] custody, accelerat[e] the future date of release from custody, nor reduc[e] the level of custody." *Dotson*, 544 U. S., at 86 (SCALIA, J., concurring).

Respondent Switzer and her *amici* forecast that a "vast expansion of federal jurisdiction . . . would ensue" were we to hold that Skinner's complaint can be initiated under § 1983. See Brief for National District Attorneys Association as *Amicus Curiae* 8. In particular, they predict a proliferation of federal civil actions "seeking postconviction discovery of evidence [and] other relief inescapably associ-

[12] The dissent would muddle the clear line *Heck* and *Dotson* drew, and instead would instruct district courts to resort to " rst principles" each time a state prisoner les a § 1983 claim in federal court. *Post*, at 538, 543.

ated with the central questions of guilt or punishment." *Id.*, at 6. These fears, shared by the dissent, *post*, at 542, are unwarranted.[13]

In the Circuits that currently allow § 1983 claims for DNA testing, see *supra*, at 524, no evidence tendered by Switzer shows any litigation ood or even rainfall. The projected toll on federal courts is all the more implausible regarding DNA testing claims, for *Osborne* has rejected substantive due process as a basis for such claims. See *supra*, at 525.

More generally, in the Prison Litigation Reform Act of 1995 (PLRA), 110 Stat. 1321–66, Congress has placed a series of controls on prisoner suits, constraints designed to prevent sportive lings in federal court. See, *e. g.*, PLRA § 803(d) (adding 42 U. S. C. § 1997e to create new procedures and penalties for prisoner lawsuits under § 1983); PLRA § 804(a)(3) (adding 28 U. S. C. § 1915(b)(1) to require any prisoner proceeding *in forma pauperis* to pay the full ling fee out of a percentage of his prison trust account); PLRA § 804(c)(3) (adding 28 U. S. C. § 1915(f) to require prisoners to pay the full amount of any cost assessed against them out of their prison trust account); PLRA § 804(d) (adding 28 U. S. C. § 1915(g) to revoke, with limited exception, *in forma pau peris* privileges for any prisoner who has led three or more

[13] Unlike the parole determinations at issue in *Wilkinson* v. *Dotson*, 544 U. S. 74 (2005), Switzer urges, claims like Skinner's require inquiry into the State's proof at trial and therefore lie at "the core of the criminal proceeding itself." Tr. of Oral Arg. 41; see *id.*, at 33–34. *Dotson* declared, however, in no uncertain terms, that when a prisoner's claim would not "necessarily spell speedier release," that claim does not lie at "the core of habeas corpus," and may be brought, if at all, under § 1983. 544 U. S., at 82 (majority opinion) (internal quotation marks omitted); see *id.*, at 85–86 (SCALIA, J., concurring). Whatever might be said of Switzer's argument were we to recast our doctrine, Switzer's position cannot be reconciled with the line our precedent currently draws. Nor can the dissent's advocacy of a "retur[n] to rst principles." *Post*, at 543. Given the importance of providing clear guidance to the lower courts, "we [again] see no reason for moving the line [our] cases draw." *Dotson*, 544 U. S., at 84.

lawsuits that fail to state a claim, or are malicious or frivolous). See also *Crawford-El* v. *Britton*, 523 U. S. 574, 596–597 (1998) (PLRA aims to "discourage prisoners from ling claims that are unlikely to succeed," and statistics suggest that the Act is "having its intended effect").

Nor do we see any cause for concern that today's ruling will spill over to claims relying on *Brady* v. *Maryland*, 373 U. S. 83 (1963); indeed, Switzer makes no such assertion. *Brady* announced a constitutional requirement addressed rst and foremost to the prosecution's conduct pretrial. *Brady* proscribes withholding evidence "favorable to an accused" and "material to [his] guilt or to punishment." *Cone* v. *Bell*, 556 U. S. 449, 451 (2009). To establish that a *Brady* violation undermines a conviction, a convicted defendant must make each of three showings: (1) the evidence at issue is "favorable to the accused, either because it is exculpatory, or because it is impeaching"; (2) the State suppressed the evidence, "either willfully or inadvertently"; and (3) "prejudice . . . ensued." *Strickler* v. *Greene*, 527 U. S. 263, 281–282 (1999); see *Banks* v. *Dretke*, 540 U. S. 668, 691 (2004).

Unlike DNA testing, which may yield exculpatory, incriminating, or inconclusive results, a *Brady* claim, when successful postconviction, necessarily yields evidence undermining a conviction: *Brady* evidence is, by de nition, always favorable to the defendant and material to his guilt or punishment. See *Strickler*, 527 U. S., at 296. And parties asserting *Brady* violations postconviction generally do seek a judgment qualifying them for "immediate or speedier release" from imprisonment. See *Dotson*, 544 U. S., at 82. Accordingly, *Brady* claims have ranked within the traditional core of habeas corpus and outside the province of § 1983. See *Heck*, 512 U. S., at 479, 490 (claim that prosecutors and an investigator had " 'knowingly destroyed' evidence 'which was exculpatory in nature and could have proved [petitioner's] innocence' " cannot be maintained under § 1983); *Amaker* v.

Weiner, 179 F. 3d 48, 51 (CA2 1999) ("claim [that] sounds under *Brady* v. *Maryland* . . . does indeed call into question the validity of [the] conviction"); *Beck* v. *Muskogee Police Dept.*, 195 F. 3d 553, 560 (CA10 1999) (same).

III

Finally, Switzer presents several reasons why Skinner's complaint should fail for lack of merit. Those arguments, unaddressed by the courts below, are ripe for consideration on remand. "[M]indful that we are a court of review, not of first view," *Cutter* v. *Wilkinson*, 544 U. S. 709, 718, n. 7 (2005), we confine this opinion to the matter on which we granted certiorari and express no opinion on the ultimate disposition of Skinner's federal action.

* * *

For the reasons stated, the judgment of the Court of Appeals for the Fifth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, with whom JUSTICE KENNEDY and JUSTICE ALITO join, dissenting.

The Court holds that Skinner may bring under 42 U. S. C. § 1983 his "procedural due process" claim challenging "Texas' postconviction DNA statute." *Ante*, at 530. I disagree.[1] I accept the majority's characterization of the issue here as

[1] I adopt the majority's view that Skinner has alleged a violation of procedural due process despite the fact that his complaint is more naturally read as alleging a violation of *substantive* due process. I also ignore the questionable premise that the requested relief—DNA testing—would be available in a procedural due process challenge. Compare *Wilkinson* v. *Dotson*, 544 U. S. 74, 77 (2005) (seeking "a new parole hearing conducted under constitutionally proper procedures"), with *Osborne*, 557 U. S., at 78, n. 1 (ALITO, J., concurring) (distinguishing *Dotson* because Osborne sought "'exculpatory' evidence").

the question left open in *District Attorney's Office for Third Judicial Dist.* v. *Osborne*, 557 U. S. 52 (2009), *ante*, at 524, where a prisoner challenged the constitutional adequacy of the access to DNA evidence provided by Alaska's "general postconviction relief statute," 557 U. S., at 64. Like Osborne, Skinner seeks to challenge state collateral review procedures.[2] I would now hold that these claims are not cognizable under § 1983.

I

The Court has recognized that § 1983 does not reach to the full extent of its "broad language." *Preiser* v. *Rodriguez*, 411 U. S. 475, 489 (1973); see, *e. g.*, *Heck* v. *Humphrey*, 512 U. S. 477, 485 (1994) (§ 1983 should not "expand opportunities for collateral attack"). But this Court has never purported to fully circumscribe the boundaries of § 1983. Cf. *id.*, at 482. Rather, we have evaluated each claim as it has come before us, reasoning from first principles and our prior decisions.

In *Preiser* v. *Rodriguez*, the Court began with the undisputed proposition that a state prisoner may not use § 1983 to

[2] Skinner challenges Texas' Article 64, Tex. Code Crim. Proc. Ann., Art. 64.01 *et seq.* (Vernon 2006 and Supp. 2010), which provides for postconviction discovery of DNA evidence that can then be used in a state habeas proceeding to challenge the validity of a conviction. See *Ard* v. *State*, 191 S. W. 3d 342, 344 (Tex. App. 2006). Article 64 does not itself "provide a vehicle for obtaining relief," *Ex parte Tuley*, 109 S. W. 3d 388, 391 (Tex. Crim. App. 2002), but rather is by design and by nature part of Texas' collateral review procedures. See Reply Brief for Petitioner 8 ("Because [Article 64] does not give the convicting court authority to overturn a conviction, the prisoner still must bring a habeas proceeding to challenge the conviction").

Although Article 64 is, for the purposes of Skinner's due process challenge, part of the state collateral review process, I do not suggest that a motion under Article 64 is an "application for . . . collateral review" under 28 U. S. C. § 2244(d)(2). See *Wall* v. *Kholi*, *post*, at 556, n. 4 (noting that an application for review must "provide a state court with authority to order relief from a judgment"). Texas has divided postconviction discovery of DNA evidence and the application for state habeas into separate proceedings, but both remain parts of the State's collateral review process.

"challeng[e] his underlying conviction and sentence on federal constitutional grounds." 411 U. S., at 489. This included attacks on the trial procedures. See *id.*, at 486 ("den[ial] [of] constitutional rights at trial"). From there, the Court reasoned that "immediate release from [physical] confinement or the shortening of its duration" also cannot be sought under § 1983. *Id.*, at 489; see also *Wolff* v. *McDonnell*, 418 U. S. 539 (1974) (refusing to allow a § 1983 suit for restoration of good-time credits); *Edwards* v. *Balisok*, 520 U. S. 641 (1997) (refusing to allow a § 1983 procedural challenge to the process used to revoke good-time credits). Then, in *Heck* v. *Humphrey*, we addressed § 1983 actions seeking damages. 512 U. S., at 483. Determining that such actions were not covered by *Preiser*, we returned to "the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments," 512 U. S., at 486, and concluded that a complaint must be dismissed where "a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence," *id.*, at 487. Most recently, in *Wilkinson* v. *Dotson*, 544 U. S. 74, 82 (2005), we applied the principles from these prior decisions and found cognizable under § 1983 a claim that sought to "render invalid the state procedures used to deny parole eligibility . . . and parole suitability."

II

We have not previously addressed whether due process challenges to state collateral review procedures may be brought under § 1983, and I would hold that they may not. Challenges to all state procedures for reviewing the validity of a conviction should be treated the same as challenges to state trial procedures, which we have already recognized may not be brought under § 1983. Moreover, allowing such challenges under § 1983 would undermine Congress' strict limitations on federal review of state habeas decisions. If cognizable at all, Skinner's claim sounds in habeas corpus.

First, for the purposes of the Due Process Clause, the process of law for the deprivation of liberty comprises all procedures—including collateral review procedures—that establish and review the validity of a conviction. This has long been recognized for direct appellate review:

> "And while the Fourteenth Amendment does not require that a State shall provide for an appellate review in criminal cases, it is perfectly obvious that where such an appeal is provided for, and the prisoner has had the bene t of it, the proceedings in the appellate tribunal are to be regarded as part of the process of law under which he is held in custody by the State, and to be considered in determining any question of alleged deprivation of his life or liberty contrary to the Fourteenth Amendment." *Frank* v. *Mangum*, 237 U. S. 309, 327 (1915) (citations omitted).

Similarly, although a State is not required to provide procedures for postconviction review, it seems clear that when state collateral review procedures are provided for, they too are part of the "process of law under which [a prisoner] is held in custody by the State." *Ibid.* As this Court has explained, when considering whether the State has provided all the process that is due in depriving an individual of life, liberty, or property, we must look at both pre- and post-deprivation process. See *Cleveland Bd. of Ed.* v. *Loudermill*, 470 U. S. 532, 547, n. 12 (1985) ("[T]he existence of post-termination procedures is relevant to the necessary scope of pretermination procedures"); see also *National Pri vate Truck Council, Inc.* v. *Oklahoma Tax Comm'n*, 515 U. S. 582, 587 (1995); *Mathews* v. *Eldridge*, 424 U. S. 319, 349 (1976). There is no principled reason this Court should refuse to allow § 1983 suits to challenge part of this process—the trial proceedings—but bless the use of § 1983 to challenge other parts.

Collateral review procedures are, of course, "not part of the criminal proceeding itself." *Pennsylvania* v. *Finley*, 481 U. S. 551, 557 (1987). But like trial and direct appellate procedures, they concern the validity of the conviction. Trial procedures are used to initially convict a prisoner; appellate procedures review the validity of that conviction before it becomes final; and collateral review procedures permit challenge to the conviction after it is final. For purposes of deciding which claims fall within the bounds of § 1983, I think it makes sense to treat similarly all constitutional challenges to procedures concerning the validity of a conviction. See *Heck*, *supra*, at 491 (THOMAS, J., concurring) ("[I]t is proper for the Court to devise limitations aimed at ameliorating the conflict [between habeas and § 1983], provided that it does so in a principled fashion").

Second, "principles of federalism and comity [are] at stake" when federal courts review state collateral review procedures, just as when they review state trial procedures. *Osborne*, 557 U. S., at 76 (ALITO, J., concurring). An attack in federal court on any "state judicial action" concerning a state conviction must proceed with "proper respect for state functions," because the federal courts are being asked to "tr[y] the regularity of proceedings had in courts of coordinate jurisdiction." *Preiser*, 411 U. S., at 491 (internal quotation marks and emphasis omitted).

Because of these concerns for federal-state comity, Congress has strictly limited the procedures for federal habeas challenges to state convictions and state habeas decisions. Congress requires that before a state prisoner may seek relief in federal court, he must "exhaus[t] the remedies available in the courts of the State." 28 U. S. C. § 2254(b)(1)(A). And state habeas determinations receive significant deference in subsequent federal habeas proceedings. § 2254(d). These requirements ensure that the state courts have the first opportunity to correct any error with a state conviction

and that their rulings receive due respect in subsequent federal challenges.

By bringing a procedural challenge under § 1983, Skinner undermines these restrictions. For example, Skinner has never presented his current challenge to Texas' procedures for postconviction relief to the Texas courts. Allowing Skinner to artfully plead an attack on state habeas *proce dures* instead of an attack on state habeas *results* undercuts the restrictions Congress and this Court have placed on federal review of state convictions. See *Osborne*, *supra*, at 76–79 (ALITO, J., concurring). To allege that the Texas courts erred in denying him relief on collateral review, Skinner could only le a federal habeas petition, with its accompanying procedural restrictions and deferential review. But a successful challenge to Texas' collateral review procedures under § 1983 would impeach the result of collateral review without complying with any of the restrictions for relief in federal habeas.

The majority contends that its decision will not "spill over to claims relying on *Brady* v. *Maryland*, 373 U. S. 83 (1963)." *Ante*, at 536; but cf. *Osborne*, *supra*, at 77–78 (ALITO, J., concurring). In truth, the majority provides a roadmap for any unsuccessful state habeas petitioner to relitigate his claim under § 1983: After state habeas is denied, le a § 1983 suit challenging the state habeas process rather than the result. What prisoner would not avail himself of this additional bite at the apple?[3]

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[3] Nor is there any reason to believe that the Court's holding will be cabined to collateral review procedures. The Court does not discuss whether a State's direct review process may be subject to challenge under § 1983, but it suggests no principled distinction between direct and collateral review. This risks transforming § 1983 into a vehicle for direct criminal appeals. Cf. *Heck* v. *Humphrey*, 512 U. S. 477, 486 (1994). Just as any unsuccessful state habeas petitioner will now resort to § 1983 and challenge state collateral review procedures, so, too, will unsuccessful appellants turn to § 1983 to challenge the state appellate procedures.

III

The majority relies on *Dotson* to reach its conclusion. In that case, the plaintiffs alleged due process violations in state parole adjudications and sought injunctive relief and "a new parole hearing conducted under constitutionally proper procedures." 544 U. S., at 77. We found the claims cognizable under § 1983.

Dotson does not control this case. Unlike state collateral review, parole does not evaluate the validity of the underlying state conviction or sentence. Collateral review permits prisoners to "attack their final convictions." *Osborne*, *supra*, at 76 (ALITO, J., concurring). In contrast, parole may provide release, but whether or not a prisoner is paroled in no way relates to the validity of the underlying conviction or sentence. Whatever the correctness of *Dotson*, parole procedures do not review the validity of a conviction or sentence. For that reason, permitting review of parole procedures does not similarly risk transforming § 1983 into a vehicle for "challenging the validity of outstanding criminal judgments." *Heck*, 512 U. S., at 486.

Contrary to the majority's contention, *Dotson* did not reduce the question whether a claim is cognizable under § 1983 to a single inquiry into whether the prisoner's claim would "necessarily spell speedier release." See *ante*, at 533–535, and n. 13 (internal quotation marks omitted).[4] As we recognized in *Heck*, evaluating the boundaries of § 1983 is not a narrow, mechanical inquiry. Even when the relief sought was not "speedier release," we inquired further and returned to first principles to determine that the challenge in that case

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[4] Because parole procedures are unrelated to the validity of a conviction, a "necessarily spell speedier release" test may sufficiently summarize the analysis of § 1983 challenges to parole procedures. But "necessarily spell speedier release" cannot be the only limit when a prisoner challenges procedures used to review the validity of the underlying conviction.

was not cognizable under § 1983.[5] See 512 U. S., at 486. *Dotson* does not suggest that the *Heck* approach, which I would continue to follow here, was incorrect.

* * *

This Court has struggled to limit § 1983 and prevent it from intruding into the boundaries of habeas corpus. In crafting these limits, we have recognized that suits seeking "immediate or speedier release" from con nement fall outside its scope. *Dotson*, *supra*, at 82. We found another limit when faced with a civil action in which "a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." *Heck*, *supra*, at 487. This case calls for yet another: due process challenges to state procedures used to review the validity of a conviction or sentence. Under that rule, Skinner's claim is not cognizable under § 1983, and the judgment of the Court of Appeals should be af rmed. I respectfully dissent.

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[5] As respondent argued, our existing formulations are not "the end of the test." Tr. of Oral Arg. 32–33.

Syllabus

WALL, DIRECTOR, RHODE ISLAND DEPARTMENT OF CORRECTIONS *v.* KHOLI

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

No. 09–868. Argued November 29, 2010—Decided March 7, 2011

Respondent was convicted in Rhode Island Superior Court on 10 counts of first-degree sexual assault and sentenced to consecutive life terms. His conviction became final on direct review on May 29, 1996. In addition to his direct appeal, he filed two relevant state motions. One, a May 16, 1996, motion to reduce his sentence under Rhode Island Superior Court Rule of Criminal Procedure 35, was denied. The State Supreme Court affirmed on January 16, 1998. The second, a state post-conviction relief motion, was also denied. That decision was affirmed on December 14, 2006. When respondent filed his federal habeas petition, his conviction had been final for over 11 years. The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) generally requires a federal petition to be filed within one year of the date on which a judgment became final, 28 U. S. C. § 2244(d)(1)(A), but "a properly filed application for State post-conviction or other collateral review" tolls that period, § 2244(d)(2). Respondent's postconviction relief motion tolled the period for over nine years, but his Rule 35 motion must also trigger the tolling provision for his habeas petition to be timely. The District Court dismissed the petition as untimely, adopting the Magistrate Judge's conclusion that the Rule 35 motion was not "a properly filed application for . . . collateral review" under § 2244(d)(2). The First Circuit reversed.

Held:

1. The phrase "collateral review" in § 2244(d)(2) means judicial review of a judgment in a proceeding that is not part of direct review. Pp. 550–553.

(a) The parties agree that the answer to the question whether a motion to reduce sentence is an "application for State post-conviction or other collateral review" turns on the meaning of "collateral review," but they disagree about what that meaning should be. Pp. 550–551.

(b) Because "collateral review" is not defined in AEDPA, the Court begins with the ordinary understanding of that phrase. By definition, "collateral" describes something that is "indirect," not direct. 3 Oxford English Dictionary 473. This suggests that "collateral" review is not part of direct review. This conclusion is supported by the definition of

the related phrase "collateral attack" and by the Court's prior use of the term "collateral" to describe proceedings that are separate from the direct review process. Pp. 551–553.

(c) The term "review" is best understood as a "judicial reexamination." Webster's Third New International Dictionary 1944. P. 553.

2. A Rule 35 motion to reduce sentence under Rhode Island law is an application for "collateral review" that triggers AEDPA's tolling provision. Pp. 553–560.

(a) Rhode Island's Rule 35 is similar to the version of Federal Rule of Criminal Procedure 35 in effect before the federal Sentencing Reform Act of 1984. The Rule permits a court to provide relief, as relevant here, to "reduce any sentence," and it is generally addressed to the sound discretion of the sentencing justice. Under the limited review available, an appellate court may disturb the trial justice's decision if the sentence imposed is without justification and is grossly disparate when compared to sentences for similar offenses. Pp. 553–554.

(b) Keeping these principles in mind, a Rule 35 sentence reduction proceeding is "collateral." The parties agree that the motion is not part of the direct review process, and both this Court and lower federal courts have described a motion to reduce sentence under old Federal Rule 35 as invoking a "collateral" remedy. Therefore, it is not difficult to conclude that Rhode Island's motion to reduce sentence is "collateral." A Rule 35 motion also calls for "review" of the sentence within § 2244(d)(2)'s meaning. The decision to reduce a sentence involves judicial reexamination of the sentence to determine whether a more lenient sentence is proper. The trial justice is guided by several sentencing factors in making that decision. And those factors are also used by the State Supreme Court in evaluating the trial justice's justifications for the sentence. Pp. 554–556.

(c) Rhode Island's arguments in support of its opposing view that "collateral review" includes only "legal" challenges to a conviction or sentence, and thus excludes motions for a discretionary sentence reduction, are unpersuasive. Nor does "collateral review" turn on whether a motion is part of the same criminal case. Pp. 557–560.

582 F. 3d 147, affirmed.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined, and in which SCALIA, J., joined, except as to footnote 3. SCALIA, J., filed an opinion concurring in part, *post,* p. 561.

Aaron L. Weisman, Assistant Attorney General of Rhode Island, argued the cause for petitioner. With him on the

briefs were *Patrick C. Lynch*, Attorney General, *Gerald Coyne*, Deputy Attorney General, *Stacey Pires Veroni*, Assistant Attorney General, and *Christopher R. Bush*, Special Assistant Attorney General.

Judith H. Mizner, by appointment of the Court, 561 U. S. 1023, argued the cause for respondent.*

JUSTICE ALITO delivered the opinion of the Court.

Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), "a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim" tolls the 1-year limitation period for filing a federal habeas petition. 28 U. S. C. § 2244(d)(2). The question in this case is whether a motion to reduce sentence under Rhode Island law tolls the limitation period, thereby rendering respondent Khalil Kholi's federal habeas petition timely. We hold that the phrase "collateral review" in § 2244(d)(2) means judicial review of a judgment in a proceeding that is not part of direct review. Because the parties agree that a motion to reduce sentence under Rhode Island law is not part of the direct review process, we hold that respondent's motion tolled the AEDPA lim

*A brief of *amici curiae* urging reversal was filed for the State of Delaware et al. by *Joseph R. Biden III*, Attorney General of Delaware, *Paul R. Wallace*, *Loren C. Meyers*, Special Deputy Attorney General, and *Kevin T. Kane*, Chief State's Attorney of Connecticut, and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *Daniel S. Sullivan* of Alaska, *Terry Goddard* of Arizona, *Dustin McDaniel* of Arkansas, *John W. Suthers* of Colorado, *Bill McCollum* of Florida, *Thurbert E. Baker* of Georgia, *Mark J. Bennett* of Hawaii, *Lawrence G. Wasden* of Idaho, *Lisa Madigan* of Illinois, *Gregory F. Zoeller* of Indiana, *Martha Coakley* of Massachusetts, *Jim Hood* of Mississippi, *Steve Bullock* of Montana, *Jon Bruning* of Nebraska, *Gary King* of New Mexico, *Wayne Stenehjem* of North Dakota, *Richard Cordray* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Henry D. McMaster* of South Carolina, *Marty J. Jackley* of South Dakota, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *Kenneth T. Cuccinelli II* of Virginia, and *Bruce A. Salzburg* of Wyoming.

itation period and that his federal habeas petition was there fore timely.

I

A

In 1993, respondent was convicted in Rhode Island Supe rior Court on 10 counts of rst-degree sexual assault, and he was sentenced to consecutive terms of life imprisonment. Respondent raised various challenges to his conviction on direct appeal, but the Supreme Court of Rhode Island af rmed his conviction. *State* v. *Kholi*, 672 A. 2d 429, 431 (1996). The parties agree that respondent's conviction be came nal on direct review when his time expired for ling a petition for a writ of certiorari in this Court. Brief for Petitioner 7, n. 4; Brief for Respondent 3, n. 1; 582 F. 3d 147, 150 (CA1 2009); see generally *Jimenez* v. *Quarterman*, 555 U. S. 113, 119 (2009). That date was May 29, 1996. See this Court's Rules 13.1, 13.3, 30.1.

In addition to taking a direct appeal, respondent led two state motions that are relevant to our decision. The rst, led on May 16, 1996, was a motion to reduce sentence under Rule 35 of the Rhode Island Superior Court Rules of Crimi nal Procedure.[1] App. 8. In that motion, respondent asked

[1] This Rule provides in relevant part:

"The court may correct an illegal sentence at any time. The court may correct a sentence imposed in an illegal manner and it *may reduce any sentence* when a motion is led within one hundred and twenty (120) days after the sentence is imposed, or within one hundred and twenty (120) days after receipt by the court of a mandate of the Supreme Court of Rhode Island issued upon af rmance of the judgment or dismissal of the appeal, or within one hundred and twenty (120) days after receipt by the court of a mandate or order of the Supreme Court of the United States issued upon af rmance of the judgment, dismissal of the appeal, or denial of a writ of certiorari. The court shall act on the motion within a reason able time, provided that any delay by the court in ruling on the motion shall not prejudice the movant. The court may reduce a sentence, the execution of which has been suspended, upon revocation of probation." R. I. Super. Ct. Rule Crim. Proc. 35(a) (2010) (emphasis added).

the trial court to "reconsider its prior determination" and "order that his life sentences run concurrently." *State* v. *Kholi*, 706 A. 2d 1326 (R. I. 1998) (order). Concluding that "the sentence imposed was appropriate," the hearing justice denied the Rule 35 motion. *Ibid.* On January 16, 1998, the State Supreme Court af rmed and observed that the facts clearly justi ed the sentence. *Id.*, at 1326–1327.

On May 23, 1997, while the Rule 35 motion was pending, respondent also led an application for state postconviction relief, see R. I. Gen. Laws § 10–9.1–1 *et seq.* (Lexis 1997) (ti tled "Post Conviction Remedy"), which challenged his con viction. The trial court denied this motion as well, and the State Supreme Court af rmed that decision on December 14, 2006. *Kholi* v. *Wall*, 911 A. 2d 262, 263–264 (R. I. 2006).

B

Respondent led a federal habeas petition in the District of Rhode Island on September 5, 2007. App. 3. By that time, his conviction had been nal for over 11 years. AEDPA generally requires a federal habeas petition to be led within one year of the date on which the judgment be came nal by the conclusion of direct review. 28 U. S. C. § 2244(d)(1)(A). But the 1-year limitation period is tolled during the pendency of "a properly led application for State post-conviction or other collateral review with respect to the pertinent judgment or claim." § 2244(d)(2).

There is no dispute that respondent's application for post-conviction relief tolled the limitation period for over nine years—from May 23, 1997, through December 14, 2006. 582 F. 3d, at 151. Even after subtracting that stretch of time from the 11-year period, however, the period between the conclusion of direct review and the ling of the federal ha beas petition still exceeds one year. Thus, in order for re spondent's petition to be timely, the Rule 35 motion to reduce sentence must also trigger the tolling provision.

Respondent's federal habeas petition was referred to a Magistrate Judge for a report and recommendation, and the Magistrate Judge concluded that the Rule 35 motion was not a "'properly filed application for post-conviction or other collateral review'" under § 2244(d)(2) because it was "a 'plea of leniency,' and not a motion challenging the legal sufficiency of his sentence." No. CA 07–346S, 2008 WL 60194, *4 (D RI, Jan. 3, 2008). The District Court adopted the Magistrate Judge's report and recommendation and therefore dismissed the federal habeas petition as untimely. See *id.*, at *1. On appeal, the First Circuit reversed. 582 F. 3d 147.

The Courts of Appeals are divided over the question whether a motion to reduce sentence tolls the period of limitation under § 2244(d)(2).[2] We granted certiorari to answer this question with respect to a motion to reduce sentence under Rhode Island law. 560 U. S. 903 (2010).

II

A

AEDPA establishes a 1-year period of limitation for a state prisoner to file a federal application for a writ of habeas corpus. § 2244(d)(1). This period runs "from the latest of" four specified dates, including "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." § 2244(d)(1)(A); see also *Jimenez*, *supra*, at 119 (explaining when "the conclusion of direct review occurs"). The limitation period is tolled, however, during the pendency of "a properly filed application for State post-conviction or other collateral review with respect to the pertinent judg

[2] Compare *Alexander* v. *Secretary, Dept. of Corrections*, 523 F. 3d 1291, 1297 (CA11 2008) (motion to reduce sentence does not toll limitation period); *Hartmann* v. *Carroll*, 492 F. 3d 478, 484 (CA3 2007) (same); *Walkowiak* v. *Haines*, 272 F. 3d 234, 239 (CA4 2001) (same), with 582 F. 3d, at 156 (case below) (motion to reduce sentence tolls); *Robinson* v. *Golder*, 443 F. 3d 718, 720–721 (CA10 2006) *(per curiam)* (same).

ment or claim." § 2244(d)(2). The question in this case is whether a motion for reduction of sentence under Rhode Island's Rule 35 is an "application for State post-conviction or other collateral review."

The parties agree that the answer to this question turns on the meaning of the phrase "collateral review," see Brief for Petitioner 19; Brief for Respondent 12–13, but they disagree about the definition of that term. Rhode Island argues that "collateral review" includes only "legal" challenges to a conviction or sentence and thus excludes motions seeking a discretionary sentence reduction. Respondent, on the other hand, maintains that "collateral review" is "review other than review of a judgment in the direct appeal process" and thus includes motions to reduce sentence. Brief for Respondent 17. We agree with respondent's understanding of "collateral review."

B

"Collateral review" is not defined in AEDPA, and we have never provided a comprehensive definition of that term. See *Duncan* v. *Walker*, 533 U. S. 167, 175–178 (2001). We therefore begin by considering the ordinary understanding of the phrase "collateral review." See *Williams* v. *Taylor*, 529 U. S. 420, 431 (2000) ("We give the words of a statute their ordinary, contemporary, common meaning, absent an indication Congress intended them to bear some different import" (internal quotation marks omitted)); see also *Carey* v. *Saffold*, 536 U. S. 214, 219 (2002) (considering the ordinary meaning of the word "pending" in § 2244(d)(2)).

The term "collateral," in its "customary and preferred sense," *Williams*, *supra*, at 431, means "[l]ying aside from the main subject, line of action, issue, purpose, etc.; . . . subordinate, indirect," 3 Oxford English Dictionary 473 (2d ed. 1989) (hereinafter OED); see also Webster's Third New International Dictionary 444 (1993) (hereinafter Webster's) ("accompanying as . . . secondary," "indirect," or "ancillary"). By definition, something that is "collateral" is "indirect," not

direct. 3 OED 473. This suggests that "collateral" review is review that is "[l]ying aside from the main" review, *i. e.*, that is not part of direct review. *Ibid.*

The de nition of the related phrase "collateral attack" points in the same direction. A "collateral attack" is "[a]n attack on a judgment in a proceeding *other than a direct appeal.*" Black's Law Dictionary 298 (9th ed. 2009) (empha sis added); cf. Wash. Rev. Code § 10.73.090(2) (2008) (de ning "collateral attack" as "any form of postconviction relief other than a direct appeal"). This usage buttresses the conclusion that "collateral review" means a form of review that is not part of the direct appeal process.

C

Our prior usage of the term "collateral" also supports this understanding. We have previously described a variety of proceedings as "collateral," and all of these proceedings share the characteristic that we have identi ed, *i. e.*, they stand apart from the process of direct review.

For example, our cases make it clear that habeas corpus is a form of collateral review. We have used the terms habeas corpus and "collateral review" interchangeably, see, *e. g.*, *Murray* v. *Carrier*, 477 U. S. 478, 482–483 (1986), and it is well accepted that state petitions for habeas corpus toll the limitation period, *e. g.*, *Rhines* v. *Weber*, 544 U. S. 269, 272 (2005) ("[T]he 1-year statute of limitations . . . was tolled while Rhines' state habeas corpus petition was pending").

We have also described *coram nobis* as a means of "collat eral attack," see, *e. g.*, *United States* v. *Morgan*, 346 U. S. 502, 510–511 (1954) (internal quotation marks omitted), and we have used the term "collateral" to describe proceedings under 28 U. S. C. § 2255 and a prior version of Rule 35 of the Federal Rules of Criminal Procedure. In *United States* v. *Robinson*, 361 U. S. 220 (1960), we distinguished between the process of direct appeal and "a number of collateral reme dies," including Federal Rule 35 motions, § 2255 motions, and

coram nobis. *Id.*, at 230, n. 14. Similarly, in *Bartone* v. *United States*, 375 U. S. 52 (1963) *(per curiam)*, we drew a distinction between a "[d]irect attack" on a criminal judgment and "collateral proceedings," such as Rule 35, habeas corpus, and § 2255 proceedings. *Id.*, at 53–54.

All of the proceedings identified in these prior opinions as "collateral" are separate from the direct review process, and thus our prior usage of the term "collateral" buttresses the conclusion that "collateral review" means a form of review that is not direct.

D

Of course, to trigger the tolling provision, a "collateral" proceeding must also involve a form of "review," but the meaning of that term seems clear. "Review" is best understood as an "act of inspecting or examining" or a "judicial reexamination." Webster's 1944; see also Black's, *supra*, at 1434 ("[c]onsideration, inspection, or reexamination of a subject or thing"); 13 OED 831 ("[t]o submit (a decree, act, etc.) to examination or revision"). We thus agree with the First Circuit that "'review' commonly denotes 'a looking over or examination with a view to amendment or improvement.'" 582 F. 3d, at 153 (quoting Webster's 1944 (2002)). Viewed as a whole, then, "collateral review" of a judgment or claim means a judicial reexamination of a judgment or claim in a proceeding outside of the direct review process.

III

We now apply this definition of "collateral review" to a Rule 35 motion to reduce sentence under Rhode Island law.

A

Rule 35 of the Rhode Island Rules of Criminal Procedure is much like the version of Federal Rule of Criminal Procedure 35 that was in force prior to the enactment of the federal Sentencing Reform Act of 1984 and the promulgation of the Federal Sentencing Guidelines. See *State* v. *Byrnes*, 456

A. 2d 742, 744 (R. I. 1983) *(per curiam);* Reporter's Notes following R. I. Super. Ct. Rule Crim. Proc. 35, R. I. Court Rules Ann., p. 620 (Lexis 2010). Under the Rhode Island Rules, a Rule 35 motion permits a court to provide relief from a sentence in three ways: A court "may" "correct an illegal sentence," "correct a sentence imposed in an illegal manner," and "reduce any sentence." R. I. Super. Ct. Rule Crim. Proc. 35(a); see n. 1, *supra.* In this case, respondent led a motion to reduce his sentence, which permits a trial justice to decide "'"on re ection or on the basis of changed circumstances that the sentence originally imposed was, for any reason, unduly severe."'" *State* v. *Ruffner*, 5 A. 3d 864, 867 (R. I. 2010) (quoting *State* v. *Mendoza*, 958 A. 2d 1159, 1161 (R. I. 2008)); see also Reporter's Notes following R. I. Super. Ct. Rule Crim. Proc. 35, R. I. Court Rules Ann., at 620–621. Rhode Island courts have, at times, referred to such a motion as a "'plea for leniency.'" *Ruffner*, *supra*, at 867 (quoting *Mendoza*, *supra*, at 1161).

A Rule 35 motion is made in the Superior Court, and it is generally heard by the same trial justice who sentenced the defendant. *Byrnes*, *supra*, at 745. The Rhode Island Su preme Court has explained that a motion to reduce sentence is "'addressed to the sound discretion of the trial justice'" and that appellate review of the trial justice's decision is lim ited. *Ruffner*, *supra*, at 867 (quoting *Mendoza*, *supra*, at 1161). An appellate court may nevertheless disturb the trial justice's decision "when the trial justice has imposed a sentence that is without justi cation and is grossly disparate from other sentences generally imposed for similar offenses." *Ruffner*, *supra*, at 867 (quoting *State* v. *Coleman*, 984 A. 2d 650, 654 (R. I. 2009); internal quotation marks omitted); see also *Ruffner*, *supra*, at 867 (asking whether trial justice "abuse[d] his discretion").

B

With these principles in mind, we consider whether Rhode Island's Rule 35 motion to reduce sentence is an application for "collateral review."

The first—and the critical—question is whether a Rhode Island Rule 35 sentence reduction proceeding is "collateral." Respondent and Rhode Island agree that such a motion is not part of the direct review process. Moreover, we have previously referred to a motion to reduce sentence under old Rule 35 of the Federal Rules of Criminal Procedure as invoking a "collateral" remedy, see *Robinson*, 361 U. S., at 230, n. 14, and Rhode Island's Rule 35 motion to reduce sentence is "substantially similar" to former Federal Rule 35, *Byrnes*, *supra*, at 744. Lower courts have also referred to Federal Rule 35 sentence reduction motions as "collateral." See, *e. g.*, *Fernandez* v. *United States*, 941 F. 2d 1488, 1492 (CA11 1991) ("Fernandez initiated a collateral attack on his sentence with a Rule 35(b) motion to reduce his sentence" under the old Federal Rule). We thus have little difficulty concluding that a Rhode Island sentence reduction proceeding is "collateral."[3]

Not only is a motion to reduce sentence under Rhode Island law "collateral," but it also undoubtedly calls for "review" of the sentence. The decision to reduce a sentence,

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[3] We can imagine an argument that a Rhode Island Rule 35 proceeding is in fact part of direct review under § 2244(d)(1) because, according to the parties, defendants in Rhode Island cannot raise any challenge to their sentences on direct appeal; instead, they must bring a Rule 35 motion. See, *e. g.*, *State* v. *Day*, 925 A. 2d 962, 985 (R. I. 2007) ("It is well settled in this jurisdiction that a challenge to a criminal sentence must begin with the filing of a [Rule 35] motion . . . . [W]e will not consider the validity or legality of a sentence on direct appeal unless extraordinary circumstances exist" (internal quotation marks omitted)); *State* v. *McManus*, 990 A. 2d 1229, 1238 (R. I. 2010) (refusing to consider Eighth Amendment challenge on direct review because "[t]o challenge a criminal sentence, the defendant must first file a motion to reduce in accordance with Rule 35"); see also *Jimenez* v. *Quarterman*, 555 U. S. 113, 120 (2009). That issue has not been briefed or argued by the parties, however, and we express no opinion as to the merit of such an argument. Even if we were to assume that a Rhode Island Rule 35 motion is part of direct review, our disposition of this case would not change: Respondent's habeas petition still would be timely, because the limitation period would not have begun to run until after the Rule 35 proceedings concluded.

while largely within the discretion of the trial justice, involves judicial reexamination of the sentence to determine whether a more lenient sentence is proper.[4] When ruling on such a motion, a trial justice is guided by several factors, including "(1) the severity of the crime, (2) the defendant's personal, educational, and employment background, (3) the potential for rehabilitation, (4) the element of societal deterrence, and (5) the appropriateness of the punishment." *State* v. *Mollicone*, 746 A. 2d 135, 138 (R. I. 2000) *(per curiam)* (internal quotation marks omitted); see also *Ruffner*, *supra*, at 867; *Coleman*, *supra*, at 655. On appeal from a trial justice's decision on a motion to reduce sentence, the Supreme Court of Rhode Island evaluates the trial justice's justifications in light of the relevant sentencing factors to determine whether a sentence is "without justification" and "grossly disparate from other sentences." *Ruffner*, *supra*, at 867 (internal quotation marks omitted).[5] This process surely qualifies as "review" of a sentence within the meaning of § 2244(d)(2).

We thus hold that a motion to reduce sentence under Rhode Island law is an application for "collateral review" that triggers AEDPA's tolling provision.

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[4] A motion to reduce sentence is unlike a motion for postconviction discovery or a motion for appointment of counsel, which generally are not direct requests for judicial review of a judgment and do not provide a state court with authority to order relief from a judgment.

[5] *E. g.*, *State* v. *Coleman*, 984 A. 2d 650, 657 (R. I. 2009) ("Given these factors, and the trial justice's exhaustive explanation of her reasoning in sentencing Mr. Coleman, we hold it was not an abuse of her discretion to order Mr. Coleman to serve consecutive sentences"); *State* v. *Ferrara*, 818 A. 2d 642, 645 (R. I. 2003) *(per curiam)* ("[M]itigating circumstances clearly are not present in this case"); *State* v. *Rossi*, 771 A. 2d 906, 908 (R. I. 2001) (order) ("Based upon [the court's] review of the record," the sentence "was not excessive and was justified under the circumstances," namely, "the abhorrent conduct of [the] defendant" and "the permissible penalty range" under the statute); *State* v. *Mollicone*, 746 A. 2d 135, 138 (R. I. 2000) *(per curiam)* ("[T]he trial justice was aware of these factors and applied them correctly").

IV

In resisting this interpretation, Rhode Island advances several arguments that we find unpersuasive.

The first of these arguments begins by observing that, whenever our opinions have used the precise phrase "collateral review," the proceeding in question was one challenging the "lawfulness" of a prior judgment, Brief for Petitioner 21–22, such as a § 2254 or § 2255 action, see *id.*, at 25. Rhode Island argues that Congress, in enacting AEDPA, must be presumed to have been aware of this usage and must have intended the phrase to carry this narrow meaning.

This argument reads far too much into these prior references to "collateral review." While our opinions have used the phrase "collateral review" to refer to proceedings that challenge the lawfulness of a prior judgment, we have never suggested that the phrase may properly be used to describe only proceedings of this type. In addition, Rhode Island overlooks opinions describing a motion to reduce sentence as "collateral." *E. g.*, *Robinson*, *supra*, at 230, n. 14; *Fernandez*, *supra*, at 1492; see also 1 D. Wilkes, State Postconviction Remedies and Relief Handbook §§ 1:2, 1:7, pp. 2, 15 (2010) (hereinafter Postconviction Remedies) (characterizing a motion to reduce sentence as a "collateral" or "postconviction" remedy).

In a related argument, Rhode Island notes that several other AEDPA provisions use the term "collateral review" to refer to proceedings that involve a challenge to the lawfulness of a state-court judgment, see 28 U. S. C. §§ 2244(b)(2)(A), (d)(1)(C), 2254(e)(2)(A)(i),[6] and Rhode Island reasons that the phrase "collateral review" in § 2244(d)(2) should be limited to proceedings of this nature. This argument has the same flaw as the argument just discussed. Just because the phrase "collateral review" encompasses pro

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[6] All of these provisions refer to a new rule of constitutional law made retroactively applicable by this Court to "cases on collateral review."

ceedings that challenge the lawfulness of a prior judgment, it does not follow that other proceedings may not also be described as involving "collateral review."

Finally, Rhode Island contends that the purpose of the toll ing provision is to allow a state prisoner to exhaust state remedies and that this purpose is not served when a prison er's state application merely seeks sentencing leniency, a matter that cannot be raised in a federal habeas petition. This argument is based on an excessively narrow under standing of § 2244(d)(2)'s role.

It is certainly true that *a* purpose—and perhaps the chief purpose—of tolling under § 2244(d)(2) is to permit the ex haustion of state remedies, see *Duncan*, 533 U. S., at 178–179, but that is not § 2244(d)(2)'s only role. The tolling provi sion "provides a powerful incentive for litigants to exhaust *all* available state remedies before proceeding in the lower federal courts." *Id.*, at 180 (emphasis added). Tolling the limitation period for all "collateral review" motions provides both litigants and States with an opportunity to resolve ob jections at the state level, potentially obviating the need for a litigant to resort to federal court. If, for example, a liti gant obtains relief on state-law grounds, there may be no need for federal habeas. The same dynamic may be present to a degree with respect to motions that do not challenge the lawfulness of a judgment. If a defendant receives relief in state court, the need for federal habeas review may be nar rowed or even obviated, and this furthers principles of "com ity, nality, and federalism." *Williams*, 529 U. S., at 436.

Rhode Island's interpretation of § 2244(d)(2) would also greatly complicate the work of federal habeas courts. Rhode Island would require those courts to separate motions for a reduced sentence into two categories: those that chal lenge a sentence on legal grounds and those that merely ask for leniency. But this taxonomy is problematic. Even if a jurisdiction allows sentencing judges to exercise a high de gree of discretion in selecting a sentence from within a pre

scribed range, it does not necessarily follow that the judge's choice is insulated from challenge on legal grounds. "[D]iscretionary choices are not left to a court's 'inclination, but to its judgment; and its judgment is to be guided by sound legal principles.'" *Albemarle Paper Co.* v. *Moody*, 422 U. S. 405, 416 (1975) (quoting *United States* v. *Burr*, 25 F. Cas. 30, 35 (No. 14,692d) (CC Va. 1807) (Marshall, C. J.)). If the law of a jurisdiction provides criteria to guide a trial judge's exercise of sentencing discretion, a motion to reduce sentence may argue that a sentence is inconsistent with those criteria. In that sense, the motion argues that the sentence is contrary to sentencing law. See, *e. g.*, *Ruffner*, 5 A. 3d, at 867 ("A trial justice considers a number of factors when determining a fair sentence[,] including the defendant's potential for rehabilitation. The defendant asserts that the trial justice did not consider defendant's participation in rehabilitative programs" (citations omitted)). We do not think that § 2244(d)(2) was meant to require federal habeas courts to draw the sort of difficult distinction that Rhode Island's interpretation would demand.

We also reject the argument that the meaning of the phrase "collateral review" should turn on whether the motion or application that triggers that review is captioned as a part of the criminal case or as a separate proceeding. See *Walkowiak* v. *Haines*, 272 F. 3d 234, 237 (CA4 2001). This interpretation of § 2244(d)(2) would produce confusion and inconsistency.

For one thing, some "collateral" proceedings are often regarded as part of the criminal case. We have said, for example, that a writ of *coram nobis* "is a step in the criminal case and not . . . a separate case and record, the beginning of a separate civil proceeding." *Morgan*, 346 U. S., at 505, n. 4; see also *United States* v. *Denedo*, 556 U. S. 904, 913 (2009) ("[A]n application for the writ is properly viewed as a belated extension of the original proceeding during which the error allegedly transpired"). But we have nonetheless suggested

that *coram nobis* is a means of "collateral attack." *Morgan*, *supra*, at 510–511 (internal quotation marks omitted); see also *Robinson*, 361 U. S., at 230, n. 14. Similarly, a motion under 28 U. S. C. § 2255 (2006 ed., Supp. III) is entered on the docket of the original criminal case and is typically re ferred to the judge who originally presided over the chal lenged proceedings, see § 2255 Rules 3(b), 4(a), but there is no dispute that § 2255 proceedings are "collateral," see, *e. g.*, *Massaro* v. *United States*, 538 U. S. 500, 504 (2003) (describ ing § 2255 proceedings as "collateral"); *Daniels* v. *United States*, 532 U. S. 374, 379 (2001) (same).[7]

Moreover, the methods of ling for postconviction or col lateral review vary among the States. In the District of Columbia and 14 States, the principal postconviction remedy is part of the original case; in other States, it is not. Post-conviction Remedies § 1:3, at 6–7. Given the States' "differ ent forms of collateral review," *Duncan*, 533 U. S., at 177, the application of AEDPA's tolling provision should not turn on such formalities. See *ibid.* ("Congress may have re frained from exclusive reliance on the term 'post-conviction' so as to leave no doubt that the tolling provision applies to all types of state collateral review available after a conviction").

We thus de ne "collateral review" according to its ordi nary meaning: It refers to judicial review that occurs in a proceeding outside of the direct review process.

* * *

For these reasons, the judgment of the Court of Appeals is af rmed.

It is so ordered.

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[7] In other contexts not relevant here, there has been some confusion over whether § 2255 proceedings are civil or criminal in nature. See, *e. g.*, Postconviction Remedies § 3:5, at 251 ("[T]here is a dispute over whether the [§ 2255] motion initiates an independent civil action or, instead, is merely a further step in the criminal prosecution"); 3 C. Wright & S. Wel ling, Federal Practice and Procedure § 622 (4th ed. 2011). We express no opinion on this question.

JUSTICE SCALIA, concurring in part.

The Court holds that the term "collateral review" in 28 U. S. C. § 2244(d)(2) means review that is not direct, *ante*, at 551, and that a motion under Rhode Island's Rule 35 seeks collateral review, *ante*, at 555. Because I agree with those conclusions, I cannot join footnote 3 of the Court's opinion, *ante*, at 555, n. 3, which declines to decide whether a Rule 35 motion seeks direct review.

Syllabus

MILNER *v.* DEPARTMENT OF THE NAVY

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

No. 09–1163. Argued December 1, 2010—Decided March 7, 2011

The Freedom of Information Act (FOIA) requires federal agencies to make Government records available to the public, subject to nine exemptions. This case concerns Exemption 2, which protects from disclosure material "related solely to the internal personnel rules and practices of an agency." 5 U. S. C. § 552(b)(2). This provision replaced an Administrative Procedure Act (APA) exemption for "any matter relating solely to the internal management of an agency," 5 U. S. C. § 1002 (1964 ed.). Congress believed that the "sweep" of the phrase "internal management" had led to excessive withholding, and drafted Exemption 2 "to have a narrower reach." *Department of Air Force* v. *Rose*, 425 U. S. 352, 362–363.

In *Rose*, the Court found that Exemption 2 could not be invoked to withhold Air Force Academy honor and ethics hearing summaries. The exemption, the Court suggested, primarily targets material concerning employee relations or human resources. But the Court stated a possible caveat: That understanding of the provision's coverage governed "at least where the situation is not one where disclosure may risk circumvention of agency regulation." *Id.*, at 369. The D. C. Circuit subsequently converted this caveat into a new de nition of Exemption 2's scope, nding that the exemption also covered any "predominantly internal" materials whose disclosure would "signi cantly ris[k] circumvention of agency regulation or statutes." *Crooker* v. *Bureau of Alcohol, Tobacco & Firearms*, 670 F. 2d 1051, 1056–1057, 1074. Courts now use the term "Low 2" for human resources and employee relations records and "High 2" for records whose disclosure would risk circumvention of the law.

Petitioner Milner submitted FOIA requests for explosives data and maps used by respondent Department of the Navy (Navy or Government) in storing munitions at a naval base in Washington State. Stating that disclosure would threaten the security of the base and surrounding community, the Navy invoked Exemption 2 and refused to release the data. The District Court granted the Navy summary judgment, and the Court of Appeals af rmed, relying on the High 2 interpretation.

Syllabus

Held: Because Exemption 2 encompasses only records relating to em ployee relations and human resources issues, the explosives maps and data requested here do not qualify for withholding under that exemp tion. Pp. 569–581.

(a) Exemption 2 shields only those records relating to "personnel rules and practices." When used as an adjective in this manner, the key statutory word "personnel" refers to human resources matters. For example, a "personnel department" deals with employee problems and interviews applicants for jobs. FOIA Exemption 6 provides an other example, protecting certain "personnel . . . les" from disclosure. § 552(b)(6). "[T]he common and congressional meaning of . . . 'personnel le'" is a le maintained by a human resources of ce collecting personal information about employees, such as examination results and work per formance evaluations. *Rose*, 425 U. S., at 377. Exemption 2 uses "per sonnel" in the exact same way. An agency's "personnel rules and prac tices" all share a critical feature: They concern conditions of employment in federal agencies—such matters as hiring and ring, work rules and discipline, compensation and bene ts. These items currently fall within the so-called Low 2 exemption. And under this Court's construction of the statutory language, Low 2 is all of 2.

FOIA's purpose reinforces this reading. The statute's goal is "broad disclosure," and the exemptions must be "given a narrow compass." *Department of Justice* v. *Tax Analysts*, 492 U. S. 136, 151. A narrow construction stands on especially rm footing with respect to Exemp tion 2, which was intended to hem in the expansive withholding that occurred under the prior APA exemption for "internal management" records.

Exemption 2, as interpreted here, does not reach the requested explo sives information. The data and maps, which calculate and visually portray the magnitude of hypothetical detonations, in no way relate to "personnel rules and practices," as that term is most naturally under stood. Pp. 569–573.

(b) The Government's two alternative readings of Exemption 2 cannot be squared with the statute. Pp. 573–580.

(c) While the Navy has a strong security interest in shielding the explosives data and maps from public disclosure, the Government has other tools at hand to protect such information: FOIA Exemption 1 pre vents access to classi ed documents; Exemption 3 applies to records that any other statute exempts from disclosure; and Exemption 7 protects "information compiled for law enforcement purposes" if its release, *inter alia*, "could reasonably be expected to endanger the life or physical safety of any individual," § 552(b)(7)(F). The Navy's argument that the

575 F. 3d 959, reversed and remanded.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, THOMAS, GINSBURG, ALITO, and SOTOMAYOR, JJ., joined. ALITO, J., led a concurring opinion, *post*, p. 581. BREYER, J., led a dissenting opinion, *post*, p. 585.

David S. Mann argued the cause for petitioner. With him on the briefs were *Michael W. Gendler* and *Brendan W. Donckers.*

Anthony A. Yang argued the cause for respondent. With him on the brief were *Acting Solicitor General Katyal*, *Assistant Attorney General West*, *Deputy Solicitor General Kneedler*, *Leonard Schaitman*, *Howard S. Scher*, *Peter A. Winn*, *J. Page Turney*, and *Judy A. Conlow.**

JUSTICE KAGAN delivered the opinion of the Court.

The Freedom of Information Act (FOIA), 5 U. S. C. § 552, requires federal agencies to make Government records avail able to the public, subject to nine exemptions for speci c categories of material. This case concerns the scope of Ex emption 2, which protects from disclosure material that is "related solely to the internal personnel rules and practices of an agency." § 552(b)(2). Respondent Department of the Navy (Navy or Government) invoked Exemption 2 to deny

*Briefs of *amici curiae* urging reversal were led for Allied Daily Newspapers of Washington et al. by *Katherine A. George;* for Public Citi zen et al. by *Adina H. Rosenbaum* and *Allison M. Zieve;* and for the Reporters Committee for Freedom of the Press et al. by *Lucy A. Dalglish*, *Kevin M. Goldberg*, *David Ardia*, *David M. Giles*, *Peter Scheer*, *Charles D. Tobin*, *Mickey H. Osterreicher*, *René P. Milam*, *Barbara L. Camens*, *Bruce W. Sanford*, *Bruce D. Brown*, *Laurie A. Babinski*, *David S. Bralow*, and *Eric N. Lieberman.*

a FOIA request for data and maps used to help store explosives at a naval base in Washington State. We hold that Exemption 2 does not stretch so far.

I

Congress enacted FOIA to overhaul the public-disclosure section of the Administrative Procedure Act (APA), 5 U. S. C. § 1002 (1964 ed.). That section of the APA "was plagued with vague phrases" and gradually became more "a withholding statute than a disclosure statute." *EPA* v. *Mink*, 410 U. S. 73, 79 (1973). Congress intended FOIA to "permit access to official information long shielded unnecessarily from public view." *Id.*, at 80. FOIA thus mandates that an agency disclose records on request, unless they fall within one of nine exemptions. These exemptions are "explicitly made exclusive," *id.*, at 79, and must be "narrowly construed," *FBI* v. *Abramson*, 456 U. S. 615, 630 (1982).

At issue here is Exemption 2, which shields from compelled disclosure documents "related solely to the internal personnel rules and practices of an agency." § 552(b)(2). Congress enacted Exemption 2 to replace the APA's exemption for "any matter relating solely to the internal management of an agency," 5 U. S. C. § 1002 (1964 ed.). Believing that the "sweep" of the phrase "internal management" had led to excessive withholding, Congress drafted Exemption 2 "to have a narrower reach." *Department of Air Force* v. *Rose*, 425 U. S. 352, 362–363 (1976).

We considered the extent of that reach in *Department of Air Force* v. *Rose*. There, we rejected the Government's invocation of Exemption 2 to withhold case summaries of honor and ethics hearings at the United States Air Force Academy. The exemption, we suggested, primarily targets material concerning employee relations or human resources: "'use of parking facilities or regulations of lunch hours, statements of policy as to sick leave, and the like.'" *Id.*, at 363 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 8 (1965)

(hereinafter S. Rep.)); see *Rose*, 425 U. S., at 367. "[T]he general thrust" of Exemption 2, we explained, "is simply to relieve agencies of the burden of assembling and maintaining [such information] for public inspection." *Id.*, at 369. We concluded that the case summaries did not fall within the exemption because they "d[id] not concern only routine mat ters" of "merely internal signi cance." *Id.*, at 370. But we stated a possible caveat to our interpretation of Exemption 2: That understanding of the provision's coverage governed, we wrote, "at least where the situation is not one where dis closure may risk circumvention of agency regulation." *Id.*, at 369.

In *Crooker* v. *Bureau of Alcohol, Tobacco & Firearms*, 670 F. 2d 1051 (1981) (en banc), the D. C. Circuit converted this caveat into a new de nition of Exemption 2's scope. *Crooker* approved the use of Exemption 2 to shield a manual designed to train Government agents in law enforcement surveillance techniques. The D. C. Circuit noted that it pre viously had understood Exemption 2 to "refe[r] only to 'pay, pensions, vacations, hours of work, lunch hours, parking[,] etc.' " *Id.*, at 1056 (quoting *Jordan* v. *Department of Justice*, 591 F. 2d 753, 763 (1978)). But the court now thought Exemption 2 should also cover any "predominantly internal" materials,[1] *Crooker*, 670 F. 2d, at 1056–1057, whose disclosure would "signi cantly ris[k] circumvention of agency regula tions or statutes," *id.*, at 1074. This construction of Exemp tion 2, the court reasoned, owed from FOIA's "overall de sign," its legislative history, "and even common sense," because Congress could not have meant to "enac[t] a statute

[1] The court adopted the "predominantly internal" standard as a way of implementing the exemption's requirement that materials "relat[e] solely to" an agency's internal personnel rules and practices. The word "solely," the court reasoned, "has to be given the construction, consonant with reasonableness, of 'predominantly' " because otherwise "solely" would con ict with the expansive term "related." 670 F. 2d, at 1056 (some inter nal quotation marks omitted).

whose provisions undermined . . . the effectiveness of law enforcement agencies." *Ibid.*

In the ensuing years, three Courts of Appeals adopted the D. C. Circuit's interpretation of Exemption 2. See 575 F. 3d 959, 965 (CA9 2009) (case below); *Massey* v. *FBI*, 3 F. 3d 620, 622 (CA2 1993); *Kaganove* v. *EPA*, 856 F. 2d 884, 889 (CA7 1988).[2] And that interpretation spawned a new terminology: Courts applying the *Crooker* approach now refer to the "Low 2" exemption when discussing materials concerning human resources and employee relations, and to the "High 2" exemption when assessing records whose disclosure would risk circumvention of the law. See, *e. g.*, 575 F. 3d, at 963; *Schiller* v. *NLRB*, 964 F. 2d 1205, 1208 (CADC 1992). Congress, as well, took notice of the D. C. Circuit's decision, borrowing language from *Crooker* to amend Exemption 7(E) when next enacting revisions to FOIA. The amended version of Exemption 7(E) shields certain "records or information compiled for law enforcement purposes" if their disclosure "could reasonably be expected to risk circumvention of the law." § 552(b)(7)(E); see Freedom of Information Reform Act of 1986, § 1802(a), 100 Stat. 3207–49.

II

The FOIA request at issue here arises from the Navy's operations at Naval Magazine Indian Island, a base in Puget

[2] Three other Courts of Appeals had previously taken a narrower view of Exemption 2's scope, consistent with the interpretation adopted in *Department of Air Force* v. *Rose*, 425 U. S. 352 (1976). See *Cox* v. *Department of Justice*, 576 F. 2d 1302, 1309–1310 (CA8 1978) (concluding that Exemption 2 covers only an agency's internal "housekeeping matters" (internal quotation marks omitted)); *Stokes* v. *Brennan*, 476 F. 2d 699, 703 (CA5 1973) (holding that Exemption 2 "must not be read so broadly as to exempt" an Occupational Safety and Health Administration manual for training compliance officers); *Hawkes* v. *IRS*, 467 F. 2d 787, 797 (CA6 1972) ("[T]he internal practices and policies referred to in [Exemption 2] relate only to . . . employee-employer type concerns"). These Circuits have never revised their understandings of the exemption. See n. 7, *infra.*

Sound, Washington. The Navy keeps weapons, ammunition, and explosives on the island. To aid in the storage and transport of these munitions, the Navy uses data known as Explosive Safety Quantity Distance (ESQD) informa tion. 575 F. 3d, at 962. ESQD information prescribes "minimum separation distances" for explosives and helps the Navy design and construct storage facilities to prevent chain reactions in case of detonation. *Ibid.* The ESQD calculations are often incorporated into specialized maps depicting the effects of hypothetical explosions. See, *e. g.*, App. 52.

In 2003 and 2004, petitioner Glen Milner, a Puget Sound resident, submitted FOIA requests for all ESQD information relating to Indian Island. 575 F. 3d, at 962. The Navy re fused to release the data, stating that disclosure would threaten the security of the base and surrounding commu nity. In support of its decision to withhold the records, the Navy invoked Exemption 2. *Ibid.*[3]

The District Court granted summary judgment to the Navy, and the Court of Appeals af rmed, relying on the High 2 interpretation developed in *Crooker*. 575 F. 3d, at 963. The Court of Appeals explained that the ESQD information "is predominantly used for the internal purpose of instruct ing agency personnel on how to do their jobs." *Id.*, at 968. And disclosure of the material, the court determined, "would risk circumvention of the law" by "point[ing] out the best targets for those bent on wreaking havoc"—for example, "[a] terrorist who wished to hit the most damaging target." *Id.*,

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[3] The Navy also invoked Exemption 7(F), which applies to "records or information compiled for law enforcement purposes, but only to the extent that the production of such . . . records . . . could reasonably be expected to endanger the life or physical safety of any individual." 5 U. S. C. § 552(b)(7)(F). The courts below did not decide whether the Navy could withhold the ESQD data under that exemption. 575 F. 3d 959, 971, n. 8 (CA9 2009); No. CV–06–01301 (WD Wash., Oct. 30, 2007), App. to Pet. for Cert. 4, 25, 2007 WL 3228049, *8.

at 971. The ESQD information, the court concluded, therefore qualified for a High 2 exemption. *Ibid.*

We granted certiorari in light of the Circuit split respecting Exemption 2's meaning, 561 U. S. 1024 (2010), and we now reverse.

III

Our consideration of Exemption 2's scope starts with its text. See, *e. g.*, *Park 'N Fly, Inc.* v. *Dollar Park & Fly, Inc.*, 469 U. S. 189, 194 (1985) ("Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose"). Judicial decisions since FOIA's enactment have analyzed and reanalyzed the meaning of the exemption. But comparatively little attention has focused on the provision's 12 simple words: "related solely to the internal personnel rules and practices of an agency."

The key word in that dozen—the one that most clearly marks the provision's boundaries—is "personnel." When used as an adjective, as it is here to modify "rules and practices," that term refers to human resources matters. "Personnel," in this common parlance, means "the selection, placement, and training of employees and . . . the formulation of policies, procedures, and relations with [or involving] employees or their representatives." Webster's Third New International Dictionary 1687 (1966) (hereinafter Webster's). So, for example, a "personnel department" is "the department of a business firm that deals with problems affecting the employees of the firm and that usually interviews applicants for jobs." Random House Dictionary 1075 (1966) (hereinafter Random House). "Personnel management" is similarly "the phase of management concerned with the engagement and effective utilization of manpower to obtain optimum efficiency of human resources." Webster's 1687. And a "personnel agency" is "an agency for placing employable persons in jobs; employment agency." Random House 1075.

FOIA itself provides an additional example in Exemption 6. See *Ratzlaf* v. *United States*, 510 U. S. 135, 143 (1994) ("A term appearing in several places in a statutory text is generally read the same way each time it appears"). That exemption, just a few short paragraphs down from Exemption 2, protects from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." § 552(b)(6). Here too, the statute uses the term "personnel" as a modifier meaning "human resources." See Tr. of Oral Arg. 32 ("[The Court:] It's [an] H. R. file, right? [The Government:] That's generally true"). As we recognized in *Rose*, "the common and congressional meaning of . . . 'personnel file'" is the file "showing, for example, where [an employee] was born, the names of his parents, where he has lived from time to time, his . . . school records, results of examinations, [and] evaluations of his work performance." 425 U. S., at 377. It is the file typically maintained in the human resources office—otherwise known (to recall an example offered above) as the "personnel department." *Ibid.*

Exemption 2 uses "personnel" in the exact same way. An agency's "personnel rules and practices" are its rules and practices dealing with employee relations or human resources. The D. C. Circuit, in a pre-*Crooker* decision, gave as examples "matters relating to pay, pensions, vacations, hours of work, lunch hours, parking, etc." *Jordan*, 591 F. 2d, at 763; see *supra*, at 566. That "etc." is important; we doubt any court could know enough about the Federal Government's operations to formulate a comprehensive list. But all the rules and practices referenced in Exemption 2 share a critical feature: They concern the conditions of employment in federal agencies—such matters as hiring and firing, work rules and discipline, compensation and benefits.[4] Courts in

[4] Government records also must satisfy the other requirements of Exemption 2 to be exempt from disclosure. Information must "relat[e] solely"—meaning, as usual, "exclusively or only," Random House 1354—to

practice have had little difficulty identifying the records that qualify for withholding under this reading: They are what now commonly fall within the Low 2 exemption. Our construction of the statutory language simply makes clear that Low 2 is all of 2 (and that High 2 is not 2 at all, see *infra*, at 573–577).

The statute's purpose reinforces this understanding of the exemption. We have often noted "the Act's goal of broad disclosure" and insisted that the exemptions be "given a narrow compass." *Department of Justice* v. *Tax Analysts*, 492 U. S. 136, 151 (1989); see *Department of Interior* v. *Klamath Water Users Protective Assn.*, 532 U. S. 1, 7–8 (2001).[5] This practice of "construi[ing] FOIA exemptions narrowly," *Department of Justice* v. *Landano*, 508 U. S. 165, 181 (1993), stands on especially firm footing with respect to Exemption 2. As described earlier, Congress worded that provision to hem in the prior APA exemption for "any matter relating solely to the internal management of an agency," which agencies had used to prevent access to masses of documents. See *Rose*, 425 U. S., at 362. We would ill-serve

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the agency's "personnel rules and practices." And the information must be "internal"; that is, the agency must typically keep the records to itself for its own use. See Webster's 1180 ("internal" means "existing or situated within the limits . . . of something"). An agency's human resources documents will often meet these conditions.

[5] The dissent would reject this longstanding rule of construction in favor of an approach asking courts "to turn Congress' public information objectives into workable agency practice." *Post*, at 592 (opinion of BREYER, J.). But nothing in FOIA either explicitly or implicitly grants courts discretion to expand (or contract) an exemption on this basis. In enacting FOIA, Congress struck the balance it thought right—generally favoring disclosure, subject only to a handful of specified exemptions—and did so across the length and breadth of the Federal Government. See, *e. g.*, *John Doe Agency* v. *John Doe Corp.*, 493 U. S. 146, 152–153 (1989). The judicial role is to enforce that congressionally determined balance rather than, as the dissent suggests, *post*, at 588–589, to assess case by case, department by department, and task by task whether disclosure interferes with good government.

Congress's purpose by construing Exemption 2 to reauthorize the expansive withholding that Congress wanted to halt. Our reading instead gives the exemption the "narrower reach" Congress intended, *id.*, at 363, through the simple device of confining the provision's meaning to its words.

The Government resists giving "personnel" its plain meaning on the ground that Congress, when drafting Exemption 2, considered but chose not to enact language exempting "internal employment rules and practices." Brief for Respondent 30–34, and n. 11 (internal quotation marks omitted). This drafting history, the Navy maintains, proves that Congress did not wish "to limit the Exemption to employment-related matters," *id.*, at 31, even if the adjective "personnel" conveys that meaning in other contexts, *id.*, at 41. But we think the Navy's evidence insufficient: The scant history concerning this word change as easily supports the inference that Congress merely swapped one synonym for another. Cf. *Mead Corp.* v. *Tilley*, 490 U. S. 714, 723 (1989) (noting with respect to the "unexplained disappearance of one word from an unenacted bill" that "mute intermediate legislative maneuvers are not reliable" aids to statutory interpretation (internal quotation marks omitted)). Those of us who make use of legislative history believe that clear evidence of congressional intent may illuminate ambiguous text. We will not take the opposite tack of allowing ambiguous legislative history to muddy clear statutory language.

Exemption 2, as we have construed it, does not reach the ESQD information at issue here. These data and maps calculate and visually portray the magnitude of hypothetical detonations. By no stretch of imagination do they relate to "personnel rules and practices," as that term is most naturally understood. They concern the physical rules governing explosives, not the workplace rules governing sailors; they address the handling of dangerous materials, not the treatment of employees. The Navy therefore may not use Exemption 2, interpreted in accord with its plain meaning to

cover human resources matters, to prevent disclosure of the requested maps and data.

IV

The Government offers two alternative readings of Exemption 2 to support withholding the ESQD information. We cannot square either with the statute.

A

The Navy first encourages us to adopt the construction of Exemption 2 pioneered by *Crooker*, which shields material not only if it meets the criteria set out above (Low 2), but also if it is "predominant[ly] interna[l]" and its "disclosure would significantly risk[ ] circumvention of federal agency functions" (High 2). Brief for Respondent 41 (internal quotation marks omitted). The dissent, too, favors this reading of the statute. *Post*, at 585. But the *Crooker* interpretation, as already suggested, suffers from a patent flaw: It is disconnected from Exemption 2's text. The High 2 test (in addition to substituting the word "predominantly" for "solely," see n. 1, *supra*) ignores the plain meaning of the adjective "personnel," see *supra*, at 569–572 and this page, and adopts a circumvention requirement with no basis or referent in Exemption 2's language. Indeed, the only way to arrive at High 2 is by taking a red pen to the statute—"cutting out some" words and "pasting in others" until little of the actual provision remains. *Elliott* v. *Department of Agriculture*, 596 F. 3d 842, 845 (CADC 2010). Because this is so, High 2 is better labeled "Non 2" (and Low 2 . . . just 2).

In support of its text-light approach to the statute, the Government relies primarily on legislative history, placing particular emphasis on the House Report concerning FOIA. See Brief for Respondent 33–38. A statement in that Report buttresses the High 2 understanding of the exemption and, indeed, specifically rejects the Low 2 construction. According to the Report: "Operating rules, guidelines, and manuals of procedure for Government investigators or exam

iners would be exempt from disclosure [under Exemption 2], but this exemption would not cover . . . employee relations and working conditions and routine administrative proce dures." H. R. Rep. No. 1497, 89th Cong., 2d Sess., 10 (1966). But the Senate Report says exactly the opposite, explaining in support of a Low 2 interpretation that the phrase "inter nal personnel rules and practices of an agency" means "rules as to personnel's use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and the like." S. Rep., at 8.[6] In *Rose*, we gave reasons for thinking the Senate Report the more reliable of the two. See 425 U. S., at 366. But the more fundamental point is what we said before: Legislative history, for those who take it into account, is meant to clear up ambiguity, not create it. See *supra*, at 572; *Wong Yang Sung* v. *McGrath*, 339 U. S. 33, 49 (1950) (declining to consult legislative history when that "history is more con icting than the text is ambiguous"). When presented, on the one hand, with clear statutory lan guage and, on the other, with dueling committee reports, we must choose the language.

The Government also advances, in support of *Crooker*'s High 2 approach, an argument based on subsequent legisla tive action. Congress, the Government notes, amended Ex emption 7(E) in 1986 to cover law enforcement records whose production "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." § 552(b)(7)(E). That amendment, the Government contends, codi ed *Crooker*'s "circumvention of the law" standard and, in so doing, rati ed

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[6] We are perplexed that the dissent takes seriously *Crooker*'s notion that the Reports are "'reconcilable.'" *Post*, at 588. To strip the matter to its essentials, the House Report says: "Exemption 2 means A, but not B." The Senate Report says: "Exemption 2 means B." That is the very de nition of "irreconcilable."

Crooker's holding. Brief for Respondent 42–43. The dissent likewise counts as significant that Congress "t[ook] note" of *Crooker* in revising FOIA. *Post*, at 592; see *post*, at 586.

But the Government and the dissent neglect the key feature of the 1986 amendment: Congress modified not Exemption 2 (the subject of *Crooker*), but instead Exemption 7(E). And the *Crooker* construction of Exemption 2 renders Exemption 7(E) superfluous and so deprives that amendment of any effect. See, *e. g., TRW Inc.* v. *Andrews*, 534 U. S. 19, 31 (2001) (noting canon that statutes should be read to avoid making any provision "superfluous, void, or insignificant" (internal quotation marks omitted)). We cannot think of any document eligible for withholding under Exemption 7(E) that the High 2 reading does not capture: The circumvention standard is the same, and the law enforcement records listed in Exemption 7(E) are "predominantly internal." So if Congress had agreed with *Crooker*'s reading of Exemption 2, it would have had no reason to alter Exemption 7(E). In that event, Congress would either have left the statute alone (on the theory that *Crooker* would do the necessary work) or would have amended Exemption 2 specifically to ratify *Crooker*. The decision instead to amend Exemption 7(E) suggests that Congress approved the circumvention standard only as to law enforcement materials, and not as to the wider set of records High 2 covers. Perhaps this legislative action does not show that Congress affirmatively disagreed with *Crooker;* maybe Congress was agnostic about whether the circumvention standard should apply to other records. But one thing is clear: The 1986 amendment does not ratify, approve, or otherwise signal agreement with *Crooker*'s interpretation of Exemption 2. This argument therefore cannot save the High 2 construction.

The dissent offers one last reason to embrace High 2, and indeed stakes most of its wager on this argument. *Crooker*, the dissent asserts, "has been consistently relied upon and followed for 30 years" by other lower courts. *Post*, at 592;

see *post*, at 585–586. But this claim, too, trips at the start ing gate. It would be immaterial even if true, because we have no warrant to ignore clear statutory language on the ground that other courts have done so. And in any event, it is not true. Prior to *Crooker*, three Circuits adopted the reading of Exemption 2 we think right, and they have not changed their minds. See n. 2, *supra*.[7] Since *Crooker*, three other Circuits have accepted the High 2 reading. See *supra*, at 567. One Circuit has reserved judgment on the High 2-Low 2 debate. See *Audubon Soc.* v. *United States Forest Serv.*, 104 F. 3d 1201, 1203–1204 (CA10 1997). And the rest have not considered the matter. (No one should think *Crooker* has been extensively discussed or debated in

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[7] The dissent's view that "two of th[ese] Circuits [have] not adher[ed] to their early positions" is incorrect. *Post*, at 586. In *Abraham & Rose, P. L. C.* v. *United States*, 138 F. 3d 1075, 1082 (1998), cited by the dissent, the Sixth Circuit rejected the Government's claim that Exemption 2 shielded records of federal tax lien lings. The court nowhere discussed the High 2 versus Low 2 question at issue here. Its only reference to *Crooker* concerned the part of that decision interpreting "solely" to mean "predominantly." See 138 F. 3d, at 1080; see also n. 1, *supra*. Subse quently, the Sixth Circuit once again held, in *Rugiero* v. *Department of Justice*, 257 F. 3d 534, 549 (2001), that Exemption 2 applies to "routine matters of merely internal signi cance." In *Sladek* v. *Bensinger*, 605 F. 2d 899, 902 (1979), which the dissent also cites, the Fifth Circuit insisted that the Government disclose a Drug Enforcement Administration agent's manual because it "is not the type of trivial rule, such as allocation of parking facilities, that is covered by Exemption 2." In con rming this Low 2 interpretation of the statute, the court acknowledged that another Circuit had embraced the High 2 standard. The court, however, declined to consider this alternative interpretation because it would not have changed the case's outcome. See *ibid.* Finally, the Eighth Circuit's last word on Exemption 2 is clear, and the dissent does not say otherwise. The exemption, according to that most recent Eighth Circuit decision, ap plies "only [to an agency's] housekeeping matters." *Cox*, 576 F. 2d, at 1309–1310 (internal quotation marks omitted). The dissent is surely right to say, *post* at 586, that *Crooker* "has guided nearly every [FOIA] case decided over the last 30 years" in Circuits applying *Crooker;* but that statement does not hold in the Circuits using the Low 2 approach.

the Courts of Appeals. In the past three decades, *Crooker*'s analysis of Exemption 2 has been cited a sum total of ve times in federal appellate decisions outside the D. C. Cir cuit—on average, once every six years.) The result is a 4 to-3 split among the Circuits.[8] We will not out all usual rules of statutory interpretation to take the side of the bare majority.

B

Presumably because *Crooker* so departs from Exemption 2's language, the Government also offers another construc tion, which it says we might adopt "on a clean slate," "based on the plain text . . . alone." Brief for Respondent 15. On this reading, the exemption "encompasses records concern ing an agency's internal rules and practices for its personnel to follow in the discharge of their governmental functions." *Id.*, at 20; see also *id.*, at 13–14 (Exemption 2 "applies gener ally to matters concerning internal rules and practices to guide agency personnel in performing their duties"). Ac cording to the Government, this interpretation makes sense because "the phrase 'personnel rules and practices of an agency' is logically understood to mean an agency's rules and practices *for its personnel.*" *Id.*, at 20 (emphasis added).

But the purported logic in the Government's de nition eludes us. We would not say, in ordinary parlance, that a "personnel le" is any le an employee uses, or that a "per sonnel department" is any department in which an employee

[8] Notably, even those courts approving *Crooker* have disagreed about how to apply High 2. Fault lines include whether the risk of circumven tion must be signi cant, see, *e. g.*, *Hidalgo* v. *FBI*, 541 F. Supp. 2d 250, 253 (DC 2008); Pet. for Cert. 15–16; whether courts should consider the public interest in disclosure when calculating that risk, see, *e. g.*, Dept. of Justice, Guide to the Freedom of Information Act, p. 185 (2009); and whether an agency must regulate the person or entity threatening circumvention; compare, *e. g.*, 575 F. 3d, at 971, with, *e. g.*, *id.*, at 978 (W. Fletcher, J., dissenting). The disagreement is not surprising. Because High 2 is no where evident in the statute, courts lack the normal guideposts for ascer taining its coverage.

serves. No more would we say that a "personnel rule or practice" is any rule or practice that assists an employee in doing her job. The use of the term "personnel" in each of these phrases connotes not that the le or department or practice/rule is *for* personnel, but rather that the le or de partment or practice/rule is *about* personnel—*i. e.*, that it re lates to employee relations or human resources. This case well illustrates the point. The records requested, as earlier noted, are explosives data and maps showing the distances that potential blasts travel. This information no doubt as sists Navy personnel in storing munitions. But that is not to say that the data and maps relate to "personnel rules and practices." No one staring at these charts of explosions and using ordinary language would describe them in this manner.

Indeed, the Government's "clean slate" construction reaches such documents only by stripping the word "person nel" of any real meaning. Under this interpretation, an agency's "internal personnel rules and practices" appears to mean all its internal rules and practices. That is be cause agencies necessarily operate through personnel, and so all their internal rules and practices are for personnel. The modi er "personnel," then, does no modifying work; it does not limit the class of internal rules and practices that Exemption 2 covers. What is most naturally viewed as the provision's key word—the term that ought to de ne its scope—does nothing more than state the truism that in an agency it is "personnel" who follow internal rules and practices.

And this odd reading would produce a sweeping exemp tion, posing the risk that FOIA would become less a disclo sure than "a withholding statute." *Mink*, 410 U. S., at 79. Many documents an agency generates in some way aid em ployees in carrying out their responsibilities. If Exemption 2 were to reach all these records, it would tend to engulf other FOIA exemptions, rendering ineffective the limita tions Congress placed on their application. Exemption 7,

for example, shields records compiled for law enforcement purposes, but only if one of six speci ed criteria is met. § 552(b)(7). Yet on the Government's view, an agency could bypass these restrictions by invoking Exemption 2 whenever law enforcement records guide personnel in performing their duties. Indeed, an agency could use Exemption 2 as an all-purpose back-up provision to withhold sensitive records that do not fall within any of FOIA's more targeted exemptions.[9]

Interpreted in this way, Exemption 2—call it "Super 2" now—would extend, rather than narrow, the APA's former exemption for records relating to the "internal management of an agency." 5 U. S. C. § 1002 (1964 ed.). We doubt that even the "internal management" provision, which Congress thought allowed too much withholding, see *supra*, at 565, would have protected all information that guides employees in the discharge of their duties, including the explosives data and maps in this case. And perhaps needless to say, this reading of Exemption 2 violates the rule favoring narrow

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[9] The dissent asserts that "30 years of experience" with a more expan sive interpretation of the exemption suggests no "seriou[s] interfere[nce] with . . . FOIA's informational objectives." *Post*, at 589–590. But those objectives suffer any time an agency denies a FOIA request based on an improper interpretation of the statute. To give just one example, the U. S. Forest Service has wrongly invoked Exemption 2 on multiple occa sions to withhold information about (of all things) bird nesting sites. See *Audubon Soc.* v. *United States Forest Serv.*, 104 F. 3d 1201, 1203 (CA10 1997); *Maricopa Audubon Soc.* v. *United States Forest Serv.*, 108 F. 3d 1082, 1084 (CA9 1997). And recent statistics raise a concern that federal agencies may too readily use Exemption 2 to refuse disclosure. According to *amicus* Public Citizen, "while reliance on exemptions overall rose 83% from 1998 to 2006, reliance on Exemption 2 rose 344% during that same time period." Brief for Public Citizen et al. 24. In 2009 alone, federal departments cited Exemption 2 more than 72,000 times to prevent access to records. See Brief for Allied Daily Newspapers of Washington et al. as *Amici Curiae* 3. We do not doubt that many of these FOIA denials were appropriate. But we are unable to accept the dissent's unsupported declaration that a sweeping construction of Exemption 2 has not inter fered with Congress's goal of broad disclosure.

construction of FOIA exemptions. See, *e. g.*, *Abramson*, 456 U. S., at 630; *Rose*, 425 U. S., at 361. Super 2 in fact has no basis in the text, context, or purpose of FOIA, and we accordingly reject it.

V

Although we cannot interpret Exemption 2 as the Government proposes, we recognize the strength of the Navy's interest in protecting the ESQD data and maps and other similar information. The Government has informed us that "[p]ublicly disclosing the [ESQD] information would significantly risk undermining the Navy's ability to safely and securely store military ordnance," Brief for Respondent 47, and we have no reason to doubt that representation. The Ninth Circuit similarly cautioned that disclosure of this information could be used to "wrea[k] havoc" and "make catastrophe more likely." 575 F. 3d, at 971. Concerns of this kind—a sense that certain sensitive information *should* be exempt from disclosure—in part led the *Crooker* court to formulate the High 2 standard. See 670 F. 2d, at 1074 (contending that "common sense" supported the High 2 interpretation because Congress would not have wanted FOIA to "undermin[e] . . . the effectiveness of law enforcement agencies"). And we acknowledge that our decision today upsets three decades of agency practice relying on *Crooker*, and therefore may force considerable adjustments.

We also note, however, that the Government has other tools at hand to shield national security information and other sensitive materials. Most notably, Exemption 1 of FOIA prevents access to classified documents. § 552(b)(1); see 575 F. 3d, at 980 (W. Fletcher, J., dissenting) (Exemption 1 is "specifically designed to allow government agencies to withhold information that might jeopardize our national security"). The Government generally may classify material even after receiving a FOIA request, see Exec. Order No. 13526, § 1.7(d), 75 Fed. Reg. 711 (2009); an agency therefore may wait until that time to decide whether the dangers

of disclosure outweigh the costs of classi cation. See Tr. of Oral Arg. 29–30. Exemption 3 also may mitigate the Government's security concerns. That provision applies to records that any other statute exempts from disclosure, § 552(b)(3) (2006 ed., Supp. IV), thus offering Congress an established, streamlined method to authorize the withhold ing of speci c records that FOIA would not otherwise pro tect. And Exemption 7, as already noted, protects "infor mation compiled for law enforcement purposes" that meets one of six criteria, including if its release "could reasonably be expected to endanger the life or physical safety of any individual." § 552(b)(7)(F) (2006 ed.). The Navy argued below that the ESQD data and maps fall within Exemption 7(F), see n. 3, *supra*, and that claim remains open for the Ninth Circuit to address on remand.

If these or other exemptions do not cover records whose release would threaten the Nation's vital interests, the Gov ernment may of course seek relief from Congress. See Tr. of Oral Arg. 48. All we hold today is that Congress has not enacted the FOIA exemption the Government desires. We leave to Congress, as is appropriate, the question whether it should do so.

VI

Exemption 2, consistent with the plain meaning of the term "personnel rules and practices," encompasses only rec ords relating to issues of employee relations and human re sources. The explosives maps and data requested here do not qualify for withholding under that exemption. We therefore reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE ALITO, concurring.

I agree with the Court that the text of Exemption 2 of the Freedom of Information Act of 1966 cannot support the

"High 2" interpretation that courts have adopted and applied over the years. As the Court explains, however, the Government may avail itself of numerous other exemptions, see *ante*, at 580–581—exemptions that may have been overshadowed in recent years by the broad reach of High 2. I write separately to underscore the alternative argument that the Navy raised below, which rested on Exemption 7(F) and which will remain open on remand. See *ante*, at 568, n. 3, 581.

Exemption 7 applies to specific categories of information "compiled for law enforcement purposes." 5 U. S. C. § 552(b)(7). In particular, Exemption 7(F) permits withholding of "records or information compiled for law enforcement purposes" that, if disclosed, "could reasonably be expected to endanger the life or physical safety of any individual." § 552(b)(7)(F). In most cases involving security information, it is not difficult to show that disclosure may "endanger the life or physical safety of any individual." A more difficult question, however, is whether the information is "compiled for law enforcement purposes." See *John Doe Agency* v. *John Doe Corp.*, 493 U. S. 146, 153 (1989) ("Before it may invoke [Exemption 7], the Government has the burden of proving the existence of . . . a compilation for such a purpose"). In my view, this phrase reasonably encompasses information used to fulfill official security and crime prevention duties.

"*Law enforcement purposes.*" The ordinary understanding of law enforcement includes not just the investigation and prosecution of offenses that have already been committed, but also proactive steps designed to prevent criminal activity and to maintain security. A "law enforcement officer" is defined as one "whose duty it is to preserve the peace," Black's Law Dictionary 796 (5th ed. 1979), and fulfilling that duty involves a range of activities. Police on the beat aim to prevent crime from occurring, and they no less carry out "law enforcement purposes" than officers investigating a crime scene. Similarly, a "law-enforcement

agency" is charged with "the apprehension of alleged offend ers *as well as crime detection and prevention.*" R. De Sola, Crime Dictionary 82 (1982) (emphasis added).

Crime prevention and security measures are critical to ef fective law enforcement as we know it. There can be no doubt, for example, that the Secret Service acts with a law enforcement purpose when it protects federal of cials from attack, even though no investigation may be ongoing. Like wise, steps by law enforcement of cers to prevent terrorism surely ful ll "law enforcement purposes." Particularly in recent years, terrorism prevention and national security measures have been recognized as vital to effective law en forcement efforts in our Nation. Indeed, "[a]fter the Sep tember 11th attacks on America," the priorities of the Fed eral Bureau of Investigation "shifted dramatically," and the FBI's "top priority became the prevention of another terror ist attack." Hearings before the Subcommittee on Science, the Departments of State, Justice, and Commerce, and Re lated Agencies of the House Committee on Appropriations, 109th Cong., 2d Sess., pt. 10, p. 232 (2006) (testimony of FBI Director Robert S. Mueller III). Today, "[t]he FBI's num ber one priority continues to be the prevention of terrorist attacks against the United States." Hearing before the Senate Committee on Homeland Security and Governmental Affairs, 111th Cong., 2d Sess., 67 (2010) (statement of Muel ler). If crime prevention and security measures do not serve "law enforcement purposes," then those charged with law enforcement responsibilities have little chance of ful ll ing their duty to preserve the peace.

The context of Exemption 7 con rms that, read naturally, "law enforcement purposes" involve more than just investi gation and prosecution. As Exemption 7's subparagraphs demonstrate, Congress knew how to refer to these narrower activities. See, *e. g.,* § 552(b)(7)(A) (information that "could reasonably be expected to interfere with enforcement pro ceedings"); § 552(b)(7)(E) (information that "would disclose

techniques and procedures for law enforcement investigations or prosecutions"). Congress' decision to use different language to trigger Exemption 7 confirms that the concept of "law enforcement purposes" sweeps in activities beyond investigation and prosecution. See *Sosa* v. *Alvarez-Machain*, 542 U. S. 692, 711, n. 9 (2004) (applying the "usual rule" that "when the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended" (internal quotation marks omitted)).

"*Compiled for law enforcement purposes.*" This Court has given a fairly broad meaning to "compiled" under § 552(b)(7). In *John Doe Agency*, we held that information need not have been originally "compiled for law enforcement purposes" to satisfy Exemption 7's threshold requirement. Rather, "even though . . . documents were put together at an earlier time for a different purpose," they may fall within Exemption 7 if they are later assembled for law enforcement purposes. 493 U. S., at 154–155. For example, documents originally gathered for routine business purposes may fall within Exemption 7 if they are later compiled for use in a criminal investigation. Similarly, federal building plans and related information—which may have been compiled originally for architectural planning or internal purposes—may fall within Exemption 7 if that information is later compiled and given to law enforcement officers for security purposes.

Documents compiled for multiple purposes are not necessarily deprived of Exemption 7's protection. The text of Exemption 7 does not require that the information be compiled *solely* for law enforcement purposes. Cf. § 552(b)(2) ("related solely to the internal personnel rules and practices of an agency"). Therefore, it may be enough that law enforcement purposes are a significant reason for the compilation.

In this case, the Navy has a fair argument that the Explosive Safety Quantity Distance (ESQD) information falls

within Exemption 7(F). The ESQD information, the Navy argues, is used "for the purpose of identifying and address ing security issues" and for the "protection of people and property on the base, as well as in [the] nearby community, from the damage, loss, death, or injury that could occur from an accident or breach of security." Brief for Appellee in No. 07–36056 (CA9), pp. 39–40. If, indeed, the ESQD infor mation was compiled as part of an effort to prevent crimes of terrorism and to maintain security, there is a reasonable argument that the information has been "compiled for law enforcement purposes." § 552(b)(7). Assuming that this threshold requirement is satis ed, the ESQD information may fall comfortably within Exemption 7(F).

JUSTICE BREYER, dissenting.

Justice Stevens has explained that once "a statute has been construed, either by this Court *or by a consistent course of decision by other federal judges* and agencies," it can acquire a clear meaning that this Court should hesitate to change. See *Shearson/American Express Inc.* v. *McMahon*, 482 U. S. 220, 268 (1987) (opinion concurring in part and dissenting in part) (emphasis added). See also *Commissioner* v. *Fink*, 483 U. S. 89, 104 (1987) (Stevens, J., dissent ing); B. Cardozo, The Nature of the Judicial Process 149 (1921). I would apply that principle to this case and accept the 30-year-old decision by the D. C. Circuit in *Crooker* v. *Bureau of Alcohol, Tobacco & Firearms*, 670 F. 2d 1051 (1981) (en banc), as properly stating the law.

For one thing, the *Crooker* decision, joined by 9 of the 10 sitting Circuit Judges, has been consistently followed, or favorably cited, by every Court of Appeals to have consid ered the matter during the past 30 years. See *ibid.* (written by Judge Edwards, and joined by Chief Judge Robinson and Judges Wright, MacKinnon, Robb, Wald, Mikva, and then-Judge Ginsburg, with Judge Tamm concurring in the result and Judge Wilkey dissenting); *Massey* v. *FBI*, 3 F. 3d 620,

622 (CA2 1993); *Kaganove* v. *EPA*, 856 F. 2d 884, 889 (CA7 1988), cert. denied, 488 U. S. 1011 (1989); *Dirksen* v. *Department of Health and Human Servs.*, 803 F. 2d 1456, 1458 (CA9 1986). Three Circuits adopted a different approach in the 1970's *before Crooker was decided*, see *ante*, at 567, n. 2, but I read subsequent decisions in two of those Circuits as not adhering to their early positions. See *Abraham & Rose, P. L. C.* v. *United States*, 138 F. 3d 1075, 1080–1081 (CA6 1998) (nding *Crooker*'s textual analysis "sound and persua sive," and noting that Federal Bureau of Investigation sym bols "used internally to identify con dential sources" may be withheld); *Sladek* v. *Bensinger*, 605 F. 2d 899, 902 (CA5 1979) (expressly reserving judgment on the *Crooker* issue). As for the remaining Circuit, its district courts understand *Crooker* now to apply. See, *e. g.*, *Gavin* v. *SEC*, No. 04–4522, 2007 WL 2454156, *5–*6 (D Minn., Aug. 23, 2007); see also *McQueen* v. *United States*, 264 F. Supp. 2d 502, 528 (SD Tex. 2003), aff'd, 100 Fed. Appx. 964 (CA5 2004) *(per curiam); Tickel* v. *IRS*, No. Civ–1–85–709, 1986 WL 14436, *2–*3 (ED Tenn., Aug. 22, 1986). I recognize that there is reasonable ground for disagreement over the precise status of certain pre-*Crooker* precedents, but the *Crooker* interpretation of Exemption 2 has guided nearly every Freedom of Informa tion Act (FOIA) case decided over the last 30 years. See generally Dept. of Justice, Guide to Freedom of Information Act, pp. 184–206 (2009) (hereinafter FOIA Guide) (identify ing over 100 district court decisions applying the *Crooker* approach, and one appearing to reject it).

Congress, moreover, well aware of *Crooker*, left Exemp tion 2, 5 U. S. C. § 552(b)(2), untouched when it amended the FOIA ve years later. See S. Rep. No. 98–221, p. 25 (1983) (discussing *Crooker*); Freedom of Information Reform Act of 1986, 100 Stat. 3207–48 (amending Exemption 7, 5 U. S. C. § 552(b)(7)).

This Court has found that circumstances of this kind offer signi cant support for retaining an interpretation of a stat

ute that has been settled by the lower courts. See *General Dynamics Land Systems, Inc.* v. *Cline*, 540 U. S. 581, 593–594 (2004); *Evans* v. *United States*, 504 U. S. 255, 268–269 (1992); *Newman-Green, Inc.* v. *Alfonzo-Larrain*, 490 U. S. 826, 833 (1989); *Monessen Southwestern R. Co.* v. *Morgan*, 486 U. S. 330, 338–339 (1988); *Lindahl* v. *Of ce of Personnel Management*, 470 U. S. 768, 781–783 (1985); *Herman & MacLean* v. *Huddleston*, 459 U. S. 375, 385–386 (1983); *Cannon* v. *University of Chicago*, 441 U. S. 677, 702–703 (1979); *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U. S. 723, 731–732 (1975); *Gulf Oil Corp.* v. *Copp Paving Co.*, 419 U. S. 186, 200–201 (1974); *Blau* v. *Lehman*, 368 U. S. 403, 412–413 (1962). See generally W. Eskridge, P. Frickey, & E. Garrett, Cases and Materials on Legislation 1048 (4th ed. 2007) ("[T]he acquiescence rule can also support implicit con gressional rati cation of a uniform line of federal appellate interpretations . . . ").

For another thing, even if the majority's analysis would have persuaded me if written on a blank slate, *Crooker*'s analysis was careful and its holding reasonable. The Court of Appeals examined the statute's language, the legislative history, and the precedent. It recognized that the exemp tion's words (" 'related solely to the internal personnel rules and practices of an agency' ") could easily be read, as the Court reads them today, to refer only to human resources rules and practices. See 670 F. 2d, at 1056–1057. But it also thought that those words could be read more broadly as referring to internal rules or practices that set forth criteria or guidelines for agency personnel to follow in respect to purely internal matters (as long as the information at issue was "not of legitimate public interest"). *Id.*, at 1056, 1057.

The D. C. Circuit agreed with today's Court that the Sen ate Report described the exemption as referring to " 'inter nal personnel' " matters, giving as examples " 'personnel's use of parking facilities . . . sick leave, and the like.' " *Id.*, at 1058–1059 (quoting S. Rep. No. 813, 89th Cong., 1st

Sess., 8 (1965)). But it also noted that the House Report described the exemption as protecting from disclosure "'[o]p erating rules, guidelines, and manuals of procedure for Gov ernment investigators or examiners.'" 670 F. 2d, at 1060 (quoting H. R. Rep. No. 1497, 89th Cong., 2d Sess., 10 (1966)). "[U]pon re ection," it thought the views of the two Houses "reconcilable" if one understood *both* sets of examples as re ferring to internal staff information (both minor personnel matters and staff instruction matters) that the public had no legitimate interest in learning about. 670 F. 2d, at 1065. And it accepted this view in light of its hesitation to "apply individual provisions of the statute woodenly, oblivious to Congress' intention that FOIA not frustrate law enforce ment efforts." *Id.*, at 1066. At the same time it found no other exemption that would protect internal documents in which there is no legitimate public interest in disclosure—a category that includes, say, building plans, safe com binations, computer passwords, evacuation plans, and the like.

After examining in depth the legislative history and rele vant precedent, the court adopted an approach based on a prior opinion by Circuit Judge Leventhal, as well as lan guage used by this Court in *Department of Air Force* v. *Rose*, 425 U. S. 352, 369 (1976). The D. C. Circuit held that a document ts within the literal language of Exemption 2 and is exempt from disclosure *if* (1) it "meets the test of 'predominant internality,'" *i. e.*, the document is "not of legit imate public interest," *and* (2) "disclosure signi cantly risks circumvention of agency regulations or statutes." *Crooker*, *supra*, at 1056, 1074; see also *Rose*, *supra*, at 369 (suggesting that Exemption 2 might apply where "disclosure may risk circumvention of agency regulation"). This test, based upon Congress' broader FOIA objectives and a "common sense" view of what information Congress did and did not want to make available, *Crooker*, *supra*, at 1074, takes the "practical approach" that this Court has "consistently . . . taken" when

interpreting the FOIA, *John Doe Agency* v. *John Doe Corp.*, 493 U. S. 146, 157 (1989).

I would not underestimate the importance of this "practi cal approach." It re ects this Court's longstanding recogni tion that it cannot interpret the FOIA (and the Administra tive Procedure Act (APA) of which it is a part) with the linguistic literalism t for interpretations of the Tax Code. See generally 1 R. Pierce, Administrative Law Treatise § 7.1, p. 413 (4th ed. 2002) ("Judicial interpretation of the malleable language of the APA has produced changes in rulemaking procedure that could be characterized as revolutionary if they had been affected in a day or a year rather than gradu ally over a period of decades"); cf. Sunstein & Vermeule, In terpretation and Institutions, 101 Mich. L. Rev. 885, 917–918, and n. 111 (2003) (observing that Congress "appears to rely on courts for long periods of time" to give meaning to the APA, which justi es interpreting it less formalistically than statutes like "the Internal Revenue Code"). That in large part is because the FOIA (like the APA but unlike the Tax Code) must govern the affairs of a vast Executive Branch with numerous different agencies, bureaus, and departments, performing numerous tasks of many different kinds. Too narrow an interpretation, while working well in the case of one agency, may seriously interfere with congressional ob jectives when applied to another. The D. C. Circuit's answer to this legal problem here was to interpret Exemption 2 in light of Congress' basic effort to achieve a "workable balance between the interests of the public in greater access to infor mation and the needs of the Government to protect certain kinds of information from disclosure." *John Doe Agency*, *supra*, at 157. See also S. Rep. No. 1219, 88th Cong., 2d Sess., 8, 11 (1964) (emphasizing this "workable" balance); S. Rep. No. 813, at 3, 5 (same); H. R. Rep. No. 1497, at 2, 6 (same).

Further, 30 years of experience with *Crooker*'s holding suggests that it has not seriously interfered with the FOIA's

informational objectives, while at the same time it has permitted agencies to withhold much information which, in my view, Congress would not have wanted to force into the public realm. To focus only on the case law, courts have held that that information protected by Exemption 2 includes blueprints for Department of Agriculture buildings that store biological agents, *Elliott* v. *Department of Agriculture*, 518 F. Supp. 2d 217 (DC 2007); documents that would help hackers access National Aeronautics and Space Administration computers, *Knight* v. *NASA*, No. 2:04–cv–2054–MCE–GGH, 2006 WL 3780901, *6 (ED Cal., Dec. 21, 2006); agency credit card numbers, *Judicial Watch, Inc.* v. *Department of Commerce*, 83 F. Supp. 2d 105, 110 (DC 1999); Commodity Futures Trading Commission guidelines for settling cases, *Shumaker, Loop & Kendrick, L. L. P.* v. *Commodity Futures Trading Comm'n*, No. 3:97 CV 7139, 1997 U. S. Dist. LEXIS 23993, *10–*15 (ND Ohio, May 27, 1997); "trigger gures" that alert the Department of Education to possible mismanagement of federal funds, *Wiesenfelder* v. *Riley*, 959 F. Supp. 532, 536 (DC 1997); security plans for the Supreme Court Building and Supreme Court Justices, *Voinche* v. *FBI*, 940 F. Supp. 323, 328–329 (DC 1996); vulnerability assessments of Commerce Department computer security plans, *Schreibman* v. *Department of Commerce*, 785 F. Supp. 164, 165–166 (DC 1991); Bureau of Prisons guidelines for controlling riots and for storing hazardous chemicals, *Miller* v. *Department of Justice*, No. 87–0533, 1989 WL 10598 (DC, Jan. 31, 1989); guidelines for assessing the sensitivity of military programs, *Institute for Policy Studies* v. *Department of Air Force*, 676 F. Supp. 3, 4–5 (DC 1987); and guidelines for processing Medicare reimbursement claims, *Dirksen*, 803 F. 2d, at 1458–1459.

In other Exemption 2 cases, where withholding may seem less reasonable, the courts have ordered disclosure. Cf. *ante*, at 579, n. 9 (citing *Audubon Soc.* v. *United States Forest Serv.*, 104 F. 3d 1201, 1203 (CA10 1997), and *Maricopa Audu-*

bon Soc. v. *United States Forest Serv.*, 108 F. 3d 1082, 1084 (CA9 1997)). See generally FOIA Guide 201, and n. 106 (citing nine decisions applying the *Crooker* approach but nonetheless requiring disclosure).

The majority acknowledges that "our decision today up sets three decades of agency practice relying on *Crooker*, and therefore may force considerable adjustments." *Ante*, at 580. But how are these adjustments to be made? Should the Government rely upon other exemptions to provide the protection it believes necessary? As JUSTICE ALITO notes, Exemption 7 applies where the documents consist of "records or information compiled for law enforcement purposes" and release would, *e. g.*, "disclose techniques and procedures for law enforcement investigations," or "could reasonably be ex pected to endanger the life or physical safety of any individ ual." 5 U. S. C. § 552(b)(7). But what about information that is *not* compiled for law enforcement purposes, such as building plans, computer passwords, credit card numbers, or safe deposit combinations? The Government, which has much experience litigating FOIA cases, warns us that Ex emption 7 "targets only a subset of the important agency functions that may be circumvented." Brief for Respondent 52–53. Today's decision only con rms this point, as the Court's insistence on narrow construction might persuade judges to avoid reading Exemption 7 broadly enough to pro vide *Crooker*-type protection.

The majority suggests that the Government can classify documents that should remain private. *Ante*, at 580–581. See 5 U. S. C. § 552(b)(1) (permitting withholding of material "properly classi ed" as authorized to be "kept secret in the interest of national defense or foreign policy"). But classi cation is at best a partial solution. It takes time. It is subject to its own rules. As the Government points out, it would hinder the sharing of information about Government buildings with " rst responders," such as local re and police departments. Brief for Respondent 53–54. And both Con

gress and the President believe the Nation currently faces a problem of too much, not too little, classi ed material. See Reducing Over-Classi cation Act, 124 Stat. 2648; Exec. Order No. 13526, §§ 1.3(d), 2.1(d), 5.4(d)(10), 3 CFR 298, 299–300, 304, 321 (2009 Comp.). Indeed, Congress recently found:

> "The 9/11 Commission and others have observed that the over-classi cation of information interferes with ac curate, actionable, and timely information sharing, in creases the cost of information security, and needlessly limits stakeholder and public access to information.
>
> "Over-classi cation of information causes considerable confusion regarding what information may be shared with whom, and negatively affects the dissemination of information within the Federal Government and with State, local, and tribal entities, and with the private sec tor." Reducing Over-Classi cation Act, §§ 2(2), (3), 124 Stat. 2648, note following 6 U. S. C. § 124m (2006 ed., Supp. IV).

These legislative findings suggest that it is "over classi cation," not *Crooker*, that poses the more serious threat to the FOIA's public information objectives.

That leaves congressional action. As the Court points out, Congress remains free to correct whatever problems it nds in today's narrowing of Exemption 2. But legislative action takes time; Congress has much to do; and other mat ters, when compared with a FOIA revision, may warrant higher legislative priority. In my view, it is for the courts, through appropriate interpretation, to turn Congress' public information objectives into workable agency practice, and to adhere to such interpretations once they are settled.

That is why: Where the courts have already interpreted Exemption 2, where that interpretation has been consist ently relied upon and followed for 30 years, where Congress has taken note of that interpretation in amending other parts

of the statute, where that interpretation is reasonable, where it has proved practically helpful and achieved commonsense results, where it is consistent with the FOIA's overall statutory goals, where a new and different interpretation raises serious problems of its own, and where that new interpretation would require Congress to act just to preserve a decades-long status quo, I would let sleeping legal dogs lie.

For these reasons, with respect, I dissent.

Per Curiam

FELKNER *v.* JACKSON

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

No. 10–797. Decided March 21, 2011

The State of California charged respondent Jackson with numerous sexual offenses. During jury selection, Jackson argued that the prosecutor excluded two prospective jurors based solely on their race, in violation of *Batson* v. *Kentucky*, 476 U. S. 79. After the prosecutor offered a race-neutral explanation for the strikes, the trial court denied Jackson's claim. Jackson was later convicted. The California Court of Appeal reviewed the trial court's denial of Jackson's *Batson* claim for substantial evidence and affirmed. The Federal District Court denied Jackson's request for habeas relief, concluding that the California appellate court's determination was not "unreasonable" under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U. S. C. § 2254(d)(2). The Ninth Circuit reversed without discussing any specific facts or mentioning the reasoning of the courts that had denied the *Batson* claim.

Held: The Ninth Circuit erred in granting habeas relief. AEDPA "imposes a highly deferential standard for evaluating state-court rulings." *Renico* v. *Lett*, 559 U. S. 766, 773. Here, the trial court credited the prosecutor's race-neutral explanations, and the state appellate court carefully reviewed and upheld those findings. Because that decision was plainly not unreasonable, there was no basis for the Ninth Circuit to reach the opposite conclusion.

Certiorari granted; 389 Fed. Appx. 640, reversed and remanded.

PER CURIAM.

A California jury convicted respondent Steven Frank Jackson of numerous sexual offenses stemming from his attack on a 72-year-old woman who lived in his apartment complex. Jackson raised a *Batson* claim, asserting that the prosecutor exercised peremptory challenges to exclude black prospective jurors on the basis of their race. See *Batson* v. *Kentucky*, 476 U. S. 79 (1986). Two of three black jurors had been struck; the third served on the jury. App. to Pet. for Cert. 49–50.

Jackson's counsel did not object when the prosecutor struck the first of the black jurors, Juror S. Counsel later explained that he did not make a "motion at that time" because he thought the excusal of Juror S "was a close call." After the prosecutor sought to dismiss the second juror, Juror J, Jackson's counsel made the *Batson* motion challenging both strikes. Record in No. 2:07-cv-00555-RJB (ED Cal.), Doc. 29, Lodged Doc. No. 7, pp. 76–77 (hereinafter Document 7).

The prosecutor offered a race-neutral explanation for striking each juror: Juror S had stated that from the ages of 16 to 30 years old, he was frequently stopped by California police officers because—in his view—of his race and age. As the prosecutor put it, "Whether or not he still harbors any animosity is not something I wanted to roll the dice with." *Id.*, at 78; Record in No. 2:07-cv-00555-RJB (ED Cal.), Doc. 29, Lodged Doc. No. 10, pp. 57–58, 98–100 (hereinafter Document 10).

The prosecutor stated that he struck Juror J because she had a master's degree in social work, and had interned at the county jail, "probably in the psych unit as a sociologist of some sort." The prosecutor explained that he dismissed her "based on her educational background," stating that he does not "like to keep social workers." Document 7, at 78–79; Document 10, at 188–189; App. to Pet. for Cert. 49.

Jackson's counsel expressly disagreed only with the prosecutor's explanation for the strike of Juror J, see *id.*, at 22–23, 47, arguing that removing her on the basis of her educational background was " 'itself invidious discrimination.' " The prosecutor responded that he was not aware that social workers were a "protected class." As for Juror S, Jackson's counsel explained that he "let [Juror S] slide" because he anticipated the prosecutor's response and, in any event, he "only need[ed] one to establish the grounds for" a *Batson* motion. After listening to each side's arguments, the trial court denied Jackson's motion. Document 7, at 78–80.

Jackson renewed his *Batson* claim on direct appeal, arguing that a comparative juror analysis revealed that the prosecutor's explanations were pretextual. With respect to Juror S, Jackson argued that a nonblack juror—Juror 8—also had negative experiences with law enforcement but remained on the jury. App. to Pet. for Cert. 47–48. Juror 8 stated during jury selection that he had been stopped while driving in Illinois several years earlier as part of what he believed to be a "scam" by Illinois police targeting drivers with California license plates. Juror 8 also complained that he had been disappointed by the failure of law enforcement officers to investigate the burglary of his car. Document 10, at 26–27, 56–57, 95–97.

With respect to Juror J, Jackson claimed that the prosecutor asked follow-up questions of several white jurors when he was concerned about their educational backgrounds, but struck Juror J without asking her any questions about her degree in social work. App. to Pet. for Cert. 49.

The California Court of Appeal upheld the trial court's denial of the *Batson* motion and affirmed Jackson's convictions. The appellate court explained that "[t]he trial court's ruling on this issue is reviewed for substantial evidence," App. to Pet. for Cert. 43 (internal quotation marks omitted), which the California courts have characterized as equivalent to the "clear error" standard employed by federal courts, see, *e. g.*, *People* v. *Alvarez*, 14 Cal. 4th 155, 196, 926 P. 2d 365, 389 (1996). With respect to whether the prosecutor's stated reasons were pretextual, the court explained that it "give[s] great deference to the trial court's ability to distinguish bona fide reasons from sham excuses." App. to Pet. for Cert. 43.

After comparing Juror S to Juror 8, the court concluded that "Juror 8's negative experience out of state and the car burglary is not comparable to [Juror S's] 14 years of perceived harassment by law enforcement based in part on race." *Id.*, at 48. As for Juror J, the court recognized that the prosecutor's dismissal was based on her social services

background—"a proper race-neutral reason"—and that this explained his different treatment of jurors with "backgrounds in law, bio-chemistry or environmental engineering." *Id.*, at 49. The court also noted that the "prosecutor focused on [Juror J's] internship experience" at the county jail. *Ibid.*

After the California Supreme Court denied Jackson's petition for review, Jackson sought federal habeas relief. The Federal District Court properly recognized that review of Jackson's claim was governed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). That law provides, in pertinent part, that federal habeas relief may not be granted unless the state-court adjudication "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U. S. C. § 2254(d)(2). After considering the State Court of Appeal decision and reviewing the record evidence, the District Court held that the California Court of Appeal's findings were not unreasonable. App. to Pet. for Cert. 24. The District Court therefore denied Jackson's petition.

The Court of Appeals for the Ninth Circuit reversed in a three-paragraph unpublished memorandum opinion. 389 Fed. Appx. 640 (2010). In so doing, the court did not discuss any specific facts or mention the reasoning of the other three courts that had rejected Jackson's claim. Instead, after setting forth the basic background legal principles in the first two paragraphs, the Court of Appeals offered a one-sentence conclusory explanation for its decision:

> "The prosecutor's proffered race-neutral bases for peremptorily striking the two African-American jurors were not sufficient to counter the evidence of purposeful discrimination in light of the fact that two out of three prospective African-American jurors were stricken, and the record reflected different treatment of comparably situated jurors." *Id.*, at 641.

That decision is as inexplicable as it is unexplained. It is reversed.

The *Batson* issue before us turns largely on an "evaluation of credibility." 476 U. S., at 98, n. 21. The trial court's determination is entitled to "great deference," *ibid.*, and "must be sustained unless it is clearly erroneous," *Snyder* v. *Louisiana*, 552 U. S. 472, 477 (2008).

That is the standard on direct review. On federal habeas review, AEDPA "imposes a highly deferential standard for evaluating state-court rulings" and "demands that state-court decisions be given the benefit of the doubt." *Renico* v. *Lett*, 559 U. S. 766, 773 (2010) (internal quotation marks omitted). Here the trial court credited the prosecutor's race-neutral explanations, and the California Court of Appeal carefully reviewed the record at some length in upholding the trial court's findings. The state appellate court's decision was plainly not unreasonable. There was simply no basis for the Ninth Circuit to reach the opposite conclusion, particularly in such a dismissive manner.

The petition for certiorari and the motion for leave to proceed *in forma pauperis* 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.

Reporter's Note

The next page is purposely numbered 801. The numbers between 598 and 801 were intentionally omitted, in order to make it possible to publish the orders with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

ORDERS FOR OCTOBER 4, 2010, THROUGH MARCH 21, 2011

OCTOBER 4, 2010

Certiorari Granted—Vacated and Remanded

No. 09–1238. HOLLINGSWORTH ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA ET AL. C. A. 9th Cir. 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).

No. 09–1404. TEAMSTERS LOCAL UNION NO. 523 *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 10th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *New Process Steel, L. P.* v. *NLRB*, 560 U. S. 674 (2010). Reported below: 590 F. 3d 849.

No. 09–9085. LEE *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the en banc opinion in *United States* v. *Corner*, 598 F. 3d 411 (CA7 2010). JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition. Reported below: 352 Fed. Appx. 112.

No. 09–10316. BEASLEY *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Carr* v. *United States*, 560 U. S. 438 (2010). Reported below: 361 Fed. Appx. 86.

No. 09–10329. SUMMERS *v.* UNITED STATES. C. A. 4th Cir. Reported below: 361 Fed. Appx. 539;

No. 09–10337. MARES-CALDERON *v.* UNITED STATES; and VARILLA-QUEVADO *v.* UNITED STATES. C. A. 5th Cir. Reported below: 370 Fed. Appx. 518 (first judgment); 365 Fed. Appx. 583 (second judgment); and

No. 09–10438. HALTIWANGER *v.* UNITED STATES. C. A. 8th Cir. Reported below: 356 Fed. Appx. 918. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Carachuri-Rosendo* v. *Holder*, 560 U. S. 563 (2010). JUSTICE KAGAN took no part in the consideration or decision of these motions and these petitions.

No. 09–10491. WHITE *v.* UNITED STATES. C. A. 4th Cir. Reported below: 362 Fed. Appx. 348;

No. 09–10847. CARRIZOSA-FLORES *v.* UNITED STATES. C. A. 5th Cir. Reported below: 365 Fed. Appx. 582; and

No. 09–11213. BLACKWOOD *v.* UNITED STATES. C. A. 4th Cir. Reported below: 368 Fed. Appx. 345. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Carachuri-Rosendo* v. *Holder*, 560 U. S. 563 (2010).

Certiorari Dismissed

No. 09–10029. BISHOP *v.* JOHNSON ET AL. Sup. Ct. Ga. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 285 Ga. XXIII, 684 S. E. 2d 885.

No. 09–10553. JOHNSON *v.* VARANO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–10596. MONACELLI *v.* NEW YORK STATE BANKING DEPARTMENT ET AL. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–10739. SABEDRA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the dock-

eting fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1.

No. 09–10740. SABEDRA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 09–10761. WILLS *v.* BARTON, CLERK, SUPERIOR COURT OF CALIFORNIA, KINGS COUNTY. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–10819. HUNG HA *v.* BURR ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–10836. FRANKLIN *v.* BWD PROPERTIES 2, LLC, ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 357 Fed. Appx. 956.

No. 09–10853. BARBOUR *v.* ROSE ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–10885. ROBENSON *v.* BONSHALL ET AL. Sup. Ct. Fla. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 29 So. 3d 291.

No. 09–10948. SIBLEY *v.* ESTATE OF SIBLEY. Dist. Ct. App. Fla., 3d Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance

with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. Reported below: 36 So. 3d 108.

No. 09–10973. BROWN *v.* CHEVY CHASE BANK ET AL. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 373 Fed. Appx. 79.

No. 09–11038. BARBOUR *v.* STANDFORD. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–11223. JANNEH *v.* REGAL ENTERTAINMENT GROUP. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–11440. WALLACE *v.* TULL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 09–11565. SABEDRA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 10–5038. ALBRIGHT-LAZZARI ET VIR *v.* CONNECTICUT. App. Ct. Conn. Motion of petitioners for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioners have repeatedly abused this Court's process, the Clerk is directed not to accept any further

petitions in noncriminal matters from petitioners unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 10–5039. ALBRIGHT-LAZZARI ET VIR *v.* CONNECTICUT. App. Ct. Conn. Motion of petitioners for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioners have repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioners unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 10–5040. ALBRIGHT-LAZZARI ET VIR *v.* CONNECTICUT. App. Ct. Conn. Motion of petitioners for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioners have repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioners unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 10–5065. STANKO *v.* RIOS, WARDEN, ET AL. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 366 Fed. Appx. 706.

No. 10–5070. DANDAR *v.* KRYSEVIG ET AL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. Reported below: 371 Fed. Appx. 251.

No. 10–5115. DOUGLAS *v.* HARRIS COUNTY DISTRICT ATTORNEY ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 370 Fed. Appx. 476.

No. 10–5172. SIBLEY *v.* DISTRICT OF COLUMBIA COURT OF APPEALS. Ct. App. D. C. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. Reported below: 990 A. 2d 483.

No. 10–5176. REHBERGER *v.* HENRY COUNTY, GEORGIA, ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–5260. GEFFKEN *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 10–5309. STANKO *v.* RIOS, WARDEN, ET AL. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 366 Fed. Appx. 725.

No. 10–5345. MCCRAY *v.* CLERK OF THE COURT. Ct. App. Tex., 5th Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 10–5365. GRANDOIT *v.* GILSON ET AL. C. A. 1st Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–5445. ALBRIGHT-LAZZARI ET VIR *v.* CONNECTICUT. App. Ct. Conn. Motion of petitioners for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioners have repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioners unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 10–5446. ALBRIGHT-LAZZARI ET VIR *v.* CONNECTICUT. App. Ct. Conn. Motion of petitioners for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioners have repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioners unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 10–5586. JOHNSON *v.* WILBUR ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. Reported below: 375 Fed. Appx. 960.

No. 10–5624. MITCHELL *v.* CASTILLO, WARDEN. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–5743. BROWN *v.* CHAVEZ, WARDEN. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. D–2468. IN RE DISBARMENT OF MITRANO. Disbarment entered. [For earlier order herein, see 559 U. S. 1002.]

No. D–2469. IN RE DISBARMENT OF BYRD. Disbarment entered. [For earlier order herein, see 560 U. S. 963.]

No. D–2487. IN RE DISBARMENT OF BERGRIN. Disbarment entered. [For earlier order herein, see 561 U. S. 1045.]

No. D–2489. IN RE MORAN. A response to the rule to show cause having been filed, it is ordered that the rule to show cause is discharged, and the order suspending John M. Moran from the practice of law in this court, dated July 26, 2010 [561 U. S. 1045], is vacated.

No. D–2495. IN RE DISCIPLINE OF WOGHIN. Steven M. Woghin, of Cold Spring Harbor, 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–2496. IN RE DISCIPLINE OF ORCI. Daniel S. Orci, Jr., of St. Petersburg Beach, 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–2497. IN RE DISCIPLINE OF STEIN. Jaffa F. Stein, of Voorhees, 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–2498. IN RE DISCIPLINE OF TONER. Terrance N. Toner, of New Brunswick, 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–2499. IN RE DISCIPLINE OF KRESS. Richard H. Kress, of Clark, 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–2500. IN RE DISCIPLINE OF KIMMEL. Andrew M. Kimmel, of Cedar Knolls, 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–2501. IN RE DISCIPLINE OF SHAFFER. Hal J. Shaffer, of Cherry Hill, 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–2502. IN RE DISCIPLINE OF NICHOLLS. Bruce Nicholls, of Gloucester, 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–2503. IN RE DISCIPLINE OF STRASSON. Shelley A. Strasson, of West Bloomfield, Mich., 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–2504. IN RE DISCIPLINE OF KROUNER. Leonard W. Krouner, of Albany, 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–2505. IN RE DISCIPLINE OF WICKENKAMP. Mary C. Wickenkamp, of Denison, Tex., 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–2506. IN RE DISCIPLINE OF CHAMBERS. William R. Chambers, of Scottsdale, 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–2507. IN RE DISCIPLINE OF HUTCHINSON. Paula B. Hutchinson, of Lincoln, Neb., 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–2508. IN RE DISCIPLINE OF MUNROE. Earl D. Munroe, of Saugus, 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–2509. IN RE DISCIPLINE OF SHWEKY. Alan J. Shweky, 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–2510. IN RE DISCIPLINE OF SPARGO. Thomas J. Spargo, of East Berne, 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–2511. IN RE DISCIPLINE OF DEJONG. Pieter J. DeJong, of Long Valley, 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–2512. IN RE DISCIPLINE OF MACKEY. Nikita V. Mackey, of Charlotte, N. C., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. D–2513. IN RE DISCIPLINE OF ROMEO. Michael John Romeo, of Birmingham, Ala., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2514. IN RE DISCIPLINE OF BLEECKER. Lorin Henry Bleecker, of Rockville, 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–2515. IN RE DISCIPLINE OF CALLEGARY. Peter Michael Callegary, of Towson, 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–2516. IN RE DISCIPLINE OF GILLAND. Michael Brian Gilland, of Towson, 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–2517. IN RE DISCIPLINE OF PEPYNE. Edward Pepyne, Jr., of Greenfield, 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–2518. IN RE DISCIPLINE OF FINNERAN. Thomas M. Finneran, of Dorchester, 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–2519. IN RE DISCIPLINE OF NGOBENI. Paul Mpande Ngobeni, of Putnam, 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–2520. IN RE DISCIPLINE OF DEUTCHMAN. Murray Leonard Deutchman, of Rockville, 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–2521. IN RE DISCIPLINE OF HARRIS-SMITH. Bridgette Miriam Harris-Smith, of Washington, D. C., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. D–2522. IN RE DISCIPLINE OF CALLIHAN. Herbert Aldon Callihan, Jr., of Bethesda, 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–2523. IN RE DISCIPLINE OF CHASNOFF. Joel Chasnoff, of Ashton, 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–2524. IN RE DISCIPLINE OF DITTON. Michael Henry Ditton, of Bozeman, Mont., 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–2525. IN RE DISCIPLINE OF BRANDES. Frederic Michael Brandes, of Timonium, 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–2526. IN RE DISCIPLINE OF EHRLICH. Robert Lee Ehrlich, of Calabasas, 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–2527. IN RE DISCIPLINE OF HEGHMANN. Robert Alan Heghmann, of Darham, N. H., 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–2528. IN RE DISCIPLINE OF UDELL. Robert G. Udell, of Stuart, 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–2529. IN RE DISCIPLINE OF FITZPATRICK. William A. Fitzpatrick, of Philadelphia, 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. D–2530. In re Discipline of Hallock. Robert Wayne Hallock, of Barrington, 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–2531. In re Discipline of Davis. Carleton Wayne Keith Davis, 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–2532. In re Discipline of DeFilippo. Gary Robert DeFilippo, 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–2533. In re Discipline of Condon. Richard Paul Condon, of Kissimmee, 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–2534. In re Discipline of Stein. Stuart Leonard Stein, of Santa Fe, N. M., 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–2535. In re Discipline of Tipler. James Harvey Tipler, of Mary Esther, 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–2536. In re Discipline of Hatch. Ira Carlton Hatch, Jr., of Vero Beach, 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–2537. In re Discipline of Manzini. Nicholas Andres Manzini, 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–2538. IN RE DISCIPLINE OF ZIEGLER. Stephen Leonard Ziegler, of Fort Lauderdale, 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–2539. IN RE DISCIPLINE OF STOLER. Leonard Udell Stolar, 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–2540. IN RE DISCIPLINE OF NAGER. Barry Roy Nager, of West 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–2541. IN RE DISCIPLINE OF SIMRING. Richard Brian Simring, of Miami Beach, 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–2542. IN RE DISCIPLINE OF BAILEY. Guy Burdette Bailey, Jr., 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–2543. IN RE DISCIPLINE OF FOX. Mitchell Eric Fox, of Plantation, 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–2544. IN RE DISCIPLINE OF LUBIN. Michael H. Lubin, of North Miami Beach, 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–2545. IN RE DISCIPLINE OF CAMPBELL. William Craig Campbell II, of Saipan, N. Mar. I., 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–2546. IN RE DISCIPLINE OF NEEL. Samuel Regester Neel III, of Tallahassee, Fla., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2547. IN RE DISCIPLINE OF WILSON. Marvin Deon Wilson, Sr., of Homestead, 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–2548. IN RE DISCIPLINE OF MENYHART. Andrew William Menyhart, of Merritt Island, 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–2549. IN RE DISCIPLINE OF RAYVIS. Myron Jerome Rayvis, of Palmetto Bay, 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–2550. IN RE DISCIPLINE OF BAGDASARIAN. Richard Charles Bagdasarian, 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. D–2551. IN RE DISCIPLINE OF MCCARTNEY. R. Allen McCartney, of Louisville, 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–2552. IN RE DISCIPLINE OF SHEMIN. Paul Shephen Shemin, of Elmsford, 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–2553. IN RE DISCIPLINE OF GASSAWAY. John Michael Gassaway, of Oklahoma City, Okla., 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–2554. IN RE DISCIPLINE OF LILE. Stephen Lile, of Lawton, Okla., 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–2555. IN RE DISCIPLINE OF SHEPHERD. Robert L. Shepherd, of Stuart, 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–2556. IN RE DISCIPLINE OF STOCKER. David Benjamin Stocker, 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–2557. IN RE DISCIPLINE OF GRABINSKI. Thomas Dale Grabinski, of Globe, 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–2558. IN RE DISCIPLINE OF BROWN. Thomas Daniel Brown, of Charlotte, N. 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–2559. IN RE DISCIPLINE OF STANTON. George Patrick Stanton, Jr., of Clarksburg, W. 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–2560. IN RE DISCIPLINE OF DEAN. Joseph Wayne Dean, of Raleigh, N. 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–2561. IN RE DISCIPLINE OF CRAWFORD. Douglas Clinton Crawford, of Las Vegas, Nev., 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–2562. IN RE DISCIPLINE OF RADOLOVICH. Ferdinand R. Radolovich, of Louisville, 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–2563. IN RE DISCIPLINE OF STEINKRAUSS. Joseph Cosmas Steinkrauss, of Lexington, 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–2564. IN RE DISCIPLINE OF CRAIG. Sandra L. Craig, of Pacific, Mo., 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–2565. IN RE DISCIPLINE OF TOLEN. Eric Tyrone Tolen, 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–2566. IN RE DISCIPLINE OF SCHWARTZ. Arthur L. Schwartz, of West Orange, 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–2567. IN RE DISCIPLINE OF MAZUR. Sigmund Victor Mazur, of Hyde Park, N. Y., is suspended from the practice of law

in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2568. IN RE DISCIPLINE OF JONES. Daryll Boyd Jones, of Laurelton, 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–2569. IN RE DISCIPLINE OF EDELSON. Gary L. Edelson, of Red Bank, 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–2570. IN RE DISCIPLINE OF HELM. William Anthony Helm, of Bartlett, 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–2571. IN RE DISCIPLINE OF MOYLER. James Edward Moyler, Jr., of Williamsburg, 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–2572. IN RE DISCIPLINE OF STONE. Robert Ray Stone, of Arlington, 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–2573. IN RE DISCIPLINE OF MCPHERSON. Stephen Lee McPherson, of Chesapeake, 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–2574. IN RE DISCIPLINE OF LEBLANC. Gary R. LeBlanc, of Gardner, 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–2575. In re Discipline of Ponds. Navron Ponds, of Washington, D. C., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 10M1. Wills *v.* Cate, Secretary, California Department of Corrections;

No. 10M2. Fisch *v.* Republic of Poland et al.;

No. 10M3. McCord *v.* O'Neill;

No. 10M4. Beatty *v.* Kerivan;

No. 10M5. Tatum *v.* Wolfenbarger, Warden;

No. 10M6. Maldonado-Arce *v.* Peters et al.;

No. 10M7. Lee *v.* Federal Bureau of Investigation et al.;

No. 10M8. Taylor *v.* Britten, Warden, et al.;

No. 10M9. Jackson *v.* Randalls Food & Drugs, L. P.;

No. 10M10. Hallford *v.* California Correctional Peace Officers Assn.;

No. 10M11. Narayan *v.* City of Sacramento, California, et al.;

No. 10M12. Vigliotti *v.* Daly et al.;

No. 10M13. Townsend *v.* Sparkman, Superintendent, Mississippi Correctional Facility;

No. 10M14. Lewis *v.* Sherry, Warden;

No. 10M15. Norwood *v.* Arkansas State Hospital;

No. 10M18. Appleby *v.* Seifert, Warden;

No. 10M19. Laurence *v.* Anteon Corp. et al.;

No. 10M20. Smith *v.* Cooper, Warden;

No. 10M21. Dolliver *v.* United States;

No. 10M22. Redfearn *v.* City of Satellite Beach, Florida;

No. 10M23. O'Bryan *v.* Eichenlaub, Warden;

No. 10M25. Clark *v.* National Credit Union Administration;

No. 10M27. Cotto *v.* Bones et al.;

No. 10M28. 1568 Montgomery Highway, Inc. *v.* City of Hoover, Alabama;

No. 10M30. Downing *v.* United States;

No. 10M31. Jackman *v.* Department of Justice et al.; and

No. 10M34. Williams *v.* Rudolph et al. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 10M16. AMEZIANE *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. Motion for leave to file petition for writ of certiorari under seal granted. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 10M17. PIPES *v.* BALLARD, WARDEN. Motion for leave to proceed as a veteran denied.

No. 10M24. ARANDA *v.* UNITED STATES; and
No. 10M26. VALLE *v.* UNITED STATES. Motions for leave to file petitions for writs of certiorari under seal with redacted copies for the public record granted.

No. 10M29. B. D. S. D. *v.* TEXAS; and
No. 10M33. REED *v.* PENNSYLVANIA. Motions for leave to proceed *in forma pauperis* without affidavits of indigency executed by petitioners denied.

No. 10M32. BAFFORD *v.* UNITED STATES. Motion to direct the Clerk to file a bill of complaint 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 $7,083.87 for the period July 1, 2009, through June 30, 2010, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 558 U. S. 809.]

No. 126, Orig. KANSAS *v.* NEBRASKA ET AL. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States. [For earlier order herein, see, *e. g.*, 540 U. S. 1043.]

No. 132, Orig. ALABAMA ET AL. *v.* NORTH CAROLINA. Motion of the Special Master for allowance of fees and reimbursement of expenses granted, and the Special Master is awarded a total of $80,904.16 for the period November 1, 2006, through June 30, 2010, to be paid equally by the parties. JUSTICE KAGAN took no part in the consideration or decision of this motion. [For earlier order herein, see, *e. g.*, 558 U. S. 1010.]

No. 08–1423. COSTCO WHOLESALE CORP. *v.* OMEGA, S. A. C. A. 9th Cir. [Certiorari granted, 559 U. S. 1066.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. JUSTICE

KAGAN took no part in the consideration or decision of this motion.

No. 08–1438. SOSSAMON *v.* TEXAS ET AL. C. A. 5th Cir. [Certiorari granted, 560 U. S. 923.] Motions of petitioner for leave to proceed further herein *in forma pauperis* and for appointment of counsel denied. JUSTICE KAGAN took no part in the consideration or decision of these motions.

No. 09–400. STAUB *v.* PROCTOR HOSPITAL. C. A. 7th Cir. [Certiorari granted, 559 U. S. 1066.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of Chamber of Commerce of the United States of America for leave to file a brief as *amicus curiae* out of time granted. JUSTICE KAGAN took no part in the consideration or decision of these motions.

No. 09–996. WALKER, WARDEN, ET AL. *v.* MARTIN. C. A. 9th Cir. [Certiorari granted, 561 U. S. 1005.] Motion of respondent for appointment of counsel granted. Michael B. Bigelow, Esq., of Sacramento, Cal., is appointed to serve as counsel for respondent in this case.

No. 09–1212. NORFOLK SOUTHERN RAILROAD CO. *v.* GROVES, INDIVIDUALLY, DBA SAVANNAH RE-LOAD, ET AL. C. A. 11th Cir.;

No. 09–1254. VON SAHER *v.* NORTON SIMON MUSEUM OF ART OF PASADENA ET AL. C. A. 9th Cir.;

No. 09–1313. SALEH ET AL. *v.* TITAN CORP. ET AL. C. A. D. C. Cir.;

No. 09–1353. THUNDERHORSE *v.* PIERCE, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS THE CHAPLAINCY DIRECTOR OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir.;

No. 09–1400. LABORERS DISTRICT COUNCIL CONSTRUCTION INDUSTRY PENSION FUND ET AL. *v.* OMNICARE, INC., ET AL. C. A. 6th Cir.; and

No. 09–1403. ERICA P. JOHN FUND, INC., FKA ARCHDIOCESE OF MILWAUKEE SUPPORTING FUND, INC. *v.* HALLIBURTON CO. ET AL. C. A. 5th Cir. The Acting Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 09–6822. PEPPER *v.* UNITED STATES. C. A. 8th Cir. [Certiorari granted, 561 U. S. 1024.] Motion of petitioner for ap-

pointment of counsel granted. Alfredo Parrish, Esq., of Des Moines, Iowa, is appointed to serve as counsel for petitioner in this case. Motion of petitioner for leave to file volume II of the joint appendix under seal granted. JUSTICE KAGAN took no part in the consideration or decision of these motions.

No. 09–9300. IN RE TAYLOR. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [559 U. S. 1036] denied. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 09–9541. IN RE WARREN. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [560 U. S. 903] denied.

No. 09–10028. BISHOP *v.* DEPARTMENTAL DISCIPLINARY COMMITTEE FOR THE FIRST JUDICIAL DEPARTMENT. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [560 U. S. 937] denied.

No. 09–10032. SHAHIN *v.* DARLING ET AL. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [560 U. S. 951] denied.

No. 09–10070. MATTHEWS *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [560 U. S. 962] denied.

No. 09–10157. TRIMBLE *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [560 U. S. 923] denied.

No. 09–10203. MITRANO *v.* DISTRICT OF COLUMBIA BAR. C. A. D. C. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [560 U. S. 964] denied.

No. 09–10213. IN RE MINOR. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [560 U. S. 902] denied. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 09–10216. JAHAGIRDAR *v.* UNITED STATES. C. A. 1st Cir. Motion of petitioner for reconsideration of order denying leave to

proceed *in forma pauperis* [560 U. S. 902] denied. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 09–10453. GRAVENHORST *v.* UNITED STATES. C. A. 1st Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [560 U. S. 938] denied. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 09–10460. TAYLOR *v.* DEGROTT ET AL. C. A. 11th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [561 U. S. 1021] denied.

No. 09–10504. SCHRADER *v.* NEW MEXICO ET AL. C. A. 10th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [561 U. S. 1022] denied.

No. 09–10505. SHAHIN *v.* DELAWARE DEPARTMENT OF FINANCE. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [561 U. S. 1004] denied.

No. 09–10619. ROGERS *v.* SCHAPIRO, CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION, ET AL. C. A. D. C. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [560 U. S. 950] denied.

No. 09–10698. PERUZOVIC *v.* MILEY ET AL. Ct. Sp. App. Md.;

No. 09–10896. CHRISTIAN *v.* FRANK BOMMARITO OLDSMOBILE, INC., DBA BOMMARITO INFINITY. C. A. 8th Cir.;

No. 09–10905. MUSLEVE *v.* MUSLEVE. Ct. App. Ohio, Stark County;

No. 09–10937. WARREN *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir.;

No. 09–11126. DOE *v.* DUNCAN ET AL. Sup. Ct. S. C.;

No. 09–11257. DEW *v.* OHIO. Ct. App. Ohio, Mahoning County;

No. 09–11480. DAY *v.* MINNESOTA ET AL. C. A. 8th Cir.;

No. 09–11527. ELLIS *v.* SMITHKLINE BEECHAM CORP., DBA GLAXOSMITHKLINE. C. A. 9th Cir.;

No. 10–5022. SNYDER *v.* UNITED STATES. C. A. 4th Cir.;

No. 10–5135. WOOTEN *v.* CALIFORNIA ET AL. C. A. 9th Cir.;

No. 10–5334. MAYBERRY ET AL. *v.* JACKSON, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY. C. A. 10th Cir.;

No. 10–5350. RODRIGUEZ-AYALA *v.* AMERICAN EXPRESS TRAVEL RELATED SERVICES CO., INC. C. A. 1st Cir.;

No. 10–5432. MCCORD ET UX. *v.* ALABAMA. C. A. 11th Cir.;

No. 10–5567. MURRAY *v.* AT&T MOBILITY LLC. C. A. 7th Cir.;

No. 10–5569. SHULMAN *v.* BLUECROSS BLUESHIELD OF SOUTH CAROLINA. C. A. 4th Cir.;

No. 10–5720. ROBERTSON *v.* CREE, INC. C. A. 4th Cir.;

No. 10–5783. HERNANDEZ-ANGUIANO *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir.;

No. 10–5867. CHAN *v.* DEPARTMENT OF JUSTICE. C. A. Fed. Cir.;

No. 10–5937. GUYTON, EXECUTOR OF THE ESTATE OF GUYTON *v.* UNITED STATES. C. A. 11th Cir.; and

No. 10–5946. ROBINSON *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 25, 2010, 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. 09–10808. FRANKLIN *v.* CHATTERTON ET AL. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [561 U. S. 1022] denied.

No. 10–5221. ZERILLI-EDELGLASS *v.* NEW YORK CITY TRANSIT ET AL. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until October 25, 2010, 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. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion.

No. 10–5328. TILLMAN *v.* NEW LINE CINEMA ET AL. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until October 25, 2010, 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. THE CHIEF JUSTICE took no part in the consideration or decision of this motion.

No. 09–11293. IN RE OLIVER;
No. 09–11317. IN RE BLAMEY;
No. 09–11321. IN RE ALLAH;
No. 09–11326. IN RE COLEMAN;
No. 09–11494. IN RE SKURDAL;
No. 09–11534. IN RE KENDRICK;
No. 09–11546. IN RE MITCHELL, AKA ALLAH;
No. 10–129. IN RE CARTER;
No. 10–194. IN RE FLORANCE;
No. 10–5252. IN RE GAFFNEY;
No. 10–5270. IN RE EMORY;
No. 10–5329. IN RE SMITH;
No. 10–5416. IN RE RAYFORD;
No. 10–5592. IN RE WYLDES;
No. 10–5627. IN RE PRYOR;
No. 10–5628. IN RE TATUM;
No. 10–5642. IN RE O'CONNOR;
No. 10–5660. IN RE DEL RIO;
No. 10–5770. IN RE BAKER;
No. 10–5849. IN RE PINA;
No. 10–5906. IN RE WADE;
No. 10–5915. IN RE LUCIOUS;
No. 10–5959. IN RE CHISUM;
No. 10–5970. IN RE PENDLETON;
No. 10–5980. IN RE CIAMBRONE;
No. 10–5994. IN RE DANIELS; and
No. 10–6152. IN RE FAIR. Petitions for writs of habeas corpus denied.

No. 09–11232. IN RE REMMERT. Petition for writ of habeas corpus denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 09–11389. IN RE WILLIAMS. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 09–11419. IN RE THOMAS;
No. 10–5171. IN RE HARRIS; and
No. 10–5428. IN RE RUSTON. Motions of petitioners for leave to proceed *in forma pauperis* denied, and petitions for writs of habeas corpus dismissed. See this Court's Rule 39.8.

No. 09–1444. IN RE ANDERSON ET AL.;
No. 09–1510. IN RE CORRIGAN;
No. 09–1516. IN RE HEIDE ET AL.;
No. 09–1524. IN RE DUBIN;
No. 09–10584. IN RE DIXON;
No. 09–10724. IN RE DANIEL;
No. 09–10903. IN RE TOWNSEND;
No. 09–10974. IN RE BECK;
No. 09–11163. IN RE MURRAY;
No. 09–11175. IN RE PHILLIPS;
No. 09–11209. IN RE DAILEY;
No. 09–11284. IN RE COULOMBE;
No. 10–95. IN RE COUNCE;
No. 10–5030. IN RE WHITE;
No. 10–5193. IN RE BRYANT;
No. 10–5368. IN RE CABALLERO MAGANA;
No. 10–5525. IN RE SUKUP; and
No. 10–5596. IN RE BOWERSOCK. Petitions for writs of mandamus denied.

No. 09–10533. IN RE COX;
No. 09–10534. IN RE CAMPBELL;
No. 09–10925. IN RE CARROLL; and
No. 10–59. IN RE ALBERTSON. Petitions for writs of mandamus and/or prohibition denied.

No. 10–5312. IN RE RUSTON. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8.

No. 10–5154. IN RE ARSAD. Petition for writ of prohibition denied.

Certiorari Denied

No. 09–913. LEWIS *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 178.

No. 09–944. Placer Dome, Inc., et al. *v.* Provincial Government of Marinduque, Republic of the Philippines. C. A. 9th Cir. Certiorari denied. Reported below: 582 F. 3d 1083.

No. 09–945. Louisiana Safety Association of Timbermen-Self Insurers Fund *v.* Certain Underwriters at Lloyd's of London et al. C. A. 5th Cir. Certiorari denied. Reported below: 587 F. 3d 714.

No. 09–951. National Right to Work Legal Defense Foundation, Inc. *v.* UNITE (Union of Needletrades, Industrial & Textile Employees, AFL–CIO) et al. C. A. 3d Cir. Certiorari denied. Reported below: 585 F. 3d 741.

No. 09–960. Hogan, Commissioner, Alaska Department of Health and Human Services, et al. *v.* Kaltag Tribal Council et al. C. A. 9th Cir. Certiorari denied. Reported below: 344 Fed. Appx. 324.

No. 09–983. Peterson *v.* City of Fort Worth, Texas. C. A. 5th Cir. Certiorari denied. Reported below: 588 F. 3d 838.

No. 09–989. Loving *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 68 M. J. 1.

No. 09–1023. Apex Oil Co., Inc. *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 579 F. 3d 734.

No. 09–1067. McFadin, dba Two Bar West, et al. *v.* Gerber, dba Foxy Roxy's, dba Eternal Perspective Handbags, et al. C. A. 5th Cir. Certiorari denied. Reported below: 587 F. 3d 753.

No. 09–1071. Go Daddy Software, Inc. *v.* Equal Employment Opportunity Commission. C. A. 9th Cir. Certiorari denied. Reported below: 581 F. 3d 951.

No. 09–1100. Yant et al. *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 588 F. 3d 1369.

No. 09–1115. Sammis et al. *v.* Nance, Individually and as the Natural Father and Next Friend of Nance, et al. C. A. 8th Cir. Certiorari denied. Reported below: 586 F. 3d 604.

No. 09–1132. ESCOBAR OCHOA *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 420.

No. 09–1142. FIA CARD SERVICES, N. A. *v.* GORMAN. C. A. 9th Cir. Certiorari denied. Reported below: 584 F. 3d 1147.

No. 09–1143. WILSON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 353 Fed. Appx. 837.

No. 09–1177. MCCLOUD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 590 F. 3d 560.

No. 09–1178. SMITH *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 22 So. 3d 544.

No. 09–1184. STRATECHUK, INDIVIDUALLY AND ON BEHALF OF HIS MINOR CHILDREN *v.* BOARD OF EDUCATION, SOUTH ORANGE-MAPLEWOOD SCHOOL DISTRICT, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 587 F. 3d 597.

No. 09–1192. WILNER ET AL. *v.* NATIONAL SECURITY AGENCY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 592 F. 3d 60.

No. 09–1195. HARMAN ET AL. *v.* POLLOCK ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 586 F. 3d 1254.

No. 09–1209. TSIMMER *v.* QUARANTILLO, NEW YORK DISTRICT DIRECTOR OF THE UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 353 Fed. Appx. 661.

No. 09–1211. JEREZ-SANCHEZ *v.* HOLDER, ATTORNEY GENERAL, ET AL. C. A. 2d Cir. Certiorari denied.

No. 09–1214. SOBITAN *v.* GLUD ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 589 F. 3d 379.

No. 09–1218. ALLEN ET AL. *v.* MCWANE, INC. C. A. 5th Cir. Certiorari denied. Reported below: 593 F. 3d 449.

No. 09–1235. CHERICHEL *v.* HOLDER, ATTORNEY GENERAL. C. A. 8th Cir. Certiorari denied. Reported below: 591 F. 3d 1002.

No. 09–1246. DESIA, TRUSTEE OF THE BARBARA BESS TRUST *v.* GE LIFE & ANNUITY ASSURANCE CO. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 350 Fed. Appx. 542.

No. 09–1255. LIMMER ET AL. *v.* MISSOURI PACIFIC RAILROAD CO., DBA UNION PACIFIC RAILROAD CO. Sup. Ct. Tex. Certiorari denied. Reported below: 299 S. W. 3d 78.

No. 09–1259. LONBERG *v.* CITY OF RIVERSIDE, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 571 F. 3d 846.

No. 09–1270. UNIVERSITY OF SOUTH CAROLINA *v.* UNIVERSITY OF SOUTHERN CALIFORNIA. C. A. Fed. Cir. Certiorari denied. Reported below: 367 Fed. Appx. 129.

No. 09–1271. BYERS *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied. Reported below: 351 Fed. Appx. 161.

No. 09–1284. MCSHERRY *v.* CITY OF LONG BEACH, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 584 F. 3d 1129.

No. 09–1303. SMITH ET UX. *v.* MCCARTHY, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS DEPUTY SHERIFF, NELSON COUNTY, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 349 Fed. Appx. 851.

No. 09–1305. ZURICH AMERICAN INSURANCE CO. ET AL. *v.* PIONEER NATURAL RESOURCES USA, INC., ET AL. C. A. 5th Cir. Certiorari denied.

No. 09–1319. HINKLE OIL & GAS, INC. *v.* BOWLES RICE MCDAVID GRAFF & LOVE, LLP, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 360 Fed. Appx. 400.

No. 09–1322. KOUBRITI *v.* CONVERTINO. C. A. 6th Cir. Certiorari denied. Reported below: 593 F. 3d 459.

No. 09–1324. MRACEK *v.* BRYN MAWR HOSPITAL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 363 Fed. Appx. 925.

No. 09–1325. MILLS, DIRECTOR OF THE INDIANA DEPARTMENT OF FINANCIAL INSTITUTIONS *v.* MIDWEST TITLE LOANS, INC. C. A. 7th Cir. Certiorari denied. Reported below: 593 F. 3d 660.

No. 09–1329. PEOPLES *v.* LANGER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 361 Fed. Appx. 392.

No. 09–1332. SAIN *v.* SNYDER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 932.

No. 09–1333. CANTO *v.* HOLDER, ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 593 F. 3d 638.

No. 09–1334. CHASE MANHATTAN BANK, USA, N. A. *v.* TAXEL, TRUSTEE. C. A. 9th Cir. Certiorari denied. Reported below: 594 F. 3d 1073.

No. 09–1335. HALDEMAN ET AL. *v.* DUTY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 359 Fed. Appx. 777.

No. 09–1336. LAWRENCE *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 09–1338. PALKOVIC *v.* JOHNSON ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 355 Fed. Appx. 513.

No. 09–1358. MASON *v.* COLUMBIA BASIN COLLEGE ET AL. Ct. App. Wash. Certiorari denied. Reported below: 150 Wash. App. 1016.

No. 09–1360. TOTES-ISOTONER CORP. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 594 F. 3d 1346.

No. 09–1362. BANK *v.* COOPER, PAROFF, COOPER & COOK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 356 Fed. Appx. 509.

No. 09–1363. DALVIT ET AL. *v.* UNITED AIRLINES, INC. C. A. 10th Cir. Certiorari denied. Reported below: 359 Fed. Appx. 904.

No. 09–1364. PERSAUD *v.* HOLDER, ATTORNEY GENERAL, ET AL. C. A. 2d Cir. Certiorari denied.

No. 09–1366. LEE ET VIR *v.* POLICASTRO ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 09–1370. BURMASTER *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–1371. THOMPSON *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 334 Fed. Appx. 325.

No. 09–1372. MEDISON AMERICA, INC. *v.* PREFERRED MEDICAL SYSTEMS, LLC, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 357 Fed. Appx. 656.

No. 09–1373. BELL, WARDEN *v.* THOMPSON. C. A. 6th Cir. Certiorari denied. Reported below: 580 F. 3d 423.

No. 09–1374. STERNBERG ET AL. *v.* JOHNSTON; and
No. 09–1525. JOHNSTON *v.* STERNBERG ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 595 F. 3d 937.

No. 09–1375. WILBANKS SECURITIES, INC. *v.* MCFARLAND. Ct. Civ. App. Okla. Certiorari denied. Reported below: 231 P. 3d 714.

No. 09–1376. VILLEDA ALDANA ET AL. *v.* FRESH DEL MONTE PRODUCE, INC., DBA DEL MONTE FRESH PRODUCE CO., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 578 F. 3d 1283.

No. 09–1379. ZACATELCO HIJUILT ET VIR *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied.

No. 09–1381. MITCHELL *v.* ANCHORAGE POLICE DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 344 Fed. Appx. 413.

No. 09–1383. FISHER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–1384. WATKINS ET VIR *v.* CITY OF PARAGOULD, ARKANSAS, ET AL. C. A. 8th Cir. Certiorari denied.

No. 09–1386. NUSSBAUM ET VIR *v.* MIGUELACHULI ET AL. Sup. Ct. P. R. Certiorari denied.

No. 09–1387. CAPITOL HOUSE PRESERVATION CO., L. L. C. *v.* PERRYMAN CONSULTANTS, INC., ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 47 So. 3d 408.

No. 09–1389. HARBER CORP. ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 354 Fed. Appx. 676.

No. 09–1390. HARTZ *v.* FARRUGIA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 360 Fed. Appx. 541.

No. 09–1391. GIANETTI *v.* SIGLINGER ET AL. App. Ct. Conn. Certiorari denied.

No. 09–1392. HAYCOCK *v.* EPSTEIN ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–1398. TRESCOTT *v.* FEDERAL HIGHWAY ADMINISTRATION ET AL. C. A. D. C. Cir. Certiorari denied.

No. 09–1399. SIMS *v.* SCHLOTT ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 23 So. 3d 716.

No. 09–1401. SOLWAY *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–1402. GAUDIN *v.* REMIS. C. A. 9th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 133.

No. 09–1405. ZUCKER ET AL. *v.* KENNEDY. C. A. 6th Cir. Certiorari denied. Reported below: 595 F. 3d 327.

No. 09–1406. MANLEY *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 734.

No. 09–1407. JONES *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 605 Pa. 188, 988 A. 2d 649.

No. 09–1409. WARREN ET AL. *v.* FEDERAL INSURANCE CO. C. A. 6th Cir. Certiorari denied. Reported below: 358 Fed. Appx. 670.

No. 09–1411. STOLTZFUS ET UX. *v.* PSR KIRKWOOD LLC ET AL. Super. Ct. Pa. Certiorari denied.

No. 09–1413. DAVIS *v.* BROUSE MCDOWELL, L. P. A., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 596 F. 3d 1355.

No. 09–1414. NEAL *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 68 M. J. 289.

No. 09–1417. UNITED RENTALS, INC. *v.* ANGELL. C. A. 4th Cir. Certiorari denied. Reported below: 592 F. 3d 525.

No. 09–1420. ALLEN *v.* MISSOURI EX REL. KOSTER, ATTORNEY GENERAL OF MISSOURI. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 298 S. W. 3d 139.

No. 09–1421. BYRD *v.* WOLPOFF & ABRAMSON, L. L. P., ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 187 Md. App. 719 and 734.

No. 09–1422. MINOR *v.* UNITED STATES;
No. 09–11039. TEEL *v.* UNITED STATES; and
No. 09–11067. WHITFIELD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 590 F. 3d 325.

No. 09–1423. SCHWINN, GUARDIAN AD LITEM OF HESSE, ET AL. *v.* EBBETS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 357.

No. 09–1424. LINKCO, INC. *v.* AKIKUSA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 367 Fed. Appx. 180.

No. 09–1427. PERSAUD *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied.

No. 09–1428. RUDDY *v.* ATTORNEY GRIEVANCE COMMISSION OF MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 411 Md. 30, 981 A. 2d 637.

No. 09–1430. DAVIS *v.* BLACKSTOCK. Sup. Ct. Ala. Certiorari denied. Reported below: 47 So. 3d 801.

No. 09–1432. BBELA *v.* MICROSOFT CORP. Ct. App. Wash. Certiorari denied. Reported below: 150 Wash. App. 1003.

No. 09–1434. FLORIDA DEPARTMENT OF REVENUE *v.* RODRIGUEZ. C. A. 11th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 25.

No. 09–1435. SAE JOON KIM *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 757.

No. 09–1436. LAWSON ET UX. *v.* CITRUS COUNTY, FLORIDA. Cir. Ct. Citrus County, Fla. Certiorari denied.

No. 09–1437. ENERGY WEST, INC. *v.* TACKE. Sup. Ct. Mont. Certiorari denied. Reported below: 355 Mont. 243, 227 P. 3d 601.

No. 09–1438. CHOW *v.* APPELLATE DIVISION, SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 09–1439. HOLGUIN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–1440. G. R. H. *v.* LOUISIANA. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 10 So. 3d 896.

No. 09–1446. TAGGART *v.* CHASE BANK USA, N. A., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 353 Fed. Appx. 731.

No. 09–1447. MILLER AUTO SALES, INC. *v.* VOLKSWAGEN OF AMERICA, INC., ET AL. Sup. Ct. Va. Certiorari denied. Reported below: 279 Va. 327, 689 S. E. 2d 679.

No. 09–1448. COCCHIOLA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 358 Fed. Appx. 376.

No. 09–1450. LARIVIERE *v.* LARIVIERE. App. Ct. Mass. Certiorari denied. Reported below: 75 Mass. App. 1115, 917 N. E. 2d 260.

No. 09–1452. GAMBOA-MOLINA *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 09–1453. GEORGE *v.* CITY OF MORRO BAY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 356 Fed. Appx. 952.

No. 09–1455. REINE *v.* HONEYWELL INTERNATIONAL INC. C. A. 5th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 395.

No. 09–1457. MARITIMA MEXICANA, S. A. DE C. V., AKA MARMEX *v.* PERFORACIONES EXPLORACION Y PRODUCCION, AKA PROTEXA, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 356 Fed. Appx. 675.

No. 09–1458. FIELDS *v.* WILBUR ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 360 Fed. Appx. 843.

No. 09–1459. SOUTH CAROLINA *v.* NAVY. Sup. Ct. S. C. Certiorari denied. Reported below: 386 S. C. 294, 688 S. E. 2d 838.

No. 09–1460. Entertainment Productions, Inc., et al. *v.* Shelby County, Tennessee, et al. C. A. 6th Cir. Certiorari denied. Reported below: 588 F. 3d 372.

No. 09–1462. Atwell *v.* Schweiker et al. C. A. 3d Cir. Certiorari denied. Reported below: 346 Fed. Appx. 752.

No. 09–1463. Messina *v.* Commissioner of Internal Revenue. C. A. 4th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 722.

No. 09–1464. Venezia *v.* William Penn School District. C. A. 3d Cir. Certiorari denied.

No. 09–1465. Pipes *v.* United Parcel Service, Inc., et al. C. A. 5th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 535.

No. 09–1466. Metlakatla Indian Community *v.* Sebelius, Secretary of Health and Human Services. C. A. Fed. Cir. Certiorari denied. Reported below: 583 F. 3d 785.

No. 09–1467. World Trade Center Families for Proper Burial, Inc., et al. *v.* City of New York, New York, et al. C. A. 2d Cir. Certiorari denied. Reported below: 359 Fed. Appx. 177.

No. 09–1468. O'Toole *v.* Northrop Grumman Corp. C. A. 10th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 472.

No. 09–1469. Sanchez *v.* Dupnik, Sheriff, Pima County, Arizona, et al. C. A. 9th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 679.

No. 09–1471. Maybee, dba SmartSmoker.com, dba BuycheapCigarettes.com, dba OrderSmokesdirect.com *v.* Idaho ex rel. Wasden, Attorney General of Idaho. Sup. Ct. Idaho. Certiorari denied. Reported below: 148 Idaho 520, 224 P. 3d 1109.

No. 09–1472. Lone Star Bakery, Inc. *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 354 Fed. Appx. 119.

No. 09–1473. DEEDS *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 27 So. 3d 1135.

No. 09–1474. DICKEY *v.* INSPECTIONAL SERVICE DEPARTMENT OF THE CITY OF BOSTON. C. A. 1st Cir. Certiorari denied.

No. 09–1475. BORING ET UX. *v.* GOOGLE, INC. C. A. 3d Cir. Certiorari denied. Reported below: 362 Fed. Appx. 273.

No. 09–1477. BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION ET AL. *v.* BNSF RAILWAY CO. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 596 F. 3d 1217.

No. 09–1479. SIMONEAUX *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 29 So. 3d 26.

No. 09–1480. SUTTON *v.* COUNTRYWIDE HOME LOANS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 833.

No. 09–1482. PAYNE ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied. Reported below: 357 Fed. Appx. 734.

No. 09–1483. DOMINGUEZ CASTRO ET AL. *v.* COMMONWEALTH OF PUERTO RICO ET AL. Sup. Ct. P. R. Certiorari denied.

No. 09–1484. JORDAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 359 Fed. Appx. 881.

No. 09–1485. AMERICAN ROAD & TRANSPORTATION BUILDERS ASSN. *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 588 F. 3d 1109.

No. 09–1487. O'CONOR *v.* FROST NATIONAL BANK. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 09–1489. FOOD MOVERS INTERNATIONAL, INC. *v.* DIAMOND CRYSTAL BRANDS, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 593 F. 3d 1249.

No. 09–1491. GAUTIER *v.* JONES, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 422.

No. 09–1493. LIGHTNER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 64 So. 3d 1158.

No. 09–1494. KLEINMAN ET AL. *v.* CITY OF SAN MARCOS, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 597 F. 3d 323.

No. 09–1495. VAN SALISBURY *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 368 Fed. Appx. 310.

No. 09–1496. DELANO FARMS CO. ET AL. *v.* CALIFORNIA TABLE GRAPE COMMISSION. C. A. 9th Cir. Certiorari denied. Reported below: 586 F. 3d 1219.

No. 09–1499. FEESERS, INC. *v.* MICHAEL FOODS, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 591 F. 3d 191.

No. 09–1500. MOMAH *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 167 Wash. 2d 140, 217 P. 3d 321.

No. 09–1502. BENTLEY ET AL. *v.* MILLENNIUM HEALTHCARE CENTERS II, LLC, DBA CAREONE AT DUNROVEN, FKA DUNROVEN HEALTHCARE CENTER, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 363 Fed. Appx. 891.

No. 09–1503. CADLE CO. ET AL. *v.* HICKS. C. A. 10th Cir. Certiorari denied. Reported below: 355 Fed. Appx. 186.

No. 09–1504. FALCON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 09–1505. FLORANCE *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 09–1506. JONES *v.* ANHEUSER BUSCH. C. A. 11th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 708.

No. 09–1507. SEGUNDO SEUNOS, LLC *v.* SATCHELL ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 09–1508. CRITZER ET UX. *v.* CITY OF CUPERTINO, CALIFORNIA, ET AL. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 09–1509. COAST AUTOMOTIVE GROUP, LTD., ET AL. *v.* MERCEDES BENZ, U. S. A., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 362 Fed. Appx. 332.

No. 09–1511. FINTAN *v.* MORRIS ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 125 Nev. 1072, 281 P. 3d 1212.

No. 09–1512. ENGLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 592 F. 3d 495.

No. 09–1513. DUVALL *v.* MISSOURI DEPARTMENT OF SOCIAL SERVICES ET AL. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 304 S. W. 3d 198.

No. 09–1514. M/Y BETTY LYN II ET AL. *v.* CRIMSON YACHTS. C. A. 11th Cir. Certiorari denied. Reported below: 603 F. 3d 864.

No. 09–1515. BERGMAN *v.* DISTRICT OF COLUMBIA ET AL. Ct. App. D. C. Certiorari denied. Reported below: 986 A. 2d 1208.

No. 09–1517. FLINT *v.* SHAKE, CHIEF JUDGE, CIRCUIT COURT OF KENTUCKY, 30TH CIRCUIT, ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–1518. HAVENS ET AL. *v.* MOBEX NETWORK SERVICES, LLC, ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 09–1519. UNITED STATES EX REL. PRITSKER *v.* SODEXHO, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 364 Fed. Appx. 787.

No. 09–1522. BROWN *v.* PROGRESS ENERGY. C. A. 11th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 556.

No. 09–1523. CONARD *v.* PENNSYLVANIA STATE POLICE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 360 Fed. Appx. 337.

No. 09–1527. KARLS *v.* GOLDMAN SACHS GROUP, INC., ET AL.; KARLS *v.* CITIGROUP OF NORTH AMERICA, INC., ET AL.; and KARLS *v.* ING FINANCIAL HOLDINGS CORP. ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–1528. RUDD *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–1529. SEPULVEDA ET AL. *v.* ALLEN FAMILY FOODS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 591 F. 3d 209.

No. 09–1530. UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 1776 *v.* RITE AID OF PENNSYLVANIA, INC. C. A. 3d Cir. Certiorari denied. Reported below: 595 F. 3d 128.

No. 09–1531. TALLEY *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 307 S. W. 3d 723.

No. 09–1534. VENDRELL *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 09–1535. PEREZ ET AL. *v.* SAKS FIFTH AVENUE, INC. C. A. 11th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 801.

No. 09–1536. MOLNAR *v.* CARE HOUSE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 359 Fed. Appx. 623.

No. 09–1537. GLATZER *v.* BEAR, STEARNS & CO., INC., ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 09–1538. HERNANDEZ-RAMOS *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 09–1540. CARIONE *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 357 Fed. Appx. 310.

No. 09–1541. VIETNAM VETERANS OF AMERICA ET AL. *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. D. C. Cir. Certiorari denied. Reported below: 599 F. 3d 654.

No. 09–1542. CHEN ET AL. *v.* LESTER ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 531.

No. 09–1543. SUONG *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 374 Fed. Appx. 708.

No. 09–1545. BUCK *v.* THOMAS M. COOLEY LAW SCHOOL. C. A. 6th Cir. Certiorari denied. Reported below: 597 F. 3d 812.

No. 09–1546. W. R. GRACE & CO. ET AL. *v.* CHAKARIAN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 591 F. 3d 164.

No. 09–1547. KELLY *v.* OLD DOMINION FREIGHT LINE, INC. C. A. 11th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 909.

No. 09–1548. KING CHI LUM *v.* KAUAI COUNTY COUNCIL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 358 Fed. Appx. 860.

No. 09–1549. MOHSEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 587 F. 3d 1028.

No. 09–1550. CARSON ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 09–1551. EVERSON ET UX. *v.* DOUGHTON, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS JUDGE OF THE SUPERIOR COURT OF ALLEGANY/ROCKINGHAM COUNTY, NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 461.

No. 09–1552. DRISCOLL *v.* CB RICHARD ELLIS, INC., ET AL. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 09–1553. CONVISSER *v.* DISCIPLINARY BOARD OF THE SUPREME COURT OF NEW MEXICO. Sup. Ct. N. M. Certiorari denied.

No. 09–1556. JACKSON ET AL. *v.* ROHM & HAAS CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 366 Fed. Appx. 342.

No. 09–1557. PATCO ENERGY EXPRESS, LLC, ET AL. *v.* LAMBROS. C. A. 11th Cir. Certiorari denied. Reported below: 353 Fed. Appx. 379.

No. 09–1558. YOUNG *v.* CARGILL. C. A. 11th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 585.

No. 09–1559. CURTIS *v.* GOOD. C. A. 5th Cir. Certiorari denied. Reported below: 601 F. 3d 393.

No. 09–1560. DURAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 596 F. 3d 1283.

No. 09–1562. KIMM *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied.

No. 09–1563. UNGAR ET AL. *v.* NEW YORK CITY HOUSING AUTHORITY. C. A. 2d Cir. Certiorari denied. Reported below: 363 Fed. Appx. 53.

No. 09–1564. ORTIZ, PERSONAL REPRESENTATIVE OF THE ESTATE OF ORTIZ-PAGAN, DECEASED *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 353 Fed. Appx. 412.

No. 09–1565. AFZAL *v.* PARK STREET TITLE, INC. Ct. App. D. C. Certiorari denied.

No. 09–1566. WALSH-FAUCHER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 1st Cir. Certiorari denied.

No. 09–1568. MOORE ET AL. *v.* LAKE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 194.

No. 09–1569. BAPTE, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BAPTE, DECEASED, ET AL. *v.* WEST CARIBBEAN AIRWAYS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 71.

No. 09–1570. ROBLETO-PASTORA *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 591 F. 3d 1051.

No. 09–1571. MCALARY ET UX. *v.* OKLAHOMA EX REL. OKLAHOMA DEPARTMENT OF HUMAN SERVICES ET AL. Ct. Civ. App. Okla. Certiorari denied. Reported below: 233 P. 3d 399.

No. 09–1573. CAPOGROSSO *v.* SUPREME COURT OF NEW JERSEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 588 F. 3d 180.

No. 09–1574. MORGAN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 394 Ill. App. 3d 1103, 985 N. E. 2d 1080.

No. 09–1575. RIVERVIEW HEALTH INSTITUTE LLC ET AL. *v.* MEDICAL MUTUAL OF OHIO ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 601 F. 3d 505.

No. 09–1577. BAKER *v.* BOOZ ALLEN HAMILTON, INC. C. A. 4th Cir. Certiorari denied. Reported below: 358 Fed. Appx. 476.

No. 09–1579. SPEAR *v.* GENERAL MOTORS CORP. Ct. Sp. App. Md. Certiorari denied.

No. 09–1580. PROSPER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 375 Fed. Appx. 190.

No. 09–8375. SCHULTZ *v.* HALPIN ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 234 Ill. 2d 381, 917 N. E. 2d 436.

No. 09–9187. BARRAZA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 576 F. 3d 798.

No. 09–9247. FOSTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 354 Fed. Appx. 278.

No. 09–9441. MAJID ET UX. *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 389.

No. 09–9539. MORROW *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 351 Fed. Appx. 649.

No. 09–9617. AVENDANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–9654. TABLER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 09–9685. N. R. *v.* NEW JERSEY DIVISION OF YOUTH AND FAMILY SERVICES. Super. Ct. N. J., App. Div. Certiorari denied.

No. 09–9705. STEVENS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 47 Cal. 4th 625, 218 P. 3d 272.

No. 09–9729. CHARLES *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 23 So. 3d 713.

No. 09–9749. HANDLEY *v.* CHAPMAN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 587 F. 3d 273.

No. 09–9786. GESSE *v.* NEOTTI, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 283.

No. 09–9863. ROBINSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 47 Cal. 4th 1104, 224 P. 3d 55.

No. 09–9871. JONES *v.* SHAW GROUP ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–9919. BROWN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied. Reported below: 279 Mich. App. 116, 755 N. W. 2d 664.

No. 09–9955. SMITH *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 604 Pa. 126, 985 A. 2d 886.

No. 09–9957. FORD *v.* PLILER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 590 F. 3d 782.

No. 09–9962. COLEMAN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 09–9972. HENNECKE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 590 F. 3d 619.

No. 09–9986. JAIYEOLA *v.* CARRIER CORP. C. A. 2d Cir. Certiorari denied. Reported below: 350 Fed. Appx. 583.

No. 09–9994. GERMAINE *v.* ST. GERMAINE. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 09–9995. GOSS *v.* FLORIDA UNEMPLOYMENT APPEALS COMMISSION ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 26 So. 3d 581.

No. 09–10012. HIGGINBOTTOM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 349 Fed. Appx. 406.

No. 09–10043. MAKIDON *v.* WOODS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–10059. HOCHSTRASER *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 178 Cal. App. 4th 883, 100 Cal. Rptr. 3d 728.

No. 09–10061. LUCERO GARCIA *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 224 Ariz. 1, 226 P. 3d 370.

No. 09–10077. MARTINEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 47 Cal. 4th 911, 224 P. 3d 877.

No. 09–10079. SANDER *v.* GREENSPAN & GREENSPAN ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 13 N. Y. 3d 880, 921 N. E. 2d 598.

No. 09–10098. GATHERS *v.* EAGLETON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 542.

No. 09–10153. TORRES *v.* CHAPMAN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 359 Fed. Appx. 459.

No. 09–10168. NOEL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 581 F. 3d 490.

No. 09–10182. STANKO *v.* QUAY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 356 Fed. Appx. 208.

No. 09–10198. BROWN *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 605 Pa. 103, 987 A. 2d 699.

No. 09–10254. LEONARD *v.* MCDANIEL, WARDEN. Sup. Ct. Nev. Certiorari denied. Reported below: 125 Nev. 1056, 281 P. 3d 1195.

No. 09–10287. DELGUIDICE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 351 Fed. Appx. 425.

No. 09–10387. MCWHORTER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 47 Cal. 4th 318, 212 P. 3d 692.

No. 09–10422. DENDY *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 09–10432. HOSKINS-HARRIS *v.* TYCO/MALLINCKRODT HEALTHCARE, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 787.

No. 09–10441. HUNTER *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 766.

No. 09–10470. CARR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 592 F. 3d 636.

No. 09–10471. KING *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Guilford County, N. C. Certiorari denied.

No. 09–10477. JACKSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 09–10481. ROBINSON *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–10484. ROBINSON *v.* KRAMER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 588 F. 3d 1212.

No. 09–10485. RIVERA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 09–10494. LEE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 09–10495. MINNS *v.* CRUMP. Sup. Ct. Va. Certiorari denied.

No. 09–10496. MENG *v.* MECKLENBURG COUNTY DEPARTMENT OF SOCIAL SERVICES. Sup. Ct. N. C. Certiorari denied. Reported below: 363 N. C. 804, 690 S. E. 2d 702.

No. 09–10503. MOURGUET *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–10511. WILBON *v.* BARAN ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–10514. WALKER *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–10517. BIN XU *v.* MECKLENBURG COUNTY DEPARTMENT OF SOCIAL SERVICES. Ct. App. N. C. Certiorari denied. Reported below: 200 N. C. App. 617, 687 S. E. 2d 710.

No. 09–10519. BING *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–10520. SONNTAG *v.* WOODS ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–10522. DAUWE *v.* MILLER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 435.

No. 09–10524. FELDER *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–10527. FULBRIGHT *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 892.

No. 09–10530. EDWARDS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 09–10537. LOPEZ *v.* THURMER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 594 F. 3d 584.

No. 09–10538. KANGER *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–10541. LLOVERA LINARES *v.* BROWARD COUNTY SHERIFF'S OFFICE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 72.

No. 09–10544. YSAIS *v.* NEW MEXICO ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 863.

No. 09–10549. WEBB *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 09–10550. THOMAS *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–10551. YOUNG *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–10552. JOHNSON *v.* BAILEY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 451.

No. 09–10556. OSPINA *v.* INDYMAC BANK ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 567.

No. 09–10558. BANKSTON *v.* VEAL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–10559. BROWN *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 26 So. 3d 583.

No. 09–10560. BASTIDA *v.* LEBLANC, SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 443.

No. 09–10565. CLARK *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 09–10567. MYLES *v.* MICHIGAN. Cir. Ct. Saginaw County, Mich. Certiorari denied.

No. 09–10570. KRETCHMAR *v.* PENNSYLVANIA ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 605 Pa. 457, 991 A. 2d 306.

No. 09–10572. Hooks *v.* Branker, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 348 Fed. Appx. 854.

No. 09–10573. Gary *v.* Upton, Warden. Super. Ct. Butts County, Ga. Certiorari denied.

No. 09–10580. Fowler *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 22 So. 3d 541.

No. 09–10583. Hagins *v.* Sinclair, Warden. C. A. 9th Cir. Certiorari denied.

No. 09–10586. DeSantiago *v.* McCollum, Attorney General of Florida, et al. C. A. 11th Cir. Certiorari denied.

No. 09–10598. Blair *v.* Blair. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 09–10599. Black *v.* Kelsey. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 09–10601. Davis *v.* Booker, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 589 F. 3d 302.

No. 09–10603. Steinburger *v.* State Correctional Institution at Greene et al. C. A. 3d Cir. Certiorari denied.

No. 09–10604. Reviere *v.* Fleming et al. C. A. 9th Cir. Certiorari denied.

No. 09–10606. Vinton *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 594 F. 3d 14.

No. 09–10607. Jones *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 596 F. 3d 273.

No. 09–10610. Martin *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 09–10615. Baker *v.* Kentucky. C. A. 6th Cir. Certiorari denied.

No. 09–10617. Shannon *v.* Evans, Warden. C. A. 7th Cir. Certiorari denied.

No. 09–10621. Quarterman *v.* Blackwood et al. C. A. 11th Cir. Certiorari denied.

No. 09–10623. STANLEY *v.* OLLIS. C. A. 6th Cir. Certiorari denied.

No. 09–10625. SMITH *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 09–10626. REED *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 09–10635. TURNER *v.* POLLARD, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–10637. WALLIS *v.* LEVINE ET AL. C. A. 7th Cir. Certiorari denied.

No. 09–10643. GARCIA ROSALES *v.* DAWSON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–10650. ANDERSON ET AL. *v.* CITY OF DAVIS, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 851.

No. 09–10653. BURGESS *v.* MCCOLLUM, ATTORNEY GENERAL OF FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 357 Fed. Appx. 206.

No. 09–10655. DECKER *v.* DUNBAR ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 358 Fed. Appx. 509.

No. 09–10657. MEEKS *v.* MCKUNE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 354 Fed. Appx. 348.

No. 09–10660. ERVINE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 47 Cal. 4th 745, 220 P. 3d 820.

No. 09–10663. DEAN *v.* J. P. MORGAN CHASE BANK. C. A. 11th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 611.

No. 09–10664. RIGGINS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 09–10665. REYES *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 09–10668. MORENO *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 11th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 23.

No. 09–10669. MORVA *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 278 Va. 329, 683 S. E. 2d 553.

No. 09–10670. NICHOLS *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 27 So. 3d 433.

No. 09–10674. LINICOMN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 358 Fed. Appx. 549.

No. 09–10675. WILLIAMS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 394 Ill. App. 3d 236, 914 N. E. 2d 641.

No. 09–10683. DACOSTA *v.* UNION LOCAL 306 OF THE MOTION PICTURE PROJECTIONISTS, OPERATORS, VIDEO TECHNICIANS, THEATRICAL EMPLOYEES & ALLIED CRAFTS, ET AL. C. A. 2d Cir. Certiorari denied.

No. 09–10684. TALLEY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 09–10685. WILLIAMS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–10686. WESTBROOK *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 29 So. 3d 828.

No. 09–10690. BOOKER *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 357 Fed. Appx. 528.

No. 09–10696. MCDOWELL *v.* CURTIN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–10697. O'NEAL *v.* LOUISIANA. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 7 So. 3d 182.

No. 09–10700. MORTON *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–10702. SMITH *v.* SOUTH CAROLINA DEPARTMENT OF HIGHWAY PATROL ET AL. C. A. 4th Cir. Certiorari denied.

No. 09–10704. RICHARDS *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari denied.

No. 09–10705. SHAARBAY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 27 So. 3d 661.

No. 09–10709. MASON *v.* CASSADY ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–10710. DECONTI *v.* HUNTER, SHERIFF, COLLIER COUNTY, FLORIDA, ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 9 So. 3d 624.

No. 09–10711. COBADO *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 09–10713. WASHINGTON *v.* LATTIMORE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–10715. WEIS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 287 Ga. 46, 694 S. E. 2d 350.

No. 09–10717. TAURO *v.* ALLEGHENY COUNTY, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 371 Fed. Appx. 345.

No. 09–10718. MENDENHALL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 09–10723. BROCK *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 327 S. W. 3d 645.

No. 09–10727. GONZALEZ *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 361 Fed. Appx. 822.

No. 09–10732. GARDNER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 306 S. W. 3d 274.

No. 09–10734. COTTON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 393 Ill. App. 3d 237, 913 N. E. 2d 578.

No. 09–10737. D'ARCY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 48 Cal. 4th 257, 226 P. 3d 949.

No. 09–10741. LEWIS *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 581 F. 3d 92.

No. 09–10742. JOHNSON *v.* LIVINGSTON, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 360 Fed. Appx. 531.

No. 09–10744. LANGLEY *v.* CAREY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–10751. SANCHEZ *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–10753. BARNES *v.* ROYAL HEALTH CARE LLC. C. A. 2d Cir. Certiorari denied. Reported below: 357 Fed. Appx. 375.

No. 09–10758. FIELDS *v.* OHIO. Ct. App. Ohio, Brown County. Certiorari denied. Reported below: 2009-Ohio-6921.

No. 09–10762. DAVIS *v.* KANAWHA COUNTY BOARD OF EDUCATION. C. A. 4th Cir. Certiorari denied. Reported below: 357 Fed. Appx. 515.

No. 09–10763. EVANS *v.* ELDRIDGE ET AL. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 09–10764. DAVIS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–10765. DICK *v.* EASTERLING, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–10771. MESSERSMITH *v.* KERESTES, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY. C. A. 3d Cir. Certiorari denied.

No. 09–10774. HALL *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–10778. STUDLI *v.* CRIMONE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 346 Fed. Appx. 804.

No. 09–10780. SAYYED *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 09–10781. ROBINSON *v.* SULLIVAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 588 F. 3d 1212.

No. 09–10782. GAVILAN *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 09–10783. FLETCHER *v.* MCKEE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 355 Fed. Appx. 935.

No. 09–10784. GROVER *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–10786. GRAHAM *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 09–10788. COLMAN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 09–10790. CLAGON *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–10791. THOMAS *v.* YATES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 797.

No. 09–10792. CARTER *v.* KING, SUPERINTENDENT, SOUTH MISSISSIPPI CORRECTIONAL INSTITUTION. C. A. 5th Cir. Certiorari denied.

No. 09–10794. HIGHTOWER *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 09–10795. HARDWICK *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 16 So. 3d 1045.

No. 09–10798. MARTINEZ-SANTACRUZ *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 09–10806. BAZE *v.* THOMPSON, COMMISSIONER, KENTUCKY DEPARTMENT OF CORRECTIONS. Sup. Ct. Ky. Certiorari denied. Reported below: 302 S. W. 3d 57.

No. 09–10807. HOWARD, AKA WHITEHEAD *v.* WASHINGTON STATE PRISON ET AL. Sup. Ct. Ga. Certiorari denied.

No. 09–10810. HALL *v.* BOATWRIGHT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–10814. GOODEN *v.* IOWA. Sup. Ct. Iowa. Certiorari denied.

No. 09–10817. FORD *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 354 Fed. Appx. 760.

No. 09–10818. FOX *v.* UPTON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–10823. ARRINGTON *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 286 Ga. 335, 687 S. E. 2d 438.

No. 09–10828. OSTERBACK *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 23 So. 3d 113.

No. 09–10829. PINGARO *v.* AMERIQUEST MORTGAGE CO. ET AL. App. Ct. Mass. Certiorari denied.

No. 09–10832. LEWIS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–10833. ANDREW J. *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 279 Neb. 81, 776 N. W. 2d 519.

No. 09–10834. WITHEROW *v.* SALLING ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–10835. CEJAS *v.* BLANAS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 763.

No. 09–10837. WEST *v.* HALLET ET AL. C. A. 7th Cir. Certiorari denied.

No. 09–10838. WEST *v.* HUIBREGTSE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–10839. WEST *v.* OVERBO ET AL. C. A. 7th Cir. Certiorari denied.

No. 09–10840. WARREN *v.* NAPOLI, SUPERINTENDENT, SOUTHPORT CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 09–10848. STINSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 592 F. 3d 460.

No. 09–10855. AVILES ARMENTA *v.* CHATMAN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 452.

No. 09–10858. OUTLEY *v.* JAMES. C. A. 9th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 851.

No. 09–10859. MOSLIMANI *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 09–10862. MILLER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 09–10866. COBBS *v.* POLLARD, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–10870. MILLER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 09–10871. MILLER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 09–10872. YOUNG *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–10877. ORTIZ *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–10878. MCKENZIE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 29 So. 3d 272.

No. 09–10881. JONES *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 363 Fed. Appx. 522.

No. 09–10882. HARRIS *v.* BUDGE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 399.

No. 09–10884. STOGNER *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 11 So. 3d 1245.

No. 09–10886. ROONEY *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 287 Ga. 1, 690 S. E. 2d 804.

No. 09–10890. GOVIND *v.* LINDSEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–10891. HOLT *v.* HETZELL, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–10892. SIMPSON *v.* CARUSO, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 355 Fed. Appx. 927.

No. 09–10893. DENNIS *v.* CITY OF AVENTURA, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–10899. BANKS *v.* JORDAN, SHERIFF, CAPE GIRARDEAU COUNTY, MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 354 Fed. Appx. 273.

No. 09–10900. JACKSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–10901. BAKER *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 223 P. 3d 542.

No. 09–10904. BLUESTEIN *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 229 Ore. App. 236, 211 P. 3d 984.

No. 09–10914. EDGE *v.* LAWLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–10915. HARPER *v.* MCCALL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 273.

No. 09–10919. GRAY *v.* MCCANN, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 598 F. 3d 324.

No. 09–10920. FIELD *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 09–10922. GREEN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 09–10923. FOSTER *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–10924. GUEST *v.* HINKLE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 357 Fed. Appx. 554.

No. 09–10927. EMORY *v.* HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII ET AL. Int. Ct. App. Haw. Certiorari denied. Reported below: 121 Haw. 472, 220 P. 3d 1053.

No. 09–10929. IACOBESCU *v.* LANSING COMMUNITY COLLEGE AND DENTAL HYGIENE PROGRAM. C. A. 6th Cir. Certiorari denied.

No. 09–10931. HORNER *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 361 Fed. Appx. 584.

No. 09–10932. HILL *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 09–10933. HERING *v.* MADDEN ET AL. C. A. 8th Cir. Certiorari denied.

No. 09–10935. DAVIS *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 09–10936. GOROSTIZA *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 09–10940. LEVI *v.* DEPARTMENT OF LABOR. C. A. 8th Cir. Certiorari denied. Reported below: 360 Fed. Appx. 710.

No. 09–10941. JACOBOWITZ ET UX. *v.* M&T MORTGAGE CORP. C. A. 3d Cir. Certiorari denied.

No. 09–10943. KITTRELL *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 473.

No. 09–10945. WHITTSETTE *v.* GANSHEIMER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–10946. SILVERMAN *v.* HUDSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–10950. ADIR *v.* CITY OF LOS ANGELES, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–10951. HARRIS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 09–10952. GATTIS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied.

No. 09–10954. FIGUEROA *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 972 A. 2d 551.

No. 09–10959. DUTCH *v.* BALICKI, ADMINISTRATOR, SOUTH WOODS STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–10964. MARTIN *v.* FANIES, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 365 Fed. Appx. 736.

No. 09–10965. LEIVA *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 358 Fed. Appx. 972.

No. 09–10967. HALLORAN *v.* BENNETT, ATTORNEY GENERAL OF HAWAII, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 791.

No. 09–10968. PO KEE WONG *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 342 Fed. Appx. 623.

No. 09–10975. BUCKNER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 392 Ill. App. 3d 1129, 984 N. E. 2d 208.

No. 09–10976. MEISTER *v.* FLORIDA UNEMPLOYMENT APPEALS COMMISSION ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 33 So. 3d 35.

No. 09–10978. CASTRO *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–10979. MATOS MONTALVO *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 604 Pa. 386, 986 A. 2d 84.

No. 09–10981. DAVIS *v.* MARYLAND STATE DEPARTMENT OF EDUCATION. Ct. Sp. App. Md. Certiorari denied. Reported below: 187 Md. App. 721 and 729.

No. 09–10982. DOUGLAS *v.* MICHIGAN. Cir. Ct. Oakland County, Mich. Certiorari denied.

No. 09–10984. EVANS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 389 Ill. App. 3d 1145, 976 N. E. 2d 1208.

No. 09–10987. JONES *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 43 So. 3d 1258.

No. 09–10988. LEMUS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 582 F. 3d 958.

No. 09–10989. JOHNSON *v.* BURRIS, ACTING WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 339 Fed. Appx. 129.

No. 09–10992. POWELL *v.* WALSH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–10996. WILSON *v.* BRUNSMAN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 363 Fed. Appx. 333.

No. 09–10997. WILLIAMSON *v.* SMITH, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 09–10999. WHITE *v.* STEELE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 602 F. 3d 707.

No. 09–11002. RUSSELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 595 F. 3d 633.

No. 09–11005. MOORE *v.* LEVINSON ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–11006. MARTIN *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 347 Fed. Appx. 485.

No. 09–11007. BUTLER *v.* SCHWARTZ, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–11013. CURTIS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 09–11015. Cooper *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 09–11016. Mehra *v.* Continental Casualty Co. et al. (Reported below: 322 Wis. 2d 735, 778 N. W. 2d 172); and Mehra *v.* Saeian et al. Ct. App. Wis. Certiorari denied.

No. 09–11017. Morris *v.* Everett, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 469.

No. 09–11018. McDaniel *v.* McKee, Warden. C. A. 6th Cir. Certiorari denied.

No. 09–11019. Neely *v.* Illinois. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 397 Ill. App. 3d 1116, 988 N. E. 2d 245.

No. 09–11021. Honesto *v.* California et al. C. A. 9th Cir. Certiorari denied.

No. 09–11023. Greene *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 09–11025. Forrest *v.* McNeil, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 342 Fed. Appx. 560.

No. 09–11026. Roberts *v.* Gerry, Warden. C. A. 1st Cir. Certiorari denied.

No. 09–11028. Riley *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 09–11029. Rodriguez *v.* McNeil, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 09–11030. Dobyne *v.* Illinois. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 385 Ill. App. 3d 1147, 970 N. E. 2d 136.

No. 09–11033. Starner *v.* Jackson, Superintendent, Nash Correctional Institution. C. A. 4th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 461.

No. 09–11037. BROTHERS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–11040. OWENS *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 22 So. 3d 92.

No. 09–11041. KELLER *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 298 Ga. App. XXIV.

No. 09–11042. LOPEZ *v.* HOREL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 810.

No. 09–11044. XIAO QING LIU *v.* RICHLINE GROUP ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 13 N. Y. 3d 880, 921 N. E. 2d 598.

No. 09–11045. JOHNSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 09–11048. FORD *v.* LUDLUM. C. A. 7th Cir. Certiorari denied. Reported below: 363 Fed. Appx. 398.

No. 09–11049. HAWKINS *v.* MONTANA BOARD OF PARDONS ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 355 Mont. 548, 228 P. 3d 451.

No. 09–11053. MIKELL *v.* BENTON, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 09–11055. MITCHELL *v.* ORANGE COUNTY, TEXAS, ET AL. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 09–11057. BELL *v.* DISTRICT COURT OF OKLAHOMA, OKLAHOMA COUNTY, ET AL. Ct. Crim. App. Okla. Certiorari denied.

No. 09–11058. APELT *v.* ARIZONA. Super. Ct. Ariz., County of Pinal. Certiorari denied.

No. 09–11062. MILLS *v.* NEW YORK. County Ct., Genesee County, N. Y. Certiorari denied.

No. 09–11063. JUARBE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 09–11065. NENG POR YANG *v.* CITY OF SHAKOPEE, MINNESOTA, ET AL. C. A. 8th Cir. Certiorari denied.

No. 09–11066. DYDZAK *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 09–11068. WINSTON *v.* KELLY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 592 F. 3d 535.

No. 09–11070. GILLARD *v.* MICHALAKOS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 365 Fed. Appx. 1.

No. 09–11072. WALKER *v.* UNIVERSITY OF ROCHESTER, STRONG MEMORIAL HOSPITAL. C. A. 2d Cir. Certiorari denied. Reported below: 368 Fed. Appx. 188.

No. 09–11074. LARUE *v.* DENSO MANUFACTURING ARKANSAS, INC. C. A. 8th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 732.

No. 09–11075. COLINA ALIVIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 790.

No. 09–11076. BANKS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 29 So. 3d 293.

No. 09–11080. WASHINGTON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–11081. BLAKENEY *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 29 So. 3d 46.

No. 09–11082. TOLEN *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 304 S. W. 3d 229.

No. 09–11085. WILSON *v.* OKLAHOMA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 363 Fed. Appx. 595.

No. 09–11089. WILLIAMS *v.* CROUCH ET AL. C. A. 8th Cir. Certiorari denied.

No. 09–11092. AVANT *v.* LOS ANGELES CENTRAL COMMUNITY POLICE STATION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 352 Fed. Appx. 452.

No. 09–11093. BROWN *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–11094. GILL *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 300 S. W. 3d 225.

No. 09–11096. PERKINS *v.* CULLIVER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–11098. SMITH *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 356 Fed. Appx. 646.

No. 09–11102. J. F. *v.* SOUTH DAKOTA. Sup. Ct. S. D. Certiorari denied. Reported below: 789 N. W. 2d 320.

No. 09–11104. FRANKLIN *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–11105. FINLEY *v.* NIXON, GOVERNOR OF MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 09–11107. THOMAS *v.* FORTNER, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–11108. WILLIAMS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–11111. MONIZ *v.* MCKEE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–11112. OGOT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–11113. NORTHERN *v.* BOATWRIGHT, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 594 F. 3d 555.

No. 09–11118. THOMAS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 279 Va. 131, 688 S. E. 2d 220.

No. 09–11119. HUNG NAM TRAN ET AL. *v.* TIMBERLAKE ET AL. C. A. 7th Cir. Certiorari denied.

No. 09–11123. ALLEN *v.* COLEMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–11124. ANTHONY *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 361 Fed. Appx. 142.

No. 09–11125. CREAR *v.* HARRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–11130. MARTINEZ-CARDENAS *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 151 Wash. App. 1051.

No. 09–11131. JOLLY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 17.

No. 09–11132. LUCAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 570.

No. 09–11133. KITTKA *v.* MICHIGAN. Cir. Ct. Oakland County, Mich. Certiorari denied.

No. 09–11134. JARMON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 596 F. 3d 228.

No. 09–11135. KEITH *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 09–11136. KESSLER *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 09–11137. MCKINNEDY *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 09–11138. ORDONEZ OROSCO *v.* NAPOLITANO, SECRETARY OF HOMELAND SECURITY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 598 F. 3d 222.

No. 09–11139. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 55.

No. 09–11140. LANE *v.* FEDERAL BUREAU OF PRISONS ET AL. C. A. D. C. Cir. Certiorari denied.

No. 09–11141. MASKO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 373.

No. 09–11142. KELLY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 352 Fed. Appx. 111.

No. 09–11144. BURGESS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 467.

No. 09–11145. BLAKELY *v.* SNIVELY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 637.

No. 09–11146. ALVAREZ-RAMOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 835.

No. 09–11147. ALMONTE-PALMERS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–11148. BURGOS *v.* YARBOROUGH, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 799.

No. 09–11149. NEWELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 596 F. 3d 876.

No. 09–11150. QUATTRINI *v.* PALMER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–11151. RIVERA-MILAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–11152. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–11153. ROOKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 596 F. 3d 204.

No. 09–11154. SARWAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 353 Fed. Appx. 347.

No. 09–11155. DOMINGUEZ-RAMIREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–11156. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–11157. BADUE *v.* MEEGAN, JUDGE, SUPERIOR COURT OF CALIFORNIA, SACRAMENTO COUNTY, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–11158. WILLIAMS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 363 N. C. 689, 686 S. E. 2d 493.

No. 09–11160. MARTINEZ-DEMPWOLF *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–11161. JOHNSON *v.* MITCHEM, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–11162. TURNER *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 09–11164. PEARSON *v.* BRACE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 743.

No. 09–11165. MONTERO *v.* WELLS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–11167. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–11168. CHANCELLOR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 826.

No. 09–11169. REBAYA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 770.

No. 09–11170. RUCKER *v.* HAMLET, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 786.

No. 09–11171. SMITH *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 323 Wis. 2d 377, 780 N. W. 2d 90.

No. 09–11172. SERVIN *v.* MCDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 778.

No. 09–11173. JUVENILE MALE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 502.

No. 09–11174. SHOOP *v.* WEST VIRGINIA. Cir. Ct. Morgan County, W. Va. Certiorari denied.

No. 09–11176. MCLEAN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 29 So. 3d 1045.

No. 09–11177. LONDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 836.

No. 09–11179. LACEY *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 29 So. 3d 786.

No. 09–11180. RODRIGUEZ-VELEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 597 F. 3d 32.

No. 09–11181. BILLINGS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–11182. ANDERSON *v.* CASTILLO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–11183. BUTLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 09–11184. ABDULLAYEV *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 363 Fed. Appx. 232.

No. 09–11185. CRUMMIE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 20.

No. 09–11186. KUN TAUCH *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 09–11187. TUCKER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 363 Fed. Appx. 643.

No. 09–11188. TORRES SANTIAGO *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 980 A. 2d 659.

No. 09–11189. STANKO *v.* CRUZ, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 360 Fed. Appx. 725.

No. 09–11190. OWENS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 286 Ga. 821, 693 S. E. 2d 490.

No. 09–11191. RUCKER *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–11192. ROSALES-DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 62.

No. 09–11193. MONTES-GUTIERREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 808.

No. 09–11194. MORALES *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 346 Fed. Appx. 539.

No. 09–11195. SHOLARS *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 312 S. W. 3d 694.

No. 09–11196. JOHNSON *v.* MCDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–11198. JACKSON *v.* RUSSO, SUPERINTENDENT, SOUZA-BARANOWSKI CORRECTIONAL CENTER. C. A. 1st Cir. Certiorari denied.

No. 09–11199. TYLER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 975 A. 2d 848.

No. 09–11200. WILSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 367 Fed. Appx. 381.

No. 09–11201. SPAULDING *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 670.

No. 09–11202. SEDAGHATY *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–11203. SCOTT *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 983 A. 2d 1064.

No. 09–11204. SCROGGINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 599 F. 3d 433.

No. 09–11205. RENDA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 368 Fed. Appx. 306.

No. 09–11206. EADY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 82.

No. 09–11210. COGDELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 437.

No. 09–11211. SIMPSON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 09–11214. BURGESS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 991 A. 2d 34.

No. 09–11215. SMITH *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 26 So. 3d 597.

No. 09–11216. STASZ *v.* GONZALEZ, TRUSTEE. C. A. 9th Cir. Certiorari denied. Reported below: 348 Fed. Appx. 233.

No. 09–11217. MCCRAY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 395 Ill. App. 3d 1116, 986 N. E. 2d 806.

No. 09–11219. PARKER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 594 F. 3d 1243.

No. 09–11221. KANTE *v.* NIKE, INC. C. A. 9th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 388.

No. 09–11222. MATHEWS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 665.

No. 09–11224. LIPHAM *v.* MAINE. C. A. 1st Cir. Certiorari denied.

No. 09–11225. YSAIS *v.* RICHARDSON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 603 F. 3d 1175.

No. 09–11226. WADE *v.* MARINE SERVICES OF ACADIANA, LLC, ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 15 So. 3d 385.

No. 09–11227. NORBERG *v.* COURSEY, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 09–11228. PLATE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 361 Fed. Appx. 318.

No. 09–11229. SEALE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 600 F. 3d 473.

No. 09–11230. SCHINDLEY *v.* MEMORY FILM PRODUCTIONS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 356 Fed. Appx. 556.

No. 09–11231. SANAI *v.* SANAI. Ct. App. Wash. Certiorari denied. Reported below: 150 Wash. App. 1042.

No. 09–11233. COULOMBE *v.* SUPERIOR COURT OF CALIFORNIA, VENTURA COUNTY, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 09–11235. LARRIMORE *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 365 Fed. Appx. 858.

No. 09–11236. KRANTZ *v.* LINDAMOOD, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 594 F. 3d 896.

No. 09–11237. MYERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 350 Fed. Appx. 810.

No. 09–11238. MURRAY *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied. Reported below: 363 Fed. Appx. 851.

No. 09–11239. ADAMS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 549.

No. 09–11240. BAUGH *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON. C. A. 9th Cir. Certiorari denied.

No. 09–11241. BOYD *v.* CITY OF COLUMBIA, SOUTH CAROLINA, ET AL. Sup. Ct. S. C. Certiorari denied.

No. 09–11242. ALEJANDRO *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–11243. ELROD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 1.

No. 09–11244. CORVAIA-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 827.

No. 09–11246. CHASE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 979.

No. 09–11247. PRICE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–11248. BENJAMIN *v.* SHEPHERD ET AL. C. A. 4th Cir. Certiorari denied.

No. 09–11249. ABRANTE *v.* ST. AMAND, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT CEDAR JUNC-

TION. C. A. 1st Cir. Certiorari denied. Reported below: 595 F. 3d 11.

No. 09–11250. BOOKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–11251. APPUKKUTTA *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 13 N. Y. 3d 936, 922 N. E. 2d 916.

No. 09–11252. BROCKMAN-EL *v.* NORTH CAROLINA DEPARTMENT OF CORRECTIONS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 332.

No. 09–11254. MEAD *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 126 Nev. 738.

No. 09–11255. PETTIFORD *v.* PITKINS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT LAUREL HIGHLANDS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–11256. DILLON *v.* SAN FRANCISCO VETERANS ADMINISTRATION, FORT MILEY HOSPITAL. C. A. 9th Cir. Certiorari denied.

No. 09–11258. CARTER *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 09–11259. GARCIA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 362 Fed. Appx. 293.

No. 09–11260. HODGES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 586.

No. 09–11261. HUPP *v.* EDUCATIONAL CREDIT MANAGEMENT CORP. ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–11262. WILDER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 597 F. 3d 936.

No. 09–11263. FUSSELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 102.

No. 09–11265. WARREN *v.* MCCOLLUM, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–11266. BATTLE *v.* HOLLY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 824.

No. 09–11267. CRUZ-BETANCOURT *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–11269. WILSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–11270. MCKINNEY *v.* OHIO. Ct. App. Ohio, Defiance County. Certiorari denied.

No. 09–11272. HARFORD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 370 Fed. Appx. 322.

No. 09–11273. GREY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 369 Fed. Appx. 331.

No. 09–11274. HERNANDEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 360 Fed. Appx. 287.

No. 09–11276. GUERRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 569.

No. 09–11279. ISLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 80.

No. 09–11280. GONZALEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 596 F. 3d 1228.

No. 09–11281. HAWKINS *v.* SOCIAL SECURITY ADMINISTRATION. C. A. Fed. Cir. Certiorari denied. Reported below: 368 Fed. Appx. 136.

No. 09–11282. GORDON *v.* STATE BAR OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 833.

No. 09–11283. RUDISILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 358 Fed. Appx. 421.

No. 09–11286. CLAUSELL *v.* SHERRER, ADMINISTRATOR, NORTHERN STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 594 F. 3d 191.

No. 09–11287. CROWDER *v.* DAVIS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 357 Fed. Appx. 554.

No. 09–11288. FULTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–11289. CUMMINGS-EL *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 588 F. 3d 1331.

No. 09–11290. MAHAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 586 F. 3d 1185 and 359 Fed. Appx. 743.

No. 09–11291. SEARS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 25 So. 3d 1244.

No. 09–11292. SANDOVAL *v.* HOLINKA, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–11294. MCRAE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 359 Fed. Appx. 399.

No. 09–11295. BOSEMAN *v.* BAZZLE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 796.

No. 09–11296. DEAN *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA. C. A. 11th Cir. Certiorari denied.

No. 09–11297. DALTON *v.* BALLARD, WARDEN. Sup. Ct. App. W. Va. Certiorari denied.

No. 09–11298. EWING *v.* UNITED STATES POSTAL SERVICE. C. A. 6th Cir. Certiorari denied.

No. 09–11299. BROOKS *v.* POULOS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 826.

No. 09–11300. DILLARD *v.* SANCHEZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 359 Fed. Appx. 703.

No. 09–11301. DORSEY *v.* MCKEE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–11302. CASTRO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 355 Fed. Appx. 750.

No. 09–11303. WATKINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–11304. WHITE *v.* FRANCIS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 371.

No. 09–11305. MELVIN *v.* HUDSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–11306. JOHNSON *v.* OBAMA, PRESIDENT OF THE UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 09–11308. JOHNSON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 353 Fed. Appx. 827.

No. 09–11309. YOUNG *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 982 A. 2d 672.

No. 09–11310. TIMMONS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 358 Fed. Appx. 437.

No. 09–11312. SCHNEPF *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–11313. SAWYER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 361 Fed. Appx. 96.

No. 09–11314. REED *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 593 F. 3d 1217.

No. 09–11315. VEAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 590.

No. 09–11316. WEICKS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 844.

No. 09–11318. ARMIJO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 602 F. 3d 381.

No. 09–11319. AUSBURN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 362 Fed. Appx. 259.

No. 09–11320. BOAZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 598 F. 3d 936.

No. 09–11322. SIMMONS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 09–11323. COLEMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–11324. CANNON *v.* MASON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 357 Fed. Appx. 969.

No. 09–11325. EARHART *v.* KONTEH, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 589 F. 3d 337.

No. 09–11329. CRULLER *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 23 So. 3d 1192.

No. 09–11330. LEMUS *v.* KRAMER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–11331. SIMON *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 456 Mass. 280, 923 N. E. 2d 58.

No. 09–11332. SAUNDERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–11334. SNYPE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 09–11335. WILLIAMS *v.* HOWARD ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–11336. BASSO *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 359 Fed. Appx. 504.

No. 09–11337. AKINMUKOMI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 522.

No. 09–11338. BODEN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 972 A. 2d 548.

No. 09–11339. ABDELSHAFI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 592 F. 3d 602.

No. 09–11340. BENJAMIN *v.* ANDREW ET AL. C. A. 4th Cir. Certiorari denied.

No. 09–11341. JACKSON *v.* BODISON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 426.

No. 09–11343. MARTINEZ *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–11344. MILLER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 09–11345. MINARIK *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 970 A. 2d 473.

No. 09–11347. LITTLE *v.* NORTH CAROLINA. Super. Ct. N. C., Anson County. Certiorari denied.

No. 09–11348. MASSEY *v.* BALLARD, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 363 Fed. Appx. 243.

No. 09–11349. LESLIE *v.* HOLDER, ATTORNEY GENERAL, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 363 Fed. Appx. 955.

No. 09–11350. FONSECA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 825.

No. 09–11351. HARRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–11352. MENEFEE *v.* MCDONALD, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 810.

No. 09–11353. MEJIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 600 F. 3d 12.

No. 09–11354. MINES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 09–11355. PENDLETON *v.* UNITED STATES MEDICAL CENTER, SPRINGFIELD, MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied.

No. 09–11356. MESINA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 353 Fed. Appx. 416.

No. 09–11357. NUNGARAY *v.* JACQUEZ, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–11358. REMME *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 855.

No. 09–11359. SMITH *v.* BRADSHAW, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 591 F. 3d 517.

No. 09–11361. YORK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 600 F. 3d 347.

No. 09–11363. ADAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 621.

No. 09–11365. BREWLEY-CARRERO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–11366. BARRIENTOS-HERNANDEZ *v.* OREGON. Ct. App. Ore. Certiorari denied.

No. 09–11367. BURTON *v.* WASHINGTON DEPARTMENT OF CORRECTIONS ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–11368. ALLEN *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 16 So. 3d 152.

No. 09–11369. BYRD *v.* STEWARD ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–11371. BREWER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 09–11372. ZAVALA-ALONSO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 547.

No. 09–11373. GERMANY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 984 A. 2d 1217.

No. 09–11374. FRANK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 599 F. 3d 1221.

No. 09–11375. GERMAN-ESPINAL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–11377. WILLIAMS *v.* WHITE, WARDEN, ET AL. (two judgments). C. A. 8th Cir. Certiorari denied.

No. 09–11379. WILLIAMS *v.* LAWLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–11380. SCOTT *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 395 Ill. App. 3d 1131, 986 N. E. 2d 812.

No. 09–11381. REYES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 350 Fed. Appx. 790.

No. 09–11382. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 357 Fed. Appx. 555.

No. 09–11383. ORTIZ *v.* SULLIVAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–11384. MILLER *v.* MEADOWS, WARDEN. Super. Ct. Baldwin County, Ga. Certiorari denied.

No. 09–11385. MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 708.

No. 09–11386. MANOHAR *v.* NEW YORK CITY HUMAN RESOURCES ADMINISTRATION ET AL. C. A. 2d Cir. Certiorari denied.

No. 09–11387. WOODARD *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–11388. WRIGHT *v.* POLLARD, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–11390. WHITE *v.* EVANS, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–11391. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 608.

No. 09–11392. NOWAK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 39.

No. 09–11393. O'NEAL-SLOANE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 371 Fed. Appx. 298.

No. 09–11394. MENNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 374 Fed. Appx. 446.

No. 09–11395. UKOFIA *v.* HOLDER, ATTORNEY GENERAL. C. A. 8th Cir. Certiorari denied. Reported below: 359 Fed. Appx. 682.

No. 09–11396. WILSON *v.* WANN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 841.

No. 09–11397. TZEUTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 415.

No. 09–11398. TURCIOS-LAZO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 341.

No. 09–11399. PINEDA ZARATE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 370 Fed. Appx. 151.

No. 09–11400. ZOMMER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 31 So. 3d 733.

No. 09–11401. LOWE *v.* DEVINE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 667.

No. 09–11403. EYE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 594 F. 3d 634.

No. 09–11404. SHIH-LIANG CHEN *v.* TOWNSHIP OF FAIRFIELD, NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 354 Fed. Appx. 656.

No. 09–11405. BEST *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–11406. BROWN *v.* MCGRADY, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT RETREAT, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–11407. BABB *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 503.

No. 09–11408. BELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 610.

No. 09–11409. TRAUGOTT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 925.

No. 09–11410. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 541.

No. 09–11411. WILLIAMS *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 24 So. 3d 729.

No. 09–11412. SUMMERS *v.* DENNEY, WARDEN. Sup. Ct. Mo. Certiorari denied.

No. 09–11413. QUESADA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 09–11414. MEZZULO *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied.

No. 09–11415. WILSON *v.* KAUTEX. C. A. 7th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 663.

No. 09–11416. EDWARDS *v.* COOPER, ATTORNEY GENERAL OF NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 363 Fed. Appx. 251.

No. 09–11417. VERNON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–11418. WILLIAMS *v.* TATUM, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 09–11420. CABOT *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 395 Ill. App. 3d 1113, 986 N. E. 2d 804.

No. 09–11421. CIBRIAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 374 Fed. Appx. 524.

No. 09–11422. CRUZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–11423. CLINE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 357 Fed. Appx. 526.

No. 09–11424. DAVIS *v.* KIA MOTORS AMERICA, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 408.

No. 09–11425. HOOD *v.* TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES. Ct. App. Tenn. Certiorari denied. Reported below: 338 S. W. 3d 917.

No. 09–11426. HAWKINS *v.* DEXTER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–11427. LANGE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–11428. THOMAS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 978 A. 2d 1211.

No. 09–11429. WEBSTER *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 09–11430. WALKER *v.* JARRIEL, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 09–11431. ANGIANO *v.* LOPEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 726.

No. 09–11432. MOODY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 395 Ill. App. 3d 1116, 986 N. E. 2d 806.

No. 09–11433. QUIGLEY *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 394 Ill. App. 3d 1114, 985 N. E. 2d 1084.

No. 09–11434. ROBBINS *v.* SMITH, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 09–11435. PURNELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–11436. PADGETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 354 Fed. Appx. 806.

No. 09–11437. EDWARDS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 981 A. 2d 917.

No. 09–11438. MCINTOSH *v.* HARDY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–11441. YORK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 494.

No. 09–11442. HAMMOND *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 31 So. 3d 354.

No. 09–11443. HOUSMAN *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 604 Pa. 596, 986 A. 2d 822.

No. 09–11444. MCGINNESS *v.* MCDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–11445. LIDDELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 474.

No. 09–11446. MEDLEY *v.* MCCLINDON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 355 Fed. Appx. 974.

No. 09–11447. HAMM *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 09–11448. DITTRICH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 411.

No. 09–11449. CASTRO *v.* WILLIAMS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–11450. DESOSA *v.* BROWN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 357 Fed. Appx. 901.

No. 09–11451. CRUZ, AKA BENITEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 09–11452. BOWMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 487.

No. 09–11453. BUTTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 372.

No. 09–11454. BROWN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 370 Fed. Appx. 277.

No. 09–11455. BISHOP *v.* FOSTER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 738.

No. 09–11456. TANNER *v.* CHOCTAW CASINO OF DURANT, OKLAHOMA, ET AL. C. A. 10th Cir. Certiorari denied.

No. 09–11457. SHRADER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 09–11458. SANDSTROM *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 594 F. 3d 634.

No. 09–11459. ELLIS ET AL. *v.* BROWN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 374 Fed. Appx. 776.

No. 09–11460. RAMOS *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 745.

No. 09–11461. HUNT *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 304 S. W. 3d 15.

No. 09–11462. SEALED PETITIONER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–11463. MCAFFEE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–11464. RISKIN *v.* MARTEL, ACTING WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–11465. DE SANTANNA *v.* MARYLAND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 426.

No. 09–11466. SIMS *v.* MORTON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–11467. RAMON *v.* RODRIGUEZ-MENDOZA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 494.

No. 09–11468. EBUZOEME, AKA OFURUM *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 352 Fed. Appx. 773.

No. 09–11469. DURROUGH *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–11470. CROSS *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 126 Nev. 703.

No. 09–11471. PIERCE *v.* HARTLEY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 851.

No. 09–11472. NAPA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 402.

No. 09–11473. RICHARDSON *v.* MCHUGH, SECRETARY OF THE ARMY. C. A. 4th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 385.

No. 09–11475. PRICE *v.* HICKEY, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 09–11476. CROCKETT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 900.

No. 09–11477. CASTOR *v.* KNIGHT, SUPERINTENDENT, PLAINFIELD CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 09–11478. BROADNAX *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 601 F. 3d 336.

No. 09–11479. PARKER, AKA PARKER-BEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 31 So. 3d 177.

No. 09–11481. CRAIN *v.* HEIFNER. Sup. Ct. Nev. Certiorari denied. Reported below: 126 Nev. 703.

No. 09–11482. DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–11483. MORALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 590 F. 3d 1049.

No. 09–11484. OGLESBY *v.* BOWERSOX, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 592 F. 3d 922.

No. 09–11486. DAVIS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–11487. CUEVAS LUGO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 09–11488. MATHEWS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–11490. VAN BRANCH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 842.

No. 09–11491. BRYANT *v.* AVERITT EXPRESS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 942.

No. 09–11492. SMITH *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 603 F. 3d 112.

No. 09–11493. STASZ *v.* GONZALEZ, CHAPTER 7 TRUSTEE. C. A. 9th Cir. Certiorari denied. Reported below: 348 Fed. Appx. 234.

No. 09–11495. CARRASCO-RIVERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 348 Fed. Appx. 308.

No. 09–11497. ROBINSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–11498. SIMS *v.* HOUSTON, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 8th Cir. Certiorari denied.

No. 09–11499. COCHRAN *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 09–11500. MUNGRO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 365 Fed. Appx. 494.

No. 09–11502. KESSLER *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY. Ct. App. Ore. Certiorari denied. Reported below: 233 Ore. App. 510, 226 P. 3d 130.

No. 09–11503. JOHNSON *v.* KOVACHEVICH, JUDGE, UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–11504. JONES *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 393 Ill. App. 3d 1115, 985 N. E. 2d 729.

No. 09–11505. DOSS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 09–11506. PEREZ-OCHOA, AKA PEREZ-SOTO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 357 Fed. Appx. 960.

No. 09–11507. NOBLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 961.

No. 09–11508. PURNELL *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 394 Ill. App. 3d 1126, 985 N. E. 2d 1089.

No. 09–11509. VILLASANA *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 09–11510. TANKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 554.

No. 09–11511. TAYLOR *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 47 Cal. 4th 850, 220 P. 3d 872.

No. 09–11512. HUNG NAM TRAN *v.* KRIZ ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 542.

No. 09–11513. SOLON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 596 F. 3d 1206.

No. 09–11514. MILLER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 09–11515. PATTERSON *v.* HOUSTON, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 8th Cir. Certiorari denied.

No. 09–11516. RYNES *v.* BODISON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 393.

No. 09–11517. ACEVEDO-GUZMAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–11518. ANTOINE *v.* RUCKER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 361 Fed. Appx. 389.

No. 09–11520. ZACHARIE *v.* CHIRILA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 586.

No. 09–11521. BIGGINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 374 Fed. Appx. 908.

No. 09–11522. INTROCASO *v.* MEEHAN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 338 Fed. Appx. 139.

No. 09–11523. BLOUNT *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 983 A. 2d 1064.

No. 09–11524. DURHAM *v.* CRIST, GOVERNOR OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–11525. DUVALL *v.* LOMBARDI, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 8th Cir. Certiorari denied.

No. 09–11526. CHASE *v.* MAYNARD, SECRETARY, MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 348.

No. 09–11528. DEL VALLE-MEJIA *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 09–11529. ORTIZ *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–11530. CALWISE *v.* CURTIN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 644.

No. 09–11531. DAWSON *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 31 So. 3d 359.

No. 09–11532. LAWRENCE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 375 Fed. Appx. 190.

No. 09–11533. LAURICO-YENO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 579 F. 3d 818.

No. 09–11535. WATERMAN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 09–11536. YOUNG *v.* FOLINO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–11537. NAVES *v.* TURLEY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 866.

No. 09–11539. SHAW *v.* GAETZ, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–11540. BROWN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 279 Va. 210, 688 S. E. 2d 185.

No. 09–11541. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 752.

No. 09–11544. PICKELHAUPT *v.* JACKSON, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 221.

No. 09–11545. POSTELL *v.* BANK OF CENTRAL FLORIDA ET AL. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 12 So. 3d 762.

No. 09–11547. SPATES *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 394 Ill. App. 3d 1115, 985 N. E. 2d 1085.

No. 09–11548. RODRIGUEZ-DURAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–11549. ROMANES *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–11550. BERGMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 599 F. 3d 1142.

No. 09–11551. ADAMS *v.* FLORIDA PAROLE COMMISSION. C. A. 11th Cir. Certiorari denied.

No. 09–11552. TAYLOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 474.

No. 09–11553. TYSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–11554. VANDENBERG *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 09–11555. MOSLEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 46 So. 3d 510.

No. 09–11557. RODRIGUEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–11558. CHAPMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 356 Fed. Appx. 361.

No. 09–11559. POSTELL *v.* BANK OF CENTRAL FLORIDA ET AL. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 12 So. 3d 762.

No. 09–11560. KINNEY *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 372.

No. 09–11561. LINEKER *v.* ALASKA. Ct. App. Alaska. Certiorari denied.

No. 09–11562. LYONS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 365.

No. 09–11563. JOHNSON *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 09–11564. RONDONUWU *v.* HOLDER, ATTORNEY GENERAL. C. A. 1st Cir. Certiorari denied.

No. 09–11566. MCINNIS *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 988 A. 2d 994.

No. 09–11568. PEREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 356 Fed. Appx. 309.

No. 09–11569. INGRAM *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 594 F. 3d 972.

No. 09–11570. CRABBE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 412.

No. 09–11571. SPRAGUE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 638.

No. 09–11573. ROBERTS *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 190 Md. App. 753.

No. 09–11575. RODRIGUEZ SORIA *v.* CLARK, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–11576. ANDERSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 359 Fed. Appx. 855.

No. 10–1. INTERNATIONAL COMFORT PRODUCTS, LLC *v.* CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION

FUND, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 585 F. 3d 281.

No. 10–2. PACESETTER APPAREL, INC. *v.* COBB COUNTY, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 374 Fed. Appx. 910.

No. 10–3. FLINT *v.* TARGET CORP. C. A. 6th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 446.

No. 10–4. HOFFMAN *v.* SANDIA RESORT AND CASINO. Ct. App. N. M. Certiorari denied. Reported below: 148 N. M. 222, 232 P. 3d 901.

No. 10–5. HOT ET UX. *v.* HOLDER, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 373 Fed. Appx. 193.

No. 10–7. FESSLER ET UX. *v.* KIRK SAUER COMMUNITY DEVELOPMENT, CITY OF WILKES-BARRE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 362 Fed. Appx. 241.

No. 10–9. BANKSTON ET UX. *v.* INTERNAL REVENUE SERVICE. C. A. 10th Cir. Certiorari denied. Reported below: 357 Fed. Appx. 190.

No. 10–11. WORLDWIDE NETWORK SERVICES, LLC, ET AL. *v.* DYNCORP INTERNATIONAL LLC. C. A. 4th Cir. Certiorari denied. Reported below: 365 Fed. Appx. 432.

No. 10–12. ALFORD, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF ALFORD, DECEASED *v.* MISSISSIPPI DIVISION OF MEDICAID. Sup. Ct. Miss. Certiorari denied. Reported below: 30 So. 3d 1212.

No. 10–13. BISHOP ET AL. *v.* RAYMOND JAMES FINANCIAL SERVICES, INC. C. A. 4th Cir. Certiorari denied. Reported below: 596 F. 3d 183.

No. 10–14. PROFESSIONAL MEDICAL EDUCATION, INC. *v.* PALM BEACH COUNTY HEALTH CARE DISTRICT ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 13 So. 3d 1090.

No. 10–15. JALLALI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–17. BROOKENS *v.* SOLIS, SECRETARY OF LABOR. C. A. D. C. Cir. Certiorari denied.

No. 10–19. WINN ET AL. *v.* ALAMO TITLE INSURANCE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 461.

No. 10–22. KARAS *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY. C. A. 3d Cir. Certiorari denied. Reported below: 372 Fed. Appx. 298.

No. 10–23. MISHRA ET AL. *v.* DOCTORS HOSPITAL OF AUGUSTA, LLC, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 354 Fed. Appx. 421.

No. 10–25. MACON *v.* OHIO DEPARTMENT OF JOB AND FAMILY SERVICES. Ct. App. Ohio, Franklin County. Certiorari denied. Reported below: 2009-Ohio-3229.

No. 10–26. WOOD *v.* SUPERIOR COURT OF CALIFORNIA, SAN JOAQUIN COUNTY, ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 10–27. MELANCON *v.* WARD, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 512.

No. 10–29. CURRY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 339 Fed. Appx. 176.

No. 10–30. DOE, BY AND THROUGH HER GUARDIANS, JOHNSON ET UX., ET AL. *v.* SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 597 F. 3d 163.

No. 10–32. CEMINCHUK *v.* OBAMA, PRESIDENT OF THE UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 10–35. CENTRAL FLORIDA INVESTMENTS, INC., ET AL. *v.* MYERS; and

No. 10–118. MYERS *v.* CENTRAL FLORIDA INVESTMENTS, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 592 F. 3d 1201.

No. 10–38. FALCONER ET AL. *v.* SANTA CRUZ COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 791.

No. 10–39. GIRTS *v.* YANAI, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 600 F. 3d 576.

No. 10–40. HANSON ET UX. *v.* CHANG, JUDGE, CIRCUIT COURT OF HAWAII, FIRST CIRCUIT, ET AL. Sup. Ct. Haw. Certiorari denied.

No. 10–41. MARCAVAGE *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 76 Mass. App. 34, 918 N. E. 2d 855.

No. 10–42. SHELTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 431.

No. 10–43. SOPHOCLEUS ET UX. *v.* TODD ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 996.

No. 10–44. SAIN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 10–45. STONEROCK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 363 Fed. Appx. 338.

No. 10–46. CHORNEY *v.* MONZACK ET AL. C. A. 1st Cir. Certiorari denied.

No. 10–48. INTERIOR/EXTERIOR SPECIALIST CO. ET AL. *v.* TRUSTEES OF THE PAINTERS UNION DEPOSIT FUND. C. A. 6th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 654.

No. 10–49. LONDON-MARABLE ET VIR *v.* BOEING CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 357 Fed. Appx. 61.

No. 10–50. LACKEY *v.* PATENT AND TRADEMARK OFFICE, BOARD OF PATENT APPEALS AND INTERFERENCES. C. A. Fed. Cir. Certiorari denied. Reported below: 371 Fed. Appx. 80.

No. 10–52. ROWLAND *v.* PRUDENTIAL EQUITY GROUP, LLC. C. A. 9th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 591.

No. 10–53. DOLAN ET AL. *v.* FIDELITY NATIONAL TITLE INSURANCE CO. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 365 Fed. Appx. 271.

No. 10–54. AVIADO *v.* INDUSTRIAL CLAIM APPEALS OFFICE ET AL. Ct. App. Colo. Certiorari denied. Reported below: 228 P. 3d 177.

No. 10–55. XIAOPING YAO *v.* VISA INC. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 385.

No. 10–57. MARKS ET AL. *v.* ALFA GROUP, AKA CROWN FINANCE FOUNDATION, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 369 Fed. Appx. 368.

No. 10–60. MAHER *v.* BANK ONE, N. A., ET AL. Ct. App. Ariz. Certiorari denied.

No. 10–62. RADICE ET AL. *v.* ETCHEBARNE-BOURDIN ET AL. Ct. App. D. C. Certiorari denied. Reported below: 982 A. 2d 752.

No. 10–64. FARR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 591 F. 3d 1322.

No. 10–65. HARPER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 556.

No. 10–66. WATKINS *v.* ARKANSAS. Ct. App. Ark. Certiorari denied. Reported below: 2010 Ark. App. 85, 377 S. W. 3d 286.

No. 10–68. PATRICK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 365 Fed. Appx. 834.

No. 10–69. SELRAHC LIMITED PARTNERSHIP ET AL. *v.* SEECO, INC., ET AL. Ct. App. Ark. Certiorari denied. Reported below: 2009 Ark. App. 865, 374 S. W. 3d 33.

No. 10–71. JACKSON *v.* MCHUGH, SECRETARY OF THE ARMY. C. A. 4th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 213.

No. 10–73. PALERMO ET UX. *v.* TOWN OF NORTH READING, MASSACHUSETTS. C. A. 1st Cir. Certiorari denied. Reported below: 370 Fed. Appx. 128.

No. 10–77. WILLIAMSON *v.* ADVENTIST HEALTH SYSTEM/SUNBELT, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 936.

No. 10–78. VALENCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 600 F. 3d 389.

No. 10–81. BRYANT *v.* MILITARY DEPARTMENT, MISSISSIPPI, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 597 F. 3d 678.

No. 10–84. CRANDALL ET AL. *v.* CITY AND COUNTY OF DENVER, COLORADO, DBA DENVER INTERNATIONAL AIRPORT. C. A. 10th Cir. Certiorari denied. Reported below: 594 F. 3d 1231.

No. 10–87. MARDIROSIAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 602 F. 3d 1.

No. 10–88. GEOGRAPHIC EXPEDITIONS, INC. *v.* LHOTKA, INDIVIDUALLY AND AS EXECUTOR, ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 181 Cal. App. 4th 816, 104 Cal. Rptr. 3d 844.

No. 10–89. BLOOMGARDEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 10–90. UNITED FINANCIAL SYSTEMS, CORP., ET AL. *v.* INDIANA EX REL. INDIANA STATE BAR ASSN. Sup. Ct. Ind. Certiorari denied. Reported below: 926 N. E. 2d 8.

No. 10–93. STALLION, INC. *v.* JOHN GALLIANO, S. A. Ct. App. N. Y. Certiorari denied. Reported below: 15 N. Y. 3d 75, 930 N. E. 2d 756.

No. 10–96. PREWITT *v.* CITY OF OXFORD, MISSISSIPPI, ET AL. Sup. Ct. Miss. Certiorari denied. Reported below: 44 So. 3d 922.

No. 10–100. BERGBAUER ET UX. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 602 F. 3d 569.

No. 10–101. SVEN *v.* CHANDLER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 10–102. CONDER *v.* RDI/CAESARS RIVERBOAT CASINO, INC., ET AL. Ct. App. Ind. Certiorari denied. Reported below: 918 N. E. 2d 759.

No. 10–104. CAMPBELL *v.* COOPER, ATTORNEY GENERAL OF NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 400.

No. 10–105. McGee *v.* Superior Court of California, Sacramento County, et al. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 10–106. McGee *v.* Brown, Attorney General of California. C. A. 9th Cir. Certiorari denied.

No. 10–107. Riccardi *v.* Kessler. C. A. 6th Cir. Certiorari denied. Reported below: 363 Fed. Appx. 350.

No. 10–111. El-Hewie *v.* Board of Education of the Bergen County Vocational School District et al. Super. Ct. N. J., App. Div. Certiorari denied.

No. 10–112. Vadde *v.* Bank of America. Ct. App. Ga. Certiorari denied. Reported below: 301 Ga. App. 475, 687 S. E. 2d 880.

No. 10–115. Hamilton *v.* Dayco Products, LLC, et al. C. A. 4th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 402.

No. 10–117. Gentile *v.* Madan et al. Sup. Ct. Nev. Certiorari denied. Reported below: 125 Nev. 1038, 281 P. 3d 1175.

No. 10–119. Stoller *v.* United States Court of Appeals for the Seventh Circuit; Stoller *v.* Google, Inc.; Stoller *v.* Pure Fishing, Inc.; and Stoller *v.* Neary. C. A. 7th Cir. Certiorari denied.

No. 10–121. Stem et al. *v.* Wix et al. Ct. App. Tenn. Certiorari denied. Reported below: 316 S. W. 3d 599.

No. 10–123. Newmark *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 374 Fed. Appx. 279.

No. 10–124. Tully *v.* Barada et al. C. A. 7th Cir. Certiorari denied. Reported below: 599 F. 3d 591.

No. 10–126. Media Technologies Licensing, LLC, et al. *v.* Upper Deck Co. et al. C. A. Fed. Cir. Certiorari denied. Reported below: 596 F. 3d 1334.

No. 10–128. Unger *v.* Taylor, Sheriff, Anderson County, Texas, et al. C. A. 5th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 526.

No. 10–132. GLENN, PERSONAL REPRESENTATIVE OF THE ESTATE OF ZACHARY, ET AL. *v.* CITY OF COLUMBUS, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 928.

No. 10–133. SAMI CHEMICALS & EXTRACTS, LTD. *v.* KAPPOS, UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR, PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 367 Fed. Appx. 150.

No. 10–134. MORALES *v.* ODYSSEY HEALTHCARE, INC., ET AL. Sup. Ct. Tex. Certiorari denied. Reported below: 310 S. W. 3d 419.

No. 10–138. MADEJA *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 988 A. 2d 724.

No. 10–139. CHRISTMAN *v.* UTICA NATIONAL INSURANCE GROUP, INC. C. A. 2d Cir. Certiorari denied. Reported below: 375 Fed. Appx. 106.

No. 10–140. CAREY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 602 F. 3d 738.

No. 10–142. SINGLETON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 182 Cal. App. 4th 1, 105 Cal. Rptr. 3d 628.

No. 10–143. SHEPARDSON, TRUSTEE FOR THE ESTATE OF SHEPARDSON *v.* MITCHELL. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 10–144. SCHNELLER *v.* ABLE HOME CARE, INC., ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–146. YAO-WEN CHANG ET AL. *v.* BAXTER HEALTHCARE CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 599 F. 3d 728.

No. 10–147. WAYLAND *v.* MCVAY, UNITED STATES TRUSTEE. C. A. 5th Cir. Certiorari denied. Reported below: 354 Fed. Appx. 837.

No. 10–153. MOYER ET AL. *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 348 Ore. 220, 230 P. 3d 7.

No. 10–155. CITY OF LONG BEACH, CALIFORNIA *v.* LONG BEACH AREA CHAMBER OF COMMERCE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 603 F. 3d 684.

No. 10–159. ARIZONA ASSOCIATION OF PROVIDERS FOR PERSONS WITH DISABILITIES ET AL. *v.* MANGUM, JUDGE, SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY. Ct. App. Ariz. Certiorari denied.

No. 10–160. BAUM *v.* ASTRAZENECA LP. C. A. 3d Cir. Certiorari denied. Reported below: 372 Fed. Appx. 246.

No. 10–161. WHITE *v.* MARTEL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 601 F. 3d 882.

No. 10–163. THOMAS *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 351 Fed. Appx. 433.

No. 10–165. CULVER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 598 F. 3d 740.

No. 10–167. PRINDLE *v.* SUPERIOR COURT OF CALIFORNIA, SAN BERNARDINO COUNTY, ET AL. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 10–171. GONZALEZ-VERA ET AL. *v.* TOWNLEY ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 595 F. 3d 379.

No. 10–172. FLORANCE *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 10–182. LARSEN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 10–184. ENGLAND *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 604 F. 3d 460.

No. 10–186. HALSTEAD *v.* GOVERNMENT EMPLOYEES INSURANCE CO. (GEICO) ET AL. C. A. D. C. Cir. Certiorari denied.

No. 10–187. HOLCOMBE *v.* US AIRWAYS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 424.

No. 10–191. KEMAL *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 802.

No. 10–193. SCHELL ET UX. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 589 F. 3d 1378.

No. 10–195. FORT PECK HOUSING AUTHORITY *v.* DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 884.

No. 10–197. BAUER *v.* HOLDER, ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 353 Fed. Appx. 38.

No. 10–198. DONOVAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 690.

No. 10–201. GRABNER *v.* H&R BLOCK ENTERPRISES, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 772.

No. 10–208. ANDREWS *v.* ASSOCIATED ANESTHESIOLOGISTS SERVICES, P. C. Ct. App. D. C. Certiorari denied. Reported below: 991 A. 2d 34.

No. 10–210. KOVACEVICH ET VIR *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 345 Fed. Appx. 581.

No. 10–215. BLAKENEY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 985 A. 2d 463.

No. 10–217. MARINO *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 8th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 662.

No. 10–221. DUFFIE ET UX. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 600 F. 3d 362.

No. 10–225. KNUTSON ET UX. *v.* CITY OF FARGO, NORTH DAKOTA. C. A. 8th Cir. Certiorari denied. Reported below: 600 F. 3d 992.

No. 10–226. STOTTER *v.* UNIVERSITY OF TEXAS AT SAN ANTONIO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 641.

No. 10–228. GODINEZ, AKA TALAVERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–234. VAIDYANATHAN *v.* KAPPOS, UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR, PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 381 Fed. Appx. 985.

No. 10–247. WELLER, INDIVIDUALLY AND AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF HETHERINGTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 910.

No. 10–266. FROST ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 355 Fed. Appx. 230.

No. 10–267. UNITED STATES EX REL. HAIGHT ET AL. *v.* CATHOLIC HEALTHCARE WEST ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 602 F. 3d 949.

No. 10–5001. GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 754.

No. 10–5004. FOSTER ET AL. *v.* BOOKER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 595 F. 3d 353.

No. 10–5005. COYLE *v.* AQUILA, INC. C. A. 8th Cir. Certiorari denied. Reported below: 363 Fed. Appx. 419.

No. 10–5006. MITCHELL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 985 A. 2d 1125.

No. 10–5007. MOORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 559.

No. 10–5008. MURRAY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 10–5009. MORTON *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–5010. ESPINOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 374 Fed. Appx. 536.

No. 10–5011. DE LA TORRE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 599 F. 3d 1198.

No. 10–5012. BOWDEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 374 Fed. Appx. 880.

No. 10–5013. BROOKS *v.* LUBBOCK COUNTY HOSPITAL DISTRICT, DBA UMC HEALTH SYSTEM. C. A. 5th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 434.

No. 10–5014. CLAYCOMB *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 832.

No. 10–5015. COLVIN *v.* SHEETS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 598 F. 3d 242.

No. 10–5016. KUHS *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 223 Ariz. 376, 224 P. 3d 192.

No. 10–5017. LEWIS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–5018. LONG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 992.

No. 10–5020. MANGINO *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 981 A. 2d 926.

No. 10–5021. JONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 596 F. 3d 881.

No. 10–5023. SAPP *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 63.

No. 10–5024. SED *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 601 F. 3d 224.

No. 10–5026. MARTIN *v.* HOLLOWAY ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 125 Ohio St. 3d 1409, 925 N. E. 2d 998.

No. 10–5027. LEON *v.* MCCALL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 361 Fed. Appx. 509.

No. 10–5028. WALSH *v.* QUINN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 359 Fed. Appx. 273.

No. 10–5029. WILLIAMS *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 386 S. C. 503, 690 S. E. 2d 62.

No. 10–5032. WELLS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 344 Fed. Appx. 839.

No. 10–5033. FERRI *v.* CORBETT, ATTORNEY GENERAL OF PENNSYLVANIA. C. A. 3d Cir. Certiorari denied.

No. 10–5034. HINES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–5035. GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 592 F. 3d 675.

No. 10–5036. PALAZZO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 445.

No. 10–5037. PHILIUS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–5042. KELLY *v.* SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 284.

No. 10–5043. SMALL *v.* ARTUS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–5044. SCHAEFER *v.* HUBBARD, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–5045. SOROKIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–5046. ADAMS *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Cumberland County, N. C. Certiorari denied.

No. 10–5047. BROWN *v.* CAMDEN COUNTY COUNSEL ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–5048. AGEE *v.* BRITTEN, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 10–5049. BRUCE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 551.

No. 10–5050. ANTHONY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–5051. PRESCOTT *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–5052. SMITH *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 394 Ill. App. 3d 1126, 985 N. E. 2d 1089.

No. 10–5053. MILLER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 10–5054. BARNES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 29 So. 3d 1010.

No. 10–5055. BURK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 363 Fed. Appx. 655.

No. 10–5056. HERNANDEZ *v.* MARTINEZ, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 327 Fed. Appx. 340.

No. 10–5057. HUNTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 436.

No. 10–5058. FAYEMI *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 389 Ill. App. 3d 1160, 976 N. E. 2d 1214.

No. 10–5059. GORDON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 10–5060. FIELDS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 588 F. 3d 270.

No. 10–5061. GOODWIN *v.* DAVIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–5062. NOBLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 423.

No. 10–5063. MADISON *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS. C. A. 8th Cir. Certiorari denied.

No. 10–5066. PADRON VAZQUEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 256.

No. 10–5067. CONLEY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–5068. De La Cruz Suarez, aka de la Cruz *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 601 F. 3d 1202.

No. 10–5069. Correa *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 981 A. 2d 309.

No. 10–5071. Craven *v.* Court of Appeals of Texas, Second District. Sup. Ct. Tex. Certiorari denied.

No. 10–5072. Demling *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 10–5073. Everson *v.* Murphy, Commissioner, Connecticut Department of Correction, et al. C. A. 2d Cir. Certiorari denied.

No. 10–5074. Rowland *v.* Lamarque, Warden. C. A. 9th Cir. Certiorari denied.

No. 10–5075. Harbst *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 10–5076. Gold *v.* Schuette. C. A. 9th Cir. Certiorari denied.

No. 10–5077. Honeycutt *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 10–5079. Gurski *v.* Outlaw, Warden. C. A. 8th Cir. Certiorari denied. Reported below: 358 Fed. Appx. 770.

No. 10–5080. Garcia *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 10–5081. Hemphill *v.* United States. C. A. D. C. Cir. Certiorari denied.

No. 10–5083. Martin *v.* Hobbs, Director, Arkansas Department of Correction. Sup. Ct. Ark. Certiorari denied. Reported below: 2010 Ark. 164.

No. 10–5084. Moddison *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 363 Fed. Appx. 473.

No. 10–5085. HINES *v.* ANDERSON ET AL. C. A. 8th Cir. Certiorari denied.

No. 10–5086. HILL *v.* BYRD, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 10–5087. FOSTER *v.* SARGUS ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–5088. CLINTON *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 10–5089. VANNAUSDLE *v.* PIERCE COUNTY DEPARTMENT OF ASSIGNED COUNSEL ET AL. Ct. App. Wash. Certiorari denied. Reported below: 149 Wash. App. 1054.

No. 10–5090. HARVEY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 972 A. 2d 553.

No. 10–5091. HOWARD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 369 Fed. Appx. 354.

No. 10–5092. HIMMELREICH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 363 Fed. Appx. 175.

No. 10–5093. HENDRIX *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 365 Fed. Appx. 10.

No. 10–5094. FIELDS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 347 Fed. Appx. 782.

No. 10–5095. FLENOID *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–5096. HOPKINS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 370 Fed. Appx. 122.

No. 10–5097. BATES *v.* BODISON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 335.

No. 10–5098. BOWERS *v.* SCOTT, ADMINISTRATOR, SOUTHWESTERN REGIONAL JAIL, ET AL. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 226 W. Va. 130, 697 S. E. 2d 722.

No. 10–5099. BORTOLON *v.* BROWN, ATTORNEY GENERAL OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 10–5100. PENG THAO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–5102. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 356 Fed. Appx. 359.

No. 10–5103. WITHEROW *v.* SMITH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–5104. TACKETT *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 124 Ohio St. 3d 1471, 921 N. E. 2d 244.

No. 10–5105. RUDDLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 765.

No. 10–5107. MCDONALD *v.* HARDY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 359 Fed. Appx. 650.

No. 10–5108. SIERRA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 600 F. 3d 263.

No. 10–5110. WRIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 347.

No. 10–5111. VASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 541.

No. 10–5112. WALKER *v.* REESE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 872.

No. 10–5114. COLLINS *v.* RUNNELS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 603 F. 3d 1127.

No. 10–5116. CADY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–5117. DESMARAT *v.* ARTUS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–5118. DOTSON *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 10–5120. DORSEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–5121. CAMPOS *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied.

No. 10–5122. MARTIN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 10–5123. COE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–5125. LIETZKE *v.* CITY OF MONTGOMERY, ALABAMA, ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 126 Nev. 733.

No. 10–5126. LARSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–5127. VIOLENTE MUNDO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 10–5129. PARKER *v.* PARKER ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 708.

No. 10–5131. TURPIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 593 F. 3d 747.

No. 10–5132. WILSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 522.

No. 10–5133. TAYLOR *v.* DAVIS, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA. C. A. 4th Cir. Certiorari denied.

No. 10–5136. PEREZ *v.* GEORGELIS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 351 Fed. Appx. 788.

No. 10–5137. CLINTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 591 F. 3d 968.

No. 10–5138. CARTAGENA, AKA MEJIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 593 F. 3d 104.

No. 10–5139. CURRY *v.* WOLFENBARGER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–5140. RAMIREZ-ESQUEDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 596 F. 3d 1017.

No. 10–5141. Flores Salas *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 355.

No. 10–5142. Mobley *v.* Ohio. Ct. App. Ohio, Fairfield County. Certiorari denied. Reported below: 2009-Ohio-5718.

No. 10–5143. Triana *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 20.

No. 10–5144. Wilson *v.* McNeil, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 10–5145. Nichols *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 546.

No. 10–5146. Weicksel *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 375 Fed. Appx. 261.

No. 10–5147. Azure, aka Wind *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 596 F. 3d 449.

No. 10–5148. Johnson *v.* Pennsylvania. Sup. Ct. Pa. Certiorari denied. Reported below: 604 Pa. 176, 985 A. 2d 915.

No. 10–5150. Kelly-Palmer *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 360 Fed. Appx. 941.

No. 10–5151. Bittan *v.* Hawaii Department of Human Services. Sup. Ct. Haw. Certiorari denied. Reported below: 123 Haw. 1, 229 P. 3d 1066.

No. 10–5152. Belk *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 374 Fed. Appx. 372.

No. 10–5155. Burks *v.* Rushton, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 375.

No. 10–5156. Burge *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 10–5157. Odom *v.* North Dakota. Sup. Ct. N. D. Certiorari denied. Reported below: 780 N. W. 2d 666.

No. 10–5158. McGraw *v.* Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied.

No. 10–5159. PEARSON *v.* KELLER, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 442.

No. 10–5160. LAWHORN *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 519 F. 3d 1272.

No. 10–5161. MERRITT *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 27 So. 3d 34.

No. 10–5162. PINDER *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 10–5163. REYES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 363 Fed. Appx. 192.

No. 10–5164. ROMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 28.

No. 10–5166. STEVENSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 989 A. 2d 710.

No. 10–5167. DUNCAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 356 Fed. Appx. 250.

No. 10–5168. VAN COX *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–5169. COLEMAN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 982 A. 2d 1148.

No. 10–5170. CALDERON-LOPEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–5173. KIM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–5174. MORGAN *v.* MINGER. C. A. 7th Cir. Certiorari denied. Reported below: 355 Fed. Appx. 53.

No. 10–5177. FORDE *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–5178. SANTIAGO *v.* BATTAGLIA ET AL. C. A. 7th Cir. Certiorari denied.

No. 10–5179. SHAH, FKA LINDSEY *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 992 A. 2d 1237.

No. 10–5180. MURRAY *v.* LENE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 595 F. 3d 868.

No. 10–5181. WINTERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 600 F. 3d 963.

No. 10–5182. STEGEMAN *v.* LILLIG. Ct. App. Ga. Certiorari denied.

No. 10–5184. ROBERTS *v.* MCCULLOCH. C. A. 7th Cir. Certiorari denied.

No. 10–5185. ROBINSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 340.

No. 10–5186. MOORE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 365 Fed. Appx. 800.

No. 10–5187. LEWIS *v.* SINCLAIR, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 10–5188. GONZALEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 371 Fed. Appx. 202.

No. 10–5189. BLOSS *v.* ROZUM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–5190. ASKINS *v.* NEVADA ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–5191. NASUTI *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 376 Fed. Appx. 29.

No. 10–5192. BENJAMIN *v.* GOINER ET AL. C. A. 4th Cir. Certiorari denied.

No. 10–5194. GARDUNO *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 365 Fed. Appx. 820.

No. 10–5197. GALINDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 811.

No. 10–5198. HINES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 378 Fed. Appx. 133.

No. 10–5199. FUTCH *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 286 Ga. 378, 687 S. E. 2d 805.

No. 10–5200. HOGAN *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 12 So. 3d 835.

No. 10–5201. HURD *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 10–5202. GUZMAN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 151 Wash. App. 1031.

No. 10–5203. GATSON *v.* FORREST. Super. Ct. N. J., App. Div. Certiorari denied.

No. 10–5204. HAMILTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 591 F. 3d 1017.

No. 10–5206. OWENS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 982 A. 2d 310.

No. 10–5209. MANUEL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 342 Fed. Appx. 844.

No. 10–5212. JONES *v.* BURNS. C. A. 8th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 658.

No. 10–5214. ELSWICK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 19.

No. 10–5215. CLARIDY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 601 F. 3d 276.

No. 10–5216. DOUGLAS *v.* HYDEN. C. A. 9th Cir. Certiorari denied.

No. 10–5217. VILLA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 668.

No. 10–5218. THOMAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 593 F. 3d 752.

No. 10–5219. THOMPSON *v.* CORTEZ MASTO, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–5220. WILSON *v.* KERNAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 831.

No. 10–5222. LOWE *v.* PIERCE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 10–5223. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 290.

No. 10–5224. JAMES *v.* LEMAY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 455.

No. 10–5225. CARTER *v.* SCHUETTE; and
No. 10–5319. GOLD *v.* SCHUETTE. C. A. 9th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 863.

No. 10–5226. BARRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–5227. ALLEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 374 Fed. Appx. 944.

No. 10–5230. AYALA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 601 F. 3d 256.

No. 10–5234. BURT *v.* EAGLETON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 372.

No. 10–5235. BAKER *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 33 So. 3d 46.

No. 10–5236. HUMPHREY *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–5237. HUNT *v.* MITCHELL, CORRECTIONAL ADMINISTRATOR, MOUNTAIN VIEW CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 454.

No. 10–5238. FRANKLIN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 980 A. 2d 1174.

No. 10–5239. RIVERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 958.

No. 10–5241. RIAN *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 10–5242. DAVID *v.* SCUTT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–5243. CANALES *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–5244. DAUGHTY *v.* LARKINS, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 10–5245. CLARK *v.* RICCI, ASSOCIATE ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–5246. HAMM *v.* RENDELL, GOVERNOR OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 376 Fed. Appx. 244.

No. 10–5248. GREGORY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 601 F. 3d 347.

No. 10–5249. D. F. *v.* NEW JERSEY DIVISION OF YOUTH AND FAMILY SERVICES. Super. Ct. N. J., App. Div. Certiorari denied.

No. 10–5250. HENDRICKS *v.* SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. Sup. Ct. S. C. Certiorari denied.

No. 10–5251. HALL *v.* JACOBY & MEYERS LAW OFFICES, INC. Ct. App. N. Y. Certiorari denied. Reported below: 14 N. Y. 3d 757, 925 N. E. 2d 88.

No. 10–5253. FREDERICK *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–5254. GUILLEN-REYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–5255. HOBBS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–5256. MORRIS *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–5259. HALL *v.* BODISON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 361 Fed. Appx. 498.

No. 10–5261. HENDERSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 10–5262. ISANAN *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 453.

No. 10–5264. IHSAAN, AKA MAYWEATHER *v.* WILKINSON ET AL. C. A. 5th Cir. Certiorari denied.

No. 10–5265. GRAHAM *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 306 S. W. 3d 613.

No. 10–5266. GEORGE *v.* WALSH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–5267. CRUZ GONZALEZ *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–5268. COHEN *v.* HODGES, INSPECTOR, UNITED STATES POSTAL SERVICE, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 953.

No. 10–5269. COKER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 10–5271. ESCAMILLA *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied.

No. 10–5272. CAVIN *v.* WOLFENBARGER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–5273. CLARK *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 2d Cir. Certiorari denied.

No. 10–5274. COLEMAN, AKA LONG *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 371 Fed. Appx. 288.

No. 10–5275. JOHN R. G. *v.* CATHOLIC CHARITIES OF SOUTHERN NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 125 Nev. 1048, 281 P. 3d 1186.

No. 10–5276. GRINDEMANN *v.* HUMPHREYS, WARDEN. Ct. App. Wis. Certiorari denied.

No. 10–5277. HUDSON *v.* MCKEE, WARDEN; and DOWE *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–5278. GERARD *v.* PARKLAND PLAZA VETERINARY CLINIC (two judgments). Ct. App. Wis. Certiorari denied. Reported below: 322 Wis. 2d 736, 778 N. W. 2d 172 (first judgment); 323 Wis. 2d 278, 779 N. W. 2d 725 (second judgment).

No. 10–5279. KOON *v.* RUSHTON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 22.

No. 10–5280. LANDRIGAN *v.* ARIZONA. Super. Ct. Ariz., County of Maricopa. Certiorari denied.

No. 10–5281. MASKE *v.* CHAPPELL ET AL. C. A. 10th Cir. Certiorari denied.

No. 10–5283. WALLACE *v.* FLORIDA PAROLE COMMISSION. C. A. 11th Cir. Certiorari denied.

No. 10–5284. VARGAS *v.* ADAMS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–5285. WILLIAMS *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. Sup. Ct. Ark. Certiorari denied. Reported below: 2009 Ark. 523, 357 S. W. 3d 867.

No. 10–5286. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 366.

No. 10–5288. GREEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 599 F. 3d 360.

No. 10–5290. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–5291. MASKE *v.* MURPHY ET AL. C. A. 10th Cir. Certiorari denied.

No. 10–5292. MASKE *v.* ESTRADA ET AL. C. A. 10th Cir. Certiorari denied.

No. 10–5293. MASKE *v.* CITY OF AURORA, COLORADO. C. A. 10th Cir. Certiorari denied.

No. 10–5294. JACKSON *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–5295. LACEY *v.* DOMINGUEZ ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–5298. BISHOP *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 603 F. 3d 279.

No. 10–5299. ANTHONY *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 22 So. 3d 555.

No. 10–5300. BARRON *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 10–5301. ARMSTRONG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 476.

No. 10–5302. CHESTANG *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 10–5303. DUMAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 361 Fed. Appx. 646.

No. 10–5304. COX *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 10–5305. ROMERO-MORENO, AKA TOLIDANO *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 10–5306. OSORIO *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 10–5307. MERILIEN *v.* DANFORTH, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 10–5308. MARTIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 638.

No. 10–5310. RUFF *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 28 So. 3d 45.

No. 10–5311. SPEARS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 10–5313. SIRINGI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 494.

No. 10–5314. ROBERTS *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 30 So. 3d 503.

No. 10–5315. RIVAS *v.* RYAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 718.

No. 10–5316. RAMIREZ *v.* ALMAGER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–5317. YOUNG *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA. C. A. D. C. Cir. Certiorari denied.

No. 10–5318. WILLIAMS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 988 A. 2d 509.

No. 10–5320. JONES ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 600 F. 3d 847.

No. 10–5321. ESPINAL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 10–5322. CASE *v.* DENNEY, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 10–5323. MORENO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–5324. MILLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 717.

No. 10–5325. BOLDEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 596 F. 3d 976.

No. 10–5326. MOORE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 372 Fed. Appx. 269.

No. 10–5327. MORALES *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 10–5331. BUZZELL ET UX *v.* TOWN COUNCIL OF THE TOWN OF KILMARNOCK, VIRGINIA, ET AL. Sup. Ct. Va. Certiorari denied.

No. 10–5332. NECHOVSKI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 568.

No. 10–5333. MEISTER *v.* SCOTT ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–5335. MARSHALL *v.* HUBER ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–5336. JACKSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 344 Fed. Appx. 391.

No. 10–5337. HAMILTON *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 33 So. 3d 37.

No. 10–5338. HEFLEY *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 986 A. 2d 1164.

No. 10–5339. MEHTA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 594 F. 3d 277.

No. 10–5340. PEREIRA *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 31 So. 2d 791.

No. 10–5341. SLUDER *v.* UNITED STATES; and
No. 10–5342. SATURDAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 593 F. 3d 990.

No. 10–5343. SALAZAR-MUNOZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–5344. QUINTERO *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–5346. NODARSE *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–5347. DADE *v.* DEPARTMENT OF COMMERCE. C. A. Fed. Cir. Certiorari denied. Reported below: 368 Fed. Appx. 122.

No. 10–5348. DA MATHA DE SANTANNA *v.* UHAUL COMPANY OF METRO DC. C. A. 4th Cir. Certiorari denied.

No. 10–5351. WEAVER *v.* BULLOCK, ATTORNEY GENERAL OF MONTANA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 869.

No. 10–5352. HERNDON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 978 A. 2d 1211.

No. 10–5353. VELARDE *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 10–5354. VASQUEZ ET AL. *v.* WALKER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 359 Fed. Appx. 758.

No. 10–5355. LEWIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 930.

No. 10–5356. LORAY *v.* UNITED STATES; and
No. 10–5654. STANLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 933.

No. 10–5357. JACKSON *v.* BITTICK ET AL. Sup. Ct. Ga. Certiorari denied. Reported below: 286 Ga. 364, 690 S. E. 2d 803.

No. 10–5358. MATHEWS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 34 So. 3d 2.

No. 10–5359. LEWIS *v.* WASHINGTON DEPARTMENT OF CORRECTIONS ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–5360. NOEL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 586.

No. 10–5361. MERLINO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 592 F. 3d 22.

No. 10–5362. PIERCE *v.* CITY OF MULLINS POLICE DEPARTMENT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 360.

No. 10–5363. WALKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 745.

No. 10–5364. WILLIAMS *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 351 Fed. Appx. 252.

No. 10–5366. WALKER *v.* PHELPS, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–5367. WALLACE *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 31 So. 3d 1059.

No. 10–5369. ARAUJO-RIOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 779.

No. 10–5370. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 643.

No. 10–5372. DUTY *v.* WORKMAN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 863.

No. 10–5373. BOVARIE *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–5374. SEVERANCE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–5375. ZUCK *v.* NEBRASKA. Ct. App. Neb. Certiorari denied.

No. 10–5376. WEST *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 625.

No. 10–5377. WILLARD *v.* NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 10–5378. CHAVEZ-SUAREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 597 F. 3d 1137.

No. 10–5379. AREVALO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 957.

No. 10–5380. BLOOD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 10–5381. PITTMAN *v.* MICHIGAN. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 10–5382. MOORE *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 10–5383. NIGL *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 10–5384. RUDOW *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 373 Fed. Appx. 298.

No. 10–5386. REYNOLDS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 374 Fed. Appx. 356.

No. 10–5387. STAPLES *v.* CHESTER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 925.

No. 10–5388. SLAUGHTER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 10–5389. MACKENZIE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–5390. JOHNSON-CHANDLER *v.* DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES. Ct. App. D. C. Certiorari denied.

No. 10–5391. LINZY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 604 F. 3d 319.

No. 10–5392. MOORE *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 309 S. W. 3d 512.

No. 10–5395. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 359.

No. 10–5396. LOMACK *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–5397. WILLIAMS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–5398. SHANNON *v.* HOUSTON, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 8th Cir. Certiorari denied.

No. 10–5399. VON STAICH *v.* CURRY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–5401. TEMPLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 668.

No. 10–5402. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 604 F. 3d 186.

No. 10–5404. PATTON *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Richmond County, N. C. Certiorari denied.

No. 10–5405. MORENO-MONTANO *v.* JACQUERT ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 865.

No. 10–5406. HINKLEY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–5407. ADAMS *v.* DEPARTMENT OF DEFENSE. C. A. Fed. Cir. Certiorari denied. Reported below: 371 Fed. Appx. 93.

No. 10–5408. BENJAMIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 596 F. 3d 976.

No. 10–5409. CLEMMONS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 507.

No. 10–5410. BADUE *v.* MCGINNESS, SHERIFF, SACRAMENTO COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–5411. WILSON *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 627.

No. 10–5412. SHOLES *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 531.

No. 10–5413. RASHID *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 375 Fed. Appx. 199.

No. 10–5414. ROBERSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 362 Fed. Appx. 235.

No. 10–5415. RAMOS-HERNANDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–5417. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 377.

No. 10–5418. BROWN *v.* WATTERS, SUPERINTENDENT, CENTRAL WISCONSIN CENTER FOR THE DEVELOPMENTALLY DISABLED. C. A. 7th Cir. Certiorari denied. Reported below: 599 F. 3d 602.

No. 10–5419. WAID *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–5420. WOOTEN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 598 F. 3d 215.

No. 10–5421. MORGAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–5422. SHARPE *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 26 So. 3d 586.

No. 10–5423. VONGXAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 594 F. 3d 1111.

No. 10–5424. GREGORY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 591 F. 3d 964.

No. 10–5425. ELLISON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 632 F. 3d 727.

No. 10–5426. MANNING *v.* MCCOLLUM, ATTORNEY GENERAL OF FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 933.

No. 10–5427. LEE *v.* ISHEE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 499.

No. 10–5429. PATRICK *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 394 Ill. App. 3d 1114, 985 N. E. 2d 1084.

No. 10–5430. PARK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 463.

No. 10–5431. STINSON *v.* KNOWLES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 357 Fed. Appx. 910.

No. 10–5433. JONES *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 10–5434. WINTERS *v.* FISHER, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 10–5435. LIN XIAN WU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 10–5436. ULLOA *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied. Reported below: 180 Cal. App. 4th 601, 102 Cal. Rptr. 3d 743.

No. 10–5437. VEREEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 517.

No. 10–5439. FRANKLIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 367.

No. 10–5440. GARCIA-MONTANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 509.

No. 10–5441. LANE-EL *v.* SEVIER, SUPERINTENDENT, MIAMI CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 10–5442. FITZGERALD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 935.

No. 10–5444. GIST *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 382 Fed. Appx. 181.

No. 10–5447. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–5448. MCBRIDE *v.* MURRAY. Sup. Ct. Ga. Certiorari denied. Reported below: 287 Ga. 99, 694 S. E. 2d 99.

No. 10–5449. RUIZ-GUIFARRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 392.

No. 10–5450. WISE *v.* KAISER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 673.

No. 10–5451. WYRICK *v.* EBBERT, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 347 Fed. Appx. 732.

No. 10–5452. THOMAS *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 312 S. W. 3d 732.

No. 10–5453. BEATY *v.* ARIZONA. Super. Ct. Ariz., County of Maricopa. Certiorari denied.

No. 10–5454. SANCHEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 917.

No. 10–5455. EVANS *v.* OKALOOSA COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–5456. EWART *v.* IOWA. Sup. Ct. Iowa. Certiorari denied.

No. 10–5457. CALHOUN *v.* RICHARDS. C. A. 9th Cir. Certiorari denied.

No. 10–5458. CHEATHAM *v.* COLEMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–5459. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–5460. MARTINEZ, AKA SUAREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 10–5461. WONG *v.* SAN MARTIN ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 10–5462. TEAGUE *v.* NORTH CAROLINA DEPARTMENT OF TRANSPORTATION. Sup. Ct. N. C. Certiorari denied.

No. 10–5463. COOPMAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 602 F. 3d 814.

No. 10–5465. PAGE *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 10–5466. OCASIO *v.* GREENE ET AL. C. A. 2d Cir. Certiorari denied.

No. 10–5468. WHITE HORSE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–5469. WASHINGTON *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–5470. BARAJAS NAVARRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 738.

No. 10–5471. MCKENZIE *v.* BROWN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 689.

No. 10–5472. MARTINEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 367 Fed. Appx. 312.

No. 10–5473. ROARK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 368.

No. 10–5474. CORBIN *v.* WHEELER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 354 Fed. Appx. 763.

No. 10–5475. SANDERS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–5476. SPEARMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–5477. WILLIAMSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 394 Ill. App. 3d 1106, 985 N. E. 2d 1081.

No. 10–5478. RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 223.

No. 10–5480. BARTAKIAN *v.* CLARK COUNTY, NEVADA, ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 125 Nev. 1019, 281 P. 3d 1153.

No. 10–5481. BLUE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 374 Fed. Appx. 226.

No. 10–5483. MORACE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 594 F. 3d 340.

No. 10–5484. WHITE *v.* GUZMAN ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 125 Ohio St. 3d 1434, 927 N. E. 2d 8.

No. 10–5485. MEREDITH *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 28 So. 3d 50.

No. 10–5486. REBARDI *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 10–5487. SULLIVAN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 10–5488. OLIVO-RODRIGUEZ *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied.

No. 10–5489. MEHTA *v.* COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT, ET AL. Sup. Ct. Cal. Certiorari denied.

No. 10–5491. VEGA *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 68 App. Div. 3d 665, 892 N. Y. S. 2d 355.

No. 10–5492. WILLIAMS *v.* RADER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 10–5493. MOORE *v.* OHIO. Ct. App. Ohio, Lucas County. Certiorari denied. Reported below: 2010-Ohio-396.

No. 10–5494. NORTON *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–5495. NGUYEN, AKA TRAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 596 F. 3d 913.

No. 10–5496. POWELL *v.* WALSH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–5497. MURPHY *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 10–5498. MCADORY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–5499. ESPINOZA-FAJARDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 409.

No. 10–5500. EREMEYEV *v.* NEW YORK ET AL. C. A. 2d Cir. Certiorari denied.

No. 10–5501. MCNEIL *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied.

No. 10–5502. BELTRAN-LASTRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 363 Fed. Appx. 534.

No. 10–5503. BEASLEY *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 10–5504. ADAMS *v.* SIMPSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–5505. BROWN *v.* CITY OF NORTH CHICAGO, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 365 Fed. Appx. 13.

No. 10–5506. CARTER *v.* GROUNDS, ACTING WARDEN. C. A. 7th Cir. Certiorari denied.

No. 10–5507. TRESSLER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 35 So. 3d 33.

No. 10–5508. WILLIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–5509. UDOINYION *v.* DEKALB COUNTY, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–5510. KING *v.* KELLER, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 70.

No. 10–5511. LOWRY ET UX. *v.* YAVAPAI COUNTY BOARD OF SUPERVISORS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 871.

No. 10–5513. DRUMMOND *v.* RYAN, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–5514. DILLEHAY, AKA SMITH *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 8th Cir. Certiorari denied. Reported below: 357 Fed. Appx. 736.

No. 10–5515. DAVIS *v.* HUCKABAY ET AL. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 10–5516. PARKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 341 Fed. Appx. 122.

No. 10–5517. MONTERROZO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 604.

No. 10–5518. KANGERE *v.* DAVENPORT. C. A. 4th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 371.

No. 10–5519. KRIZ *v.* 12TH JUDICIAL DISTRICT BOARD OF MENTAL HEALTH OF BOX BUTTE COUNTY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 721.

No. 10–5521. MATTHEWS *v.* CLARK COUNTY DETENTION CENTER ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–5523. WILLIAMS *v.* JONES ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–5524. TAPLIN *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 356 Fed. Appx. 936.

No. 10–5526. MRINA *v.* HOLDER, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 350 Fed. Appx. 966.

No. 10–5527. SCOTT *v.* JP MORGAN CHASE BANK. C. A. 5th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 528.

No. 10–5528. SOENTGEN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 981 A. 2d 935.

No. 10–5529. WANSLEY *v.* KING ET AL. C. A. 5th Cir. Certiorari denied.

No. 10–5530. VILLAFUERTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 594 F. 3d 1303.

No. 10–5531. WEBSTER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 867.

No. 10–5532. REECE *v.* COUNTRYWIDE HOME LOANS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 530.

No. 10–5534. DOBRE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–5535. LEYVA *v.* WILLIAMS ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–5536. LOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 365.

No. 10–5537. JOHNSON *v.* BASINGER. C. A. 7th Cir. Certiorari denied.

No. 10–5538. KAUFMAN *v.* ROBINSON PROPERTY GROUP LIMITED PARTNERSHIP. C. A. 5th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 494.

No. 10–5540. COOPER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 955.

No. 10–5542. RICHARDSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 10–5543. BERNAZAL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–5544. ALCALDE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–5545. CABRERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 78.

No. 10–5546. SCAGGS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 653.

No. 10–5547. HALL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 588.

No. 10–5548. FLORES-CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 393.

No. 10–5550. HERNANDEZ-DOMINGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 374 Fed. Appx. 558.

No. 10–5551. HARGRAVE *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 225 Ariz. 1, 234 P. 3d 569.

No. 10–5552. GROGGER *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 10–5553. GRAHAM *v.* BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY SYSTEM ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–5554. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 403.

No. 10–5555. FOSTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 374 Fed. Appx. 448.

No. 10–5556. BUSTAMANTE GONZALEZ *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 168 Wash. 2d 256, 226 P. 3d 131.

No. 10–5559. BLEVINS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 10–5560. BROWN *v.* MILLS, SUPERINTENDENT, TWO RIVERS CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 10–5561. BEY *v.* I. B. E. W. LOCAL UNION #3 UNION REPRESENTATIVES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 374 Fed. Appx. 187.

No. 10–5562. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 18.

No. 10–5563. SINGLETON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 532.

No. 10–5564. QUINONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 34.

No. 10–5565. DEVEAU *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–5568. SALTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–5570. CROSS *v.* BENEDETTI, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–5573. PRICE *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 10–5576. MCNEIL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 991.

No. 10–5577. VARELA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 586 F. 3d 1249.

No. 10–5578. VELASQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 632.

No. 10–5579. VILLARREAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 467.

No. 10–5580. WHITE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 590 F. 3d 1210.

No. 10–5581. WILKES *v.* UNITED STATES; and
No. 10–5582. WILKES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 295.

No. 10–5583. BANDA-COLLAZO, AKA COLLAZO-BANDA, AKA BANDA COLLAZO, AKA COLLAZO BONDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 425.

No. 10–5585. DANIELS *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–5587. JOHNSON *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 350 Fed. Appx. 187.

No. 10–5588. BERG *v.* PRISON HEALTH SERVICES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 723.

No. 10–5589. OWENS *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–5591. THURMON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–5593. MCINTOSH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 597.

No. 10–5594. TURNER *v.* EDMONDS. Sup. Ct. Tex. Certiorari denied.

No. 10–5595. WADE *v.* SHARTLE, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–5597. BENJAMIN *v.* REID ET AL. C. A. 4th Cir. Certiorari denied.

No. 10–5598. APPLEWHITE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 969.

No. 10–5599. ANDERSON *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–5600. VALDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–5602. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 320.

No. 10–5603. WHEELER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 977 A. 2d 973 and 987 A. 2d 431.

No. 10–5604. REESE *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 991 A. 2d 806.

No. 10–5605. RAMSEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 968.

No. 10–5606. CASTILLO SANCHEZ *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 223 P. 3d 980.

No. 10–5607. POWELL *v.* LEE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–5608. ODUM *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 67 App. Div. 3d 1465, 890 N. Y. S. 2d 241.

No. 10–5609. MILES *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 10–5611. MCBRIDE *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 14 N. Y. 3d 440, 928 N. E. 2d 1027.

No. 10–5612. MITCHELL *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 386 Ill. App. 3d 1119, 970 N. E. 2d 623.

No. 10–5613. ANDERSON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 306 S. W. 3d 529.

No. 10–5614. KELLY *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 10–5615. DOWDY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–5616. WELLS *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 154 Wash. App. 1018.

No. 10–5617. WILLIAMS *v.* CLAY ELECTRIC COOPERATIVE, INC., ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 42 So. 3d 236.

No. 10–5618. WATSON *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 302 Ga. App. 619, 691 S. E. 2d 378.

No. 10–5619. CHUONG VAN DUONG *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–5620. MYRON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–5622. RAUSER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 378 Fed. Appx. 229.

No. 10–5623. REDD *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 48 Cal. 4th 691, 229 P. 3d 101.

No. 10–5626. MILLER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 10–5629. TAGLIAMONTE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 340 Fed. Appx. 73.

No. 10–5630. ROGERS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–5631. RAMOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–5633. EARDLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 404.

No. 10–5634. WILSON *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 10–5635. TUCKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 676.

No. 10–5637. BUENROSTRO *v.* DEPARTMENT OF JUSTICE. C. A. Fed. Cir. Certiorari denied. Reported below: 370 Fed. Appx. 115.

No. 10–5638. BURNETT *v.* CITY OF JACKSONVILLE, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 905.

No. 10–5639. ALTAMIRANO-QUINTERO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 764.

No. 10–5640. BARNES-MCNEELY *v.* ARKANSAS DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 710.

No. 10–5641. RAMOS *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 152 Wash. App. 684, 217 P. 3d 384.

No. 10–5643. CALDERON *v.* EVERGREEN OWNERS, INC., ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 70 App. Div. 3d 742, 895 N. Y. S. 2d 154.

No. 10–5644. COOK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 599 F. 3d 1208.

No. 10–5646. POTTS *v.* MCEWEN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 361 Fed. Appx. 879.

No. 10–5647. JORDAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 882.

No. 10–5649. LARRABEE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–5650. WHOLAVER *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 605 Pa. 325, 989 A. 2d 883.

No. 10–5652. REYNOSA-ATISUEGO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 343.

No. 10–5656. MOSES *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 34 So. 3d 12.

No. 10–5657. VERA *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–5658. PAIGE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 604 F. 3d 1268.

No. 10–5662. BROWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 543.

No. 10–5663. ADAMS *v.* VAZQUEZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 623.

No. 10–5667. RUHBAYAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 497.

No. 10–5669. SALAZAR *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 36 So. 3d 100.

No. 10–5670. GRANT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 878.

No. 10–5673. HODGE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 602 F. 3d 935.

No. 10–5674. GALLEGOS-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 357 Fed. Appx. 103.

No. 10–5676. REEVES *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–5677. NEWMAN *v.* REDMANN, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 10–5679. SMALLWOOD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 10–5681. REID *v.* SWIFT TRANSPORTATION CO., INC. Ct. App. Ariz. Certiorari denied.

No. 10–5683. CHALK *v.* RHODE ISLAND. C. A. 1st Cir. Certiorari denied.

No. 10–5694. RUCKER *v.* LATTIMORE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 810.

No. 10–5695. WASHINGTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 596 F. 3d 926.

No. 10–5696. WOODS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 600.

No. 10–5697. MORRISON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 594 F. 3d 543.

No. 10–5700. LASKO *v.* WATTS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 373 Fed. Appx. 196.

No. 10–5701. KARAWI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 626.

No. 10–5702. LANGE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 645.

No. 10–5703. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–5704. PAYNE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 464.

No. 10–5705. WILLIAMS *v.* SNYDER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 679.

No. 10–5707. AHAMAD *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 37 So. 3d 869.

No. 10–5708. BOGLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 864.

No. 10–5713. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–5714. VALDIVIA-PEREZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–5715. URENA GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–5716. WEBB *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 10–5719. SCOTT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–5722. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–5723. TOTARO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–5724. WIEST *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 596 F. 3d 906.

No. 10–5725. FIELDING *v.* GRANT, SUPERINTENDENT, BAY STATE CORRECTIONAL CENTER. C. A. 1st Cir. Certiorari denied.

No. 10–5727. PALOS-MARQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 591 F. 3d 1272.

No. 10–5729. NAKAGAWA *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 10–5730. ORTIZ-MEDINA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–5732. RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–5734. ARANGUREN-SUAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 346 Fed. Appx. 557.

No. 10–5735. BOYD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 599 F. 3d 360.

No. 10–5736. BOWIE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 480.

No. 10–5737. BOWERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 594 F. 3d 522.

No. 10–5739. ALVANEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 336.

No. 10–5740. BYERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 603 F. 3d 503.

No. 10–5741. BAKER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 987.

No. 10–5742. BATTLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 426.

No. 10–5745. GANDARA-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 405.

No. 10–5752. SANDERS *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied.

No. 10–5753. PHIEU VAN NGUYEN *v.* UNITED STATES; and
No. 10–5863. VA THI NGUYEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 602 F. 3d 886.

No. 10–5756. MAUSALI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 590 F. 3d 1077.

No. 10–5763. DEAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 604 F. 3d 169.

No. 10–5765. DRAPER *v.* ATLANTA INDEPENDENT SCHOOL SYSTEM. C. A. 11th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 937.

No. 10–5768. ALVAREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 756.

No. 10–5769. BUCHANAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 604 F. 3d 517.

No. 10–5772. ZARN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 365 Fed. Appx. 838.

No. 10–5775. DOUGLAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 378 Fed. Appx. 247.

No. 10–5776. CURRY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 597 F. 3d 936.

No. 10–5780. COHEN *v.* HUNT, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 850.

No. 10–5781. CARLSON *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 10–5785. GHILARDUCCI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–5786. FALLS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–5787. FINCHER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 374 Fed. Appx. 442.

No. 10–5788. HUDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 353.

No. 10–5789. HOWARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 978.

No. 10–5793. LINH DAI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 386 Fed. Appx. 168.

No. 10–5796. COOK *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. Sup. Ct. Mich. Certiorari denied.

No. 10–5797. COLEMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 401.

No. 10–5798. TEXEIRA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–5799. MILLARD-GRASSHORN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 603 F. 3d 492.

No. 10–5800. MAIDEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 606 F. 3d 337.

No. 10–5801. KALICK *v.* NORTHWEST AIRLINES CORP. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 372 Fed. Appx. 317.

No. 10–5803. MOUNSAVENG *v.* LAMARQUE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 746.

No. 10–5806. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 872.

No. 10–5810. RUTHERFORD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 599 F. 3d 817.

No. 10–5812. BUFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 831.

No. 10–5815. KELLY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 368 Fed. Appx. 194.

No. 10–5816. KING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 948.

No. 10–5822. HINNANT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 276.

No. 10–5827. WHITELAW *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 584.

No. 10–5828. HERNANDEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 378 Fed. Appx. 145.

No. 10–5830. LEGGINS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–5831. MESSERLY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 682.

No. 10–5833. BOBMANUEL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 693.

No. 10–5834. BOCZKOWSKI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 378 Fed. Appx. 126.

No. 10–5835. SMITH *v.* SALAZAR, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 829.

No. 10–5837. SPIWAK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 319.

No. 10–5838. SCHWINDT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 721.

No. 10–5841. NORRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–5842. STOUT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 599 F. 3d 549.

No. 10–5843. CAMPBELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 603 F. 3d 1218.

No. 10–5844. DELGADILLO-GALLEGOS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 758.

No. 10–5845. CLARK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 365.

No. 10–5848. STURGIS *v.* HAYES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 374 Fed. Appx. 620.

No. 10–5851. STOYER *v.* OHIO DEPARTMENT OF JOB AND FAMILY SERVICES. Ct. App. Ohio, Franklin County. Certiorari denied. Reported below: 2009-Ohio-6662.

No. 10–5857. WILLIAMS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 987 A. 2d 827.

No. 10–5861. JOHNSON *v.* TURCHIN, MAGISTRATE JUDGE, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 10–5862. McFadden *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 699.

No. 10–5865. Love *v.* Chester, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 766.

No. 10–5868. Cole *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 36 So. 3d 597.

No. 10–5869. Rigmaiden *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 10–5874. Rodriguez *v.* Director of Special Housing and Inmate Disciplinary Programs. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 71 App. Div. 3d 1346, 897 N. Y. S. 2d 311.

No. 10–5875. Robertson *v.* Cree, Inc. C. A. 4th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 317.

No. 10–5877. Jones *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 205.

No. 10–5878. Kanan *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 387 Fed. Appx. 120.

No. 10–5884. Brunick *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 374 Fed. Appx. 714.

No. 10–5885. Webb *v.* Hepp, Warden. C. A. 7th Cir. Certiorari denied.

No. 10–5887. Pericles *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 801.

No. 10–5889. Monea *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 531.

No. 10–5890. Moore *v.* Tennis, Superintendent, State Correctional Institution at Rockview, et al. C. A. 3d Cir. Certiorari denied.

No. 10–5891. Peatross *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 477.

No. 10–5892. Dorsey *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 10–5893. CORMIER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 607 F. 3d 133.

No. 10–5894. COURTNEY *v.* KNOWLES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 591.

No. 10–5896. MARTIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 395.

No. 10–5902. WRIGHT *v.* SHERRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–5903. THERCY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–5905. TORRIENTE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 294.

No. 10–5907. CABRERA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–5908. RODRIGUEZ-CASIANO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–5911. LACY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 316.

No. 10–5912. KENNEDY *v.* WASHINGTON ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–5913. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 599 F. 3d 339.

No. 10–5918. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 964.

No. 10–5921. CALDERON-QUINONEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 540.

No. 10–5927. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 373.

No. 10–5928. ARMSTEAD *v.* PALOKOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CAMP HILL, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–5932. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 307 Fed. Appx. 764.

No. 10–5933. VILLARREAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 467.

No. 10–5934. EZIKE *v.* HOLDER, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 470.

No. 10–5938. GURKA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 605 F. 3d 40.

No. 10–5939. FANCHER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 259.

No. 10–5941. GRANADOS-REYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 318.

No. 10–5942. MORENO HERRERA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 49 Cal. 4th 613, 232 P. 3d 710.

No. 10–5945. OLIVAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–5947. SCOTT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 10–5951. WHITLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 390.

No. 10–5952. MARTINEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 600 F. 3d 971.

No. 10–5956. COCHRAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–5962. ACOSTA-MENDOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 450.

No. 10–5966. BLACK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 810.

No. 10–5968. GREEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 617 F. 3d 233.

No. 10–5974. DEJEAR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 813.

No. 10–5976. ESTRADA RODRIGUEZ, AKA ESTRADA, AKA MARTINEZ, AKA ESTRADAL, AKA ESTRADA BALERIO, AKA ESTRADA-

RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 342.

No. 10–5981. COLINDRES-COMELLI *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 10–5982. PONCIANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 369.

No. 10–5987. WEST *v.* CABRAL. C. A. D. C. Cir. Certiorari denied. Reported below: 373 Fed. Appx. 79.

No. 10–5990. COSEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 602 F. 3d 943.

No. 10–5992. ROBERTSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 789.

No. 10–5995. HOFUS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 598 F. 3d 1171.

No. 10–6000. DIMARCO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–6002. CROMPTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–6003. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 974.

No. 10–6004. CARROWAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 334.

No. 10–6005. FIFER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 429.

No. 10–6013. MARDIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 600 F. 3d 693.

No. 10–6028. ROSSATY, AKA ROSSATTI MENDEZ, AKA ROSSATTY *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 10–6030. MCMICKENS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 373 Fed. Appx. 226.

No. 10–6046. ALFONZO ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 592 F. 3d 280.

No. 10–6047. McClendon *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 898.

No. 10–6055. Arnaiz *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 10–6061. De La Paz-Rentas *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 613 F. 3d 18.

No. 10–6064. Perales *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 967.

No. 10–6065. Smith *v.* Department of Homeland Security. C. A. D. C. Cir. Certiorari denied. Reported below: 387 Fed. Appx. 2.

No. 10–6067. Williams *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 612 F. 3d 500.

No. 10–6071. Johnson *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 980 A. 2d 1174.

No. 10–6072. Thurston *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 752.

No. 10–6081. Simmons *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 323.

No. 10–6086. De Leon-Zamora, aka Cervantes *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 401.

No. 10–6087. Duran-Berroa *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 10–6092. Adame-Orozco *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 607 F. 3d 647.

No. 10–6093. Zuniga-Holguin *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 362.

No. 10–6098. Garcia-Ramirez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 374.

No. 10–6099. Flores-Garcia *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 367.

No. 10–6100. FARLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 607 F. 3d 1294.

No. 10–6104. MAXWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 327.

No. 10–6108. CRUZ-CASTRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 632.

No. 10–6109. DUPREE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 590.

No. 10–6110. CHAVARRIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 634.

No. 10–6112. KPOHANU *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 519.

No. 10–6114. DANIELS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 303.

No. 10–6126. DUNN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–6128. NORMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 311.

No. 10–6129. BIVENS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 803.

No. 10–6130. AUSTIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 53.

No. 10–6131. MOSES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 844.

No. 10–6139. GROSS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–6142. GILLIAM, AKA GILLIUM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 349.

No. 10–6145. FARMER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 303.

No. 10–6146. GARRETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 279.

No. 10–6157. PUGH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 776.

No. 10–6173. LEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 830.

No. 10–6174. ARBUTISKI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 09–1188. SKINNER *v.* DEPARTMENT OF JUSTICE ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 584 F. 3d 1093.

No. 09–1191. DANIELS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 590 F. 3d 499.

No. 09–1242. BAIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 586 F. 3d 634.

No. 09–1262. PRESBYTERIAN CHURCH OF SUDAN ET AL. *v.* TALISMAN ENERGY, INC.; and

No. 09–1418. TALISMAN ENERGY, INC. *v.* PRESBYTERIAN CHURCH OF SUDAN ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of these petitions. Reported below: 582 F. 3d 244.

No. 09–1327. MISSOURI *v.* GILL. Sup. Ct. Mo. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 300 S. W. 3d 225.

No. 09–1328. SMITH, WARDEN *v.* VASQUEZ. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 345 Fed. Appx. 104.

No. 09–1339. NESTLE PURINA PETCARE CO. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 594 F. 3d 968.

No. 09–1342. SHERRY, WARDEN *v.* JOHNSON. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 586 F. 3d 439.

No. 09–1359. KRASNIQI *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 355 Fed. Appx. 577.

No. 09–1377. OHIO *v.* SMITH. Sup. Ct. Ohio. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 124 Ohio St. 3d 163, 920 N. E. 2d 949.

No. 09–1416. GIANETTI *v.* BLUE CROSS AND BLUE SHIELD OF CONNECTICUT ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 351 Fed. Appx. 520.

No. 09–1425. NEW YORK *v.* WILLIAMS ET AL. Ct. App. N. Y. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 14 N. Y. 3d 198, 925 N. E. 2d 878.

No. 09–1426. CITY OF NEW YORK, NEW YORK, ET AL. *v.* GREEN, EXECUTRIX OF THE ESTATE OF GREEN, DECEASED. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 359 Fed. Appx. 197.

No. 09–1431. KELLY, WARDEN *v.* WINSTON. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 592 F. 3d 535.

No. 09–1433. SCHAGHTICOKE TRIBAL NATION *v.* SALAZAR, SECRETARY OF THE INTERIOR, ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 587 F. 3d 132.

No. 09–1451. DIEFFENBACH *v.* HAWORTH ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 356 Fed. Appx. 529.

No. 09–1456. RIGAS ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 583 F. 3d 108.

No. 09–1481. BRZAK ET AL. *v.* UNITED NATIONS ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 597 F. 3d 107.

No. 09–1488. CORNEJO, INDIVIDUALLY AND ON BEHALF OF HER MINOR SON, SALAS *v.* MONN ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 592 F. 3d 121.

No. 09–1492. MISSOURI *v.* BROOKS. Sup. Ct. Mo. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 304 S. W. 3d 130.

No. 09–1526. MARTIN *v.* DELAWARE LAW SCHOOL OF WIDENER UNIVERSITY ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 304 Fed. Appx. 29.

No. 09–1544. VRDOLYAK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 593 F. 3d 676.

No. 09–1567. LEE *v.* ASTORIA GENERATING CO., L. P., ET AL. Ct. App. N. Y. Motion of Maritime Law Association of the United States for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 13 N. Y. 3d 382, 920 N. E. 2d 350.

No. 09–8733. SANCHEZ-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 350 Fed. Appx. 928.

No. 09–9011. MONFORT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 320 Fed. Appx. 722.

No. 09–9035. YAWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 09–9106. FARTHING *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 09–9264. GUZMAN-PADILLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 573 F. 3d 865.

No. 09–9350. WHITLOCK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 581 F. 3d 635.

No. 09–9415. BALDWIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 347 Fed. Appx. 911.

No. 09–9434. BELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 351 Fed. Appx. 357.

No. 09–9509. AUSTIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 09–9553. ZACCAGNINI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 357 Fed. Appx. 132.

No. 09–9625. AJETUNMOBI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR and JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 353 Fed. Appx. 628.

No. 09–9714. CONEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 349 Fed. Appx. 497.

No. 09–9804. HEADLEY-OMBLER *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 09–9944. PEREDA-REBOLLO *v.* UNITED STATES; and
No. 09–10100. PRECIADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of these petitions. Reported below: 357 Fed. Appx. 31.

No. 09–10015. PAYNE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR and JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 591 F. 3d 46.

No. 09–10236. CASPER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 353 Fed. Appx. 976.

No. 09–10411. MCDARRAH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR and JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 351 Fed. Appx. 558.

No. 09–10531. CHAVEZ-SILVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 363 Fed. Appx. 484.

No. 09–10562. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 596 F. 3d 236.

No. 09–10706. SAMUEL *v.* BELLEVUE HOSPITAL CENTER. C. A. 2d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 366 Fed. Appx. 206.

No. 09–10738. DICKERSON *v.* UNITED WAY OF NEW YORK CITY. C. A. 2d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 351 Fed. Appx. 506.

No. 09–10977. CONNELLY *v.* LANTZ. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 366 Fed. Appx. 194.

No. 09–11061. PRINGLE *v.* EMC MORTGAGE CORP. ET AL. C. A. 4th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 09–11088. SHIRE *v.* UNITED STATES; and

No. 09–11197. JAMA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consider-

ation or decision of these petitions. Reported below: 369 Fed. Appx. 242.

No. 09–11100. STRUJAN *v.* LEHMAN COLLEGE ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 363 Fed. Appx. 84.

No. 09–11212. RICHARD S. *v.* HOGAN, COMMISSIONER, NEW YORK STATE OFFICE OF MENTAL HEALTH, ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 589 F. 3d 75.

No. 09–11264. PERSAD *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 368 Fed. Appx. 265.

No. 09–11275. GLADDEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 602 F. 3d 97 and 369 Fed. Appx. 190.

No. 09–11278. HANSEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 369 Fed. Appx. 215.

No. 09–11307. THROWER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 584 F. 3d 70.

No. 09–11327. CONSTANT *v.* DOE ET AL. C. A. 2d Cir. Motion of respondents to seal the petition for writ of certiorari and to substitute a redacted version for the public record granted. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion and this petition. Reported below: 354 Fed. Appx. 543.

No. 09–11402. MANNA *v.* SCHULTZ, WARDEN. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 591 F. 3d 664.

No. 09–11485. NOGBOU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 370 Fed. Appx. 154.

No. 09–11496. CALDWELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 585 F. 3d 1347.

No. 09–11543. JACOB ET AL. *v.* HOUSTON, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. Ct. App. Neb. Motion of petitioner Daniel T. Meis for leave to proceed *in forma pauperis* denied. Petitioner Meis is allowed until October 25, 2010, 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. Certiorari as to petitioner Steven M. Jacob denied.

No. 10–16. AGOSTIN, AKA VOLAJ *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 363 Fed. Appx. 107.

No. 10–20. NORWOOD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 603 F. 3d 1063.

No. 10–21. MCKENNA *v.* NESTLE PURINA PETCARE CO. C. A. 6th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 10–70. FINNAN *v.* RYAN ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 357 Fed. Appx. 331.

No. 10–80. WEISS *v.* ASSICURAZIONI GENERALI, S. P. A., ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR and JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 592 F. 3d 113.

No. 10–127. BAHRAMI *v.* KETABCHI. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 365 Fed. Appx. 266.

No. 10–141. HASSAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari before judgment denied.

No. 10–206. GOULD, SHERIFF, CAYUGA COUNTY, NEW YORK, ET AL. *v.* CAYUGA INDIAN NATION OF NEW YORK. Ct. App. N. Y. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 14 N. Y. 3d 614, 930 N. E. 2d 233.

No. 10–5101. WILLIAMS *v.* TEMPLE. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 349 Fed. Appx. 594.

No. 10–5109. KUMVACHIRAPITAG *v.* MICROSOFT CORP. ET AL. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE and JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 383 Fed. Appx. 4.

No. 10–5153. BUCHANAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 600 F. 3d 204.

No. 10–5207. WATSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 358 Fed. Appx. 207.

No. 10–5210. KYLES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 601 F. 3d 78.

No. 10–5228. BARRIOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 374 Fed. Appx. 56.

No. 10–5231. ADKINS *v.* SEMPLE, WARDEN. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 354 Fed. Appx. 564.

No. 10–5233. AHMADZAI *v.* UNITED STATES. C. A. 9th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 365 Fed. Appx. 871.

No. 10–5257. PALACIOS *v.* GRAHAM, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari

denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 589 F. 3d 556.

No. 10–5297. BEGAY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 602 F. 3d 1150.

No. 10–5330. GARRAWAY *v.* LEE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 591 F. 3d 72.

No. 10–5349. SPENCER *v.* UNITED PARCEL SERVICE, INC. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 354 Fed. Appx. 554.

No. 10–5385. STEVENS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 10–5393. PETERKIN, AKA JAMES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 374 Fed. Appx. 208.

No. 10–5467. OLIVERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 372 Fed. Appx. 174.

No. 10–5522. PALMER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 374 Fed. Appx. 208.

No. 10–5549. HASAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 586 F. 3d 161.

No. 10–5557. PERKINS *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 596 F. 3d 161.

No. 10–5574. NAVAS *v.* UNITED STATES; and

No. 10–5636. ALVAREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of these petitions. Reported below: 597 F. 3d 492.

No. 10–5575. ORTIZ *v.* NEW YORK STATE PAROLE IN BRONX. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 586 F. 3d 149.

No. 10–5671. LIN GUANG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 373 Fed. Appx. 121.

No. 10–5754. PENDER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 376 Fed. Appx. 60.

No. 10–5760. BESSER *v.* WALSH, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 601 F. 3d 163.

No. 10–5792. GOITIA-MORA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 377 Fed. Appx. 842.

No. 10–5876. LEIJA-SANCHEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 602 F. 3d 797.

No. 10–5882. ROBLES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 604 F. 3d 673.

No. 10–5910. SHI YONG WEI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 373 Fed. Appx. 121.

No. 10–5986. VARGAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consid-

eration or decision of this petition. Reported below: 378 Fed. Appx. 41.

Rehearing Denied

No. 09–8755. HOOD *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 561 U. S. 1028;

No. 09–10594. LAND *v.* FLORIDA, 561 U. S. 1032;

No. 09–10909. HINES *v.* JACKSON, SUPERINTENDENT, NASH CORRECTIONAL INSTITUTION, 561 U. S. 1033;

No. 09–10928. CLARK *v.* UNITED STATES GYPSUM CO., 561 U. S. 1034; and

No. 09–11073. TAKELE *v.* MAYO CLINIC, 561 U. S. 1036. Petitions for rehearing denied.

OCTOBER 12, 2010

Certiorari Granted—Vacated and Remanded

No. 09–1443. RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* DOODY. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Florida* v. *Powell*, 559 U. S. 50 (2010). Reported below: 596 F. 3d 620.

No. 09–11051. PETERSON *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Holland* v. *Florida*, 560 U. S. 631 (2010).

No. 10–8. EUGENE IOVINE, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *New Process Steel, L. P.* v. *NLRB*, 560 U. S. 674 (2010). JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 371 Fed. Appx. 167.

No. 10–5211. LOADHOLT *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *McDonald* v. *Chi-*

cago, 561 U. S. 742 (2010). Reported below: 456 Mass. 411, 923 N. E. 2d 1037.

Certiorari Dismissed

No. 10–5710. BISHOP *v.* GRIEVANCE COMMITTEE FOR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. Reported below: 360 Fed. Appx. 246.

No. 10–5779. SABEDRA *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–5813. HUNG HA *v.* MCGUINESS. Ct. App. Cal., 1st App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–5817. JACOBS *v.* HUIBREGTSE, WARDEN. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 10–5832. MOORE *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–6200. ELLIOTT *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied,

and certiorari dismissed. See this Court's Rule 39.8. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition. Reported below: 373 Fed. Appx. 326.

Miscellaneous Orders

No. 10A357. FAMILY PAC *v.* MCKENNA, ATTORNEY GENERAL OF WASHINGTON, ET AL. Application to vacate the stay entered by the United States Court of Appeals for the Ninth Circuit, case No. 10–35832, addressed to JUSTICE KENNEDY and by him referred to the Court, denied.

No. D–2476. IN RE DISBARMENT OF LAPIDUS. Disbarment entered. [For earlier order herein, see 561 U. S. 1043.]

No. D–2483. IN RE DISBARMENT OF MINTMIRE. Disbarment entered. [For earlier order herein, see 561 U. S. 1044.]

No. D–2493. IN RE DISBARMENT OF EHRLICH. Disbarment entered. [For earlier order herein, see 561 U. S. 1046.]

No. 10M35. WOODS *v.* MCCOLLUM, ATTORNEY GENERAL OF FLORIDA; and

No. 10M36. PEARSON DENTAL SUPPLIES, INC. *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 137, Orig. MONTANA *v.* WYOMING ET AL. First exception to the Special Master's First Interim Report is set for oral argument in due course. Second exception is recommitted to the Special Master. Wyoming's motion to dismiss denied. Motion of the Special Master for allowance of fees and reimbursement of expenses granted, and the Special Master is awarded a total of $72,008.74 for the period June 13, 2009, through July 9, 2010, to be paid equally by Montana and Wyoming. JUSTICE KAGAN took no part in the consideration or decision of these exceptions and these motions. [For earlier order herein, see, *e. g.*, 559 U. S. 989.]

No. 09–400. STAUB *v.* PROCTOR HOSPITAL. C. A. 7th Cir. [Certiorari granted, 559 U. S. 1066.] Motion of Equal Employment Advisory Council for leave to file a brief as *amicus curiae* out of time granted. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 09–987. ARIZONA CHRISTIAN SCHOOL TUITION ORGANIZATION *v.* WINN ET AL.; and

No. 09–991. GARRIOTT, DIRECTOR, ARIZONA DEPARTMENT OF REVENUE *v.* WINN ET AL. C. A. 9th Cir. [Certiorari granted, 560 U. S. 924.] Motion of petitioner Arizona Christian School Tuition Organization for divided argument denied. Joint motion of petitioner Gale Garriott and the Acting Solicitor General for leave to allow the Acting Solicitor General to participate in oral argument as *amicus curiae* and for divided argument granted, and the time is to be divided as follows: 15 minutes for petitioner Gale Garriott, and 15 minutes for the United States.

No. 10–74. AQUINO, SECRETARY, PUERTO RICO DEPARTMENT OF AGRICULTURE, ET AL. *v.* SUIZA DAIRY, INC., ET AL. C. A. 1st Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 10–6060. DUNBAR *v.* HAWAII. Int. Ct. App. Haw.; and

No. 10–6105. PIPER *v.* UNITED STATES. C. A. Fed. Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 2, 2010, 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. 10–6390. IN RE POLLY;

No. 10–6485. IN RE CAPERS;

No. 10–6507. IN RE WANSLEY;

No. 10–6514. IN RE SLATE; and

No. 10–6535. IN RE DAVIDSON. Petitions for writs of habeas corpus denied.

No. 10–6316. IN RE BERRYHILL. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 10–6349. IN RE WILLIAMS;

No. 10–6386. IN RE WATTS; and

No. 10–6547. IN RE SINQUEFIELD. Motions of petitioners for leave to proceed *in forma pauperis* denied, and petitions for writs of habeas corpus dismissed. See this Court's Rule 39.8.

No. 10–5659. IN RE DEL RIO; and
No. 10–5684. IN RE SHOVE. Petitions for writs of mandamus denied.

No. 10–5886. IN RE DAVIDSON. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 09–1227. BOND *v.* UNITED STATES. C. A. 3d Cir. Certiorari granted. Reported below: 581 F. 3d 128.

No. 09–1454. CAMRETA *v.* GREENE, PERSONALLY AND AS NEXT FRIEND OF S. G., A MINOR, ET AL.; and
No. 09–1478. ALFORD, DEPUTY SHERIFF, DESCHUTES COUNTY, OREGON *v.* GREENE, PERSONALLY AND AS NEXT FRIEND OF S. G., A MINOR, ET AL. C. A. 9th Cir. Certiorari granted, cases consolidated, and a total of one hour is allotted for oral argument. Reported below: 588 F. 3d 1011.

No. 09–1476. BOROUGH OF DURYEA, PENNSYLVANIA, ET AL. *v.* GUARNIERI. C. A. 3d Cir. Certiorari granted. Reported below: 364 Fed. Appx. 749.

No. 09–1533. DEPIERRE *v.* UNITED STATES. C. A. 1st Cir. Certiorari granted. Reported below: 599 F. 3d 25.

No. 10–6. GLOBAL-TECH APPLIANCES, INC., ET AL. *v.* SEB S. A. C. A. Fed. Cir. Certiorari granted. Reported below: 594 F. 3d 1360.

No. 10–72. MADISON COUNTY, NEW YORK, ET AL. *v.* ONEIDA INDIAN NATION OF NEW YORK. C. A. 2d Cir. Motion of Citizens Equal Rights Foundation et al. for leave to file a brief as *amici curiae* granted. Certiorari granted. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion and this petition. Reported below: 605 F. 3d 149.

Certiorari Denied

No. 09–1442. DENALI, L. L. C., ET AL. *v.* UTAH STATE TAX COMMISSION ET AL. Sup. Ct. Utah. Certiorari denied. Reported below: 225 P. 3d 153.

No. 09–10097. HILL *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–10509. MAXWELL ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 590 F. 3d 585.

No. 09–10911. SEDRATI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 365 Fed. Appx. 30.

No. 09–11207. DODGE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 597 F. 3d 1347.

No. 09–11218. PRESSLEY *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 290 Kan. 24, 223 P. 3d 299.

No. 09–11285. CASTILLO-ESTEVEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 597 F. 3d 238.

No. 09–11538. JACKSON *v.* DANBERG, COMMISSIONER, DELAWARE DEPARTMENT OF CORRECTION, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 594 F. 3d 210.

No. 10–28. CHAE ET AL. *v.* SLM CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 593 F. 3d 936.

No. 10–47. WELLS *v.* FRANKLIN APARTMENTS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 794.

No. 10–152. BROOKS-MCCOLLUM *v.* STATE FARM INSURANCE CO. C. A. 3d Cir. Certiorari denied. Reported below: 376 Fed. Appx. 217.

No. 10–154. KEREAKOGLOW *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 456 Mass. 225, 922 N. E. 2d 790.

No. 10–162. J. Z. *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 10–164. ALSTON *v.* SUPREME COURT OF DELAWARE ET AL. Sup. Ct. Del. Certiorari denied. Reported below: 991 A. 2d 17.

No. 10–166. STANLEY *v.* GRATE, JUDGE, CIRCUIT COURT OF MISSOURI, JACKSON COUNTY, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 699.

No. 10–168. LIFE SETTLEMENT CORP., DBA PEACHTREE LIFE SETTLEMENTS *v.* GOSHAWK SYNDICATE 102 AT LLOYD'S. Ct. App. N. Y. Certiorari denied. Reported below: 14 N. Y. 3d 850, 927 N. E. 2d 553.

No. 10–169. KNIGHT *v.* DRYE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 375 Fed. Appx. 280.

No. 10–170. MARTIN ET AL. *v.* HANIC, PERSONAL REPRESENTATIVE OF THE ESTATE OF ESCOBEDO, DECEASED. C. A. 7th Cir. Certiorari denied. Reported below: 600 F. 3d 770.

No. 10–173. BYRD ET UX. *v.* HOFFMAN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 352 Fed. Appx. 775.

No. 10–181. SCHNELLER *v.* PHILADELPHIA ENTERTAINMENT AND DEVELOPMENT PARTNERS, L. P. Sup. Ct. Pa. Certiorari denied. Reported below: 605 Pa. 255, 988 A. 2d 1288.

No. 10–183. SAMSON *v.* MANLEY ET AL. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 10–190. TORAIN *v.* AT&T MANAGEMENT SERVICES, LP, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 353 Fed. Appx. 37.

No. 10–199. FILAR *v.* CHICAGO SCHOOL REFORM BOARD OF TRUSTEES, AKA BOARD OF EDUCATION OF THE CITY OF CHICAGO. C. A. 7th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 607.

No. 10–207. FOOD MOVERS INTERNATIONAL, INC. *v.* WELLS DAIRY, INC. C. A. 8th Cir. Certiorari denied. Reported below: 607 F. 3d 515.

No. 10–211. TRANSOCEAN ENTERPRISE, INC. *v.* INGALLS SHIPBUILDING, INC. Sup. Ct. Miss. Certiorari denied. Reported below: 33 So. 3d 459.

No. 10–213. ROWLAND *v.* PRUDENTIAL FINANCIAL, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 596.

No. 10–219. PIKE COUNTY JOINT VOCATIONAL SCHOOL DISTRICT ET AL. *v.* KNISLEY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 604 F. 3d 977.

No. 10–222. WYETH LLC ET AL. *v.* KIRKLAND ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 591 F. 3d 613.

No. 10–230. FISHERMEN'S FINEST INC. ET AL. *v.* LOCKE, SECRETARY OF COMMERCE. C. A. 9th Cir. Certiorari denied. Reported below: 593 F. 3d 886.

No. 10–231. GRAY *v.* GENERAL ELECTRIC CO. C. A. 2d Cir. Certiorari denied.

No. 10–243. SONNENSCHEIN NATH & ROSENTHAL LLP *v.* ROSENTHAL. Ct. App. D. C. Certiorari denied. Reported below: 985 A. 2d 443.

No. 10–246. MONTGOMERY *v.* DAVIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–248. ABRAM *v.* NEBRASKA. Ct. App. Neb. Certiorari denied.

No. 10–249. CWIK, AS SUCCESSOR INDEPENDENT ADMINISTRATOR OF THE ESTATE OF BOGDANOWICZ, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL. *v.* GIANNOULIAS, ILLINOIS STATE TREASURER, ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 237 Ill. 2d 409, 930 N. E. 2d 990.

No. 10–253. UMPHREYVILLE *v.* GITTINS. C. A. 4th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 460.

No. 10–256. MELLOR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 656.

No. 10–258. JACKIM *v.* CITY OF BROOKLYN, OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 556.

No. 10–259. COLLIS *v.* BANK OF AMERICA, N. A. C. A. 4th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 819.

No. 10–260. MATTIS *v.* NEW JERSEY ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–270. SKIDMORE ENERGY, INC. *v.* MAGHREB PETROLEUM EXPLORATION, S. A., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 706.

No. 10–289. HUMALA ET VIR *v.* HOLDER, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 374 Fed. Appx. 259.

No. 10–292. PEREZ ET AL. *v.* CAREY INTERNATIONAL, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 907.

No. 10–295. VEASAW *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 361 Fed. Appx. 628.

No. 10–296. HARRIS *v.* HOMECOMING FINANCIAL SERVICES, INC./BANK ONE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 377 Fed. Appx. 240.

No. 10–303. LAMANA *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 988 A. 2d 723.

No. 10–307. MELENDREZ *v.* BIERY, JUDGE, UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, ET AL. C. A. 7th Cir. Certiorari denied.

No. 10–310. BROEMER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied.

No. 10–316. GAGALIS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–5124. JOHNSTON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 27 So. 3d 11.

No. 10–5282. MASKE *v.* ESTRADA ET AL. C. A. 10th Cir. Certiorari denied.

No. 10–5655. REYNOLDS *v.* SUPREME COURT OF VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 320.

No. 10–5661. BOSIER *v.* GILA GROUP ET AL. C. A. 5th Cir. Certiorari denied.

No. 10–5664. LEVI *v.* AEROTEK, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 374 Fed. Appx. 679.

No. 10–5665. RHETT *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 10–5666. SILVA *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 10–5668. STAFFORD *v.* AMMONS ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–5678. SINGH *v.* HEATH, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–5680. SMITH *v.* MAHONEY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 611 F. 3d 978.

No. 10–5682. ELAM *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 10–5686. HILL *v.* ORTEGON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 360 Fed. Appx. 582.

No. 10–5687. GARCIA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 10–5688. GUERRERO *v.* TEXAS;
No. 10–5689. GUERRERO *v.* TEXAS; and
No. 10–5690. GUERRERO *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 10–5698. LANDIS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 10–5699. REECE *v.* SISTO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–5709. BARNES *v.* ALTERNATIVE CAPITAL SOURCE, LLC. Ct. Civ. App. Ala. Certiorari denied. Reported below: 47 So. 3d 280.

No. 10–5717. TAYLOR *v.* GUNNELS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 469.

No. 10–5721. PRICE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 10–5726. JEBBIA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–5731. LAURORE *v.* UMASS MEDICAL HEALTHCARE ET AL. App. Ct. Mass. Certiorari denied. Reported below: 73 Mass. App. 1109, 897 N. E. 2d 1042.

No. 10–5733. RODRIGUEZ APONTE *v.* MCKEE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–5747. ROUSER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 10–5748. SHEEHAN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–5749. RICHARD *v.* ROCK, SUPERINTENDENT, UPSTATE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–5750. ROSENBLUM *v.* CAMPBELL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 782.

No. 10–5751. SHERMAN *v.* HENDERSON, YOLO COUNTY DISTRICT ATTORNEY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 557.

No. 10–5755. KING *v.* IOWA DEPARTMENT OF CORRECTIONS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 598 F. 3d 1051.

No. 10–5757. LEE *v.* LUDWICK, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–5758. LEWIS *v.* COCA-COLA ENTERPRISES, INC. C. A. 6th Cir. Certiorari denied.

No. 10–5759. KANTAMANTO *v.* NORTH. C. A. 3d Cir. Certiorari denied. Reported below: 375 Fed. Appx. 163.

No. 10–5761. BROWN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–5766. KNIGHT *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–5771. THOMPSON *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 25 So. 3d 646.

No. 10–5773. MEDRANO *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 10–5774. DIXON *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–5777. MCBRIDE *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 10–5778. ST. AMANT *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 39 So. 3d 589.

No. 10–5784. INSUA *v.* MCDONALD, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 853.

No. 10–5791. GEORGIEVA *v.* BARNES & NOBLE. C. A. 9th Cir. Certiorari denied.

No. 10–5794. DANIELS *v.* DISTRICT COURT OF COLORADO, ARAPAHOE COUNTY, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 851.

No. 10–5795. JONES *v.* SHAW GROUP ET AL.; JONES *v.* FIRST BANK & TRUST; and JONES *v.* SHAW GROUP ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–5804. HALLFORD *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 576 F. 3d 1221.

No. 10–5805. ALBRITTON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 700.

No. 10–5807. BUNYARD *v.* KNOWLES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–5808. BELANGER *v.* STOVALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–5811. ABDULHASSEB, AKA THOMAS *v.* CALBONE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 600 F. 3d 1301.

No. 10–5814. HUNG HA *v.* RICHMAN ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 10–5818. JACKSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 10–5819. JONES *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 10–5820. NEWSOM *v.* RUNNELS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 641.

No. 10–5821. PERREGO *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 988 A. 2d 727.

No. 10–5823. HUBBARD *v.* DETROIT PUBLIC SCHOOLS. C. A. 6th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 631.

No. 10–5824. TAYLOR *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–5825. VALLERY *v.* SMELOSKY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–5826. VENEGAS *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 10–5840. POLK *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 42 Kan. App. 2d xxiii, 210 P. 3d 137.

No. 10–5846. DIXIE *v.* WILSON, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied.

No. 10–5847. ROWELL *v.* MARTINO ET AL. C. A. 2d Cir. Certiorari denied.

No. 10–5853. MANKO *v.* MANNOR ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 14 N. Y. 3d 880, 929 N. E. 2d 398.

No. 10–5854. JERVIS *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 916 N. E. 2d 969.

No. 10–5855. MARIE P. *v.* SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 10–5856. BUCHANAN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 395 Ill. App. 3d 1113, 986 N. E. 2d 804.

No. 10–5866. McGleachie *v.* Mississippi; and McGleachie *v.* Sparkman, Superintendent, Mississippi State Penitentiary. C. A. 5th Cir. Certiorari denied.

No. 10–5871. Reid *v.* Ricci, Associate Administrator, New Jersey State Prison, et al. C. A. 3d Cir. Certiorari denied.

No. 10–5879. Davis *v.* McNeil, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 10–5897. Randle *v.* Skolnik, Director, Nevada Department of Corrections, et al. C. A. 9th Cir. Certiorari denied. Reported below: 604 F. 3d 1047.

No. 10–5899. McCray *v.* Wal-Mart Stores, Inc., et al. C. A. 11th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 921.

No. 10–5916. Jeffus *v.* Drew, Warden. C. A. 11th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 963.

No. 10–5924. Bailey *v.* Texas. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 10–5930. Al-Timimi *v.* Jackson, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 435.

No. 10–5950. Ramos *v.* McNeil, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 10–5954. Rogers *v.* New York. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 70 App. Div. 3d 1340, 894 N. Y. S. 2d 313.

No. 10–5957. Carter *v.* Florida. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 23 So. 3d 1238.

No. 10–5963. Bustos Anaya *v.* Sisto, Warden. C. A. 9th Cir. Certiorari denied.

No. 10–5979. Dontigney *v.* O & G Industries, Inc., et al. App. Ct. Conn. Certiorari denied. Reported below: 121 Conn. App. 901, 992 A. 2d 1234.

No. 10–6011. CUTSHAW *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 10–6022. GREENE *v.* LEE'S MAINTENANCE SERVICES ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–6026. ESCARENO *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–6045. RIVERA *v.* OHIO. Ct. App. Ohio, Butler County. Certiorari denied. Reported below: 2010-Ohio-323.

No. 10–6049. NOCERO *v.* ARIZONA. Ct. App. Ariz. Certiorari denied. Reported below: 223 Ariz. 222, 221 P. 3d 1036.

No. 10–6050. REYNOLDS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 396 Ill. App. 3d 1128, 6 N. E. 3d 449.

No. 10–6051. TARVER *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 10–6069. MACOMBER *v.* HAWAII ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–6070. JONES *v.* NEBRASKA. Ct. App. Neb. Certiorari denied.

No. 10–6073. VILLANUEVA-MORAN *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 10–6074. WAYNE *v.* GUNDY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–6088. STONE *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–6095. HARRIS *v.* ARIZONA. Ct. App. Ariz. Certiorari denied. Reported below: 223 Ariz. 222, 221 P. 3d 1036.

No. 10–6102. SETTLE *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–6118. BANKS *v.* KRAMER, JUDGE, DISTRICT OF COLUMBIA COURT OF APPEALS, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 10–6123. RODRIGUEZ *v.* ROBERTS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 971.

No. 10–6137. IGBINOSUN *v.* NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 10–6155. HENDERSON *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 990.

No. 10–6169. FERREL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 603 F. 3d 758.

No. 10–6176. GALLOWAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 294.

No. 10–6182. CUNNINGHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 607 F. 3d 1264.

No. 10–6184. DELOGE *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 231 P. 3d 862.

No. 10–6187. MCQUEEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 477.

No. 10–6194. VAN BUREN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 599 F. 3d 170.

No. 10–6198. LEISER *v.* THURMER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 691.

No. 10–6201. REYES-SILVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–6202. SURA-VILLALTA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 407.

No. 10–6203. CUNNINGHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–6204. CASTRO-GAXIOLA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–6206. YOUNG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 373 Fed. Appx. 119.

No. 10–6210. MAHDI *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 598 F. 3d 883.

No. 10–6211. KIMMONS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 84.

No. 10–6214. MCBROOM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 299.

No. 10–6219. SEGURA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 296.

No. 10–6224. SIMPSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 349.

No. 10–6226. TAYLOR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 604 F. 3d 1011.

No. 10–6229. RIDEOUT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 344.

No. 10–6230. REED *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 396 Ill. App. 3d 636, 919 N. E. 2d 1106.

No. 10–6232. SMITH *v.* KONTEH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–6234. RAGLIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 10–6236. MARCANO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 382 Fed. Appx. 222.

No. 10–6238. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–6239. GILREATH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–6246. IBRAHIM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 382 Fed. Appx. 242.

No. 10–6247. GUZMAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 603 F. 3d 99.

No. 10–6248. GOPIE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 347 Fed. Appx. 495.

No. 10–6249. HENDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 295.

No. 10–6250. FIELDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 400.

No. 10–6252. HARRIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–6256. LEDBETTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 292.

No. 10–6257. CHRISTMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 607 F. 3d 1110.

No. 10–6260. EGU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 605.

No. 10–6261. BOWERS *v.* BURT, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–6264. ORLANDO-PAPIAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 565.

No. 10–6265. OSORIO-FUNEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 573.

No. 10–6269. TREADWELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 593 F. 3d 990.

No. 10–6271. SOLORIO-VALDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 576.

No. 10–6284. BORDEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 464.

No. 10–6287. LEMKE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 570.

No. 10–6288. LUONG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–6290. LOCKETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 315.

No. 10–6295. NUNEZ-GONZALEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 380 Fed. Appx. 87.

No. 10–6296. AKENS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 602 F. 3d 904.

No. 10–6301. NAPOLI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 377 Fed. Appx. 157.

No. 10–6302. PEREZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–6319. FELIX-CARRAZCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 778.

No. 10–6320. HARMON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 607 F. 3d 233.

No. 10–6321. HARO-VERDUGO ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–6324. GROOMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 602 F. 3d 939.

No. 10–6330. MATIAS *v.* UNITED STATES (two judgments). C. A. 7th Cir. Certiorari denied.

No. 10–6335. BLACK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–6340. ELLIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–6344. GARCIA-MANZO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 660.

No. 10–6348. CALDWELL ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 933.

No. 10–6352. TABATABAI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 845.

No. 10–6355. SANTOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 794.

No. 10–6358. THOMPSON *v.* CHOINSKI, WARDEN, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 374 Fed. Appx. 222.

No. 10–6361. CASTELLON, AKA CHAPINVA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 326.

No. 10–6362. CONNORS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 607 F. 3d 504.

No. 10–6363. ROBINSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 996 A. 2d 849.

No. 10–6364. VILLARREAL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 580.

No. 10–6365. VEGA-SOTO ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 685.

No. 10–6366. VILLEGAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 445.

No. 10–6367. ZAVALA-ROSALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 316.

No. 10–6373. GARCIA-OCHOA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 607 F. 3d 371.

No. 10–6375. STEPHENS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 282.

No. 10–6379. MACINNIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 607 F. 3d 539.

No. 10–6380. MANCHA-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 455.

No. 10–6383. TURNBULL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 322.

No. 10–6384. WELKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 534.

No. 10–6387. XINIDAKIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 598 F. 3d 1213 and 374 Fed. Appx. 726.

No. 10–6394. RAMIREZ-LEONARDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 362.

No. 09–1461. ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL ET AL. *v.* STEARNS ET AL. C. A. 9th Cir. Motion of Catholic League et al. for leave to file a brief as *amici curiae*

granted. Certiorari denied. Reported below: 362 Fed. Appx. 640.

No. 09–1520. UNITED STATES *v.* HAGEN. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition. Reported below: 349 Fed. Appx. 896.

No. 10–67. WEISE ET AL. *v.* CASPER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 593 F. 3d 1163.

JUSTICE GINSBURG, with whom JUSTICE SOTOMAYOR joins, dissenting.

The President of the United States gave a speech open to the public, from which Leslie Weise and Alex Young allege they were forcibly ejected. Their transgression was to have arrived at the event in a car that displayed a bumper sticker reading "No More Blood For Oil." After they were marched out, they allege, Secret Service officials confirmed to them that the bumper sticker was the reason for their exclusion.

I cannot see how reasonable public officials, or any staff or volunteers under their direction, could have viewed the bumper sticker as a permissible reason for depriving Weise and Young of access to the event. Nevertheless, the Court of Appeals held respondents entitled to qualified immunity because "no specific authority instructs this court . . . how to treat the ejection of a silent attendee from an official speech based on the attendee's protected expression outside the speech area." 593 F. 3d 1163, 1170 (CA10 2010). No "specific authority" should have been needed; "[f]or at least a [half]-century, this Court has made clear that . . . [the government] may not deny a benefit to a person on a basis that infringes his constitutionally protected interests." *Perry* v. *Sindermann*, 408 U. S. 593, 597 (1972). As Judge Holloway noted in his incisive dissent, solidly established law "may apply with obvious clarity" even to conduct startling in its novelty. 593 F. 3d, at 1177 (quoting *Hope* v. *Pelzer*, 536 U. S. 730, 741 (2002); emphasis deleted).

The Court of Appeals suggested that this Court's decision in *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U. S. 557 (1995), could have justified a decision to exclude individuals who appear to disagree with the President's

views. But the comparison serves only to highlight the unlawfulness of the alleged treatment of Weise and Young: Not only was this an official presentation of the President's views, not a private act of expression as in *Hurley*; in addition, unlike the *Hurley* plaintiff who sought to engage in competing expression, Weise and Young were "*silent* attendee[s]," 593 F. 3d, at 1170 (emphasis added). Their presence alone cannot have affected the President's message. Therefore, ejecting them for holding discordant views could only have been a reprisal for the expression conveyed by the bumper sticker. "Official reprisal for protected speech 'offends the Constitution because it threatens to inhibit exercise of the protected right.'" *Hartman* v. *Moore*, 547 U. S. 250, 256 (2006) (quoting *Crawford-El* v. *Britton*, 523 U. S. 574, 588, n. 10 (1998); brackets omitted).

I see only one arguable reason for deferring the question this case presents. Respondents were volunteers following instructions from White House officials. The Volunteer Protection Act of 1997, 111 Stat. 218, 42 U. S. C. § 14501 *et seq.*, had respondents invoked it in the courts below, might have shielded them from liability. Federal officials themselves, however, gain no shelter from that Act. Suits against the officials responsible for Weise's and Young's ouster remain pending and may offer this Court an opportunity to take up the issue avoided today.

No. 10–175. GLATZER *v.* ENRON CORP. ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 10–242. DADA ET AL. *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 361 Fed. Appx. 254.

No. 10–254. UNITED STATES ET AL. EX REL. RADCLIFFE *v.* PURDUE PHARMA L. P. ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 600 F. 3d 319.

No. 10–5883. WHITAKER *v.* DEXTER, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 10–6216. SANTIAGO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 601 F. 3d 1241.

No. 10–6223. PIATEK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 608 F. 3d 939.

No. 10–6329. MESZAROS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 381 Fed. Appx. 55.

No. 10–6346. MELENDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 377 Fed. Appx. 842.

Rehearing Denied

No. 09–8961. ROBERTS *v.* MITCHEM, WARDEN, ET AL., 559 U. S. 1052. Petition for rehearing denied.

OCTOBER 14, 2010

Certiorari Denied

No. 10–6804 (10A349). WACKERLY *v.* OKLAHOMA. Ct. Crim. App. Okla. Application for stay of execution of sentence of death, presented to JUSTICE SOTOMAYOR, and by her referred to the Court, denied. Certiorari denied. Reported below: 237 P. 3d 795.

OCTOBER 15, 2010

Dismissals Under Rule 46

No. 10–51. TIMONEY ET AL. *v.* KEATING ET AL. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 598 F. 3d 753.

No. 10–5685. IN RE GOODMAN. Petition for writ of mandamus dismissed under this Court's Rule 46.

OCTOBER 18, 2010

Certiorari Dismissed

No. 10–5895. DANDAR *v.* PENNSYLVANIA (two judgments). Super. Ct. Pa. Motion of petitioner for leave to proceed *in forma*

pauperis denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–6462. ROBINSON *v.* UNITED STATES. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition.

No. 10–6465. RAMSEY *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 364 Fed. Appx. 432.

No. 10–6508. YOUNG *v.* STANSBERRY, WARDEN. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 372 Fed. Appx. 394.

Miscellaneous Orders

No. 10M37. TINSLEY *v.* GIORLA, WARDEN, ET AL.;

No. 10M39. DUNKLEY *v.* MELLON INVESTOR SERVICES ET AL.; and

No. 10M41. MORRISON *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 10M38. IN RE GRAND JURY PROCEEDINGS. Motion of Reporters Committee for Freedom of the Press for leave to intervene denied. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 10M40. ZAMBRANO RODRIGUEZ *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 137, Orig. MONTANA *v.* WYOMING ET AL. Montana's motion for partial summary judgment granted in part and denied in part without prejudice in accordance with the Special Master's First Interim Report, and Anadarko Petroleum's motion for leave to intervene denied. JUSTICE KAGAN took no part in the consideration or decision of these motions. [For earlier order herein, see, *e. g.*, *ante*, p. 958.]

No. 08–1314. WILLIAMSON ET AL. *v.* MAZDA MOTOR OF AMERICA, INC., ET AL. Ct. App. Cal., 4th App. Dist., Div. 3.

[Certiorari granted, 560 U. S. 923.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 08–1438. SOSSAMON *v.* TEXAS ET AL. C. A. 5th Cir. [Certiorari granted, 560 U. S. 923.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 10–5898. PARKER *v.* POTTER. C. A. 11th Cir.;

No. 10–5967. HAMMANN *v.* FALLS/PINNACLE, LLC, ET AL.; and HAMMANN *v.* DEYO ET AL. Ct. App. Minn.;

No. 10–6205. THYKKUTTATHIL ET UX. *v.* UNITED STATES. C. A. Fed. Cir.; and

No. 10–6370. IN RE STARLING. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 8, 2010, 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. 10–6599. IN RE STAHL. Petition for writ of habeas corpus denied.

No. 10–6633. IN RE WILLIAMS. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition.

No. 10–6331. IN RE PARKS. Petition for writ of mandamus denied.

Certiorari Granted

No. 10–98. ASHCROFT *v.* AL-KIDD. C. A. 9th Cir. Certiorari granted limited to Questions 1 and 2 presented by the petition. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 580 F. 3d 949.

Certiorari Denied

No. 09–920. SIMMONS ET AL. *v.* GALVIN, SECRETARY OF COMMONWEALTH OF MASSACHUSETTS. C. A. 1st Cir. Certiorari denied. Reported below: 575 F. 3d 24.

No. 09–1539. WILKES *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 917 N. E. 2d 675.

No. 09–10417. WADE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–10985. LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 590 F. 3d 1238.

No. 09–11277. GAEDTKE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 12.

No. 09–11346. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 477.

No. 09–11360. RODRIGUEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 581 F. 3d 775.

No. 09–11364. ALLMON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 594 F. 3d 981.

No. 10–33. SUQUAMISH INDIAN TRIBE *v.* UPPER SKAGIT INDIAN TRIBE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 590 F. 3d 1020.

No. 10–37. HALL *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 597 F. 3d 746.

No. 10–79. METRO FUEL LLC *v.* CITY OF NEW YORK, NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 594 F. 3d 94.

No. 10–92. SAHYERS *v.* PRUGH, HOLLIDAY & KARATINOS, P. L., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 560 F. 3d 1241.

No. 10–135. HUDSON *v.* SCARBRO, ADMINISTRATRIX OF THE ESTATE OF RUMMER. C. A. 4th Cir. Certiorari denied. Reported below: 374 Fed. Appx. 366.

No. 10–200. FITZGIBBONS *v.* ZEMAN, TRUSTEE. C. A. 10th Cir. Certiorari denied. Reported below: 365 Fed. Appx. 126.

No. 10–223. PHILLIPS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–227. SCHNELLER *v.* PROSPECT PARK NURSING AND REHABILITATION CENTER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 368 Fed. Appx. 298.

No. 10–232. BANK OF NEW YORK MELLON ET AL. *v.* GREDE, TRUSTEE, SENTINEL LIQUIDATION TRUST. C. A. 7th Cir. Certiorari denied. Reported below: 598 F. 3d 899.

No. 10–261. TRUHLAR *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 600 F. 3d 888.

No. 10–265. FLESZAR *v.* DEPARTMENT OF LABOR. C. A. 7th Cir. Certiorari denied. Reported below: 598 F. 3d 912.

No. 10–287. INNOVATIVE THERAPIES, INC. *v.* KINETIC CONCEPTS, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 599 F. 3d 1377.

No. 10–340. JACKIM *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 125 Ohio St. 3d 1416, 925 N. E. 2d 1003.

No. 10–352. RICHARDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 607 F. 3d 357.

No. 10–353. CRASE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 948.

No. 10–362. BAILEY ET AL. *v.* SHELL WESTERN E&P INC. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 609 F. 3d 710.

No. 10–380. TERRA XXI, LTD., ET AL. *v.* AG ACCEPTANCE CORP. ET AL. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 10–5584. CROPPER *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 223 Ariz. 522, 225 P. 3d 579.

No. 10–5870. YOUNG BOK SONG *v.* SMITH ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–5872. SMITH *v.* CONDER ET AL. C. A. 7th Cir. Certiorari denied.

No. 10–5873. ROSENDAHL *v.* NIXON, GOVERNOR OF MISSOURI, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 360 Fed. Appx. 167.

No. 10–5880. COSTA *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 311 S. W. 3d 340.

No. 10–5881. CANTEY *v.* OHIO. Ct. App. Ohio, Wayne County. Certiorari denied. Reported below: 2009-Ohio-4423.

No. 10–5888. ORSELLO *v.* GAFFNEY ET AL. C. A. 8th Cir. Certiorari denied.

No. 10–5900. WILSON *v.* ZAFRA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 784.

No. 10–5901. WILLIAMS *v.* FREE ET AL. C. A. 8th Cir. Certiorari denied.

No. 10–5904. TINSLEY *v.* DAVIS, SHERIFF, HENDERSON COUNTY, NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 254.

No. 10–5914. KIRKPATRICK *v.* HALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–5917. LAURENCE *v.* GATEWAY HEALTH SYSTEM. C. A. 6th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 668.

No. 10–5919. MARS *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 395 Ill. App. 3d 1126, 986 N. E. 2d 810.

No. 10–5920. DRUMMOND *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 992 A. 2d 1236.

No. 10–5925. ALLEMAN *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 306 S. W. 3d 484.

No. 10–5931. WILSON *v.* HUBBARD ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–5935. EVERETT *v.* WALSH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–5936. WILLIAMSON *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 413 Md. 521, 993 A. 2d 626.

No. 10–5943. MERCADO *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 397 Ill. App. 3d 622, 921 N. E. 2d 756.

No. 10–5944. MCCLINE *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied.

No. 10–5948. STRICKLAND *v.* SAINT LUKE'S HEALTH SYSTEM. C. A. 8th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 569.

No. 10–5949. SPISAK *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 126 Nev. 758.

No. 10–5953. STARKS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 10–5958. COCHRANE *v.* SCUTT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–5960. CAMPANILE *v.* NICOLELLA, EXECUTOR OF THE ESTATE OF RENZI, DECEASED. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 67 App. Div. 3d 1078, 888 N. Y. S. 2d 270.

No. 10–5964. BROWN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 70 App. Div. 3d 1047, 893 N. Y. S. 2d 901.

No. 10–5965. BARGHOUTI *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 391 Ill. App. 3d 1115, 982 N. E. 2d 986.

No. 10–5969. HYDE *v.* VALDEZ. Sup. Ct. Idaho. Certiorari denied.

No. 10–5971. TOWNSEND *v.* TOWNSEND. Super. Ct. N. J., App. Div. Certiorari denied.

No. 10–5972. BLACKMER *v.* SWEAT ET AL. C. A. 1st Cir. Certiorari denied.

No. 10–5975. STYLES *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 10–5977. STAPLEY *v.* MISSISSIPPI BAR ET AL. Sup. Ct. Miss. Certiorari denied.

No. 10–5978. DEVEAUX *v.* BRESLIN, SUPERINTENDENT, ARTHUR KILL CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–5983. MATTHEWS *v.* PURKETT, SUPERINTENDENT, EASTERN RECEPTION, DIAGNOSTIC AND CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 583.

No. 10–5984. SAULA-RIVERA *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 990 A. 2d 53.

No. 10–5985. TRICE *v.* CLARK COUNTY SCHOOL DISTRICT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 789.

No. 10–5989. WHITE *v.* ARNOLD ET AL.; and WHITE *v.* ANDERSON. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 10–5991. PETITIONER G *v.* BROWN, COMMISSIONER, KENTUCKY DEPARTMENT OF JUVENILE JUSTICE. Sup. Ct. Ky. Certiorari denied. Reported below: 306 S. W. 3d 80.

No. 10–5993. DAVIS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 446.

No. 10–5996. HANCOCK *v.* BROWN, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 777.

No. 10–5997. HARTSCH *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 49 Cal. 4th 472, 232 P. 3d 663.

No. 10–6007. DAVIS *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 313 S. W. 3d 751.

No. 10–6008. WILLIAMSON *v.* WALKER. C. A. 5th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 376.

No. 10–6009. CLEM *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 342.

No. 10–6052. PHILLIPS *v.* ROCK, SUPERINTENDENT, UPSTATE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–6096. GREER *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 373.

No. 10–6107. CHOY *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 456 Mass. 146, 927 N. E. 2d 970.

No. 10–6119. TINSLEY *v.* DENNEY, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 10–6120. WINNETT *v.* SALINE COUNTY JAIL ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 688.

No. 10–6121. THOMAS *v.* SISTO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 667.

No. 10–6147. HALL *v.* OLLISON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–6150. FOREMAN *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 468.

No. 10–6151. HAUPT *v.* BROWN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 10–6154. HANSON *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 117 Conn. App. 436, 979 A. 2d 576.

No. 10–6164. POPA *v.* PRICEWATERHOUSECOOPERS LLP. C. A. 2d Cir. Certiorari denied.

No. 10–6181. MOSS *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2010 Ark. 284.

No. 10–6199. DILLARD *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 10–6227. WILLIAMS, AKA MCCARTHY *v.* ZAVARES, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied.

No. 10–6262. MCMILLON *v.* CULLEY, SUPERINTENDENT, LIVINGSTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 380 Fed. Appx. 63.

No. 10–6270. TURNER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 37 So. 3d 212.

No. 10–6276. MCCLELLAN *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 10–6279. CRAIG *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–6285. KRAY *v.* GLEBE, SUPERINTENDENT, STAFFORD CREEK CORRECTIONS CENTER, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 762.

No. 10–6336. MEARIDY *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 287 Ga. 312, 696 S. E. 2d 61.

No. 10–6338. CONTRERAS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 312 S. W. 3d 566.

No. 10–6378. GONZALEZ-HURTADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 665.

No. 10–6399. WARREN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 593 F. 3d 540.

No. 10–6401. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 10–6402. ASHLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 606 F. 3d 135.

No. 10–6405. WATTERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 363 Fed. Appx. 653.

No. 10–6407. LEWIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 376.

No. 10–6408. PARKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 749.

No. 10–6409. DUNCAN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 982 A. 2d 1149.

No. 10–6410. EDWARDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 873.

No. 10–6413. MILLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 807.

No. 10–6415. POPE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 735.

No. 10–6417. MICHTAVI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–6418. NGUYEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 620.

No. 10–6419. BLADE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 297.

No. 10–6425. RODRIGUEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 612 F. 3d 1049.

No. 10–6428. JAMES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–6433. WALKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–6434. JOHAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 670.

No. 10–6435. MIX *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 406.

No. 10–6437. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 355.

No. 10–6441. ZAMOT-SANTIAGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–6445. LAW *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 384 Fed. Appx. 121.

No. 10–6447. CRUZ-PAGUADA, AKA AGURCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 852.

No. 10–6452. METCALF *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 10–6453. RAZO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–6461. RAINEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 605 F. 3d 581.

No. 10–6464. RODRIGUEZ-APONTE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–6466. HOLMES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–6468. MALGOZA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 874.

No. 10–6469. REID *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 10–6475. CENTENO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 566.

No. 10–6482. GOOL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 583.

No. 10–6488. HINES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–6489. HINES *v.* HAYES ET AL. C. A. 8th Cir. Certiorari denied.

No. 10–6491. HEADDEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 290.

No. 10–6494. GREER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 607 F. 3d 559.

No. 10–6497. HENLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 370.

No. 10–6500. EHRLICH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 879.

No. 10–6503. MINERO-REGALADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 651.

No. 10–6504. JACKSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 608 F. 3d 100.

No. 10–6510. SANCHEZ-LINO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 824.

No. 10–6511. JACKSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 598 F. 3d 340.

No. 10–6525. HENDERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 10–6526. HANTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 340.

No. 10–6528. GANT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–6531. HAYES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 309.

No. 10–6533. LAN DANG *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 362 Fed. Appx. 335.

No. 10–6534. CHAVEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 584 F. 3d 1354.

No. 10–6536. CEBALLOS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 605 F. 3d 468.

No. 10–6539. MATHIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 417.

No. 10–6540. LEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 603 F. 3d 904.

No. 10–6544. WYMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–6546. RAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 478.

No. 10–6553. RICE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 435.

No. 10–6557. VELASQUEZ-TORREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 609 F. 3d 743.

No. 10–6560. ECHERIVEL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 628.

No. 10–6561. ESQUIVEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 242.

No. 10–6562. CRUZ-VELEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 415.

No. 10–6565. LARA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 631.

No. 10–6566. LANE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 440.

No. 10–6571. PARTEE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 614.

No. 10–6573. RODRIGUEZ VALENCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 419.

No. 10–6575. ADESOYE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 421.

No. 10–6578. RODRIGUEZ-HERNANDEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 732.

No. 10–6581. TROTTER ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 735.

No. 10–6582. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 259.

No. 10–6584. PERRINE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 838.

No. 10–6588. ANDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 863.

No. 10–6589. JONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–6603. RASHAW-BEY *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 10–6607. SHELTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 364 Fed. Appx. 733.

No. 10–6621. CARDENAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 312.

No. 10–6622. COMPIAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 413.

No. 09–1449. MEACHAM ET AL. *v.* KNOLLS ATOMIC POWER LABORATORY ET AL.; and

No. 10–36. KAPL, INC., ET AL. *v.* MEACHAM ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of these petitions. Reported below: 358 Fed. Appx. 233.

No. 09–9515. PITRE *v.* CAIN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 354 Fed. Appx. 142.

JUSTICE SOTOMAYOR, dissenting.

Petitioner Anthony Pitre, a Louisiana state prisoner, stopped taking his HIV medication to protest his transfer to a prison facility. He alleges that respondents at the facility punished him for this decision by subjecting him to hard labor in 100-degree heat. According to Pitre, respondents repeatedly denied his requests for lighter duty more appropriate to his medical condition, even after prison officials twice thought his condition sufficiently serious to rush him to an emergency room. In response to one such request, respondent Cain expressly acknowledged in a letter attached to Pitre's complaint that Pitre was "dealing with unnecessary pain and suffering, as well as cruel and unusual punishment," but he accused Pitre of "bringing it on himself" by refusing to take his medication. App. F to Pet. for Cert. (Exh. A–2). Cain concluded, "If you are suffering because of your own choices, so be it." *Ibid.* As a result of respondents' actions, Pitre alleges, his already-fragile medical condition deteriorated even further.

The courts below deemed these allegations insufficient to state an Eighth Amendment violation. The Magistrate Judge concluded that Pitre had been "'hoist by his own petard,'" Report and Recommendation in No. 2:08–CV–1894 (WD La., Apr. 29, 2009), p. 9, App. C to Pet. for Cert., and *sua sponte* recom-

mended dismissing the complaint as "frivolous," see 28 U. S. C. § 1915(e)(2)(B)(i). The District Judge adopted this recommendation. Judgment in No. 2:08–CV–1894 (WD La., May 27, 2009), App. C to Pet. for Cert. The Fifth Circuit summarily affirmed, concluding, "Mr. Pitre has been given medical care, but he refuses to take medication which results at times in physical problems. Evidence of conscious indifference is not presented." 354 Fed. Appx. 142, 143 (2009) *(per curiam)*.

The Fifth Circuit's error in requiring Pitre to produce "evidence" in support of his allegations before a responsive pleading was filed, in and of itself, is sufficient reason to reverse the judgment below. See *Bell Atlantic Corp.* v. *Twombly*, 550 U. S. 544, 564, n. 8 (2007) ("[W]hen a complaint adequately states a claim, it may not be dismissed based on a district court's assessment that the plaintiff will fail to find evidentiary support for his allegations"). More fundamentally, however, in focusing on Pitre's own contribution to his health problems, the courts appear to have misunderstood the nature of Pitre's Eighth Amendment claim. His *pro se* complaint and attachments thereto, "liberally construed," *Estelle* v. *Gamble*, 429 U. S. 97, 106 (1976), allege not that respondents denied him medical care but that they punished him for refusing to take medication, or attempted to coerce him to take medication, by subjecting him to hard labor that they knew exceeded his medical limitations.

"The principle that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions."* *Cruzan* v. *Director, Mo. Dept. of Health*, 497 U. S. 261, 278 (1990). A prison regulation infringing an interest in avoiding unwanted medication is valid if it is "'reasonably related to legitimate penological interests.'" *Washington* v. *Harper*, 494 U. S. 210, 223 (1990) (quoting *Turner* v. *Safley*, 482 U. S. 78, 89 (1987)). We have thus held that prison officials may forcibly treat a mentally ill inmate with

*In the District Court, Pitre also claimed a liberty interest created by state law. See La. Rev. Stat. Ann. § 15:860 (West 2005) ("Except as to compliance with the sanitary laws and all reasonable regulations relating to contagious and infectious diseases, any sane patient or sane inmate of the Louisiana State Penitentiary may decline any medical care or treatment offered or provided by the institution and provide other care for himself at his own expense").

antipsychotic drugs "if the inmate is dangerous to himself or others and the treatment is in the inmate's medical interest." *Harper*, 494 U. S., at 227. We have not considered, however, whether prison officials may require inmates with HIV to take medication, such that the refusal to do so might justify the imposition of sanctions by such officials.

Even assuming respondents had a legitimate penological interest that outweighed a right to refuse HIV medication, that interest would not permit respondents to punish Pitre, or to attempt to coerce him to take medication, by subjecting him to hard labor that they knew posed "a substantial risk of serious harm." *Farmer* v. *Brennan*, 511 U. S. 825, 837 (1994); see also *Hope* v. *Pelzer*, 536 U. S. 730, 738 (2002). To determine whether prison officials' conduct violates the Eighth Amendment in the context of prison conditions, we ask whether "the officials involved acted with 'deliberate indifference' to the inmates' health or safety." *Ibid.* (quoting *Hudson* v. *McMillian*, 503 U. S. 1, 8 (1992)). Pitre's complaint alleges that respondents subjected him to labor that they knew posed "a substantial risk of serious harm" to his health notwithstanding his pleas for a more appropriate assignment, *Farmer*, 511 U. S., at 837, and he even attaches a letter from a prison official implying as much. This is more than sufficient to state a claim of deliberate indifference. See *ibid.* (holding that a prison official violates the Eighth Amendment if he denies "an inmate humane conditions of confinement [if] the official knows of and disregards an excessive risk to inmate health or safety").

To be sure, Pitre's decision to refuse medication may have been foolish and likely caused a significant part of his pain. But that decision does not give prison officials license to exacerbate Pitre's condition further as a means of punishing or coercing him—just as a prisoner's disruptive conduct does not permit prison officials to punish the prisoner by handcuffing him to a hitching post, see *Hope*, 536 U. S., at 738. Pitre's allegations, if true, describe "punitive treatment [that] amounts to gratuitous infliction of 'wanton and unnecessary' pain that our precedent clearly prohibits." *Ibid.* I cannot comprehend how a court could deem such allegations "frivolous." Because I believe that Pitre's complaint states an Eighth Amendment violation, I would grant the petition for a writ of certiorari and reverse the judgment below.

No. 09–10414. MATTHEWS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 591 F. 3d 230.

No. 10–97. LYNCH ET AL. *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 589 F. 3d 94.

No. 10–202. WEINTRAUB, ADMINISTRATOR OF THE ESTATE OF WEINTRAUB *v.* BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 593 F. 3d 196.

No. 10–6025. COSIO *v.* GROUNDS, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 381 Fed. Appx. 714.

No. 10–6449. WARE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 415 Fed. Appx. 259.

No. 10–6569. LALL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 316 Fed. Appx. 60.

No. 10–6579. STONE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 608 F. 3d 939.

No. 10–6613. SPERLING *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 367 Fed. Appx. 213.

Rehearing Denied

No. 09–11003. SANDRES *v.* NOLAND, MAGISTRATE JUDGE, UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA, ET AL., 561 U. S. 1034. Petition for rehearing denied.

October 19, 2010

Miscellaneous Order

No. 10A393. Bowersox *v.* Nunley. Application to vacate stay of execution of sentence of death, entered by the United States District Court for the Western District of Missouri on October 18, 2010, presented to Justice Alito, and by him referred to the Court, denied. Justice Scalia would grant the application to vacate the stay of execution.

October 22, 2010

Miscellaneous Order

No. 10A362. Respect Maine PAC et al. *v.* McKee, Member, Commission on Governmental Ethics and Election Practices, et al. D. C. Me. Application for injunction, presented to Justice Kennedy, and by him referred to the Court, denied. Applicants are correct to note that relief was granted in *McComish* v. *Bennett*, 560 U. S. 961 (2010), which concerned a constitutional challenge to an Arizona law similar to the Maine law challenged by applicants here. The *McComish* applicants, however, requested a stay of an appeals court decision, whereas applicants here are asking for an injunction against enforcement of a presumptively constitutional state legislative act. Such a request "demands a significantly higher justification" than a request for a stay because, unlike a stay, an injunction "does not simply suspend judicial alteration of the status quo but grants judicial intervention that has been withheld by lower courts." *Ohio Citizens for Responsible Energy, Inc.* v. *NRC*, 479 U. S. 1312, 1313 (1986) (Scalia, J., in chambers). In light of these considerations, and given the difficulties in fashioning relief so close to the election, applicants' request for extraordinary relief is denied. Justice Scalia and Justice Alito would grant the application for an injunction as to the matching fund provisions.

October 26, 2010

Miscellaneous Order

No. 10A416. Brewer, Governor of Arizona, et al. *v.* Landrigan. D. C. Ariz. Application to vacate the order by the District Court granting a temporary restraining order, presented to Justice Kennedy, and by him referred to the Court, granted. There is no evidence in the record to suggest that the

drug obtained from a foreign source is unsafe. The District Court granted the restraining order because it was left to speculate as to the risk of harm. See Order Granting Motion for a Temporary Restraining Order in *Landrigan v. Brewer*, No. CV–10–02246–PHX–ROS (D Ariz., Oct. 25, 2010), Doc. 21, p. 15 ("[T]he Court is left to speculate . . . whether the non-[Food and Drug Administration] approved drug will cause pain and suffering"). But speculation cannot substitute for evidence that the use of the drug is "'*sure or very likely* to cause serious illness and needless suffering.'" *Baze* v. *Rees*, 553 U. S. 35, 50 (2008) (quoting *Helling* v. *McKinney*, 509 U. S. 25, 33 (1993)). There was no showing that the drug was unlawfully obtained, nor was there an offer of proof to that effect. The motion to file documents under seal is denied as moot. JUSTICE GINSBURG, JUSTICE BREYER, JUSTICE SOTOMAYOR, and JUSTICE KAGAN would deny the application to vacate the order granting a temporary restraining order.

OCTOBER 29, 2010

Miscellaneous Orders

No. 10A422. MINNESOTA CITIZENS CONCERNED FOR LIFE, INC., ET AL. *v.* SWANSON, ATTORNEY GENERAL OF MINNESOTA, ET AL. D. C. Minn. Application for injunction pending appeal, presented to JUSTICE ALITO, and by him referred to the Court, denied.

No. 09–520. CSX TRANSPORTATION, INC. *v.* ALABAMA DEPARTMENT OF REVENUE ET AL. C. A. 11th Cir. [Certiorari granted, 560 U. S. 964.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

NOVEMBER 1, 2010

Dismissal Under Rule 46

No. 10–5025. SILVA-ARZETA, AKA SELVA, AKA ARELLANO CEBRERO *v.* UNITED STATES. C. A. 10th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 602 F. 3d 1208.

Certiorari Granted—Vacated and Remanded

No. 10–5706. BRANDON *v.* UNITED STATES. 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 *Carachuri-Rosendo* v. *Holder*, 560 U. S. 563 (2010). Reported below: 376 Fed. Appx. 343.

Certiorari Dismissed

No. 10–6031. MATTHEWS *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 10–6080. STOLLER *v.* COURT OF APPEALS OF ARIZONA, DIVISION ONE, ET AL. Sup. Ct. Ariz. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–6090. ALBRIGHT-LAZZARI ET VIR *v.* HAMILTON, COMMISSIONER, CONNECTICUT DEPARTMENT OF CHILDREN AND FAMILIES. App. Ct. Conn. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 120 Conn. App. 376, 991 A. 2d 696.

No. 10–6135. COHEN *v.* TERRELL, WARDEN, ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 10–6170. FARRIS *v.* OKLAHOMA. Ct. Crim. App. Okla. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–6314. BERRYHILL *v.* SEAY, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA,

ET AL. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–6481. GRANDOIT *v.* PHYSICIAN NETWORK, INC., ET AL. C. A. 1st Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–6545. BERRYHILL *v.* WHITE, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA, ET AL. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–6551. BERRYHILL *v.* PAYNE, JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA, ET AL. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. D–2475. IN RE DISBARMENT OF BLAU. Disbarment entered. [For earlier order herein, see 561 U. S. 1043.]

No. D–2481. IN RE DISBARMENT OF MICKLER. Disbarment entered. [For earlier order herein, see 561 U. S. 1044.]

No. D–2482. IN RE DISBARMENT OF KIPI. Disbarment entered. [For earlier order herein, see 561 U. S. 1044.]

No. D–2485. IN RE DISBARMENT OF MITTENDORFF. Disbarment entered. [For earlier order herein, see 561 U. S. 1045.]

No. D–2490. IN RE DISBARMENT OF ARLEDGE. Disbarment entered. [For earlier order herein, see 561 U. S. 1045.]

No. D–2491. IN RE DISBARMENT OF SHOMBER. Disbarment entered. [For earlier order herein, see 561 U. S. 1045.]

No. D–2492. IN RE DISBARMENT OF MCNEAL. Disbarment entered. [For earlier order herein, see 561 U. S. 1045.]

No. D–2512. IN RE DISBARMENT OF MACKEY. Disbarment entered. [For earlier order herein, see *ante*, p. 810.]

No. D–2541. In re Disbarment of Simring. Disbarment entered. [For earlier order herein, see *ante*, p. 814.]

No. D–2550. In re Disbarment of Bagdasarian. Disbarment entered. [For earlier order herein, see *ante*, p. 815.]

No. D–2560. In re Dean. Joseph Wayne Dean, of Raleigh, N. C., 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 October 4, 2010 [*ante*, p. 817], is discharged.

No. 137, Orig. Montana *v.* Wyoming et al. Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Justice Kagan took no part in the consideration or decision of this motion. [For earlier order herein, see, *e. g.*, *ante*, p. 979.]

No. 09–529. Virginia Office for Protection and Advocacy *v.* Stewart, Commissioner, Virginia Department of Behavioral Health and Developmental Services, et al. C. A. 4th Cir. [Certiorari granted *sub nom. Virginia Office for Protection and Advocacy* v. *Reinhard*, 561 U. S. 1005.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Justice Kagan took no part in the consideration or decision of these motions.

No. 09–1279. Federal Communications Commission et al. *v.* AT&T Inc. et al. C. A. 3d Cir. [Certiorari granted, 561 U. S. 1057.] Motion of the Acting Solicitor General to dispense with printing the joint appendix granted. Justice Kagan took no part in the consideration or decision of this motion.

No. 10–218. PPL Montana, LLC *v.* Montana. Sup. Ct. Mont.; and

No. 10–272. John Crane Inc. *v.* Atwell, Executor of the Estate of Atwell, Deceased. Super. Ct. Pa. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 10–6059. Riley *v.* Union Parish School Board et al. C. A. 5th Cir.;

No. 10–6083. Mills *v.* Wayne County Board of Education. Cir. Ct. W. Va., Kanawha County;

No. 10–6532. SHAW *v.* POTTER, POSTMASTER GENERAL. C. A. 6th Cir.; and

No. 10–6618. BANEY *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 22, 2010, 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. 10–452. IN RE FIGUEROA HERNANDEZ;

No. 10–6822. IN RE WAGNER;

No. 10–6828. IN RE NEWMAN; and

No. 10–6843. IN RE ROSS. Petitions for writs of habeas corpus denied.

No. 10–6911. IN RE GRIFFIN. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals,* 506 U. S. 1 (1992) *(per curiam).*

No. 10–322. IN RE OGUNJOBI;

No. 10–6054. IN RE MEDINA;

No. 10–6101. IN RE SANCHO;

No. 10–6116. IN RE WHITE; and

No. 10–6240. IN RE NEELEY. Petitions for writs of mandamus denied.

No. 10–6020. IN RE DAVIS. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 09–1159. BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY *v.* ROCHE MOLECULAR SYSTEMS, INC., ET AL. C. A. Fed. Cir. Certiorari granted. Reported below: 583 F. 3d 832.

No. 09–11121. J. D. B. *v.* NORTH CAROLINA. Sup. Ct. N. C. Motion of Juvenile Law Center et al. for leave to file a brief as

amici curiae granted. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 363 N. C. 664, 686 S. E. 2d 135.

No. 09–11328. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 598 F. 3d 1259.

No. 10–114. FOX *v.* VICE, CHIEF OF POLICE, TOWN OF VINTON, ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 594 F. 3d 423.

No. 10–10. TURNER *v.* ROGERS ET AL. Sup. Ct. S. C. Motion of Larry E. Price, Sr., for leave to intervene granted. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari granted. In addition to the question presented by the petition, the parties are directed to brief and argue the following question: "Does the Court have jurisdiction to review the decision of the South Carolina Supreme Court?" Reported below: 387 S. C. 142, 691 S. E. 2d 470.

Certiorari Denied

No. 09–1367. ROSILLO-PUGA, AKA PUGA, AKA ROSILLO *v.* HOLDER, ATTORNEY GENERAL. C. A. 10th Cir. Certiorari denied. Reported below: 580 F. 3d 1147.

No. 09–1378. MENDIOLA *v.* HOLDER, ATTORNEY GENERAL. C. A. 10th Cir. Certiorari denied. Reported below: 585 F. 3d 1303.

No. 09–1554. SHELBY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 604 F. 3d 881.

No. 09–1561. MAYFIELD ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 599 F. 3d 964.

No. 09–1572. STROUD ET AL. *v.* BLOUNT. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 395 Ill. App. 3d 8, 915 N. E. 2d 925.

No. 09–11370. BUTT *v.* HARTLEY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 822.

No. 09–11489. ZARATE-MORALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 696.

No. 09–11574. KPORLOR *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 597 F. 3d 222.

No. 10–103. ARCHSTONE MULTIFAMILY SERIES I TRUST ET AL. *v.* NILES BOLTON ASSOCIATES, INC. C. A. 4th Cir. Certiorari denied. Reported below: 602 F. 3d 597.

No. 10–108. KING ET UX. *v.* PIONEER REGIONAL EDUCATIONAL SERVICE AGENCY. Ct. App. Ga. Certiorari denied. Reported below: 301 Ga. App. 547, 688 S. E. 2d 7.

No. 10–110. BROWNFIELD *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 44 So. 3d 43.

No. 10–120. SCHNELLER *v.* FOX SUBACUTE AT CLARA BURKE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 368 Fed. Appx. 275.

No. 10–125. NATIONAL UROLOGICAL GROUP, INC., ET AL. *v.* FEDERAL TRADE COMMISSION. C. A. 11th Cir. Certiorari denied. Reported below: 356 Fed. Appx. 358.

No. 10–137. FIRST BANK *v.* DJL PROPERTIES, LLC, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 598 F. 3d 915.

No. 10–145. KEATING ET AL. *v.* FEDERAL ELECTION COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 599 F. 3d 686.

No. 10–148. ESTATE OF SHEPPARD, BY ITS CO-PERSONAL REPRESENTATIVE, MCMORROW *v.* SCHLEIS ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 324 Wis. 2d 41, 782 N. W. 2d 85.

No. 10–157. SPRINT SPECTRUM, L. P., DBA SPRINT PCS *v.* HESSE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 598 F. 3d 581.

No. 10–158. HUNTZINGER *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 69 M. J. 1.

No. 10–178. LOCKETT ET UX. *v.* CITY OF NEW ORLEANS, LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 607 F. 3d 992.

No. 10–192. ROSS *v.* PFIZER, INC. C. A. 6th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 450.

No. 10–255. SHALABY ET AL. *v.* NEWELL RUBBERMAID, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 620.

No. 10–269. GERSTEN *v.* GERSTEN. Ct. App. Ariz. Certiorari denied. Reported below: 223 Ariz. 99, 219 P. 3d 309.

No. 10–271. CHANDLER *v.* COURSEY, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 830.

No. 10–273. YOUNGS *v.* INDUSTRIAL CLAIM APPEALS OFFICE ET AL. Ct. App. Colo. Certiorari denied.

No. 10–280. GHAZIBAYAT *v.* SBC ADVANCED SOLUTIONS, INC. C. A. 9th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 408.

No. 10–282. SKUTCHES ET AL. *v.* GLASOW. Super. Ct. Pa. Certiorari denied. Reported below: 981 A. 2d 327.

No. 10–285. CNG FINANCIAL CORP. *v.* DAVIS. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 10–286. MURPHY *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 991 A. 2d 35.

No. 10–293. ABAD, INDIVIDUALLY AND AS TRUSTEE OF THE ARTEMIO M. ABAD REVOCABLE TRUST, ET AL. *v.* FINANCE FACTORS, LTD., ET AL. Int. Ct. App. Haw. Certiorari denied.

No. 10–297. JENNEY *v.* CITY OF BARBERTON, OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 126 Ohio St. 3d 5, 929 N. E. 2d 1047.

No. 10–298. PALMA-PALMA ET AL. *v.* HOLDER, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied.

No. 10–299. YUMIN ZHAO *v.* LONE STAR ENGINE INSTALLATION CENTER, INC. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 10–301. ANASCAPE, LTD. *v.* NINTENDO OF AMERICA, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 601 F. 3d 1333.

No. 10–302. KUBICKI *v.* APPROXIMATELY 3.38 ACRES OF LAND LOCATED NEAR COUNTY OF OAKLAND, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–304. ZUTZ ET AL. *v.* NELSON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 601 F. 3d 842.

No. 10–306. ROBERTS ET AL. *v.* MENTZER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 382 Fed. Appx. 158.

No. 10–311. ADVANCED TOWING CO. LLC ET AL. *v.* FAIRFAX COUNTY BOARD OF SUPERVISORS. Sup. Ct. Va. Certiorari denied. Reported below: 280 Va. 187, 694 S. E. 2d 621.

No. 10–321. PARKER, DBA PARKER INTERNATIONAL *v.* DONLEY, SECRETARY OF THE AIR FORCE. C. A. Fed. Cir. Certiorari denied. Reported below: 379 Fed. Appx. 980.

No. 10–331. MAUNALUA BAY BEACH OHANA 28 ET AL. *v.* HAWAII. Int. Ct. App. Haw. Certiorari denied. Reported below: 122 Haw. 34, 222 P. 3d 441.

No. 10–338. TRICOME *v.* EBAY INC. C. A. 3d Cir. Certiorari denied.

No. 10–342. KOZACHUK *v.* MEDPOINTE HEALTHCARE, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 373 Fed. Appx. 62.

No. 10–345. AYDINER *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 228 Ore. App. 282, 208 P. 3d 515.

No. 10–365. HIGHLAND CRUSADER OFFSHORE PARTNERS LP ET AL. *v.* LIFECARE HOLDINGS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 422.

No. 10–381. VANCE *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 394 Ill. App. 3d 1115, 985 N. E. 2d 1085.

No. 10–390. EHLERS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 69 M. J. 89.

No. 10–400. MURPHY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 745.

No. 10–413. CONTRERAS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 69 M. J. 120.

No. 10–423. LOPERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–428. AMERICAN HOME ASSURANCE CO. *v.* UMG RECORDINGS, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 766.

No. 10–5263. MCMILLAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 600 F. 3d 434.

No. 10–5558. BATES *v.* MORRISON MANAGEMENT SPECIALISTS, INC. C. A. 8th Cir. Certiorari denied. Reported below: 358 Fed. Appx. 771.

No. 10–5566. CHANTHAKOUMMANE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 10–5572. WILLIAMS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 602 F. 3d 291.

No. 10–5601. RANDOLPH *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 590 F. 3d 1273.

No. 10–5645. WRIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 594 F. 3d 259.

No. 10–5672. GRANT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 375 Fed. Appx. 79.

No. 10–5675. HEARN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 310 S. W. 3d 424.

No. 10–5728. MILLS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 48 Cal. 4th 158, 226 P. 3d 276.

No. 10–5809. SNEED *v.* JOHNSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 600 F. 3d 607.

No. 10–5999. GRAVES *v.* AULT, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 614 F. 3d 501.

No. 10–6001. CANTRELL *v.* ARPAIO, SHERIFF, MARICOPA COUNTY, ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 716.

No. 10–6006. MCCULLOUGH *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 443.

No. 10–6012. HARRIS *v.* PROGRESSIVE NORTHERN INSURANCE CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 354 Fed. Appx. 804.

No. 10–6014. JOHNSON *v.* VALENTINO ET AL. C. A. 2d Cir. Certiorari denied.

No. 10–6016. WOOLRIDGE *v.* CITY AND COUNTY OF RIVERSIDE, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–6018. MARSH *v.* FLORIDA DEPARTMENT OF CHILDREN AND FAMILY SERVICES ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–6019. MARTIN *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 255.

No. 10–6021. DELORIA *v.* SOUTH DAKOTA DEPARTMENT OF CORRECTIONS ET AL. C. A. 8th Cir. Certiorari denied.

No. 10–6023. JOHNSON *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 36 So. 3d 88.

No. 10–6024. D'ANTUONO *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–6027. NELSON *v.* HARRIS, N. A., ET AL. C. A. 7th Cir. Certiorari denied.

No. 10–6029. MCWATTERS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 36 So. 3d 613.

No. 10–6032. MALONE *v.* MARTINEZ. C. A. 9th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 621.

No. 10–6034. WALSH *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–6035. CHRISTIAN *v.* FRANK, DIRECTOR, HAWAII DEPARTMENT OF PUBLIC SAFETY. C. A. 9th Cir. Certiorari denied. Reported below: 595 F. 3d 1076.

No. 10–6036. TAYLOR *v.* LUDWICK, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–6037. THORNTON *v.* BANK OF NEW YORK. Ct. App. Mo., Eastern Dist. Certiorari denied.

No. 10–6040. THOEUR *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–6041. WALTON *v.* TEXAS. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 10–6044. ALVERSON *v.* WORKMAN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 595 F. 3d 1142.

No. 10–6053. WEST *v.* DENNISON, CHAIRPERSON, NEW YORK BOARD OF PAROLE, ET AL. C. A. 2d Cir. Certiorari denied.

No. 10–6056. PELLINO *v.* PROVINCE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 826.

No. 10–6057. MILLER *v.* KOLENDER ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–6058. KAY *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 10–6062. DICKEY *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 36 F. 3d 712.

No. 10–6063. PRATHER *v.* LEE, CHIEF JUDGE, SUPERIOR COURT OF GEORGIA, COWETA COUNTY. Sup. Ct. Ga. Certiorari denied.

No. 10–6066. SWON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 10–6068. VALENCIA *v.* NEVADA (two judgments). Sup. Ct. Nev. Certiorari denied. Reported below: 126 Nev. 764 (both judgments).

No. 10–6075. THOMPSON *v.* WORKMAN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 858.

No. 10–6078. BACON *v.* SKOLNIK, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–6079. STOWELL *v.* TOLL BROTHERS, INC. C. A. 3d Cir. Certiorari denied.

No. 10–6082. McCastle *v.* North Texas Medical Hospital. C. A. 5th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 424.

No. 10–6084. Battle *v.* JP Morgan Chase Bank, NA, et al. C. A. 4th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 328.

No. 10–6085. Martin *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 10–6089. Diaz *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 10–6091. Neeley *v.* NameMedia, Inc., et al. C. A. 8th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 584.

No. 10–6094. Dingle *v.* Stevenson, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 285.

No. 10–6097. Green *v.* Cate, Secretary, California Department of Corrections and Rehabilitation, et al. C. A. 9th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 387.

No. 10–6103. Shead *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 10–6111. Mann *v.* McNeil, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 360 Fed. Appx. 31.

No. 10–6113. Ponce *v.* Felker, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 606 F. 3d 596.

No. 10–6122. Stout *v.* Hobbs, Warden. Sup. Ct. Va. Certiorari denied.

No. 10–6124. Ayala-Carranza *v.* Holder, Attorney General. C. A. 9th Cir. Certiorari denied.

No. 10–6125. Eubanks *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 10–6127. PATEL *v.* TESTPAK, INC. Super. Ct. N. J., App. Div. Certiorari denied.

No. 10–6132. SMITH *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 606 Pa. 127, 995 A. 2d 1143.

No. 10–6134. DUHALL *v.* LENNAR FAMILY OF BUILDERS. C. A. 10th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 751.

No. 10–6136. DEROVEN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–6138. HARRIS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 10–6141. XIAO HAN *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 10–6143. HALL *v.* VARANO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–6144. HARRIS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 32 So. 3d 730.

No. 10–6148. GOWAN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–6149. IRVIN *v.* CITY OF CLARKSVILLE POLICE DEPARTMENT ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–6153. HENDERSHOTT *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 10–6156. HOLMES *v.* BROWN, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–6158. PHILLIPS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 39 So. 3d 296.

No. 10–6159. ATKINS *v.* HERNDON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 726.

No. 10–6160. WALKER *v.* TILLMAN. Ct. Civ. App. Ala. Certiorari denied. Reported below: 55 So. 3d 1214.

No. 10–6161. HOISINGTON *v.* WILLIAMS. C. A. 9th Cir. Certiorari denied.

No. 10–6162. HENDRICKS *v.* COHEN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 391.

No. 10–6163. GONZALES *v.* CLARK, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 942.

No. 10–6165. HERRERA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–6167. RHONE *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 168 Wash. 2d 645, 229 P. 3d 752.

No. 10–6168. STINSKI *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 286 Ga. 839, 691 S. E. 2d 854.

No. 10–6171. GUTIERREZ *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–6175. LABRANCHE *v.* ARGENT MORTGAGE CO. C. A. 5th Cir. Certiorari denied.

No. 10–6177. JENKINS *v.* STEVENSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 308.

No. 10–6183. DELACRUZ *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–6186. HINOJOSA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–6188. PREPETIT *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 10–6189. PREPETIT *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 10–6190. OWENS *v.* MORENO VALLEY HOSPITAL ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–6191. WADDEL *v.* JONES, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 862.

No. 10–6192. TAYLOR *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 10–6193. WALKER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 75 So. 3d 1228.

No. 10–6195. JONES *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 607 F. 3d 1346.

No. 10–6196. JOHNSON *v.* CASTRO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 788.

No. 10–6197. LATCHISON *v.* FELKER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 542.

No. 10–6207. WILSON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 10–6209. BREYTMAN *v.* OLINVILLE REALTY, LLC, ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 70 App. Div. 3d 573, 893 N. Y. S. 2d 872.

No. 10–6212. BERRIOS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–6213. JACKSON *v.* LAWLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–6220. SMITH *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 672.

No. 10–6221. BRADLEY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 373.

No. 10–6222. CUNNINGHAM, INDIVIDUALLY AND BY AND THROUGH HIS FATHER AND NEXT FRIEND, CUNNINGHAM *v.* CITY

of West Point, Mississippi. C. A. 5th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 419.

No. 10–6225. Dodson *v.* Coleman, Superintendent, State Correctional Institution at Fayette, et al. Sup. Ct. Pa. Certiorari denied.

No. 10–6228. Rideout *v.* Holder, Attorney General, et al. C. A. 8th Cir. Certiorari denied.

No. 10–6231. Qazza *v.* Kane, Warden. C. A. 9th Cir. Certiorari denied.

No. 10–6233. Riley *v.* Supreme Court of Pennsylvania. C. A. 3d Cir. Certiorari denied.

No. 10–6235. Pinson *v.* Grimes et al. C. A. 11th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 797.

No. 10–6237. Matthews *v.* Scribner, Warden. C. A. 9th Cir. Certiorari denied.

No. 10–6241. Patterson *v.* Shearous. C. A. 4th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 290.

No. 10–6245. Robinson *v.* California. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 10–6251. Goodrum *v.* Brown, Attorney General of California, et al. C. A. 9th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 750.

No. 10–6282. Zied *v.* Astrue, Commissioner of Social Security, et al. C. A. 3d Cir. Certiorari denied. Reported below: 347 Fed. Appx. 862.

No. 10–6289. James *v.* T. H. Continental Limited Partnership. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 10–6294. McCoin *v.* Fickle. C. A. 9th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 629.

No. 10–6299. Taylor *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 48 Cal. 4th 574, 229 P. 3d 12.

No. 10–6325. Hayward *v.* Godinez, Executive Director, Cook County Department of Corrections, et al. C. A. 9th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 642.

No. 10–6326. MORALES *v.* HARRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–6327. MCCLENTON *v.* MINNESOTA. Ct. App. Minn. Certiorari denied. Reported below: 781 N. W. 2d 181.

No. 10–6357. WALKER *v.* SHELDON, SECRETARY, FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES. C. A. 11th Cir. Certiorari denied. Reported below: 611 F. 3d 720.

No. 10–6368. COULOMBE *v.* CITY OF OXNARD, CALIFORNIA, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–6374. NORRIS *v.* LAWLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–6381. BONNER *v.* STEELE. Sup. Ct. S. D. Certiorari denied. Reported below: 782 N. W. 2d 379.

No. 10–6385. WHITE *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 10–6400. WILSON *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–6412. O'CONNELL *v.* UTTECHT, SUPERINTENDENT, COYOTE RIDGE CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 10–6414. MERIDETH *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 652.

No. 10–6421. BROWN *v.* MILYARD, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 853.

No. 10–6424. BATES *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 2009-Ohio-5819.

No. 10–6426. REYNA *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 290 Kan. 666, 234 P. 3d 761.

No. 10–6427. SCHIFF *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 649.

No. 10–6438. ZAVALA *v.* DRUG ENFORCEMENT AGENCY. C. A. D. C. Cir. Certiorari denied.

No. 10–6460. MARCUM *v.* OHIO ADULT PAROLE AUTHORITY. C. A. 6th Cir. Certiorari denied.

No. 10–6487. DURRANTE *v.* KARESTES ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–6496. GIST *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–6498. SIMPSON *v.* DANFORTH, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 10–6512. BROWN *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 37 So. 3d 1205.

No. 10–6516. KENDRICKS *v.* BARROW, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 10–6520. BRIM, AKA HORNE *v.* ZAVARES, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 885.

No. 10–6527. HENDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 295.

No. 10–6538. MOON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 563.

No. 10–6543. FOREMAN ET AL. *v.* LOUISIANA ET AL. C. A. 5th Cir. Certiorari denied.

No. 10–6554. ROADCAP *v.* MILYARD, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 859.

No. 10–6580. SCHLUSSEL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 383 Fed. Appx. 87.

No. 10–6593. GATLIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 613 F. 3d 374.

No. 10–6594. HENRIKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 428.

No. 10–6596. HENDERSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 736.

No. 10–6597. RODGERS *v.* UNITED STATES;
No. 10–6750. ARCENEAUX *v.* UNITED STATES; and
No. 10–6808. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 682.

No. 10–6598. SHIPP *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 9th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 861.

No. 10–6602. PICKETT *v.* ROLLINS, DEPUTY WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–6604. SULLIVAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–6606. STEPHENS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 295.

No. 10–6610. TERRELL *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–6628. COX *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 234.

No. 10–6629. DUBOSE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 579 F. 3d 117.

No. 10–6630. AVELAR CASTRO, AKA AVELAR-CASTRO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 314.

No. 10–6631. ESPINOSA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 426.

No. 10–6632. CAMPBELL ET UX. *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 375 Fed. Appx. 254.

No. 10–6636. BARRON-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 309.

No. 10–6637. VASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 526.

No. 10–6638. VASQUEZ-OCHOA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 406.

No. 10–6639. RAMIREZ-AGUILAR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 397.

No. 10–6640. ORNELAS-LOPEZ, AKA LOPEZ PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 398.

No. 10–6641. MARTINEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 588 F. 3d 301.

No. 10–6642. MANNERS *v.* UNITED STATES; and
No. 10–6648. SIEBERT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 302.

No. 10–6643. LOWE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 477.

No. 10–6645. MILLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 646.

No. 10–6646. GUILLIOT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 416.

No. 10–6653. MARTINEZ SANTANA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 361 Fed. Appx. 541.

No. 10–6656. VALENCIA-BARRAGAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 608 F. 3d 1103.

No. 10–6659. BRACEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 580.

No. 10–6661. BLOOMER *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 233 P. 3d 971.

No. 10–6666. COLLINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 405.

No. 10–6669. LADSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 10–6675. GROSS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–6679. GHALI *v.* ROY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 462.

No. 10–6682. HARTZOG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–6683. FORD *v.* CHAPMAN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 513.

No. 10–6684. FORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 545.

No. 10–6686. HARGRAVE *v.* WASHINGTON POST. C. A. D. C. Cir. Certiorari denied. Reported below: 365 Fed. Appx. 224.

No. 10–6687. GAONA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–6693. HANDBERRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 383.

No. 10–6694. HAFED *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 602 F. 3d 877.

No. 10–6697. NORTHINGTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 392 Fed. Appx. 919.

No. 10–6700. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 549 F. 3d 946.

No. 10–6706. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 394.

No. 10–6708. ADAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 385 Fed. Appx. 114.

No. 10–6711. TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–6714. BANKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 664.

No. 10–6719. CHAPMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 614 F. 3d 810.

No. 10–6721. MARTINEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 610 F. 3d 1216.

No. 10–6722. MONCRIEFFE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 249.

No. 10–6729. COHEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 890.

No. 10–6734. MARCH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 382 Fed. Appx. 76.

No. 10–6735. LOPEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–6738. QUAINTANCE *v.* UNITED STATES; and
No. 10–6776. QUAINTANCE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 608 F. 3d 717.

No. 10–6740. MCCORMICK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 385 Fed. Appx. 259.

No. 10–6741. WONG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 927.

No. 10–6742. WRIGHT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–6743. BYRD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 374.

No. 10–6744. BRIDGEWATER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 606 F. 3d 258.

No. 10–6754. HUBBARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 931.

No. 10–6757. SHERMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 393 Fed. Appx. 743.

No. 10–6760. GONZALEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 609 F. 3d 13.

No. 10–6761. FERNANDEZ-ROQUE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 617 F. 3d 565.

No. 10–6762. GREEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 375.

No. 10–6764. MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–6774. VILLASENOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 608 F. 3d 467.

No. 10–6777. GABBARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 319.

No. 10–6778. GARCIA-CORDERO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 610 F. 3d 613.

No. 10–6779. FINLEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 612 F. 3d 998.

No. 10–6780. MIZWA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 345 Fed. Appx. 834.

No. 10–6783. STANLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 805.

No. 10–6785. SCOTT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 419.

No. 10–6787. VAN THI NGUYEN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 618 F. 3d 72.

No. 10–6789. KENNEDY *v.* ALLERA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 612 F. 3d 261.

No. 10–6790. MASON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–6792. RODGERS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 379 Fed. Appx. 151.

No. 10–6793. ARANDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 626.

No. 10–6797. VALLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 332.

No. 10–6798. REED *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 605 Pa. 431, 990 A. 2d 1158.

No. 10–6803. SUAREZ FLORES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 881.

No. 10–6806. BROOKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 300.

No. 10–6807. WILLIAMS *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 10–6810. WHITE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–6811. TRUAX *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 591.

No. 10–6815. MOSS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 651.

No. 09–1031. WONG, WARDEN *v.* SMITH. C. A. 9th Cir. Certiorari denied. Reported below: 580 F. 3d 1071.

JUSTICE ALITO, with whom THE CHIEF JUSTICE and JUSTICE SCALIA join, dissenting.

The Court of Appeals granted habeas relief in this case after concluding that a state trial judge unconstitutionally coerced the jury by commenting and offering an opinion on the evidence. Because that decision cannot be reconciled with the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), see 28 U. S. C. § 2254(d)(1), and gives short shrift to a venerable common-law practice, I would grant the petition for writ of certiorari.

I

After they learned that Eugene and Deanna S. had won some money at a casino, respondent Anthony Smith and codefendant James Hinex drove to the couple's Sacramento home, burglarized it, and robbed both victims at gunpoint. During the robbery, one of the defendants put a gun to the head of Mrs. S. and forced her to perform oral copulation. Both Smith and Hinex were arrested and charged under California law with one count of residential burglary and two counts of residential robbery. Cal. Penal Code Ann. §§ 459 (West 2010), 211 (West 2008). Smith was also charged with forcible oral copulation. § 288a(c) (West 2008). At trial, the jury deliberated for a little over two days before convicting both defendants on the burglary and robbery counts. The jury had a more difficult time reaching agreement on the oral-copulation count. Tests showed that semen recovered from the

crime scene matched Smith's DNA, but Mrs. S. had originally identified Hinex as her attacker.

On the fourth day of deliberations, one juror sent the judge a note stating that he was unable to vote to convict Smith on the oral-copulation count because he thought the DNA evidence was unreliable. The trial judge then gave the jury a modified version of an *Allen* charge. See *Allen* v. *United States*, 164 U. S. 492 (1896). When further deliberations proved fruitless, the judge decided to exercise the judicial authority, as recognized by the State Constitution, to "comment on the evidence." See Art. VI, § 10.

At the outset, the judge reminded the jurors that they were the "'exclusive judges of the facts.'" *Smith* v. *Curry*, 580 F. 3d 1071, 1077 (CA9 2009). He explained that his comments were not intended "'to impose [his] will'" on the jury, but only to review "'certain evidence'" that they "'may not have considered.'" *Ibid.* The judge thought it "'important'" for the jury to consider the statements Smith and Hinex "'made to law enforcement following their arrests,'" particularly the "'consistencies and inconsistencies'" between those statements. *Ibid.* The judge pointed out that Smith told police that both he and Hinex entered the house. Smith stated that he found Mrs. S. in a back bedroom, that Smith was armed at the time, and that Mrs. S. gave Smith a $100 bill. *Id.*, at 1077–1078. The judge noted that Hinex also "'said Smith went to the back of the house . . . and closed the door.'" *Id.*, at 1077. But Hinex denied going inside the house himself. The judge played the tapes of both defendants' statements for the jury. He told them to consider and discuss the statements during deliberations. Finally, the judge reiterated that his "'comments [were] advisory only'" and that the jurors remained "'the exclusive judges'" of the facts and the "'credibility of the witnesses.'" *Id.*, at 1078. The jury continued their deliberations; a short time later, they returned a guilty verdict against Smith on the oral-copulation count.

Smith argued on appeal that the judge's comments coerced the jury's verdict. A California intermediate appellate court rejected that claim. The California Supreme Court denied review. Smith then filed a federal petition for writ of habeas corpus, 28 U. S. C. § 2254, which the District Court granted. A split Ninth Circuit panel affirmed.

II

Smith's claim on federal habeas is that the California appellate court unreasonably applied this Court's clearly established law forbidding coercive jury instructions. § 2254(d)(1); see Brief in Opposition 12. "[C]learly established" law under § 2254(d)(1) consists of "the holdings, as opposed to the dicta, of this Court's" cases. *Williams* v. *Taylor*, 529 U. S. 362, 412 (2000). An "unreasonable application" of that law involves not just an erroneous or incorrect decision, but an objectively unreasonable one. *Renico* v. *Lett*, 559 U. S. 766 (2010).

The clearly established law relevant to this case is sparse. Just one of this Court's decisions, *Lowenfield* v. *Phelps*, 484 U. S. 231 (1988), has addressed the constitutional rule against coercive jury instructions. And *Lowenfield* held only that, on the totality of the circumstances present there, no unconstitutional coercion resulted. *Id.*, at 241. The Court has also decided several cases on the specific practice of judicial comment on the evidence. *E. g.*, *Quercia* v. *United States*, 289 U. S. 466 (1933). But all of those cases arose under this Court's supervisory power over federal courts; they set no clearly established constitutional limits under AEDPA. See *Early* v. *Packer*, 537 U. S. 3, 10 (2002) *(per curiam)*. As a result, the clearly established law in this area provides very little specific guidance. About all that can be said is that coercive instructions are unconstitutional, coerciveness must be judged on the totality of the circumstances, and the facts of *Lowenfield* (polling a deadlocked jury and reading a slightly modified *Allen* charge) were not unconstitutionally coercive. See 484 U. S., at 237–241.

A general standard such as this gives state courts wide latitude for reasonable decisionmaking under AEDPA. *Yarborough* v. *Alvarado*, 541 U. S. 652, 664 (2004) ("The more general the rule, the more leeway courts have in reaching outcomes in case-by-case determinations"). That latitude is wider still in this case, as no constitutional decision of this Court has ever explained how the general rule against "coercion" applies to the traditional practice of judicial comment on the evidence. Cf. *Carey* v. *Musladin*, 549 U. S. 70, 76 (2006).

For centuries, trial judges have enjoyed authority to comment on the evidence. At common law, the judge was empowered to "weig[h] the evidence" and share an "opinion" with the jury, even

"in matter of fact." 2 M. Hale, History of the Common Law of England 147 (5th ed. 1794) (hereinafter Hale).* The practice is well established in this Court's cases as well. The Court has recognized that a trial judge has "discretion" to "comment upon the evidence," to call the jury's "attention to parts of it which he thinks important," and to "express his opinion upon the facts." *Vicksburg & Meridian R. Co.* v. *Putnam*, 118 U. S. 545, 553 (1886); *Quercia*, *supra*, at 469.

To be sure, the practice has for many years been on the wane. Comment on the evidence has always been more popular in Britain than it ever was in this country. See 9 Wigmore § 2551, at 666. That said, federal courts and several States continue to recognize judicial authority to comment on the evidence, and California expressly protects the practice in its State Constitution. Art. VI, § 10.

This long tradition, combined with the complete absence of constitutional precedent on how to apply *Lowenfield*'s anticoercion principle in this context, shows that federal courts should tread lightly when faced with a claim that judicial comment on the evidence runs afoul of clearly established federal law. Outside of extreme cases, most decisions approving traditional uses of this common-law practice should fall within the bounds of reasonable decisionmaking under AEDPA.

III

Here, the California appellate court did not unreasonably apply this Court's clearly established law. The trial judge, before commenting on the evidence, made clear that the jurors remained the exclusive judges of the facts and that the judge's comments were advisory only. 580 F. 3d, at 1077. The judge then directed the jurors to particular evidence—the defendants' initial statements to police—and highlighted for them certain "'consistencies and inconsistencies'" between those statements. *Ibid.* This practice of drawing the jury's "attention to parts" of the evidence that

*See J. Thayer, Preliminary Treatise on Evidence at Common Law 188, n. 2 (1898) (trial by jury "in a form which would withhold from the jury the assistance of the court in dealing with the facts" is not "trial by jury in any historic sense of the word"); 9 J. Wigmore, Evidence § 2551, p. 664 (J. Chadbourn rev. 1981) (hereinafter Wigmore) (comment on the evidence "existed at common law since the beginning of jury trial, and must be regarded historically as an essential and inseparable part of jury trial").

the judge thinks "important" lies at the recognized core of the common-law power to comment on the evidence. See *Vicksburg*, *supra*, at 553; Hale 147 (The judge "is able, . . . in matters of fact, to give [the jury] a great light and assistance, by . . . observing where the question and knot of the business lies; and by showing them his opinion even in matter of fact" (some capitalization omitted)). Neither the trial judge's decision to employ the practice here nor the state appellate court's approval of the instruction ran afoul of clearly established federal law.

The Ninth Circuit's contrary decision rested in large measure on its concern that the comments "pointed the jury to evidence leading to a particular verdict," while omitting to mention other evidence favorable to Smith. 580 F. 3d, at 1081, 1083. But the common-law privilege to comment on the evidence has never required a compendious summary. Rather, the judge has traditionally enjoyed the power to focus on the particular evidence the *judge* thinks important, and to share with the jury an opinion on that evidence. *Vicksburg*, *supra*, at 553; *Quercia*, *supra*, at 469. It was not unreasonable under this Court's clearly established law for the California appellate court to approve that practice here.

The Ninth Circuit's opinion also suggests that, when a jury is "deadlocked," the judge may provide only "appropriate encouragement . . . to deliberate," and must refrain from providing the "judge's selective view of the evidence." 580 F. 3d, at 1080. None of this Court's constitutional cases establish such a rule. And this Court's supervisory-power cases (which, if anything, set a more demanding standard than the constitutional minimum) have specifically upheld judicial comments that provide a particular "view of the evidence" to an apparently deadlocked jury. See *Simmons* v. *United States*, 142 U. S. 148, 155 (1891) (no error where judge denied deadlocked jury's request to be discharged and told them "that he regarded the testimony as convincing"). Nothing in this Court's clearly established law prohibits the trial judge from offering an opinion to a jury that is struggling to reach a verdict.

The Ninth Circuit was also troubled that the trial judge's comments appeared to be designed to address the concerns of the holdout juror. 580 F. 3d, at 1082. And the panel majority disapproved of the trial judge's "mandatory language" directing the jury to "'consider and discuss'" the evidence highlighted by the court. *Id.*, at 1082–1083. Whatever potential for coercion these

comments caused, the California appellate court's decision upholding them "was clearly *not unreasonable*" under the general *Lowenfield* standard. See *Renico*, 559 U. S., at 779. I would grant certiorari in this case and correct the Ninth Circuit's error.

No. 10–85. SCHEUR *v.* UNITED STATES ET AL. C. A. 5th Cir. Motion of respondent Robert McMillan for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 600 F. 3d 434.

No. 10–312. LA UNION DEL PUEBLO ENTERO ET AL. *v.* FEDERAL EMERGENCY MANAGEMENT AGENCY. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 608 F. 3d 217.

No. 10–419. TORJMAN *v.* FEDERAL BUREAU OF INVESTIGATION ET AL. C. A. D. C. Cir. Certiorari before judgment denied.

No. 10–5541. STRICKLAND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 601 F. 3d 963.

No. 10–6625. SUKUP *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 10–6662. WOODBERRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 376 Fed. Appx. 307.

No. 10–6728. PERCEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 383 Fed. Appx. 417.

No. 10–6747. TANN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

Rehearing Denied

No. 10–5125. LIETZKE *v.* CITY OF MONTGOMERY, ALABAMA, ET AL., *ante*, p. 905. Petition for rehearing denied.

NOVEMBER 3, 2010

Dismissal Under Rule 46

No. 10–6833. THOMAS *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 54 So. 3d 1.

NOVEMBER 4, 2010

Certiorari Denied

No. 10–7364 (10A456). HALLFORD *v.* ALABAMA. Sup. Ct. Ala. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied.

NOVEMBER 5, 2010

Dismissal Under Rule 46

No. 09–1400. LABORERS DISTRICT COUNCIL CONSTRUCTION INDUSTRY PENSION FUND ET AL. *v.* OMNICARE, INC., ET AL. C. A. 6th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 583 F. 3d 935.

NOVEMBER 8, 2010

Certiorari Granted—Vacated and Remanded. (See also No. 10–91, *ante*, p. 1.)

No. 10–5464. PERKINS *v.* AMMONS, WARDEN. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Holland* v. *Florida*, 560 U. S. 631 (2010). Reported below: 366 Fed. Appx. 86.

Certiorari Dismissed

No. 10–6315. BERRYHILL *v.* HENRY, GOVERNOR OF OKLAHOMA, ET AL. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–6564. CORBIN *v.* FLORIDA ET AL. Dist. Ct. App. Fla., 1st Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 38 So. 3d 772.

Miscellaneous Orders

No. D–2563. In re Steinkrauss. Joseph Cosmas Steinkrauss, of Medford, Mass., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on October 4, 2010 [*ante*, p. 817], is discharged.

No. 10M44. Moseley *v.* United States District Court for the District of Hawaii et al.; and

No. 10M45. Eldaghar *v.* City of New York Department of Citywide Administrative Services. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 09–10876. Bullcoming *v.* New Mexico. Sup. Ct. N. M. [Certiorari granted, 561 U. S. 1058.] Motion of petitioner for appointment of counsel granted. Jeffrey L. Fisher, Esq., of Stanford, Cal., is appointed to serve as counsel for petitioner in this case.

No. 09–10896. Christian *v.* Frank Bommarito Oldsmobile, Inc., dba Bommarito Infinity. C. A. 8th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 823] denied.

No. 10–5586. Johnson *v.* Wilbur et al. C. A. 11th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 807] denied.

No. 10–6283. Adams *v.* High Purity Systems, Inc., et al. C. A. 4th Cir.; and

No. 10–6701. Wideman *v.* Colorado; and Wideman *v.* Garcia. C. A. 10th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 29, 2010, 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. 10–6937. In re Jones; and

No. 10–7026. In re Johnson. Petitions for writs of habeas corpus denied.

No. 10–6950. In re Gorbey. Petition for writ of habeas corpus denied. The Chief Justice took no part in the consideration or decision of this petition.

Certiorari Denied

No. 09–1380. National Football League et al. *v.* Williams et al. C. A. 8th Cir. Certiorari denied. Reported below: 582 F. 3d 863.

No. 09–1490. Garcia *v.* Florida Bar. Sup. Ct. Fla. Certiorari denied. Reported below: 31 So. 3d 782.

No. 09–1578. Altus Finance S. A. et al. *v.* SAFG Retirement Services, Inc., fka AIG Retirement Services, Inc. C. A. 9th Cir. Certiorari denied. Reported below: 365 Fed. Appx. 756.

No. 09–10938. Voyles *v.* Hill, Superintendent, Powder River Correctional Facility. C. A. 9th Cir. Certiorari denied.

No. 10–61. Dworkin et al. *v.* Tamburo, dba Man's Best Friend Software, et al. C. A. 7th Cir. Certiorari denied. Reported below: 601 F. 3d 693.

No. 10–177. Miller *v.* Jenkins. Sup. Ct. Va. Certiorari denied.

No. 10–317. Mawulawde *v.* Board of Regents of the University System of Georgia et al. C. A. 11th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 51.

No. 10–319. Hankey, Individually and as Administratrix of the Estate of Rohrbaugh *v.* Wexford Health Sources et al. C. A. 3d Cir. Certiorari denied. Reported below: 383 Fed. Appx. 165.

No. 10–325. Dutton *v.* Montgomery County, Maryland, et al. C. A. 4th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 362.

No. 10–350. Doe et al. *v.* Sebelius, Secretary of Health and Human Services. C. A. Fed. Cir. Certiorari denied. Reported below: 601 F. 3d 1349.

No. 10–358. Dunn et al. *v.* Sziranyi. C. A. 11th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 884.

No. 10–359. Pablo-Sanchez et al. *v.* Holder, Attorney General. C. A. 6th Cir. Certiorari denied. Reported below: 600 F. 3d 592.

No. 10–361. XIUYING ZHENG *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied.

No. 10–370. STEWART *v.* AT&T, FKA SBC COMMUNICATIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 474.

No. 10–391. XIU FENG LI *v.* HOCK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 371 Fed. Appx. 171.

No. 10–393. BAIRD *v.* BURLINGTON NORTHERN & SANTA FE RAILWAY CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 628.

No. 10–407. GOULD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 603 F. 3d 1100.

No. 10–465. SCOTT *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied. Reported below: 39 So. 3d 309.

No. 10–472. CARDENAL ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 985.

No. 10–480. KROCKA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 983.

No. 10–488. ZAJANCKAUSKAS *v.* HOLDER, ATTORNEY GENERAL. C. A. 1st Cir. Certiorari denied. Reported below: 611 F. 3d 87.

No. 10–5113. WALKER *v.* THOMSEN ET AL. C. A. 8th Cir. Certiorari denied.

No. 10–5195. GAGLIANO *v.* MAZUR-HART. C. A. 9th Cir. Certiorari denied.

No. 10–5232. BOND *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 604 Pa. 1, 985 A. 2d 810.

No. 10–5247. HUDGINS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 338 Fed. Appx. 150.

No. 10–6253. WALKER *v.* CATE. C. A. 9th Cir. Certiorari denied.

No. 10–6254. VINES *v.* KANE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–6255. WASHINGTON *v.* EXPERIAN INC. ET AL. C. A. 7th Cir. Certiorari denied.

No. 10–6263. NOONER ET AL. *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 594 F. 3d 592.

No. 10–6266. JONES *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 126 Nev. 728.

No. 10–6267. MARSHALL *v.* BOWLES ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–6273. WOOLRIDGE *v.* GONZALES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–6274. BRADFIELD *v.* CORRECTIONAL MEDICAL SERVICES, INC., ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–6277. PEARSON *v.* HERRON, CORRECTIONAL ADMINISTRATOR, SCOTLAND CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 288.

No. 10–6280. MILLER *v.* CITY OF NEW YORK, NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 10–6281. OSTOPOSIDES *v.* BUNTING ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–6286. LAWLER *v.* HALL, WARDEN. Super. Ct. Butts County, Ga. Certiorari denied.

No. 10–6292. LUA *v.* MARTEL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 365 Fed. Appx. 872.

No. 10–6293. MCCASLIN *v.* BIRMINGHAM MUSEUM OF ART ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 871.

No. 10–6298. SCHWIETERMAN *v.* OHIO. Ct. App. Ohio, Mercer County. Certiorari denied. Reported below: 2010-Ohio-102.

No. 10–6305. WATKINS *v.* MARYLAND DIVISION OF CORRECTIONS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 310.

No. 10–6306. LaBoy *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 10–6307. Lewis *v.* Johnson, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 312.

No. 10–6308. Villa *v.* Arizona. Ct. App. Ariz. Certiorari denied.

No. 10–6309. Washington *v.* Harrelson et al. C. A. 4th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 300.

No. 10–6310. Webb *v.* Kern, Judge, Circuit Court of South Dakota, Pennington County, et al. C. A. 8th Cir. Certiorari denied.

No. 10–6312. Lightfoot *v.* Burt, Warden. C. A. 6th Cir. Certiorari denied.

No. 10–6313. Chung Kao *v.* Superior Court of California, San Bernardino County, et al. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 10–6317. Marshall *v.* Friend et al. C. A. 4th Cir. Certiorari denied.

No. 10–6359. Wynter *v.* New York. Sup. Ct. N. Y., Nassau County. Certiorari denied.

No. 10–6382. Turner *v.* Dzurenda, Warden. C. A. 2d Cir. Certiorari denied. Reported below: 381 Fed. Appx. 41.

No. 10–6439. Washington *v.* Propes. C. A. 4th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 293.

No. 10–6451. Towers *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 397 Ill. App. 3d 1109, 988 N. E. 2d 242.

No. 10–6473. Price *v.* Shewalter, Warden. Sup. Ct. Ohio. Certiorari denied. Reported below: 126 Ohio St. 3d 1510, 930 N. E. 2d 329.

No. 10–6477. Chavez *v.* Henry, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 653.

No. 10–6479. WITHEROW *v.* FARWELL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 688.

No. 10–6490. GREENE *v.* KELLY SERVICES, INC. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–6518. HITCHCOCK *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–6523. FAIRLEY *v.* PUCKETT. C. A. 5th Cir. Certiorari denied.

No. 10–6524. GIBSON *v.* CULLIVER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–6530. HUDSON *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 10–6542. MARSHALL *v.* STAFFIERI ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–6572. MONTERROSA *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 619.

No. 10–6574. WILSON *v.* HURLEY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 471.

No. 10–6592. NUNNERY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 395 Ill. App. 3d 1117, 986 N. E. 2d 806.

No. 10–6608. MISENHELTER *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 234 P. 3d 657.

No. 10–6615. SALAMEH *v.* CARLSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 678.

No. 10–6651. ALVAREZ HERNANDEZ *v.* DUNCAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 380.

No. 10–6665. CHAVEZ *v.* SKOLNIK, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 667.

No. 10–6671. JACKSON *v.* BOISE LOCOMOTIVE. C. A. 5th Cir. Certiorari denied.

No. 10–6705. TOWNSEND *v.* KING, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 10–6717. EBERT *v.* GAETZ, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 610 F. 3d 404.

No. 10–6718. CZARKOWSKI *v.* MILLS, SUPERINTENDENT, TWO RIVERS CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 10–6723. LINEBAUGH *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 751.

No. 10–6724. MANDARELLI *v.* BARNHART, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 10–6725. NORTON *v.* COLEMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–6737. JONES *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–6752. SMITH *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 225 W. Va. 706, 696 S. E. 2d 8.

No. 10–6759. FERGUSSON *v.* COURSEY, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 10–6769. TOWNSEL *v.* QUINN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 830.

No. 10–6795. AMADOR-BELTRAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 219.

No. 10–6823. ESTRADA-ELIVERIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 583 F. 3d 669.

No. 10–6826. PARISH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 606 F. 3d 480.

No. 10–6827. RIVERA-MORENO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 613 F. 3d 1.

No. 10–6831. STITT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 253.

No. 10–6834. BEILHARZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 363.

No. 10–6836. MONTGOMERY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 321.

No. 10–6838. LAWSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–6840. SNEED *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 551.

No. 10–6848. BELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 389.

No. 10–6852. COX *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–6853. REED *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–6854. REID *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 392.

No. 10–6856. ECCLESTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 390 Fed. Appx. 62.

No. 10–6858. TREVINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–6860. BIRTHA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 351.

No. 10–6862. MULLINS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 613 F. 3d 1273.

No. 10–6868. MAZZA-ALALUF *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 621 F. 3d 205.

No. 10–6875. GRAJEDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 581 F. 3d 1186.

No. 10–6876. Ross *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 364.

No. 10–6877. Sanchez-Rebollar *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 488.

No. 10–6882. Sheppard *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 265.

No. 10–6884. Sanchez *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 10–6896. Richardson *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 10–6898. Salazar-Agundes *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 640.

No. 10–6899. Bell *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 835.

No. 10–6901. Stephens *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 491.

No. 10–6904. Hall-Ditchfield *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 366 Fed. Appx. 391.

No. 10–6906. Ginglen *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 10–6909. Gutierrez *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 10–6910. Farrow *v.* Johns, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 308.

No. 10–6917. Hughes *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 10–6922. Young *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 267.

No. 10–6925. Whisnant *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 426.

No. 10–6926. Avila-Anguiano *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 609 F. 3d 1046.

No. 10–6930. MEJIA *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 597 F. 3d 1329.

No. 10–6943. BEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 486.

No. 10–34. RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* ROBINSON. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 595 F. 3d 1086.

No. 10–318. MCKENNA *v.* NESTLE PURINA PETCARE CO. C. A. 6th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 10–369. BALDWIN ET AL. *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 9th Cir. Certiorari before judgment denied.

No. 10–6635. BROWN *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 10–6814. JORDAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 379 Fed. Appx. 758.

No. 10–6850. REED *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 389 Fed. Appx. 272.

No. 10–6887. MERCADO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 371 Fed. Appx. 122.

Rehearing Denied

No. 09–11233. COULOMBE *v.* SUPERIOR COURT OF CALIFORNIA, VENTURA COUNTY, ET AL., *ante*, p. 868;

No. 09–11424. DAVIS *v.* KIA MOTORS AMERICA, INC., ET AL., *ante*, p. 879;

No. 09–11481. CRAIN *v.* HEIFNER, *ante*, p. 883; and

No. 10–5013. BROOKS *v.* LUBBOCK COUNTY HOSPITAL DISTRICT, DBA UMC HEALTH SYSTEM, *ante,* p. 899. Petitions for rehearing denied.

NOVEMBER 10, 2010

Miscellaneous Order

No. 09–1227. BOND *v.* UNITED STATES. C. A. 3d Cir. [Certiorari granted, *ante,* p. 960.] Stephen R. McAllister, Esq., of Lawrence, Kan., is invited to brief and argue this case, as *amicus curiae,* in support of the judgment below.

NOVEMBER 12, 2010

Miscellaneous Order

No. 10A465. LOG CABIN REPUBLICANS *v.* UNITED STATES ET AL. Application to vacate the stay entered by the United States Court of Appeals for the Ninth Circuit on November 1, 2010, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. JUSTICE KAGAN took no part in the consideration or decision of this application.

NOVEMBER 15, 2010

Certiorari Granted—Vacated and Remanded

No. 10–5610. PULIDO-ISLAS *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Carachuri-Rosendo* v. *Holder,* 560 U. S. 563 (2010). Reported below: 376 Fed. Appx. 418.

Certiorari Dismissed

No. 10–6347. ODOM *v.* MT. PLEASANT POLICE DEPARTMENT INSURANCE POLICY HOLDER ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See

Martin v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. Reported below: 389 Fed. Appx. 210.

No. 10–6403. WILLIAMS *v.* HARDIN ET AL. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–6404. WILLIAMS *v.* HICKS ET AL. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–6422. MILLER *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–6470. SABEDRA *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–6939. MAYBERRY *v.* SANDERS, WARDEN. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

Miscellaneous Orders

No. D–2576. IN RE DISCIPLINE OF MALKUS. James Alan Malkus, of San Diego, 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–2577. IN RE DISCIPLINE OF ROTHSCHILD. John David Rothschild, of Sonoma, 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–2578. IN RE DISCIPLINE OF KRONEMYER. David Edward Kronemyer, 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–2579. IN RE DISCIPLINE OF CHIN. Arnold Chin, 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–2580. IN RE DISCIPLINE OF HUNT. Craig Monard Hunt, 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–2581. IN RE DISCIPLINE OF LERACH. William S. Lerach, of San Diego, 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–2582. IN RE DISCIPLINE OF CERVIZZI. Richard Glennan Cervizzi, of Scarborough, Me., 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–2583. IN RE DISCIPLINE OF REICH. Perry S. Reich, of Oakland Gardens, 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–2584. IN RE DISCIPLINE OF RYAN. Michael Wayne Ryan, Jr., of Bowie, 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–2585. IN RE DISCIPLINE OF FORD. Stephen Edward Ford, of Algonquin, 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–2586. IN RE DISCIPLINE OF MITCHELL. Stephen T. Mitchell, 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–2587. IN RE DISCIPLINE OF TRUM. Kathleen Kauth Trum, of Garden City, 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. 10M46. TAYLOR *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 09–115. CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA ET AL. *v.* WHITING ET AL. C. A. 9th Cir. [Certiorari granted, 561 U. S. 1024.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 09–291. THOMPSON *v.* NORTH AMERICAN STAINLESS, LP. C. A. 6th Cir. [Certiorari granted, 561 U. S. 1041.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 09–329. CHASE BANK USA, N. A. *v.* MCCOY, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED. C. A. 9th Cir. [Certiorari granted, 561 U. S. 1005.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 09–804. CIGNA CORP. ET AL. *v.* AMARA ET AL., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED. C. A. 2d Cir. [Certiorari granted, 561 U. S. 1024.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion.

No. 09–1036. HENDERSON *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. [Certiorari granted, 561 U. S.

1024.] Motion of Doretha H. Henderson, the authorized representative of David L. Henderson, to be substituted as petitioner granted. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 09–1233. SCHWARZENEGGER, GOVERNOR OF CALIFORNIA *v.* PLATA ET AL. D. C. E. D. & D. C. N. D. Cal. [Probable jurisdiction postponed, 560 U. S. 964.] Motion of appellees for divided argument denied. An additional 10 minutes are allotted to each side for oral argument.

No. 09–1272. KENTUCKY *v.* KING. Sup. Ct. Ky. [Certiorari granted, 561 U. S. 1057.] Motion of respondent to dismiss writ of certiorari as improvidently granted is denied.

No. 09–6822. PEPPER *v.* UNITED STATES. C. A. 8th Cir. [Certiorari granted, 561 U. S. 1024.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 10–5070. DANDAR *v.* KRYSEVIG ET AL. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 805] denied.

No. 10–5221. ZERILLI-EDELGLASS *v.* NEW YORK CITY TRANSIT ET AL. C. A. 2d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 824] denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion.

No. 10–5567. MURRAY *v.* AT&T MOBILITY LLC. C. A. 7th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 824] denied.

No. 10–6318. STRICKLAND *v.* BAKER ET AL. C. A. 4th Cir.; and

No. 10–6471. MILLER *v.* MARKS, JUDGE, CIRCUIT COURT OF WEST VIRGINIA, 15TH JUDICIAL CIRCUIT, ET AL. Cir. Ct. Harrison County, W. Va. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 6, 2010, 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. 10–7109. IN RE SMITH;
No. 10–7144. IN RE GUOAN; and
No. 10–7157. IN RE HILL. Petitions for writs of habeas corpus denied.

No. 10–6369. IN RE SANDERS; and
No. 10–7076. IN RE DECOLOGERO. Petitions for writs of mandamus denied.

No. 10–6934. IN RE HUSBAND. Petition for writ of mandamus denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 10–6501. IN RE DOMINGUEZ. Petition for writ of mandamus and/or prohibition denied.

No. 10–7069. IN RE JONES. Petition for writ of prohibition denied.

Certiorari Granted

No. 09–11556. TOLENTINO *v.* NEW YORK. Ct. App. N. Y. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 14 N. Y. 3d 382, 926 N. E. 2d 1212.

No. 10–5443. FOWLER *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 603 F. 3d 883.

Certiorari Denied

No. 09–1110. PARK *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 321 Wis. 2d 477, 774 N. W. 2d 476.

No. 09–1532. CLAYTON *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 68 M. J. 419.

No. 09–10905. MUSLEVE *v.* MUSLEVE. Ct. App. Ohio, Stark County. Certiorari denied. Reported below: 2009-Ohio-5789.

No. 09–11159. YOUNG *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 680.

No. 09–11257. DEW *v.* OHIO. Ct. App. Ohio, Mahoning County. Certiorari denied. Reported below: 2009-Ohio-6537.

No. 09–11474. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 592 F. 3d 511.

No. 10–31. BOATWRIGHT, WARDEN *v.* RAY. C. A. 7th Cir. Certiorari denied. Reported below: 592 F. 3d 793.

No. 10–58. ANDREWS *v.* HOWARD. C. A. 5th Cir. Certiorari denied. Reported below: 599 F. 3d 455.

No. 10–176. YOUNG *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 35 So. 3d 1042.

No. 10–185. CORE COMMUNICATIONS, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and

No. 10–189. PENNSYLVANIA PUBLIC UTILITY COMMISSION *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 592 F. 3d 139.

No. 10–212. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 602 F. 3d 313.

No. 10–216. TARANTINO *v.* CITY OF HORNELL, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 378 Fed. Appx. 68.

No. 10–335. COTTIER ET AL. *v.* CITY OF MARTIN, SOUTH DAKOTA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 604 F. 3d 553.

No. 10–336. GREEN *v.* FIDELITY INVESTMENTS. C. A. 6th Cir. Certiorari denied. Reported below: 374 Fed. Appx. 573.

No. 10–343. PICCIOTTO ET AL. *v.* APPEALS COURT OF MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 457 Mass. 1002, 927 N. E. 2d 998.

No. 10–346. GRIFFIN *v.* HARDRICK. C. A. 6th Cir. Certiorari denied. Reported below: 604 F. 3d 949.

No. 10–347. GUTTMAN *v.* RAWLINGS-BLAKE, MAYOR, CITY OF BALTIMORE, MARYLAND, ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 190 Md. App. 395, 988 A. 2d 1095.

No. 10–351. MALIK *v.* CONTINENTAL AIRLINES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 588.

No. 10–354. APC Acquisition Corp., Inc. *v.* Atlantech, Inc. C. A. 1st Cir. Certiorari denied.

No. 10–356. Locke *v.* Evans, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 658.

No. 10–368. Morris et al. *v.* Nuclear Regulatory Commission et al. C. A. 10th Cir. Certiorari denied. Reported below: 598 F. 3d 677.

No. 10–429. Walker et ux. *v.* Cromartie et al. Sup. Ct. Ga. Certiorari denied. Reported below: 287 Ga. 511, 696 S. E. 2d 654.

No. 10–493. Katz *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 10–495. L. E. K. *v.* D. R. S. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 33 So. 3d 428.

No. 10–500. Urciuoli *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 613 F. 3d 11.

No. 10–515. Peterson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 607 F. 3d 975.

No. 10–5022. Snyder *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 365 Fed. Appx. 508.

No. 10–5287. Smithey *v.* Arizona. Super. Ct. Ariz., County of Maricopa. Certiorari denied.

No. 10–5432. McCord et ux. *v.* Alabama. C. A. 11th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 590.

No. 10–5625. Dailey *v.* Martel, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 782.

No. 10–5720. Robertson *v.* Cree, Inc. C. A. 4th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 307.

No. 10–5867. Chan *v.* Department of Justice. C. A. Fed. Cir. Certiorari denied. Reported below: 368 Fed. Appx. 143.

No. 10–5937. Guyton, Executor of the Estate of Guyton *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 5.

No. 10–6304. DAVIS *v.* WILLIAMS, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 354 Fed. Appx. 603.

No. 10–6322. HUMPHREYS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 287 Ga. 63, 694 S. E. 2d 316.

No. 10–6332. BLACKWELL *v.* YORK. C. A. 9th Cir. Certiorari denied.

No. 10–6333. BURTON *v.* SPOKANE POLICE DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 671.

No. 10–6341. COOK *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 38 So. 3d 135.

No. 10–6342. MCCARTY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 442.

No. 10–6345. GUIMARAES *v.* NATIONAL OPINION RESEARCH SERVICES (NORS) ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 51.

No. 10–6350. WATSON *v.* LOCKETTE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 822.

No. 10–6351. WOJTCZAK *v.* SAFECO PROPERTY & CASUALTY INSURANCE COS. ET AL. C. A. 2d Cir. Certiorari denied.

No. 10–6353. TORREZ *v.* ELEY. C. A. 10th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 770.

No. 10–6360. WOOLRIDGE *v.* EDWARDS. C. A. 9th Cir. Certiorari denied.

No. 10–6371. ROSS *v.* HENSE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–6388. SHABAZZ *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied.

No. 10–6389. ROWL *v.* SMITH DEBNAM NARRON DRAKE SAINTSING & MYERS, LLP, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 329.

No. 10–6391. McMULLAN *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 599 F. 3d 849.

No. 10–6392. JOHNSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–6393. JONES *v.* CITY OF NORTH PLATTE, NEBRASKA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 579.

No. 10–6395. STRADLEY *v.* EAGLETON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 361.

No. 10–6397. JOHNSON *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 230 Ore. App. 756, 217 P. 3d 703.

No. 10–6416. KEYS *v.* MICHIGAN. Cir. Ct. Eaton County, Mich. Certiorari denied.

No. 10–6420. BROWN *v.* SMITH. C. A. 8th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 712.

No. 10–6429. MARTEL *v.* McNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 10–6430. WHITE *v.* HATHAWAY ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–6432. WRIGHT *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 10–6436. McDANIEL *v.* MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 10–6442. TOLLIVER *v.* SHEETS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 594 F. 3d 900.

No. 10–6443. YOH *v.* PALLITO, COMMISSIONER, VERMONT DEPARTMENT OF CORRECTIONS. C. A. 2d Cir. Certiorari denied.

No. 10–6444. TRUJILLO *v.* PROVINCE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 879.

No. 10–6448. OBRIECHT *v.* THURMER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 10–6454. SNIPES *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 10–6455. SOTO *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 10–6457. STEVENS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–6458. KAPETAN *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 126 Nev. 729.

No. 10–6459. KIMBROUGH *v.* COLSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–6463. SMITH *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–6467. MAJORS *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 10–6472. JONES *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 49 So. 3d 238.

No. 10–6474. JACKSON *v.* PEOPLE OF OCTOBER 19–20, 1994. C. A. 2d Cir. Certiorari denied.

No. 10–6478. TAYLOR *v.* NEW JERSEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 372 Fed. Appx. 250.

No. 10–6480. WASHINGTON *v.* WILSON. C. A. 5th Cir. Certiorari denied.

No. 10–6483. GARVINS *v.* BURNETT ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–6484. LEBBOS *v.* SCHUETTE. C. A. 9th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 863.

No. 10–6486. CARSON *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 10–6492. GRANGER *v.* SLADE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 466.

No. 10–6493. HINKLE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 10–6495. FRAZIER *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 10–6502. HOWELL *v.* HEATH, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–6505. SNIPES *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 10–6513. MOOR *v.* PALMER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 603 F. 3d 658.

No. 10–6541. KENNEWAY *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 1st Cir. Certiorari denied.

No. 10–6586. KARIMZADA *v.* CUNNINGHAM, SUPERINTENDENT, WOODBOURNE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–6611. BRYANT *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 394 Ill. App. 3d 1101, 985 N. E. 2d 1078.

No. 10–6614. STONE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–6619. KALU *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied.

No. 10–6623. CAMPER *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 346.

No. 10–6655. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 321.

No. 10–6726. PROSSER *v.* HENDRICKS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 710.

No. 10–6749. ARCHER *v.* HEATH, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 619 F. 3d 187.

No. 10–6763. JONES *v.* DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL. C. A. 8th Cir. Certiorari denied.

No. 10–6839. RAINEY *v.* KNOWLES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 605.

No. 10–6857. EL SHABAZZ *v.* COMMITTEE ON CHARACTER AND FITNESS, APPELLATE DIVISION, SUPREME COURT OF NEW YORK, SECOND JUDICIAL DEPARTMENT. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 10–6908. GREGG *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 377 Fed. Appx. 155.

No. 10–6923. WOLFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 479.

No. 10–6932. CAYETANO-CAMACHO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 822.

No. 10–6933. CARR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 713.

No. 10–6938. KNOWLES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 623 F. 3d 381.

No. 10–6946. PEOPLES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–6949. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 449.

No. 10–6951. FEW *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 564.

No. 10–6965. BIGGS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 355 Fed. Appx. 639.

No. 10–6967. WATSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–6970. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 612 F. 3d 417.

No. 10–6971. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 302.

No. 10–6972. McMichael *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 529.

No. 10–6973. Pugh *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 464.

No. 10–6977. Butler *v.* Castillo, Warden. C. A. 6th Cir. Certiorari denied.

No. 10–6981. Golden *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 388 Fed. Appx. 113.

No. 10–6982. Mosquera Gamboa *v.* Norwood, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 613.

No. 10–6983. Gehringer *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 830.

No. 10–6984. Goggans *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 386 Fed. Appx. 171.

No. 10–6995. Arellano-Arellano *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 295.

No. 10–7008. Duhart *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 814.

No. 10–7010. Davis *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 935.

No. 10–7012. Levy *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 385 Fed. Appx. 20.

No. 10–7014. Roe *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 606 F. 3d 180.

No. 10–7015. Reddick *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 288.

No. 10–7019. Eyster *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 386 Fed. Appx. 180.

No. 10–7022. Ledet *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 392.

No. 10–7023. Lawson et al. *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 712.

No. 10–7024. MAHER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–7028. ZAMBRANO RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–7034. VALLIN-JAUREGUI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 745.

No. 10–7035. VERNIER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 325.

No. 10–7038. POWELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 10–7040. MCCASLAND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 622.

No. 10–7045. ACOSTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 620.

No. 10–7046. BING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 896.

No. 10–7052. PACK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 612 F. 3d 341 and 622 F. 3d 383.

No. 10–7053. MERIDYTH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 869.

No. 10–7055. RENDON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 607 F. 3d 982.

No. 10–7056. CELIS ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 608 F. 3d 818.

No. 10–7061. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 918.

No. 10–7064. SANCHEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 612 F. 3d 1.

No. 10–7066. KONSHUK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 618.

No. 10–7067. KALCHSTEIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 350.

No. 10–7070. LITTRELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–7071. MARTINEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 876.

No. 10–7072. GENTLES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 619 F. 3d 75.

No. 10–7073. FORREST *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 611 F. 3d 908.

No. 10–7074. HERNANDEZ-VARGAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 760.

No. 10–7081. LADNER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 365 Fed. Appx. 557.

No. 10–7086. BLADE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–7088. AVINA-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 754.

No. 10–7089. WANKO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–7090. BLOCKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 612 F. 3d 413.

No. 09–1285. PAPPAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 592 F. 3d 799.

No. 09–10488. FRECHETTE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 583 F. 3d 374.

No. 10–204. E. S. H. *v.* K. D. ET AL. Super. Ct. Pa. Motion of Center for Arizona Policy et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 990 A. 2d 57.

No. 10–205. U. S. INFORMATION SYSTEMS, INC., ET AL. *v.* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION NO. 3 ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE

SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 366 Fed. Appx. 290.

No. 10–214. FRATERRIGO *v.* AKAL SECURITY, INC. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 376 Fed. Appx. 40.

No. 10–512. IN RE GRAND JURY PROCEEDINGS. C. A. 10th Cir. Motion of petitioners to unseal petition for writ of certiorari denied. Certiorari denied.

No. 10–6354. JONES *v.* KRAMER, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 391 Fed. Appx. 635.

No. 10–6396. DAVID *v.* FIDELITY INVESTMENTS ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 10–6616. GORDON *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 368 Fed. Appx. 250.

No. 10–6936. XIANG LI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 381 Fed. Appx. 38.

No. 10–6944. AWAD *v.* UNITED STATES; and

No. 10–6974. MOGE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of these petitions. Reported below: 598 F. 3d 76 and 369 Fed. Appx. 242.

No. 10–6954. HENDERSON-EL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 10–6986. HARRISON *v.* INTERNATIONAL BUSINESS MACHINES (IBM) CORP. C. A. 11th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 378 Fed. Appx. 950.

No. 10–7043. BROWN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 374 Fed. Appx. 208.

No. 10–7049. PETTIFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 612 F. 3d 270.

No. 10–7058. AKPAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 383 Fed. Appx. 457.

Rehearing Denied

No. 09–1547. KELLY *v.* OLD DOMINION FREIGHT LINE, INC., *ante*, p. 839;

No. 09–10685. WILLIAMS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 849;

No. 09–11062. MILLS *v.* NEW YORK, *ante*, p. 860;

No. 09–11321. IN RE ALLAH, *ante*, p. 825;

No. 09–11414. MEZZULO *v.* UNITED STATES, *ante*, p. 879;

No. 09–11491. BRYANT *v.* AVERITT EXPRESS, INC., *ante*, p. 883;

No. 09–11505. DOSS *v.* VIRGINIA, *ante*, p. 884;

No. 09–11553. TYSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 887;

No. 10–115. HAMILTON *v.* DAYCO PRODUCTS, LLC, ET AL., *ante*, p. 894;

No. 10–5073. EVERSON *v.* MURPHY, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTION, ET AL., *ante*, p. 902;

No. 10–5162. PINDER *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, *ante*, p. 907; and

No. 10–5322. CASE *v.* DENNEY, WARDEN, *ante*, p. 915. Petitions for rehearing denied.

NOVEMBER 23, 2010

Miscellaneous Orders

No. 09–525. JANUS CAPITAL GROUP, INC., ET AL. *v.* FIRST DERIVATIVE TRADERS. C. A. 4th Cir. [Certiorari granted, 561

U. S. 1024.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 09–1233. SCHWARZENEGGER, GOVERNOR OF CALIFORNIA *v.* PLATA ET AL. D. C. E. D. & D. C. N. D. Cal. [Probable jurisdiction postponed, 560 U. S. 964.] Motion of J. Clark Kelso, Receiver for Medical Healthcare for the California State Prisons, for leave to file a brief as *amicus curiae* out of time granted.

NOVEMBER 29, 2010

Certiorari Granted—Vacated and Remanded

No. 09–466. UNITED STATES *v.* WILLIAMS. C. A. 2d 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 *Abbott* v. *United States*, *ante*, p. 8. JUSTICE SOTOMAYOR and JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition. Reported below: 558 F. 3d 166.

No. 09–1497. UNITED STATES *v.* ALMANY. C. A. 6th 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 *Abbott* v. *United States*, *ante*, p. 8. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition. Reported below: 598 F. 3d 238.

No. 09–11567. OWENS *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Johnson* v. *United States*, 559 U. S. 133 (2010). Reported below: 363 Fed. Appx. 696.

No. 10–323. UNITED STATES *v.* HUCKABEE. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Abbott* v. *United States*, *ante*, p. 8. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 380 Fed. Appx. 101.

No. 10–5019. JACKSON *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted.

Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Carr* v. *United States*, 560 U. S. 438 (2010).

No. 10–5539. MANDEVILLE *v.* SMEAL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Commonwealth* v. *Mandeville*, 11 A. 3d 1009 (Pa. Super. 2010).

Certiorari Dismissed

No. 10–6548. BERRYHILL *v.* EVANS ET AL. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–6591. MINNFEE *v.* TEXAS. Sup. Ct. Tex. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 10–6676. FERQUERON *v.* STRAUB, WARDEN, ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 10–6699. MILLER *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–6739. MILLER *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 10M47. WASHINGTON *v.* EQUIFAX INFORMATION SERVICES LLC; and

No. 10M48. WINDING *v.* KING, SUPERINTENDENT, SOUTH MISSISSIPPI CORRECTIONAL INSTITUTION. Motions to direct the Clerk to file petitions for writ of certiorari out of time denied.

No. 09–10596. MONACELLI *v.* NEW YORK STATE BANKING DEPARTMENT ET AL. C. A. 2d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 802] denied.

No. 09–10819. HUNG HA *v.* BURR ET AL. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 803] denied.

No. 09–10836. FRANKLIN *v.* BWD PROPERTIES 2, LLC, ET AL. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 803] denied.

No. 09–11126. DOE *v.* DUNCAN ET AL. Sup. Ct. S. C. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 823] denied.

No. 09–11223. JANNEH *v.* REGAL ENTERTAINMENT GROUP. C. A. 2d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 804] denied.

No. 10–5171. IN RE HARRIS. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 826] denied.

No. 10–5365. GRANDOIT *v.* GILSON ET AL. C. A. 1st Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 807] denied.

No. 10–5817. JACOBS *v.* HUIBREGTSE, WARDEN. C. A. 7th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 957] denied.

No. 10–5946. ROBINSON *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 824] denied.

No. 10–6316. IN RE BERRYHILL. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 959] denied.

No. 10–6386. IN RE WATTS. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 959] denied.

No. 10–6576. WHITE *v.* GREEN ET AL. C. A. 3d Cir.;
No. 10–6652. HAYDEN ET UX. *v.* D'AMICO ET AL. Super. Ct. N. J., App. Div.;
No. 10–6837. MADDEN *v.* UNITED STATES ET AL. C. A. D. C. Cir.;
No. 10–6870. KELLNER *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist.; and
No. 10–7240. BILLIAN *v.* UNITED STATES. C. A. 7th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 20, 2010, 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. 10–7114. REDZIC *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 20, 2010, 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. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 10–6450. IN RE WILKINSON;
No. 10–7290. IN RE CAGE; and
No. 10–7313. IN RE WRIGHT. Petitions for writs of habeas corpus denied.

No. 10–7189. IN RE MARTINEZ-HERRERA. Petition for writ of mandamus denied.

No. 10–245. IN RE TRAVELERS INDEMNITY CO. ET AL. Petition for writ of mandamus denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 10–6704. IN RE WARREN. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of

mandamus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 10–7112. IN RE RUSTON. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8.

No. 10–6849. IN RE MCGLEACHIE. Petition for writ of prohibition denied.

Certiorari Granted

No. 10–235. CSX TRANSPORTATION, INC. *v.* MCBRIDE. C. A. 7th Cir. Motion of the Association of American Railroads for leave to file a brief as *amicus curiae* granted. Certiorari granted. Reported below: 598 F. 3d 388.

No. 10–238. ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC ET AL. *v.* BENNETT, SECRETARY OF STATE OF ARIZONA, ET AL.; and

No. 10–239. MCCOMISH ET AL. *v.* BENNETT, SECRETARY OF STATE OF ARIZONA, ET AL. C. A. 9th Cir. Certiorari granted, cases consolidated, and a total of one hour is allotted for oral argument. Reported below: 611 F. 3d 510.

No. 10–290. MICROSOFT CORP. *v.* I4I LIMITED PARTNERSHIP ET AL. C. A. Fed. Cir. Certiorari granted. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 598 F. 3d 831.

Certiorari Denied

No. 09–1445. VILLA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 589 F. 3d 1334.

No. 09–1470. CHEESEMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 600 F. 3d 270.

No. 09–1486. FISHER ET AL. *v.* MCCRARY CRESCENT CITY ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 186 Md. App. 86, 972 A. 2d 954.

No. 09–1576. BANNISTER *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 236 Ill. 2d 1, 923 N. E. 2d 244.

No. 09–10654. DREW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 356 Fed. Appx. 258.

No. 09–10667. MCDONEL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 523.

No. 09–11114. PIERRE *v.* UNITED STATES;
No. 09–11542. LOUIS *v.* UNITED STATES; and
No. 10–5520. LOUISUIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–11166. SCOTT ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 365 Fed. Appx. 702.

No. 09–11220. PICKETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 598 F. 3d 231.

No. 09–11268. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 66.

No. 09–11362. BERROA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 374 Fed. Appx. 266.

No. 09–11501. LEGETTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 30.

No. 09–11527. ELLIS *v.* SMITHKLINE BEECHAM CORP., DBA GLAXOSMITHKLINE. C. A. 9th Cir. Certiorari denied. Reported below: 363 Fed. Appx. 481.

No. 09–11572. LAVANG SEE *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 10–18. SMITH *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 68 M. J. 445.

No. 10–86. JOHNSON ET AL. *v.* ESTATE OF GEE, DECEASED, BY SPECIAL ADMINISTRATOR BEEMAN. C. A. 7th Cir. Certiorari denied. Reported below: 365 Fed. Appx. 679.

No. 10–180. COOK COUNTY, ILLINOIS *v.* THOMAS. C. A. 7th Cir. Certiorari denied. Reported below: 604 F. 3d 293.

No. 10–229. Fox *v.* Traverse City Area Public Schools Board of Education et al. C. A. 6th Cir. Certiorari denied. Reported below: 605 F. 3d 345.

No. 10–257. North County Communications Corp. *v.* California Catalog & Technology, dba CTT Telecomms (OCN 573B), et al. C. A. 9th Cir. Certiorari denied. Reported below: 594 F. 3d 1149.

No. 10–268. IAC/InterActiveCorp et al. *v.* Cosmetic Ideas, Inc., dba Sweet Romance Jewelry Manufacturing. C. A. 9th Cir. Certiorari denied. Reported below: 606 F. 3d 612.

No. 10–274. Loya, Personal Representative of the Estate of Loya, Deceased, et al. *v.* Starwood Hotels & Resorts Worldwide, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 583 F. 3d 656.

No. 10–276. Bruner et al. *v.* Hartsfield, Property Appraiser, Leon County, Florida, et al. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 23 So. 3d 192.

No. 10–278. Educational Media Company at Virginia Tech, Inc., et al. *v.* Swecker, Commissioner, Virginia Department of Alcoholic Beverage Control, et al. C. A. 4th Cir. Certiorari denied. Reported below: 602 F. 3d 583.

No. 10–279. Carpenter Technology Corp. *v.* Agere Systems, Inc., et al. C. A. 3d Cir. Certiorari denied. Reported below: 602 F. 3d 204.

No. 10–281. Lanning et al. *v.* Pilcher et al. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 16 So. 3d 294.

No. 10–284. City of Colton, California *v.* American Promotional Events, Inc.-West, et al. C. A. 9th Cir. Certiorari denied. Reported below: 614 F. 3d 998 and 390 Fed. Appx. 749.

No. 10–364. Randolph *v.* Dimension Films et al. C. A. 5th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 449.

No. 10–373. Manning *v.* American Republic Insurance Co. C. A. 8th Cir. Certiorari denied. Reported below: 604 F. 3d 1030.

No. 10–375. Perez *v.* Wells Fargo Bank Minnesota, National Assn. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 70 App. Div. 3d 817, 894 N. Y. S. 2d 509.

No. 10–378. Edwards *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied. Reported below: 75 So. 3d 1228.

No. 10–379. Columbia Venture, LLC *v.* Dewberry & Davis, LLC, et al. C. A. 4th Cir. Certiorari denied. Reported below: 604 F. 3d 824.

No. 10–386. Dunn *v.* Louisiana. Sup. Ct. La. Certiorari denied. Reported below: 41 So. 3d 454.

No. 10–392. Junkert *v.* Massey. C. A. 7th Cir. Certiorari denied. Reported below: 610 F. 3d 364.

No. 10–394. Atwell *v.* Walsh, Superintendent, State Correctional Institution at Dallas, et al. C. A. 3d Cir. Certiorari denied. Reported below: 366 Fed. Appx. 393.

No. 10–395. Mikkilineni *v.* City of Houston, Texas, et al. C. A. 5th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 298.

No. 10–396. Board of Directors of the Truckee-Carson Irrigation District et al. *v.* United States et al. C. A. 9th Cir. Certiorari denied. Reported below: 602 F. 3d 1074.

No. 10–399. Smith *v.* McNeil, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 10–403. Wright, fka Sanger *v.* Brown, Personal Representative of the Estate of Sanger, Deceased. Ct. App. Mich. Certiorari denied.

No. 10–406. Root *v.* Fairfax County, Virginia, et al. C. A. 4th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 432.

No. 10–408. Glacier Electric Cooperative, Inc. *v.* Estate of Sherburne et al. C. A. 9th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 686.

No. 10–410. McCormick et al. *v.* Bechtol et al. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 68 App. Div. 3d 1376, 891 N. Y. S. 2d 188.

No. 10–411. WINDSOR *v.* MAID OF THE MIST CORP. ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–414. JOHNSON *v.* JOHNSON. Sup. Ct. Utah. Certiorari denied. Reported below: 234 P. 3d 1100.

No. 10–415. BRYANT ET AL. *v.* MEDIA RIGHT PRODUCTIONS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 603 F. 3d 135.

No. 10–417. LACKEY *v.* DEPARTMENT OF AGRICULTURE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 741.

No. 10–421. DEUTSCHER TENNIS BUND ET AL. *v.* ATP TOUR, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 610 F. 3d 820.

No. 10–424. BLOME *v.* MONTANA. C. A. 9th Cir. Certiorari denied.

No. 10–427. MILLER *v.* MONUMENTAL LIFE INSURANCE CO. C. A. 10th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 871.

No. 10–430. WERNER ET AL. *v.* PEAK ALARM CO., INC., ET AL. Sup. Ct. Utah. Certiorari denied. Reported below: 243 P. 3d 1221.

No. 10–437. GOODY'S FAMILY CLOTHING, INC., ET AL. *v.* MOUNTAINEER PROPERTY CO. II, LLC, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 610 F. 3d 812.

No. 10–456. TONEY *v.* SWIFT TRANSPORTATION CO., INC. C. A. 6th Cir. Certiorari denied.

No. 10–462. MUNICIPALITY OF AGUADA, PUERTO RICO *v.* ACEVEDO-ORAMA ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 607 F. 3d 261.

No. 10–464. TEXAS DISPOSAL SYSTEMS LANDFILL, INC. *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 406.

No. 10–466. COWELL *v.* GOOD SAMARITAN COMMUNITY HEALTH CARE ET AL. Ct. App. Wash. Certiorari denied. Reported below: 153 Wash. App. 911, 225 P. 3d 294.

No. 10–473. GRUNDSTEIN *v.* SUPREME COURT OF OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 125 Ohio St. 3d 1455, 928 N. E. 2d 454.

No. 10–478. RANA *v.* TOYOTA MOTOR CREDIT CORP. Sup. Ct. Va. Certiorari denied.

No. 10–485. DAVIS *v.* CALIFORNIA BOARD OF CHIROPRACTIC EXAMINERS. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 10–498. NOREN *v.* JEFFERSON PILOT FINANCIAL INSURANCE CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 696.

No. 10–513. BLUNT *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 785 N. W. 2d 909.

No. 10–532. NERAD *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 69 M. J. 138.

No. 10–554. STINN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 379 Fed. Appx. 19.

No. 10–555. PERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 275.

No. 10–5002. FOSTER, AKA JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 1.

No. 10–5003. HERNANDEZ *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 530.

No. 10–5078. GAMBOA-VICTORIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–5106. REDD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 413.

No. 10–5130. PROPST *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 42.

No. 10–5135. WOOTEN *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 783.

No. 10–5149. NOBARI ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 574 F. 3d 1065.

No. 10–5229. ALEXANDER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 602 F. 3d 639.

No. 10–5240. SEIGFRIED *v.* GREER, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 536.

No. 10–5569. SHULMAN *v.* BLUECROSS BLUESHIELD OF SOUTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 384.

No. 10–5590. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 956.

No. 10–5632. DEAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 604 F. 3d 1275.

No. 10–5744. FORREST *v.* SECOND JUDICIAL DISTRICT COURT OF NEVADA, WASHOE COUNTY, ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 126 Nev. 711.

No. 10–5782. GORHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 899.

No. 10–5864. PHAKNIKONE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 605 F. 3d 1099.

No. 10–5926. BOYCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 346.

No. 10–5929. BUCKNER *v.* JONES ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–6010. WALKER *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 126 Nev. 766.

No. 10–6042. BOYD *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 592 F. 3d 1274.

No. 10–6043. BELL *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 347 Fed. Appx. 73.

No. 10–6060. DUNBAR *v.* HAWAII. Int. Ct. App. Haw. Certiorari denied.

No. 10–6215. MCCRAY *v.* CHRYSLER LLC. C. A. 8th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 539.

No. 10–6244. BOYD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 608 F. 3d 331.

No. 10–6517. HANSEN *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 37 So. 3d 852.

No. 10–6519. HARMON *v.* MARSHAL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 632.

No. 10–6522. FULLER *v.* KELLY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 358 Fed. Appx. 438.

No. 10–6529. IRVIN *v.* TENNESSEE ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–6552. BROOKS *v.* SMITH, MAYOR, CITY OF MERIDIAN, MISSISSIPPI, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 397.

No. 10–6555. STEWART *v.* WOLFENBARGER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 595 F. 3d 647.

No. 10–6556. WEBB *v.* ONIZUKA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 608.

No. 10–6558. WHITLOW *v.* CITY OF ROANOKE, VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 10–6559. WHITE *v.* FAIRFAX COUNTY, VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 466.

No. 10–6563. DORSEY *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 318 S. W. 3d 648.

No. 10–6567. LEWIS *v.* VAIL, SECRETARY, WASHINGTON DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–6568. LEWIS *v.* KING COUNTY, WASHINGTON. C. A. 9th Cir. Certiorari denied.

No. 10–6570. MULDER *v.* WILLIAMS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 666.

No. 10–6577. RAVER *v.* BRUNSMAN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 558.

No. 10–6583. MEDINA *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–6585. JEFFRIES *v.* HEDGPETH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–6587. BOWLES *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 608 F. 3d 1313.

No. 10–6590. MEEKS *v.* TENNESSEE DEPARTMENT OF CORRECTION ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–6600. STRONG *v.* NEW YORK CITY DEPARTMENT OF EDUCATION. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 62 App. Div. 3d 592, 880 N. Y. S. 2d 39.

No. 10–6601. MCKINLEY *v.* OREGON. Ct. App. Ore. Certiorari denied.

No. 10–6605. GUZMAN-SOTO *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 328.

No. 10–6609. WERDLOW *v.* CARUSO ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–6612. BRYANT *v.* FAYRAM, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 10–6617. JONES *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE ET AL. C. A. 5th Cir. Certiorari denied.

No. 10–6624. DE MOSS *v.* COTHRON ET AL. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 10–6626. BROADUS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 990 A. 2d 37.

No. 10–6627. BLAKELY *v.* TATARSKY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 343.

No. 10–6644. HAIYAN LIN *v.* REED. Ct. App. S. C. Certiorari denied.

No. 10–6657. THARPE *v.* UPTON, WARDEN. Super. Ct. Butts County, Ga. Certiorari denied.

No. 10–6660. AYALA *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 10–6663. PARKS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 39 So. 3d 1269.

No. 10–6670. OPREA *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 10–6672. INIGUEZ *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 10–6673. GRIGGS *v.* MISSOURI ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 595.

No. 10–6674. FULLER *v.* BAZZLE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 334.

No. 10–6677. HICKINGBOTTOM *v.* FINNAN, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 10–6678. FRIEND *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 10–6680. HUMPHREY *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–6681. GRIFFIN ET AL. *v.* MILWAUKEE COUNTY, WISCONSIN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 761.

No. 10–6685. GIPSON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 10–6688. WALLS *v.* DOSCH. C. A. 7th Cir. Certiorari denied.

No. 10–6696. LAIRD *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 605 Pa. 137, 988 A. 2d 618.

No. 10–6698. LEE *v.* WYATT ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 697.

No. 10–6702. BROWN *v.* PARKING AUTHORITY OF THE CITY OF JERSEY CITY ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 10–6703. BRIGGS *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–6709. WHITTED *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 71 App. Div. 3d 1066, 896 N. Y. S. 2d 686.

No. 10–6710. TORREZ *v.* MCKEE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–6712. TAYLOR *v.* HINKLE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 387.

No. 10–6713. TAMEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 10–6715. WARNER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 10–6716. BAKER *v.* LIADACKER ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–6720. KAGUYUTAN *v.* ROZUM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–6727. ADDO *v.* HOLDER, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 355 Fed. Appx. 672.

No. 10–6730. CHAPMAN *v.* WAL-MART CORP. C. A. 8th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 691.

No. 10–6731. CROUCH *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 77 So. 3d 625.

No. 10–6732. K. R. J. *v.* WAYNE COUNTY JUVENILE OFFICE. Ct. App. Mo., Southern Dist. Certiorari denied.

No. 10–6736. LANDRY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–6745. Baker *v.* California. C. A. 9th Cir. Certiorari denied.

No. 10–6748. Aponte *v.* McNeil, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 10–6766. Timmons *v.* Ryan, Director, Arizona Department of Corrections, et al. C. A. 9th Cir. Certiorari denied.

No. 10–6767. Bonanno *v.* Thomas et al. C. A. 6th Cir. Certiorari denied.

No. 10–6768. Lau *v.* Florida. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 38 So. 3d 153.

No. 10–6775. Wright *v.* Stine, Superintendent, New Castle Correctional Facility. C. A. 7th Cir. Certiorari denied.

No. 10–6782. Rogers *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 10–6786. Nash *v.* Lee, Superintendent, Green Haven Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 10–6794. Chery *v.* Holder, Attorney General. C. A. 11th Cir. Certiorari denied.

No. 10–6801. Caroselli, aka Horan *v.* New York. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 10–6816. Mothershed *v.* Oklahoma ex rel. Oklahoma Bar Assn. C. A. 10th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 779.

No. 10–6818. Mallard *v.* Potenza et al. C. A. 2d Cir. Certiorari denied. Reported below: 376 Fed. Appx. 132.

No. 10–6819. Koenig *v.* North Dakota. Sup. Ct. N. D. Certiorari denied. Reported below: 789 N. W. 2d 731.

No. 10–6842. Blackwood *v.* McNeil, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 10–6845. MONTGOMERY *v.* BODISON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 341.

No. 10–6871. KELLNER *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 10–6891. BOYD *v.* HAYNES, SUPERINTENDENT, WARREN CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 259.

No. 10–6893. ASBURY *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 288.

No. 10–6914. FLOWERS *v.* LEE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–6916. FREEMAN *v.* STEELE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 10–6918. GORDON *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–6921. THOMAS *v.* SCRIBNER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 726.

No. 10–6962. JAMES *v.* FIESTA FOOD MART, INC. C. A. 5th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 220.

No. 10–6968. TYSON *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 10–6975. LABRAKE *v.* STOWITZKY ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–6976. PARKS *v.* LUDWICK, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–6979. D. J. G. *v.* WASHINGTON COUNTY CHILDREN AND YOUTH SERVICES. Sup. Ct. Pa. Certiorari denied. Reported below: 606 Pa. 677, 996 A. 2d 1068.

No. 10–6990. RESENDIZ *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 10–6992. TICE *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 10–7006. MILLER *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 508.

No. 10–7025. JACKSON *v.* WORKMAN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 724.

No. 10–7036. PIPES *v.* BALLARD, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 315.

No. 10–7047. MONTOYA *v.* HARTLEY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 817.

No. 10–7050. RAMIREZ-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–7059. CESARIO *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 71 App. Div. 3d 587, 900 N. Y. S. 2d 4.

No. 10–7063. SANAVIA-ARELLANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 770.

No. 10–7065. ROMERO *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 233 P. 3d 951.

No. 10–7080. PENALOZA-BANOS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 340.

No. 10–7084. SANJURJO-NUNEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 613 F. 3d 18.

No. 10–7096. SPARKMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 413.

No. 10–7100. ENCARNACION-MONTERO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–7101. DANIELS *v.* EAGLETON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 341.

No. 10–7102. MAYNARD *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 615 F. 3d 544.

No. 10–7108. ARTIC *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 327 Wis. 2d 392, 786 N. W. 2d 430.

No. 10–7110. SANCHEZ-CHAPARRO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 639.

No. 10–7115. RAMIREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 807.

No. 10–7116. STUTTS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 317.

No. 10–7119. DOUGLAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 10–7120. DUKES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 270.

No. 10–7123. PEREZ-GODINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 633.

No. 10–7124. MOLINA-URIOSTEGUI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 603.

No. 10–7125. MCCARTY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 612 F. 3d 1020.

No. 10–7126. MACIEL-ALCALA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 612 F. 3d 1092.

No. 10–7127. LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 908.

No. 10–7130. BOYD *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 998 A. 2d 866.

No. 10–7138. CLARK *v.* CASTILLO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–7143. CARTER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 10–7145. GAINES *v.* MIDDLEBROOKS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 812.

No. 10–7152. HILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 10–7159. TOVAR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 387 Fed. Appx. 210.

No. 10–7160. TOME *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 611 F. 3d 1371.

No. 10–7167. RODRIGUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 387 Fed. Appx. 47.

No. 10–7168. RIVAS-CHAVARRIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 685.

No. 10–7170. MORGUTIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 703.

No. 10–7171. MORRISON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–7172. CARACAPPA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 614 F. 3d 30.

No. 10–7182. RESTREPO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 10–7196. ROSS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–7199. MEDLEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 386 Fed. Appx. 12.

No. 10–7202. WALKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 615 F. 3d 728.

No. 10–7203. RICO-CARRILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 631.

No. 10–7204. SAGOES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 911.

No. 10–7206. HERNANDEZ-OREGEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 260.

No. 10–7207. GONZALES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 866.

No. 10–7209. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 231.

No. 10–7212. HOLMES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 607 F. 3d 332.

No. 10–7214. BUNCH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 996.

No. 10–7215. YOUNG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 860.

No. 10–7216. CALDWELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 671.

No. 10–7219. CARBAJAL-MORENO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 505.

No. 10–7226. AGUILAR-MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 302.

No. 10–7229. ROEL-VILLAGOMEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 369.

No. 10–7234. BOWIE-MYLES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–7235. ERBO, AKA GARCIA-VELEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 10–7238. SINGH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 671.

No. 10–7244. VAN PHONG NGUYEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 608 F. 3d 368.

No. 10–7245. NANCE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 611 F. 3d 409.

No. 10–7248. MARSHALL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–7249. ALLEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 603 F. 3d 1202.

No. 10–7250. BALLEZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 613 F. 3d 432.

No. 10–7255. CHISOLM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 43.

No. 10–7256. DURITY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 998 A. 2d 866.

No. 10–7263. BRANDFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 310.

No. 10–7265. RAMOS-ROMERO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–7276. CISNEROS-GUTIERREZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 598 F. 3d 997.

No. 10–7277. CALLIHAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 290.

No. 10–7278. LARSEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 615 F. 3d 780.

No. 10–7281. RASHID *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 10–7289. SELLERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 251.

No. 10–7294. LONGS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 613 F. 3d 1174.

No. 10–7296. VALENCIA-TRUJILLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 936.

No. 10–7298. ZEPETA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 907.

No. 10–7299. WALDRON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 283.

No. 10–7310. BERNARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 801.

No. 10–7317. ALVARADO-FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 735.

No. 08–9560. MCSWAIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 553 F. 3d 519.

No. 09–5248. LEE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 312 Fed. Appx. 844.

No. 09–5844. LONDON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 568 F. 3d 553.

No. 09–5949. PULIDO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 566 F. 3d 52.

No. 09–6865. MARQUEZ-HUAZO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 337 Fed. Appx. 652.

No. 09–7127. VARGAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 339 Fed. Appx. 428.

No. 09–7131. ACOSTA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 333 Fed. Appx. 159.

No. 09–7433. GARTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 336 Fed. Appx. 804.

No. 09–7984. WILSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 347 Fed. Appx. 778.

No. 09–8536. SEGARRA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 382 F. 3d 1269.

No. 09–8561. SCHNEDLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 09–8567. SQUIREWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 346 Fed. Appx. 959.

No. 09–8869. MATLOCK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 09–8888. TATE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 586 F. 3d 936.

No. 09–8919. AYALA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 345 Fed. Appx. 421.

No. 09–9029. CEDENO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 356 Fed. Appx. 321.

No. 09–9115. HAYNES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 582 F. 3d 686.

No. 09–9754. DANIELS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 345 Fed. Appx. 514.

No. 09–9839. EDGECOMB *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 359 Fed. Appx. 84.

No. 09–10178. ROBERTSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 09–10189. CORDERO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 360 Fed. Appx. 33.

No. 09–10205. MITTEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 592 F. 3d 767.

No. 09–10261. BASLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consid-

eration or decision of this petition. Reported below: 357 Fed. Appx. 455.

No. 10–94. HARPER *v.* MAVERICK RECORDING CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 598 F. 3d 193.

JUSTICE ALITO, dissenting.

I would grant the petition to consider the question whether 17 U. S. C. § 402(d) applies when a person is found to have engaged in copyright infringement by downloading digital music files. Under § 504(c)(1), an infringer is ordinarily liable for statutory damages of "not less than $750 or more than $30,000" per work infringed. In a case involving an "innocent infringer," however, the minimum statutory damages that must be awarded are reduced. Specifically, if the infringer proves that he or she "was not aware and had no reason to believe that his or her acts constituted an infringement," then the minimum statutory damages per violation are $200. § 504(c)(2).

In this case, a 16-year-old was found to have infringed respondents' copyrights by downloading digital music files. The District Court held that there were genuine issues of fact on whether she qualified as an innocent infringer, but the Court of Appeals reversed, concluding that another provision, § 402(d), foreclosed the innocent-infringer defense as a matter of law. Section 402(d) provides, with an exception not relevant here, that if a prescribed notice of copyright "appears on the published *phonorecord* or *phonorecords* to which a defendant . . . had access, then no weight shall be given to . . . a defendant's interposition of a defense based on innocent infringement in mitigation of actual or statutory damages." (Emphasis added.) The term "phonorecords" is defined as including only "material objects."[1]

There is a strong argument that § 402(d) does not apply in a case involving the downloading of digital music files. This provision was adopted in 1988, well before digital music files became available on the Internet. See Berne Convention Implementation

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[1] Specifically, 17 U. S. C. § 101 provides:

"'Phonorecords' are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term 'phonorecords' includes the material object in which the sounds are first fixed."

Act, § 7, 102 Stat. 2857. The theory of § 402(d) appears to be that a person who copies music from a material object bearing the prescribed copyright notice is deemed to have "reason to believe that his or her acts constituted an infringement," § 504(c)(2). But a person who downloads a digital music file generally does not see any material object bearing a copyright notice, and accordingly there is force to the argument that § 402(d) does not apply. In such a case, the question would simply be whether the infringer "was . . . aware and had . . . reason to believe," § 504(c)(2), that the downloading was illegal.

The Court of Appeals in the present case adopted a very different interpretation of § 402(d). The court held that the innocent-infringer defense was "foreclose[d] . . . as a matter of law" because (1) respondents "provided proper notice on each of the published phonorecords from which the audio files were taken" before they were made available on a file-sharing network and (2) petitioner relied solely on § 504(c)(2) and did not dispute her "access" to the phonorecords under § 402(d). 598 F. 3d 193, 198–199 (CA5 2010). Under this interpretation, it is not necessary that the infringer actually see a material object with the copyright notice. It is enough that the infringer could have ascertained that the work was copyrighted.[2] The Fifth Circuit did not specify what sort of inquiry a person who downloads digital music files is required to make in order to preserve the § 402(d) defense, but it may be that the court had in mind such things as research on the Internet or a visit to a local store in search of a compact disc containing the songs in question. In any event, the Court of Appeals rejected petitioner's argument that her youth and lack of legal sophistication were relevant considerations—a conclusion that would not necessarily be correct if the determinative question were simply whether petitioner had "reason to believe" that her actions were illegal. Although "reason to believe" is an objective standard, it is by no means clear that certain objective characteristics of the infringer—such as age—may not be taken into account.

The Fifth Circuit's decision may or may not set out a sensible rule for the post-"phonorecord" age, but it is at least questionable whether the decision correctly interprets § 402(d). Although there are now no conflicting Circuit decisions, I would grant re-

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[2] In *BMG Music* v. *Gonzalez*, 430 F. 3d 888 (2005), the Seventh Circuit adopted a similar interpretation of § 402(d).

view in this case because not many cases presenting this issue are likely to reach the Courts of Appeals. The Court has decided not to grant review at this time, but if a conflict in the Circuits develops in the future, the question presented, in my judgment, is important enough to warrant review.

No. 10–156. SCROGGY, WARDEN *v.* GALL. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 603 F. 3d 346.

No. 10–196. FRIENDS OF THE EVERGLADES ET AL. *v.* SOUTH FLORIDA WATER MANAGEMENT DISTRICT ET AL.; and

No. 10–252. MICCOSUKEE TRIBE OF INDIANS OF FLORIDA *v.* SOUTH FLORIDA WATER MANAGEMENT DISTRICT ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of these petitions. Reported below: 570 F. 3d 1210.

No. 10–244. TRAVELERS INDEMNITY CO. ET AL. *v.* CHUBB INDEMNITY INSURANCE CO. ET AL. C. A. 2d Cir. Motion of Brady C. Williamson for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion and this petition. Reported below: 600 F. 3d 135.

No. 10–288. HALL, WARDEN *v.* WARD. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 592 F. 3d 1144.

No. 10–300. TIFFANY (NJ) INC. ET AL. *v.* EBAY INC. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 600 F. 3d 93.

No. 10–389. GUEVARA *v.* REPUBLIC OF PERU ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 608 F. 3d 1297.

No. 10–416. MONTEJO *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 40 So. 3d 952.

No. 10–446. KERCHNER ET AL. *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 3d Cir. Motion of Western Center

for Journalism for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 612 F. 3d 204.

No. 10–560. SCHULZ *v.* FEDERAL RESERVE SYSTEM ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 370 Fed. Appx. 201.

No. 10–5196. GAMACHE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 48 Cal. 4th 347, 227 P. 3d 342.

Statement of JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG, JUSTICE BREYER, and JUSTICE KAGAN join, respecting the denial of the petition for writ of certiorari.

After a jury convicted Richard Gamache of first-degree murder and sentenced him to death, Gamache's counsel and the trial court learned that during deliberations, court personnel inadvertently gave the jury a videotape that had not been admitted into evidence. During its deliberations, the jury watched the video twice in full and a third time in part before reaching its verdict. The video showed a police interview of Gamache and his codefendants on the day of the murder in which Gamache confessed to the crime in graphic terms. The video showed Gamache explaining, for example, that given the opportunity, he would have shot police officers. 48 Cal. 4th 347, 402, 227 P. 3d 342, 390 (2010) (quoting Gamache on the video as stating, "'If I figured, if I had any idea I was about to be arrested, I'd have started shooting. . . . See, I figure if I'm going to die, . . . I'm going to take one or two with me'").

On appeal, the California Supreme Court held that the jury's access to the tape was indisputably error, citing our opinion in *Turner* v. *Louisiana*, 379 U. S. 466 (1965). 48 Cal. 4th, at 396, 227 P. 3d, at 386 ("'The requirement that a jury's verdict "must be based upon the evidence developed at the trial" goes to the fundamental integrity of all that is embraced in the constitutional concept of trial by jury'" (quoting *Turner*, 379 U. S., at 472)); see also *id.*, at 472–473 ("In the constitutional sense, trial by jury in a criminal case necessarily implies at the very least that the 'evidence developed' against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant's right of confrontation, of cross-examination, and of counsel"). The California Supreme Court

found that the error was trial error and not the result of any juror misconduct. Accordingly, it did not apply a presumption of prejudice, 48 Cal. 4th, at 399, 227 P. 3d, at 388, and proceeded to conduct a harmless-error analysis.

Under our decision in *Chapman* v. *California*, 386 U. S. 18, 24 (1967), the prosecution must carry the burden of showing that a constitutional trial error is harmless beyond a reasonable doubt. See also *Deck* v. *Missouri*, 544 U. S. 622, 635 (2005) ("[W]here a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury . . . [t]he State must prove 'beyond a reasonable doubt that the [shackling] error complained of did not contribute to the verdict obtained'" (quoting *Chapman*, 386 U. S., at 24)); *United States* v. *Dominguez Benitez*, 542 U. S. 74, 81, n. 7 (2004) ("When the Government has the burden of addressing prejudice, as in excusing preserved error as harmless on direct review of the criminal conviction, it is not enough to negate an effect on the outcome of the case" (citing *Chapman*, 386 U. S., at 24)); *Arizona* v. *Fulminante*, 499 U. S. 279, 295–296 (1991) ("The Court has the power to review the record *de novo* in order to determine an error's harmlessness. In so doing, it must be determined whether the State has met its burden of demonstrating that the" error "did not contribute to [defendant's] conviction" (citations omitted)).

The California Supreme Court, however, stated, "[I]n the absence of misconduct, the burden remains with the *defendant* to demonstrate prejudice under the usual standard for ordinary trial error." 48 Cal. 4th, at 397, 227 P. 3d, at 387 (emphasis added). It is not clear what the court intended in allocating the burden to the defendant to demonstrate prejudice, but if it meant to convey that the defendant bore the burden of persuasion, that would contravene *Chapman*. See 386 U. S., at 24 (noting that the "original common-law harmless-error rule put the burden on the beneficiary of the error either to prove that there was no injury or to suffer a reversal of his erroneously obtained judgment"); cf. *O'Neal* v. *McAninch*, 513 U. S. 432, 438–439 (1995) (describing *Chapman* as "placing the risk of doubt" about harmlessness on the State).

However, it appears from the court's recitation of the evidence and its analysis that the court found that the error at issue was harmless, regardless of the burden allocation. See 48 Cal. 4th, at 399, 227 P. 3d, at 388 ("[T]here is no reasonable possibility the

outcome would have been different absent the error"). I therefore do not disagree with the denial of certiorari.

I nonetheless write respecting the denial of certiorari because the allocation of the burden of proving harmlessness can be outcome determinative in some cases. See *Fulminante*, 499 U. S., at 296 ("Five of us are of the view that the State has not carried its burden and accordingly affirm the judgment of the court below reversing respondent's conviction"); see, *e. g.*, *State* v. *Ball*, 2004 S. D. 9, 675 N. W. 2d 192 (holding that the State had not met its burden of showing that prosecutor's improper references in closing argument to defendant's silence were harmless beyond a reasonable doubt); *State* v. *Jorgensen*, 2008 WI 60, 310 Wis. 2d 138, 754 N. W. 2d 77 (holding that the State had not met its burden of showing that Confrontation Clause violation was harmless beyond a reasonable doubt). With all that is at stake in capital cases, cf. *Kyles* v. *Whitley*, 514 U. S. 419, 422 (1995) ("'[O]ur duty to search for constitutional error with painstaking care is never more exacting than it is in a capital case'" (quoting *Burger* v. *Kemp*, 483 U. S. 776, 785 (1987))), in future cases the California courts should take care to ensure that their burden allocation conforms to the commands of *Chapman*. In this case, however, because it seems that the burden allocation would not have altered the court's prejudice analysis, I do not disagree with the denial of certiorari.

No. 10–5328. TILLMAN *v.* NEW LINE CINEMA ET AL. C. A. 7th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 374 Fed. Appx. 664.

No. 10–5571. JONES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 375 Fed. Appx. 95.

No. 10–7129. BALLARD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 390 Fed. Appx. 6.

No. 10–7163. DEWAR, AKA DAWAR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR and JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 375 Fed. Appx. 90.

No. 10–7175. BANKOFF *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 613 F. 3d 358.

No. 10–7231. NOWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 10–7268. SHEPHERD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 372 Fed. Appx. 21.

Rehearing Denied

No. 09–1332. SAIN *v.* SNYDER ET AL., *ante*, p. 830;

No. 09–1464. VENEZIA *v.* WILLIAM PENN SCHOOL DISTRICT, *ante*, p. 835;

No. 09–1506. JONES *v.* ANHEUSER BUSCH, *ante*, p. 837;

No. 09–1558. YOUNG *v.* CARGILL, *ante*, p. 840;

No. 09–1566. WALSH-FAUCHER *v.* COMMISSIONER OF INTERNAL REVENUE, *ante*, p. 841;

No. 09–1579. SPEAR *v.* GENERAL MOTORS CORP., *ante*, p. 841;

No. 09–8375. SCHULTZ *v.* HALPIN ET AL., *ante*, p. 841;

No. 09–9986. JAIYEOLA *v.* CARRIER CORP., *ante*, p. 843;

No. 09–10533. IN RE COX, *ante*, p. 826;

No. 09–10544. YSAIS *v.* NEW MEXICO ET AL., *ante*, p. 846;

No. 09–10601. DAVIS *v.* BOOKER, WARDEN, *ante*, p. 847;

No. 09–10615. BAKER *v.* KENTUCKY, *ante*, p. 847;

No. 09–10683. DACOSTA *v.* UNION LOCAL 306 OF THE MOTION PICTURE PROJECTIONISTS, OPERATORS, VIDEO TECHNICIANS, THEATRICAL EMPLOYEES & ALLIED CRAFTS, ET AL., *ante*, p. 849;

No. 09–10724. IN RE DANIEL, *ante*, p. 826;

No. 09–10742. JOHNSON *v.* LIVINGSTON, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL., *ante*, p. 851;

No. 09–10778. STUDLI *v.* CRIMONE ET AL., *ante*, p. 851;

No. 09–10817. FORD *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante*, p. 853;

No. 09–10893. DENNIS *v.* CITY OF AVENTURA, FLORIDA, ET AL., *ante*, p. 855;

No. 09–10950. ADIR *v.* CITY OF LOS ANGELES, CALIFORNIA, ET AL., *ante*, p. 857;

No. 09–10959. DUTCH *v.* BALICKI, ADMINISTRATOR, SOUTH WOODS STATE PRISON, ET AL., *ante*, p. 857;

No. 09–10982. DOUGLAS *v.* MICHIGAN, *ante*, p. 858;

No. 09–11016. MEHRA *v.* CONTINENTAL CASUALTY CO. ET AL., and MEHRA *v.* SAEIAN ET AL., *ante*, p. 859;

No. 09–11021. HONESTO *v.* CALIFORNIA ET AL., *ante*, p. 859;

No. 09–11089. WILLIAMS *v.* CROUCH ET AL., *ante*, p. 861;

No. 09–11092. AVANT *v.* LOS ANGELES CENTRAL COMMUNITY POLICE STATION ET AL., *ante*, p. 861;

No. 09–11111. MONIZ *v.* MCKEE, WARDEN, *ante*, p. 862;

No. 09–11137. MCKINNEDY *v.* SOUTH CAROLINA, *ante*, p. 863;

No. 09–11145. BLAKELY *v.* SNIVELY ET AL., *ante*, p. 864;

No. 09–11164. PEARSON *v.* BRACE ET AL., *ante*, p. 865;

No. 09–11182. ANDERSON *v.* CASTILLO, WARDEN, *ante*, p. 866;

No. 09–11198. JACKSON *v.* RUSSO, SUPERINTENDENT, SOUZA-BARANOWSKI CORRECTIONAL CENTER, *ante*, p. 867;

No. 09–11225. YSAIS *v.* RICHARDSON ET AL., *ante*, p. 868;

No. 09–11251. APPUKKUTTA *v.* NEW YORK, *ante*, p. 870;

No. 09–11256. DILLON *v.* SAN FRANCISCO VETERANS ADMINISTRATION, FORT MILEY HOSPITAL, *ante*, p. 870;

No. 09–11288. FULTON *v.* UNITED STATES, *ante*, p. 872;

No. 09–11306. JOHNSON *v.* OBAMA, PRESIDENT OF THE UNITED STATES, *ante*, p. 873;

No. 09–11336. BASSO *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 874;

No. 09–11371. BREWER *v.* VIRGINIA, *ante*, p. 876;

No. 09–11377. WILLIAMS *v.* WHITE, WARDEN, ET AL. (two judgments), *ante*, p. 876;

No. 09–11387. WOODARD *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 877;

No. 09–11430. WALKER *v.* JARRIEL, WARDEN, *ante*, p. 880;

No. 09–11526. CHASE *v.* MAYNARD, SECRETARY, MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES, ET AL., *ante*, p. 886;

No. 10–25. MACON *v.* OHIO DEPARTMENT OF JOB AND FAMILY SERVICES, *ante*, p. 890;

No. 10–32. CEMINCHUK *v.* OBAMA, PRESIDENT OF THE UNITED STATES, *ante*, p. 890;

No. 10–65. HARPER *v.* UNITED STATES, *ante*, p. 892;

No. 10–112. VADDE *v.* BANK OF AMERICA, *ante*, p. 894;

No. 10–138. MADEJA *v.* PENNSYLVANIA, *ante*, p. 895;

No. 10–139. CHRISTMAN *v.* UTICA NATIONAL INSURANCE GROUP, INC., *ante*, p. 895;

No. 10–197. BAUER *v.* HOLDER, ATTORNEY GENERAL, *ante*, p. 897;

No. 10–307. MELENDREZ *v.* BIERY, JUDGE, UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, ET AL., *ante*, p. 964;

No. 10–5089. VANNAUSDLE *v.* PIERCE COUNTY DEPARTMENT OF ASSIGNED COUNSEL ET AL., *ante*, p. 903;

No. 10–5116. CADY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 904;

No. 10–5126. LARSON *v.* UNITED STATES, *ante*, p. 905;

No. 10–5170. CALDERON-LOPEZ *v.* UNITED STATES, *ante*, p. 907;

No. 10–5173. KIM *v.* UNITED STATES, *ante*, p. 907;

No. 10–5233. AHMADZAI *v.* UNITED STATES, *ante*, p. 953;

No. 10–5252. IN RE GAFFNEY, *ante*, p. 825;

No. 10–5265. GRAHAM *v.* MISSOURI, *ante*, p. 912;

No. 10–5389. MACKENZIE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 919;

No. 10–5441. LANE-EL *v.* SEVIER, SUPERINTENDENT, MIAMI CORRECTIONAL FACILITY, *ante*, p. 922;

No. 10–5462. TEAGUE *v.* NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, *ante*, p. 923;

No. 10–5561. BEY *v.* I. B. E. W. LOCAL UNION #3 UNION REPRESENTATIVES ET AL., *ante*, p. 929;

No. 10–5594. TURNER *v.* EDMONDS, *ante*, p. 930;

No. 10–5637. BUENROSTRO *v.* DEPARTMENT OF JUSTICE, *ante*, p. 932;

No. 10–5643. CALDERON *v.* EVERGREEN OWNERS, INC., ET AL., *ante*, p. 933;

No. 10–5667. RUHBAYAN *v.* UNITED STATES, *ante*, p. 934;

No. 10–5780. COHEN *v.* HUNT, WARDEN, *ante*, p. 937;

No. 10–5791. GEORGIEVA *v.* BARNES & NOBLE, *ante*, p. 967;

No. 10–5796. COOK *v.* MICHIGAN DEPARTMENT OF CORRECTIONS, *ante*, p. 938;

No. 10–5847. ROWELL *v.* MARTINO ET AL., *ante*, p. 968;

No. 10–5880. COSTA *v.* MISSOURI, *ante*, p. 983;

No. 10–5901. WILLIAMS *v.* FREE ET AL., *ante*, p. 983; and

No. 10–6003. DAVIS *v.* UNITED STATES, *ante*, p. 943. Petitions for rehearing denied.

No. 09–1433. SCHAGHTICOKE TRIBAL NATION *v.* SALAZAR, SECRETARY OF THE INTERIOR, ET AL., *ante*, p. 947;

No. 09–10706. SAMUEL *v.* BELLEVUE HOSPITAL CENTER, *ante*, p. 950; and

No. 09–10738. DICKERSON *v.* UNITED WAY OF NEW YORK CITY, *ante*, p. 950. Petitions for rehearing denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of these petitions.

No. 10–80. WEISS *v.* ASSICURAZIONI GENERALI, S. P. A., ET AL., *ante*, p. 952. Petition for rehearing denied. JUSTICE SOTOMAYOR and JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 10–5349. SPENCER *v.* UNITED PARCEL SERVICE, INC., *ante*, p. 954. Petition for rehearing denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

DECEMBER 6, 2010

Certiorari Dismissed

No. 10–6751. JACOBS *v.* WISCONSIN. Ct. App. Wis. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–6765. WILLIAMS *v.* CLINE ET AL. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. D–2522. IN RE DISCIPLINE OF CALLIHAN. It having been reported that Herbert Aldon Callihan, Jr., of Bethesda, Md., has died, the rule to show cause, issued on October 4, 2010 [*ante*, p. 811], is discharged.

No. 10M42. WANZER *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, ET AL.;

No. 10M43. WANZER *v.* HERNANDEZ ET AL.;

No. 10M50. SETHUNYA *v.* WEBER STATE UNIVERSITY ET AL.;
No. 10M52. PARTHEMORE *v.* CALIFORNIA; and
No. 10M53. DYER *v.* STOVALL, WARDEN. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 10M49. RHOADES ET AL. *v.* IDAHO. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 10M51. MOHAMMED ET AL. *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. Motion for leave to file petition for writ of certiorari under seal granted. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 09–987. ARIZONA CHRISTIAN SCHOOL TUITION ORGANIZATION *v.* WINN ET AL.; and
No. 09–991. GARRIOTT, DIRECTOR, ARIZONA DEPARTMENT OF REVENUE *v.* WINN ET AL. C. A. 9th Cir. [Certiorari granted, 560 U. S. 924.] Motion of petitioner Arizona Christian School Tuition Organization to file a supplemental brief after argument granted.

No. 09–1156. MATRIXX INITIATIVES, INC., ET AL. *v.* SIRACUSANO ET AL. C. A. 9th Cir. [Certiorari granted, 560 U. S. 964.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 10–5624. MITCHELL *v.* CASTILLO, WARDEN. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 807] denied.

No. 10–6799. HAMMOND *v.* TUFAMERICA, INC. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 27, 2010, 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. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion.

No. 10–606. IN RE HEIMERMANN; and
No. 10–7450. IN RE SHAARBAY. Petitions for writs of habeas corpus denied.

Certiorari Granted

No. 10–174. American Electric Power Co., Inc., et al. *v.* Connecticut et al. C. A. 2d Cir. Certiorari granted. Justice Sotomayor took no part in the consideration or decision of this petition. Reported below: 582 F. 3d 309.

No. 10–277. Wal-Mart Stores, Inc. *v.* Dukes et al. C. A. 9th Cir. Certiorari granted limited to Question 1 presented by the petition. In addition to Question 1, the parties are directed to brief and argue the following question: "Whether the class certification ordered under Rule 23(b)(2) was consistent with Rule 23(a)." Reported below: 603 F. 3d 571.

Certiorari Denied

No. 09–11245. Galan Del Carmen, aka Lopez Hernandez, aka Gala, aka Galan Delcarmen, aka Galan-Del Carmen, aka Carmen Galan, aka Hernandez-Lopez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 615.

No. 10–150. Webster *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 605 F. 3d 256.

No. 10–220. Stephen et al. *v.* Hanley et al. C. A. 2d Cir. Certiorari denied. Reported below: 376 Fed. Appx. 158.

No. 10–438. Good et vir *v.* City of Sunbury, Pennsylvania. C. A. 3d Cir. Certiorari denied. Reported below: 352 Fed. Appx. 688.

No. 10–440. Kramer *v.* Zoning Board of Appeals of Somerville, Massachusetts, et al. App. Ct. Mass. Certiorari denied. Reported below: 76 Mass. App. 1126, 925 N. E. 2d 572.

No. 10–442. McKinley *v.* White. C. A. 8th Cir. Certiorari denied. Reported below: 605 F. 3d 525.

No. 10–445. Florance *v.* Texas (two judgments). Ct. App. Tex., 5th Dist. Certiorari denied.

No. 10–448. E–L Enterprises, Inc. *v.* Milwaukee Metropolitan Sewerage District. Sup. Ct. Wis. Certiorari denied. Reported below: 326 Wis. 2d 82, 785 N. W. 2d 409.

No. 10–450. TIG Specialty Insurance Co. *v.* United States District Court for the District of Oregon. C. A. 9th Cir. Certiorari denied.

No. 10–455. WALSH *v.* KRANTZ ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 386 Fed. Appx. 334.

No. 10–519. IRWIN *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 785 N. W. 2d 245.

No. 10–531. COURTNEY *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 2010-Ohio-774.

No. 10–585. PUERTO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 692.

No. 10–588. WOLF *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 598.

No. 10–593. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 616 F. 3d 685.

No. 10–5082. MARTIN *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 10–5183. STEWART *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 355 Fed. Appx. 275.

No. 10–5482. BARRINGTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 365 Fed. Appx. 514.

No. 10–5767. BEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 394.

No. 10–6205. THYKKUTTATHIL ET UX. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 389 Fed. Appx. 999.

No. 10–6243. BOROWY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 595 F. 3d 1045.

No. 10–6328. PUGH *v.* MINNESOTA. C. A. 8th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 558.

No. 10–6746. COOPERSMITH, FKA DOWNEY *v.* DOWNEY. Ct. App. Colo. Certiorari denied.

No. 10–6755. HART *v.* HILL, SUPERINTENDENT, POWDER RIVER CORRECTIONAL FACILITY. C. A. 9th Cir. Certiorari denied.

No. 10–6758. WATERS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–6770. BELL *v.* WOODS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 391.

No. 10–6771. JOSEPH *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 68 App. Div. 3d 1534, 893 N. Y. S. 2d 306.

No. 10–6772. VINH QUOC TA *v.* WALKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–6781. PARKS *v.* EDGEWATER CASINO ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–6784. SULLIVAN *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 10–6791. CORMIER *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 10–6796. WILSON *v.* TERRY, WARDEN. Super. Ct. Butts County, Ga. Certiorari denied.

No. 10–6800. CASILLA *v.* RICCI, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–6802. EDWARDS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 10–6809. WELLS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 38 So. 3d 137.

No. 10–6812. SOLIS VELA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 10–6813. WANZER *v.* VELASQUEZ ET AL. C. A. 5th Cir. Certiorari denied.

No. 10–6817. MCCURRY *v.* MILLS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–6820. BARRIOS *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 852.

No. 10–6821. WALTERS *v.* SISTO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–6829. BLACK *v.* SADLER. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–6830. BURKETT *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 351.

No. 10–6841. CLINKSCALE *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 41 So. 3d 226.

No. 10–6872. LEWIS *v.* JACKSON, SUPERINTENDENT, BROWN CREEK CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 262.

No. 10–6883. SHELTON *v.* FOX, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 10–6885. ROKER *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 25 So. 3d 647.

No. 10–6897. LOWERY *v.* STEVENSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 349.

No. 10–6907. IFENATUORAH *v.* HOLDER, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied.

No. 10–6941. MARANIAN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 10–7002. EMERUWA *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 189 Md. App. 720.

No. 10–7003. DYE *v.* BARTOW ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 604.

No. 10–7051. O'DONNELL *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 203 N. J. 160, 1 A. 3d 604.

No. 10–7083. SVEUM *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 328 Wis. 2d 369, 787 N. W. 2d 317.

No. 10–7098. CASTILLO *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 121 Conn. App. 699, 998 A. 2d 177.

No. 10–7118. CENTENO *v.* WINSTEAD, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CAMBRIDGE SPRINGS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–7149. GILLARD *v.* PROVEN METHOD SEMINARS, LLC. C. A. 7th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 549.

No. 10–7150. HALL *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 188 Md. App. 728.

No. 10–7165. KOVACIC *v.* CUYAHOGA COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 606 F. 3d 301.

No. 10–7183. RAYBORN *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 10–7228. ROMAN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 996 A. 2d 554.

No. 10–7247. MARTINEZ *v.* MILYARD, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 474.

No. 10–7302. DE LA CRUZ-ALEJO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 915.

No. 10–7303. CAMPBELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 570.

No. 10–7309. DANIELS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 2 A. 3d 250.

No. 10–7318. NICHERIE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 338.

No. 10–7323. VANDEMARK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 825.

No. 10–7324. REYES-MIRANDA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 981.

No. 10–7330. HEIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 652.

No. 10–7333. VARDARO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 747.

No. 10–7335. TAYLOR *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 394.

No. 10–7337. THOMAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 495.

No. 10–7339. LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 245.

No. 10–7344. GORDON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 679.

No. 10–7345. DEJESUS FERNANDEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 433.

No. 10–7352. ROSAS-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 463.

No. 10–7353. RANDALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 373.

No. 10–7354. COOPER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 617 F. 3d 307.

No. 10–7358. PARKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 10–7360. GAMBOA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 608 F. 3d 492.

No. 10–7361. FROOK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 616 F. 3d 773.

No. 10–7363. VENKATARAM *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 356 Fed. Appx. 541.

No. 10–7369. SHORTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 10–7372. ANFIELD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–7376. LOWE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 561.

No. 10–7379. MASSENBURG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 371.

No. 10–7383. HUFF *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 10–7389. MOBLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 618 F. 3d 539.

No. 10–7391. SIERRA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 793.

No. 10–7392. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–10382. WILLIAMS *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Motion of Scholars of Habeas Corpus Law for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 576 F. 3d 850.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, dissenting.

Today the Court refuses to review the Eighth Circuit's conclusion that a State may withhold an objection to a federal habeas evidentiary hearing until after the hearing is complete, the constitutional violation established, and habeas relief granted. Because I believe such a rule enables, and even invites, States to manipulate federal habeas proceedings to their own strategic advantage at an unacceptable cost to justice, I respectfully dissent.

Petitioner Marcel Wayne Williams was charged with capital murder, kidnaping, rape, and aggravated robbery. At trial, his attorneys conceded guilt in the opening statement, apparently hoping to establish credibility with the jury and ultimately to convince the jury to recommend a sentence of life without parole. Despite adopting this strategy, however, Williams' attorneys called only one witness at the penalty phase, an inmate who had no personal relationship with Williams and who testified from his own experience that life was more pleasant on death row than in the general prison population. Not surprisingly, the jury unanimously recommended a death sentence. The trial court sentenced Williams to death by lethal injection, and the Arkansas Supreme Court affirmed the conviction and sentence on direct appeal. *Williams* v. *State*, 338 Ark. 97, 991 S. W. 2d 565 (1999).

After the Arkansas courts denied his petition for collateral relief, Williams filed a federal habeas petition under 28 U. S. C. § 2254. Williams alleged that he received ineffective assistance of counsel under *Strickland* v. *Washington*, 466 U. S. 668 (1984), due to his attorneys' failure to develop and present mitigating social history evidence to the jury. As to *Strickland*'s performance prong, the District Court held that the state-court decision denying Williams' ineffective-assistance claim was "based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding." *Williams* v. *Norris*, No. 5:02CV00450, 2006 WL 1699835, *8 (ED Ark., June 19, 2006). As to prejudice, the court concluded that the record was inconclusive and ordered an evidentiary hearing. The testimony at the hearing established that Williams had been "subject to every category of traumatic experience that is generally used to describe childhood trauma": sexual abuse by multiple perpetrators; physical and psychological abuse by his mother and stepfather; gross medical, nutritional, and educational neglect; exposure to violence in the childhood home and neighborhood; and a violent gang-rape while in prison as an adolescent. 2007 WL 1100417, *2 (Apr. 11, 2007). On the basis of that testimony, the District Court found that Williams had been prejudiced by counsel's ineffective assistance, granted habeas relief, and ordered the State to afford Williams a new trial at the penalty phase or to reduce his sentence to life without parole. *Id.*, at *2–*3.

The Court of Appeals reversed, reinstating the sentence of death by lethal injection. *Williams* v. *Norris*, 576 F. 3d 850 (CA8 2009). Concluding that Williams was not entitled to a federal evidentiary hearing in the first place and entirely disregarding the evidence introduced at the hearing as a result, the court held that Williams had failed to prove prejudice "on the factual record he developed in state court." *Id.*, at 863. Thus, although the District Court found that the State never "object[ed] to [the court's decision] to conduct an evidentiary hearing" nor "argued that [it] should not consider that evidence" in ruling on Williams' petition, 2007 WL 1100417, *2, n. 1; see also *id.*, at *3, the Court of Appeals held that the State had in fact objected to the hearing. In the alternative, the Court of Appeals concluded that it would "exercise [its] discretion to review the district court's noncompliance with § 2254(e)(2)" even if the State had not objected. 576 F. 3d, at 860.

To be sure, under § 2254(e)(2), if a habeas petitioner "has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim" unless certain conditions are met. Had the State invoked this section in the District Court, the hearing may have been barred for the reasons given by the Court of Appeals. But whether § 2254(e)(2) barred the hearing is a separate question from whether the State's § 2254(e)(2) objection was properly before the Court of Appeals in the first place. As to that threshold question, neither of the holdings adopted by the court below withstands scrutiny.

First, the Eighth Circuit's conclusion that the State objected in the District Court to the evidentiary hearing is patently wrong. As proof of an objection, the Court of Appeals found one sentence in the record where the State asserted that a federal habeas court "is prevented from re-trying a state criminal case." 576 F. 3d, at 860 (internal quotation marks omitted). According to the Court of Appeals, this statement amounted to an objection to the hearing because it "incorporated the fundamental purpose behind the restrictions on evidentiary hearings in § 2254(e)(2)." *Ibid.* As a general matter, however, a party wishing to raise an objection and preserve an issue for appeal must "pu[t] the court on notice as to [its] concern," *Beech Aircraft Corp.* v. *Rainey*, 488 U. S. 153, 174 (1988). Absolutely nothing in the State's general statement—or any other part of the record, for that matter—put the District Court, or Williams, on notice that the State contested Williams' entitlement to an evidentiary hearing. Even if a State need not spell out its opposition to an evidentiary hearing in precise terms, I cannot fathom how this statement of a general principle of law—a principle that is no less true even when a federal evidentiary hearing *is* proper—could suffice.

Indeed, rather than reveal an objection to the hearing, the record indicates that the State affirmatively consented to the hearing and sought to use the hearing to its own strategic advantage. Williams made multiple straightforward requests for an evidentiary hearing in no unclear terms. And, the District Court clearly informed the State of its intent to grant that request, giving the State every opportunity to object that a hearing was improper because Williams had "failed to develop the factual basis of [his] claim" in state court, § 2254(e)(2). Rather than protest, the State requested that the court narrow the issues on which

evidence would be heard and that the hearing be rescheduled due to the unavailability of its own witness. The State then relied on new evidence *developed at the hearing* to contest the court's prior conclusion, *on the state-court record*, that defense counsel's performance had been deficient. The State presented the same evidence on appeal, although there it also argued—inconsistently and for the very first time—that the hearing had been improper. I simply cannot see how this record suggests anything other than a deliberate strategy by the State to use the hearing to fortify the record in support of the state-court decision and to object to the hearing only if and when that strategy failed.

Second, with respect to the Eighth Circuit's alternative holding that it would, in any event, "exercise [its] discretion to review the district court's non-compliance with § 2254(e)(2)," 576 F. 3d, at 860, the Court of Appeals seriously misapplied our precedent. The court assumed that it possessed discretion to consider an objection to an evidentiary hearing that is asserted only after the hearing has been conducted, the constitutional violation established, and habeas relief granted, relying on this Court's decision in *Day* v. *McDonough*, 547 U. S. 198 (2006). In that case, we held that "district courts are permitted, but not obliged, to consider, *sua sponte*, the timeliness of a state prisoner's habeas petition." *Id.*, at 209. Even assuming that same discretion applies in these circumstances,* *Day* makes clear that the court must "'determine whether the interests of justice would be better served'" by allowing the State's unasserted defense to expire without court intervention. *Id.*, at 210 (quoting *Granberry* v. *Greer*, 481 U. S. 129, 136 (1987)). In particular, and of critical significance to this case, the court must evaluate whether anything "in the record suggests that the State 'strategically' withheld the defense or chose to relinquish it." *Day*, 547 U. S., at 211. If so, the court

*Although we have never decided whether the courts of appeals possess discretion to consider after-the-fact objections of the kind here, we have at least left open the possibility that a State might forfeit such an objection if the State fails to raise it properly. See *Bradshaw* v. *Richey*, 546 U. S. 74, 79–80 (2005) *(per curiam)* (remanding for the Sixth Circuit to address the argument that the State "failed to preserve its objection to the [court's] reliance on evidence not presented in state court by failing to raise this argument properly"); *Holland* v. *Jackson*, 542 U. S. 649, 653, n. (2004) *(per curiam)* (rejecting the contention that the State had failed to preserve its objection on the record present there).

"would not be at liberty to disregard that choice." *Id.*, at 210, n. 11. Thus, even assuming *Day* applied here, it required the Court of Appeals to search the record for a suggestion of strategic forfeiture. Yet, despite the record described above, which at the very least raises the possibility of a deliberate decision by the State, the Court of Appeals failed to consider the question at all.

Day also would require the Court of Appeals to "assure itself" that Williams would not be "significantly prejudiced by the delayed focus" on his entitlement to a federal evidentiary hearing. *Id.*, at 210. Williams raised just this point in the Court of Appeals, arguing that the State's untimely objection to the evidentiary hearing had "deprived [him] of any opportunity to present facts that would show his entitlement to a hearing under the applicable standard." Brief for Appellee/Cross-Appellant and Addendum in No. 07–1984 etc. (CA8), p. 8. This, too, the court failed to address.

In fact, the Court of Appeals made no mention of—and apparently gave no consideration to—*any* countervailing interests weighing against review of the State's untimely § 2254(e)(2) challenge. Such interests are certainly significant where, as here, the evidence at the hearing led the District Court to conclude that a constitutional violation had occurred and that a capital sentence must be set aside. Indeed, the relevant interests to be considered include not only interests of finality and comity (the singular focus of the Court of Appeals), but also the interest of remedying a "miscarriage of justice" that is evident after "a full trial has been held in the district court." *Granberry*, 481 U. S., at 135.

In my opinion, the interests of justice are poorly served by a rule that allows a State to object to an evidentiary hearing only after the hearing has been completed and the State has lost. Cf. *Puckett* v. *United States*, 556 U. S. 129, 134 (2009) ("[T]he contemporaneous-objection rule prevents a litigant from 'sandbagging' the court—remaining silent about his objection and belatedly raising the error only if the case does not conclude in his favor" (some internal quotation marks omitted)). It is true, as the Court of Appeals emphasized, that the policy against evidentiary hearings in federal habeas promotes principles of comity and federalism. See *Williams* v. *Taylor*, 529 U. S. 420, 436–437 (2000). But when the State voluntarily participates in a federal evidentiary hearing—without objection, with an apparent intent of supplementing the record for its own purposes, and at a sig-

nificant cost and expenditure of judicial resources—these interests are significantly diminished if not altogether absent. We have refused to adopt rules that "would permit, and might even encourage, the State to seek a favorable ruling on the merits in the district court while holding [a] defense in reserve for use on appeal if necessary." *Granberry*, 481 U. S., at 132. Because I believe the opinion below does just that, at an unacceptable cost to the interests of justice generally and in this particular case, I would grant the petition for writ of certiorari and vacate the judgment below.

No. 10–409. HOLMES ET AL. *v.* GRUBMAN ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 383 Fed. Appx. 18.

No. 10–435. CHENKIN ET UX. *v.* 808 COLUMBUS LLC ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 368 Fed. Appx. 162.

No. 10–443. DOBSON-DAVIS, WARDEN, ET AL. *v.* LUNBERY. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 605 F. 3d 754.

No. 10–449. RICHARDS *v.* HEWLETT-PACKARD CORP., FKA COMPAQ, FKA DIGITAL EQUIPMENT CORP., ET AL. C. A. 1st Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 592 F. 3d 232.

No. 10–461. UNITED STATES EX REL. EBEID *v.* LUNGWITZ ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 616 F. 3d 993.

No. 10–592. GOODSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 358 Fed. Appx. 533.

No. 10–7297. ZALESKI *v.* BURNS ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 606 F. 3d 51.

No. 10–7341. HORN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 612 F. 3d 524.

No. 10–7382. ROMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 10–7396. BURKE *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 389 Fed. Appx. 136.

Rehearing Denied

No. 09–9515. PITRE *v.* CAIN ET AL., *ante*, p. 992;

No. 09–10814. GOODEN *v.* IOWA, *ante*, p. 853;

No. 09–10886. ROONEY *v.* GEORGIA, *ante*, p. 854;

No. 09–11074. LARUE *v.* DENSO MANUFACTURING ARKANSAS, INC., *ante*, p. 861;

No. 09–11076. BANKS *v.* FLORIDA, *ante*, p. 861;

No. 09–11325. EARHART *v.* KONTEH, WARDEN, *ante*, p. 874;

No. 09–11355. PENDLETON *v.* UNITED STATES MEDICAL CENTER, SPRINGFIELD, MISSOURI, ET AL., *ante*, p. 875;

No. 09–11473. RICHARDSON *v.* MCHUGH, SECRETARY OF THE ARMY, *ante*, p. 882;

No. 10–183. SAMSON *v.* MANLEY ET AL., *ante*, p. 962;

No. 10–295. VEASAW *v.* UNITED STATES ET AL., *ante*, p. 964;

No. 10–5121. CAMPOS *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY, *ante*, p. 905;

No. 10–5151. BITTAN *v.* HAWAII DEPARTMENT OF HUMAN SERVICES, *ante*, p. 906;

No. 10–5200. HOGAN *v.* FLORIDA, *ante*, p. 909;

No. 10–5212. JONES *v.* BURNS, *ante*, p. 909;

No. 10–5273. CLARK *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 912;

No. 10–5326. MOORE *v.* UNITED STATES, *ante*, p. 915;

No. 10–5505. BROWN *v.* CITY OF NORTH CHICAGO, ILLINOIS, ET AL., *ante*, p. 926;

No. 10–5528. SOENTGEN *v.* PENNSYLVANIA, *ante*, p. 927;

No. 10–5682. ELAM *v.* TEXAS, *ante*, p. 965;

No. 10–5748. SHEEHAN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 966;

No. 10–5915. IN RE LUCIOUS, *ante*, p. 825;

No. 10–6102. SETTLE *v.* BELL, WARDEN, *ante*, p. 970; and

No. 10–6368. COULOMBE *v.* CITY OF OXNARD, CALIFORNIA, ET AL., *ante*, p. 1014. Petitions for rehearing denied.

No. 10–5109. KUMVACHIRAPITAG *v.* MICROSOFT CORP. ET AL., *ante*, p. 953. Petition for rehearing denied. THE CHIEF JUSTICE and JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 10–5385. STEVENS *v.* UNITED STATES, *ante*, p. 954. Petition for rehearing denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 10–5786. FALLS *v.* UNITED STATES, *ante*, p. 937. Petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

DECEMBER 10, 2010

Certiorari Granted

No. 09–993. PLIVA, INC., ET AL. *v.* MENSING. C. A. 8th Cir.;

No. 09–1039. ACTAVIS ELIZABETH, LLC *v.* MENSING. C. A. 8th Cir.; and

No. 09–1501. ACTAVIS, INC. *v.* DEMAHY. C. A. 5th Cir. Certiorari granted, cases consolidated, and a total of one hour is allotted for oral argument. Reported below: Nos. 09–993 and 09–1039, 588 F. 3d 603; No. 09–1501, 593 F. 3d 428.

No. 10–313. TALK AMERICA, INC. *v.* MICHIGAN BELL TELEPHONE CO., DBA AT&T MICHIGAN; and

No. 10–329. ISIOGU ET AL. *v.* MICHIGAN BELL TELEPHONE CO., DBA AT&T MICHIGAN. C. A. 6th Cir. Certiorari granted, cases consolidated, and a total of one hour is allotted for oral argument. JUSTICE KAGAN took no part in the consideration or decision of these petitions. Reported below: 597 F. 3d 370.

No. 10–5400. TAPIA *v.* UNITED STATES. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 376 Fed. Appx. 707.

DECEMBER 13, 2010

Vacated and Remanded on Appeal

No. 10–291. CLEMONS ET AL. *v.* DEPARTMENT OF COMMERCE ET AL. Appeal from D. C. N. D. Miss. Judgment vacated, and case remanded with instructions to dismiss the complaint for lack of jurisdiction. Reported below: 710 F. Supp. 2d 570.

Certiorari Dismissed

No. 10–6912. JONES *v.* BLUM. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 391 Fed. Appx. 573.

No. 10–6924. BENJAMIN *v.* BOOKER ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–7213. SPAIN *v.* TEXAS MEDICAL BOARD DISCIPLINARY COMMITTEE. Sup. Ct. Tex. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–7275. BENJAMIN *v.* WALLACE ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. D–2474. IN RE DISBARMENT OF MARSHALL. Disbarment entered. [For earlier order herein, see 561 U. S. 1043.]

No. D–2524. IN RE DISBARMENT OF DITTON. Disbarment entered. [For earlier order herein, see *ante*, p. 812.]

No. 10M54. SADIQ K. *v.* MAINE DEPARTMENT OF HEALTH. Motion for leave to file petition for writ of certiorari under seal granted.

No. 09–11419. IN RE THOMAS. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 826] denied.

No. 10–10. TURNER *v.* ROGERS ET AL. Sup. Ct. S. C. [Certiorari granted, *ante*, p. 1002.] Motion of respondents for appointment of counsel denied.

No. 10–330. SCHWARZENEGGER, GOVERNOR OF CALIFORNIA, ET AL. *v.* RINCON BAND OF LUISENO MISSION INDIANS OF THE RINCON RESERVATION, AKA RINCON SAN LUISENO BAND OF MISSION INDIANS, AKA RINCON BAND OF LUISENO INDIANS. C. A. 9th Cir.; and

No. 10–426. APPLERA CORP. ET AL. *v.* ENZO BIOCHEM, INC., ET AL. C. A. Fed. Cir. The Acting Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 10–5710. BISHOP *v.* GRIEVANCE COMMITTEE FOR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK. C. A. 2d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 957] denied.

No. 10–5813. HUNG HA *v.* MCGUINESS. Ct. App. Cal., 1st App. Dist. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 957] denied.

No. 10–6031. MATTHEWS *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 998] denied.

No. 10–6059. RILEY *v.* UNION PARISH SCHOOL BOARD ET AL. C. A. 5th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1000] denied.

No. 10–6135. COHEN *v.* TERRELL, WARDEN, ET AL. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 998] denied.

No. 10–6170. FARRIS *v.* OKLAHOMA. Ct. Crim. App. Okla. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 998] denied.

No. 10–6314. BERRYHILL *v.* SEAY, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA, ET AL. C. A. 10th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 998] denied.

No. 10–6545. BERRYHILL *v.* WHITE, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA, ET AL. C. A. 10th Cir. Motion of petitioner for reconsideration

of order denying leave to proceed *in forma pauperis* [*ante,* p. 999] denied.

No. 10–6551. BERRYHILL *v.* PAYNE, JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA, ET AL. C. A. 10th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 999] denied.

No. 10–7134. JILES *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. 8th Cir.;

No. 10–7223. YOUNG ET UX. *v.* DI FERRANTE. C. A. 5th Cir.;

No. 10–7236. CALHOUN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist.; and

No. 10–7397. SCURLOCK-FERGUSON *v.* CITY OF DURHAM, NORTH CAROLINA. C. A. 4th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until January 3, 2010, 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. 10–7506. IN RE MASON;

No. 10–7606. IN RE HOLLOMAN; and

No. 10–7620. IN RE WILHELM. Petitions for writs of habeas corpus denied.

No. 10–525. IN RE ORCUTT; and

No. 10–6835. IN RE LOVE. Petitions for writs of mandamus denied.

No. 10–6855. IN RE STAFFNEY. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8.

No. 10–6894. IN RE ASHANTI. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals,* 506 U. S. 1 (1992) *(per curiam).*

No. 10–6863. IN RE SIMS. Petition for writ of prohibition denied.

Certiorari Denied

No. 09–11234. MAZARIEGOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 67.

No. 09–11376. GUIDRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 611.

No. 09–11480. DAY *v.* MINNESOTA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 354 Fed. Appx. 272.

No. 10–122. NORTH STAR ALASKA HOUSING CORP. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 356 Fed. Appx. 415.

No. 10–149. BAJALA *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 355 Fed. Appx. 986.

No. 10–233. PORCH *v.* GARRISON. C. A. 3d Cir. Certiorari denied. Reported below: 376 Fed. Appx. 274.

No. 10–240. NILSEN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 10–332. MCGUAN ET AL. *v.* ENDOVASCULAR TECHNOLOGIES, INC., ET AL. Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 182 Cal. App. 4th 974, 106 Cal. Rptr. 3d 277.

No. 10–337. FAYUS ENTERPRISES ET AL. *v.* BNSF RAILWAY CO. ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 602 F. 3d 444.

No. 10–402. TUCK-IT-AWAY, INC., ET AL. *v.* NEW YORK STATE URBAN DEVELOPMENT CORP., DBA EMPIRE STATE DEVELOPMENT CORP. Ct. App. N. Y. Certiorari denied. Reported below: 15 N. Y. 3d 235, 933 N. E. 2d 721.

No. 10–451. ROSS *v.* ORANGE COUNTY BAR ASSN. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 868.

No. 10–470. RUSTON ET UX. *v.* TOWN BOARD FOR THE TOWN OF SKANEATELES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 610 F. 3d 55.

No. 10–474. HARRELSON *v.* SWAN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 336.

No. 10–477. LUTZ ET AL. *v.* SAMPAIR ET AL. Sup. Ct. Minn. Certiorari denied. Reported below: 784 N. W. 2d 65.

No. 10–479. HINDLE *v.* FUITH. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 33 So. 3d 782.

No. 10–482. SHERMAN *v.* LAMOTHE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 608 F. 3d 212.

No. 10–483. MIKKILINENI *v.* GIBSON-THOMAS ENGINEERING CO., INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 379 Fed. Appx. 256.

No. 10–484. SITZES, INDIVIDUALLY AND AS JOINT ADMINISTRATOR OF THE ESTATE OF SITZES, DECEASED, ET AL. *v.* CITY OF WEST MEMPHIS, ARKANSAS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 606 F. 3d 461.

No. 10–486. BENUN ET AL. *v.* FUJIFILM CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 605 F. 3d 1366.

No. 10–492. YOUA VANG LEE, TRUSTEE FOR THE HEIRS AND NEXT OF KIN OF FONG LEE, DECEDENT *v.* ANDERSEN ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 616 F. 3d 803.

No. 10–496. WHITE *v.* MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P. C. C. A. 1st Cir. Certiorari denied.

No. 10–504. SINGH *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 818.

No. 10–506. CRUZ *v.* NEW YORK CITY DEPARTMENT OF EDUCATION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 376 Fed. Appx. 82.

No. 10–523. ZAHN *v.* MCHUGH, SECRETARY OF THE ARMY. C. A. 9th Cir. Certiorari denied. Reported below: 374 Fed. Appx. 753.

No. 10–524. MORGAN *v.* TOWN OF MINERAL, VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 10–530. UL HAQ *v.* HOLDER, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 411.

No. 10–534. CERTAIN UNDERWRITERS AT LLOYD'S, LONDON *v.* LAGSTEIN. C. A. 9th Cir. Certiorari denied. Reported below: 607 F. 3d 634.

No. 10–536. MCGUIRE *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 328 Wis. 2d 289, 786 N. W. 2d 227.

No. 10–538. WINLOCK *v.* DEPARTMENT OF HOMELAND SECURITY. C. A. Fed. Cir. Certiorari denied. Reported below: 370 Fed. Appx. 119.

No. 10–556. BADRINAUTH *v.* METLIFE CORP. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 368 Fed. Appx. 320.

No. 10–563. NEEL *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 10–571. ROTTE *v.* INTERNAL REVENUE SERVICE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 73.

No. 10–579. JANIGA *v.* QUESTAR CAPITAL CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 615 F. 3d 735.

No. 10–595. ZARRO *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 66 App. Div. 3d 1050, 887 N. Y. S. 2d 663.

No. 10–597. LACOUR *v.* KILCREASE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 422.

No. 10–611. LOGAN *v.* NAPOLITANO, SECRETARY OF HOMELAND SECURITY, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 660.

No. 10–615. LUXPRO CORP. *v.* APPLE, INC., FKA APPLE COMPUTER, INC. C. A. 8th Cir. Certiorari denied. Reported below: 602 F. 3d 909.

No. 10–636. ALLEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 619 F. 3d 518.

No. 10–5119. CARROLL *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–5165. SPARKS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 48 Cal. 4th 1, 224 P. 3d 86.

No. 10–5208. MARSHALL *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–5371. BROWN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 979 A. 2d 630.

No. 10–5490. MERCHANT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 376 Fed. Appx. 172.

No. 10–5512. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 368.

No. 10–5859. TURNER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 603 F. 3d 468.

No. 10–5923. ALSTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 380 Fed. Appx. 217.

No. 10–6015. JOELSON *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–6185. HICKS *v.* LINGLE. C. A. 5th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 497.

No. 10–6208. STONE *v.* ELOHIM, INC. Ct. Civ. App. Okla. Certiorari denied.

No. 10–6268. TALADA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 255.

No. 10–6499. ELEY *v.* HOUK, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 604 F. 3d 958.

No. 10–6595. FOSTER *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 598.

No. 10–6844. ALLEN *v.* BRITTON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–6846. BITTICK *v.* KOSTER, ATTORNEY GENERAL OF MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 559.

No. 10–6847. BAINES *v.* CHICAGO BOARD OF EDUCATION ET AL. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 10–6851. SKAINS *v.* HEDGPETH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 620.

No. 10–6859. WILSON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–6861. SMITH *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 10–6867. HADDAD *v.* RIVER FOREST POLICE DEPARTMENT ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 513.

No. 10–6869. MANNING *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–6874. FRANKLIN *v.* U. S. BANK NATIONAL ASSN. C. A. 5th Cir. Certiorari denied.

No. 10–6880. RITON, AKA RITEN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–6881. RAY *v.* BURNETTE, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 10–6888. MOORE *v.* NEW JERSEY. C. A. 3d Cir. Certiorari denied. Reported below: 385 Fed. Appx. 65.

No. 10–6889. NEWMAN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–6890. SMITH *v.* CASH, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 673.

No. 10–6892. ASBURY *v.* DRISKELL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 355 Fed. Appx. 682.

No. 10–6902. GREEN *v.* NELSON, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 595 F. 3d 1245.

No. 10–6903. GARNETT *v.* WINONA COUNTY SOCIAL SERVICES ET AL. Ct. App. Minn. Certiorari denied.

No. 10–6905. HARMON *v.* KEITH, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 770.

No. 10–6913. MAGER *v.* PRAIRIE CENTER DEVELOPMENT, LLC. Sup. Ct. Colo. Certiorari denied.

No. 10–6915. GREENE *v.* CALIFORNIA STATE PRISON ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–6919. GREEN *v.* VU (Reported below: 393 Fed. Appx. 225); and GREEN *v.* GRAMPRE ET AL. (388 Fed. Appx. 437). C. A. 5th Cir. Certiorari denied.

No. 10–6927. ALSTON *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 610 F. 3d 1318.

No. 10–6931. PIERCE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 10–6940. LEWIS *v.* VAIL, SECRETARY, WASHINGTON DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–6942. PATTERSON *v.* BENSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 304.

No. 10–6957. HODGE *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 10–6978. CHAVEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 949.

No. 10–6993. ALLEN *v.* DEPARTMENT OF THE AIR FORCE. C. A. 8th Cir. Certiorari denied. Reported below: 603 F. 3d 423.

No. 10–6996. NEWMAN *v.* MEMPHIS LIGHT, GAS & WATER. C. A. 6th Cir. Certiorari denied.

No. 10–7001. BROWDER *v.* CBE GROUP INC. LITIGATION CENTER ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 591.

No. 10–7021. COSTLEY *v.* SOCIAL SECURITY ADMINISTRATION. C. A. 5th Cir. Certiorari denied.

No. 10–7031. WOMBLE *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 225 Ariz. 91, 235 P. 3d 244.

No. 10–7032. MOORE *v.* JONES ET AL. C. A. 5th Cir. Certiorari denied.

No. 10–7033. PORDASH *v.* BEIGHTLER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 466.

No. 10–7044. WEBB *v.* PALMER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 755.

No. 10–7068. MAHLER ET VIR *v.* COUNTY OF HAWAII, REAL PROPERTY TAX DIVISION. Int. Ct. App. Haw. Certiorari denied. Reported below: 121 Haw. 541, 221 P. 3d 519.

No. 10–7099. EDWARDS *v.* HILL, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–7136. WELLS *v.* CAMPBELL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 634.

No. 10–7153. HARRIS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 10–7185. O'NEAL *v.* BUCKNER ET AL. Super. Ct. Fulton County, Ga. Certiorari denied.

No. 10–7194. PINSON *v.* PACHECO ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 488.

No. 10–7198. MORSE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 613 F. 3d 787.

No. 10–7227. BARKLEY *v.* GLOVER, ADMINISTRATOR, NORTHERN STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 209 Fed. Appx. 120.

No. 10–7230. SMITH *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 767.

No. 10–7246. BARRY ET UX. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 3.

No. 10–7251. ARUANNO *v.* HAYMAN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 384 Fed. Appx. 144.

No. 10–7270. MUSGROVE *v.* FRANKE, SUPERINTENDENT, TWO RIVERS CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 10–7311. WARE *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 324 Wis. 2d 305, 784 N. W. 2d 182.

No. 10–7314. BOYLE *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 391 Fed. Appx. 212.

No. 10–7315. COOPER *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 365 Fed. Appx. 740.

No. 10–7346. GOMEZ *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 237 P. 3d 393.

No. 10–7357. WILLIAMS *v.* POTTER, POSTMASTER GENERAL. C. A. 9th Cir. Certiorari denied.

No. 10–7365. COLLINS *v.* WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–7380. NARVIOS *v.* LAMARQUE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 662.

No. 10–7388. DYKES *v.* MURPHY ET AL. C. A. 8th Cir. Certiorari denied.

No. 10–7399. SANDERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 368.

No. 10–7401. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 233.

No. 10–7403. LOPEZ *v.* ZENON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 786.

No. 10–7406. MICHTAVI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 852.

No. 10–7408. PORTLEY-EL *v.* BRILL, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 744.

No. 10–7411. STOWE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 277.

No. 10–7412. RIOS-PEREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 662.

No. 10–7413. SILVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 642.

No. 10–7415. MCDOUGALD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 299.

No. 10–7416. BOOTH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 612 F. 3d 306.

No. 10–7422. ORTEGA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 373 Fed. Appx. 211.

No. 10–7423. VENEGAS-MARTIN DEL CAMPO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 786.

No. 10–7425. VISERTO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 391 Fed. Appx. 932.

No. 10–7427. WALLACE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 605 F. 3d 477.

No. 10–7428. WAHID *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 614 F. 3d 1009.

No. 10–7429. QUINONES, AKA ROSADO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 349.

No. 10–7430. ANGELES-TREJO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 84.

No. 10–7437. POLK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 385.

No. 10–7440. SHAKIR, AKA PERRY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 616 F. 3d 315.

No. 10–7449. VALENZUELA-LOPEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 665.

No. 10–7456. WILSON *v.* UNITED STATES; and

No. 10–7478. BLACKSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 605 F. 3d 985.

No. 10–7458. BROWN *v.* LIRIOS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 539.

No. 10–7464. TALLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 129.

No. 10–7467. SAENZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–7472. ROSA-CARINO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 615 F. 3d 75.

No. 10–7473. CRUZ-NEGRON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–7474. CONTRERAS-VIERAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 831.

No. 10–7475. COLLINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 273.

No. 10–7477. DIAZ-DUMENIGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 615 F. 3d 75.

No. 10–7480. MCKOY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 991.

No. 10–7484. RUTHERFORD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 10–7486. ARISTONDO-MAGANA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 410.

No. 10–7489. LYONS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 719.

No. 10–7491. LUPOVITZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–7497. CHANNELLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 729.

No. 10–7500. HAVING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–7501. SOBERANES-FIERRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 290.

No. 10–7503. SEPULVEDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 529.

No. 10–7504. BLAZEK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–7505. ALDANA-ORTIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 633.

No. 10–7508. ALLER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 384 Fed. Appx. 34.

No. 10–7520. LOCKETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 837.

No. 10–7521. MARTINEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 786.

No. 10–7522. MATTHIEU *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–7523. FUENTES-MORENO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 549.

No. 10–7524. HERNANDEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 359.

No. 10–7525. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 661.

No. 10–7538. FLOOD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 616 F. 3d 321.

No. 10–7544. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 927.

No. 10–24. ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. *v.* LAWHORN. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 519 F. 3d 1272.

JUSTICE SCALIA, with whom JUSTICE THOMAS and JUSTICE ALITO join, dissenting.

Respondent James Lawhorn was sentenced to death by an Alabama court in 1989. Nearly two decades later, the United States Court of Appeals for the Eleventh Circuit granted him habeas relief on the ground that his counsel had rendered ineffective assistance at the sentencing hearing by failing to make a closing argument. In my view that decision was patently wrong: The court had no basis in law for setting aside the state courts' judgment that respondent had failed to establish a probable effect of that failure upon the outcome. I dissent from the Court's decision not to grant certiorari and summarily reverse the Eleventh Circuit's judgment.

I

In March 1988, Altion Maxine Walker offered to pay her nephews, James Lawhorn and his brother Mac Lawhorn, $100 in exchange for murdering her boyfriend, William Berry. The Lawhorns accepted. After they ambushed Berry, Mac Lawhorn shot him, causing him to fall. James Lawhorn (hereinafter Lawhorn) then heard Berry making "'gurgling noises'" and shot him repeatedly "to 'make sure he was dead.'" 519 F. 3d 1272, 1278 (CA11 2008).

Lawhorn was arrested for the crime and made a full confession. An Alabama jury found him guilty of capital murder. During the sentencing phase, Lawhorn's lawyer gave an opening argument, detailing the mitigating factors that would be established by the forthcoming testimony. Lawhorn's mother, sister, junior high school principal, and juvenile probation officer then testified on the defendant's behalf. Lawhorn himself also gave a brief statement to the jury, saying that he knew his actions were wrong and asking them to "'please have mercy on me.'" *Id.*, at 1280. At the close of the testimony, Lawhorn's counsel waived his right to closing argument; his ensuing objection to the prosecutor's making closing argument was overruled.

The jury made a recommendation of death, which the trial judge accepted. The Alabama Court of Criminal Appeals and the Supreme Court of Alabama affirmed the conviction and sentence. See *Lawhorn* v. *State*, 581 So. 2d 1159 (1990); *Ex parte Lawhorn*, 581 So. 2d 1179 (1991). We denied Lawhorn's petition for certiorari. 502 U. S. 970 (1991).

Lawhorn moved in state court for postconviction relief. He contended, as relevant here, that his lawyer's failure to give a closing argument in the sentencing phase constituted ineffective assistance of counsel under *Strickland* v. *Washington*, 466 U. S. 668 (1984). The trial court—the same court that had imposed the death sentence—denied the motion, on dual grounds that counsel's waiver of closing argument was a reasonable strategic decision, and that Lawhorn had failed to establish prejudice from the waiver. The Alabama Court of Criminal Appeals affirmed, *Lawhorn* v. *State*, 756 So. 2d 971 (1999). The Supreme Court of Alabama denied certiorari, No. 1982018 (Jan. 7, 2000), as did we, 531 U. S. 835 (2000).

Lawhorn then sought federal habeas relief. The District Court set aside both the conviction and the sentence. *Lawhorn* v. *Haley*, 323 F. Supp. 2d 1158 (ND Ala. 2004). A panel of the Eleventh Circuit reversed with regard to the conviction, but affirmed with regard to the sentence. 519 F. 3d 1272. With regard to the latter, it sustained the District Court's finding that counsel's failure to give a closing argument was not a reasonable strategic decision, but rested on the erroneous belief that that would preclude closing argument by the prosecutor; and it sustained the District Court's conclusion that Lawhorn had been prejudiced by counsel's failure. The Eleventh Circuit denied the State's petitions for panel rehearing, No. 04–11711 (Mar. 31, 2010) *(per curiam)*, App. to Pet. for Cert. 197a, and rehearing en banc, No. 04–11711 (Mar. 29, 2010), App. to Pet. for Cert. 220a–221a—after, I may note, an unexplained delay of over two years.

The State now petitions for certiorari. It does not challenge the Eleventh Circuit's conclusion that counsel's performance was deficient; it contends only that it was error to find that Lawhorn had established prejudice.

II

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) provides in part as follows:

> "An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim . . . resulted in a decision that was contrary to, or involved an unreasonable application of, clearly

established Federal law, as determined by the Supreme Court of the United States." 28 U. S. C. § 2254(d)(1).

The State contends that the Eleventh Circuit erroneously considered the claim of prejudice *de novo*, rather than granting the deference mandated by AEDPA to the state court's conclusion. Lawhorn does not deny that the Eleventh Circuit was required to grant deference, but contends that it did so. He acknowledges that in its discussion of the prejudice claim the Court of Appeals did not so much as cite AEDPA, but argues that "[t]his Court has never required any magical incantation of the terms of § 2254(d)(1) in habeas corpus appeals" and that "[i]t is unreasonable as a matter of law to suggest that [the Eleventh] Circuit . . . is unfamiliar with or did not apply § 2254(d)." Brief in Opposition 25–26.

If indeed Lawhorn is correct that the Eleventh Circuit attempted to apply § 2254(d), it is clear that the attempt failed. As we have repeatedly explained, AEDPA imposes a "highly deferential standard for evaluating state-court rulings, and demands that state-court decisions be given the benefit of the doubt." *Renico* v. *Lett*, 559 U. S. 766, 773 (2010) (citation and internal quotation marks omitted); accord, *Knowles* v. *Mirzayance*, 556 U. S. 111, 122–123 (2009); *Schriro* v. *Landrigan*, 550 U. S. 465, 473 (2007); *Woodford* v. *Visciotti*, 537 U. S. 19, 24–25 (2002) *(per curiam)*; *Williams* v. *Taylor*, 529 U. S. 362, 410–411 (2000). The doubt of which the Alabama Court of Criminal Appeals was to be given the benefit was particularly expansive in this case, since none of our cases has ever considered whether the failure to give a closing argument can be considered prejudicial under *Strickland*. Accordingly, only the standard for ineffective assistance set forth in *Strickland* itself could be applied; and as we have explained, "because the *Strickland* standard is a general standard, a state court has even more latitude to reasonably determine that a defendant has not satisfied that standard." *Knowles*, *supra*, at 123. "[T]he more general the rule at issue—and thus the greater the potential for reasoned disagreement among fair-minded judges—the more leeway state courts have in reaching outcomes in case-by-case determinations." *Renico*, *supra*, at 776 (internal quotation marks omitted).

Strickland requires the defendant to show that there is a "reasonable probability that, but for counsel's unprofessional errors,

the result of the proceeding would have been different." 466 U. S., at 694. The trial judge, who witnessed the proceedings and imposed Lawhorn's death sentence, concluded that Lawhorn had not made that showing. He explained that "[t]rial counsel did not present a complicated case in mitigation that needed to be explained to the jury"; that counsel had "presented Lawhorn's family background and pleas for mercy in mitigation," making closing argument on those matters unnecessary; and that "this was a horrible crime and the jury would not have been swayed by a closing argument considering the facts of this case." 756 So. 2d, at 987 (internal quotation marks omitted). The Alabama Court of Criminal Appeals quoted those findings and agreed that "in this situation with these particular facts, closing argument by defense counsel would have had little impact." *Ibid.*

This was not an unreasonable application of *Strickland.* Counsel's closing statement is rhetorical argument, not evidence. Reconstructing what that argument might have been, and how the jury might have reacted to it—a jury that had already heard opening argument and a procession of mitigation witnesses—is an exercise in guesswork. The Eleventh Circuit's reasons for finding prejudice are unpersuasive.

The Eleventh Circuit observed that one juror had voted to recommend life; and because a vote of 10 to 2 was required to recommend a death sentence, counsel "needed only to convince two other jurors to alter the outcome of the proceedings." 519 F. 3d, at 1297. (Apart from the fact that the jury's recommendation is in any event not binding on the sentencing judge, a 9-to-3 vote would not have produced recommendation of a life sentence, but would have resulted in a mistrial and empaneling of a new sentencing jury. See Ala. Code §§ 13A–5–46(f), (g), 13A–5–47(e) (2006).) But it cannot be deduced from the existence of a single dissenting juror that a closing argument would have persuaded other jurors not to recommend a death sentence. That there was one juror against a recommendation of death does not establish that this was a close mitigation case, much less that a closing argument would have made the difference for other jurors.

The Eleventh Circuit provided several examples of statements Lawhorn's counsel could have made. Closing argument might "have refreshed the jury's memory of the evidence of substantial domination presented during the guilt phase." 519 F. 3d, at 1297. Counsel "could have . . . argued for the mitigation of Lawhorn's

age at the time of the offense and his troubled family background," and could have asked the jury for mercy. *Ibid.* But merely identifying statements counsel could have made (there will *always* be statements counsel could have made) does not establish what *Strickland* requires: that those statements would probably have made a difference. All the facts relevant to the Eleventh Circuit's hypothesized closing argument had already come out in the sentencing phase. And a plea for mercy had been made in the sentencing phase by Lawhorn himself.

The hypothesized closing argument falls even further short of establishing what AEDPA requires: that it was not merely incorrect but *unreasonable* for the Alabama courts to conclude that probability of a different outcome had not been shown. It was, to the contrary, well within the bounds of reasonable judgment for the Alabama Court of Criminal Appeals to conclude that "in this situation with these particular facts, closing argument by defense counsel would have had little impact." 756 So. 2d, at 987.

In sum, the outcome imposed upon the Alabama courts by the Eleventh Circuit is not remotely required by clearly established Supreme Court precedent.

* * *

It has been over 21 years since Lawhorn was sentenced to death. Alabama should be not barred from carrying out its judgment based on a federal court's lawless speculation. I would not dissent from denial of certiorari if what happened here were an isolated judicial error. It is not. With distressing frequency, especially in capital cases such as this, federal judges refuse to be governed by Congress's command that state criminal judgments must not be revised by federal courts unless they are "contrary to, or involv[e] an unreasonable application of, *clearly established Federal law, as determined by the Supreme Court of the United States*," 28 U. S. C. § 2254(d)(1) (emphasis added). We invite continued lawlessness when we permit a patently improper interference with state justice such as that which occurred in this case to stand. We should grant Alabama's petition for certiorari and summarily reverse the Eleventh Circuit's judgment.

No. 10–203. CAHILL ET AL. *v.* ALEXANDER ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 598 F. 3d 79.

No. 10–349. SHELL OIL CO. ET AL. *v.* HEBBLE ET AL. Ct. Civ. App. Okla. Motions of International Association of Defense Counsel et al., Chamber of Commerce of the United States of America et al., and American Petroleum Institute for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 238 P. 3d 939.

No. 10–467. WINKLER *v.* GRANT ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 370 Fed. Appx. 145.

No. 10–565. TIBBETTS *v.* DITTES ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 303 Fed. Appx. 935.

No. 10–6920. HARMON *v.* ANDERSON, SHERIFF, SANTA BARBARA COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 384 Fed. Appx. 673.

No. 10–7348. LORENZANA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 380 Fed. Appx. 13.

No. 10–7509. LIGHTY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 382 Fed. Appx. 276.

No. 10–7539. HUNTER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 386 Fed. Appx. 1.

Rehearing Denied

No. 09–1450. LARIVIERE *v.* LARIVIERE, *ante*, p. 834;
No. 09–10514. WALKER *v.* YATES, WARDEN, *ante*, p. 845;
No. 09–10758. FIELDS *v.* OHIO, *ante*, p. 851;
No. 09–10788. COLMAN *v.* TEXAS, *ante*, p. 852;
No. 09–10859. MOSLIMANI *v.* MICHIGAN, *ante*, p. 854;
No. 09–10903. IN RE TOWNSEND, *ante*, p. 826;
No. 09–11221. KANTE *v.* NIKE, INC., *ante*, p. 868;

No. 09–11394. MENNER *v.* UNITED STATES, *ante*, p. 878;

No. 09–11522. INTROCASO *v.* MEEHAN ET AL., *ante*, p. 885;

No. 09–11529. ORTIZ *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 886;

No. 09–11546. IN RE MITCHELL, AKA ALLAH, *ante*, p. 825;

No. 10–144. SCHNELLER *v.* ABLE HOME CARE, INC., ET AL., *ante*, p. 895;

No. 10–190. TORAIN *v.* AT&T MANAGEMENT SERVICES, LP, ET AL., *ante*, p. 962;

No. 10–5005. COYLE *v.* AQUILA, INC., *ante*, p. 898;

No. 10–5338. HEFLEY *v.* DELAWARE, *ante*, p. 916;

No. 10–5377. WILLARD *v.* NEW YORK, *ante*, p. 918;

No. 10–5386. REYNOLDS *v.* UNITED STATES, *ante*, p. 918;

No. 10–5427. LEE *v.* ISHEE ET AL., *ante*, p. 921;

No. 10–5484. WHITE *v.* GUZMAN ET AL., *ante*, p. 924;

No. 10–5513. DRUMMOND *v.* RYAN, WARDEN, ET AL., *ante*, p. 926;

No. 10–5545. CABRERA *v.* UNITED STATES, *ante*, p. 928;

No. 10–5622. RAUSER *v.* UNITED STATES, *ante*, p. 932;

No. 10–5678. SINGH *v.* HEATH, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY, *ante*, p. 965;

No. 10–5749. RICHARD *v.* ROCK, SUPERINTENDENT, UPSTATE CORRECTIONAL FACILITY, *ante*, p. 966;

No. 10–5759. KANTAMANTO *v.* NORTH, *ante*, p. 966;

No. 10–5826. VENEGAS *v.* TEXAS, *ante*, p. 968;

No. 10–6063. PRATHER *v.* LEE, CHIEF JUDGE, SUPERIOR COURT OF GEORGIA, COWETA COUNTY, *ante*, p. 1008;

No. 10–6073. VILLANUEVA-MORAN *v.* HOLDER, ATTORNEY GENERAL, *ante*, p. 970;

No. 10–6094. DINGLE *v.* STEVENSON, WARDEN, *ante*, p. 1009;

No. 10–6188. PREPETIT *v.* VIRGINIA, *ante*, p. 1011;

No. 10–6189. PREPETIT *v.* VIRGINIA, *ante*, p. 1011;

No. 10–6543. FOREMAN ET AL. *v.* LOUISIANA ET AL., *ante*, p. 1015; and

No. 10–6729. COHEN *v.* UNITED STATES, *ante*, p. 1019. Petitions for rehearing denied.

No. 10–127. BAHRAMI *v.* KETABCHI, *ante*, p. 952. Petition for rehearing denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

DECEMBER 14, 2010

Dismissal Under Rule 46

No. 138, Orig. SOUTH CAROLINA *v.* NORTH CAROLINA. Bill of complaint dismissed under this Court's Rule 46.1. [For earlier decision herein, see, *e. g.*, 558 U. S. 256.]

DECEMBER 16, 2010

Dismissal Under Rule 46

No. 10–5802. MARKEL, AKA JONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari dismissed under this Court's Rule 46.

JANUARY 5, 2011

Dismissal Under Rule 46

No. 10–540. ADELPHIA RECOVERY TRUST *v.* BANK OF AMERICA, N. A., ET AL. C. A. 2d Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 379 Fed. Appx. 10.

JANUARY 7, 2011

Miscellaneous Orders

No. 09–987. ARIZONA CHRISTIAN SCHOOL TUITION ORGANIZATION *v.* WINN ET AL.; and

No. 09–991. GARRIOTT, DIRECTOR, ARIZONA DEPARTMENT OF REVENUE *v.* WINN ET AL. C. A. 9th Cir. [Certiorari granted, 560 U. S. 924.] Motions of respondents Glenn Dennard et al. and Kathleen M. Winn et al. for leave to file supplemental briefs after argument granted.

No. 09–1272. KENTUCKY *v.* KING. Sup. Ct. Ky. [Certiorari granted, 561 U. S. 1057.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 09–1273. ASTRA USA, INC., ET AL. *v.* SANTA CLARA COUNTY, CALIFORNIA. C. A. 9th Cir. [Certiorari granted, 561 U. S. 1057.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of Kansas et al. for leave to participate in oral argument as *amicus curiae* and for divided argument

denied. JUSTICE KAGAN took no part in the consideration or decision of these motions.

No. 09–11311. SYKES *v.* UNITED STATES. C. A. 7th Cir. [Certiorari granted, 561 U. S. 1058.] Motion of petitioner for leave to file volume II of the joint appendix under seal granted.

No. 10–76. GOODYEAR DUNLOP TIRES OPERATIONS, S. A., ET AL. *v.* BROWN ET UX., CO-ADMINISTRATORS OF THE ESTATE OF BROWN, ET AL. Ct. App. N. C. [Certiorari granted *sub nom. Goodyear Luxembourg Tires, S. A.* v. *Brown*, 561 U. S. 1058.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 10–179. STERN, EXECUTOR OF THE ESTATE OF MARSHALL *v.* MARSHALL, EXECUTRIX OF THE ESTATE OF MARSHALL. C. A. 9th Cir. [Certiorari granted, 561 U. S. 1058.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

Certiorari Granted

No. 09–1403. ERICA P. JOHN FUND, INC., FKA ARCHDIOCESE OF MILWAUKEE SUPPORTING FUND, INC. *v.* HALLIBURTON CO. ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 597 F. 3d 330.

No. 10–568. NEVADA COMMISSION ON ETHICS *v.* CARRIGAN. Sup. Ct. Nev. Certiorari granted. Reported below: 126 Nev. 277, 236 P. 3d 616.

No. 10–779. SORRELL, ATTORNEY GENERAL OF VERMONT, ET AL. *v.* IMS HEALTH INC. ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 630 F. 3d 263.

No. 10–209. LAFLER *v.* COOPER. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. In addition to the question presented by the petition, the parties are directed to brief and argue the following question: "What remedy, if any, should be provided for ineffective assistance of counsel during plea bargain negotiations if the defendant was later convicted and sentenced pursuant to constitutionally adequate procedures?" Reported below: 376 Fed. Appx. 563.

No. 10–382. UNITED STATES *v.* JICARILLA APACHE NATION. C. A. Fed. Cir. Certiorari granted. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 590 F. 3d 1305.

No. 10–444. MISSOURI *v.* FRYE. Ct. App. Mo., Western Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. In addition to the question presented by the petition, the parties are directed to brief and argue the following question: "What remedy, if any, should be provided for ineffective assistance of counsel during plea bargain negotiations if the defendant was later convicted and sentenced pursuant to constitutionally adequate procedures?" Reported below: 311 S. W. 3d 350.

No. 10–5258. MCNEILL *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 598 F. 3d 161.

JANUARY 10, 2011

Certiorari Granted—Vacated and Remanded

No. 09–9487. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Reported below: 355 Fed. Appx. 297; and

No. 10–5852. BELTRAN *v.* UNITED STATES. C. A. 11th Cir. Reported below: 367 Fed. Appx. 984. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Johnson* v. *United States*, 559 U. S. 133 (2010).

No. 10–5394. PAYNE *v.* UNITED STATES. C. A. 8th Cir.;

No. 10–5648. MANNING *v.* UNITED STATES. C. A. 8th Cir.; and

No. 10–5961. BENNETT *v.* UNITED STATES. C. A. 8th Cir. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Carr* v. *United States*, 560 U. S. 438 (2010).

Certiorari Dismissed

No. 10–6945. MILLER *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–6947. HARVEY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–6955. HOLT *v.* HETZELL, WARDEN, ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–6956. HARRIS *v.* BROOKS ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 10–6961. MILLER *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–7029. WILLIAMS *v.* SMALLWOOD ET AL. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–7082. JOHNSON *v.* VELMER ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–7137. DUNLAP *v.* MICHIGAN. Ct. App. Mich. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 10–7195. MILLER *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–7273. BLOOM *v.* MCKUNE, WARDEN, ET AL. Ct. App. Kan. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. Reported below: 42 Kan. App. 2d xi, 220 P. 3d 593.

No. 10–7320. YSAIS *v.* YSAIS. Ct. App. N. M. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–7398. RIVAS *v.* SUFFOLK COUNTY, NEW YORK, ET AL. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 10–7438. SANDERS *v.* JACKSON, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. Reported below: 395 Fed. Appx. 939.

No. 10–7441. SOLIS *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE. Ct. App. Tex., 10th Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–7452. BROWN *v.* BLEDSOE, WARDEN, ET AL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis*

denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 10–7548. STANKO *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. Reported below: 393 Fed. Appx. 849.

No. 10–7804. STANKO *v.* DAVIS, WARDEN. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. Reported below: 617 F. 3d 1262.

Miscellaneous Orders

No. 10A243. GREEN *v.* UNITED STATES. Application for bail, addressed to JUSTICE BREYER and referred to the Court, denied.

No. 10M55. IDEA NUOVA, INC. *v.* GM LICENSING GROUP, INC.;
No. 10M57. WILLIAMS *v.* UNITED STATES; and
No. 10M58. COLLINS *v.* TIAA–CREF ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 10M56. KOLEV *v.* DAVIDI ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 10M59. MALLO *v.* WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES ET AL. Motion for leave to file petition for writ of certiorari under seal denied without prejudice to filing a renewed motion together with either a redacted petition for writ of certiorari, or an explanation as to why the petition may not be redacted, within 30 days.

No. 138, Orig. SOUTH CAROLINA *v.* NORTH CAROLINA. Kristin Linsley Myles, Esq., of San Francisco, Cal., the Special Master in this case, is hereby discharged with the thanks of the Court. [For earlier order herein, see, *e. g.*, *ante,* p. 1126.]

No. 09–10245. FREEMAN *v.* UNITED STATES. C. A. 6th Cir. [Certiorari granted, 561 U. S. 1058.] Motion of petitioner for leave to file a volume of the joint appendix under seal granted.

No. 10–5400. TAPIA *v.* UNITED STATES. C. A. 9th Cir. [Certiorari granted, *ante,* p. 1104.] Stephanos Bibas, Esq., of Philadelphia, Pa., is invited to brief and argue this case as *amicus curiae* in support of the position that 18 U. S. C. § 3582(a) allows district courts to consider rehabilitative need in setting the length and term of imprisonment.

No. 10–6315. BERRYHILL *v.* HENRY, GOVERNOR OF OKLAHOMA, ET AL. C. A. 10th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 1027] denied.

No. 10–6403. WILLIAMS *v.* HARDIN ET AL. C. A. 8th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 1039] denied.

No. 10–6471. MILLER *v.* MARKS, JUDGE, CIRCUIT COURT OF WEST VIRGINIA, 15TH JUDICIAL CIRCUIT, ET AL. Cir. Ct. Harrison County, W. Va. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 1042] denied.

No. 10–6481. GRANDOIT *v.* PHYSICIAN NETWORK, INC., ET AL. C. A. 1st Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 999] denied.

No. 10–6548. BERRYHILL *v.* EVANS ET AL. C. A. 10th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 1057] denied.

No. 10–6987. HOLMES *v.* EAST COOPER HOSPITAL, INC., ET AL. Sup. Ct. S. C.;
No. 10–7258. BOLOMET ET UX. *v.* RLI INSURANCE CO. ET AL. Sup. Ct. Haw.;
No. 10–7274. WIDEMAN *v.* COLORADO ET AL. C. A. 10th Cir.;
No. 10–7326. MURRAY *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 2d Cir.;
No. 10–7359. HANDLEY *v.* CHASE BANK USA, N. A., ET AL. C. A. 3d Cir.;
No. 10–7384. FRANCIS *v.* UNITED STATES ET AL. C. A. 9th Cir.; and
No. 10–7721. MCCONNEL *v.* UNITED STATES. C. A. 10th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until January 31, 2011, 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. 10–7331. GUIRLANDO *v.* T. C. ZIRAAT BANKASI, A. S. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until January 31, 2011, 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. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion.

No. 10–7732. IN RE VAUGHN. Petition for writ of habeas corpus denied.

No. 10–7916. IN RE MILLS. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 10–294. IN RE COMER ET AL.;
No. 10–655. IN RE MELLOR;
No. 10–7054. IN RE MCPHERRON;
No. 10–7362. IN RE WILCOCK;
No. 10–7566. IN RE KENEMORE; and
No. 10–7635. IN RE SKURDAL. Petitions for writs of mandamus denied.

No. 10–547. IN RE BETTWIESER. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 09–1138. TAM Travel, Inc., et al. *v.* American Airlines, Inc., et al. C. A. 6th Cir. Certiorari denied. Reported below: 583 F. 3d 896.

No. 09–1353. Thunderhorse *v.* Pierce, Individually and in His Official Capacity as Chaplaincy Director of the Texas Department of Criminal Justice, et al. C. A. 5th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 141.

No. 09–11099. Simms *v.* Acevedo, Warden. C. A. 7th Cir. Certiorari denied. Reported below: 595 F. 3d 774.

No. 09–11126. Doe *v.* Duncan et al. Sup. Ct. S. C. Certiorari denied.

No. 09–11208. Corber *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 596 F. 3d 763.

No. 10–116. Grant County Black Sands Irrigation District et al. *v.* United States Bureau of Reclamation et al. C. A. Fed. Cir. Certiorari denied. Reported below: 579 F. 3d 1345.

No. 10–130. Zhan Gao *v.* Holder, Attorney General. C. A. 4th Cir. Certiorari denied. Reported below: 595 F. 3d 549.

No. 10–151. Depee et al. *v.* Mahach-Watkins, Individually and as the Successor in Interest to the Estate of Watkins. C. A. 9th Cir. Certiorari denied. Reported below: 593 F. 3d 1054.

No. 10–241. Chapman *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 593 F. 3d 365.

No. 10–251. Experian Information Solutions, Inc. *v.* Pintos. C. A. 9th Cir. Certiorari denied. Reported below: 605 F. 3d 665.

No. 10–262. Wilcox et ux. *v.* Fenn et al. C. A. 11th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 837.

No. 10–264. Missouri *v.* Kruse. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 306 S. W. 3d 603.

No. 10–308. DODSON *v.* UNIVERSITY OF ARKANSAS FOR MEDICAL SCIENCES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 601 F. 3d 750.

No. 10–320. HAQUE *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 70 App. Div. 3d 967, 897 N. Y. S. 2d 130.

No. 10–326. BROWN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 595 F. 3d 498.

No. 10–344. ALVINO HERRERA *v.* OREGON. Ct. App. Ore. Certiorari denied.

No. 10–357. MAHARAM *v.* PATTERSON ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 369 Fed. Appx. 240.

No. 10–363. ESTATE OF TIMKEN, DECEASED, ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 601 F. 3d 431.

No. 10–371. LAWNWOOD MEDICAL CENTER, INC. *v.* SADOW. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 43 So. 3d 710.

No. 10–372. FORRESTER *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2010 Ark. 291.

No. 10–376. WRISLEY ET AL. *v.* CROWE ET AL.;
No. 10–377. MCDONOUGH *v.* CROWE ET AL.; and
No. 10–420. BLUM *v.* CROWE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 608 F. 3d 406.

No. 10–383. NIBCO, INC. *v.* RIVERA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 757.

No. 10–397. BRADLEY *v.* HOLDER, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 603 F. 3d 235.

No. 10–401. WEINMAN, TRUSTEE *v.* GRAVES ET UX. C. A. 10th Cir. Certiorari denied. Reported below: 609 F. 3d 1153.

No. 10–404. SCHAEFER *v.* MCHUGH, SECRETARY OF THE ARMY. C. A. D. C. Cir. Certiorari denied. Reported below: 608 F. 3d 851.

No. 10–441. JANICE R. *v.* DEBRA H. Ct. App. N. Y. Certiorari denied. Reported below: 14 N. Y. 3d 576, 930 N. E. 2d 184.

No. 10–457. CHESNEY ET UX. *v.* VALLEY STREAM UNION FREE SCHOOL DISTRICT NO. 24 ET AL. C. A. 2d Cir. Certiorari denied.

No. 10–463. ADDINGTON ET AL., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED *v.* US AIRLINE PILOTS ASSN. C. A. 9th Cir. Certiorari denied. Reported below: 606 F. 3d 1174.

No. 10–471. MILLER-GOODWIN *v.* CITY OF PANAMA CITY BEACH, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 966.

No. 10–502. DIXON *v.* DEUTSCHE BANK NATIONAL TRUST CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 360 Fed. Appx. 703.

No. 10–503. ERICKSON ET UX. *v.* CITY OF AUBURN, WASHINGTON. C. A. 9th Cir. Certiorari denied. Reported below: 361 Fed. Appx. 750.

No. 10–505. STEVENS *v.* ESTATE OF MYERS. C. A. 11th Cir. Certiorari denied.

No. 10–510. TABOR *v.* FREIGHTLINER OF CLEVELAND, LLC. C. A. 4th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 321.

No. 10–518. HOLMAN, PERSONAL REPRESENTATIVE OF THE ESTATE OF CLIPPERT, DECEASED *v.* RASAK. Sup. Ct. Mich. Certiorari denied. Reported below: 486 Mich. 429, 785 N. W. 2d 98.

No. 10–521. BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY, COLORADO *v.* ROCKY MOUNTAIN CHRISTIAN CHURCH ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 613 F. 3d 1229.

No. 10–526. HOLLANDER *v.* COPACABANA NIGHTCLUB ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 624 F. 3d 30.

No. 10–527. MORALES *v.* CAMPBELL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 728.

No. 10–529. PARRA ET AL. *v.* NEAL, CHAIRMAN OF THE CHICAGO BOARD OF ELECTION COMMISSIONERS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 614 F. 3d 635.

No. 10–539. MODZELEWSKI *v.* PROCH. Sup. Ct. Pa. Certiorari denied. Reported below: 605 Pa. 508, 992 A. 2d 89.

No. 10–541. TAITZ *v.* MACDONALD ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 949.

No. 10–549. HOLIBAUGH *v.* ROBB EVANS & ASSOCIATES, LLC. C. A. 4th Cir. Certiorari denied. Reported below: 609 F. 3d 359.

No. 10–552. KRANTZ ET UX. *v.* ARKANSAS DEPARTMENT OF HUMAN SERVICES. Ct. App. Ark. Certiorari denied. Reported below: 2010 Ark. App. 316.

No. 10–561. SUNG ET AL. *v.* CHOI ET AL. Ct. App. Wash. Certiorari denied. Reported below: 154 Wash. App. 303, 225 P. 3d 425.

No. 10–562. KIRLEIS *v.* DICKIE, MCCAMEY & CHILCOTE, P. C. C. A. 3d Cir. Certiorari denied.

No. 10–567. KING *v.* FARRIS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 357 Fed. Appx. 223.

No. 10–569. CONWAY, ATTORNEY GENERAL OF KENTUCKY *v.* MCQUEARY. C. A. 6th Cir. Certiorari denied. Reported below: 614 F. 3d 591.

No. 10–573. SHEPHERD MONTESSORI CENTER MILAN *v.* ANN ARBOR CHARTER TOWNSHIP ET AL. Sup. Ct. Mich. Certiorari denied. Reported below: 486 Mich. 311, 783 N. W. 2d 695.

No. 10–574. BARNWELL, AS SURVIVING SPOUSE AND PERSONAL REPRESENTATIVE OF BARNWELL *v.* DOUGLAS COUNTY, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 862.

No. 10–575. VENESEVICH *v.* LEONARD ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 378 Fed. Appx. 129.

No. 10–580. KRAFT FOODS GLOBAL, INC., OSCAR MAYER FOODS DIVISION *v.* SPOERLE ET AL., INDIVIDUALLY AND ON BE-

HALF OF ALL OTHERS SIMILARLY SITUATED. C. A. 7th Cir. Certiorari denied. Reported below: 614 F. 3d 427.

No. 10–581. CE DESIGN, LTD. *v.* PRISM BUSINESS MEDIA, INC. C. A. 7th Cir. Certiorari denied. Reported below: 606 F. 3d 443.

No. 10–582. TIFFEE ET AL. *v.* CITIZENS TELECOMMUNICATIONS CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 638.

No. 10–583. AYANBADEJO ET UX. *v.* NAPOLITANO, SECRETARY OF HOMELAND SECURITY, ET AL. C. A. 5th Cir. Certiorari denied.

No. 10–584. JASSO *v.* CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 636.

No. 10–586. JOHNSON *v.* POTTER, POSTMASTER GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 398 Fed. Appx. 644.

No. 10–587. PATEL *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 595.

No. 10–599. ONYEABOR *v.* CENTENNIAL POINTE OWNER'S ASSN. ET AL. Ct. App. Utah. Certiorari denied. Reported below: 2009 UT App 325.

No. 10–600. PIPER *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 374 Fed. Appx. 957.

No. 10–601. MEE INDUSTRIES INC. *v.* DOW CHEMICAL CO. C. A. 11th Cir. Certiorari denied. Reported below: 608 F. 3d 1202.

No. 10–602. DEEGAN ET UX. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 603 F. 3d 1301.

No. 10–607. SULLIVAN *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 201 N. C. App. 540, 687 S. E. 2d 504.

No. 10–608. GREEN *v.* RHEE. Ct. App. D. C. Certiorari denied.

No. 10–609. New Jersey Peace Action et al. *v.* Obama, President of the United States. C. A. 3d Cir. Certiorari denied. Reported below: 379 Fed. Appx. 217.

No. 10–610. Prati et ux. *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 603 F. 3d 1301.

No. 10–612. Anderson et al. *v.* Obama, President of the United States. C. A. 4th Cir. Certiorari denied.

No. 10–614. Zhuang Li Cai *v.* Uddin. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 58 App. Div. 3d 746, 871 N. Y. S. 2d 675.

No. 10–619. Talmage et ux. *v.* Commissioner of Internal Revenue. C. A. 9th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 660.

No. 10–625. O'Hara et al. *v.* Zurich American Insurance Co. et al. C. A. 11th Cir. Certiorari denied. Reported below: 604 F. 3d 1232.

No. 10–626. Barros *v.* Smeal, Acting Secretary, Pennsylvania Department of Corrections, et al. C. A. 3d Cir. Certiorari denied.

No. 10–628. O'Connor *v.* Colorado College et al. Ct. App. Colo. Certiorari denied.

No. 10–634. Tratree *v.* BP North America Pipelines, Inc. C. A. 5th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 386.

No. 10–641. Powers *v.* Freihammer et ux., Individually and on Behalf of Their Minor Children. Ct. App. Minn. Certiorari denied.

No. 10–642. Kone *v.* Virginia Department of State Police. Sup. Ct. Va. Certiorari denied.

No. 10–643. International Association of Machinists & Aerospace Workers, AFL–CIO, Local Lodge 1943 *v.* AK Steel Corp. C. A. 6th Cir. Certiorari denied. Reported below: 615 F. 3d 706.

No. 10–645. Raynor et vir *v.* Myers, Trustee of the John P. Raynor Chapter 7 Bankruptcy. C. A. 8th Cir. Certiorari denied. Reported below: 617 F. 3d 1065.

No. 10–650. MAYERCHECK *v.* JUDGES OF THE SUPREME COURT OF PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 395 Fed. Appx. 839.

No. 10–654. MORALES-VALLELLANES *v.* POTTER, POSTMASTER GENERAL. C. A. 1st Cir. Certiorari denied. Reported below: 605 F. 3d 27.

No. 10–663. MALYUTIN *v.* RICE ET AL. C. A. D. C. Cir. Certiorari denied.

No. 10–673. DUKES *v.* LANCER INSURANCE CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 390 Fed. Appx. 159.

No. 10–675. GONZALEZ GUILBOT ET AL. *v.* GUILBOT SERROS DE GONZALEZ ET AL. Sup. Ct. Tex. Certiorari denied. Reported below: 315 S. W. 3d 533.

No. 10–697. PABON-MANDRELL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 617 F. 3d 581.

No. 10–700. CREATIVE COMPOUNDS, LLC *v.* SABINSA CORP. C. A. 3d Cir. Certiorari denied. Reported below: 609 F. 3d 175.

No. 10–706. DESENBERG *v.* GOOGLE, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 392 Fed. Appx. 868.

No. 10–710. MULLINS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 69 M. J. 113.

No. 10–716. MALDONADO *v.* LOGLOGIC, INC. C. A. D. C. Cir. Certiorari denied. Reported below: 383 Fed. Appx. 9.

No. 10–726. GANIM *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 10–737. LAZAR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 604 F. 3d 230.

No. 10–5128. MORENO-PADILLA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 602 F. 3d 802.

No. 10–5175. NGUYEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 602 F. 3d 886.

No. 10–5403. NORIEGA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 48 Cal. 4th 517, 229 P. 3d 1.

No. 10–5651. N–A–M *v.* HOLDER, ATTORNEY GENERAL. C. A. 10th Cir. Certiorari denied. Reported below: 587 F. 3d 1052.

No. 10–5718. REYES-BOSQUE, AKA VARELA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 596 F. 3d 1017.

No. 10–5836. SIEGEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 338.

No. 10–5898. PARKER *v.* POTTER. C. A. 11th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 945.

No. 10–5909. DAVIS *v.* UNITED STATES; and
No. 10–5940. FENNER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 600 F. 3d 1014.

No. 10–5922. BANKS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 237 Ill. 2d 154, 934 N. E. 2d 435.

No. 10–5988. WILLIAMS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 392 Ill. App. 3d 1132, 984 N. E. 2d 210.

No. 10–5998. FAZIO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 599 F. 3d 835.

No. 10–6039. VILLALOBOS *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 225 Ariz. 74, 235 P. 3d 227.

No. 10–6115. EDENS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 880.

No. 10–6180. BELL *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 440.

No. 10–6242. BURKS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 548.

No. 10–6259. CEBALLOS-ZUNIGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 417.

No. 10–6272. TINSLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 10–6297. BRYAN *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 10–6323. IRBY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 327 S. W. 3d 138.

No. 10–6337. MARTINEZ COVARRUBIAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 626.

No. 10–6339. DEL VALLE-CISNEROS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 319.

No. 10–6446. ESTRADA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 313 S. W. 3d 274.

No. 10–6532. SHAW *v.* POTTER, POSTMASTER GENERAL. C. A. 6th Cir. Certiorari denied.

No. 10–6634. WILLIAMS *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 598 F. 3d 778.

No. 10–6650. HINES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 10–6668. KERR *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 400.

No. 10–6689. DARTEZ *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 42 Kan. App. 2d xviii, 209 P. 3d 764.

No. 10–6701. WIDEMAN *v.* COLORADO (Reported below: 382 Fed. Appx. 743); and WIDEMAN *v.* GARCIA (382 Fed. Appx. 741). C. A. 10th Cir. Certiorari denied.

No. 10–6928. LUCKEY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 10–6948. FRANCIS *v.* CITY OF LOS ANGELES, CALIFORNIA, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–6952. FENNER *v.* BELL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 362.

No. 10–6953. HACKNEY *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–6958. HOLLINS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 287 Ga. 233, 695 S. E. 2d 23.

No. 10–6959. HILL *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 619.

No. 10–6960. NEYENS *v.* IOWA. Sup. Ct. Iowa. Certiorari denied.

No. 10–6963. MADDOX *v.* MCPHETRES ET AL. C. A. 8th Cir. Certiorari denied.

No. 10–6966. WILLIAMS *v.* UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT ET AL. C. A. 8th Cir. Certiorari denied.

No. 10–6969. WILLIAMS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 10–6980. FIELDS *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 10–6985. FRAZIER *v.* JACKSON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 808.

No. 10–6988. MOORE *v.* OHIO. Ct. App. Ohio, Lucas County. Certiorari denied.

No. 10–6994. BIAS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 77 So. 3d 632.

No. 10–6997. NELSON *v.* SKEHAN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 783.

No. 10–6998. ADAMS *v.* SHORT ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–7000. ADAMS *v.* CITY OF FEDERAL WAY, WASHINGTON, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–7004. EDWARDS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–7007. EVANS *v.* LEE. Sup. Ct. Del. Certiorari denied. Reported below: 996 A. 2d 793.

No. 10–7009. DAVIS *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 10–7011. DAVIS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 10–7016. SCOTT *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–7017. RAMOS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 396 Ill. App. 3d 869, 920 N. E. 2d 504.

No. 10–7020. DODSON *v.* VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 445.

No. 10–7027. MCCRACKEN *v.* BROOKHAVEN SCIENCE ASSOCIATES LLC ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 376 Fed. Appx. 138.

No. 10–7030. TORREFRANCA *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–7037. ODOM *v.* RYAN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 303.

No. 10–7041. TREVINO *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–7042. TAURO *v.* BAER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 395 Fed. Appx. 875.

No. 10–7048. MOORE *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 433.

No. 10–7077. EDWARDS *v.* SOUTH DAKOTA. Sup. Ct. S. D. Certiorari denied. Reported below: 785 N. W. 2d 272.

No. 10–7078. CASE *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 384 Fed. Appx. 43.

No. 10–7079. MILLER *v.* WENEROWICZ, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FRACKVILLE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–7091. VINES *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 429.

No. 10–7092. IRICK *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 320 S. W. 3d 284.

No. 10–7093. PARKER *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 42 So. 3d 402.

No. 10–7094. PETE *v.* WHITE, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 10–7095. BATISTE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 10–7103. LAMBRIX *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 39 So. 3d 260.

No. 10–7104. HAMMOND *v.* UPTON, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 586 F. 3d 1289.

No. 10–7105. STOEVER *v.* TECH USA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 492.

No. 10–7107. BURE *v.* MCCOLLUM, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–7111. SONNTAG *v.* CLIFTON ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–7113. RIVERA *v.* PENNSYLVANIA DEPARTMENT OF CORRECTIONS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 388 Fed. Appx. 107.

No. 10–7117. EVANS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 38 So. 3d 135.

No. 10–7121. DIAZ *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 947.

No. 10–7122. FORE *v.* LAKESIDE BUSES OF WISCONSIN, INC. C. A. 7th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 478.

No. 10–7128. BELL *v.* WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES (two judgments). Ct. App. Wash. Certiorari denied.

No. 10–7131. THOMPSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 49 Cal. 4th 79, 231 P. 3d 289.

No. 10–7132. SANCHEZ *v.* HAYNES, SUPERINTENDENT, WARREN CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 289.

No. 10–7133. CALLAHAN *v.* DIGGS, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 10–7135. SIKANDER *v.* HOLDER, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 376 Fed. Appx. 179.

No. 10–7140. EDWARDS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–7142. DELK *v.* MINNESOTA. Ct. App. Minn. Certiorari denied. Reported below: 781 N. W. 2d 426.

No. 10–7146. GONZALES GARCIA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–7147. GRAY *v.* MARYLAND. Cir. Ct. Baltimore County, Md. Certiorari denied.

No. 10–7148. GOLD *v.* SCHUETTE. C. A. 9th Cir. Certiorari denied.

No. 10–7151. GIBSON *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 10–7154. GONZALES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 313 S. W. 3d 840.

No. 10–7155. HOPKINS *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–7158. STONE *v.* STENZ ET AL. C. A. 7th Cir. Certiorari denied.

No. 10–7161. WASHINGTON *v.* PROVINCE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 823.

No. 10–7162. DAVIS *v.* LOUISIANA. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 26 So. 3d 802.

No. 10–7166. JOHNSON *v.* MORRELL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 333.

No. 10–7169. CARTER *v.* VASQUEZ ET AL. C. A. 7th Cir. Certiorari denied.

No. 10–7173. DEERE *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 126 Nev. 705.

No. 10–7174. BOURGEOIS *v.* BERGERON, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 10–7176. DAVIS *v.* GUSMAN, SHERIFF, ORLEANS PARISH PRISON, ET AL. C. A. 5th Cir. Certiorari denied.

No. 10–7177. MILTON *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 347 Fed. Appx. 528.

No. 10–7178. SEPULVEDA *v.* BURNSIDE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 821.

No. 10–7179. RINES *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–7180. SAINT *v.* MASSACHUSETTS REHABILITATION COMMISSION HOME CARE ASSISTANCE PROGRAM. C. A. 1st Cir. Certiorari denied.

No. 10–7181. QUINONEZ *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–7184. RICHARDSON *v.* VARANO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–7188. MALLETT *v.* LABOR AND INDUSTRY REVIEW COMMISSION ET AL. Ct. App. Wis. Certiorari denied. Reported below: 324 Wis. 2d 583, 785 N. W. 2d 688.

No. 10–7190. JEFFERSON *v.* SMITH, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 643.

No. 10–7191. JONES *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 236.

No. 10–7197. WILSON *v.* HOLDER, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 419.

No. 10–7200. PIPES *v.* CORRECTIONAL MEDICAL SERVICES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 290.

No. 10–7201. WAGSTAFF *v.* DEPARTMENT OF EDUCATION. C. A. 5th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 564.

No. 10–7217. DAWSON *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–7218. ELLIS *v.* BENEDETTI ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 227.

No. 10–7220. ALLEN *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 43 So. 3d 690.

No. 10–7221. BURGOS-SANTOS *v.* LAVALLEY, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–7224. ABEBE *v.* PERRY. C. A. 4th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 282.

No. 10–7225. BATEMAN *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 318 S. W. 3d 681.

No. 10–7232. THOMPSON *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 639.

No. 10–7237. BARBEE *v.* CORRECTIONAL MEDICAL SERVICES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 337.

No. 10–7239. RODRIGUEZ *v.* WOODS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–7242. BROWN *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied.

No. 10–7252. BAKER *v.* SIMPSON ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 613 F. 3d 346.

No. 10–7253. DAVIS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 10–7254. LOPEZ CALDERON *v.* SWARTHOUT, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–7257. TOUA HONG CHANG *v.* MINNESOTA. Ct. App. Minn. Certiorari denied. Reported below: 778 N. W. 2d 388.

No. 10–7259. ROGERS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–7261. WILLIAMS *v.* HAVILAND, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 397.

No. 10–7262. ROSE *v.* COX HEALTH SYSTEMS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 573.

No. 10–7264. ROBERTS *v.* SINGER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–7266. SILVA ROSA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–7267. RUSSELL *v.* LAVALLEY, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–7271. PATTERSON *v.* SUPERIOR COURT OF CALIFORNIA, SOLANO COUNTY. C. A. 9th Cir. Certiorari denied.

No. 10–7272. MEAD *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 10–7279. ARMSTRONG *v.* REDDING PAROLE DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–7280. STALEY *v.* OWENS, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 102.

No. 10–7282. BAILEY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 609 F. 3d 763.

No. 10–7283. BONIFACE *v.* DEPARTMENT OF HOMELAND SECURITY ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 613 F. 3d 282.

No. 10–7284. ELLIS *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA. C. A. 9th Cir. Certiorari denied.

No. 10–7285. EVANS *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 10–7286. SNEED *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 31 So. 3d 33.

No. 10–7288. IGLESIAS *v.* WAL-MART STORES EAST, L. P. C. A. 4th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 364.

No. 10–7291. JOHNLOUIS *v.* LOUISIANA. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 22 So. 3d 1150.

No. 10–7292. JONES *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 39 So. 3d 860.

No. 10–7293. JOHNSON *v.* ALABAMA ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–7295. MASSINGA *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 10–7300. TOLBERT *v.* WISE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–7301. SINGLETON *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 41 So. 3d 225.

No. 10–7306. SCHLECHTY *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 926 N. E. 2d 1.

No. 10–7307. ARVIE *v.* TANNER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 10–7308. CUEN *v.* HEDGPETH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 721.

No. 10–7316. JOHNSON *v.* SISTO, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–7319. MILLER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 42 So. 3d 204.

No. 10–7321. WILSON *v.* GOLDSTEIN. C. A. 7th Cir. Certiorari denied.

No. 10–7322. WILLIAMS *v.* GROUNDS, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–7325. HIRATA *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 833.

No. 10–7327. MCCRACKEN *v.* FORD MOTOR CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 392 Fed. Appx. 1.

No. 10–7328. MANN *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 10–7329. PROTOPAPPAS *v.* KNOWLES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–7334. WHITE *v.* ADAMS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–7336. CHOINSKI *v.* YATES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–7338. CARSON *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 10–7340. BOOKER-EL *v.* WILSON, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied.

No. 10–7342. GEIER *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 10–7347. ALLEN *v.* RELIANCE INSURANCE CO. C. A. 9th Cir. Certiorari denied.

No. 10–7355. ASHBAUGH *v.* YATES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–7356. WINDHAM *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 657.

No. 10–7366. DELGADO RODRIGUEZ *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–7367. SABREE *v.* WALSH ET AL. C. A. 1st Cir. Certiorari denied.

No. 10–7368. SEYMORE *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–7370. SATTERFIELD *v.* JOHNSON ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–7371. PERRY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–7373. BIVINGS *v.* LAWLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–7374. BROWN *v.* CLARK, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–7375. SCOTT *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 924 N. E. 2d 169.

No. 10–7378. JAMES *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–7381. BURTON *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 10–7386. ASTROP *v.* ECKERD CORP. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 881.

No. 10–7390. CHERRY *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 381 Fed. Appx. 57.

No. 10–7393. WEST *v.* RAY, COMMISSIONER, TENNESSEE DEPARTMENT OF CORRECTION, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 72.

No. 10–7395. ALLEN *v.* MCCOLLUM, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–7400. RHODES *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 8th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 653.

No. 10–7407. CASTILLA *v.* UTTECHT, SUPERINTENDENT, COYOTE RIDGE CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 10–7409. ROWE *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 583.

No. 10–7418. BARNO *v.* RYAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 272.

No. 10–7446. UPTON *v.* HARRINGTON, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–7448. THUILLARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 650.

No. 10–7453. SZYMANSKI *v.* ARIZONA. Super. Ct. Ariz., County of Maricopa. Certiorari denied.

No. 10–7454. SHOAGA *v.* MAERSK, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 620.

No. 10–7462. ARROYO-MUNOZ *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–7466. UPSHAW *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–7470. JAMESON *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 617.

No. 10–7471. LAZARO *v.* HOLDER, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 319.

No. 10–7479. MANESS *v.* ALASKA. Ct. App. Alaska. Certiorari denied.

No. 10–7483. STEIN *v.* FRAKES, SUPERINTENDENT, MONROE CORRECTIONAL COMPLEX. C. A. 9th Cir. Certiorari denied.

No. 10–7493. JOHNSON *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 10–7494. CARTER *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–7510. O'MEARA *v.* FENEIS, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 617 F. 3d 998.

No. 10–7511. MONDAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 614 F. 3d 983.

No. 10–7512. OROZCO-ACOSTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 607 F. 3d 1156.

No. 10–7514. BAXTER *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–7516. ANDERSON *v.* TENNESSEE. Ct. App. Tenn. Certiorari denied.

No. 10–7517. ELLIOTT *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 42 So. 3d 239.

No. 10–7534. RICHARDSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 614.

No. 10–7535. GONZALEZ-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 443.

No. 10–7536. FOREHAND *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 386 Fed. Appx. 174.

No. 10–7540. GRANT *v.* BARNHART, WARDEN. C. A. 1st Cir. Certiorari denied. Reported below: 616 F. 3d 72.

No. 10–7545. ANDERSON *v.* COLEMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–7546. HILL *v.* CARLTON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 38.

No. 10–7549. SILLS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 570.

No. 10–7555. ARIAS-JAVIER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 392 Fed. Appx. 896.

No. 10–7556. FAULDS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 612 F. 3d 566.

No. 10–7557. SWAIN *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 10–7563. ROMERO *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 10–7567. GRIFFIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–7572. HATCHER *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–7577. MORALES-VEGA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 158.

No. 10–7578. GRANT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–7579. HENDERSON *v.* HOUSTON, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 8th Cir. Certiorari denied.

No. 10–7581. IZEGWIRE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 369.

No. 10–7582. HENDERSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 736.

No. 10–7583. HERRON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 913.

No. 10–7586. BLAKEY *v.* MISSOURI ET AL. C. A. 8th Cir. Certiorari denied.

No. 10–7587. OLMEDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 166.

No. 10–7590. KONSAVICH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 361 Fed. Appx. 474.

No. 10–7595. RODRIGUEZ-TURCIOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 87.

No. 10–7598. ARREDONDO-DUENAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 376.

No. 10–7601. HAMMOND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 437.

No. 10–7602. HERNANDEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 608 F. 3d 1001.

No. 10–7604. FLOYD *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–7607. HARDY *v.* BRANKER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 206.

No. 10–7609. CONTRERAS-AGUINAGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 324.

No. 10–7610. COLE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 614 F. 3d 726.

No. 10–7614. BROWN *v.* SPARKMAN, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 208.

No. 10–7618. MORAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 612 F. 3d 684.

No. 10–7621. WISE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 566.

No. 10–7623. WHITNEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 277.

No. 10–7624. VERDUGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 617 F. 3d 565.

No. 10–7625. ALEXANDER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 274.

No. 10–7626. BOWIE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 618 F. 3d 802.

No. 10–7630. GIANNINI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–7636. SANCHEZ-GUZMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 8.

No. 10–7638. MCGEE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 615 F. 3d 1287.

No. 10–7640. ANGULO-LOPEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 615 F. 3d 1287.

No. 10–7642. MARTINEZ-PEREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 615 F. 3d 1287.

No. 10–7643. ANGULO-LOPEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 615 F. 3d 1287.

No. 10–7644. ESPARZA-CRUZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 597.

No. 10–7645. EVANS-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 611 F. 3d 635.

No. 10–7649. NEWTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 64.

No. 10–7651. RODRIGUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 609 F. 3d 495.

No. 10–7655. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 402.

No. 10–7657. JACKSON *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 10–7659. PAYTON *v.* DEPARTMENT OF HOMELAND SECURITY. C. A. Fed. Cir. Certiorari denied. Reported below: 403 F. 3d 496.

No. 10–7660. PEREZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 10–7661. MALCOLM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 964.

No. 10–7665. GRIFFIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 615 F. 3d 1287.

No. 10–7668. FELDHACKER *v.* BAKEWELL, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 10–7669. FLACK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 467.

No. 10–7670. GRAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 971.

No. 10–7672. DAVIS *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 30 So. 3d 201.

No. 10–7677. SALEH *v.* DAVIS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 331.

No. 10–7679. BENNETT *v.* HICKEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–7680. LLOYD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 179.

No. 10–7682. MARZZARELLA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 614 F. 3d 85.

No. 10–7685. SALINAS BAUTISTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 701.

No. 10–7686. MALLOY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 550.

No. 10–7687. MATOS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 611 F. 3d 31.

No. 10–7689. SHELBY *v.* QUINN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 548.

No. 10–7691. MENDOZA ZALDIVAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 615 F. 3d 1346.

No. 10–7694. VASQUEZ-MARTINEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 616 F. 3d 600.

No. 10–7697. VAZQUEZ-HERNANDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–7701. CRAFTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 378 Fed. Appx. 201.

No. 10–7702. MOTTOLA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 567.

No. 10–7703. NAVARRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 608 F. 3d 529.

No. 10–7704. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 607 F. 3d 1123.

No. 10–7705. WEST *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 402 Fed. Appx. 77.

No. 10–7707. KING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–7709. CARRAZANA *v.* UNITED STATES; and
No. 10–7783. GOMEZ-CRUZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 570.

No. 10–7713. LUCAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 305.

No. 10–7714. SCHULTZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 842.

No. 10–7716. DEAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 265.

No. 10–7720. PADILLA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 3d 643.

No. 10–7723. PETERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 665.

No. 10–7725. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–7727. YOUNG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 613 F. 3d 735.

No. 10–7733. BRADFIELD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 620.

No. 10–7734. COLLINS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 373 Fed. Appx. 94.

No. 10–7735. MARTINEZ-SEGURA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 135.

No. 10–7736. LITTLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–7738. MARTINEZ-BRAMBILA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 502.

No. 10–7739. MUNGO ET AL. *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 987 A. 2d 1145.

No. 10–7741. MCMAHAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 453.

No. 10–7744. ROMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 149.

No. 10–7745. SCOTT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 610 F. 3d 1009.

No. 10–7747. BUTCHER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 628.

No. 10–7748. ALI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 619 F. 3d 713.

No. 10–7749. BUSH *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 43 So. 3d 47.

No. 10–7750. ELMER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 401.

No. 10–7753. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 356.

No. 10–7756. LAKE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 10–7758. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 434.

No. 10–7759. OMOTOSHO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–7760. POTTS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 10–7766. GARCIA BLANCA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 10–7769. ELLISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 722.

No. 10–7774. DMYTRYSZYN *v.* COLORADO. Sup. Ct. Colo. Certiorari denied.

No. 10–7778. BUCCI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–7779. GOMEZ-MURILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 341.

No. 10–7780. HARDIN *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 238 Ill. 2d 33, 932 N. E. 2d 1016.

No. 10–7782. FERGUSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 77.

No. 10–7784. HERNANDEZ-PEREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 506.

No. 10–7787. RAINER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 616 F. 3d 1212.

No. 10–7789. RIVERA-RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 617 F. 3d 581.

No. 10–7790. FEASTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 561.

No. 10–7794. FORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 648.

No. 10–7796. HARVEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 607.

No. 10–7798. MIRANDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 243.

No. 10–7801. LEE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 345.

No. 10–7806. LAURIENTI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 611 F. 3d 530.

No. 10–7810. MEMIJE-SANTOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 437.

No. 10–7818. CASTRO-DAVIS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 612 F. 3d 53.

No. 10–7819. DIAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 120.

No. 10–7823. CRUMPLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 321.

No. 10–7825. DELGADO *v.* UNITED STATES;
No. 10–7837. JOHNSON *v.* UNITED STATES;
No. 10–7840. MCINTYRE *v.* UNITED STATES;
No. 10–7843. WALKER *v.* UNITED STATES; and
No. 10–7849. HISHAW *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 467.

No. 10–7828. BOONE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 909.

No. 10–7836. ALI JABER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 602.

No. 10–7838. LOCKARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 616.

No. 10–7841. OCHOA-RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 641.

No. 10–7846. SIMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 910.

No. 10–7848. MOSLEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–7855. MURPHY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 528.

No. 10–7858. KAUTZ *v.* KILMER. C. A. 9th Cir. Certiorari denied.

No. 10–7859. LII *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 498.

No. 10–7860. MALDONADO-DELGADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 281.

No. 10–7862. CARROLL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 456.

No. 09–1555. ALDERMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 565 F. 3d 641.

JUSTICE THOMAS, with whom JUSTICE SCALIA joins except for footnote 2, dissenting.

Today the Court tacitly accepts the nullification of our recent Commerce Clause jurisprudence. Joining other Circuits, the Court of Appeals for the Ninth Circuit has decided that an "implic[it] assum[ption]" of constitutionality in a 33-year-old statutory interpretation opinion "carve[s] out" a separate constitutional place for statutes like the one in this case and pre-empts a "careful parsing of post-*Lopez* case law." 565 F. 3d 641, 645, 647, 648 (2009) (citing *Scarborough* v. *United States*, 431 U. S. 563 (1977)). That logic threatens the proper limits on Congress' commerce power and may allow Congress to exercise police powers that our Constitution reserves to the States. I would grant certiorari.

I

Title 18 U. S. C. § 931(a) makes it "unlawful for a person to purchase, own, or possess body armor, if that person has been convicted of a felony that is . . . a crime of violence." James Guelff and Chris McCurley Body Armor Act of 2002, § 11009(e)(2)(A), 116 Stat. 1821. The statute defines "body armor" as "any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire." 18 U. S. C. § 921(a)(35).

In October 2005, federal prosecutors indicted Cedrick Alderman under § 931. Seattle police had stopped Alderman on suspicion of selling cocaine. The officers found no cocaine but discovered that Alderman was wearing a bulletproof vest. Although possession of the vest was legal under Washington state law, the elements of § 931 were satisfied. Alderman had been convicted of robbery in 1999, and the vest had been sold in interstate commerce three years earlier when the California manufacturer sold it to a distributor in Washington State. 565 F. 3d, at 644. There were no allegations that Alderman had purchased the body armor from another State or ever carried it across state lines.

Alderman entered a conditional guilty plea and was sentenced to 18 months in prison. He then appealed, arguing that § 931 exceeded Congress' power under the Commerce Clause. U. S. Const., Art. I, § 8, cl. 3. Over a dissent, a panel of the Ninth Circuit found § 931 constitutional. 565 F. 3d, at 648; *ibid.* (Paez, J., dissenting). The Ninth Circuit denied rehearing en banc, with four judges dissenting. 593 F. 3d 1141 (2010) (O'Scannlain, J., dissenting from denial of rehearing en banc).

II

This Court has consistently recognized that the Constitution imposes real limits on federal power. See *Gregory* v. *Ashcroft*, 501 U. S. 452, 457 (1991); *Marbury* v. *Madison*, 1 Cranch 137, 176 (1803) (opinion for the Court by Marshall, C. J.) ("The powers of the legislature are defined, and limited; and that those limits may not be mistaken, or forgotten, the constitution is written"). It follows from the enumeration of specific powers that there are boundaries to what the Federal Government may do. See, *e. g.*, *Gibbons* v. *Ogden*, 9 Wheat. 1, 195 (1824) ("The enumeration presupposes something not enumerated . . . "). The Constitution "withhold[s] from Congress a plenary police power that would authorize enactment of every type of legislation." *United States* v. *Lopez*, 514 U. S. 549, 566 (1995).

Recently we have endeavored to more sharply define and enforce limits on Congress' enumerated "[p]ower . . . [t]o regulate Commerce . . . among the several States." U. S. Const., Art. I, § 8, cl. 3. *Lopez* marked the first time in half a century that this Court held that an Act of Congress exceeded its commerce power. We identified three categories of activity that Congress' commerce power authorizes it to regulate: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) "activities having a substantial relation to interstate commerce . . . *i. e.*, those activities that substantially affect interstate commerce." 514 U. S., at 558–559. Emphasizing that we were unwilling to "convert congressional authority under the Commerce Clause to a general police power," *id.*, at 567, we struck down a ban on the possession of firearms within a 1,000-foot radius of schools because the statute did not regulate an activity that "substantially affect[ed]" interstate commerce, *id.*, at 561.

Five years after *Lopez*, we reaffirmed the "substantial effects" test in *United States* v. *Morrison*, 529 U. S. 598 (2000). We rejected Congress' attempt to "regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce," and held unconstitutional the civil remedy portion of the Violence Against Women Act of 1994. *Id.*, at 617, 619. We could think of "no better example of the police power, which the Founders denied the National Government and reposed in the States." *Id.*, at 618.

III

In upholding § 931(a), the Ninth Circuit recognized that *Lopez* and *Morrison* had "significantly altered the landscape of congressional power under the Commerce Clause" but held that it was guided "first and foremost" by *Scarborough*, *supra.* 565 F. 3d, at 643, 645. In *Scarborough*, this Court construed 18 U. S. C. App. § 1202(a) (1970 ed.), which made it a crime for a felon to "receiv[e], posses[s], or transpor[t] in commerce or affecting commerce" any firearm. 431 U. S., at 564. The question in that case was whether the "statutorily required nexus between the possession of a firearm by a convicted felon and commerce" could be satisfied by evidence that the gun had once traveled in interstate commerce. *Ibid.* The Court held that such evidence was sufficient, noting that the legislative history suggested that Congress wished to assert "'its full Commerce Clause power.'" *Id.*, at 571. No party alleged that the statute exceeded Congress' authority, and the Court did not hold that the statute was constitutional. The Ninth Circuit concluded that *Scarborough* had "implicitly assumed the constitutionality of" § 1202(a). 565 F. 3d, at 645.

The Ninth Circuit discussed how it might apply *Lopez* and *Morrison* "when traveling in uncharted waters" but ultimately concluded that it was "bound by *Scarborough*," in which this Court had "blessed" a "nearly identical jurisdictional hook." 565 F. 3d, at 648. Although it would "generally analyze cases in the framework of th[e] three *[Lopez]* categories," the Ninth Circuit determined that *Scarborough* had "carved out" a separate constitutional niche for statutes like §§ 931(a) and 1202(a). 565 F. 3d, at 646–647. The Ninth Circuit thus upheld the statute without "engag[ing] in the careful parsing of post-*Lopez* case law that would otherwise be required." *Id.*, at 648. The court recognized a tension between *Scarborough* and *Lopez* but declined to "deviate from binding precedent." 565 F. 3d, at 646.

The dissent argued that the court had "effectively render[ed] the Supreme Court's three-part Commerce Clause analysis superfluous." *Id.*, at 648 (opinion of Paez, J.). *Scarborough*, the dissent explained, "decided only a question of statutory interpretation." 565 F. 3d, at 656. Section 931 was, in the dissent's view, unconstitutional because applying *Lopez*, "felon-possession of body armor does not have a substantial effect on interstate commerce." 565 F. 3d, at 648.

The Ninth Circuit is not alone in its confusion about *Scarborough* and *Lopez*. The Tenth Circuit, also upholding § 931 under *Scarborough*, has observed that "[l]ike our sister circuits, we see considerable tension between *Scarborough* and the three-category approach adopted by the Supreme Court in its recent Commerce Clause cases." *United States* v. *Patton*, 451 F. 3d 615, 636 (2006).[1] These Circuits have determined that "[a]ny doctrinal inconsistency between *Scarborough* and the Supreme Court's more recent decisions is not for [us] to remedy," *ibid.*, and have stated their intent to follow *Scarborough* "until the Supreme Court tells us otherwise," 565 F. 3d, at 648 (internal quotation marks and brackets omitted).

IV

It is difficult to imagine a better case for certiorari. *Scarborough*, as the lower courts have read it, cannot be reconciled with *Lopez* because it reduces the constitutional analysis to the mere identification of a jurisdictional hook like the one in § 1202(a). See 593 F. 3d, at 1142 (O'Scannlain, J., dissenting from denial of rehearing en banc) ("The majority's opinion makes *Lopez* superfluous"). In fact, the Tenth Circuit has concluded that "[a]lthough the body armor statute does not fit within any of the *Lopez* categories, it is supported by the pre-*Lopez* precedent of *Scarborough*." *Patton*, *supra*, at 634.

Recognizing the conflict between *Lopez* and their interpretation of *Scarborough*, the lower courts have cried out for guidance from this Court. See 565 F. 3d, at 643 ("[A]bsent the Supreme Court or our en banc court telling us otherwise . . . the felon-in-

[1] Other Courts of Appeals, considering the constitutionality of different possession statutes, have applied *Scarborough* similarly, although the issue has divided some panels. See, *e. g.*, *United States* v. *Bishop*, 66 F. 3d 569 (CA3 1995); *id.*, at 595–596 (Becker, J., concurring in part and dissenting in part); *United States* v. *Vasquez*, 611 F. 3d 325 (CA7 2010); *id.*, at 337 (Manion, J., dissenting).

possession of body armor statute passes muster"); *Patton*, *supra*, at 636 ("We suspect the Supreme Court will revisit this issue in an appropriate case—maybe even this one"). This Court has a duty to defend the integrity of its precedents, and we should grant certiorari to affirm that *Lopez* provides the proper framework for a Commerce Clause analysis of this type.[2]

Further, the lower courts' reading of *Scarborough*, by trumping the *Lopez* framework, could very well remove any limit on the commerce power. The Ninth Circuit's interpretation of *Scarborough* seems to permit Congress to regulate or ban possession of any item that has ever been offered for sale or crossed state lines. Congress arguably could outlaw "the theft of a Hershey kiss from a corner store in Youngstown, Ohio, by a neighborhood juvenile on the basis that the candy once traveled . . . to the store from Hershey, Pennsylvania." *United States* v. *Bishop*, 66 F. 3d 569, 596 (CA3 1995) (Becker, J., concurring in part and dissenting in part). The Government actually conceded at oral argument in the Ninth Circuit that Congress could ban possession of french fries that have been offered for sale in interstate commerce.

Such an expansion of federal authority would trespass on traditional state police powers. See *Morrison*, *supra*, at 618; *Lopez*, 514 U. S., at 566; *id.*, at 584 (THOMAS, J., concurring) ("[W]e *always* have rejected readings of the Commerce Clause and the scope of federal power that would permit Congress to exercise a police power . . . " (emphasis in original)). Before Congress enacted § 931, the majority of States already had employed their police powers to address body armor and its use or possession by criminals. The States' different regimes range from laws requiring sales of body armor to be face to face, to laws increasing sentences for criminals who commit certain crimes with weapons and body armor, to no regulation at all.[3] Cf. *id.*, at 581 (KEN-

[2] I adhere to my previously stated views on the proper scope of the Commerce Clause. See *United States* v. *Lopez*, 514 U. S. 549, 585 (1995) (concurring opinion); *United States* v. *Morrison*, 529 U. S. 598, 627 (2000) (same); *Gonzales* v. *Raich*, 545 U. S. 1, 57 (2005) (dissenting opinion).

[3] At least 31 States have some form of body armor regulation. For instance, Maryland makes it a crime to wear body armor while committing certain crimes, Md. Crim. Law Code Ann. § 4–106 (Lexis Supp. 2010), and also prohibits individuals who have been convicted of crimes of violence or drug crimes from possessing, owning, or using body armor, although individuals may be exempted through a permit system, § 4–107 (Lexis 2002). Virginia makes it a class 4 felony to wear body armor while possessing a knife or firearm and committing a drug or violence offense. Va. Code Ann. § 18.2–

NEDY, J., concurring) (noting that more than 40 States had already outlawed gun possession at or near schools, and observing that "the reserved powers of the States are sufficient to enact those measures").

* * *

Fifteen years ago in *Lopez*, we took a significant step toward reaffirming this Court's commitment to proper constitutional limits on Congress' commerce power. If the *Lopez* framework is to have any ongoing vitality, it is up to this Court to prevent it from being undermined by a 1977 precedent that does not squarely address the constitutional issue. Lower courts have recognized this problem and asked us to grant certiorari. I would do so.

No. 10–263. SONY MUSIC ENTERTAINMENT, FKA SONY BMG MUSIC ENTERTAINMENT, ET AL. *v.* STARR ET AL. C. A. 2d Cir. Certiorari denied. THE CHIEF JUSTICE and JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 592 F. 3d 314.

No. 10–309. CASTRO, INDIVIDUALLY AND AS NEXT FRIEND OF R. M. G. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 608 F. 3d 266.

No. 10–360. KENTUCKY *v.* BROWN. Sup. Ct. Ky. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 313 S. W. 3d 577.

No. 10–433. ROTHE DEVELOPMENT CORP. *v.* DEPARTMENT OF DEFENSE ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 374 Fed. Appx. 36.

287.2 (Lexis 2009). North Carolina, by comparison, enhances all felony offenses by one class level if the offender wears or possesses body armor during the commission of the felony. N. C. Gen. Stat. Ann. § 15A–1340.16C (Lexis 2009). The States also define "body armor" in many different ways. See M. Puckett, Body Armor: A Survey of State & Federal Law (2d ed. 2004). Montana, Hawaii, Alaska, Maine, Nebraska, and Rhode Island, among others, have elected not to regulate body armor at all. See *United States* v. *Patton*, 451 F. 3d 615, 631, n. 7 (CA10 2006) (categorizing the various state schemes).

No. 10–501. TAYLOR ET AL. *v.* ACXIOM CORP. ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 612 F. 3d 325.

No. 10–509. AVID IDENTIFICATION SYSTEMS, INC. *v.* CRYSTAL IMPORT CORP. ET AL. C. A. Fed. Cir. Motion of Allflex U. S. A., Inc., for leave to file a brief as *amicus curiae* under seal with redacted copies for the public record granted. Certiorari denied. Reported below: 603 F. 3d 967.

No. 10–546. ATLANTIC RICHFIELD CO. ET AL. *v.* SANTA CLARA COUNTY, CALIFORNIA, ET AL. Sup. Ct. Cal. Motion of Atlantic Legal Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 50 Cal. 4th 35, 235 P. 3d 21.

No. 10–550. FLORIDA *v.* ROSS. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 45 So. 3d 403.

No. 10–647. WYSOCKI *v.* INTERNATIONAL BUSINESS MACHINES CORP., DBA IBM, INC. C. A. 6th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 607 F. 3d 1102.

No. 10–679. BURDEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 600 F. 3d 204.

No. 10–5850. SAUNDERS *v.* ARTUS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 587 F. 3d 543.

No. 10–5955. SESSION *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 378 Fed. Appx. 115.

No. 10–6133. SCHERY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 10–7106. ZIED-CAMPBELL *v.* RICHMAN ET AL. C. A. 3d Cir. Certiorari before judgment denied.

No. 10–7114. REDZIC *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 10–7233. TRUONG *v.* CHARLES SCHWAB & CO., INC. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 10–7613. BHATIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 10–7678. BROWN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 381 Fed. Appx. 864.

No. 10–7754. MARTINEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 393 Fed. Appx. 739.

No. 10–7772. MCCULLOUGH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 389 Fed. Appx. 211.

No. 10–7777. CUSANO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 389 Fed. Appx. 143.

No. 10–7807. AWAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 607 F. 3d 306 and 384 Fed. Appx. 9.

No. 10–7845. VASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 386 Fed. Appx. 479.

No. 10–7857. SONG LAI LIAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 391 Fed. Appx. 969.

No. 10–8168 (10A664). MATTHEWS *v.* JONES, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SOTOMAYOR, and by her referred to the Court, denied. Certiorari denied. Reported below: 627 F. 3d 1336.

Rehearing Denied

No. 09–1463. MESSINA *v.* COMMISSIONER OF INTERNAL REVENUE, *ante*, p. 835;

No. 09–10496. MENG *v.* MECKLENBURG COUNTY DEPARTMENT OF SOCIAL SERVICES, *ante*, p. 845;

No. 09–10655. DECKER *v.* DUNBAR ET AL., *ante*, p. 848;

No. 09–10690. BOOKER *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante*, p. 849;

No. 09–10705. SHAARBAY *v.* FLORIDA, *ante*, p. 850;

No. 09–10709. MASON *v.* CASSADY ET AL., *ante*, p. 850;

No. 09–10763. EVANS *v.* ELDRIDGE ET AL., *ante*, p. 851;

No. 09–10764. DAVIS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 851;

No. 09–10784. GROVER *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 852;

No. 09–10818. FOX *v.* UPTON, WARDEN, ET AL., *ante*, p. 853;

No. 09–10946. SILVERMAN *v.* HUDSON, WARDEN, *ante*, p. 856;

No. 09–11037. BROTHERS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 860;

No. 09–11044. XIAO QING LIU *v.* RICHLINE GROUP ET AL., *ante*, p. 860;

No. 09–11070. GILLARD *v.* MICHALAKOS ET AL., *ante*, p. 861;

No. 09–11081. BLAKENEY *v.* MISSISSIPPI, *ante*, p. 861;

No. 09–11108. WILLIAMS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 862;

No. 09–11248. BENJAMIN *v.* SHEPHERD ET AL., *ante*, p. 869;

No. 09–11545. POSTELL *v.* BANK OF CENTRAL FLORIDA ET AL., *ante*, p. 887;

No. 09–11559. POSTELL *v.* BANK OF CENTRAL FLORIDA ET AL., *ante*, p. 888;

No. 10–280. GHAZIBAYAT *v.* SBC ADVANCED SOLUTIONS, INC., *ante*, p. 1004;

No. 10–299. YUMIN ZHAO *v.* LONE STAR ENGINE INSTALLATION CENTER, INC., *ante*, p. 1004;

No. 10–338. TRICOME *v.* EBAY INC., *ante*, p. 1005;

No. 10–381. VANCE *v.* ILLINOIS, *ante*, p. 1005;

No. 10–393. BAIRD *v.* BURLINGTON NORTHERN & SANTA FE RAILWAY CO. ET AL., *ante*, p. 1030;

No. 10–5028. WALSH *v.* QUINN ET AL., *ante*, p. 899;

No. 10–5161. MERRITT *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 907;

No. 10–5184. ROBERTS *v.* MCCULLOCH, *ante*, p. 908;

No. 10–5275. JOHN R. G. *v.* CATHOLIC CHARITIES OF SOUTHERN NEVADA, *ante*, p. 912;

No. 10–5304. COX *v.* FLORIDA, *ante*, p. 914;

No. 10–5380. BLOOD *v.* UNITED STATES, *ante*, p. 918;

No. 10–5474. CORBIN *v.* WHEELER, WARDEN, *ante*, p. 924;

No. 10–5485. MEREDITH *v.* FLORIDA, *ante*, p. 924;

No. 10–5501. MCNEIL *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, *ante*, p. 925;

No. 10–5514. DILLEHAY, AKA SMITH *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 926;

No. 10–5518. KANGERE *v.* DAVENPORT, *ante*, p. 926;

No. 10–5519. KRIZ *v.* 12TH JUDICIAL DISTRICT BOARD OF MENTAL HEALTH OF BOX BUTTE COUNTY ET AL., *ante*, p. 926;

No. 10–5568. SALTER *v.* UNITED STATES, *ante*, p. 929;

No. 10–5589. OWENS *v.* MARSHALL, WARDEN, *ante*, p. 930;

No. 10–5597. BENJAMIN *v.* REID ET AL., *ante*, p. 930;

No. 10–5630. ROGERS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 932;

No. 10–5668. STAFFORD *v.* AMMONS ET AL., *ante*, p. 965;

No. 10–5681. REID *v.* SWIFT TRANSPORTATION CO., INC., *ante*, p. 934;

No. 10–5701. KARAWI *v.* UNITED STATES, *ante*, p. 935;

No. 10–5729. NAKAGAWA *v.* COLORADO, *ante*, p. 936;

No. 10–5814. HUNG HA *v.* RICHMAN ET AL., *ante*, p. 967;

No. 10–5823. HUBBARD *v.* DETROIT PUBLIC SCHOOLS, *ante*, p. 968;

No. 10–5824. TAYLOR *v.* YATES, WARDEN, *ante*, p. 968;

No. 10–5890. Moore *v.* Tennis, Superintendent, State Correctional Institution at Rockview, et al., *ante*, p. 940;

No. 10–5899. McCray *v.* Wal-Mart Stores, Inc., et al., *ante*, p. 969;

No. 10–5949. Spisak *v.* Nevada, *ante*, p. 984;

No. 10–5960. Campanile *v.* Nicolella, Executor of the Estate of Renzi, Deceased, *ante*, p. 984;

No. 10–5963. Bustos Anaya *v.* Sisto, Warden, *ante*, p. 969;

No. 10–5972. Blackmer *v.* Sweat et al., *ante*, p. 984;

No. 10–5977. Stapley *v.* Mississippi Bar et al., *ante*, p. 985;

No. 10–6012. Harris *v.* Progressive Northern Insurance Co. et al., *ante*, p. 1007;

No. 10–6019. Martin *v.* Johnson, Director, Virginia Department of Corrections, *ante*, p. 1007;

No. 10–6055. Arnaiz *v.* United States, *ante*, p. 944;

No. 10–6057. Miller *v.* Kolender et al., *ante*, p. 1008;

No. 10–6101. In re Sancho, *ante*, p. 1001;

No. 10–6120. Winnett *v.* Saline County Jail et al., *ante*, p. 986;

No. 10–6122. Stout *v.* Hobbs, Warden, *ante*, p. 1009;

No. 10–6168. Stinski *v.* Georgia, *ante*, p. 1011;

No. 10–6198. Leiser *v.* Thurmer, Warden, *ante*, p. 971;

No. 10–6276. McClellan *v.* Hobbs, Director, Arkansas Department of Correction, *ante*, p. 987;

No. 10–6293. McCaslin *v.* Birmingham Museum of Art et al., *ante*, p. 1031;

No. 10–6310. Webb *v.* Kern, Judge, Circuit Court of South Dakota, Pennington County, et al., *ante*, p. 1032;

No. 10–6359. Wynter *v.* New York, *ante*, p. 1032;

No. 10–6369. In re Sanders, *ante*, p. 1043;

No. 10–6393. Jones *v.* City of North Platte, Nebraska, et al., *ante*, p. 1047;

No. 10–6419. Blade *v.* United States, *ante*, p. 988;

No. 10–6452. Metcalf *v.* United States, *ante*, p. 989;

No. 10–6461. Rainey *v.* United States, *ante*, p. 989;

No. 10–6466. Holmes *v.* United States, *ante*, p. 989;

No. 10–6478. Taylor *v.* New Jersey et al., *ante*, p. 1048;

No. 10–6483. Garvins *v.* Burnett et al., *ante*, p. 1048;

No. 10–6501. In re Dominguez, *ante*, p. 1043;

No. 10–6516. Kendricks *v.* Barrow, Warden, *ante*, p. 1015;

No. 10–6520. BRIM, AKA HORNE *v.* ZAVARES, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 1015;

No. 10–6641. MARTINEZ *v.* UNITED STATES, *ante*, p. 1017;

No. 10–6711. TORRES *v.* UNITED STATES, *ante*, p. 1018; and

No. 10–6860. BIRTHA *v.* UNITED STATES, *ante*, p. 1035. Petitions for rehearing denied.

No. 09–9905. MATTHEWS *v.* UNITED STATES, 559 U. S. 1113. Motion for leave to file petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 10–6449. WARE *v.* UNITED STATES, *ante*, p. 995; and

No. 10–6936. XIANG LI *v.* UNITED STATES, *ante*, p. 1054. Petitions for rehearing denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of these petitions.

No. 10–6950. IN RE GORBEY, *ante*, p. 1028. Petition for rehearing denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 10–5330. GARRAWAY *v.* LEE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, *ante*, p. 954. Motion for leave to file petition for rehearing denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion.

JANUARY 11, 2011

Miscellaneous Order

No. 10A688 (10–8317). FOSTER *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 terminate upon the issuance of the mandate of this Court. JUSTICE SCALIA and JUSTICE ALITO would deny the application for stay of execution.

JANUARY 13, 2011

Certiorari Denied

No. 10–8367 (10A698). WHITE *v.* CULLIVER, WARDEN, ET AL. C. A. 11th Cir. Application for stay of execution of sentence of

death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. The order heretofore entered by JUSTICE THOMAS is vacated. Reported below: 408 Fed. Appx. 292.

No. 10–8382 (10A700). WHITE *v.* ALABAMA. Sup. Ct. Ala. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied.

JANUARY 18, 2011

Dismissal Under Rule 46

No. 132, Orig. ALABAMA ET AL. *v.* NORTH CAROLINA. Bill of complaint dismissed under this Court's Rule 46.1. [For earlier order herein, see, *e. g.*, *ante*, p. 820.]

Certiorari Dismissed

No. 10–7498. WILLIAMS *v.* SMALLWOOD ET AL. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–7576. MILLER *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–7591. CHILDS *v.* OLSON ET AL. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

Miscellaneous Orders

No. 10M60. WALSH *v.* PATITUCCI;

No. 10M61. LEATHERWOOD *v.* ANNA'S LINENS CO.;

No. 10M62. JAFFE *v.* YAFFE ET AL.;

No. 10M63. STURDZA *v.* UNITED ARAB EMIRATES ET AL.; and

No. 10M64. MESSER ET AL. *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 132, Orig. ALABAMA ET AL. *v.* NORTH CAROLINA. Motion of the Special Master for allowance of fees and reimbursement of expenses granted, and the Special Master is awarded a total of $6,312.50 for the period July 1 through December 31, 2010, to be paid equally by the parties. JUSTICE KAGAN took no part in the consideration or decision of this motion. [For earlier order herein, see, *e. g.*, *supra.*]

No. 10–224. NATIONAL MEAT ASSN. *v.* HARRIS, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 10–6704. IN RE WARREN. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 1059] denied.

No. 10–6765. WILLIAMS *v.* CLINE ET AL. C. A. 8th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 1089] denied.

No. 10–6870. KELLNER *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 1059] denied.

No. 10–7550. RUTHERFORD *v.* EMPLOYMENT STANDARDS ADMINISTRATION ET AL. C. A. 5th Cir.; and

No. 10–7765. AKERS *v.* MBNA AMERICA BANK, N. A. Ct. App. Tenn. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until February 8, 2011, 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. 10–7830. RIVERA *v.* SMITH ET AL. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until February 8, 2011, 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. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion.

No. 10–8020. SPATARO *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied.

Petitioner is allowed until February 8, 2011, 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. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 10–632. IN RE WINDSOR;
No. 10–633. IN RE WINDSOR;
No. 10–690. IN RE WINDSOR; and
No. 10–6370. IN RE STARLING. Petitions for writs of mandamus denied.

Certiorari Granted

No. 09–958. MAXWELL-JOLLY, DIRECTOR, CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES *v.* INDEPENDENT LIVING CENTER OF SOUTHERN CALIFORNIA, INC., ET AL. (two judgments). Reported below: 572 F. 3d 644 (first judgment) and 342 Fed. Appx. 306 (second judgment);

No. 09–1158. MAXWELL-JOLLY, DIRECTOR, CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES *v.* CALIFORNIA PHARMACISTS ASSN. ET AL. (Reported below: 596 F. 3d 1098); MAXWELL-JOLLY, DIRECTOR, CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES *v.* CALIFORNIA HOSPITAL ASSN. ET AL. (563 F. 3d 847); MAXWELL-JOLLY, DIRECTOR, CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES *v.* INDEPENDENT LIVING CENTER OF SOUTHERN CALIFORNIA, INC., ET AL. (374 Fed. Appx. 690); MAXWELL-JOLLY, DIRECTOR, CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES *v.* DOMINGUEZ, BY AND THROUGH HER MOTHER AND NEXT FRIEND BROWN, ET AL. (596 F. 3d 1087); and

No. 10–283. MAXWELL-JOLLY, DIRECTOR, CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES *v.* SANTA ROSA MEMORIAL HOSPITAL ET AL. Reported below: 380 Fed. Appx. 656. C. A. 9th Cir. Certiorari granted limited to Question 1 presented by the petitions, cases consolidated, and a total of one hour is allotted for oral argument.

Certiorari Denied

No. 09–11342. LONGORIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 481.

No. 09–11519. BRADFORD *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS

DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 521.

No. 10–83. PEEL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 595 F. 3d 763.

No. 10–99. RIVERA AGREDANO ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 595 F. 3d 1278.

No. 10–236. REVELL *v.* PORT AUTHORITY OF NEW YORK AND NEW JERSEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 598 F. 3d 128.

No. 10–275. FISHER *v.* SOUTHWESTERN BELL TELEPHONE CO. C. A. 10th Cir. Certiorari denied. Reported below: 361 Fed. Appx. 974.

No. 10–327. CAPENER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 608 F. 3d 392.

No. 10–328. EL-SHIFA PHARMACEUTICAL INDUSTRIES CO. ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 607 F. 3d 836.

No. 10–341. PRECISION PINE & TIMBER, INC. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 596 F. 3d 817.

No. 10–355. PELLA CORP. ET AL. *v.* SALTZMAN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 606 F. 3d 391.

No. 10–366. GRAHAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 608 F. 3d 164.

No. 10–385. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 608 F. 3d 193.

No. 10–481. FORD MOTOR CREDIT CO. *v.* MICHIGAN DEPARTMENT OF TREASURY ET AL. Ct. App. Mich. Certiorari denied.

No. 10–494. LITTEN ET AL. *v.* GRENADA COUNTY, MISSISSIPPI, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 487.

No. 10–511. JACKSON ET AL. *v.* DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS ET AL. Ct. App. D. C. Certiorari denied. Reported below: 999 A. 2d 89.

No. 10–517. ESTALITA *v.* HOLDER, ATTORNEY GENERAL. C. A. 10th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 711.

No. 10–596. COFFIELD ET AL. *v.* KEMP. C. A. 11th Cir. Certiorari denied. Reported below: 599 F. 3d 1276.

No. 10–598. KLEINHAMMER *v.* CITY OF PASO ROBLES, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 642.

No. 10–603. SUPER DUPER, INC., DBA SUPER DUPER PUBLICATIONS *v.* MATTEL, INC. C. A. 4th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 308.

No. 10–604. MOSELEY ET UX. *v.* V SECRET CATALOGUE, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 605 F. 3d 382.

No. 10–613. ATTORNEY'S PROCESS & INVESTIGATION SERVICES, INC. *v.* SAC AND FOX TRIBE OF THE MISSISSIPPI IN IOWA. C. A. 8th Cir. Certiorari denied. Reported below: 609 F. 3d 927.

No. 10–620. PROCESSING SOLUTIONS, LLC, ET AL. *v.* BAILLIE. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 10–624. GRISWOLD ET AL. *v.* DRISCOLL ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 616 F. 3d 53.

No. 10–630. INTERNATIONAL BOUNDARY COMMISSION ET AL. *v.* LEU ET VIR. C. A. 9th Cir. Certiorari denied. Reported below: 605 F. 3d 693.

No. 10–635. TOWNSHIP OF LIBERTY, OHIO, ET AL. *v.* WEDGEWOOD LIMITED PARTNERSHIP I. C. A. 6th Cir. Certiorari denied. Reported below: 610 F. 3d 340.

No. 10–639. ROACH *v.* WRIGLEY, SUPERINTENDENT, NEW CASTLE CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 10–640. SHLAHTICHMAN *v.* 1-800-CONTACTS, INC. C. A. 7th Cir. Certiorari denied. Reported below: 615 F. 3d 794.

No. 10–644. GRUMA CORP. *v.* AREVALO. C. A. 9th Cir. Certiorari denied.

No. 10–651. MELROSE, INC. *v.* CITY OF PITTSBURGH, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 613 F. 3d 380.

No. 10–652. PEOPLES *v.* DISCOVER FINANCIAL SERVICES, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 387 Fed. Appx. 179.

No. 10–667. MIRANDA-MARIN ET AL. *v.* RODRIGUEZ-GARCIA. C. A. 1st Cir. Certiorari denied. Reported below: 610 F. 3d 756.

No. 10–674. FERNANDEZ *v.* FROST NATIONAL BANK ET AL. (Reported below: 315 S. W. 3d 494); and FERNANDEZ *v.* JOHN G. AND MARIE STELLA KENEDY MEMORIAL FOUNDATION (315 S. W. 3d 515). Sup. Ct. Tex. Certiorari denied.

No. 10–678. HOLLISTER *v.* SOETORO ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 368 Fed. Appx. 154.

No. 10–698. TATE *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 287 Ga. 364, 695 S. E. 2d 591.

No. 10–709. BENTLEY *v.* ATLANTIC COUNTY, NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 382 Fed. Appx. 205.

No. 10–713. PATEL ET AL. *v.* CITY OF SANTA ROSA, CALIFORNIA, ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 10–729. MCNEIL - P. P. C., INC. *v.* VALDES ET AL. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 27 So. 3d 689.

No. 10–748. SANTHUFF ET UX. *v.* SEITZ. C. A. 11th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 939.

No. 10–753. APODACA *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 379 Fed. Appx. 986.

No. 10–756. PEREZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 612 F. 3d 879.

No. 10–764. RYAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–790. BRANDAO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–798. HUDSON *v.* UNIVERSAL STUDIOS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 369 Fed. Appx. 291.

No. 10–799. LARSON ET UX. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 376 Fed. Appx. 26.

No. 10–807. RAMER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 353.

No. 10–5031. TAYLOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 350.

No. 10–5213. CARAZA-VALDEZ, AKA RIVERA-RIVERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 552.

No. 10–5334. MAYBERRY ET AL. *v.* JACKSON, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY. C. A. 10th Cir. Certiorari denied. Reported below: 366 Fed. Appx. 907.

No. 10–5438. DOZAL-VARGAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 512.

No. 10–5533. DONNELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 596 F. 3d 913.

No. 10–5653. RICHARDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 363 Fed. Appx. 729.

No. 10–5711. CISNEROS-GUTIERREZ *v.* UNITED STATES; and No. 10–5712. CISNEROS-GUTIERREZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 598 F. 3d 997.

No. 10–5762. COLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 295.

No. 10–5790. FRANKLIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–5973. JAVAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 596.

No. 10–6083. MILLS *v.* WAYNE COUNTY BOARD OF EDUCATION. Cir. Ct. Kanawha County, W. Va. Certiorari denied.

No. 10–6178. NORWOOD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 580.

No. 10–6179. PAPPAS ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 362 Fed. Appx. 175.

No. 10–6291. KEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 599 F. 3d 469.

No. 10–6303. SINES *v.* WILNER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 609 F. 3d 1070.

No. 10–6334. BRYSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 374 Fed. Appx. 680.

No. 10–6376. NUNO-GARZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 365 Fed. Appx. 806.

No. 10–6377. PIZZUTO *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied. Reported below: 149 Idaho 155, 233 P. 3d 86.

No. 10–6398. TRAXTLE *v.* MILLS, SUPERINTENDENT, TWO RIVERS CORRECTIONAL CENTER. C. A. 9th Cir. Certiorari denied.

No. 10–6509. LAURENT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 607 F. 3d 895.

No. 10–6550. SCOTT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 441.

No. 10–6649. FERGUSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 361.

No. 10–6773. URGENT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 386 Fed. Appx. 100.

No. 10–6788. LIZCANO *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 10–6929. PINKARD *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 327 Wis. 2d 346, 785 N. W. 2d 592.

No. 10–6999. BOOKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 612 F. 3d 596.

No. 10–7039. POWELL *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 602 F. 3d 1263.

No. 10–7075. HAYDUK *v.* CITY OF JOHNSTOWN, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 386 Fed. Appx. 55.

No. 10–7192. CASTRILLO-RUBIO, AKA SALAZAR-RUBIO, AKA CASTRILLO, AKA RUBIO, AKA CASTILLO-RUBIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 431.

No. 10–7210. COOK *v.* ARIZONA. Super. Ct. Ariz., County of Mohave. Certiorari denied.

No. 10–7241. AWKAL *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 613 F. 3d 629.

No. 10–7394. WHITE *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–7404. KISS *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–7410. WADE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 41 So. 3d 857.

No. 10–7417. ORTIZ *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–7421. P. E. *v.* UTAH. Ct. App. Utah. Certiorari denied. Reported below: 2010 UT App 18.

No. 10–7424. DANG *v.* MCDONALD, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 634.

No. 10–7426. WORTHEM *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 398 Ill. App. 3d 1106, 988 N. E. 2d 1125.

No. 10–7431. BETHEL *v.* CITY OF BAY MINETTE, ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 77 So. 3d 626.

No. 10–7433. GASTELLO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 49 Cal. 4th 395, 232 P. 3d 650.

No. 10–7439. ROGERS *v.* HOREL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–7442. KNOD *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 10–7444. SUBH *v.* WAL-MART STORES EAST, L. P. C. A. 3d Cir. Certiorari denied. Reported below: 386 Fed. Appx. 29.

No. 10–7445. WATSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–7451. SHEPHARD *v.* CBS PRESIDENT ET AL. C. A. 2d Cir. Certiorari denied.

No. 10–7455. SWOPES *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 10–7457. ARMSTRONG *v.* SMEAL, ACTING SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–7459. BALL *v.* STATE CORRECTIONAL INSTITUTION AT MUNCY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 385 Fed. Appx. 211.

No. 10–7460. PIGNATARO *v.* LEMPKE, SUPERINTENDENT, FIVE POINTS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 381 Fed. Appx. 46.

No. 10–7461. BRIGHT *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–7465. WILLIAMS *v.* HAGAN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 266.

No. 10–7468. KOROLEV *v.* DICKINSON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 594.

No. 10–7469. MALDONADO *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 10–7476. McCollough *v.* Bradt, Superintendent, Elmira Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 10–7481. Witcher *v.* Prelesnik, Warden. C. A. 6th Cir. Certiorari denied.

No. 10–7482. Smith *v.* Bock, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 10–7485. Simpson *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied. Reported below: 230 P. 3d 888.

No. 10–7487. Bailey *v.* Indiana. Ct. App. Ind. Certiorari denied. Reported below: 923 N. E. 2d 434.

No. 10–7488. Knight *v.* UNUM Life Insurance Company of America. C. A. 11th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 575.

No. 10–7490. LeJeune *v.* Cain, Warden. C. A. 5th Cir. Certiorari denied.

No. 10–7492. Jefferson *v.* Miller Brothers Ford, Inc., et al. Cir. Ct. Baltimore County, Md. Certiorari denied.

No. 10–7495. Diegner *v.* Franke, Superintendent, Two Rivers Correctional Institution. C. A. 9th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 554.

No. 10–7496. Cowles *v.* Iowa Department of Corrections. C. A. 8th Cir. Certiorari denied.

No. 10–7507. Swain *v.* Florida. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 43 So. 3d 60.

No. 10–7513. Anthony *v.* Cain, Warden. C. A. 5th Cir. Certiorari denied.

No. 10–7518. Carrasco *v.* Kernan, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 362.

No. 10–7519. Roberson *v.* Mississippi Insurance Guaranty Assn. Sup. Ct. Miss. Certiorari denied.

No. 10–7527. Holcomb *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 390 Fed. Appx. 117.

No. 10–7529. TURNER *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 201 N. C. App. 727, 689 S. E. 2d 601.

No. 10–7530. WELLS *v.* JONES, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 331.

No. 10–7531. WHITE *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–7532. WILLIAMS *v.* MASSEY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 335.

No. 10–7533. YOUNG *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 10–7537. HUERTA *v.* ARIZONA. Ct. App. Ariz. Certiorari denied. Reported below: 223 Ariz. 424, 224 P. 3d 240.

No. 10–7541. THREATT *v.* ARREDIA ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–7542. YBARRA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–7547. ALLEN *v.* SCRIBNER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 565.

No. 10–7551. MILLER *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 74 App. Div. 3d 1097, 903 N. Y. S. 2d 131.

No. 10–7552. SHEETS, AKA WALKER *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 302 Ga. App. XXVI.

No. 10–7553. PRESLEY *v.* MISSISSIPPI ET AL. C. A. 5th Cir. Certiorari denied.

No. 10–7554. MENDOZA *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 10–7558. SHANEBERGER *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 615 F. 3d 448.

No. 10–7559. STEWART *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 356.

No. 10–7560. BRECHT *v.* MARTEN ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–7561. ALLADIN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–7562. TILLMAN *v.* BIRKETT, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–7568. FRANKENBERRY *v.* COURT OF COMMON PLEAS OF PENNSYLVANIA, FAYETTE COUNTY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 365 Fed. Appx. 334.

No. 10–7569. GRETHEN *v.* WESTERN REGIONAL DIRECTOR. C. A. 4th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 431.

No. 10–7570. FORTE *v.* BARBER ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–7571. HAWKINS *v.* ILLINOIS DEPARTMENT OF CORRECTIONS ET AL. C. A. 7th Cir. Certiorari denied.

No. 10–7573. GILBERT *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 10–7574. HUSBAND *v.* KORNBRATH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 302.

No. 10–7575. GASTON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 398 Ill. App. 3d 1101, 988 N. E. 2d 1123.

No. 10–7580. HAZEL *v.* LAPPIN, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. (two judgments). C. A. 4th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 343 (first judgment) and 389 Fed. Appx. 224 (second judgment).

No. 10–7584. TEK NGO *v.* HOLDER, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 385 Fed. Appx. 227.

No. 10–7585. POPE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–7589. THORNTON *v.* MATHENA, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 329.

No. 10–7593. REYES-BURGOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 277.

No. 10–7594. SIXTA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 3d 569.

No. 10–7596. GRAY, BY AND ON BEHALF OF HIS SON D. G. *v.* LATHROP R–II SCHOOL DISTRICT. C. A. 8th Cir. Certiorari denied. Reported below: 611 F. 3d 419.

No. 10–7597. DRUM *v.* CALHOUN ET AL. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 299 S. W. 3d 360.

No. 10–7603. HUGHES *v.* KING, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 10–7608. FORNEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 42 So. 3d 233.

No. 10–7612. ASHCROFT *v.* OREGON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 301.

No. 10–7627. FRANQUI *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 10–7639. MEEKS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied.

No. 10–7647. CLAYTON *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–7652. RICHARDSON *v.* INSERRA, SUPERINTENDENT, MID-ORANGE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 621 F. 3d 196.

No. 10–7653. RATLEY *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 41 So. 3d 897.

No. 10–7658. MCLENITHAN *v.* HILL, SUPERINTENDENT, POWDER RIVER CORRECTIONAL FACILITY. C. A. 9th Cir. Certiorari denied.

No. 10–7692. WAGGONER *v.* HERNANDEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 449.

No. 10–7695. WILLIAMS *v.* JONES, SUPERINTENDENT, HYDE CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 269.

No. 10–7698. WROTTEN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 73 App. Div. 3d 637, 901 N. Y. S. 2d 265.

No. 10–7708. ALCALA *v.* LOPEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 416.

No. 10–7722. OSTERBACK *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 39 So. 3d 334.

No. 10–7731. TORRES *v.* DUVAL, ACTING COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION. C. A. 1st Cir. Certiorari denied. Reported below: 615 F. 3d 1.

No. 10–7743. SANDOVAL *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–7752. JORDAN *v.* GOBO, INC. C. A. 4th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 118.

No. 10–7773. MCKENZIE *v.* OREGON DEPARTMENT OF CORRECTIONS ET AL. Ct. App. Ore. Certiorari denied. Reported below: 235 Ore. App. 380, 231 P. 3d 1191.

No. 10–7800. BARRETTO *v.* URIBE, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 644.

No. 10–7827. BISHOP *v.* HOUSING AUTHORITY OF SOUTH BEND. Ct. App. Ind. Certiorari denied. Reported below: 920 N. E. 2d 772.

No. 10–7839. STOCK *v.* REDNOUR, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 621 F. 3d 644.

No. 10–7847. MCMILLEN *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. Sup. Ct. Mo. Certiorari denied.

No. 10–7853. PEREZ *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 10–7856. BLODGETT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 392.

No. 10–7863. WHITE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–7865. WILLIS *v.* NAGIN, MAYOR, CITY OF NEW ORLEANS, LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 473.

No. 10–7866. COX *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 801.

No. 10–7879. BEALE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 620 F. 3d 856.

No. 10–7882. WILLIAMS *v.* HALL, SUPERINTENDENT, TWO RIVERS CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 10–7886. DOUGLAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 626 F. 3d 161.

No. 10–7888. BENJAMIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 391 Fed. Appx. 942.

No. 10–7893. WEBB *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 850.

No. 10–7894. THOMAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 474.

No. 10–7896. PATTERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–7898. BASCIANO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 384 Fed. Appx. 28.

No. 10–7899. BISHAWI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–7901. RANDALL *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 25 So. 3d 1035.

No. 10–7903. CARRAWAY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 612 F. 3d 642.

No. 10–7910. TERRAGNA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 631.

No. 10–7914. MAINOR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 393 Fed. Appx. 10.

No. 10–7915. MYERS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 364 Fed. Appx. 769.

No. 10–7921. GUERRA RODRIGUEZ ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 652.

No. 10–7923. SPEARS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 391 Fed. Appx. 962.

No. 10–7929. DIXON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 183.

No. 10–7933. KINSELLA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 622 F. 3d 75.

No. 10–7935. COUSINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 255.

No. 10–7936. SEAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 620 F. 3d 919.

No. 10–7938. LEBRON-ORTIZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–7940. MORALES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 10–7943. LIPSCOMB *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 604.

No. 10–7945. WEST *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 612 F. 3d 993.

No. 10–7947. LIANG YANG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 859.

No. 10–7948. STANFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 72.

No. 10–7951. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 637.

No. 10–7952. KURTZ *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 321 Wis. 2d 478, 774 N. W. 2d 476.

No. 10–7954. REYES-GUTIERREZ, AKA REYES GUTIERREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 865.

No. 10–7955. EVANS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 617.

No. 10–7956. CORRALES-FELIX *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 474.

No. 10–7957. CHAVEZ-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–7959. RODRIGUEZ-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 112.

No. 10–7961. WASHINGTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 155.

No. 10–7964. LUTCHER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–7970. MCGEE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 262.

No. 10–7976. SPRENGER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 625 F. 3d 1305.

No. 10–7978. CLIVE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 10–7982. HOUDERSHELDT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 66.

No. 10–7985. HAHN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 381.

No. 10–7986. FREEMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 99.

No. 10–7987. GASPAR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 259.

No. 10–7988. GARCIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 985.

No. 10–7989. GOTORA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 180.

No. 10–7992. GARZA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 403 Fed. Appx. 362.

No. 10–7995. HORTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 611 F. 3d 936.

No. 10–7997. LOFTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 393 Fed. Appx. 872.

No. 10–8001. GOFF *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 1.

No. 10–8002. HERNANDEZ-RIOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 272.

No. 10–8005. RANGEL *v.* STANSBERRY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 291.

No. 10–8007. SKINNER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–8011. SANDERS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 622 F. 3d 779.

No. 10–8012. COOPER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 842.

No. 10–8013. COLLINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 117.

No. 10–8016. MENDEZ-VALDEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 51.

No. 10–8019. CLARK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 394 Fed. Appx. 842.

No. 10–8029. ZISKIND *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–8035. BRANCH *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 989 A. 2d 711.

No. 10–8046. BENITEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 120.

No. 10–8317. FOSTER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 09–1212. NORFOLK SOUTHERN RAILWAY CO. *v.* GROVES, INDIVIDUALLY, DBA SAVANNAH RE-LOAD, ET AL. C. A. 11th Cir. Motion of Association of American Railroads for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 586 F. 3d 1273.

No. 10–237. BUONORA *v.* COGGINS. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 362 Fed. Appx. 224.

No. 10–453. APOTEX, INC. *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 384 Fed. Appx. 4.

No. 10–475. SABHNANI *v.* UNITED STATES; and

No. 10–476. SABHNANI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of these petitions. Reported below: 599 F. 3d 215.

No. 10–487. AL-ADAHI ET AL. *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 613 F. 3d 1102.

No. 10–661. DAVIS *v.* DEPARTMENT OF JUSTICE. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 610 F. 3d 750.

No. 10–670. SOJOURN CARE, INC., DBA SOJOURN CARE OF TULSA *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 10–672. DROLETT *v.* DEMARCO ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 382 Fed. Appx. 7.

No. 10–6618. BANEY *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Motion of petitioner for reconsideration of order

denying leave to proceed *in forma pauperis* [*ante*, p. 1001] denied. Motion for leave to proceed as a veteran granted. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of these motions and this petition. Reported below: 360 Fed. Appx. 119.

No. 10–6799. HAMMOND *v.* TUFAMERICA, INC. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 10–7432. GALLEGOS *v.* SISTO, WARDEN, ET AL. C. A. 9th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 384 Fed. Appx. 650.

No. 10–7633. HARRISON *v.* HARLEM HOSPITAL ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 364 Fed. Appx. 686.

No. 10–7891. NIBLOCK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 382 Fed. Appx. 296.

No. 10–7913. LEA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 416 Fed. Appx. 166.

No. 10–7928. MOHAMED *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 369 Fed. Appx. 242.

No. 10–7967. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

Rehearing Denied

No. 09–10900. JACKSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 855;

No. 09–11291. SEARS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 872;

No. 10–5317. YOUNG *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, *ante*, p. 915;

No. 10–5532. REECE *v.* COUNTRYWIDE HOME LOANS ET AL., *ante*, p. 927;

No. 10–5969. HYDE *v.* VALDEZ, *ante*, p. 984;

No. 10–6054. IN RE MEDINA, *ante*, p. 1001;

No. 10–6134. DUHALL *v.* LENNAR FAMILY OF BUILDERS, *ante*, p. 1010;

No. 10–6215. MCCRAY *v.* CHRYSLER LLC, *ante*, p. 1067;

No. 10–6227. WILLIAMS, AKA MCCARTHY *v.* ZAVARES, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 987;

No. 10–6305. WATKINS *v.* MARYLAND DIVISION OF CORRECTIONS ET AL., *ante*, p. 1031;

No. 10–6309. WASHINGTON *v.* HARRELSON ET AL., *ante*, p. 1032;

No. 10–6317. MARSHALL *v.* FRIEND ET AL., *ante*, p. 1032;

No. 10–6324. GROOMS *v.* UNITED STATES, *ante*, p. 974;

No. 10–6326. MORALES *v.* HARRY, WARDEN, *ante*, p. 1014;

No. 10–6353. TORREZ *v.* ELEY, *ante*, p. 1046;

No. 10–6412. O'CONNELL *v.* UTTECHT, SUPERINTENDENT, COYOTE RIDGE CORRECTIONS CENTER, *ante*, p. 1014;

No. 10–6439. WASHINGTON *v.* PROPES, *ante*, p. 1032;

No. 10–6603. RASHAW-BEY *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI, *ante*, p. 991; and

No. 10–6743. BYRD *v.* UNITED STATES, *ante*, p. 1019. Petitions for rehearing denied.

No. 09–10968. PO KEE WONG *v.* UNITED STATES, *ante*, p. 857; and

No. 10–5532. REECE *v.* COUNTRYWIDE HOME LOANS ET AL., *ante*, p. 927. Motions for leave to file petitions for rehearing denied.

No. 10–6934. IN RE HUSBAND, *ante*, p. 1043. Petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

JANUARY 24, 2011

Certiorari Granted—Vacated and Remanded

No. 10–136. HOREL, WARDEN *v.* SOLORIO VALDOVINOS. 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 *Harrington* v. *Richter*, *ante*, p. 86. Reported below: 598 F. 3d 568.

Certiorari Granted—Reversed. (See No. 10–333, *ante,* p. 216.)

Certiorari Dismissed

No. 10–7875. JONES *v.* MIDSTATES DEVELOPMENT, INC., ET AL. Ct. App. Neb. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–7900. BREEST *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 10A609 (10–7797). ANDERSON *v.* CLINE, WARDEN, ET AL. C. A. 10th Cir. Application for stay, addressed to JUSTICE THOMAS and referred to the Court, denied.

No. D–2478. IN RE DISBARMENT OF GOLDEN. Disbarment entered. [For earlier order herein, see 561 U. S. 1044.]

No. D–2479. IN RE DISBARMENT OF SELIGSOHN. Disbarment entered. [For earlier order herein, see 561 U. S. 1044.]

No. D–2480. IN RE DISBARMENT OF BARON. Disbarment entered. [For earlier order herein, see 561 U. S. 1044.]

No. D–2484. IN RE DISBARMENT OF SCHAINKER. Disbarment entered. [For earlier order herein, see 561 U. S. 1044.]

No. D–2486. IN RE DISBARMENT OF LEE. Disbarment entered. [For earlier order herein, see 561 U. S. 1045.]

No. D–2488. IN RE DISBARMENT OF WEAVER. Disbarment entered. [For earlier order herein, see 561 U. S. 1045.]

No. D–2494. IN RE DISBARMENT OF FORD. Disbarment entered. [For earlier order herein, see 561 U. S. 1052.]

No. 10M65. JASSO ET AL. *v.* UNITED STATES FOREST SERVICE ET AL.;
No. 10M66. CLEMONS *v.* KANSAS;
No. 10M67. MOTTON *v.* GRANNIS; and

No. 10M68. BOYER ET UX. *v.* FRISCIA ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 132, Orig. ALABAMA ET AL. *v.* NORTH CAROLINA. Bradford R. Clark, Esq., the Special Master in this case, is hereby discharged with the thanks of the Court. [For earlier order herein, see, *e. g.*, *ante*, p. 1176.]

No. 09–1227. BOND *v.* UNITED STATES. C. A. 3d Cir. [Certiorari granted, *ante*, p. 960.] Motion of the Acting Solicitor General for divided argument granted.

No. 09–1343. J. MCINTYRE MACHINERY, LTD. *v.* NICASTRO ET UX. Sup. Ct. N. J. [Certiorari granted, 561 U. S. 1058.] Motion of respondent Robert Nicastro, authorized representative of Estate of Roseanne Nicastro, to be substituted as party for Roseanne Nicastro granted.

No. 10–313. TALK AMERICA, INC. *v.* MICHIGAN BELL TELEPHONE CO., DBA AT&T MICHIGAN; and

No. 10–329. ISIOGU ET AL. *v.* MICHIGAN BELL TELEPHONE CO., DBA AT&T MICHIGAN. C. A. 6th Cir. [Certiorari granted, *ante*, p. 1104.] Motion of petitioners to dispense with printing the joint appendix granted. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 10–717. MICCOSUKEE TRIBE OF INDIANS OF FLORIDA *v.* KRAUS-ANDERSON CONSTRUCTION CO. C. A. 11th Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 10–5967. HAMMANN *v.* FALLS/PINNACLE, LLC, ET AL.; and HAMMANN *v.* DEYO ET AL. Ct. App. Minn. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 980] denied.

No. 10–7889. JEWELL *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until February 14, 2011, 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. 10–8101. IN RE HARVEY;

No. 10–8188. IN RE DAVIS;

No. 10–8190. IN RE ESHAN; and

No. 10–8231. IN RE MACKLIN. Petitions for writs of habeas corpus denied.

No. 10–7904. IN RE CREVELING. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus and/or prohibition dismissed. See this Court's Rule 39.8.

Certiorari Granted

No. 10–680. HOWES, WARDEN *v.* FIELDS. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 617 F. 3d 813.

No. 10–6549. REYNOLDS *v.* UNITED STATES. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 380 Fed. Appx. 125.

Certiorari Denied

No. 08–9917. BLANKENSHIP *v.* HALL, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 542 F. 3d 1253.

No. 09–1354. ASSOCIATION OF AMERICAN PHYSICIANS & SURGEONS, INC., ET AL. *v.* FOOD AND DRUG ADMINISTRATION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 358 Fed. Appx. 179.

No. 09–8253. WILES *v.* BAGLEY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 561 F. 3d 636.

No. 09–9903. MARTINEZ *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 362 Fed. Appx. 882.

No. 10–339. BENOIT ET AL. *v.* DEPARTMENT OF AGRICULTURE ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 608 F. 3d 17.

No. 10–412. VANDERBILT UNIVERSITY *v.* ICOS CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 601 F. 3d 1297.

No. 10–434. CITY OF SANTA ROSA, CALIFORNIA, ET AL. *v.* DESANTIS, GUARDIAN AD LITEM, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 690.

No. 10–468. TRANSCOR AMERICA, LLC, ET AL. *v.* SCHILLING ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–522. BIANCHI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 386 Fed. Appx. 156.

No. 10–542. TERRY *v.* TYSON FARMS, INC. C. A. 6th Cir. Certiorari denied. Reported below: 604 F. 3d 272.

No. 10–544. GANGI *v.* VERIZON NEW ENGLAND, INC., DBA VERIZON MASSACHUSETTS, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 603 F. 3d 71.

No. 10–578. WAGONER COUNTY RURAL WATER DISTRICT NO. 2 ET AL. *v.* GRAND RIVER DAM AUTHORITY. Ct. Civ. App. Okla. Certiorari denied. Reported below: 241 P. 3d 1132.

No. 10–591. HIGHLAND CAPITAL MANAGEMENT, L. P. *v.* SCHNEIDER ET AL.; and

No. 10–682. RBC CAPITAL MARKETS, LLC, FKA RBC CAPITAL MARKETS CORP. *v.* SCHNEIDER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 607 F. 3d 322.

No. 10–616. SALZANO *v.* NORTH JERSEY MEDIA GROUP, INC., DBA RECORD, ET AL. Sup. Ct. N. J. Certiorari denied. Reported below: 201 N. J. 500, 993 A. 2d 778.

No. 10–621. BROOKS *v.* GAENZLE. C. A. 10th Cir. Certiorari denied. Reported below: 614 F. 3d 1213.

No. 10–656. MUSCARELLO *v.* OGLE COUNTY BOARD OF COMMISSIONERS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 610 F. 3d 416.

No. 10–657. MARTIN *v.* MARTIN. Sup. Ct. N. H. Certiorari denied. Reported below: 160 N. H. 645, 8 A. 3d 60.

No. 10–659. COLEGIO DE ABOGADOS DE PUERTO RICO *v.* BROWN ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 613 F. 3d 44.

No. 10–662. ASWORTH, LLC, FKA ASWORTH CORP., ET AL. *v.* KENTUCKY DEPARTMENT OF REVENUE, FINANCE AND ADMINISTRATION CABINET, FKA REVENUE CABINET. Ct. App. Ky. Certiorari denied.

No. 10–664. JOYCE *v.* J. C. PENNEY CORP., INC. C. A. 7th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 529.

No. 10–676. HAWKS *v.* MATTOX ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 878.

No. 10–687. ALBRECHT ET AL., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED *v.* TREON, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS CORONER OF CLERMONT COUNTY, OHIO, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 617 F. 3d 890.

No. 10–688. ESTATE OF SCHWING *v.* LILLY HEALTH PLAN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 562 F. 3d 522.

No. 10–705. BARCENAS-BARRERA *v.* HOLDER, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 100.

No. 10–707. ROOS *v.* ROOS. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–712. MORRIS ET AL. *v.* SWOFFORD. C. A. 11th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 559.

No. 10–733. SCHULZ ET UX., TRUSTEES OF 1980 SCHULZ LIVING TRUST, AS AMENDED, ET AL. *v.* KING, NEVADA STATE ENGINEER. Sup. Ct. Nev. Certiorari denied. Reported below: 126 Nev. 754.

No. 10–739. ABOU-HUSSEIN *v.* GATES, SECRETARY OF DEFENSE, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 10–743. SULLIVAN *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 202 N. C. App. 553, 691 S. E. 2d 417.

No. 10–777. ROMALA STONE, INC. *v.* HOME DEPOT U. S. A., INC. C. A. Fed. Cir. Certiorari denied. Reported below: 392 Fed. Appx. 875.

No. 10–818. WALBAUM *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 668.

No. 10–5764. DAWN EAGLE *v.* YERINGTON PAIUTE TRIBE. C. A. 9th Cir. Certiorari denied. Reported below: 603 F. 3d 1161.

No. 10–6017. SCOTT *v.* URLICH ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 970.

No. 10–6695. MARTINEZ-MENDOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 338.

No. 10–6753. EVANS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 987 A. 2d 1138.

No. 10–6756. FIELDS *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 225 W. Va. 753, 696 S. E. 2d 269.

No. 10–7193. CROSS *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 326 Wis. 2d 492, 786 N. W. 2d 64.

No. 10–7528. GOFF *v.* BAGLEY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 601 F. 3d 445.

No. 10–7599. HAY *v.* J. L. D. Ct. App. Wis. Certiorari denied.

No. 10–7600. HALL *v.* KORESKI. C. A. 9th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 689.

No. 10–7605. FOX *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 32.

No. 10–7611. DEVAUGHN *v.* SNIFF, SHERIFF, RIVERSIDE COUNTY, CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 10–7615. JACKSON *v.* JACKSON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 664.

No. 10–7616. MARTINEZ *v.* CAMPBELL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–7617. LUH *v.* MISSOURI ET AL. C. A. 8th Cir. Certiorari denied.

No. 10–7619. THOMPSON *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 10–7629. FAUROT *v.* TERHUNE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 357 Fed. Appx. 137.

No. 10–7631. FORD *v.* SISTO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–7632. HUDSON *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–7634. GALE *v.* ANDERSON. C. A. 4th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 394.

No. 10–7637. SPENCER *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 609 F. 3d 1170.

No. 10–7641. EMMETT *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 321.

No. 10–7646. DAVIS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–7648. NIGRO *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 279.

No. 10–7650. PAREDES *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 617 F. 3d 315.

No. 10–7654. SHAW *v.* CAMPBELL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 572.

No. 10–7656. LOCKHART *v.* BARNHART, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 10–7662. JARVIS *v.* MARYLAND. C. A. 4th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 11.

No. 10–7663. JARVIS *v.* MONTGOMERY COUNTY, MARYLAND. C. A. 4th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 12.

No. 10–7666. HOUSTON *v.* SAN DIEGO COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–7667. GRIMES *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–7671. GARY *v.* DEKALB COUNTY, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 352 Fed. Appx. 360.

No. 10–7673. DUNN *v.* PARKER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 787.

No. 10–7674. BARNETT *v.* KEITH, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 562.

No. 10–7675. REDDELL *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 10–7676. SUBH *v.* WAL-MART STORES, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 386 Fed. Appx. 31.

No. 10–7681. KNOWLES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 41 So. 3d 218.

No. 10–7683. ROE *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–7684. STAUFFER *v.* VAZQUEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–7688. KEITH *v.* WASHINGTON. C. A. 11th Cir. Certiorari denied.

No. 10–7696. WILBURN *v.* TATE. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied. Reported below: 184 Cal. App. 4th 150, 109 Cal. Rptr. 3d 18.

No. 10–7717. BYERS *v.* BASINGER, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied. Reported below: 610 F. 3d 980.

No. 10–7718. CONKLIN *v.* EMC MORTGAGE CORP. Super. Ct. Pa. Certiorari denied. Reported below: 984 A. 2d 1027.

No. 10–7763. BROWN *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 10–7832. BURTON *v.* SPOKANE POLICE DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 671.

No. 10–7861. JAMES *v.* SPOKANE COMMUNITY COLLEGE. Sup. Ct. Wash. Certiorari denied.

No. 10–7877. NICHOLS *v.* COLEMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–7878. NICHOLLS *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 10–7907. ASBURY *v.* SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. Sup. Ct. S. C. Certiorari denied.

No. 10–7911. ADLER *v.* GONZALEZ, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–7927. BROWN *v.* GAETZ, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 10–7937. MCLAUGHLIN *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 226 W. Va. 229, 700 S. E. 2d 289.

No. 10–7977. SLATER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 996 A. 2d 15.

No. 10–7981. HARRIS *v.* FRAKES, SUPERINTENDENT, MONROE CORRECTIONAL COMPLEX. C. A. 9th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 390.

No. 10–8042. CASTRO-DAVIS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 612 F. 3d 53.

No. 10–8044. XU JUN LEE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 428.

No. 10–8047. MONTGOMERY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 398 Fed. Appx. 843.

No. 10–8048. RICH *v.* TAMEZ, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 390.

No. 10–8051. OSORIO-NORENA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–8052. BANKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 10–8053. COX *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 617.

No. 10–8056. SIMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 494.

No. 10–8057. GRIFFIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 311.

No. 10–8062. CARLSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 613 F. 3d 813.

No. 10–8063. VOICE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 622 F. 3d 870.

No. 10–8069. SALEH *v.* DUNBAR, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 566.

No. 10–8070. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–8072. BRAZIL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 205.

No. 10–8073. TINKER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 985 A. 2d 463.

No. 10–8074. CASAS-HERRERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 404 Fed. Appx. 212.

No. 10–8075. VARGAS ESPINOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 122.

No. 10–8078. MOORE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 875.

No. 10–8079. WALKER *v.* SMEAL, ACTING SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–8081. TRAUTMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 141.

No. 10–747. HARRINGTON *v.* ATLANTIC SOUNDING CO., INC., ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 602 F. 3d 113.

No. 10–8061. WILLIAMS *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 408 Fed. Appx. 561.

Rehearing Denied

No. 10–455. WALSH *v.* KRANTZ ET AL., *ante*, p. 1092;

No. 10–464. TEXAS DISPOSAL SYSTEMS LANDFILL, INC. *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL., *ante*, p. 1064;

No. 10–6060. DUNBAR *v.* HAWAII, *ante*, p. 1067;

No. 10–6075. THOMPSON *v.* WORKMAN, WARDEN, *ante*, p. 1008;

No. 10–6125. EUBANKS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1009;

No. 10–6233. RILEY *v.* SUPREME COURT OF PENNSYLVANIA, *ante*, p. 1013;

No. 10–6421. BROWN *v.* MILYARD, WARDEN, ET AL., *ante*, p. 1014;

No. 10–6558. WHITLOW *v.* CITY OF ROANOKE, VIRGINIA, *ante*, p. 1067;

No. 10–6559. WHITE *v.* FAIRFAX COUNTY, VIRGINIA, *ante*, p. 1067;

No. 10–6583. MEDINA *v.* SCRIBNER, WARDEN, *ante*, p. 1068;

No. 10–6590. MEEKS *v.* TENNESSEE DEPARTMENT OF CORRECTION ET AL., *ante*, p. 1068;

No. 10–6655. THOMAS *v.* UNITED STATES, *ante*, p. 1049;

No. 10–6736. LANDRY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1070;

No. 10–7070. LITTRELL *v.* UNITED STATES, *ante*, p. 1053; and

No. 10–7227. BARKLEY *v.* GLOVER, ADMINISTRATOR, NORTHERN STATE PRISON, ET AL., *ante*, p. 1114. Petitions for rehearing denied.

No. 09–8695. CORYELL *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS ET AL., 559 U. S. 1015. Motion for leave to file petition for rehearing denied.

No. 10–5328. TILLMAN *v.* NEW LINE CINEMA ET AL., *ante*, p. 1085. Petition for rehearing denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 10–6396. DAVID *v.* FIDELITY INVESTMENTS ET AL., *ante*, p. 1054. Petition for rehearing denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 10–7175. BANKOFF *v.* UNITED STATES, *ante*, p. 1086. Petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

JANUARY 25, 2011

Certiorari Denied

No. 10–8590 (10A737). HAMMOND *v.* OWENS, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. Super. Ct. Fulton County, Ga. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. The order heretofore entered by JUSTICE THOMAS is vacated.

JANUARY 26, 2011

Dismissal Under Rule 46

No. 10–832. GUNN *v.* RELIANCE STANDARD LIFE INSURANCE CO. ET AL. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 399 Fed. Appx. 147.

FEBRUARY 8, 2011

Miscellaneous Order

No. 10A785. LINK *v.* LOMBARDI, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL. Application for stay of execution of sentence of death, presented to JUSTICE ALITO, and by him referred to the Court, denied.

Certiorari Denied

No. 10–8869 (10A784). LINK *v.* NIXON, GOVERNOR OF MISSOURI, ET AL. C. A. 8th Cir. Application for stay of execution of sentence of death, presented to JUSTICE ALITO, and by him referred to the Court, denied. Certiorari denied.

FEBRUARY 15, 2011

Miscellaneous Order

No. 10–8967 (10A805). IN RE HALL. 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. 10–8966 (10A804). HALL *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied.

FEBRUARY 16, 2011

Certiorari Denied

No. 10–8973 (10A811). SPISAK *v.* TIBBALS, WARDEN. C. A. 6th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KAGAN, and by her referred to the Court, denied. Certiorari denied.

FEBRUARY 18, 2011

Miscellaneous Orders

No. 09–1159. BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY *v.* ROCHE MOLECULAR SYSTEMS, INC., ET AL. C. A. Fed. Cir. [Certiorari granted, *ante,* p. 1001.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 09–1454. CAMRETA *v.* GREENE, PERSONALLY AND AS NEXT FRIEND OF S. G., A MINOR, ET AL.; and

No. 09–1478. ALFORD, DEPUTY SHERIFF, DESCHUTES COUNTY, OREGON *v.* GREENE, PERSONALLY AND AS NEXT FRIEND OF S. G., A MINOR, ET AL. C. A. 9th Cir. [Certiorari granted, *ante,* p. 960.] Motion of the Acting Solicitor General for leave to participate

in oral argument as *amicus curiae* and for divided argument granted.

No. 10–188. SCHINDLER ELEVATOR CORP. *v.* UNITED STATES EX REL. KIRK. C. A. 2d Cir. [Certiorari granted, 561 U. S. 1058.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. JUSTICE KAGAN took no part in the consideration or decision of this motion.

FEBRUARY 22, 2011

Dismissal Under Rule 46

No. 10–8577. ROBILIO *v.* SELF HELP VENTURES FUND. Ct. App. Tenn. Certiorari dismissed under this Court's Rule 46.1.

Certiorari Granted—Vacated and Remanded

No. 10–324. UNITED STATES *v.* PRAYLOW. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Abbott* v. *United States*, *ante*, p. 8. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 380 Fed. Appx. 109.

No. 10–6456. STURGIS *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Arizona* v. *Gant*, 556 U. S. 332 (2009). Reported below: 366 Fed. Appx. 713.

No. 10–6521. GARZA *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Magwood* v. *Patterson*, 561 U. S. 320 (2010). Reported below: 371 Fed. Appx. 481.

Certiorari Dismissed

No. 10–7786. SIMPSON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 385 Fed. Appx. 349.

No. 10–7885. BLAXTON *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 48 So. 3d 914.

No. 10–7960. MILLER *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 10–7965. YODER *v.* WHITE, WARDEN. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–8050. MILLS *v.* LEMPKE, SUPERINTENDENT, FIVE POINTS CORRECTIONAL FACILITY. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–8055. MILLS *v.* NEW YORK. County Ct., Genesee County, N. Y. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–8071. MOORE *v.* NORTH DAKOTA. Sup. Ct. N. D. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. Reported below: 791 N. W. 2d 376.

No. 10–8112. GILLARD *v.* BOARD OF TRUSTEES OF COMMUNITY COLLEGE DISTRICT NO. 508. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 393 Fed. Appx. 399.

No. 10–8210. PATTERSON *v.* SCHRIRO ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–8572. FRANCIS *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition.

Miscellaneous Orders

No. 10A827. ADAMS *v.* TEXAS. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

No. D–2495. IN RE DISBARMENT OF WOGHIN. Disbarment entered. [For earlier order herein, see *ante*, p. 808.]

No. D–2496. IN RE DISBARMENT OF ORCI. Disbarment entered. [For earlier order herein, see *ante*, p. 808.]

No. D–2497. IN RE DISBARMENT OF STEIN. Disbarment entered. [For earlier order herein, see *ante*, p. 808.]

No. D–2498. IN RE DISBARMENT OF TONER. Disbarment entered. [For earlier order herein, see *ante*, p. 808.]

No. D–2499. IN RE DISBARMENT OF KRESS. Disbarment entered. [For earlier order herein, see *ante*, p. 808.]

No. D–2500. IN RE DISBARMENT OF KIMMEL. Disbarment entered. [For earlier order herein, see *ante*, p. 809.]

No. D–2501. IN RE DISBARMENT OF SHAFFER. Disbarment entered. [For earlier order herein, see *ante*, p. 809.]

No. D–2502. IN RE DISBARMENT OF NICHOLLS. Disbarment entered. [For earlier order herein, see *ante*, p. 809.]

No. D–2503. IN RE DISBARMENT OF STRASSON. Disbarment entered. [For earlier order herein, see *ante*, p. 809.]

No. D–2504. In re Disbarment of Krouner. Disbarment entered. [For earlier order herein, see *ante*, p. 809.]

No. D–2505. In re Disbarment of Wickenkamp. Disbarment entered. [For earlier order herein, see *ante*, p. 809.]

No. D–2506. In re Disbarment of Chambers. Disbarment entered. [For earlier order herein, see *ante*, p. 809.]

No. D–2507. In re Disbarment of Hutchinson. Disbarment entered. [For earlier order herein, see *ante*, p. 809.]

No. D–2509. In re Disbarment of Shweky. Disbarment entered. [For earlier order herein, see *ante*, p. 810.]

No. D–2568. In re Disbarment of Jones. Disbarment entered. [For earlier order herein, see *ante*, p. 818.]

No. D–2577. In re Rothschild. John David Rothschild, of Sonoma, Cal., 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 15, 2010 [*ante*, p. 1039], is discharged.

No. 10M69. S. G. *v.* J. H. Motion for leave to proceed as a veteran denied.

No. 10M70. Sealed Appellant *v.* Sealed Appellee. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 10M71. Davis *v.* Texas. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 10M72. Searles *v.* West Hartford Board of Education et al.;

No. 10M73. Pang et ux. *v.* First Hawaiian Bank; and

No. 10M74. Falso *v.* Sutherland Global Services. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 09–1476. Borough of Duryea, Pennsylvania, et al. *v.* Guarnieri. C. A. 3d Cir. [Certiorari granted, *ante*, p. 960.] Motion of the Acting Solicitor General for leave to participate in

oral argument as *amicus curiae* and for divided argument granted.

No. 09–11121. J. D. B. *v.* North Carolina. Sup. Ct. N. C. [Certiorari granted, *ante*, p. 1001.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 10–537. Osage Nation *v.* Irby, Secretary-Member, Oklahoma Tax Commission, et al. C. A. 10th Cir.; and

No. 10–627. City of New York, New York *v.* Permanent Mission of India to the United Nations et al. C. A. 2d Cir. The Acting Solicitor General is invited to file briefs in these cases expressing the views of the United States. Justice Kagan took no part in the consideration or decision of these petitions.

No. 10–6576. White *v.* Green et al. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1059] denied.

No. 10–6987. Holmes *v.* East Cooper Hospital, Inc., et al. Sup. Ct. S. C. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1133] denied.

No. 10–7029. Williams *v.* Smallwood et al. C. A. 8th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1129] denied.

No. 10–7137. Dunlap *v.* Michigan. Ct. App. Mich. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1129] denied.

No. 10–7803. Breen et ux. *v.* Guttman. C. A. 4th Cir.;

No. 10–8059. Riley *v.* Louisiana State Bar Assn. et al. C. A. 5th Cir.;

No. 10–8374. Farmer *v.* Alaska. Sup. Ct. Alaska;

No. 10–8444. Throckmorton *v.* United States. C. A. 3d Cir.; and

No. 10–8594. Selvy *v.* United States. C. A. 8th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 15, 2011, 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. 10–7851. Oparaji *v.* Atlantic Container Line et al. C. A. 2d Cir.; and

No. 10–8150. COHEN *v.* FEDERAL EXPRESS CORP. C. A. 2d Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 15, 2011, 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. JUSTICE SOTOMAYOR took no part in the consideration or decision of these motions.

No. 10–8010. VEGA *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until March 15, 2011, 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. JUSTICE BREYER took no part in the consideration or decision of this motion.

No. 10–8293. IN RE FOSTER;
No. 10–8397. IN RE AL-ZAGHARI;
No. 10–8432. IN RE CARTER;
No. 10–8636. IN RE DANIELS;
No. 10–8703. IN RE RICE; and
No. 10–8704. IN RE RICHARD. Petitions for writs of habeas corpus denied.

No. 10–7775. IN RE CROFT;
No. 10–7884. IN RE BIVENS;
No. 10–8138. IN RE TRADER;
No. 10–8301. IN RE WHITMER; and
No. 10–8412. IN RE SMITHBACK. Petitions for writs of mandamus denied.

Certiorari Granted

No. 10–507. PACIFIC OPERATORS OFFSHORE, LLP, ET AL. *v.* VALLADOLID ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 604 F. 3d 1126.

No. 10–514. STOK & ASSOCIATES, P. A. *v.* CITIBANK, N. A. C. A. 11th Cir. Certiorari granted. Reported below: 387 Fed. Appx. 921.

Certiorari Denied

No. 09–1215. NORWOOD *v.* VANCE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 591 F. 3d 1062.

No. 09–10203. MITRANO *v.* DISTRICT OF COLUMBIA BAR. C. A. D. C. Cir. Certiorari denied.

No. 10–334. ROBERSON *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 607 F. 3d 809.

No. 10–348. JIANLIN ZHANG *v.* HOLDER, ATTORNEY GENERAL. C. A. 10th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 879.

No. 10–418. UNDER SEAL #10 *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 597 F. 3d 189.

No. 10–422. EXIDE TECHNOLOGIES *v.* ENERSYS DELAWARE, INC. C. A. 3d Cir. Certiorari denied. Reported below: 607 F. 3d 957.

No. 10–432. BEGGS, SHERIFF, CLEVELAND COUNTY, OKLAHOMA, ET AL. *v.* ABOEN, PERSONAL REPRESENTATIVE OF THE ESTATE OF CROWELL, DECEASED. Sup. Ct. Okla. Certiorari denied. Reported below: 237 P. 3d 134.

No. 10–436. R. H., BY HIS PARENTS AND NEXT FRIENDS, EMILY H. ET VIR *v.* PLANO INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 607 F. 3d 1003.

No. 10–454. ARIZONA CATTLE GROWERS' ASSN. *v.* SALAZAR, SECRETARY OF THE INTERIOR, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 606 F. 3d 1160.

No. 10–469. BALDWIN *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE NORTHERN MARIANA ISLANDS ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–499. LANDMARK SCREENS, LLC *v.* MORGAN, LEWIS & BOCKIUS LLP ET AL. Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 183 Cal. App. 4th 238, 107 Cal. Rptr. 3d 373.

No. 10–508. COZZI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 613 F. 3d 725.

No. 10–558. SAUNDERS *v.* EMORY HEALTHCARE, INC. C. A. 11th Cir. Certiorari denied. Reported below: 360 Fed. Appx. 110.

No. 10–564. Coyote Publishing, Inc., dba High Desert Advocate, et al. *v.* Cortez Masto, Attorney General of Nevada. C. A. 9th Cir. Certiorari denied. Reported below: 598 F. 3d 592.

No. 10–566. McCreary County, Kentucky, et al. *v.* American Civil Liberties Union of Kentucky et al. C. A. 6th Cir. Certiorari denied. Reported below: 607 F. 3d 439.

No. 10–572. Republic of Argentina et al. *v.* EM Ltd. et al. C. A. 2d Cir. Certiorari denied. Reported below: 389 Fed. Appx. 38.

No. 10–594. Allen *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 605 F. 3d 461.

No. 10–605. Home Builders Association of Northern California et al. *v.* United States Fish and Wildlife Service et al. C. A. 9th Cir. Certiorari denied. Reported below: 616 F. 3d 983.

No. 10–653. PSKS, Inc., dba Kay's Kloset . . . Kay's Shoes *v.* Leegin Creative Leather Products, Inc. C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 3d 412.

No. 10–665. Brown *v.* Kansas City Freightliner Sales, Inc., dba Joplin Freightliner Sales, et al. C. A. 8th Cir. Certiorari denied. Reported below: 617 F. 3d 995.

No. 10–666. Dier et al. *v.* Merck & Co., Inc. C. A. 5th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 391.

No. 10–684. Bell, Individually and on Behalf of All Others Similarly Situated *v.* Callaway Partners, LLC, et al. C. A. 11th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 632.

No. 10–686. Human Life of Washington, Inc. *v.* Brumsickle, Chair, Washington State Public Disclosure Commission, et al. C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 3d 990.

No. 10–689. Barbour *v.* Louisiana. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 35 So. 3d 1142.

No. 10–691. Alliance Logistics, Inc., nka Alliance 3PL Corp. *v.* New Prime, Inc., dba Prime, Inc. C. A. 7th Cir. Certiorari denied. Reported below: 614 F. 3d 703.

No. 10–692. Schneller *v.* Able Home Care, Inc., et al. C. A. 3d Cir. Certiorari denied. Reported below: 389 Fed. Appx. 90.

No. 10–693. Ernst & Young, LLP, et al. *v.* Clark, Commissioner, Kentucky Department of Insurance, et al. Sup. Ct. Ky. Certiorari denied. Reported below: 323 S. W. 3d 682.

No. 10–696. Johnson *v.* City of Memphis, Tennessee, et al. C. A. 6th Cir. Certiorari denied. Reported below: 617 F. 3d 864.

No. 10–703. Mumid et al. *v.* Abraham Lincoln High School et al. C. A. 8th Cir. Certiorari denied. Reported below: 618 F. 3d 789.

No. 10–714. Marion, Receiver for Bentley Financial Services, Inc. *v.* Peninsula Bank et al. C. A. 3d Cir. Certiorari denied. Reported below: 591 F. 3d 137.

No. 10–723. Grey *v.* Texas. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 10–734. Gracia Bazan *v.* Texas. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 10–744. Waldron *v.* Conway, Superintendent, Attica Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 10–745. Urnikis-Negro *v.* American Family Property Services et al. C. A. 7th Cir. Certiorari denied. Reported below: 616 F. 3d 665.

No. 10–750. Bradford *v.* Swarthout, Acting Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 715.

No. 10–758. B. D. S. D. *v.* Texas. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 289 S. W. 3d 889.

No. 10–759. Aslani et al. *v.* State Farm Mutual Automobile Insurance Co. et al. Ct. App. Mich. Certiorari denied.

No. 10–761. DOLEY ET AL. *v.* WINSTON & STRAWN, LLP. C. A. D. C. Cir. Certiorari denied. Reported below: 384 Fed. Appx. 1.

No. 10–763. JACKSON ET AL. *v.* ESTELLE'S PLACE, LLC, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 239.

No. 10–767. MARTINEZ *v.* GOVERNMENT OF THE VIRGIN ISLANDS. C. A. 3d Cir. Certiorari denied. Reported below: 620 F. 3d 321.

No. 10–774. HAYWOOD ET AL. *v.* LOCKE, SECRETARY OF COMMERCE. C. A. 4th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 355.

No. 10–780. PING YIP *v.* HUGS TO GO LLC ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 377 Fed. Appx. 973.

No. 10–781. WILKINSON ET AL. *v.* TORRES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 610 F. 3d 546.

No. 10–782. THAMPI *v.* MANATEE COUNTY BOARD OF COMMISSIONERS. C. A. 11th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 983.

No. 10–784. CARMONA *v.* CARMONA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 603 F. 3d 1041.

No. 10–787. KLEINMAN *v.* NEW JERSEY DEPARTMENT OF LABOR, DIVISION OF UNEMPLOYMENT AND DISABILITY INSURANCE. Super. Ct. N. J., App. Div. Certiorari denied.

No. 10–789. BARRETT ET AL. *v.* VENTURA COUNTY, CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–791. REDERIET OTTO DANIELSEN, A. S., ET AL. *v.* STACY. C. A. 9th Cir. Certiorari denied. Reported below: 609 F. 3d 1033.

No. 10–793. MACK *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 126 Nev. 735.

No. 10–800. WILSON *v.* THOMPSON, COMMISSIONER, KENTUCKY DEPARTMENT OF CORRECTIONS, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 3d 699.

No. 10–802. MINER, AKA ARCISZEWSKA *v.* HOLDER, ATTORNEY GENERAL. C. A. 1st Cir. Certiorari denied.

No. 10–805. TU MY TONG *v.* RONE ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–806. VARGAS *v.* WUGHALTER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 380 Fed. Appx. 110.

No. 10–811. DAY ET AL. *v.* APOLIONA ET AL.; and
No. 10–825. MARUMOTO *v.* DAY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 616 F. 3d 918.

No. 10–812. DOMNITZ *v.* REESE ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 126 Nev. 706.

No. 10–813. MIRAYES *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 10–815. SCHNELLER *v.* ZONING HEARING BOARD OF RADNOR TOWNSHIP; and SCHNELLER *v.* RADNOR TOWNSHIP BOARD OF COMMISSIONERS. Commw. Ct. Pa. Certiorari denied. Reported below: 973 A. 2d 1115 (both judgments).

No. 10–816. DEHENRE *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 43 So. 3d 407.

No. 10–817. PARISH *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 10–819. TAYLOR *v.* HALE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 116.

No. 10–820. SCHAIN ET AL. *v.* SCHMIDT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 396 Fed. Appx. 713.

No. 10–823. WENETA *v.* WRIGHT, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 10–824. WOODRUFF *v.* GRUNDMANN, CHAIRMAN, MERIT SYSTEMS PROTECTION BOARD. C. A. D. C. Cir. Certiorari denied. Reported below: 383 Fed. Appx. 5.

No. 10–829. STEVEN I. ET AL. *v.* CENTRAL BUCKS SCHOOL DISTRICT. C. A. 3d Cir. Certiorari denied. Reported below: 618 F. 3d 411.

No. 10–831. GAITAN-AYALA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 454 Fed. Appx. 538.

No. 10–837. SMITH *v.* ANDERSON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 789.

No. 10–839. SEGER-THOMSCHITZ *v.* DUNBAR. C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 3d 574.

No. 10–845. CABRERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 379 Fed. Appx. 24.

No. 10–846. STRATEGIC HOUSING FINANCE CORPORATION OF TRAVIS COUNTY *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 608 F. 3d 1317.

No. 10–849. FILIPCZYK *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 386 Fed. Appx. 973.

No. 10–850. OHIO *v.* ROSEBOROUGH. Ct. App. Ohio, Ashland County. Certiorari denied.

No. 10–853. ZABARA *v.* BYRNE ET AL. Super. Ct. Pa. Certiorari denied.

No. 10–858. PARTAIN *v.* ISGUR ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 326.

No. 10–860. REPKING ET AL. *v.* LOKEY ET AL. Sup. Ct. Ark. Certiorari denied. Reported below: 2010 Ark. 356, 377 S. W. 3d 211.

No. 10–863. KADI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–866. PAPYRUS TECHNOLOGY CORP. *v.* NEW YORK STOCK EXCHANGE, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 396 Fed. Appx. 702.

No. 10–874. SHERWOOD *v.* INTERNAL REVENUE SERVICE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 372 Fed. Appx. 101.

No. 10–877. INDEPENDENT SCHOOL DISTRICT NO. 12, CENTENNIAL *v.* MINNESOTA DEPARTMENT OF EDUCATION. Sup. Ct. Minn. Certiorari denied. Reported below: 788 N. W. 2d 907.

No. 10–883. REED *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 84 A. 3d 579.

No. 10–897. GILMORE *v.* MACY'S RETAIL HOLDINGS, INC. C. A. 3d Cir. Certiorari denied. Reported below: 385 Fed. Appx. 233.

No. 10–899. WYERS ET AL. *v.* MASTER LOCK CO. C. A. Fed. Cir. Certiorari denied. Reported below: 616 F. 3d 1231.

No. 10–905. JENKINS *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 782 N. W. 2d 211.

No. 10–910. SEATON *v.* MAYBERG ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 610 F. 3d 530.

No. 10–926. CLAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 618 F. 3d 946.

No. 10–938. ALVAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 623 F. 3d 1350.

No. 10–955. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 616 F. 3d 760.

No. 10–5296. AYALA-SEGOVIANO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 643.

No. 10–5621. SCHWINN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 974.

No. 10–5738. BOLT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 321.

No. 10–6038. TAYLOR *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 237 Ill. 2d 356, 930 N. E. 2d 959.

No. 10–6059. RILEY *v.* UNION PARISH SCHOOL BOARD ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 335.

No. 10–6117. VAZQUEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 381 Fed. Appx. 168.

No. 10–6140. HENRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–6166. STEWART *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 378 Fed. Appx. 201.

No. 10–6172. KING *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 604 F. 3d 125.

No. 10–6283. ADAMS *v.* HIGH PURITY SYSTEMS, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 269.

No. 10–6311. JOHNSON *v.* DEBOO, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 270.

No. 10–6406. WRIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 374 Fed. Appx. 386.

No. 10–6411. DIAZ DE LA CRUZ *v.* UNITED STATES; and
No. 10–6423. JUBIEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 925.

No. 10–6431. WATERS *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 368 Fed. Appx. 379.

No. 10–6476. COLBERT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 605 F. 3d 573.

No. 10–6506. SHEID *v.* UNITED STATES MARSHALS SERVICE, HOUSTON DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 345.

No. 10–6537. CRAIG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 459.

No. 10–6620. MOJENA *v.* UNITED STATES; and
No. 10–6707. MARTINEZ ALMEIDA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 919.

No. 10–6652. HAYDEN ET UX. *v.* D'AMICO ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 10–6825. DAVIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 383 Fed. Appx. 172.

No. 10–6878. HALL *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 613 F. 3d 249.

No. 10–6886. ROSADO-TORO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–6935. JENKINS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 998 A. 2d 867.

No. 10–6989. STUART *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied. Reported below: 149 Idaho 35, 232 P. 3d 813.

No. 10–7062. SILVA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 608 F. 3d 663.

No. 10–7134. JILES *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. 8th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 574.

No. 10–7186. ARMIJO, AS PARENT AND BEST FRIEND OF ARMIJO SANCHEZ *v.* PETERSON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 601 F. 3d 1065.

No. 10–7208. FOXWORTH *v.* PEPE, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT CEDAR JUNCTION. C. A. 1st Cir. Certiorari denied. Reported below: 612 F. 3d 705.

No. 10–7222. WEST *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 608 F. 3d 477.

No. 10–7236. CALHOUN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–7269. MCGEHEE *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 588 F. 3d 1185.

No. 10–7274. WIDEMAN *v.* COLORADO ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 184.

No. 10–7287. BOYD *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 295 Conn. 707, 992 A. 2d 1071.

No. 10–7350. MOYERS-SAENZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 450.

No. 10–7351. RODRIGUEZ-ALVARADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 461.

No. 10–7359. HANDLEY *v.* CHASE BANK USA, N. A., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 387 Fed. Appx. 166.

No. 10–7384. FRANCIS *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 792.

No. 10–7419. WOOD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 698.

No. 10–7420. BROWN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 41 So. 3d 116.

No. 10–7463. TWILEGAR *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 42 So. 3d 177.

No. 10–7699. WILSON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 10–7700. TRAVIS *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 2 A. 3d 75.

No. 10–7706. LIGGINS *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–7710. BLOUNT *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 10–7711. JACKSON *v.* HERRINGTON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 348.

No. 10–7724. OUTING *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 298 Conn. 34, 3 A. 3d 1.

No. 10–7726. WALLACE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 10–7729. VERDUGO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 50 Cal. 4th 263, 236 P. 3d 1035.

No. 10–7730. TREASE *v.* FLORIDA ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 41 So. 3d 119.

No. 10–7737. LUTZE *v.* MCQUIGGIN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 455.

No. 10–7740. MITCHELL *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 10–7742. PROPES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 10–7746. REYES *v.* SNOW ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 847.

No. 10–7751. EARL *v.* TURNBULL, SUPERINTENDENT, SPRING CREEK CORRECTIONAL CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 475.

No. 10–7755. JEFFERS *v.* KELLER ET AL. C. A. 7th Cir. Certiorari denied.

No. 10–7761. NORMAN *v.* SOCIAL SECURITY ADMINISTRATION ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 661.

No. 10–7762. NASSAR *v.* DISTRICT ATTORNEY FOR ESSEX COUNTY, MASSACHUSETTS, ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 456 Mass. 1006, 922 N. E. 2d 140.

No. 10–7764. BEASON, AKA BOONE *v.* CRAIG, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 10–7767. WOODHULL *v.* GUARDIANSHIP OF FALVO (five judgments). Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 43 So. 3d 708 (all judgments).

No. 10–7770. PAYTON *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 41 So. 3d 713.

No. 10–7771. MY NGO *v.* HEDGPETH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–7776. COLON *v.* TASKEY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 735.

No. 10–7785. SNEED *v.* PAN AMERICAN HOSPITAL ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 47.

No. 10–7788. SALEM *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–7792. HUDON *v.* HELLING, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–7793. FLIPPO *v.* MCBRIDE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 93.

No. 10–7795. FIELDS *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied. Reported below: 149 Idaho 399, 234 P. 3d 723.

No. 10–7797. ANDERSON *v.* CLINE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 463.

No. 10–7799. COOPER *v.* BUSS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 10–7802. LENTON *v.* STOLL ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–7805. ROMES *v.* BUSS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–7808. WHITE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–7809. LANKFORD *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–7812. MERCADO *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 74 App. Div. 3d 990, 904 N. Y. S. 2d 451.

No. 10–7820. MERTENS *v.* SHENSKY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 355 Fed. Appx. 990.

No. 10–7822. WICKS *v.* BROWN, SUPERINTENDENT, EASTERN NEW YORK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–7826. CHAPPELL *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 225 Ariz. 229, 236 P. 3d 1176.

No. 10–7829. SMITH *v.* CHAMBERLAIN ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–7842. Olson *v.* Estate of Gaignat, Deceased. Ct. App. Kan. Certiorari denied.

No. 10–7844. Warfield *v.* Weber, Warden, et al. C. A. 8th Cir. Certiorari denied.

No. 10–7850. Parker *v.* Astrue, Commissioner of Social Security. C. A. 6th Cir. Certiorari denied.

No. 10–7854. Noble *v.* Giurbino, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 675.

No. 10–7864. Evans *v.* Cate, Secretary, California Department of Corrections and Rehabilitation, et al. C. A. 9th Cir. Certiorari denied.

No. 10–7868. Martinez *v.* Scribner, Warden. C. A. 9th Cir. Certiorari denied.

No. 10–7869. Barnes *v.* Mississippi Department of Human Services. Sup. Ct. Miss. Certiorari denied. Reported below: 42 So. 3d 10.

No. 10–7871. Partovi *v.* Holder, Attorney General, et al. C. A. 9th Cir. Certiorari denied.

No. 10–7872. Partovi *v.* Matuszewski et al. C. A. D. C. Cir. Certiorari denied.

No. 10–7873. Devon *v.* Walsh, Superintendent, State Correctional Institution at Dallas. C. A. 3d Cir. Certiorari denied.

No. 10–7874. Jewell *v.* Cate, Secretary, California Department of Corrections and Rehabilitation. C. A. 9th Cir. Certiorari denied.

No. 10–7876. Norris *v.* Sinclair, Superintendent, Washington State Penitentiary. C. A. 9th Cir. Certiorari denied. Reported below: 622 F. 3d 1276.

No. 10–7880. Williams *v.* Buss, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 524.

No. 10–7881. Yellowbear *v.* Salzburg, Attorney General of Wyoming, et al. C. A. 10th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 740.

No. 10–7890. MAYS *v.* HOFBAUER ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–7897. SHADDEN *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–7902. DICKERSON *v.* KING COUNTY, WASHINGTON. C. A. 9th Cir. Certiorari denied.

No. 10–7905. RIDEAU *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 258.

No. 10–7908. BIN XU *v.* HOLDER, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 953.

No. 10–7917. ELKINS *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 656.

No. 10–7918. DEAN *v.* STREET ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–7919. JACKSON *v.* FLORIDA ET AL. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 49 So. 3d 253.

No. 10–7920. LARSON *v.* WILSON, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 10–7922. BARKER *v.* CALIFORNIA BOARD OF PRISON TERMS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 650.

No. 10–7924. ATKINS *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–7926. BURTON *v.* FABIAN, COMMISSIONER, MINNESOTA DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied. Reported below: 612 F. 3d 1003.

No. 10–7931. BENGE *v.* BUSS, COMMISSIONER, INDIANA DEPARTMENT OF CORRECTION, ET AL. C. A. 7th Cir. Certiorari denied.

No. 10–7932. DARLING, AKA SMITH *v.* BUSS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 619 F. 3d 1279.

No. 10–7939. PURNELL *v.* COHEN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 3.

No. 10–7941. SMITH *v.* MCCLURE. C. A. 4th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 961.

No. 10–7944. LAMBERT *v.* FELKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–7946. WOLTZ *v.* BAILEY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 223.

No. 10–7949. SZERLONG *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 457 Mass. 858, 933 N. E. 2d 633.

No. 10–7950. SLAUGHTER *v.* ROGERS, ADMINISTRATOR, ADULT DIAGNOSTIC AND TREATMENT CENTER, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 408 Fed. Appx. 510.

No. 10–7953. LUKE *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 77 So. 3d 629.

No. 10–7958. ADDISON *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied. Reported below: 160 N. H. 493, 8 A. 3d 53.

No. 10–7962. TIMMS *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 10–7963. BOYD *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–7966. WALLACE *v.* POWERS ET AL. C. A. 7th Cir. Certiorari denied.

No. 10–7968. ZUESKI *v.* PRAUSE ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–7969. KEMPPAINEN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–7972. TORRES *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 101.

No. 10–7973. PITTS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 43 So. 3d 697.

No. 10–7979. HUPP *v.* EDUCATIONAL CREDIT MANAGEMENT CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 572.

No. 10–7980. FOX *v.* FEDERAL BUREAU OF PRISONS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 966.

No. 10–7983. GREGG *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 332.

No. 10–7991. HOLIDAY *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 10–7993. FARRIS *v.* RYAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 358.

No. 10–7994. GOODE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 236 P. 3d 671.

No. 10–7998. JACKSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 142.

No. 10–7999. LANN *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied.

No. 10–8000. MUMPHREY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–8004. URBINA SOLERA *v.* PENSION FUND OF AMERICA L. C. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 832.

No. 10–8006. STRATTON *v.* TEXAS (three judgments). Ct. Crim. App. Tex. Certiorari denied.

No. 10–8009. TURNER *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–8015. MILLER *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–8017. COLVIN *v.* VETERANS ADMINISTRATION MEDICAL CENTER. C. A. 6th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 454.

No. 10–8018. ALLAIN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 45 So. 3d 461.

No. 10–8021. STRINGER *v.* FAYRAM, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 10–8022. JACKSON *v.* BUSS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–8023. MARES *v.* MCDONALD, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 738.

No. 10–8024. MANKO *v.* MANNOR ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 68 App. Div. 3d 497, 889 N. Y. S. 2d 448.

No. 10–8025. PULLUM *v.* FELKER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 663.

No. 10–8026. SMITH *v.* SCHOOL BOARD OF BREVARD COUNTY ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–8027. TOWNSEND *v.* CALDERONE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 396 Fed. Appx. 787.

No. 10–8028. WILLIAMS *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 36 So. 3d 102.

No. 10–8031. ROGERS *v.* BOOKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–8032. GOLLMAN *v.* METRISH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–8033. SOLOMON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 49 Cal. 4th 792, 234 P. 3d 501.

No. 10–8036. SIMPSON *v.* KAPELUCK ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 402 Fed. Appx. 803.

No. 10–8037. SPIKES *v.* BUSS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 44 So. 3d 582.

No. 10–8038. REEVES *v.* GAETZ, WARDEN, ET AL. App. Ct. Ill., 5th Dist. Certiorari denied.

No. 10–8040. KELLY *v.* CITY OF CONWAY, ARKANSAS, ET AL. C. A. 8th Cir. Certiorari denied.

No. 10–8041. DAVOLT *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 10–8043. DENNISON *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 330.

No. 10–8049. MELTON *v.* BUSS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–8054. BISHOP *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 10–8058. STARNES *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 388 S. C. 590, 698 S. E. 2d 604.

No. 10–8064. WALKER *v.* WOODFORD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 513.

No. 10–8065. WELLS *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 396 Ill. App. 3d 1142, 6 N. E. 3d 455.

No. 10–8066. CASTRO *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–8067. BOWIE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 10–8068. RODRIGUES *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 74 App. Div. 3d 1818, 902 N. Y. S. 2d 750.

No. 10–8076. MCPHERRON *v.* ULMER, DIRECTOR, COURT AND PROBATION SERVICES, 22D CIRCUIT COURT, ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 10–8080. WATKINS *v.* SMALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 222.

No. 10–8082. E. R. H. *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 573.

No. 10–8083. BARNES *v.* MCKOWN. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 74 App. Div. 3d 1914, 903 N. Y. S. 2d 843.

No. 10–8084. PRESLEY *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 10–8085. PARK *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 10–8086. WILLIAMS *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 10–8087. SPRING *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 46 So. 3d 1005.

No. 10–8088. BOMER *v.* CAPELLO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–8089. GOULD *v.* METRISH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–8090. HIGGINS *v.* ADDISON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 516.

No. 10–8091. FINCHER *v.* SOUTH BEND HERITAGE FOUNDATION ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 606 F. 3d 331.

No. 10–8092. GONZALEZ-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 621 F. 3d 354.

No. 10–8093. Romero Hidalgo *v.* United States; and
No. 10–8113. Hidalgo *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 372.

No. 10–8095. Hatchett *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 10–8096. Finley *v.* Farwell, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 373.

No. 10–8098. Ceballo Gonzalez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 570.

No. 10–8099. Finn *v.* California; and
No. 10–8218. Beckley *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 185 Cal. App. 4th 509, 110 Cal. Rptr. 3d 362.

No. 10–8100. Free *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 10–8103. Aaron *v.* Hobbs, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied.

No. 10–8104. Nixon *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 1.

No. 10–8105. Sanders *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 145.

No. 10–8106. Smith *v.* Crist, Governor of Florida, et al. C. A. 11th Cir. Certiorari denied.

No. 10–8107. Roberts *v.* United Parcel Service et al. Sup. Ct. Ky. Certiorari denied.

No. 10–8108. Brummett *v.* United States District Court for the Eastern District of California et al. C. A. 9th Cir. Certiorari denied.

No. 10–8109. Baugham *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 613 F. 3d 291.

No. 10–8110. Myers *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 402 Fed. Appx. 844.

No. 10–8111. SUDA *v.* STEVENSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 442.

No. 10–8115. WORLEY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 398 Ill. App. 3d 1106, 988 N. E. 2d 1125.

No. 10–8120. BELFAST *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 611 F. 3d 783.

No. 10–8122. RICHARD *v.* SHEWALTER, WARDEN. Sup. Ct. Ohio. Certiorari denied. Reported below: 126 Ohio St. 3d 1510, 930 N. E. 2d 329.

No. 10–8123. STEVENS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 10.

No. 10–8125. COBB *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 404 Fed. Appx. 46.

No. 10–8126. FOY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 617 F. 3d 1029.

No. 10–8128. MIRELES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 617 F. 3d 1009.

No. 10–8129. UVINO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 409 Fed. Appx. 372.

No. 10–8130. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 262.

No. 10–8131. CROFF *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 10–8132. CHRISTIE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 624 F. 3d 558.

No. 10–8134. CHURCH *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–8136. DIAZ ASPINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 280.

No. 10–8142. DAVIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 616.

No. 10–8143. SANFORD *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 287 Ga. 351, 695 S. E. 2d 579.

No. 10–8147. SARTAIN *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 357 Mont. 483, 241 P. 3d 1032.

No. 10–8148. SIMPSON *v.* BUSS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–8151. CASTILLO-CAMPOS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 987 A. 2d 476.

No. 10–8154. DESMOULINS *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 394 Fed. Appx. 785.

No. 10–8155. TILLMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 224.

No. 10–8156. WARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–8157. VASQUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–8161. TOWNSEND *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 618 F. 3d 915.

No. 10–8162. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 367 Fed. Appx. 486.

No. 10–8165. LECHUGA-ESPARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 49.

No. 10–8169. JUAREZ-GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 547.

No. 10–8175. JEAN-PIERRE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 10–8176. LINYARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 935.

No. 10–8177. MASSEY *v.* HARDY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 10–8179. PIERRE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 902.

No. 10–8180. PARK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 965.

No. 10–8181. PERKINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 86.

No. 10–8187. CVIJETINOVIC *v.* EBERLIN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 617 F. 3d 833.

No. 10–8189. DURANT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 554.

No. 10–8191. DAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 371 Fed. Appx. 431.

No. 10–8192. JACKSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 10–8193. LOPEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 680.

No. 10–8194. MARTIN *v.* MCQUIGGIN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–8197. MATTOX *v.* BUSS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–8198. ALDRIDGE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 3d 589.

No. 10–8199. BROWN *v.* CORTEZ MASTO, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–8201. BROOKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 103.

No. 10–8202. BROWN *v.* BRADSHAW, WARDEN. Sup. Ct. Ohio. Certiorari denied. Reported below: 126 Ohio St. 3d 265, 933 N. E. 2d 259.

No. 10–8204. BAEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–8205. ANTHONY *v.* BUSS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 10–8206. ANGUIANO *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–8211. NABE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 10–8212. DEHANEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 665.

No. 10–8214. DEMPSEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 652.

No. 10–8215. ESCOBAR-MERCADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 43.

No. 10–8216. CHAVEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 611 F. 3d 1006.

No. 10–8217. CULBERTSON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 10–8220. MONDRAGON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 10–8222. PETERS ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 161.

No. 10–8225. WAINWRIGHT *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 43.

No. 10–8229. MARTIN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 10–8232. OWUOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 572.

No. 10–8233. MIDDLETON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–8234. RANKIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 561.

No. 10–8238. SAVATH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 237.

No. 10–8241. BELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 42.

No. 10–8243. FRANKS *v.* LINDAMOOD, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 1.

No. 10–8244. HENNING *v.* COOPER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 847.

No. 10–8246. VASQUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–8247. SEARS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 491.

No. 10–8251. DAVIES, AKA DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 822.

No. 10–8252. DUNIGAN *v.* SUPERIOR COURT OF CALIFORNIA, SACRAMENTO COUNTY, ET AL. Sup. Ct. Cal. Certiorari denied.

No. 10–8253. COOPER *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 10–8254. FEIGER *v.* HICKMAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 406 Fed. Appx. 153.

No. 10–8256. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 10–8258. OLEA-CORONADO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 508.

No. 10–8265. CECIL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 615 F. 3d 678.

No. 10–8270. CHATMAN *v.* NORMAN, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 10–8271. GARZA-CASTANEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 985.

No. 10–8277. YARBROUGH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 271.

No. 10–8278. VASQUEZ-DIAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 983.

No. 10–8279. BROWN *v.* LAVALLEY, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–8280. BEASLEY *v.* SCHWOCHERT, ACTING WARDEN. Ct. App. Wis. Certiorari denied.

No. 10–8284. EPPS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 613 F. 3d 1093.

No. 10–8285. CLAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 979.

No. 10–8287. CRAWFORD *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 985 A. 2d 463.

No. 10–8288. ELLIOT *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–8289. DOMINGUEZ *v.* FELKER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 153.

No. 10–8292. CHAVEZ-SALGADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 80.

No. 10–8298. WISENBAKER *v.* FARWELL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 192.

No. 10–8299. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 113.

No. 10–8300. TURNER *v.* BARONE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FOREST, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–8304. BRUNN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 631.

No. 10–8307. RIVERA-KADER, AKA KADER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 146.

No. 10–8308. STEPHENS *v.* KUBIC ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 235.

No. 10–8310. SHAMAH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 624 F. 3d 449.

No. 10–8311. SISTRUNK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 622 F. 3d 1328.

No. 10–8312. ACEVEDO-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 278.

No. 10–8313. TEMPLETON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 624 F. 3d 215.

No. 10–8315. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 403 Fed. Appx. 146.

No. 10–8319. LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–8320. PAMATZ-HUERTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 179.

No. 10–8322. PICKARD ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 568.

No. 10–8323. CARILLO MORENO, AKA CARRILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 10.

No. 10–8325. MUNDY, AKA FRAZIER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 621 F. 3d 283.

No. 10–8328. CETIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 179.

No. 10–8330. CANTU, AKA ALARCON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 12.

No. 10–8331. CHAMBLISS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 142.

No. 10–8334. CARDENAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–8338. ABUHOURAN *v.* SNIEZEK, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 392 Fed. Appx. 78.

No. 10–8341. JENSEN *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 10–8343. LEWIS *v.* STANSBERRY, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 928.

No. 10–8345. JENKINS *v.* NEW YORK CITY DEPARTMENT OF HOMELESS SERVICES. C. A. 2d Cir. Certiorari denied. Reported below: 391 Fed. Appx. 81.

No. 10–8346. RENDER *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 316 S. W. 3d 846.

No. 10–8347. AYALA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 610 F. 3d 1035.

No. 10–8352. SOUCY *v.* BARNHART, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 10–8358. CUDD *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 982.

No. 10–8361. ASKEW *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 10–8364. ROSARIO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 384 Fed. Appx. 47.

No. 10–8365. WELLS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 623 F. 3d 332.

No. 10–8366. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 630 F. 3d 483.

No. 10–8368. COBOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–8371. ALMAGRO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 627.

No. 10–8372. DAVIS, AKA HEALY, AKA MARTIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 10–8375. GAMEZ-ORTEGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 177.

No. 10–8377. HOLLOWAY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 402 Fed. Appx. 692.

No. 10–8379. NGUYEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 379 Fed. Appx. 177.

No. 10–8380. NICK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 404.

No. 10–8383. RILEY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 615 F. 3d 7.

No. 10–8385. KILGORE *v.* JARVIS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 489.

No. 10–8388. GUERRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 14.

No. 10–8398. GHOLIKHAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 987.

No. 10–8399. GOMEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 294.

No. 10–8402. FIELDS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 624.

No. 10–8406. HODGE ET UX. *v.* CALVERT COUNTY, MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 298.

No. 10–8407. WEST *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–8408. WOOD *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 9 A. 3d 477.

No. 10–8410. BOYD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 595.

No. 10–8411. BELTRAN-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 252.

No. 10–8413. DEMBRY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–8414. EVERETT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 375 Fed. Appx. 748.

No. 10–8416. DOUGLAS *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 10–8417. CARRILLO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 861.

No. 10–8422. MONTGOMERY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 177.

No. 10–8425. WALKER ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 638.

No. 10–8426. TRAYLOR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 396 Fed. Appx. 725.

No. 10–8431. DVORAK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 617 F. 3d 1017.

No. 10–8433. CARBALLO *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 303 S. W. 3d 742.

No. 10–8438. WEBSTER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 400 Fed. Appx. 666.

No. 10–8441. MENDEZ-CASAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 624 F. 3d 233.

No. 10–8442. PURIFOY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 202.

No. 10–8445. PORTILLO-MESQUITA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 975.

No. 10–8447. LEAKE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 396 Fed. Appx. 898.

No. 10–8450. AUCOIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 336.

No. 10–8458. GREGORY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 996 A. 2d 542.

No. 10–8462. HILL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 634.

No. 10–8463. ARRINGTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 190.

No. 10–8466. TILLMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 404 Fed. Appx. 949.

No. 10–8468. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–8471. MITCHELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 3d 1023.

No. 10–8472. MCCULLERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 975.

No. 10–8473. NICOLL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 468.

No. 10–8479. GOSPIDON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–8480. FRANCIS *v.* FABIAN, COMMISSIONER, MINNESOTA DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied.

No. 10–8481. FOFANA *v.* CLARK. C. A. 9th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 717.

No. 10–8482. LOPEZ-MORENO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–8487. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–8488. CHINH TRONG NGUYEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 402.

No. 10–8493. VERNON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 901.

No. 10–8498. SWAIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 893.

No. 10–8501. ORLANSKY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 692.

No. 10–8506. THOMAS *v.* ZAVARAS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 638.

No. 10–8510. LUPTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 620 F. 3d 790.

No. 10–8522. BAILEY, AKA JONES, AKA BARROWS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–8525. TORRES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 10–8529. AMRATIEL, FKA HIBDON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 622 F. 3d 914.

No. 10–8531. CORTES, AKA CORTEZ-RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 526.

No. 10–8533. CRUZ-RAMOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 75.

No. 10–8534. EVANS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–8539. WILLIAMS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 5 A. 3d 21.

No. 10–8543. SOLIMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 196.

No. 10–8547. HOLMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 595 F. 3d 1255.

No. 10–8549. GARNER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 380.

No. 10–8550. GONZALEZ-VILLEGAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 70.

No. 10–8551. HOOD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 615 F. 3d 1293.

No. 10–8552. ZEIGLER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 328.

No. 10–8553. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 983.

No. 10–8554. WRIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 835.

No. 10–8555. MEADOR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 618 F. 3d 821.

No. 10–8569. GHOST BEAR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 659.

No. 10–8570. FREEMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 230.

No. 10–8571. FRISTOE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 754.

No. 10–8573. HAWKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 10–8584. PETERKIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 395 Fed. Appx. 856.

No. 10–8585. PADILLA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 404 Fed. Appx. 339.

No. 10–8589. CHAPMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 931.

No. 10–8591. COOPER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 992 A. 2d 1288.

No. 10–8595. SPITSYN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 403 Fed. Appx. 572.

No. 10–8597. ESPINOZA BRAVO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 624 F. 3d 921.

No. 10–8600. CLARK *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 996 A. 2d 848.

No. 10–8602. MOODY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 373.

No. 10–8608. MARTINEZ-INTRERIANO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 407 Fed. Appx. 676.

No. 10–8611. PEREZ-VILLANUEVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 489.

No. 10–8618. ANDERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 618 F. 3d 873.

No. 10–8623. VASQUEZ-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 970.

No. 10–8624. WETTSTAIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 618 F. 3d 577.

No. 10–8626. THACH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 411 Fed. Appx. 485.

No. 10–8627. MURINKO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 410 Fed. Appx. 2.

No. 10–8632. BERNARD *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–387. MISSOURI *v.* VACA. Sup. Ct. Mo. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 314 S. W. 3d 331.

No. 10–489. CONNECTICUT ET AL. *v.* DUNCAN, SECRETARY OF EDUCATION, ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 612 F. 3d 107.

No. 10–490. UTAH *v.* OTT. Sup. Ct. Utah. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 247 P. 3d 344.

No. 10–719. SCHEFFER ET AL. *v.* CIVIL SERVICE EMPLOYEES ASSN., LOCAL 828, ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 610 F. 3d 782.

No. 10–773. GEIER ET AL. *v.* OMNIGLOW CORP. ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 357 Fed. Appx. 377.

No. 10–814. MORTIMER OFF SHORE SERVICES, LTD. *v.* FEDERAL REPUBLIC OF GERMANY. C. A. 2d Cir. Certiorari de-

nied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 615 F. 3d 97.

No. 10–826. PIERCE, WARDEN *v.* GRIFFIN. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 622 F. 3d 831.

No. 10–916. RYSKAMP *v.* COMMISSIONER OF INTERNAL REVENUE. Certiorari before judgment denied. C. A. 9th Cir.

No. 10–7331. GUIRLANDO *v.* T. C. ZIRAAT BANKASI, A. S. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 602 F. 3d 69.

No. 10–7757. KAPORDELIS *v.* DANZIG ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 387 Fed. Appx. 905.

No. 10–7791. GIBSON *v.* ARTIS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 407 Fed. Appx. 517.

No. 10–7996. MURPHY *v.* EDDY MURPHY PRODUCTIONS, INC., ET AL. C. A. 7th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 611 F. 3d 322.

No. 10–8158. VILLAVICENCIO-BURRUEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 608 F. 3d 556.

No. 10–8170. MATTHEWS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 622 F. 3d 99.

No. 10–8173. KROSS *v.* GRIFFIN, SUPERINTENDENT, SOUTHPORT CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 403 Fed. Appx. 533.

No. 10–8275. MI KYUNG KIM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 390 Fed. Appx. 675.

No. 10–8295. DOHOU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 382 Fed. Appx. 32.

No. 10–8297. CHIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 385 Fed. Appx. 315.

No. 10–8340. NEGRON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 394 Fed. Appx. 788.

No. 10–8357. CASTELLO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR and JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 611 F. 3d 116.

No. 10–8387. FIFE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 624 F. 3d 441.

No. 10–8535. DODD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 10–8556. MORALES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 393 Fed. Appx. 773.

No. 10–8560. BROWN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 392 Fed. Appx. 515.

No. 10–8565. CRIM *v.* ADLER, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 10–8599. POLK *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 10–8601. ELSO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 364 Fed. Appx. 595.

Rehearing Denied

No. 09–10807. HOWARD, AKA WHITEHEAD *v.* WASHINGTON STATE PRISON ET AL., *ante*, p. 852;

No. 10–394. ATWELL *v.* WALSH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL., *ante*, p. 1063;

No. 10–411. WINDSOR *v.* MAID OF THE MIST CORP. ET AL., *ante*, p. 1064;

No. 10–524. MORGAN *v.* TOWN OF MINERAL, VIRGINIA, *ante*, p. 1109;

No. 10–556. BADRINAUTH *v.* METLIFE CORP. ET AL., *ante*, p. 1110;

No. 10–571. ROTTE *v.* INTERNAL REVENUE SERVICE ET AL., *ante*, p. 1110;

No. 10–595. ZARRO *v.* NEW YORK, *ante*, p. 1110;

No. 10–606. IN RE HEIMERMANN, *ante*, p. 1090;

No. 10–6014. JOHNSON *v.* VALENTINO ET AL., *ante*, p. 1007;

No. 10–6024. D'ANTUONO *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY, *ante*, p. 1007;

No. 10–6079. STOWELL *v.* TOLL BROTHERS, INC., *ante*, p. 1008;

No. 10–6480. WASHINGTON *v.* WILSON, *ante*, p. 1048;

No. 10–6600. STRONG *v.* NEW YORK CITY DEPARTMENT OF EDUCATION, *ante*, p. 1068;

No. 10–6617. JONES *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE ET AL., *ante*, p. 1068;

No. 10–6713. TAMEZ *v.* TEXAS, *ante*, p. 1070;

No. 10–6767. BONANNO *v.* THOMAS ET AL., *ante*, p. 1071;

No. 10–6770. BELL *v.* WOODS ET AL., *ante*, p. 1093;

No. 10–6775. WRIGHT *v.* STINE, SUPERINTENDENT, NEW CASTLE CORRECTIONAL FACILITY, *ante*, p. 1071;

No. 10–6781. PARKS *v.* EDGEWATER CASINO ET AL., *ante*, p. 1093;

No. 10–6863. IN RE SIMS, *ante*, p. 1108;

No. 10–6867. HADDAD *v.* RIVER FOREST POLICE DEPARTMENT ET AL., *ante*, p. 1112;

No. 10–6996. NEWMAN *v.* MEMPHIS LIGHT, GAS & WATER, *ante*, p. 1113;

No. 10–7000. ADAMS *v.* CITY OF FEDERAL WAY, WASHINGTON, ET AL., *ante*, p. 1143;

No. 10–7003. DYE *v.* BARTOW ET AL., *ante*, p. 1094;

No. 10–7007. EVANS *v.* LEE, *ante*, p. 1143;

No. 10–7021. COSTLEY *v.* SOCIAL SECURITY ADMINISTRATION, *ante*, p. 1114;

No. 10–7033. PORDASH *v.* BEIGHTLER, WARDEN, *ante*, p. 1114;

No. 10–7036. PIPES *v.* BALLARD, WARDEN, *ante*, p. 1073;

No. 10–7041. TREVINO *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1144;

No. 10–7042. TAURO *v.* BAER ET AL., *ante*, p. 1144;

No. 10–7149. GILLARD *v.* PROVEN METHOD SEMINARS, LLC, *ante*, p. 1095;

No. 10–7171. MORRISON *v.* UNITED STATES, *ante*, p. 1075;

No. 10–7185. O'NEAL *v.* BUCKNER ET AL., *ante*, p. 1114;

No. 10–7218. ELLIS *v.* BENEDETTI ET AL., *ante*, p. 1148;

No. 10–7249. ALLEN *v.* UNITED STATES, *ante*, p. 1076;

No. 10–7284. ELLIS *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA, *ante*, p. 1150;

No. 10–7313. IN RE WRIGHT, *ante*, p. 1059;

No. 10–7357. WILLIAMS *v.* POTTER, POSTMASTER GENERAL, *ante*, p. 1115;

No. 10–7427. WALLACE *v.* UNITED STATES, *ante*, p. 1116;

No. 10–7429. QUINONES, AKA ROSADO *v.* UNITED STATES, *ante*, p. 1116;

No. 10–7449. VALENZUELA-LOPEZ *v.* UNITED STATES, *ante*, p. 1116;

No. 10–7504. BLAZEK *v.* UNITED STATES, *ante*, p. 1118; and

No. 10–7606. IN RE HOLLOMAN, *ante*, p. 1107. Petitions for rehearing denied.

No. 09–11555. MOSLEY *v.* FLORIDA, *ante*, p. 887;

No. 10–6022. GREENE *v.* LEE'S MAINTENANCE SERVICES ET AL., *ante*, p. 970;

No. 10–6231. QAZZA *v.* KANE, WARDEN, *ante*, p. 1013;

No. 10–6490. GREENE *v.* KELLY SERVICES, INC., *ante*, p. 1033; and

No. 10–6915. GREENE *v.* CALIFORNIA STATE PRISON ET AL., *ante*, p. 1113. Motions for leave to file petitions for rehearing denied.

No. 10–565. TIBBETTS *v.* DITTES ET AL., *ante*, p. 1124. Petition for rehearing denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

FEBRUARY 28, 2011

Certiorari Granted—Vacated and Remanded

No. 08–1120. AMERICAN HOME PRODUCTS CORP., DBA WYETH, ET AL. *v.* FERRARI ET AL. Sup. Ct. Ga. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bruesewitz* v. *Wyeth LLC*, *ante*, p. 223. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 284 Ga. 384, 668 S. E. 2d 236.

No. 10–668. PRIESTER *v.* FORD MOTOR CO. Sup. Ct. S. C. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Williamson* v. *Mazda Motor of America, Inc.*, *ante*, p. 323. Reported below: 388 S. C. 425, 697 S. E. 2d 567.

No. 10–681. UNITED STATES *v.* DEWAR ET AL. C. A. 2d Cir. Motions of respondents for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Abbott* v. *United States*, *ante*, p. 8. JUSTICE SOTOMAYOR and JUSTICE KAGAN took no part in the consideration or decision of these motions and this petition. Reported below: 375 Fed. Appx. 90.

Miscellaneous Orders

No. D–2547. IN RE DISBARMENT OF WILSON. Disbarment entered. [For earlier order herein, see *ante*, p. 815.]

No. 10M59. MALLO *v.* WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES ET AL. Renewed motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 10M75. EVANS *v.* SUTER, CLERK, SUPREME COURT OF THE UNITED STATES, ET AL.;

No. 10M76. GUERRA *v.* FELKER, WARDEN; and

No. 10M78. SHAW *v.* COUGHLIN ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 10M77. DOE *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 10–708. FIRST AMERICAN FINANCIAL CORP., SUCCESSOR IN INTEREST TO FIRST AMERICAN CORP., ET AL. *v.* EDWARDS. C. A. 9th Cir.; and

No. 10–827. UNITED STATES EX REL. SUMMERS *v.* LHC GROUP, INC. C. A. 6th Cir. The Acting Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 10–7258. BOLOMET ET UX. *v.* RLI INSURANCE CO. ET AL. Sup. Ct. Haw. Motion of petitioners for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 1133] denied.

No. 10–7273. BLOOM *v.* MCKUNE, WARDEN, ET AL. Ct. App. Kan. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 1130] denied.

No. 10–7320. YSAIS *v.* YSAIS. Ct. App. N. M. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 1130] denied.

No. 10–8714. SAMPLES *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until March 21, 2011, 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. 10–8838. IN RE VAN HOOSEN. Petition for writ of habeas corpus denied.

No. 10–8559. IN RE MACKEY; and

No. 10–8751. IN RE ESPINOZA. Petitions for writs of mandamus denied.

Certiorari Denied

No. 10–459. SCHERING CORP. *v.* KUZINSKI ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 384 Fed. Appx. 17.

No. 10–460. NOVARTIS PHARMACEUTICALS CORP. *v.* LOPES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 611 F. 3d 141.

No. 10–497. GATIMI ET AL. *v.* HOLDER, ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 606 F. 3d 344.

No. 10–559. COOKE ET AL. *v.* TUBRA. Ct. App. Ore. Certiorari denied. Reported below: 233 Ore. App. 339, 225 P. 3d 862.

No. 10–570. MORA FLORES ET UX. *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 10–683. ROHART *v.* NORTH BROWARD HOSPITAL DISTRICT. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 41 So. 3d 410.

No. 10–685. KELLY ET AL. *v.* TOWNSHIP OF ABINGTON, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 336 Fed. Appx. 163.

No. 10–701. EVANSON ET AL. *v.* REEDY. C. A. 3d Cir. Certiorari denied. Reported below: 615 F. 3d 197.

No. 10–830. GRANT-BOESEN *v.* VIRGINIA EMPLOYMENT COMMISSION ET AL. Sup. Ct. Va. Certiorari denied.

No. 10–833. ELDEEB *v.* ALLIEDBARTON SECURITY SERVICES, L. L. C., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 393 Fed. Appx. 877.

No. 10–841. VAUGHAN ROOFING & SHEET METAL, LLC *v.* GARCIA RODRIGUEZ. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 38 So. 3d 511, 526, and 527.

No. 10–842. CLEVELAND CONSTRUCTION, INC. *v.* CITY OF CINCINNATI, OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 10–843. ALARIE ET AL. *v.* MILLER ET AL. Sup. Ct. Mich. Certiorari denied. Reported below: 488 Mich. 883, 788 N. W. 2d 458.

No. 10–847. TURNER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 46 So. 3d 568.

No. 10–852. MacDonald *v.* Johnson, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 273.

No. 10–855. Mathis *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 3d 461.

No. 10–859. Prunty et al. *v.* Terry, Chapter 7 Trustee. C. A. 4th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 299.

No. 10–891. Latsch *v.* Shinseki, Secretary of Veterans Affairs. C. A. Fed. Cir. Certiorari denied. Reported below: 396 Fed. Appx. 697.

No. 10–904. Etherly *v.* Davis, Warden. C. A. 7th Cir. Certiorari denied. Reported below: 619 F. 3d 654.

No. 10–919. DeFabio et al. *v.* East Hampton Union Free School District et al. C. A. 2d Cir. Certiorari denied. Reported below: 623 F. 3d 71.

No. 10–924. Taggart *v.* Chase Bank USA, N. A., et al. C. A. 3d Cir. Certiorari denied. Reported below: 375 Fed. Appx. 266.

No. 10–960. Kalaycioglu *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 10–6515. Jackson *v.* Geo Group, Inc., et al. C. A. 11th Cir. Certiorari denied.

No. 10–6873. Flores Feliciano et al. *v.* Molina et al. C. A. 1st Cir. Certiorari denied. Reported below: 607 F. 3d 864.

No. 10–6879. Hernandez-Mendoza *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 600 F. 3d 971.

No. 10–6895. Sanchez *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 608 F. 3d 685.

No. 10–6900. Toliver *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 570.

No. 10–7349. MISSOURI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 252.

No. 10–7447. WENMOTH *v.* DUNCAN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 271.

No. 10–7526. HRCKA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 232.

No. 10–7831. RHOADES ET AL. *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied. Reported below: 149 Idaho 130, 233 P. 3d 61.

No. 10–8119. JOHNSON *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 375.

No. 10–8121. STATON *v.* INDIANA ADULT PROTECTIVE SERVICES ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–8124. MILLER *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 10–8127. HUDSON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 10–8133. DAVIS *v.* BANK OF NEW YORK. Sup. Ct. Ill. Certiorari denied.

No. 10–8139. WILLIAMS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–8140. DUBOSE *v.* PATTERSON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–8141. COMBER *v.* WOLFE, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 273.

No. 10–8144. RODRIGUEZ *v.* BARONE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FOREST, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–8149. RIDEAU *v.* SMALL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 402 Fed. Appx. 165.

No. 10–8152. DOUGLAS *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 397 Ill. App. 3d 1117, 988 N. E. 2d 246.

No. 10–8153. CASTRILLO *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA. C. A. 5th Cir. Certiorari denied.

No. 10–8160. VILLA *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 10–8163. STOREY *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 603 F. 3d 507.

No. 10–8171. LEVI *v.* DEPARTMENT OF LABOR ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 556.

No. 10–8184. MURRAY *v.* GIL. Sup. Ct. Fla. Certiorari denied. Reported below: 46 So. 3d 566.

No. 10–8223. PASCUAL *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied.

No. 10–8226. THIGPEN *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA. C. A. 8th Cir. Certiorari denied.

No. 10–8227. WHITESIDE *v.* PARRISH ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 608.

No. 10–8235. POLANCO *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 10–8237. MUNOZ-PADILLA *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 10–8239. AMRHEIN *v.* LA MADELEINE, INC. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 10–8245. BORRERO *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied.

No. 10–8249. SKANES *v.* BUSS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–8269. DAVENPORT *v.* FRAZIER, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 10–8309. STUDY *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–8333. CHAMBERS *v.* JUSTICE OF THE PEACE COURT, PRECINCT ONE. Sup. Ct. Tex. Certiorari denied.

No. 10–8386. MOORE *v.* ANGLIN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 10–8390. SNEED *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 46 So. 3d 1012.

No. 10–8404. NELSON *v.* JACKSON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 10–8424. WILKINS *v.* LONG ET AL. C. A. 8th Cir. Certiorari denied.

No. 10–8443. TOLONEN *v.* PUGH, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 10–8449. BRINK *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–8451. NELSON *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 323 S. W. 3d 42.

No. 10–8452. RAFI *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. D. C. Cir. Certiorari denied. Reported below: 377 Fed. Appx. 24.

No. 10–8484. SPRINGER *v.* ALBIN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 427.

No. 10–8504. THOMPSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 394 Fed. Appx. 873.

No. 10–8511. MAUCHLIN *v.* BIER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 519.

No. 10–8523. WHITE *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 10–8537. BUNCHAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 626 F. 3d 29.

No. 10–8561. BANKS *v.* BROWN, DIRECTOR, DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS. C. A. D. C. Cir. Certiorari denied.

No. 10–8620. MONTOYA BAIRES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 811.

No. 10–8628. PERRY *v.* SANDERS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–8643. CURTNER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–8644. DUINA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 388 Fed. Appx. 86.

No. 10–8646. SOLIS-CASTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 988.

No. 10–8648. LUPERCIO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–8649. SZETO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 10–8653. EASON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 573.

No. 10–8655. CHACON-CHINCHILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 939.

No. 10–8658. MURPHY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 460.

No. 10–8661. AGUILAR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 85.

No. 10–8662. BAKER *v.* HOLLINGSWORTH, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 10–8663. STEWART *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 618 F. 3d 577.

No. 10–8665. VARELA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 406 Fed. Appx. 827.

No. 10–8667. VALDEZ-ORTIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 935.

No. 10–8668. PRYOR *v.* MCHUGH, SECRETARY OF THE ARMY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 841.

No. 10–8669. SEGOVIA-CASTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 14.

No. 10–8670. SAMUELS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 611 F. 3d 914.

No. 10–8673. LOPEZ AYALA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 937.

No. 10–8674. BALLARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 650.

No. 10–8678. RUDISILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 916.

No. 10–8680. RICHARDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 422.

No. 10–8681. LEE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 264.

No. 10–8682. ROBINSON *v.* SNIEZEK, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 401 Fed. Appx. 645.

No. 10–8689. THOMPSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 393 Fed. Appx. 852.

No. 10–8696. MAYNARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 944.

No. 10–8697. BARROW *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–8698. ARAUJO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 622 F. 3d 854.

No. 10–8701. ADAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 303.

No. 10–8702. ARANA-ESQUIVEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 686.

No. 10–8706. SCALISE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 398 Fed. Appx. 736.

No. 10–8707. BURKS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 406 Fed. Appx. 539.

No. 10–8711. DICKAU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 399 Fed. Appx. 625.

No. 10–8712. DINWIDDIE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 618 F. 3d 821.

No. 10–8713. EDWARDS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 618 F. 3d 802.

No. 10–8718. DONELSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–8723. WOODS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 117.

No. 10–8724. DOMINGUEZ-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 881.

No. 10–8726. WALKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 945.

No. 10–8728. PETERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 402 Fed. Appx. 211.

No. 10–8729. MINIFEE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 406 Fed. Appx. 19.

No. 10–8733. MAN NEI LUI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 402 Fed. Appx. 235.

No. 10–8736. BOGANS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–8737. BONILLA-DELCID *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 921.

No. 10–8738. AITCHISON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 411 Fed. Appx. 358.

No. 10–8739. ABEITA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 2.

No. 10–8741. BENJAMIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 391 Fed. Appx. 942.

No. 10–8747. PRICE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 392 Fed. Appx. 881.

No. 10–8748. LEWIS ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 277.

No. 10–8757. OFRAY-CAMPOS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–8762. TENERELLI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 614 F. 3d 764.

No. 10–8763. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 212.

No. 10–8767. KING *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–8772. DIXON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 491.

No. 10–8776. ROSS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 730.

No. 10–8778. CABALLERO-CERVANTES, AKA CABALLERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 849.

No. 10–8779. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 964.

No. 10–8781. CALLAHAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 775.

No. 10–8782. MORENO-ROBLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 913.

No. 10–8786. SANTAMARIA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–8790. ALVARADO-ZAPATA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 835.

No. 10–618. CITY OF NEW YORK, NEW YORK, ET AL. *v.* METROPOLITAN TAXICAB BOARD OF TRADE ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 615 F. 3d 152.

No. 10–695. LAY *v.* UNITED STATES. C. A. 6th Cir. Motion of Dr. Barron H. Harvey et al. for leave to file a brief as *amici*

curiae out of time denied. Certiorari denied. Reported below: 612 F. 3d 440.

No. 10–7768. KING *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR and JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 375 Fed. Appx. 90.

No. 10–8114. TENORE *v.* MARTEL, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 381 Fed. Appx. 733.

No. 10–8497. RUTHERFORD *v.* UNITED STATES DISTRICT COURTS ET AL. C. A. 5th Cir. Certiorari before judgment denied.

No. 10–8660. BALDWIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 398 Fed. Appx. 677.

No. 10–8717. EDWARDS *v.* SNIEZEK, WARDEN. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 400 Fed. Appx. 622.

No. 10–8730. LETO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 399 Fed. Appx. 693.

Rehearing Denied

No. 09–10810. HALL *v.* BOATWRIGHT, WARDEN, *ante*, p. 853;

No. 10–573. SHEPHERD MONTESSORI CENTER MILAN *v.* ANN ARBOR CHARTER TOWNSHIP ET AL., *ante*, p. 1137;

No. 10–583. AYANBADEJO ET UX. *v.* NAPOLITANO, SECRETARY OF HOMELAND SECURITY, ET AL., *ante*, p. 1138;

No. 10–628. O'CONNOR *v.* COLORADO COLLEGE ET AL., *ante*, p. 1139;

No. 10–642. KONE *v.* VIRGINIA DEPARTMENT OF STATE POLICE, *ante*, p. 1139;

No. 10–5267. CRUZ GONZALEZ *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 912;

No. 10–5767. BEY *v.* UNITED STATES, *ante,* p. 1092;

No. 10–5788. HUDSON *v.* UNITED STATES, *ante,* p. 937;

No. 10–6138. HARRIS *v.* MICHIGAN, *ante,* p. 1010;

No. 10–6156. HOLMES *v.* BROWN, WARDEN, ET AL., *ante,* p. 1010;

No. 10–6165. HERRERA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante,* p. 1011;

No. 10–6208. STONE *v.* ELOHIM, INC., *ante,* p. 1111;

No. 10–6493. HINKLE *v.* TEXAS, *ante,* p. 1049;

No. 10–6829. BLACK *v.* SADLER, *ante,* p. 1094;

No. 10–6907. IFENATUORAH *v.* HOLDER, ATTORNEY GENERAL, *ante,* p. 1094;

No. 10–6966. WILLIAMS *v.* UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT ET AL., *ante,* p. 1143;

No. 10–7122. FORE *v.* LAKESIDE BUSES OF WISCONSIN, INC., *ante,* p. 1145;

No. 10–7174. BOURGEOIS *v.* BERGERON, WARDEN, *ante,* p. 1147;

No. 10–7177. MILTON *v.* BUSS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante,* p. 1147;

No. 10–7184. RICHARDSON *v.* VARANO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL., *ante,* p. 1147;

No. 10–7290. IN RE CAGE, *ante,* p. 1059;

No. 10–7374. BROWN *v.* CLARK, WARDEN, *ante,* p. 1152;

No. 10–7386. ASTROP *v.* ECKERD CORP. ET AL., *ante,* p. 1152;

No. 10–7662. JARVIS *v.* MARYLAND, *ante,* p. 1203;

No. 10–7663. JARVIS *v.* MONTGOMERY COUNTY, MARYLAND, *ante,* p. 1203; and

No. 10–7866. COX *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY, *ante,* p. 1190. Petitions for rehearing denied.

MARCH 4, 2011

Miscellaneous Order

No. 10–114. FOX *v.* VICE, CHIEF OF POLICE, TOWN OF VINTON, ET AL. C. A. 5th Cir. [Certiorari granted, *ante,* p. 1002.] The parties are directed to file letter briefs addressing the effect on this proceeding of the death of respondent Billy Ray Vice and the failure to substitute an authorized representative of Vice as a party under this Court's Rule 35.1. To the extent there are claims against Vice in his official capacity, the parties are further

directed to address the effect of Rule 35.3 on this proceeding. Briefs, limited to 12 pages, are to be filed simultaneously with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, March 11, 2011.

March 7, 2011

Appointment Order

It is ordered that Christine Luchok Fallon be appointed Reporter of Decisions of this Court to succeed Frank D. Wagner, effective March 3, 2011, and she is charged with the duty of reporting the decisions of the present Term which have not been reported prior to March 3, 2011.

Affirmed for Absence of Quorum

No. 10–935. Smith *v.* Thomas, Associate Justice, Supreme Court of the United States, et al. C. A. D. C. Cir. Because the Court lacks a quorum, 28 U. S. C. § 1, and since the only qualified Justice is of the opinion that the case cannot be heard and determined at the next Term of the Court, the judgment is affirmed under 28 U. S. C. § 2109, which provides that under these circumstances "the court shall enter its order affirming the judgment of the court from which the case was brought for review with the same effect as upon affirmance by an equally divided court." The Chief Justice, Justice Scalia, Justice Kennedy, Justice Thomas, Justice Ginsburg, Justice Breyer, Justice Alito, and Justice Sotomayor took no part in the consideration or decision of this petition. Reported below: 383 Fed. Appx. 8.

Certiorari Granted—Vacated and Remanded

No. 09–1396. Allshouse *v.* Pennsylvania. Sup. Ct. Pa. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Michigan* v. *Bryant*, *ante*, p. 344. Reported below: 604 Pa. 61, 985 A. 2d 847.

No. 09–10146. Kane *v.* United States. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Pepper* v. *United States*, *ante*, p. 476. Justice Kagan took no part in the consideration or decision of this motion and this petition. Reported below: 552 F. 3d 748.

No. 10–5829. HARKNESS *v.* UNITED STATES. C. A. 11th Cir. Reported below: 367 Fed. Appx. 973; and

No. 10–5839. SMITH *v.* UNITED STATES. C. A. 11th Cir. Reported below: 370 Fed. Appx. 59. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Pepper* v. *United States*, *ante*, p. 476.

No. 10–5860. MANN *v.* UNITED STATES. 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 *Henderson* v. *Shinseki*, *ante*, p. 428. Reported below: 373 Fed. Appx. 350.

Certiorari Dismissed

No. 10–8262. HARVEY *v.* LOUISIANA. Sup. Ct. La. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 38 So. 3d 316.

No. 10–8486. MCKINNEDY *v.* REYNOLDS, WARDEN, ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 393 Fed. Appx. 973.

No. 10–8820. GONZALEZ LORA *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 368 Fed. Appx. 407.

Miscellaneous Orders

No. 09–11556. TOLENTINO *v.* NEW YORK. Ct. App. N. Y. [Certiorari granted, *ante*, p. 1043.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 10–10. TURNER *v.* ROGERS ET AL. Sup. Ct. S. C. [Certiorari granted, *ante*, p. 1002.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted, and the time is divided as follows: 30 minutes for petitioner, 10 minutes for the Acting Solicitor General, and 30 minutes for respondents.

No. 10–5400. TAPIA *v.* UNITED STATES. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1104.] Motion of petitioner for leave to file volume II of the joint appendix under seal granted.

No. 10–7441. SOLIS *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE. Ct. App. Tex., 10th Dist. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1130] denied.

No. 10–7550. RUTHERFORD *v.* EMPLOYMENT STANDARDS ADMINISTRATION ET AL. C. A. 5th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1176] denied.

No. 10–7721. MCCONNEL *v.* UNITED STATES. C. A. 10th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1133] denied.

No. 10–7875. JONES *v.* MIDSTATES DEVELOPMENT, INC., ET AL. Ct. App. Neb. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1197] denied.

No. 10–7900. BREEST *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1197] denied.

No. 10–8196. TOMEY ET UX. *v.* LAMBDIN. Ct. Sp. App. Md.;
No. 10–8228. TUCKER ET AL. *v.* CITY OF LOS ANGELES, CALIFORNIA. C. A. 9th Cir.; and
No. 10–8516. SEISMAN *v.* CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL OF MARYLAND. Ct. Sp. App. Md. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 28, 2011, 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. 10–8888. IN RE TOBEY;
No. 10–8912. IN RE SOTO; and
No. 10–8947. IN RE NESBITT. Petitions for writs of habeas corpus denied.

No. 10–8524. IN RE TROXLER. Petition for writ of mandamus denied.

No. 10–8200. IN RE THOMAS. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8.

Certiorari Granted

No. 10–545. GOLAN ET AL. *v.* HOLDER, ATTORNEY GENERAL, ET AL. C. A. 10th Cir. Certiorari granted. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 609 F. 3d 1076.

Certiorari Denied

No. 10–516. RAST ET AL. *v.* UNITED STATES;
No. 10–528. PUGH ET AL. *v.* UNITED STATES; and
No. 10–533. MCNAIR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 605 F. 3d 1152.

No. 10–576. FIDEICOMISO DE LA TIERRA DEL CANO MARTIN PENA *v.* FORTUNO, GOVERNOR OF PUERTO RICO, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 604 F. 3d 7.

No. 10–622. S&M BRANDS, INC., ET AL. *v.* CALDWELL, ATTORNEY GENERAL OF LOUISIANA. C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 3d 172.

No. 10–649. APOLLO GROUP, INC., ET AL. *v.* POLICEMEN'S ANNUITY AND BENEFIT FUND OF CHICAGO. C. A. 9th Cir. Certiorari denied.

No. 10–671. WINE COUNTRY GIFT BASKETS.COM ET AL. *v.* STEEN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 612 F. 3d 809.

No. 10–715. LESLIE ET AL. *v.* CARNIVAL CORP. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 22 So. 3d 567.

No. 10–721. SENSIENT TECHNOLOGIES CORP. ET AL. *v.* SENSORYEFFECTS FLAVOR CO., FKA SENSORYFLAVORS, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 613 F. 3d 754.

No. 10–722. DEAN *v.* COMPUTER SCIENCES CORP. C. A. 10th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 831.

No. 10–724. HATMAKER *v.* MEMORIAL MEDICAL CENTER. C. A. 7th Cir. Certiorari denied. Reported below: 619 F. 3d 741.

No. 10–725. HARDY *v.* TENNESSEE DEPARTMENT OF HEALTH, DIVISION OF HEALTH RELATED BOARDS. Ct. App. Tenn. Certiorari denied.

No. 10–749. HONGSERMEIER ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 621 F. 3d 890.

No. 10–752. DRESSNER *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 45 So. 3d 127.

No. 10–848. BROWN, GOVERNOR OF CALIFORNIA, ET AL. *v.* VALDIVIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 599 F. 3d 984.

No. 10–861. ASTER *v.* ASTER. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 10–862. BARAN *v.* MEDICAL DEVICE TECHNOLOGIES, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 616 F. 3d 1309.

No. 10–867. MAYER *v.* BELICHICK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 605 F. 3d 223.

No. 10–870. HARLAN ET VIR *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 359 Fed. Appx. 458.

No. 10–876. CARLSON *v.* BUKOVIC ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 621 F. 3d 610.

No. 10–882. VAUGHN ET UX. *v.* WYREMBEK. Sup. Ct. Ohio. Certiorari denied. Reported below: 126 Ohio St. 3d 249, 933 N. E. 2d 245.

No. 10–893. NEWDOW *v.* LEFEVRE, LAW REVISION COUNSEL, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 598 F. 3d 638.

No. 10–901. SEGER-THOMSCHITZ *v.* MUSEUM OF FINE ARTS, BOSTON. C. A. 1st Cir. Certiorari denied. Reported below: 623 F. 3d 1.

No. 10–907. OWNER-OPERATOR INDEPENDENT DRIVERS ASSN., INC., ET AL. *v.* MAYFLOWER TRANSIT, LLC. C. A. 7th Cir. Certiorari denied. Reported below: 615 F. 3d 790.

No. 10–927. SWEE FOON CHONG *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 391 Fed. Appx. 49.

No. 10–936. BETTS ET AL. *v.* NEW CASTLE YOUTH DEVELOPMENT CENTER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 621 F. 3d 249.

No. 10–943. FOREST *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 10–951. REEL HOOKER SPORTFISHING, INC., ET AL. *v.* HAWAII DEPARTMENT OF TAXATION. Int. Ct. App. Haw. Certiorari denied. Reported below: 123 Haw. 494, 236 P. 3d 1230.

No. 10–952. BLUE MOVIES, INC., DBA LOVE BOUTIQUE, ET AL. *v.* METROPOLITAN GOVERNMENT OF LOUISVILLE AND JEFFERSON COUNTY, KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 317 S. W. 3d 23.

No. 10–957. DOE *v.* SHURTLEFF, ATTORNEY GENERAL OF UTAH. C. A. 10th Cir. Certiorari denied. Reported below: 628 F. 3d 1217.

No. 10–968. BRAQUET *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT ET AL. C. A. 5th Cir. Certiorari denied.

No. 10–978. SALVADOR ET AL. *v.* LAKE GEORGE PARK COMMISSION. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 72 App. Div. 3d 1219, 899 N. Y. S. 2d 386.

No. 10–993. SHARP *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 741.

No. 10–1003. MONEA FAMILY TRUST I ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 626 F. 3d 271.

No. 10–5746. FRANKLIN *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 308 S. W. 3d 799.

No. 10–5967. HAMMANN *v.* FALLS/PINNACLE, LLC, ET AL.; and HAMMANN *v.* DEYO ET AL. Ct. App. Minn. Certiorari denied.

No. 10–6218. SHACKELFORD *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied. Reported below: 150 Idaho 355, 247 P. 3d 582.

No. 10–6356. PEMBROOK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 609 F. 3d 381.

No. 10–6372. GRIFFIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 589 F. 3d 148.

No. 10–6824. DONOFRIO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–6964. WILSON *v.* UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT. C. A. 7th Cir. Certiorari denied.

No. 10–7060. ARANGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–7187. KJONAAS ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 584 F. 3d 132.

No. 10–7385. FONTENOT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 611 F. 3d 734.

No. 10–7397. SCURLOCK-FERGUSON *v.* CITY OF DURHAM, NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 302.

No. 10–7414. NOBLE, AKA SOTO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 10–7443. BETHEA *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 2 A. 3d 1093.

No. 10–7543. WALDON *v.* WILKINS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 75.

No. 10–7622. WILLIAMS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 49 Cal. 4th 405, 233 P. 3d 1000.

No. 10–7781. MARTINEZ GARCIA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 396.

No. 10–7813. ALFARO-MONCADA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 607 F. 3d 720.

No. 10–7816. DAVIS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 318 S. W. 3d 618.

No. 10–7821. SALDANA-MARTINEZ, AKA SOLDANA-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 67.

No. 10–7833. TATE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 49 Cal. 4th 635, 234 P. 3d 428.

No. 10–7834. MASHEK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 606 F. 3d 922.

No. 10–7852. PHILLIPS *v.* BRADSHAW, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 607 F. 3d 199.

No. 10–7892. THOMAS *v.* BARTOW, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 10–8172. MAYS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 318 S. W. 3d 368.

No. 10–8174. KLEIN *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 126 Nev. 730.

No. 10–8182. MCGLONE *v.* AUSTIN. App. Ct. Mass. Certiorari denied.

No. 10–8183. PRESLEY *v.* KING, SUPERINTENDENT, SOUTH MISSISSIPPI CORRECTIONAL INSTITUTION. C. A. 5th Cir. Certiorari denied.

No. 10–8185. PUCKETT *v.* CALIFORNIA (two judgments). Sup. Ct. Cal. Certiorari denied.

No. 10–8186. NELSON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 10–8195. JOHNSON *v.* GUERRERO. C. A. 9th Cir. Certiorari denied.

No. 10–8203. BROWN *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 10–8207. CRUZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–8208. BANKS *v.* MISSISSIPPI ET AL. C. A. 5th Cir. Certiorari denied.

No. 10–8209. PALMER *v.* TRENT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 332.

No. 10–8213. DENBOW *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 10–8219. ORTEGON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 10–8224. WHITE *v.* BOYD ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 10–8230. LAFFITEAU *v.* MANAGEMENT AND LEGAL AGENTS FOR CAMELOT INN. C. A. 4th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 303.

No. 10–8236. MUSUNGAYI *v.* WHIRLPOOL CORP. C. A. 10th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 346.

No. 10–8242. MARTINEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 10–8257. WRIGHT *v.* WOOD ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 327.

No. 10–8259. GOMES *v.* BERGERON, SUPERINTENDENT, OLD COLONY CORRECTIONAL CENTER. C. A. 1st Cir. Certiorari denied.

No. 10–8260. HOOKS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 79.

No. 10–8264. CODE *v.* CAIN, WARDEN. Sup. Ct. La. Certiorari denied. Reported below: 46 So. 3d 1258.

No. 10–8267. DAVIS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–8268. DAVIS *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 10–8274. BERRY *v.* CITIBANK F. S. B. C. A. 7th Cir. Certiorari denied.

No. 10–8281. ALLEN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 398 Ill. App. 3d 1099, 988 N. E. 2d 1122.

No. 10–8282. ANDERS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–8283. BROWN *v.* ROBERTS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 499.

No. 10–8342. MARQUEZ *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 10–8348. RAHMAN *v.* NAPOLITANO, SECRETARY OF HOMELAND SECURITY, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 540.

No. 10–8362. NNURO *v.* HOLDER, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied.

No. 10–8378. BONIELLA *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 3d Cir. Certiorari denied. Reported below: 390 Fed. Appx. 122.

No. 10–8381. BIGGS *v.* SMITH, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–8392. ROBISON *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–8423. MCMILLIAN *v.* NORTON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 804.

No. 10–8460. FLANAGAN *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 10–8469. WARD *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 10–8477. GILLILLAND *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 10–8494. WOODS *v.* NEVEN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–8500. REYNOLDS *v.* WHITEHEAD ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–8512. ALLEN *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 328 Wis. 2d 1, 786 N. W. 2d 124.

No. 10–8515. REA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–8519. BROWN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 998 A. 2d 1002.

No. 10–8545. GRAHAM *v.* WILSON, ATTORNEY GENERAL OF SOUTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 278.

No. 10–8567. HERNANDEZ *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 46 So. 3d 1010.

No. 10–8568. HENDRIX *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 10–8598. PIPES *v.* BALLARD, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 19.

No. 10–8639. CELEBISOY *v.* BRUNSON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–8683. RUE *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–8720. BRADLEY *v.* URBOM ET AL. C. A. 8th Cir. Certiorari denied.

No. 10–8764. SMART *v.* REYNOLDS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 114.

No. 10–8797. BOYD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 401 Fed. Appx. 565.

No. 10–8798. ACOSTA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 619 F. 3d 956.

No. 10–8801. WASHINGTON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–8805. CHEATHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 403 Fed. Appx. 427.

No. 10–8812. CANNION *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 561.

No. 10–8814. PERRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 56.

No. 10–8815. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 129.

No. 10–8818. ELLIS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 619 F. 3d 72.

No. 10–8823. HERNANDEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 399 Fed. Appx. 685.

No. 10–8824. FINLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 482.

No. 10–8827. FLAKES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 10.

No. 10–8828. HOWARD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 621 F. 3d 433.

No. 10–8830. GLASPY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 430.

No. 10–8831. HARRIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 398 Fed. Appx. 803.

No. 10–8839. TORRES-ROSARIO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–8842. ABUHOURAN *v.* GRONDOLSKY, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 392 Fed. Appx. 78.

No. 10–8847. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–8849. JOHNSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 630 F. 3d 970.

No. 10–8850. JACKSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 5 A. 3d 22.

No. 10–8851. JAIMES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 405 Fed. Appx. 31.

No. 10–8856. DANIEL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 399 Fed. Appx. 690.

No. 10–8858. MCKOY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–8861. AGUILAR SEVILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 408 Fed. Appx. 784.

No. 10–8865. DUMAS *v.* UNITED STATES PAROLE COMMISSION. C. A. 10th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 492.

No. 10–8871. LATOUR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 760.

No. 10–8872. ROWLS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 402 Fed. Appx. 467.

No. 10–8873. SOLOMON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 387 Fed. Appx. 258.

No. 10–8878. MARTIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 813.

No. 10–8882. DURRETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 950.

No. 10–589. IDAHO *v.* SHACKELFORD. Sup. Ct. Idaho. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 150 Idaho 355, 247 P. 3d 582.

No. 10–669. WYETH PHARMACEUTICALS, INC. *v.* HENRY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 616 F. 3d 134.

No. 10–711. NATIONAL UNION FIRE INSURANCE CO. *v.* VP BUILDINGS, INC. C. A. 6th Cir. Motion of Zurich American Insurance Company for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 606 F. 3d 835.

No. 10–718. MISSOURI *v.* GARCIA. Sup. Ct. Mo. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 316 S. W. 3d 907.

No. 10–731. WALSH ET AL. *v.* BADGER CATHOLIC, INC., ET AL. C. A. 7th Cir. Motion of American Council on Education et al. for leave to file a brief as *amici curiae* out of time granted. Certiorari denied. Reported below: 620 F. 3d 775.

No. 10–732. EDWARDS *v.* A. H. CORNELL & SON, INC., DBA AH CORNELLS, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 610 F. 3d 217.

No. 10–762. LOUISIANA WHOLESALE DRUG CO., INC., ET AL. *v.* BAYER AG ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR and JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 604 F. 3d 98.

No. 10–856. MORRIS *v.* ALES GROUP USA ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 378 Fed. Appx. 46.

No. 10–8884. PARIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 621 F. 3d 101.

Rehearing Denied

No. 09–10951. HARRIS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante,* p. 857;

No. 10–604. MOSELEY ET UX. *v.* V SECRET CATALOGUE, INC., ET AL., *ante,* p. 1179;

No. 10–632. IN RE WINDSOR, *ante,* p. 1177;

No. 10–633. IN RE WINDSOR, *ante,* p. 1177;

No. 10–678. HOLLISTER *v.* SOETORO ET AL., *ante,* p. 1180;

No. 10–690. IN RE WINDSOR, *ante,* p. 1177;

No. 10–6712. TAYLOR *v.* HINKLE, WARDEN, *ante,* p. 1070;

No. 10–7086. BLADE *v.* UNITED STATES, *ante,* p. 1053;

No. 10–7201. WAGSTAFF *v.* DEPARTMENT OF EDUCATION, *ante,* p. 1148;

No. 10–7235. ERBO, AKA GARCIA-VELEZ *v.* UNITED STATES, *ante,* p. 1076;

No. 10–7288. IGLESIAS *v.* WAL-MART STORES EAST, L. P., *ante,* p. 1150;

No. 10–7307. ARVIE *v.* TANNER, WARDEN, *ante,* p. 1150;

No. 10–7371. PERRY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante,* p. 1152;

No. 10–7390. CHERRY *v.* CITY OF NEW YORK, NEW YORK, ET AL., *ante,* p. 1152;

No. 10–7409. ROWE *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY, *ante,* p. 1153;

No. 10–7455. SWOPES *v.* ILLINOIS, *ante,* p. 1184;

No. 10–7483. STEIN *v.* FRAKES, SUPERINTENDENT, MONROE CORRECTIONAL COMPLEX, *ante,* p. 1154;

No. 10–7668. FELDHACKER *v.* BAKEWELL, WARDEN, ET AL., *ante,* p. 1158;

No. 10–7695. WILLIAMS *v.* JONES, SUPERINTENDENT, HYDE CORRECTIONAL INSTITUTION, *ante,* p. 1189; and

No. 10–7739. MUNGO ET AL. *v.* UNITED STATES, *ante,* p. 1160. Petitions for rehearing denied.

No. 10–6618. BANEY *v.* MERIT SYSTEMS PROTECTION BOARD, *ante,* p. 1194. Petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 10–7231. NOWELL *v.* UNITED STATES, *ante,* p. 1086. Motion for leave to file petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 10–7315. COOPER *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, *ante,* p. 1115. Motion for leave to file petition for rehearing denied.

MARCH 10, 2011

Dismissal Under Rule 46

No. 10–8752. SHADLEY *v.* GRIMES ET AL. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 405 Fed. Appx. 813.

MARCH 17, 2011

Dismissal Under Rule 46

No. 10–8137. AVILA-VILLA *v.* OHIO. Ct. App. Ohio, Butler County. Certiorari dismissed under this Court's Rule 46.1.

March 18, 2011

Miscellaneous Orders

No. 09–993. PLIVA, Inc., et al. *v.* Mensing. C. A. 8th Cir.;
No. 09–1039. Actavis Elizabeth, LLC *v.* Mensing. C. A. 8th Cir.; and
No. 09–1501. Actavis, Inc. *v.* Demahy. C. A. 5th Cir. [Certiorari granted, *ante*, p. 1104.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 10–114. Fox *v.* Vice, Chief of Police, Town of Vinton, et al. C. A. 5th Cir. [Certiorari granted, *ante*, p. 1002.] Motion to substitute Judy Ann Vice, as Executrix of the Estate of Billy Ray Vice, as respondent in place of Billy Ray Vice granted.

No. 10–238. Arizona Free Enterprise Club's Freedom Club PAC et al. *v.* Bennett, Secretary of State of Arizona, et al.; and
No. 10–239. McComish et al. *v.* Bennett, Secretary of State of Arizona, et al. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1060.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of petitioners for divided argument denied.

No. 10–313. Talk America, Inc. *v.* Michigan Bell Telephone Co., dba AT&T Michigan; and
No. 10–329. Isiogu et al. *v.* Michigan Bell Telephone Co., dba AT&T Michigan. C. A. 6th Cir. [Certiorari granted, *ante*, p. 1104.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Justice Kagan took no part in the consideration or decision of this motion.

March 21, 2011

Certiorari Granted—Reversed and Remanded. (See No. 10–797, *ante*, p. 594.)

Certiorari Granted—Vacated and Remanded

No. 09–11056. Baker *v.* Buss, Secretary, Florida Department of Corrections. C. A. 11th Cir. Motion of petitioner for

leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Wall* v. *Kholi*, *ante*, p. 545. Reported below: 369 Fed. Appx. 997.

No. 10–7435. FRANKLIN *v.* UNITED STATES. C. A. 6th 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 *Pepper* v. *United States*, *ante*, p. 476. Reported below: 622 F. 3d 650.

Certiorari Dismissed

No. 10–8369. BROWN *v.* SMALL, WARDEN. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 10–8395. SEMLER *v.* CROW WING COUNTY SOCIAL SERVICES ET AL. Ct. App. Minn. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–8401. HOLT *v.* VALLS ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 395 Fed. Appx. 604.

No. 10–8435. CLUCK *v.* VAIL, SECRETARY, WASHINGTON DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

No. 10–8446. POINTER *v.* EARLY ET AL. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–8576. HOWARD *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO ET AL. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition.

No. 10–8833. GILLARD *v.* NORTHWESTERN UNIVERSITY. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 10M79. MCBRIDE *v.* TEXAS;

No. 10M80. WARE *v.* GANSLER, ATTORNEY GENERAL OF MARYLAND, ET AL.;

No. 10M81. GREENE *v.* BROOKS;

No. 10M85. DANZELL *v.* UNITED STATES; and

No. 10M86. GREENE *v.* CERMAK ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 10M82. IN RE MIDDLEBROOKS. Motion for leave to proceed as a veteran denied.

No. 10M83. GOSSAGE *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 10M87. JUVENILE MALE *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted.

No. 10M88. WHITE & CASE LLP *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari with supplemental

appendix under seal granted. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 10–209. LAFLER *v.* COOPER. C. A. 6th Cir. [Certiorari granted, *ante*, p. 1127.] Motion of respondent for appointment of counsel granted. Valerie R. Newman, Esq., of Detroit, Mich., is appointed to serve as counsel for respondent in this case.

No. 10–786. KINGDOM OF SPAIN ET AL. *v.* ESTATE OF CASSIRER. C. A. 9th Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 10–5258. MCNEILL *v.* UNITED STATES. C. A. 4th Cir. [Certiorari granted, *ante*, p. 1128.] Motion of petitioner for leave to file volume II of the joint appendix under seal granted.

No. 10–7904. IN RE CREVELING. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1199] denied.

No. 10–8112. GILLARD *v.* BOARD OF TRUSTEES OF COMMUNITY COLLEGE DISTRICT NO. 508. C. A. 7th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1211] denied.

No. 10–8332. ETERE *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir.; and

No. 10–8745. CLIFTON *v.* FLORIDA PAROLE COMMISSION. C. A. 11th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until April 11, 2011, 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. 10–9049. IN RE ROCHE;

No. 10–9192. IN RE MOORE;

No. 10–9200. IN RE BROWN; and

No. 10–9216. IN RE OWENS-BEY. Petitions for writs of habeas corpus denied.

No. 10–8476. IN RE VENOYA; and

No. 10–8587. IN RE JABBOUR. Petitions for writs of mandamus denied.

No. 10–8490. IN RE THACKER. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 10–63. MAPLES *v.* THOMAS, INTERIM COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari granted limited to Question 2 presented by the petition. Reported below: 586 F. 3d 879.

No. 10–788. REHBERG *v.* PAULK ET AL. C. A. 11th Cir. Motion of Government Accountability Project for leave to file a brief as *amicus curiae* granted. Certiorari granted. Reported below: 611 F. 3d 828.

Certiorari Denied

No. 10–431. RAINEY *v.* WALSH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 603 F. 3d 189.

No. 10–648. FOUNDATION OF HUMAN UNDERSTANDING *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 614 F. 3d 1383.

No. 10–677. FOX *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied. Reported below: 44 So. 3d 107.

No. 10–768. AFTERMATH RECORDS, DBA AFTERMATH ENTERTAINMENT, ET AL. *v.* F. B. T. PRODUCTIONS, LLC, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 621 F. 3d 958.

No. 10–770. MYLAN INC. ET AL. *v.* DAIICHI SANKYO CO., LTD., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 619 F. 3d 1346.

No. 10–776. CAO ET AL. *v.* FEDERAL ELECTION COMMISSION. C. A. 5th Cir. Certiorari denied. Reported below: 619 F. 3d 410.

No. 10–785. KRAINSKI *v.* NEVADA EX REL. BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, ON BEHALF OF THE UNIVERSITY OF NEVADA, LAS VEGAS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 616 F. 3d 963.

No. 10–792. WALKER, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL. *v.* MONSANTO COMPANY PENSION PLAN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 614 F. 3d 415.

No. 10–794. BARR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 617 F. 3d 370.

No. 10–796. STATE COMPENSATION INSURANCE FUND *v.* ZAMORA, CHAPTER 7 TRUSTEE. C. A. 9th Cir. Certiorari denied. Reported below: 616 F. 3d 1001.

No. 10–808. MORRIS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 60 So. 3d 326.

No. 10–878. KUELBS ET AL. *v.* HILL ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 615 F. 3d 1037.

No. 10–880. TAYLOR *v.* CITY OF COLUMBIA, SOUTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 325.

No. 10–887. DIXON *v.* EAST COAST MUSIC MALL. Ct. App. Minn. Certiorari denied.

No. 10–892. PALKA *v.* SHELTON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 623 F. 3d 447.

No. 10–894. PROSSER ET AL. *v.* NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORP. ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–900. BOHANA *v.* VAUGHN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 600.

No. 10–903. OBER *v.* MILLER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 395 Fed. Appx. 849.

No. 10–906. SCHNELLER *v.* CROZER CHESTER MEDICAL CENTER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 387 Fed. Appx. 289.

No. 10–908. FLORANCE *v.* BUSH ET AL. C. A. 5th Cir. Certiorari denied.

No. 10–909. DRIVER *v.* CONLEY. Ct. App. Tex., 6th Dist. Certiorari denied. Reported below: 320 S. W. 3d 516.

No. 10–912. BAKER *v.* TEXAS. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 10–913. ABCARIAN *v.* MCDONALD ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 617 F. 3d 931.

No. 10–915. CITY OF CLEVELAND, OHIO *v.* AMERIQUEST MORTGAGE SECURITIES, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 615 F. 3d 496.

No. 10–917. HILLSIDE PRODUCTIONS, INC., ET AL. *v.* MACOMB COUNTY, MICHIGAN. C. A. 6th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 449.

No. 10–921. ADAMS *v.* TRIMBLE ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 10–922. DIAMOND *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 69 M. J. 403.

No. 10–923. MUNOZ-MEJIA *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 10–934. LAKSHMINARASIMHA *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 258.

No. 10–942. HENZLER ET AL. *v.* SALAZAR, SECRETARY OF THE INTERIOR, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 457.

No. 10–959. CARDEN *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 914.

No. 10–964. ROMERO *v.* BUHIMSCHI ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 224.

No. 10–967. ADEDIRAN *v.* HOLDER, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 482.

No. 10–970. LIVONIA PROPERTIES HOLDINGS, LLC *v.* 12840–12976 FARMINGTON ROAD HOLDINGS, LLC. C. A. 6th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 97.

No. 10–974. BURLINGTON BASKET CO. *v.* NEWBERRY. C. A. 8th Cir. Certiorari denied. Reported below: 622 F. 3d 979.

No. 10–990. WILLIAMS *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied.

No. 10–996. PROCTOR *v.* HUNTINGTON ET UX. Sup. Ct. Wash. Certiorari denied. Reported below: 169 Wash. 2d 491, 238 P. 3d 1117.

No. 10–998. COLOMBO *v.* SUFFOLK COUNTY, NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 10–1002. KNIGHT *v.* MOORING CAPITAL FUND, LLC, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 814.

No. 10–1006. MDL CAPITAL MANAGEMENT ET AL. *v.* FEDERAL INSURANCE CO. C. A. 3d Cir. Certiorari denied.

No. 10–1022. ORTIZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 394 Fed. Appx. 722.

No. 10–1040. PETRUCELLI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 10–6733. JIMENEZ-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 369 Fed. Appx. 857.

No. 10–7018. BIRDOW *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 391.

No. 10–7087. ALEJO-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 488.

No. 10–7097. CULBERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 400.

No. 10–7141. VENCES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–7211. HULL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 10–7258. BOLOMET ET UX. *v.* RLI INSURANCE CO. ET AL. Sup. Ct. Haw. Certiorari denied.

No. 10–7343. GAYFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 442.

No. 10–7377. LOAEZA-MONTES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 967.

No. 10–7436. HARGROVE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 382 Fed. Appx. 765.

No. 10–7564. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 609 F. 3d 663.

No. 10–7870. BARRON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 727.

No. 10–7887. SIMON *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 138.

No. 10–7889. JEWELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 614 F. 3d 911.

No. 10–7895. PRISCO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 391 Fed. Appx. 920.

No. 10–7909. WILLIAMS *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 612 F. 3d 941.

No. 10–7912. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 613 F. 3d 1305.

No. 10–7930. TREESH *v.* BAGLEY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 612 F. 3d 424.

No. 10–7984. IRICK *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–8255. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 927.

No. 10–8273. HERRERA-TORRES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 251.

No. 10–8290. DAVIS *v.* KUYKENDALL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 387 Fed. Appx. 500.

No. 10–8291. CAMPBELL *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 156 Wash. App. 1012.

No. 10–8296. EKANDEM *v.* MARYLAND DEPARTMENT OF LABOR, LICENSING AND REGULATION ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 174 Md. App. 777.

No. 10–8302. WILLIAMS *v.* PERKINS, DEPUTY WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 210.

No. 10–8303. RICHARD *v.* DEXTER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 198.

No. 10–8306. ROBINSON *v.* DIGGS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 205.

No. 10–8314. CAMPBELL *v.* WORKMAN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 809.

No. 10–8316. LUTZ *v.* VARANO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–8324. PEREZ-RAMOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 262.

No. 10–8326. NICKSON *v.* PLILER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 209.

No. 10–8327. BRAZZEL *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 925 N. E. 2d 510.

No. 10–8329. SMITH *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 42 So. 3d 234.

No. 10–8336. WELLS *v.* FISHER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 392 Fed. Appx. 914.

No. 10–8339. NIXON *v.* TEXAS. C. A. 5th Cir. Certiorari denied.

No. 10–8344. LYNCH *v.* ALAMEDA COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 295.

No. 10–8349. TIMMONS *v.* ARTUS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–8350. THOMAS *v.* VAN HOLLEN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 215.

No. 10–8351. SALLIS *v.* AURORA HEALTH CARE, INC. C. A. 7th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 591.

No. 10–8353. SHERRATT *v.* TURLEY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 411.

No. 10–8355. DIAZ *v.* KNOWLES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–8359. BRADFORD *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 10–8360. BURE *v.* FLORIDA. Cir. Ct. Miami-Dade County, Fla. Certiorari denied.

No. 10–8363. PATSCHECK *v.* HICKSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 405 Fed. Appx. 317.

No. 10–8376. FOSTER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 50 Cal. 4th 1301, 242 P. 3d 105.

No. 10–8384. MAHOLMES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 389 Ill. App. 3d 1146, 976 N. E. 2d 1209.

No. 10–8389. GRANDOIT *v.* HSBC BANK NEVADA, N. A., ET AL. C. A. 1st Cir. Certiorari denied.

No. 10–8391. RICHARDSON *v.* STROUD ET AL. C. A. 5th Cir. Certiorari denied.

No. 10–8393. SILVA *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 44 So. 3d 591.

No. 10–8394. SORRELL *v.* MICHIGAN DEPARTMENT OF HUMAN SERVICES. Ct. App. Mich. Certiorari denied.

No. 10–8396. STURGEON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 401 Ill. App. 3d 1143, 989 N. E. 2d 1217.

No. 10–8400. HENDERSON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied.

No. 10–8409. WILLIAMS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–8415. CENTOBENE *v.* BROWN, GOVERNOR OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–8420. THOMAS *v.* FRECH ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 315.

No. 10–8421. MITCHELL *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 235 P. 3d 640.

No. 10–8428. EVANS *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–8429. BANKS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 46 So. 3d 989.

No. 10–8430. BRAMAGE *v.* HSBC BANK NEVADA, N. A. Ct. App. Ind. Certiorari denied.

No. 10–8436. ASSA'AD-FALTAS *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 10–8437. WINDING *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 10–8453. ARNAUT *v.* RODEN, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT NORFOLK. C. A. 1st Cir. Certiorari denied.

No. 10–8455. KARABAJAKYAN ET AL. *v.* SCHWARZENEGGER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 647.

No. 10–8456. DEYOUNG *v.* SCHOFIELD, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 609 F. 3d 1260.

No. 10–8467. THOMAS *v.* PARKER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 609 F. 3d 1114.

No. 10–8474. THIBEAULT *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 73 App. Div. 3d 1237, 900 N. Y. S. 2d 501.

No. 10–8475. VICTORY *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–8483. JAMESON *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–8485. ALSTON *v.* COURT OF APPEALS OF WISCONSIN. C. A. 7th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 230.

No. 10–8492. ROLLE *v.* AGENCY FOR PERSONS WITH DISABILITIES. Sup. Ct. Fla. Certiorari denied. Reported below: 47 So. 3d 1290.

No. 10–8495. YATES *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 10–8499. QUISPE-GUEVARA *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 10–8503. MCDONALD *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 6 A. 3d 283.

No. 10–8508. JONES *v.* LARKINS, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 10–8536. ELLIS *v.* EIGHTH JUDICIAL DISTRICT COURT OF NEVADA, CLARK COUNTY, ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 126 Nev. 708.

No. 10–8542. SHOTTS *v.* EVANS, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 10–8563. DIAZ *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 38 So. 3d 791.

No. 10–8578. SANCHEZ *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–8582. BARRINO *v.* DEPARTMENT OF THE TREASURY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 782.

No. 10–8605. KENNEDY *v.* TRUSTEES OF THE TESTAMENTARY TRUST OF THE LAST WILL AND TESTAMENT OF PRESIDENT JOHN F. KENNEDY. C. A. 2d Cir. Certiorari denied. Reported below: 406 Fed. Appx. 507.

No. 10–8609. RENNEKE *v.* FLORENCE COUNTY, WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 10–8612. TROLLOPE *v.* SHELDON ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–8616. TRACY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 224.

No. 10–8617. TRACY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 232.

No. 10–8619. NZUNDU-ANDI *v.* NCO FINANCIAL SYSTEMS, INC. C. A. 11th Cir. Certiorari denied.

No. 10–8631. LOR *v.* KRAMER. C. A. 9th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 636.

No. 10–8637. DUNIGAN *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 10–8654. CULGAN *v.* OHIO. Ct. App. Ohio, Medina County. Certiorari denied.

No. 10–8656. CERVANTES-SEGURA, AKA NAVARRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 23.

No. 10–8685. LADD *v.* THIBAULT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 402 Fed. Appx. 618.

No. 10–8687. CIRIA *v.* RUBINO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 400.

No. 10–8688. ABRAM *v.* MILYARD, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 380.

No. 10–8699. BROWN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 47 So. 3d 1287.

No. 10–8708. BONILLA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 618 F. 3d 102.

No. 10–8716. COSTA *v.* ALLEN. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 323 S. W. 3d 383.

No. 10–8719. BAER *v.* BUSS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 48 So. 3d 52.

No. 10–8721. CHARRON *v.* NIXON, GOVERNOR OF MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 318 S. W. 3d 740.

No. 10–8735. STOKES *v.* GEHR ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 399 Fed. Appx. 697.

No. 10–8740. LIGON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 239 Ill. 2d 94, 940 N. E. 2d 1067.

No. 10–8749. LAGARDE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 10–8755. AYRES *v.* BIERMAN, GEESING & WARD, LLC, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 47.

No. 10–8769. DANYSH *v.* COLLINS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FRACKVILLE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–8770. RENNEKE *v.* NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES. Ct. App. Neb. Certiorari denied.

No. 10–8773. DICKERSON *v.* MUTUAL OF AMERICA ET AL. C. A. 2d Cir. Certiorari denied.

No. 10–8777. SCHWEITZER *v.* WILLIAMS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–8780. LUSK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 624.

No. 10–8788. WILLIAMS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 10–8810. COATES *v.* NATALE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 238.

No. 10–8813. MCINERNEY *v.* HELLING, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 403 Fed. Appx. 162.

No. 10–8816. HOUSTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 3d 871.

No. 10–8834. HAGOS *v.* COLORADO. Ct. App. Colo. Certiorari denied. Reported below: 250 P. 3d 596.

No. 10–8836. HEINEMANN *v.* MURPHY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 304.

No. 10–8840. TAYLOR *v.* CONWAY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 381 Fed. Appx. 40.

No. 10–8841. THOMAS *v.* VAIL, SECRETARY, WASHINGTON DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–8848. KOCH *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–8855. POLK *v.* BEELER, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 406 Fed. Appx. 694.

No. 10–8859. COOLEY *v.* MEDINA, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 412 Fed. Appx. 51.

No. 10–8860. RETANAN *v.* YATES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–8866. THOMAS *v.* EAGLETON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 965.

No. 10–8874. SHEIKA *v.* DOW, ATTORNEY GENERAL OF NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–8883. W. X. C. *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 204 N. J. 179, 8 A. 3d 174.

No. 10–8892. FRAUSTO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 616 F. 3d 767.

No. 10–8894. FAUSNAUGHT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 380 Fed. Appx. 198.

No. 10–8899. GOODLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–8901. THOMPSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 313.

No. 10–8905. HELMS *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 48 So. 3d 67.

No. 10–8906. HUNTER ET VIR *v.* MANSDORF, CHAPTER 7 TRUSTEE, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 402 Fed. Appx. 228.

No. 10–8910. MOSES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 650.

No. 10–8911. ZAZUETA MIRANDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 697.

No. 10–8915. AGUILAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–8918. STANLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 482.

No. 10–8920. OCAMPO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 402 Fed. Appx. 90.

No. 10–8928. SISTRUNK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 90.

No. 10–8930. WILLIAMS *v.* LAWLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–8934. BOLDEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 622 F. 3d 988.

No. 10–8935. DUENAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–8936. DANIELS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 625 F. 3d 529.

No. 10–8937. CARRADINE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 621 F. 3d 575.

No. 10–8939. MUNIZ-MASSA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 617 F. 3d 581.

No. 10–8941. GRIGG *v.* LEE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 401 Fed. Appx. 590.

No. 10–8942. HERNANDEZ-GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–8948. VALDEZ-CASTRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 736.

No. 10–8950. HINCHLIFFE *v.* OPTION ONE MORTGAGE CORP. C. A. 3d Cir. Certiorari denied.

No. 10–8951. HOLMES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–8953. GALLOWAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 229.

No. 10–8956. HOWARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–8959. MARTIN *v.* TANNER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 10–8964. LITTLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 242.

No. 10–8971. TUVALU *v.* WOODFORD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 735.

No. 10–8976. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 402 Fed. Appx. 778.

No. 10–8979. SHARMA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 591.

No. 10–8983. BASKERVILLE *v.* SMITH, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 10–8984. SMART *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–8985. REEP *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 245.

No. 10–8989. GALLOWAY *v.* ZICKEFOOSE, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 385 Fed. Appx. 59.

No. 10–8990. FOUNTAIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–8995. HARPER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–9003. SANTIAGO *v.* WHIDDEN, WARDEN. C. A. 2d Cir. Certiorari denied.

No. 10–9005. FLOWERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 476.

No. 10–9011. GARCIA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–9017. ESPINOZA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 403 Fed. Appx. 315.

No. 10–9022. WANAMBISI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 624 F. 3d 724.

No. 10–9023. WATKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 10–9024. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 403 Fed. Appx. 819.

No. 10–9025. THOMAS *v.* UNITED STATES DISCIPLINARY BARRACKS. C. A. 10th Cir. Certiorari denied. Reported below: 625 F. 3d 667.

No. 10–9029. PEREZ-GUTIERREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 970.

No. 10–9041. PINDLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 838.

No. 10–9042. MEDINA VASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 940.

No. 10–9045. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 402 Fed. Appx. 121.

No. 10–9047. ROCHE-MORENO, AKA GONZALEZ-SANTIAGO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 401 Fed. Appx. 710.

No. 10–9052. LINDSEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 615 F. 3d 998.

No. 10–9056. DOE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–9060. JUAREZ-AGUILAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 732.

No. 10–9063. TAVAREZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 626 F. 3d 902.

No. 10–9068. EVANS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 10–9075. OESBY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 10–9077. SEALED APPELLANT *v.* SEALED APPELLEE. C. A. 5th Cir. Certiorari denied.

No. 10–9079. PARKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 446.

No. 10–9080. KISTLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 412 Fed. Appx. 1.

No. 10–9081. LUCKEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 402 Fed. Appx. 889.

No. 10–9086. JACOB *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–9091. VAN WART *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 794.

No. 10–9098. PALACIOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 402 Fed. Appx. 893.

No. 10–9099. MCCURDY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–9102. LEET *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 406 Fed. Appx. 830.

No. 10–9124. COLE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–388. HUBER ET UX. *v.* NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION. Super. Ct. N. J., App. Div. Certiorari denied.

Statement of JUSTICE ALITO, with whom THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE THOMAS join, respecting the denial of certiorari.

Our cases recognize a limited exception to the Fourth Amendment's warrant requirement for searches of businesses in "closely regulated industries." See, *e. g.*, *New York* v. *Burger*, 482 U. S. 691, 699–703 (1987) (internal quotation marks omitted). The thinking is that, other things being equal, the "expectation of privacy in commercial premises" is significantly less than the "expectation in an individual's home." *Id.*, at 700. And where a business operates in an industry with a "long tradition of close government supervision"—liquor dealers and pawnbrokers are classic examples—the expectation of privacy becomes "particularly attenuated." *Ibid.* (internal quotation marks omitted).

In this case, a New Jersey appellate court applied this doctrine to uphold a warrantless search by a state environmental official of Robert and Michelle Huber's backyard. No. A–5874–07T3, 2010 WL 173533, *9–*10 (Super. Ct. N. J., App. Div., Jan. 20, 2010) *(per curiam)*. The Hubers' residential property contains wetlands protected by a New Jersey environmental statute. See N. J. Stat. Ann. § 13:9B–1 *et seq.* (West 2003 and Supp. 2010). According to the court below, the presence of these wetlands brought the Hubers' yard "directly under the regulatory arm" of the State "just as much" as if the yard had been involved in a "regulated industry." 2010 WL 173533, *10.

This Court has not suggested that a State, by imposing heavy regulations on the use of privately owned residential property, may escape the Fourth Amendment's warrant requirement. But because this case comes to us on review of a decision by a state intermediate appellate court, I agree that today's denial of certiorari is appropriate. See this Court's Rule 10. It does bear mentioning, however, that "denial of certiorari does not constitute an expression of any opinion on the merits." *Boumediene* v. *Bush*, 549 U. S. 1328, 1329 (2007) (Stevens and KENNEDY, JJ., statement respecting denial of certiorari).

No. 10–447. AMEZIANE *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Motion of respondents for leave

to file a brief in opposition under seal granted. Motion of petitioner for leave to file a reply brief under seal granted. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of these motions and this petition. Reported below: 620 F. 3d 1.

No. 10–543. CLEARING HOUSE ASSN. L. L. C. *v.* BLOOMBERG L. P. ET AL. C. A. 2d Cir. Motion of American Bankers Association for leave to file a brief as *amicus curiae* out of time denied. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition. Reported below: 601 F. 3d 143.

No. 10–590. HERRERA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 614 F. 3d 661.

No. 10–660. CLEARING HOUSE ASSN. L. L. C. *v.* FOX NEWS NETWORK, LLC, ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 601 F. 3d 158.

No. 10–946. BIERENBAUM *v.* GRAHAM, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 607 F. 3d 36.

No. 10–7005. SKOIEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 614 F. 3d 638.

No. 10–7402. LUJAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 603 F. 3d 850.

No. 10–8305. RICH *v.* ASSOCIATED BRANDS, INC. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 379 Fed. Appx. 78.

No. 10–8454. BENSON *v.* LUTTRELL ET AL. C. A. 6th Cir. Certiorari before judgment denied.

No. 10–8464. MORRIS *v.* ARTUS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY, ET AL.;

No. 10–8470. PHILLIPS *v.* ARTUS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY, ET AL.; and

No. 10–8502. PORTALATIN *v.* GRAHAM, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of these petitions. Reported below: 624 F. 3d 69.

No. 10–8489. MCPHERSON *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 392 Fed. Appx. 938.

No. 10–8640. WASHINGTON *v.* ALLISON, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 392 Fed. Appx. 559.

No. 10–8890. CRUZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 10–8996. FLECK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 397 Fed. Appx. 871.

No. 10–9021. URENA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 393 Fed. Appx. 801.

Rehearing Denied

No. 10–136. HOREL, WARDEN *v.* SOLORIO VALDOVINOS, *ante*, p. 1196;

No. 10–505. STEVENS *v.* ESTATE OF MYERS, *ante*, p. 1136;

No. 10–598. KLEINHAMMER *v.* CITY OF PASO ROBLES, CALIFORNIA, ET AL., *ante*, p. 1179;

No. 10–599. ONYEABOR *v.* CENTENNIAL POINTE OWNER'S ASSN. ET AL., *ante*, p. 1138;

No. 10–622. S&M BRANDS, INC., ET AL. *v.* CALDWELL, ATTORNEY GENERAL OF LOUISIANA, *ante*, p. 1270;

No. 10–664. JOYCE *v.* J. C. PENNEY CORP., INC., *ante*, p. 1201;

No. 10–707. ROOS *v.* ROOS, *ante*, p. 1201;

No. 10–6518. HITCHCOCK *v.* JACKSON, WARDEN, *ante*, p. 1033;

No. 10–6903. GARNETT *v.* WINONA COUNTY SOCIAL SERVICES ET AL., *ante*, p. 1113;

No. 10–7030. TORREFRANCA *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 1144;

No. 10–7105. STOEVER *v.* TECH USA ET AL., *ante*, p. 1145;

No. 10–7262. ROSE *v.* COX HEALTH SYSTEMS ET AL., *ante*, p. 1149;

No. 10–7279. ARMSTRONG *v.* REDDING PAROLE DEPARTMENT ET AL., *ante*, p. 1149;

No. 10–7293. JOHNSON *v.* ALABAMA ET AL., *ante*, p. 1150;

No. 10–7347. ALLEN *v.* RELIANCE INSURANCE CO., *ante*, p. 1151;

No. 10–7445. WATSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1184;

No. 10–7471. LAZARO *v.* HOLDER, ATTORNEY GENERAL, *ante*, p. 1153;

No. 10–7519. ROBERSON *v.* MISSISSIPPI INSURANCE GUARANTY ASSN., *ante*, p. 1185;

No. 10–7639. MEEKS *v.* NORTH CAROLINA, *ante*, p. 1188;

No. 10–7673. DUNN *v.* PARKER, WARDEN, *ante*, p. 1204;

No. 10–7718. CONKLIN *v.* EMC MORTGAGE CORP., *ante*, p. 1204; and

No. 10–7850. PARKER *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 1228. Petitions for rehearing denied.

No. 09–1420. ALLEN *v.* MISSOURI EX REL. KOSTER, ATTORNEY GENERAL OF MISSOURI, *ante*, p. 833. Motion for leave to file petition for rehearing denied.

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