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CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 2011

BEGINNING OF TERM

OCTOBER 3, 2011, THROUGH MARCH 19, 2012

CHRISTINE LUCHOK FALLON

REPORTER OF DECISIONS

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Errata

250 U. S. 39, line 16: "March 19" should be "May 19".
545 U. S. 315, lines 29 and 32: "plaintiffs" should be "plaintiff's".
554 U. S. 595, line 4: "1 Blackstone's" should be "2 Blackstone's".
560 U. S. 61, line 3: "551 U. S.," should be "554 U. S.,".

JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS

JOHN G. ROBERTS, JR., CHIEF JUSTICE.
ANTONIN SCALIA, ASSOCIATE JUSTICE.
ANTHONY M. KENNEDY, ASSOCIATE JUSTICE.
CLARENCE THOMAS, ASSOCIATE JUSTICE.
RUTH BADER GINSBURG, ASSOCIATE JUSTICE.
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SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE.
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ELENA KAGAN, ASSOCIATE JUSTICE.

RETIRED

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DAVID H. SOUTER, ASSOCIATE JUSTICE.
JOHN PAUL STEVENS, ASSOCIATE JUSTICE.

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WILLIAM K. SUTER, CLERK.
CHRISTINE LUCHOK FALLON, REPORTER OF DECISIONS.
PAMELA TALKIN, MARSHAL.
LINDA S. MASLOW, LIBRARIAN.*

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*Ms. Maslow was appointed Librarian effective January 17, 2012. See *post*, pp. v and 1153.

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., p. vi.)

APPOINTMENT OF LIBRARIAN

Supreme Court of the United States

TUESDAY, JANUARY 17, 2012

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

The Chief Justice said:

I am pleased to announce that the Court has appointed Linda S. Maslow as the new Librarian of the Court. Ms. Maslow came to the Court in 1988 as head of the Library's research division and has been the Court's Acting Librarian since September 2011. We wish Ms. Maslow well in her service as the 11th Librarian of the Court.

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IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 2011

CAVAZOS, ACTING WARDEN *v.* SMITH

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

No. 10–1115. Decided October 31, 2011

Respondent was tried in California state court for assault on a child resulting in death. The prosecution's expert witnesses testified that respondent's infant grandson died from shaken baby syndrome (SBS), but defense experts disagreed, and the jury found respondent guilty. Concluding that the jury had carefully weighed the conflicting testimony, the trial judge denied respondent's motion for a new trial. On direct review, the California Court of Appeal concluded that the evidence credited by the jury was substantial and sufficient to establish the cause of death as SBS. The Federal District Court subsequently denied respondent's request for habeas relief, but the Ninth Circuit reversed. It determined that there was no evidence at trial to support an expert's conclusion one way or the other and—because of the absence of physical evidence—no basis for a finding of guilt beyond a reasonable doubt. The Ninth Circuit accordingly ruled that the California Court of Appeal had unreasonably applied *Jackson* v. *Virginia*, 443 U. S. 307, in upholding respondent's conviction.

Held: In light of the evidence presented at trial, the Ninth Circuit plainly erred in concluding that the jury's verdict was irrational, let alone that it was unreasonable for the California Court of Appeal to think otherwise. Evidence is sufficient to support a conviction so long as "after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond

a reasonable doubt." *Id.*, at 319. And a reviewing court "faced with a record of historical facts that supports conflicting inferences must presume . . . that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution." *Id.*, at 326. Because the Court of Appeals failed to follow these basic principles, the Court reverses.

Certiorari granted; 437 F. 3d 884, reversed and remanded.

PER CURIAM.

The opinion of the Court in *Jackson* v. *Virginia*, 443 U. S. 307 (1979), makes clear that it is the responsibility of the jury—not the court—to decide what conclusions should be drawn from evidence admitted at trial. A reviewing court may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury. What is more, a federal court may not overturn a state court decision rejecting a sufficiency of the evidence challenge simply because the federal court disagrees with the state court. The federal court instead may do so only if the state court decision was "objectively unreasonable." *Renico* v. *Lett*, 559 U. S. 766, 773 (2010) (internal quotation marks omitted).

Because rational people can sometimes disagree, the inevitable consequence of this settled law is that judges will sometimes encounter convictions that they believe to be mistaken, but that they must nonetheless uphold. The Court of Appeals in this case substituted its judgment for that of a California jury on the question whether the prosecution's or the defense's expert witnesses more persuasively explained the cause of a death. For this reason, certiorari is granted and the judgment of the Court of Appeals is reversed.

* * *

This case concerns the death of 7-week-old Etzel Glass. On November 29, 1996, Etzel's mother, Tomeka, put Etzel to sleep on a sofa before going to sleep herself in another room. Respondent Shirley Ree Smith—Tomeka's mother—slept on

the floor next to Etzel. Several hours later, Smith ran into Tomeka's room, holding Etzel, who was limp, and told her that "[s]omething [was] wrong with Etzel." Tr. 416. By the time emergency officials arrived, Etzel was not breathing and had no heartbeat. Smith reported that she thought Etzel had fallen off the sofa. The officials' efforts to resuscitate Etzel failed.

Doctors initially attributed Etzel's death to sudden infant death syndrome (SIDS), the customary diagnosis when an infant shows no outward signs of trauma. But after an autopsy, the coroner concluded that the cause of death was instead shaken baby syndrome (SBS). When a social worker informed Smith of that finding, Smith told her that Etzel had not responded to her touch while sleeping, so she had picked him up and given him "a little shake, a jostle" to wake him. *Id.*, at 842. According to the social worker, Smith then said something to the effect of, "Oh, my God. Did I do it? Did I do it? Oh, my God." *Id.*, at 847 (internal quotation marks omitted). In an interview with the police a few days later, Smith said that she had shaken Etzel, but then she corrected herself and said that she had twisted him to try to elicit a reaction. Smith was arrested and charged with assault on a child resulting in death. See Cal. Penal Code Ann. § 273ab (West 2008) ("Any person who, having the care or custody of a child who is under eight years of age, assaults the child by means of force that to a reasonable person would be likely to produce great bodily injury, resulting in the child's death, shall be punished by imprisonment . . . ").

At trial, the jury heard seven days of expert medical testimony on the cause of Etzel's death. The prosecution offered three experts, each of whom attested that Etzel's death was the result of SBS—not SIDS, as the defense contended. The first expert, Dr. Eugene Carpenter, was the medical examiner for the Los Angeles County coroner who had supervised Etzel's autopsy. Dr. Carpenter is board certified in forensic, anatomic, and clinical pathology. He testified that

Etzel's autopsy revealed recent hemorrhages in the brain, and he opined that the bleeding and other features of Etzel's pathology, including a bruise and abrasion on the lower back of the baby's head, were consistent with violent shaking. Dr. Carpenter identified two means by which shaking can result in a baby's death: The first is that the shaking causes blood vessels in the brain to tear, creating a pool of blood that pushes the brain downward into the spinal canal, resulting in death but little direct damage to the brain. The second is that the shaking itself is sufficiently severe that the brain directly tears in vital areas, causing death with very little bleeding. Dr. Carpenter testified that Etzel's injuries were consistent with the latter pathology. He also explained that the injuries could not be attributed to either a fall from the sofa or the administration of cardiopulmonary resuscitation. Nor, according to Dr. Carpenter, was it possible that Etzel perished from SIDS, given the signs of internal trauma. Dr. Carpenter did testify, however, that while SBS victims often suffer retinal hemorrhaging, Etzel's autopsy revealed no such injury.

The prosecution's second expert, Dr. Stephanie Erlich, was the associate deputy medical examiner who actually performed Etzel's autopsy. She is board certified in anatomic pathology and neuropathology. She corroborated Dr. Carpenter's testimony about the autopsy findings, and added that a followup neuropathological examination of Etzel's brain confirmed the existence of recent hemorrhaging. Noting only a minimal amount of new blood in Etzel's brain, she testified that the cause of death was direct trauma to the brainstem. On cross-examination, she agreed with defense counsel that retinal hemorrhaging (absent in Etzel's case) is present in 75 to 80 percent of SBS cases.

The third prosecution expert, Dr. David Chadwick, is board certified in pediatrics and the author of articles on childhood death by abusive trauma. He testified that Et-

zel's injuries were consistent with SBS and that old trauma could not have been the cause of the child's death.

The defense called two experts to dispute these conclusions. The first, pathologist Dr. Richard Siegler, testified that Etzel died from brain trauma, but that it was not the result of SBS, given the lack of retinal hemorrhaging. He admitted on cross-examination, however, that an absence of retinal hemorrhaging does not exclude a finding of SBS. He also acknowledged that he did not believe the cause of Etzel's death was SIDS. According to Dr. Siegler, Etzel died from old trauma, an opinion he reached on the basis of studying photographs of the neuropathological examination.

The other defense expert, pediatric neurologist Dr. William Goldie, testified that Etzel's death *was* due to SIDS. He noted that Etzel was born with jaundice, a heart murmur, and low birth weight—making him more susceptible to SIDS. Dr. Goldie testified that pathologists had not been able to determine the cause of Etzel's death and that the bleeding could be attributed to the resuscitation efforts.

The jury found Smith guilty. Concluding that the jury "carefully weighed" the "tremendous amount of evidence" supporting the verdict, Tr. 1649, the trial judge denied Smith's motion for a new trial and sentenced her to an indeterminate term of 15 years to life in prison.

On direct review, Smith contended that the evidence was not sufficient to establish that Etzel died from SBS. After thoroughly reviewing the competing medical testimony, the California Court of Appeal rejected this claim, concluding:

> "The expert opinion evidence we have summarized was conflicting. It was for the jury to resolve the conflicts. The credited evidence was substantial and sufficient to support the jury's conclusion that Etzel died from shaken baby syndrome. The conviction is supported by substantial evidence." *People* v. *Smith*, No. B118869 (Feb. 10, 2000), App. K to Pet. for Cert. 86.

The California Supreme Court denied review. App. J, *id.*, at 74.

Smith then filed this petition for a writ of habeas corpus with the United States District Court for the Central District of California, renewing her claim that the evidence was insufficient to prove that Etzel died of SBS. Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 110 Stat. 1214, that court had no power to afford relief unless Smith could show either that the California Court of Appeal's decision affirming the conviction "was contrary to, or involved an unreasonable application of," clearly established federal law as reflected in the holdings of this Court's cases, 28 U. S. C. § 2254(d)(1), or that it "was based on an unreasonable determination of the facts" in light of the state court record, § 2254(d)(2). *Harrington* v. *Richter*, 562 U. S. 86, 100 (2011).

The Magistrate Judge to whom the case was assigned issued a report acknowledging that "[t]his is not the typical shaken baby case" and that the evidence against Smith "raises many questions." App. I to Pet. for Cert. 65. But the Magistrate Judge nevertheless concluded that the evidence was "clearly sufficient to support a conviction." *Ibid.* The District Court adopted the Magistrate Judge's report and denied the petition. App. G, *id.*, at 52.

On appeal, the Ninth Circuit reversed with instructions to grant the writ. *Smith* v. *Mitchell*, 437 F. 3d 884 (2006). Despite the plenitude of expert testimony in the trial record concluding that sudden shearing or tearing of the brainstem was the cause of Etzel's death, the Ninth Circuit determined that there was "no evidence to permit an expert conclusion one way or the other" on that question because there was "no physical evidence of . . . tearing or shearing, and no other evidence supporting death by violent shaking." *Id.*, at 890. The court said that the State's experts "reached [their] conclusion because *there was no evidence in the brain itself of the cause of death*." *Ibid.* (emphasis in original). The

court concluded that because "[a]bsence of evidence cannot constitute proof beyond a reasonable doubt," *ibid.*, the California Court of Appeal had "unreasonably applied" this Court's opinion in *Jackson* v. *Virginia* in upholding Smith's conviction, 437 F. 3d, at 890.

That conclusion was plainly wrong. *Jackson* says that evidence is sufficient to support a conviction so long as "after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." 443 U. S., at 319. It also unambiguously instructs that a reviewing court "faced with a record of historical facts that supports conflicting inferences must presume—even if it does not affirmatively appear in the record—that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution." *Id.*, at 326. When the deference to state court decisions required by § 2254(d) is applied to the state court's already deferential review, see *Renico*, 559 U. S., at 778, there can be no doubt of the Ninth Circuit's error below.

The jury was presented with competing views of how Etzel died. It was made aware of the various experts' qualifications and their familiarity with both the subject of SBS and the physical condition of Etzel's body. It observed the attorneys for each party cross-examine the experts and elicit concessions from them. The State's experts, whom the jury was entitled to believe, opined that the physical evidence was consistent with, and best explained by, death from sudden tearing of the brainstem caused by shaking. The Ninth Circuit's assertion that these experts "reached [their] conclusion because there was no evidence in the brain itself of the cause of death" is simply false. There *was* "evidence in the brain itself." The autopsy revealed indications of recent trauma to Etzel's brain, such as subdural and subarachnoid hemorrhaging, hemorrhaging around the optic nerves, and the presence of a blood clot between the brain's hemispheres.

The autopsy also revealed a bruise and abrasion on the lower back of Etzel's head. These affirmative indications of trauma formed the basis of the experts' opinion that Etzel died from shaking so severe that his brainstem tore.

Defense counsel made certain that the jury understood that the prosecution's experts were unable to identify the precise point of tearing itself. But as Judge Bea noted in his dissent from the Ninth Circuit's denial of rehearing en banc, the experts explained why the location of the tear was undetectable: "Etzel's death happened so quickly that the effects of the trauma did not have time to develop." *Smith* v. *Mitchell*, 453 F. 3d 1203, 1207 (2006). According to the prosecutions' experts, there was simply no opportunity for swelling to occur around the brainstem before Etzel died.

In light of the evidence presented at trial, the Ninth Circuit plainly erred in concluding that the jury's verdict was irrational, let alone that it was unreasonable for the California Court of Appeal to think otherwise. See § 2254(d). Doubts about whether Smith is in fact guilty are understandable. But it is not the job of this Court, and was not that of the Ninth Circuit, to decide whether the State's theory was correct. The jury decided that question, and its decision is supported by the record.*

It is said that Smith, who already has served years in prison, has been punished enough, and that she poses no danger to society. These or other considerations perhaps would be grounds to seek clemency, a prerogative granted to executive authorities to help ensure that justice is tempered by

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*The dissent's review of the evidence presented to the jury over seven days is precisely the sort of reweighing of facts that is precluded by *Jackson* v. *Virginia*, 443 U. S. 307, 324 (1979), and precisely the sort of second-guessing of a state court decision applying *Jackson* that is precluded by AEDPA, 28 U. S. C. § 2254(d). The dissent's views on how "adamantly" experts would testify today as opposed to at the time of trial, *post*, at 14 (opinion of GINSBURG, J.), are of course pure speculation, as would be any views on how a jury would react to less adamant testimony.

mercy. It is not clear to the Court whether this process has been invoked, or, if so, what its course has been. It is not for the Judicial Branch to determine the standards for this discretion. If the clemency power is exercised in either too generous or too stingy a way, that calls for political correctives, not judicial intervention.

The decision below cannot be allowed to stand. This Court vacated and remanded this judgment twice before, calling the panel's attention to this Court's opinions highlighting the necessity of deference to state courts in § 2254(d) habeas cases. Each time the panel persisted in its course, reinstating its judgment without seriously confronting the significance of the cases called to its attention. See *Patrick* v. *Smith*, 550 U. S. 915 (vacating and remanding in light of *Carey* v. *Musladin*, 549 U. S. 70 (2006)), reinstated on remand, 508 F. 3d 1256 (2007) *(per curiam);* 558 U. S. 1143 (2010) (vacating and remanding in light of *McDaniel* v. *Brown*, 558 U. S. 120 (2010) *(per curiam)*), reinstated on remand *sub nom. Smith* v. *Mitchell*, 624 F. 3d 1235 (2010) *(per curiam)*. Its refusal to do so necessitates this Court's action today.

The petition for a writ of certiorari and respondent's motion 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.

JUSTICE GINSBURG, with whom JUSTICE BREYER and JUSTICE SOTOMAYOR join, dissenting.

The Court's summary disposition of this case, in my judgment, is a misuse of discretion. I set out below my reasons for concluding that discretion, soundly exercised, would have occasioned denial of California's petition for review.

The Magistrate Judge who reviewed respondent Shirley Ree Smith's habeas corpus petition in the first instance con-

cluded, as the Court does today, that relief was unwarranted. He observed, however, that the evidence, "though clearly sufficient to support a conviction, raises many questions":

> "Grandmothers, especially those not serving as the primary caretakers, are not the typical perpetrators [in shaken baby cases]. Further, [Smith] was helping her daughter raise her other children (a [4-year-old] and a 14-month-old) and there was no hint of [Smith] abusing or neglecting these other children, who were in the room with Etzel when he died. Still further, there was no evidence of any precipitating event that might have caused [Smith] to snap and assault her grandson. She was not trapped in a hopeless situation with a child she did not want or love. Nor was she forced to single-handedly care for a baby that had been crying all day and all night. In fact, there is no evidence that Etzel was doing anything other than sleeping the night he died. In addition, [Smith's] daughter [Tomeka], Etzel's mother, was in the room next door when Etzel died. The medical evidence was not typical either, in that some of the telltale signs usually found in shaken baby cases did not exist in this case." *Smith* v. *Mitchell*, Case No. CV 01–4484–ABC (CD Cal., Mar. 22, 2004), p. 10, App. I to Pet. for Cert. 65.

The District Court adopted the Magistrate Judge's recommendation to deny Smith's petition, but granted a certificate of appealability, recognizing that "reasonable jurists would find the [court's] assessment of [Smith's] claims debatable." Order in No. CV 01–4484–ABC (CD Cal., Apr. 29, 2004), Doc. 36, p. 1.

After full briefing and argument, the Ninth Circuit reversed the District Court's judgment. The Court of Appeals acknowledged the limitations on its authority. "We approach this case," the court said, "with a firm awareness of the very strict limits that the [Antiterrorism and Effective

Death Penalty Act of 1996 (AEDPA)] places on our collateral review of state criminal convictions." *Smith* v. *Mitchell*, 437 F. 3d 884, 888–889 (CA9 2006). Accurately describing the standards applicable under AEDPA and *Jackson* v. *Virginia*, 443 U. S. 307 (1979), and reviewing the evidence in some detail, the court concluded that "[i]n this most unusual case, . . . the [California] Court of Appeal unreasonably applied *Jackson*." 437 F. 3d, at 889.

Beyond question, the Court today reviews a case as tragic as it is extraordinary and fact intensive. By taking up the case, one may ask, what does the Court achieve other than to prolong Smith's suffering and her separation from her family. Is this Court's intervention really necessary? Our routine practice counsels no.

Error correction is "outside the mainstream of the Court's functions." E. Gressman, K. Geller, S. Shapiro, T. Bishop, & E. Hartnett, Supreme Court Practice § 5.12(c)(3), p. 351 (9th ed. 2007). As this Court's Rule 10 informs, "[a] petition for a writ of certiorari is rarely granted when the asserted error [is] . . . the misapplication of a properly stated rule of law." The Ninth Circuit correctly described the relevant legal rules under AEDPA and *Jackson* v. *Virginia*. This Court, therefore, has no law-clarifying role to play. Its summary adjudication seems to me all the more untoward for these reasons: What is now known about shaken baby syndrome (SBS) casts grave doubt on the charge leveled against Smith; and uncontradicted evidence shows that she poses no danger whatever to her family or anyone else in society.

I turn first to the medical evidence presented at trial. Dr. Carpenter, the autopsy supervisor, testified that the following symptoms are consistent with, but not required for, a diagnosis of SBS: cerebral edema, subdural hemorrhage, retinal hemorrhage, bleeding at the joints of the back of the neck, bruises on the arms, fractures of the ribs, and internal injuries to the buttocks, abdominal organs, and chest organs. Tr. 575. Few of these signs of SBS were present here. Et-

zel's subdural hemorrhage and subarachnoid hemorrhage were "minimal," insufficient to cause death. *Id.*, at 540–541, 557–558, 675, 693, 700, 729, 1484–1485. There was no brain swelling and no retinal hemorrhage in either eye. *Id.*, at 580, 693, 802, 1274.[1] Similarly absent were any fractures, sprains, bleeding in the joints, or displacement of joints. *Id.*, at 682. A "tiny" abrasion on the skin and a corresponding bruise under the scalp did not produce brain trauma. *Id.*, at 555, 562, 576, 712–713.

These findings led Dr. Carpenter, the autopsy supervisor, and Dr. Erlich, who performed Etzel's autopsy, to rule out two commonly proffered causes of death in SBS cases: massive bleeding and massive swelling that create pressure and push the brain downward. *Id.*, at 541, 551–552, 729–730, 801. Instead, they opined, Etzel's death was caused by direct injury—shearing or tearing of the brainstem or the brain itself. *Id.*, at 694–696, 729–730, 801, 1298. The autopsy revealed no physical evidence of such injury, either grossly or microscopically. *Id.*, at 730, 763, 803–804, 1298–1299. Dr. Carpenter was unable to state which particular areas of the brain were injured, and the neuropathologist found no evidence of specific brain injury. *Id.*, at 696, 1475. No doctor located any tear. Indeed, the examining physicians did not cut open Etzel's brainstem, or submit it to neuropathology, because, in their own estimation, "[w]e wouldn't have seen anything anyway." *Id.*, at 803, 1299.[2]

Neither doctor testified to ever having performed an autopsy on an infant in which a similar conclusion was reached. Nor did either physician point to any medical literature supporting their belief that shearing or tearing of the brainstem

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[1] The State's third expert, Dr. Chadwick, who was not present at Etzel's autopsy, testified that there may have been some swelling. But he conceded that any swelling could not have caused death. Tr. 1478.

[2] Dr. Chadwick mentioned new methods, not then standard in medical examiners' offices and not used here, which may reveal this type of brainstem damage. *Id.*, at 1448, 1481–1482.

or the brain itself caused Etzel's death. *Id.*, at 694–696, 801–802. Dr. Carpenter nevertheless maintained that when there is subdural hemorrhage without signs of external trauma to the head or skull, the injury is necessarily caused by violent shaking. *Id.*, at 576–577, 660–661. Smith's conviction thus turned on, as Dr. Erlich put it, "direct trauma which we don't see to the brainstem." *Id.*, at 801. That this gave the Ninth Circuit pause is understandable. Dr. Erlich herself conceded that "[i]t is a difficult concept to absorb." *Id.*, at 1298.

Reason to suspect the Carpenter-Erlich thesis has grown in the years following Smith's 1997 trial. Doubt has increased in the medical community "over whether infants can be fatally injured through shaking alone." *State* v. *Edmunds*, 2008 WI App. 33, ¶15, 308 Wis. 2d 374, 385, 746 N. W. 2d 590, 596. See, *e. g.*, Donohoe, Evidence-Based Medicine and Shaken Baby Syndrome, Part I: Literature Review, 1966–1998, 24 Am. J. Forensic Med. & Pathology 239, 241 (2003) (By the end of 1998, it had become apparent that "there was inadequate scientific evidence to come to a firm conclusion on most aspects of causation, diagnosis, treatment, or any other matters pertaining to SBS," and that "the commonly held opinion that the finding of [subdural hemorrhage] and [retinal hemorrhage] in an infant was strong evidence of SBS was unsustainable."); Bandak, Shaken Baby Syndrome: A Biomechanics Analysis of Injury Mechanisms, 151 Forensic Sci. Int'l 71, 78 (2005) ("Head acceleration and velocity levels commonly reported for SBS generate forces that are far too great for the infant neck to withstand without injury. . . . [A]n SBS diagnosis in an infant . . . without cervical spine or brain stem injury is questionable and other causes of the intracerebral injury must be considered."); Minns, Shaken Baby Syndrome: Theoretical and Evidential Controversies, 35 J. Royal College of Physicians of Edinburgh 5, 10 (2005) ("[D]iagnosing 'shaking' as a mechanism of injury . . . is not possible, because these are unwitnessed injuries that may

be incurred by a whole variety of mechanisms solely or in combination."); Uscinski, Shaken Baby Syndrome: An Odyssey, 46 Neurol. Med. Chir. (Tokyo) 57, 59 (2006) ("[T]he hypothetical mechanism of manually shaking infants in such a way as to cause intracranial injury is based on a misinterpretation of an experiment done for a different purpose, and contrary to the laws of injury biomechanics as they apply specifically to the infant anatomy."); Leestma, Case Analysis of Brain-Injured Admittedly Shaken Infants, 54 Cases, 1969–2001, 26 Am. J. Forensic Med. & Pathology 199, 211 (2005) ("[M]ost of the pathologies in allegedly shaken babies are due to impact injuries to the head and body."); Squier, Shaken Baby Syndrome: The Quest for Evidence, 50 Developmental Med. & Child Neurol. 10, 13 (2008) ("[H]ead impacts onto carpeted floors and steps from heights in the 1 to 3 feet range result in far greater . . . forces and accelerations than shaking and slamming onto either a sofa or a bed.").

In light of current information, it is unlikely that the prosecution's experts would today testify as adamantly as they did in 1997. Noteworthy in this regard, prosecution witnesses Carpenter and Erlich testified that the belated diagnosis of old (*i. e.*, chronic) blood in Etzel's brain and around his optic nerves did not change their initial cause-of-death findings, because rebleeding of old subdural blood does not occur in infants. Tr. 608–609, 672–673, 721–722, 771, 776, 1269–1270, 1283. Recent scientific opinion undermines this testimony. See Miller & Miller, Overrepresentation of Males in Traumatic Brain Injury of Infancy and in Infants with Macrocephaly, 31 Am. J. Forensic Med. & Pathology 165, 170 (2010) ("Small, asymptomatic [subdural hematomas] from the normal trauma of the birth process can spontaneously rebleed or rebleed with minimal forces, enlarge, and then present with clinical symptoms and [subdural hematoma, retinal hemorrhages, and neurologic dysfunction] in the first year of life. . . . [This situation] mimic[s] child abuse, and we believe many such infants in the past have been mistakenly

diagnosed as victims of child abuse, when they were likely not."). What is now known about SBS hypotheses seems to me worthy of considerable weight in the discretionary decision whether to take up this tragic case.

I consider next the State's meager nonmedical evidence. There was no evidence whatever that Smith abused her grandchildren in the past or acted with any malicious intent on the night in question. Instead, the evidence indicated that Smith was warmhearted, sensitive, and gentle. Tr. 1086. As earlier observed, see *supra*, at 10, the Magistrate Judge noted the absence of any motive or precipitating event that might have led Smith to shake Etzel violently. Although shaking may quiet a crying child, Tr. 601, no evidence showed that Etzel was crying in the hours before he died, *id.*, at 444. To the contrary: Any loud crying likely would have woken Etzel's siblings, Yondale, age 14 months, and Yolanda, age 4, asleep only feet away, even Etzel's mother, Tomeka, asleep in the neighboring room. *Id.*, at 335, 358–361. Yet no one's slumber was disturbed. *Id.*, at 358–361.

The prosecution relied on the testimony of a social worker, who asserted that Smith, after hearing that the cause of Etzel's death had been changed from Sudden Infant Death Syndrome (SIDS) to SBS, *id.*, at 840, and after stating that she had given Etzel "a little shake, a jostle to awaken him" when she found him unresponsive, asked "something like 'Oh, my God. Did I do it? Did I do it? Oh, my God.'" *Id.*, at 842, 847.[3] Etzel's mother, Tomeka, contradicted this account. According to Tomeka, after the social worker accused Smith of killing Etzel, Smith started crying, *id.*, at 429–430, and responded, "No, I didn't," *id.*, at 387. Taking the social worker's version of events as true, Smith's distraught and equivocal question fairly cannot be equated to a confession of guilt. Giving a baby "a little shake, a jostle to wake him,"

[3] The social worker also testified that Etzel's mother, Tomeka, told Smith: "If it wasn't for you this wouldn't have happened." *Id.*, at 847. Tomeka denied making any statement to that effect. *Id.*, at 389.

ante, at 3 (internal quotation marks omitted), after finding him unexpectedly unresponsive, surely is not an admission to shaking a child violently, causing his brainstem to tear.

Moreover, Smith's counsel, Ubiwe Eriye,[4] represented her poorly at trial. In a case as trying as this one, competent counsel might have persuaded the jury to disbelieve the prosecution's case. A few examples from the record are illustrative. At the suppression hearing, the presiding judge was so disturbed about Eriye's preparation for trial that he remarked to the defendant, "Miss Smith, I'm scared." Tr. A52. Eriye badly misportrayed the burden of proof when he declared, both at the suppression hearing and in his opening remarks, that he would prove, beyond a shadow of a doubt, that Smith was not guilty. *Id.*, at A58–A59, 213. The two experts Eriye called presented testimony that hardly meshed.[5]

In sum, this is a notably factbound case in which the Court of Appeals unquestionably stated the correct rule of law. It is thus "the type of case in which we are *most* inclined to deny certiorari." *Kyles* v. *Whitley*, 514 U. S. 419, 460 (1995) (SCALIA, J., dissenting). Nevertheless, the Court is bent on rebuking the Ninth Circuit for what it conceives to be defiance of our prior remands. See *ante*, at 9. I would not ignore Smith's plight and choose her case as a fit opportunity to teach the Ninth Circuit a lesson.

But even if granting review qualified as a proper exercise of our discretionary authority, I would resist summary reversal of the Court of Appeals' decision. The fact-intensive character of the case calls for attentive review of the record,

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[4] Eriye has since resigned from the California Bar with discipline charges pending.

[5] Dr. Goldie testified that the old blood in Etzel's brain did not contribute to his death, and Etzel died of SIDS. *Id.*, at 994–995, 1403. In contrast, Dr. Siegler testified that the old blood provided the basis for his conclusion that Etzel died of an earlier brain trauma, *id.*, at 1152–1153, 1166–1167, not SIDS, *id.*, at 1193–1194.

including a trial transcript that runs over 1,500 pages. Careful inspection of the record would be aided by the adversarial presentation that full briefing and argument afford. See, *e. g.*, R. Fallon, J. Manning, D. Meltzer, D. Shapiro, Hart and Wechsler's The Federal Courts and the Federal System 1480 (6th ed. 2009) (posing question whether summary reversal would "smack of unfairness to the losing party unless an opportunity were afforded for the filing of briefs on the merits"); Gressman, Supreme Court Practice § 6.12(c), p. 417, and n. 46 (questioning the Court's reliance on its own examination of the record in summarily reversing, without at least affording the parties, "particularly the respondent," an opportunity to brief the critical issue and identify the relevant portions of the record). Peremptory disposition, in my judgment, is all the more inappropriate given the grave consequences of upsetting the judgment below: Smith, who has already served ten years, will be returned to prison to complete a sentence of fifteen years to life. Before depriving Smith of the liberty she currently enjoys, and her family of her care, I would at least afford her a full opportunity to defend her release from a decade's incarceration.

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For the reasons stated, justice is not served by the Court's exercise of discretion to take up this tragic, factbound case. I would therefore deny the petition for review.

Syllabus

KPMG LLP *v.* COCCHI ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

No. 10–1521. Decided November 7, 2011

Respondents, who lost money on investments in certain limited partnerships known as the Rye Funds (Funds), sued petitioner KPMG LLP, among others, in state court claiming that KPMG's failure to use proper auditing standards with respect to the partnerships' financial statements led to substantial misrepresentations about the Funds' financial health. The Florida Circuit Court denied KPMG's motion to compel arbitration on the basis of its audit services agreement with the Funds' managers. The Florida Court of Appeal determined that the arbitration clause was enforceable only if respondents' claims were derivative of the services KPMG performed for the Funds' managers pursuant to the audit services agreement. Applying the law of the proper forum as agreed by the parties, the court held that two of respondents' four claims against KPMG were direct rather than derivative. Without addressing whether respondents' other two claims were direct or derivative, the court found that the arbitration agreement did not apply to respondents' direct claims and affirmed the trial court's denial of KPMG's motion.

Held: By disregarding the direct-derivative status of two of respondents' claims, the Florida Court of Appeal failed to give proper effect to the plain meaning of the Federal Arbitration Act and to this Court's holding in *Dean Witter Reynolds Inc.* v. *Byrd*, 470 U. S. 213, that the Act "leaves no place for the exercise of discretion . . . but instead mandates that . . . courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed," *id.*, at 218. Thus, when a complaint contains both arbitrable and nonarbitrable claims, courts must "compel arbitration of pendent arbitrable claims when one of the parties files a motion to compel, even where the result would be the possibly inefficient maintenance of separate proceedings in different forums." *Id.*, at 217. On remand, the Florida Court of Appeal should determine whether either of the two remaining claims requires arbitration.

Certiorari granted; 51 So. 3d 1165, vacated and remanded.

PER CURIAM.

Agreements to arbitrate that fall within the scope and coverage of the Federal Arbitration Act (Act), 9 U. S. C. § 1 *et seq.*, must be enforced in state and federal courts. State courts, then, "have a prominent role to play as enforcers of agreements to arbitrate." *Vaden* v. *Discover Bank*, 556 U. S. 49, 59 (2009).

The Act has been interpreted to require that if a dispute presents multiple claims, some arbitrable and some not, the former must be sent to arbitration even if this will lead to piecemeal litigation. See *Dean Witter Reynolds Inc.* v. *Byrd*, 470 U. S. 213, 217 (1985). From this it follows that state and federal courts must examine with care the complaints seeking to invoke their jurisdiction in order to separate arbitrable from nonarbitrable claims. A court may not issue a blanket refusal to compel arbitration merely on the grounds that some of the claims could be resolved by the court without arbitration. See *ibid.*

In this case the Fourth District Court of Appeal of the State of Florida upheld a trial court's refusal to compel arbitration of respondents' claims after determining that two of the four claims in a complaint were nonarbitrable. Though the matter is not altogether free from doubt, a fair reading of the opinion indicates a likelihood that the Court of Appeal failed to determine whether the other two claims in the complaint were arbitrable. For this reason, the judgment of the Court of Appeal is vacated, and the case is remanded for further proceedings.

Respondents are 19 individuals and entities who bought limited partnership interests in one of three limited partnerships, all known as the Rye Funds. The Rye Funds were managed by Tremont Group Holding, Inc., and Tremont Partners, Inc., both of which were audited by KPMG. The Rye Funds were invested with financier Bernard Madoff

and allegedly lost millions of dollars as a result of a scheme to defraud. Respondents sued the Rye Funds, the Tremont defendants, and Tremont's auditing firm, KPMG.

Only the claims against KPMG are at issue in this case. Against KPMG, respondents alleged four causes of action: negligent misrepresentation; violation of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), Fla. Stat. § 501.201 *et seq.* (2010); professional malpractice; and aiding and abetting a breach of fiduciary duty. Respondents' basic theory was that KPMG failed to use proper auditing standards with respect to the financial statements of the partnerships. These improper audits, respondents contend, led to "substantial misrepresentations" about the health of the funds and resulted in respondents' investment losses. 51 So. 3d 1165, 1168 (Fla. App. 2010).

KPMG moved to compel arbitration based on the audit services agreement that existed between it and the Tremont defendants. That agreement provided that "[a]ny dispute or claim arising out of or relating to . . . the services provided [by KPMG] . . . (including any dispute or claim involving any person or entity for whose benefit the services in question are or were provided) shall be resolved" either by mediation or arbitration. App. to Pet. for Cert. 63a. The Florida Circuit Court of the Fifteenth Judicial Circuit Palm Beach County denied the motion.

The Court of Appeal affirmed, noting that "[n]one of the plaintiffs . . . expressly assented in any fashion to [the audit services agreement] or the arbitration provision." 51 So. 3d, at 1168. Thus, the court found, the arbitration clause could only be enforced if respondents' claims were derivative in that they arose from the services KPMG performed for the Tremont defendants pursuant to the audit services agreement. Applying Delaware law, which both parties agreed was applicable, the Court of Appeal concluded that the negligent misrepresentation and the violation of FDUTPA claims were direct rather than derivative. A fair reading of the

opinion reveals nothing to suggest that the court came to the same conclusion about the professional malpractice and breach of fiduciary duty claims. Indeed, the court said nothing about those claims at all. Finding "the arbitral agreement upon which KPMG relied would not apply to the direct claims made by the individual plaintiffs," *id.*, at 1167, the Court of Appeal affirmed the trial court's denial of the motion to arbitrate.

Respondents have since amended their complaint to add a fifth claim. Citing the Court of Appeal's decision, the trial court again denied KPMG's motion to compel arbitration.

The Act reflects an "emphatic federal policy in favor of arbitral dispute resolution." *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614, 631 (1985); *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U. S. 1, 24–25 (1983) (noting that "questions of arbitrability [must] . . . be addressed with a healthy regard for the federal policy favoring arbitration"). This policy, as contained within the Act, "requires courts to enforce the bargain of the parties to arbitrate," *Dean Witter*, *supra*, at 217, and "cannot possibly require the disregard of state law permitting arbitration by or against nonparties to the written arbitration agreement," *Arthur Andersen LLP* v. *Carlisle*, 556 U. S. 624, 630, n. 5 (2009) (emphasis deleted). Both parties agree that whether the claims in the complaint are arbitrable turns on the question whether they must be deemed direct or derivative under Delaware law. That question of state law is not at issue here. What is at issue is the Court of Appeal's apparent refusal to compel arbitration on any of the four claims based solely on a finding that two of them, the claim of negligent misrepresentation and the alleged violation of the FDUTPA, were nonarbitrable.

In *Dean Witter*, the Court noted that the Act "provides that written agreements to arbitrate controversies arising out of an existing contract 'shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in

equity for the revocation of any contract.'" 470 U. S., at 218 (quoting 9 U. S. C. § 2). The Court found that by its terms, "the Act leaves no place for the exercise of discretion by a district court, but instead mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." 470 U. S., at 218 (emphasis in original). Thus, when a complaint contains both arbitrable and nonarbitrable claims, the Act requires courts to "compel arbitration of pendent arbitrable claims when one of the parties files a motion to compel, even where the result would be the possibly inefficient maintenance of separate proceedings in different forums." *Id.*, at 217. To implement this holding, courts must examine a complaint with care to assess whether any individual claim must be arbitrated. The failure to do so is subject to immediate review. See *Southland Corp.* v. *Keating*, 465 U. S. 1, 6–7 (1984).

The Court of Appeal listed all four claims, found that two were direct, and then refused to compel arbitration on the complaint as a whole because the arbitral agreement "would not apply to the direct claims." 51 So. 3d, at 1167. By not addressing the other two claims in the complaint, the Court of Appeal failed to give effect to the plain meaning of the Act and to the holding of *Dean Witter*. The petition for certiorari is granted. The judgment of the Court of Appeal is vacated, and the case is remanded. On remand, the Court of Appeal should examine the remaining two claims to determine whether either requires arbitration.

It is so ordered.

Syllabus

BOBBY, WARDEN *v.* DIXON

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

No. 10–1540. Decided November 7, 2011

Respondent Archie Dixon and an accomplice, Tim Hoffner, murdered Chris Hammer in order to steal his car. Dixon then assumed Hammer's identity, established ownership of the car, and sold it. When Dixon showed up at the police station for reasons unrelated to the instant case, a police detective investigating Hammer's disappearance attempted to question him about Hammer's whereabouts. He issued Dixon *Miranda* warnings, but Dixon declined to speak without his lawyer present and left the station. Police eventually tied Dixon to the sale of Hammer's car and arrested him for forgery. Because they feared that Dixon would again refuse to speak, they did not issue him *Miranda* warnings before questioning him over several hours. Dixon admitted to selling Hammer's car but denied having anything to do with his disappearance. Even when detectives suggested that Hoffner was likely to cut a deal with police, Dixon continued to deny any involvement in Hammer's disappearance. Shortly thereafter, Hoffner led police to Hammer's body, claiming that Dixon had told him where it was. Dixon was brought back in to the police station. Prior to any police questioning, Dixon stated that he had heard the police had found a body and asked whether Hoffner was in custody. Upon hearing that Hoffner was not in custody, Dixon told police that he had spoken with his attorney and wished to tell them what happened. Dixon was advised of his *Miranda* rights and waived them in writing before speaking to police. He was advised of those rights a second time before giving a detailed, tape-recorded confession to Hammer's murder. When the Ohio trial court excluded both Dixon's forgery and murder confessions, the State appealed. The Ohio Court of Appeals concluded that Dixon's murder confession was admissible because it was obtained after he was given *Miranda* warnings. Dixon was convicted, and the Ohio Supreme Court affirmed. The District Court denied Dixon's subsequent federal habeas petition, but the Sixth Circuit reversed, believing that the Ohio Supreme Court's decision was in error.

Held: The Sixth Circuit lacked the authority to overturn the Ohio Supreme Court's reasoned judgment, which did not rest on errors "well understood and comprehended in existing law beyond any possibility for fairminded disagreement," *Harrington* v. *Richter*, 562 U. S. 86, 103. The

Per Curiam

Sixth Circuit found that Dixon's initial invocation of his *Miranda* rights applied to subsequent interviews, but Dixon was originally at the station house for noncustodial reasons completely unrelated to the Hammer investigation, and this Court has "never held that a person can invoke his *Miranda* rights anticipatorily, in a context other than 'custodial interrogation,'" *McNeil* v. *Wisconsin*, 501 U. S. 171, 182, n. 3. The Sixth Circuit also held that police violated the Fifth Amendment by urging Dixon to "cut a deal" before Hoffner did, but it cited no precedent supporting its conclusion that this common police tactic is unconstitutional. The court held further that the Ohio Supreme Court unreasonably applied the holding of *Oregon* v. *Elstad*, 470 U. S. 298, that "a suspect who has once responded to unwarned yet uncoercive questioning is not thereby disabled from waiving his rights and confessing after he has been given the requisite *Miranda* warnings," *id.*, at 318. Here, however, there is no concern that police gave Dixon *Miranda* warnings and then led him to repeat an earlier murder confession, because there was no earlier murder confession to repeat. *Missouri* v. *Seibert*, 542 U. S. 600, distinguished. Nor is there any evidence that police used his earlier forgery confession to induce him to waive his right to silence later.

Certiorari granted; 627 F. 3d 553, reversed and remanded.

PER CURIAM.

Under the Antiterrorism and Effective Death Penalty Act of 1996, a state prisoner seeking a writ of habeas corpus from a federal court "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." *Harrington* v. *Richter*, 562 U. S. 86, 103 (2011). The Court of Appeals for the Sixth Circuit purported to identify three such grievous errors in the Ohio Supreme Court's affirmance of respondent Archie Dixon's murder conviction. Because it is not clear that the Ohio Supreme Court erred at all, much less erred so transparently that no fairminded jurist could agree with that court's decision, the Sixth Circuit's judgment must be reversed.

* * *

Archie Dixon and Tim Hoffner murdered Chris Hammer in order to steal his car. Dixon and Hoffner beat Hammer,

tied him up, and buried him alive, pushing the struggling Hammer down into his grave while they shoveled dirt on top of him. Dixon then used Hammer's birth certificate and Social Security card to obtain a state identification card in Hammer's name. After using that identification card to establish ownership of Hammer's car, Dixon sold the vehicle for $2,800.

Hammer's mother reported her son missing the day after his murder. While investigating Hammer's disappearance, police had various encounters with Dixon, three of which are relevant here. On November 4, 1993, a police detective spoke with Dixon at a local police station. It is undisputed that this was a chance encounter—Dixon was apparently visiting the police station to retrieve his own car, which had been impounded for a traffic violation. The detective issued *Miranda* warnings to Dixon and then asked to talk to him about Hammer's disappearance. See *Miranda* v. *Arizona*, 384 U. S. 436 (1966). Dixon declined to answer questions without his lawyer present and left the station.

As their investigation continued, police determined that Dixon had sold Hammer's car and forged Hammer's signature when cashing the check he received in that sale. Police arrested Dixon for forgery on the morning of November 9. Beginning at 11:30 a.m. detectives intermittently interrogated Dixon over several hours, speaking with him for about 45 minutes total. Prior to the interrogation, the detectives had decided not to provide Dixon with *Miranda* warnings for fear that Dixon would again refuse to speak with them.

Dixon readily admitted to obtaining the identification card in Hammer's name and signing Hammer's name on the check, but said that Hammer had given him permission to sell the car. Dixon claimed not to know where Hammer was, although he said he thought Hammer might have left for Tennessee. The detectives challenged the plausibility of Dixon's tale and told Dixon that Tim Hoffner was providing them more useful information. At one point a detective told

Dixon that "now is the time to say" whether he had any involvement in Hammer's disappearance because "if Tim starts cutting a deal over there, this is kinda like, a bus leaving. The first one that gets on it is the only one that's gonna get on." App. to Pet. for Cert. 183a. Dixon responded that, if Hoffner knew anything about Hammer's disappearance, Hoffner had not told him. Dixon insisted that he had told police everything he knew and that he had "[n]othing whatsoever" to do with Hammer's disappearance. *Id.*, at 186a. At approximately 3:30 p.m. the interrogation concluded, and the detectives brought Dixon to a correctional facility where he was booked on a forgery charge.

The same afternoon, Hoffner led police to Hammer's grave. Hoffner claimed that Dixon had told him that Hammer was buried there. After concluding their interview with Hoffner and releasing him, the police had Dixon transported back to the police station.

Dixon arrived at the police station at about 7:30 p.m. Prior to any police questioning, Dixon stated that he had heard the police had found a body and asked whether Hoffner was in custody. The police told Dixon that Hoffner was not, at which point Dixon said, "I talked to my attorney, and I want to tell you what happened." *State* v. *Dixon*, 101 Ohio St. 3d 328, 331, 2004-Ohio-1585, 805 N. E. 2d 1042, 1050. The police read Dixon his *Miranda* rights, obtained a signed waiver of those rights, and spoke with Dixon for about half an hour. At 8 p.m. the police, now using a tape recorder, again advised Dixon of his *Miranda* rights. In a detailed confession, Dixon admitted to murdering Hammer but attempted to pin the lion's share of the blame on Hoffner.

At Dixon's trial, the Ohio trial court excluded both Dixon's initial confession to forgery and his later confession to murder. The State took an interlocutory appeal. The State did not dispute that Dixon's forgery confession was properly suppressed, but argued that the murder confession was admissible because Dixon had received *Miranda* warnings

prior to that confession. The Ohio Court of Appeals agreed and allowed Dixon's murder confession to be admitted as evidence. Dixon was convicted of murder, kidnaping, robbery, and forgery, and sentenced to death.

The Ohio Supreme Court affirmed Dixon's convictions and sentence. To analyze the admissibility of Dixon's murder confession, the court applied *Oregon* v. *Elstad*, 470 U. S. 298 (1985). The Ohio Supreme Court found that Dixon's confession to murder after receiving *Miranda* warnings was admissible because that confession and his prior, unwarned confession to forgery were both voluntary. *State* v. *Dixon*, *supra*, at 332–334, 805 N. E. 2d, at 1050–1052; see *Elstad*, *supra*, at 318 ("We hold today that a suspect who has once responded to unwarned yet uncoercive questioning is not thereby disabled from waiving his rights and confessing after he has been given the requisite *Miranda* warnings").

Dixon then filed a petition for a writ of habeas corpus under 28 U. S. C. § 2254 in the U. S. District Court for the Northern District of Ohio. Dixon claimed, *inter alia*, that the state court decisions allowing the admission of his murder confession contravened clearly established federal law. The District Court denied relief, but a divided panel of the Sixth Circuit reversed. *Dixon* v. *Houk*, 627 F. 3d 553 (2010).

The Sixth Circuit had authority to issue the writ of habeas corpus only if the Ohio Supreme Court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law," as set forth in this Court's holdings, or was "based on an unreasonable determination of the facts" in light of the state court record. § 2254(d); see *Harrington*, 562 U. S., at 100. The Sixth Circuit believed that the Ohio Supreme Court's decision contained three such egregious errors.

First, according to the Sixth Circuit, the *Miranda* decision itself clearly established that police could not speak to Dixon on November 9, because on November 4 Dixon had refused to speak to police without his lawyer. That is plainly wrong.

It is undisputed that Dixon was not in custody during his chance encounter with police on November 4. And this Court has "never held that a person can invoke his *Miranda* rights anticipatorily, in a context other than 'custodial interrogation.'" *McNeil* v. *Wisconsin*, 501 U. S. 171, 182, n. 3 (1991); see also *Montejo* v. *Louisiana*, 556 U. S. 778, 795 (2009) ("If the defendant is not in custody then [*Miranda* and its progeny] do not apply").

Second, the Sixth Circuit held that police violated the Fifth Amendment by urging Dixon to "cut a deal" before his accomplice Hoffner did so.[1] The Sixth Circuit cited no precedent of this Court—or any court—holding that this common police tactic is unconstitutional. Cf., *e. g.*, *Elstad*, *supra*, at 317 ("[T]he Court has refused to find that a defendant who confesses, after being falsely told that his codefendant has turned State's evidence, does so involuntarily"). Because no holding of this Court suggests, much less clearly establishes, that police may not urge a suspect to confess before another suspect does so, the Sixth Circuit had no authority to issue the writ on this ground.[2]

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[1] In the Sixth Circuit's view, the Ohio Supreme Court's contrary conclusion that Dixon's confession was voluntary "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." § 2254(d)(2). The Sixth Circuit did not, however, purport to identify any mistaken factual finding. It differed with the Ohio Supreme Court only on the ultimate characterization of Dixon's confession as voluntary, and this Court's cases make clear that "the ultimate issue of 'voluntariness' is a legal question." *Miller* v. *Fenton*, 474 U. S. 104, 110 (1985); see also *Arizona* v. *Fulminante*, 499 U. S. 279, 287 (1991). This Court therefore addresses the question the Sixth Circuit should have addressed: whether the Ohio Supreme Court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." § 2254(d)(1).

[2] The only case the Sixth Circuit cited on this issue was *Mincey* v. *Arizona*, 437 U. S. 385 (1978). *Mincey* involved the "virtually continuous questioning of a seriously and painfully wounded man on the edge of consciousness" who was in a hospital's intensive care unit and who "clearly expressed his wish not to be interrogated" while in a "debilitated and

Third, the Sixth Circuit held that the Ohio Supreme Court unreasonably applied this Court's precedent in *Elstad*. In that case, a suspect who had not received *Miranda* warnings confessed to burglary as police took him into custody. Approximately an hour later, after he had received *Miranda* warnings, the suspect again confessed to the same burglary. This Court held that the later, warned confession was admissible because "there is no warrant for presuming coercive effect where the suspect's initial inculpatory statement, though technically in violation of *Miranda*, was voluntary. The relevant inquiry is whether, in fact, the second [warned] statement was also voluntarily made." 470 U. S., at 318 (footnote omitted).

As the Ohio Supreme Court's opinion explained, the circumstances surrounding Dixon's interrogations demonstrate that his statements were voluntary. During Dixon's first interrogation, he received several breaks, was given water and offered food, and was not abused or threatened. He freely acknowledged that he had forged Hammer's name, even stating that the police were "welcome" to that information, and he had no difficulty denying that he had anything to do with Hammer's disappearance. *State* v. *Dixon*, 101 Ohio St. 3d, at 331, 805 N. E. 2d, at 1049. Prior to his second interrogation, Dixon made an unsolicited declaration that he had spoken with his attorney and wanted to tell the police what had happened to Hammer. Then, before giving his taped confession, Dixon twice received *Miranda* warnings and signed a waiver-of-rights form which stated that he was acting of his own free will.

The Ohio Supreme Court recognized that Dixon's first interrogation involved "an intentional *Miranda* violation." 101 Ohio St. 3d, at 334, 805 N. E. 2d, at 1052. The court concluded, however, that "as in *Elstad*, the breach of the *Mi-*

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helpless condition." *Id.*, at 399–401. There is simply nothing in the facts or reasoning of *Mincey* suggesting that any of Dixon's statements were involuntary.

randa procedures here involved no actual compulsion" and thus there was no reason to suppress Dixon's later, warned confession. *Ibid.* (citing *Elstad*, 470 U. S., at 318).

The Sixth Circuit disagreed, believing that Dixon's confession was inadmissible under *Elstad* because it was the product of a "deliberate question-first, warn-later strategy." 627 F. 3d, at 557. In so holding, the Sixth Circuit relied heavily on this Court's decision in *Missouri* v. *Seibert*, 542 U. S. 600 (2004).[3] In *Seibert*, police employed a two-step strategy to reduce the effect of *Miranda* warnings: A detective exhaustively questioned Seibert until she confessed to murder and then, after a 15- to 20-minute break, gave Seibert *Miranda* warnings and led her to repeat her prior confession. 542 U. S., at 604–606, 616 (plurality opinion). The Court held that Seibert's second confession was inadmissible as evidence against her even though it was preceded by a *Miranda* warning. A plurality of the Court reasoned that "[u]pon hearing warnings only in the aftermath of interrogation and just after making a confession, a suspect would hardly think he had a genuine right to remain silent, let alone persist in so believing once the police began to lead him over the same ground again." 542 U. S., at 613; see also *id.*, at 615 (detailing a "series of relevant facts that bear on whether *Miranda* warnings delivered midstream could be effective enough to accomplish their object"). JUSTICE KENNEDY concurred in

[3] *Seibert* was not decided until after the Ohio Supreme Court's opinion in this case, but was issued before this Court denied Dixon's petition for certiorari seeking review of the Ohio Supreme Court's decision. It is thus an open question whether *Seibert* was "clearly established Federal law" for purposes of § 2254(d). See *Smith* v. *Spisak*, 558 U. S. 139, 143 (2010). It is not necessary to decide that question here because *Seibert* is entirely consistent with the Ohio Supreme Court's decision. Thus, if *Seibert* was clearly established law, the Ohio Supreme Court's decision was not "contrary to" or "an unreasonable application of" *Seibert*. § 2254(d). And if *Seibert* was not clearly established law, *Seibert*'s explication of *Elstad* further demonstrates that the Ohio Supreme Court's decision was not contrary to or an unreasonable application of *Elstad*.

the judgment, noting he "would apply a narrower test applicable only in the infrequent case . . . in which the two-step interrogation technique was used in a calculated way to undermine the *Miranda* warning." *Id.*, at 622.

In this case, no two-step interrogation technique of the type that concerned the Court in *Seibert* undermined the *Miranda* warnings Dixon received. In *Seibert*, the suspect's first, unwarned interrogation left "little, if anything, of incriminating potential left unsaid," making it "unnatural" not to "repeat at the second stage what had been said before." 542 U. S., at 616–617 (plurality opinion). But in this case Dixon steadfastly maintained during his first, unwarned interrogation that he had "[n]othing whatsoever" to do with Hammer's disappearance. App. to Pet. for Cert. 186a. Thus, unlike in *Seibert*, there is no concern here that police gave Dixon *Miranda* warnings and then led him to repeat an earlier murder confession, because there was no earlier confession to repeat. Indeed, Dixon *contradicted* his prior unwarned statements when he confessed to Hammer's murder. Nor is there any evidence that police used Dixon's earlier admission to forgery to induce him to waive his right to silence later: Dixon declared his desire to tell police what happened to Hammer before the second interrogation session even began. As the Ohio Supreme Court reasonably concluded, there was simply "no nexus" between Dixon's unwarned admission to forgery and his later, warned confession to murder. 101 Ohio St. 3d, at 333, 805 N. E. 2d, at 1051.

Moreover, in *Seibert* the Court was concerned that the *Miranda* warnings did not "effectively advise the suspect that he had a real choice about giving an admissible statement" because the unwarned and warned interrogations blended into one "continuum." 542 U. S., at 612, 617. Given all the circumstances of this case, that is not so here. Four hours passed between Dixon's unwarned interrogation and his receipt of *Miranda* rights, during which time he traveled from the police station to a separate jail and back again; claimed

to have spoken to his lawyer; and learned that police were talking to his accomplice and had found Hammer's body. Things had changed. Under *Seibert*, this significant break in time and dramatic change in circumstances created "a new and distinct experience," ensuring that Dixon's prior, unwarned interrogation did not undermine the effectiveness of the *Miranda* warnings he received before confessing to Hammer's murder. 542 U. S., at 615; see also *id.*, at 622 (KENNEDY, J., concurring in judgment) ("For example, a substantial break in time and circumstances between the prewarning statement and the *Miranda* warning may suffice in most circumstances, as it allows the accused to distinguish the two contexts and appreciate that the interrogation has taken a new turn").[4]

The admission of Dixon's murder confession was consistent with this Court's precedents: Dixon received *Miranda* warnings before confessing to Hammer's murder; the effectiveness of those warnings was not impaired by the sort of "two-step interrogation technique" condemned in *Seibert;* and there is no evidence that any of Dixon's statements was the product of actual coercion. That does not excuse the detectives' decision not to give Dixon *Miranda* warnings before his first interrogation. But the Ohio courts recognized that failure and imposed the appropriate remedy: exclusion of Dixon's forgery confession and the attendant statements given without the benefit of *Miranda* warnings. Because no precedent of this Court required Ohio to do more, the

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[4] The Sixth Circuit also concluded that "the Ohio Supreme Court erroneously placed the burden of proof on Dixon to prove that his confession was coerced." *Dixon* v. *Houk*, 627 F. 3d 553, 558 (2010). But the Ohio Supreme Court clearly said that "the state carries the burden of proving voluntariness." *State* v. *Dixon*, 101 Ohio St. 3d 328, 332, 2004-Ohio-1585, 805 N. E. 2d 1042, 1050. That the court's opinion discusses the absence of evidence of coerciveness alongside the affirmative evidence of voluntariness in no way indicates that the court shifted the burden onto Dixon.

Sixth Circuit was without authority to overturn the reasoned judgment of the State's highest court.

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

It is so ordered.

Syllabus

GREENE, AKA TRICE *v.* FISHER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL.

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

No. 10–637. Argued October 11, 2011—Decided November 8, 2011

During petitioner Greene's trial for murder, robbery, and conspiracy, the prosecution introduced the redacted confessions of two of Greene's nontestifying codefendants. A jury convicted Greene. The Pennsylvania Superior Court upheld the conviction, reasoning that the rule announced in *Bruton* v. *United States*, 391 U. S. 123, did not apply because the confessions were redacted to remove any specific reference to Greene. While Greene's petition to the Pennsylvania Supreme Court was pending, this Court announced in *Gray* v. *Maryland*, 523 U. S. 185, that *Bruton* does apply to some redacted confessions. The Pennsylvania Supreme Court declined to hear Greene's appeal, and he then sought federal habeas relief. Under the Antiterrorism and Effective Death Penalty Act of 1996, a federal court may not grant such relief to a state prisoner on any claim that has been "adjudicated on the merits in State court proceedings" unless that adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U. S. C. § 2254(d)(1). Here, the District Court concluded that, because the United States Supreme Court's opinion in *Gray* had not yet been issued when the Pennsylvania Superior Court adjudicated Greene's claim, the condition for granting habeas relief had not been met. The Third Circuit affirmed.

Held:

1. Under § 2254(d)(1), "clearly established Federal law, as determined by the Supreme Court of the United States," includes only this Court's decisions as of the time of the relevant state-court adjudication on the merits. The Court's decision last Term in *Cullen* v. *Pinholster*, 563 U. S. 170, established that § 2254(d)(1)'s "backward-looking language requires an examination of the state-court decision at the time it was made." *Id.*, at 182. As the Court explained in *Cullen*, § 2254(d)(1) requires federal courts to measure state-court decisions "against this Court's precedents as of 'the time the state court renders its decision.'" *Ibid.* That reasoning determines the result here. Pp. 37–40.

2. Because the Pennsylvania Superior Court's decision—the last state-court adjudication on the merits of Greene's claim—predated *Gray* by nearly three months, the Third Circuit correctly held that *Gray* was not "clearly established Federal law" against which it could measure the state-court decision. It therefore correctly concluded that the state court's decision neither was "contrary to," nor "involved an unreasonable application of," any "clearly established Federal law." Pp. 40–41.

606 F. 3d 85, affirmed.

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

Jeffrey L. Fisher argued the cause for petitioner. With him on the briefs were *Pamela S. Karlan*, *Isabel McGinty*, *Thomas C. Goldstein*, *Amy Howe*, and *Kevin K. Russell*.

Ronald Eisenberg argued the cause for respondents. With him on the brief were *Susan E. Affronti* and *Thomas W. Dolgenos*.*

JUSTICE SCALIA delivered the opinion of the Court.

Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), a federal court may not grant habeas relief to a state prisoner with respect to any claim that has been "adjudicated on the merits in State court proceedings" unless the state-court adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of,

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**David M. Porter* and *Brett G. Sweitzer* filed a brief for the National Association of Criminal Defense Lawyers et al. as *amici curiae* urging reversal.

A brief of *amici curiae* urging affirmance was filed for the State of Texas et al. by *Greg Abbott*, Attorney General of Texas, *Jonathan F. Mitchell*, Solicitor General, *Daniel T. Hodge*, First Assistant Attorney General, *Don Clemmer*, Deputy Attorney General, and *Edward L. Marshall*, Assistant Attorney General, and by the Attorneys General for their respective States as follows: *Joseph R. Biden III* of Delaware, *Pamela Jo Bondi* of Florida, *Jack Conway* of Kentucky, *William J. Schneider* of Maine, *Bill Schuette* of Michigan, *Steve Bullock* of Montana, *Wayne Stenehjem* of North Dakota, *Linda L. Kelly* of Pennsylvania, *Mark L. Shurtleff* of Utah, *Robert M. McKenna* of Washington, *J. B. Van Hollen* of Wisconsin, and *Gregory A. Phillips* of Wyoming.

clearly established Federal law, as determined by the Supreme Court of the United States." 28 U. S. C. § 2254(d)(1). We consider whether "clearly established Federal law" includes decisions of this Court that are announced after the last adjudication of the merits in state court but before the defendant's conviction becomes final.

I

In December 1993, petitioner Eric Greene and four coconspirators robbed a grocery store in North Philadelphia, Pennsylvania. During the robbery, one of the men shot and killed the store's owner. The five were apprehended, and two of them confessed to taking part in the robbery. Greene did not confess, but he was implicated by the others' statements.

When the Commonwealth sought to try all of the coconspirators jointly, Greene sought severance, arguing, *inter alia*, that the confessions of his nontestifying codefendants should not be introduced at his trial. The trial court denied the motion to sever, but agreed to require redaction of the confessions to eliminate proper names. As redacted, the confessions replaced names with words like "this guy," "someone," and "other guys," or with the word "blank," or simply omitted the names without substitution.

A jury convicted Greene of second-degree murder, robbery, and conspiracy. He appealed to the Pennsylvania Superior Court, arguing that severance of his trial was demanded by the rule announced in *Bruton* v. *United States*, 391 U. S. 123 (1968), that the Confrontation Clause forbids the prosecution to introduce a nontestifying codefendant's confession implicating the defendant in the crime. The Pennsylvania Superior Court affirmed the conviction, holding that the redaction had cured any problem under *Bruton*.

Greene filed a petition for allowance of appeal to the Pennsylvania Supreme Court, raising the same *Bruton* claim. While that petition was pending, we held in *Gray* v. *Maryland*, 523 U. S. 185, 195 (1998), that "considered as a class,

redactions that replace a proper name with an obvious blank, the word 'delete,' a symbol, or similarly notify the jury that a name has been deleted are similar enough to *Bruton*'s unredacted confessions as to warrant the same legal results." The Pennsylvania Supreme Court granted the petition for allowance of appeal, limited to the question whether admission of the redacted confessions violated Greene's Sixth Amendment rights. After the parties filed merits briefs, however, the Pennsylvania Supreme Court dismissed the appeal as improvidently granted.

Greene then filed a federal habeas corpus petition in the United States District Court for the Eastern District of Pennsylvania, alleging, *inter alia*, that the introduction of his nontestifying codefendants' statements violated the Confrontation Clause. Adopting the report and recommendation of a Magistrate Judge, the District Court denied the petition. It concluded that since our decision in *Gray* was not "clearly established Federal law" when the Pennsylvania Superior Court adjudicated Greene's Confrontation Clause claim, that court's decision was not "contrary to," or "an unreasonable application of, clearly established Federal law." 28 U. S. C. § 2254(d)(1).

A divided panel of the United States Court of Appeals for the Third Circuit affirmed. *Greene* v. *Palakovich*, 606 F. 3d 85 (2010). The majority held that the "clearly established Federal law" referred to in § 2254(d)(1) is the law at the time of the state-court adjudication on the merits. *Id.*, at 99. The dissenting judge contended that it is the law at the time the conviction becomes final. *Id.*, at 108. We granted certiorari. 563 U. S. 917 (2011).

II

Section 2254(d) of Title 28 U. S. C., as amended by AEDPA, provides:

> "An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any

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

The issue here pertains to the first exception. We have said that its standard of "contrary to, or involv[ing] an unreasonable application of, clearly established Federal law" is "difficult to meet," because the purpose of AEDPA is to ensure that federal habeas relief functions as a "'guard against extreme malfunctions in the state criminal justice systems,'" and not as a means of error correction. *Harrington* v. *Richter*, 562 U. S. 86, 102–103 (2011) (quoting *Jackson* v. *Virginia*, 443 U. S. 307, 332, n. 5 (1979) (Stevens, J., concurring in judgment)).

In light of that objective, and relying upon the text of the provision, we held last Term, in *Cullen* v. *Pinholster*, 563 U. S. 170 (2011), that review under § 2254(d)(1) is limited to the record that was before the state court that adjudicated the prisoner's claim on the merits. We said that the provision's "backward-looking language requires an examination of the state-court decision at the time it was made." *Id.*, at 182. The reasoning of *Cullen* determines the result here. As we explained, § 2254(d)(1) requires federal courts to "focu[s] on what a state court knew and did," and to measure state-court decisions "against this Court's precedents *as of 'the time the state court renders its decision.'*" *Ibid.* (quoting *Lockyer* v. *Andrade*, 538 U. S. 63, 71–72 (2003); emphasis added).

Greene resists that conclusion by appealing to our decision in *Teague* v. *Lane*, 489 U. S. 288 (1989). *Teague* held that a prisoner seeking federal habeas relief may rely on new

constitutional rules of criminal procedure announced before the prisoner's conviction became final. *Id.*, at 310 (plurality opinion); see also *Penry* v. *Lynaugh*, 492 U. S. 302, 313 (1989) (affirming and applying *Teague* rule). Finality occurs when direct state appeals have been exhausted and a petition for writ of certiorari from this Court has become time barred or has been disposed of. *Griffith* v. *Kentucky*, 479 U. S. 314, 321, n. 6 (1987). Greene contends that, because finality marks the temporal cutoff for *Teague* purposes, it must mark the temporal cutoff for "clearly established Federal law" under AEDPA.

The analogy has been rejected by our cases. We have explained that AEDPA did not codify *Teague*, and that "the AEDPA and *Teague* inquiries are distinct." *Horn* v. *Banks*, 536 U. S. 266, 272 (2002) *(per curiam)*. The retroactivity rules that govern federal habeas review on the merits—which include *Teague*—are quite separate from the relitigation bar imposed by AEDPA; neither abrogates or qualifies the other. If § 2254(d)(1) was, indeed, pegged to *Teague*, it would authorize relief when a state-court merits adjudication "resulted in a decision that *became* contrary to, or an unreasonable application of, clearly established Federal law, *before the conviction became final*." The statute says no such thing, and we see no reason why *Teague* should alter AEDPA's plain meaning.*

Greene alternatively contends that the relevant "decision" to which the "clearly established Federal law" criterion must be applied is the decision of the state supreme court that disposes of a direct appeal from a defendant's conviction or sentence, even when (as here) that decision does not adjudicate the relevant claim on the merits. This is an implausible

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*Whether § 2254(d)(1) would bar a federal habeas petitioner from relying on a decision that came after the last state-court adjudication on the merits, but fell within one of the exceptions recognized in *Teague*, 489 U. S., at 311 (plurality opinion), is a question we need not address to resolve this case.

reading of § 2254(d)(1). The text, we repeat, provides that habeas relief

> "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 . . . ." (Emphasis added.)

The words "the adjudication" in the "unless" clause obviously refer back to the "adjudicat[ion] on the merits," and the phrase "resulted in a decision" in the "unless" clause obviously refers to the decision produced *by that same adjudication on the merits*. A later affirmance of that decision on alternative procedural grounds, for example, would not be a decision *resulting from* the merits adjudication. And much less would be (what is at issue here) a decision by the state supreme court not to hear the appeal—that is, not to decide at all.

III

The Third Circuit held, and the parties do not dispute, that the last state-court adjudication on the merits of Greene's Confrontation Clause claim occurred on direct appeal to the Pennsylvania Superior Court. 606 F. 3d, at 92, and n. 1. The Pennsylvania Superior Court's decision predated our decision in *Gray* by nearly three months. The Third Circuit thus correctly held that *Gray* was not "clearly established Federal law" against which it could measure the Pennsylvania Superior Court's decision. 606 F. 3d, at 99. The panel then concluded (and the parties do not dispute) that the Pennsylvania Superior Court's decision neither was "contrary to," nor "involved an unreasonable application of," any "clearly established Federal law" that existed at the time. *Id.*, at 106. Consequently, § 2254(d)(1) bars the federal courts from granting Greene's application for a writ of habeas corpus.

We must observe that Greene's predicament is an unusual one of his own creation. Before applying for federal habeas, he missed two opportunities to obtain relief under *Gray:* After the Pennsylvania Supreme Court dismissed his appeal, he did not file a petition for writ of certiorari from this Court, which would almost certainly have produced a remand in light of the intervening *Gray* decision. "Where intervening developments . . . reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome of the litigation, [an order granting the petition, vacating the judgment below, and remanding the case (GVR)] is, we believe, potentially appropriate." *Lawrence* v. *Chater*, 516 U. S. 163, 167 (1996) *(per curiam)*. See, *e. g.*, *Stanbridge* v. *New York*, 395 U. S. 709 (1969) *(per curiam)* (GVR in light of *Bruton*). Nor did Greene assert his *Gray* claim in a petition for state postconviction relief. Having forgone two obvious means of asserting his claim, Greene asks us to provide him relief by interpreting AEDPA in a manner contrary to both its text and our precedents. We decline to do so, and affirm the judgment of the Court of Appeals.

It is so ordered.

Syllabus

JUDULANG *v.* HOLDER, ATTORNEY GENERAL

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

No. 10–694. Argued October 12, 2011—Decided December 12, 2011

Federal immigration law governs both the exclusion of aliens from admission to this country and the deportation of aliens previously admitted. Before 1996, these two kinds of actions occurred in different procedural settings; since then, the Government has employed a unified "removal proceeding" for exclusions and deportations alike. But the immigration laws have always provided separate lists of substantive grounds for the two actions. One list specifies what crimes render an alien excludable, see 8 U. S. C. § 1182(a), while another—sometimes overlapping and sometimes divergent—list specifies what crimes render an alien deportable, see § 1227(a).

Until repealed in 1996, § 212(c) of the Immigration and Nationality Act permitted the Attorney General to grant discretionary relief to an excludable alien, if the alien had lawfully resided in the United States for at least seven years before temporarily leaving the country and if the alien was not excludable on one of two specified grounds. By its terms, § 212(c) applied only in exclusion proceedings, but the Board of Immigration Appeals (BIA) extended it decades ago to deportation proceedings as well. Although Congress substituted a narrower discretionary remedy for § 212(c) in 1996, see § 1229b, § 212(c)'s broader relief remains available to an alien whose removal is based on a guilty plea entered before § 212(c)'s repeal, *INS* v. *St. Cyr*, 533 U. S. 289, 326.

In deciding whether to exclude such an alien, the BIA first checks the statutory ground identified by the Department of Homeland Security (DHS) as the basis for exclusion. Unless that ground is one of the two falling outside § 212(c)'s scope, the alien is eligible for discretionary relief. The BIA then determines whether to grant relief based on such factors as the seriousness of the offense.

This case concerns the BIA's method for applying § 212(c) in the deportation context. The BIA's approach, known as the "comparable-grounds" rule, evaluates whether the charged deportation ground has a close analogue in the statute's list of exclusion grounds. If the deportation ground consists of a set of crimes "substantially equivalent" to the set making up an exclusion ground, the alien can seek § 212(c) relief. But if the deportation ground covers different or more or fewer offenses than any exclusion ground, the alien is ineligible for relief, even if the alien's particular offense falls within an exclusion ground.

Syllabus

Petitioner Judulang, who has lived continuously in the United States as a lawful permanent resident since 1974, pleaded guilty to voluntary manslaughter in 1988. After he pleaded guilty to another crime in 2005, DHS commenced a deportation action, charging him with having committed an "aggravated felony" involving "a crime of violence" based on his manslaughter conviction. The Immigration Judge ordered Judulang's deportation, and the BIA affirmed, finding Judulang ineligible for § 212(c) relief because the "crime of violence" deportation ground is not comparable to any exclusion ground. The Ninth Circuit, having previously upheld the BIA's comparable-grounds rule, denied Judulang's petition for review.

Held: The BIA's policy for applying § 212(c) in deportation cases is "arbitrary and capricious" under the Administrative Procedure Act (APA), 5 U. S. C. § 706(2)(A). Pp. 52–64.

(a) While agencies have expertise and experience in administering their statutes that no court may properly ignore, courts retain a narrow but important role in ensuring that agencies have engaged in reasoned decisionmaking. Thus, in reviewing the BIA's action, this Court must assess, among other matters, "whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 43. That task involves examining the reasons for agency decisions, or the absence of such reasons.

The comparable-grounds approach cannot survive scrutiny under this standard. By hinging a deportable alien's eligibility for discretionary relief on the chance correspondence between statutory categories—a matter irrelevant to the alien's fitness to reside in this country—the BIA has failed to exercise its discretion in a reasoned manner. Pp. 52–53.

(b) Even if the BIA has legitimate reasons for limiting § 212(c)'s scope in deportation cases, it must do so in some rational way. In other words, the BIA must use an approach that is tied to the purposes of the immigration laws or the appropriate operation of the immigration system. The comparable-grounds rule has no connection to these factors. Instead, it makes § 212(c) eligibility turn on an irrelevant comparison between statutory provisions. Whether the set of offenses in a particular deportation ground lines up with the set in an exclusion ground has nothing to do with whether a deportable alien whose prior conviction falls within both grounds merits the ability to stay in this country. Here, Judulang was found ineligible for § 212(c) relief because the "crime of violence" deportation ground includes a few offenses—simple assault, minor burglary, and unauthorized use of a vehicle—not found in the similar moral turpitude exclusion ground. But the inclusion of simple

assaults and minor burglaries in the deportation ground is irrelevant to the merits of Judulang's case.

The BIA's approach has other odd features. In applying the comparable-grounds rule, the BIA has denied relief to aliens whose deportation ground fits entirely within a much broader exclusion ground. Yet providing relief in exclusion cases to a broad class of aliens hardly justifies denying relief in deportation cases to a subset of that group. In addition, the outcome of the comparable-grounds analysis may itself rest on an arbitrary decision. An alien's prior conviction could fall within a number of deportation grounds, only one of which corresponds to an exclusion ground. In such cases, an alien's eligibility for relief would hinge on an individual official's decision as to which deportation ground to charge. An alien appearing before one official may suffer deportation, while an identically situated alien appearing before another may gain the right to stay in this country.

In short, the comparable-grounds approach does not rest on any factors relevant to whether an alien should be deported. Instead, it turns deportation decisions into a "sport of chance." *Rosenberg* v. *Fleuti*, 374 U. S. 449, 455. That is what the APA's "arbitrary and capricious" standard is designed to prevent. Pp. 53–59.

(c) The Government's arguments in defense of the comparable-grounds rule are not persuasive. First, § 212(c)'s text does not support the rule. That section cannot provide a textual anchor for any method of providing discretionary relief in deportation cases because it addresses only exclusion. Second, the history of the comparable-grounds rule does not work in the Government's favor. The BIA repeatedly vacillated in its method for applying § 212(c) to deportable aliens, settling on the current rule only in 2005. Third, the Government's claim that the comparable-grounds rule saves time and money falls short. Cost may be an important factor for agencies to consider in many contexts, but cheapness alone cannot save an arbitrary agency policy. In any event, it is unclear that the comparable-grounds rule saves money when compared with alternative approaches. Pp. 59–64.

249 Fed. Appx. 499, reversed and remanded.

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

Mark C. Fleming argued the cause for petitioner. With him on the briefs were *Megan Barbero*, *Seth P. Waxman*, *Paul R. Q. Wolfson*, *James L. Quarles III*, and *Eric F. Citron*.

Curtis E. Gannon argued the cause for respondent. With him on the brief were *Solicitor General Verrilli*, *Assistant Attorney General West*, *Deputy Solicitor General Kneedler*, *Donald E. Keener*, *Alison R. Drucker*, and *Andrew MacLachlan.**

JUSTICE KAGAN delivered the opinion of the Court.

This case concerns the Board of Immigration Appeals' (BIA or Board) policy for deciding when resident aliens may apply to the Attorney General for relief from deportation under a now-repealed provision of the immigration laws. We hold that the BIA's approach is arbitrary and capricious.

The legal background of this case is complex, but the principle guiding our decision is anything but. When an administrative agency sets policy, it must provide a reasoned explanation for its action. That is not a high bar, but it is an unwavering one. Here, the BIA has failed to meet it.

I

A

Federal immigration law governs both the exclusion of aliens from admission to this country and the deportation of aliens previously admitted. Before 1996, these two kinds of action occurred in different procedural settings, with an alien seeking entry (whether for the first time or upon return from a trip abroad) placed in an "exclusion proceeding" and an alien already here channeled to a "deportation proceeding." See *Landon* v. *Plasencia*, 459 U. S. 21, 25–26 (1982)

*Briefs of *amici curiae* urging reversal were filed for the Catholic Legal Immigration Network, Inc., et al. by *Ira J. Kurzban;* for Former Immigration Officials by *Kannon K. Shanmugam;* for the National Association of Criminal Defense Lawyers et al. by *Iris E. Bennett*, *Matthew S. Hellman*, *Joshua L. Dratel*, and *Edwin A. Burnette;* for the National Immigrant Justice Center et al. by *Brian J. Murray*, *Charles Roth*, and *Matthew L. Guadagno;* and for 39 Immigration Law Professors by *Matthew D. McGill*.

(comparing the two). Since that time, the Government has used a unified procedure, known as a "removal proceeding," for exclusions and deportations alike. See 8 U. S. C. §§ 1229, 1229a. But the statutory bases for excluding and deporting aliens have always varied. Now, as before, the immigration laws provide two separate lists of substantive grounds, principally involving criminal offenses, for these two actions. One list specifies what kinds of crime render an alien excludable (or in the term the statute now uses, "inadmissible"), see § 1182(a) (2006 ed., Supp. IV), while another—sometimes overlapping and sometimes divergent—list specifies what kinds of crime render an alien deportable from the country, see § 1227(a).

An additional, historic difference between exclusion and deportation cases involved the ability of the Attorney General to grant an alien discretionary relief. Until repealed in 1996, § 212(c) of the Immigration and Nationality Act, 66 Stat. 187, 8 U. S. C. § 1182(c) (1994 ed.), authorized the Attorney General to admit certain excludable aliens. See also § 136(p) (1926 ed.) (predecessor provision to § 212(c)). The Attorney General could order this relief when the alien had lawfully resided in the United States for at least seven years before temporarily leaving the country, unless the alien was excludable on one of two specified grounds. See § 1182(c) (1994 ed.).[1] But by its terms, § 212(c) did not apply when an alien was being deported.

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[1] The relevant part of § 212(c), in the version of the exclusion statute all parties use, reads as follows:

"Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General without regard to the provisions of subsection (a) of this section (other than paragraphs (3) and (9)(C))." 8 U. S. C. § 1182(c) (1994 ed.).

The parenthetical clause of this section prevented the Attorney General from waiving exclusion for aliens who posed a threat to national security, § 1182(a)(3), and aliens who engaged in international child abduction, § 1182(a)(9)(C).

This discrepancy threatened to produce an odd result in a case called *Matter of L-*, 1 I. & N. Dec. 1 (1940), leading to the first-ever grant of discretionary relief in a deportation case. L- was a permanent resident of the United States who had been convicted of larceny. Although L-'s crime made him inadmissible, he traveled abroad and then returned to the United States without any immigration official's preventing his entry. A few months later, the Government caught up with L- and initiated a deportation action based on his larceny conviction. Had the Government apprehended L- at the border a short while earlier, he would have been placed in an exclusion proceeding where he could have applied for discretionary relief. But because L- was instead in a deportation proceeding, no such relief was available. Responding to this apparent anomaly, Attorney General Robert Jackson (on referral of the case from the BIA) determined that L- could receive a waiver: L-, Jackson said, "should be permitted to make the same appeal to discretion that he could have made if denied admission" when returning from his recent trip. *Id.*, at 6. In accord with this decision, the BIA adopted a policy of allowing aliens in deportation proceedings to apply for discretionary relief under § 212(c) whenever they had left and reentered the country after becoming deportable. See *Matter of S-*, 6 I. & N. Dec. 392, 394–396 (1954).

But this approach created another peculiar asymmetry: Deportable aliens who had traveled abroad and returned could receive § 212(c) relief, while those who had never left could not. In *Francis* v. *INS*, 532 F. 2d 268 (1976), the Court of Appeals for the Second Circuit concluded that this disparity violated equal protection. *Id.*, at 273 ("[A]n alien whose ties with this country are so strong that he has never departed after his initial entry should receive at least as much consideration as an individual who may leave and return from time to time"). The BIA acquiesced in the Second Circuit's decision, see *Matter of Silva*, 16 I. & N. Dec. 26 (1976), thus applying § 212(c) in deportation proceedings regardless of an alien's travel history.

All this might have become academic when Congress repealed § 212(c) in 1996 and substituted a new discretionary remedy, known as "cancellation of removal," which is available in a narrow range of circumstances to excludable and deportable aliens alike. See 8 U. S. C. § 1229b. But in *INS* v. *St. Cyr*, 533 U. S. 289, 326 (2001), this Court concluded that the broader relief afforded by § 212(c) must remain available, on the same terms as before, to an alien whose removal is based on a guilty plea entered before § 212(c)'s repeal. We reasoned that aliens had agreed to those pleas with the possibility of discretionary relief in mind and that eliminating this prospect would ill comport with "'familiar considerations of fair notice, reasonable reliance, and settled expectations.'" *Id.*, at 323 (quoting *Landgraf* v. *USI Film Products*, 511 U. S. 244, 270 (1994)). Accordingly, § 212(c) has had an afterlife for resident aliens with old criminal convictions.

When the BIA is deciding whether to *exclude* such an alien, applying § 212(c) is an easy matter. The Board first checks the statutory ground that the Department of Homeland Security (DHS) has identified as the basis for exclusion; the Board may note, for example, that DHS has charged the alien with previously committing a "crime involving moral turpitude," see 8 U. S. C. § 1182(a)(2)(A)(i)(I). Unless the charged ground is one of the pair falling outside § 212(c)'s scope, see n. 1, *supra*, the alien is eligible for discretionary relief. The Board then determines whether to grant that relief based on such factors as "the seriousness of the offense, evidence of either rehabilitation or recidivism, the duration of the alien's residence, the impact of deportation on the family, the number of citizens in the family, and the character of any service in the Armed Forces." *St. Cyr*, 533 U. S., at 296, n. 5.

By contrast, when the BIA is deciding whether to *deport* an alien, applying § 212(c) becomes a tricky business. Recall

that § 212(c) applies on its face only to exclusion decisions. So the question arises: How is the BIA to determine when an alien should receive § 212(c) relief in the deportation context?

One approach that the BIA formerly used considered how the alien would fare in an exclusion proceeding. To perform this analysis, the Board would first determine whether the criminal conviction making the alien deportable fell within a statutory ground for exclusion. Almost all convictions did so, largely because the "crime involving moral turpitude" ground encompasses so many offenses.[2] Assuming that threshold inquiry were met, the Board would mimic its approach in exclusion cases—first making sure the statutory ground at issue was not excepted from § 212(c) and then conducting the multi-factor analysis. See *Matter of Tanori*, 15 I. & N. Dec. 566, 567–568 (1976); *In re Manzueta*, No. A93 022 672, 2003 WL 23269892 (BIA, Dec. 1, 2003).

A second approach is the one challenged here; definitively adopted in 2005 (after decades of occasional use), it often is called the "comparable-grounds" rule. See, *e. g.*, *De la Rosa* v. *U. S. Attorney General*, 579 F. 3d 1327, 1332 (CA11 2009). That approach evaluates whether the ground for deportation charged in a case has a close analogue in the statute's list of exclusion grounds. See *In re Blake*, 23 I. & N. Dec. 722, 728 (2005); *In re Brieva-Perez*, 23 I. & N. Dec. 766, 772–773 (2005).[3] If the deportation ground consists of a set of crimes "substantially equivalent" to the set of offenses making up an exclusion ground, then the alien can seek § 212(c) relief. *Blake*, 23 I. & N. Dec., at 728. But if the deportation ground

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[2] Firearms offenses are the most significant crimes falling outside the statutory grounds for exclusion. See *Matter of Hernandez-Casillas*, 20 I. & N. Dec. 262, 282, n. 4 (1990).

[3] *Blake* and *Brieva-Perez* clarified a 2004 regulation issued by the BIA stating that an alien is ineligible for § 212(c) relief when deportable "on a ground which does not have a statutory counterpart in section 212." 8 CFR § 1212.3(f)(5) (2010).

charged covers significantly different or more or fewer offenses than any exclusion ground, the alien is not eligible for a waiver. Such a divergence makes § 212(c) inapplicable even if the particular offense committed by the alien falls within an exclusion ground.

Two contrasting examples from the BIA's cases may help to illustrate this approach. Take first an alien convicted of conspiring to distribute cocaine, whom DHS seeks to deport on the ground that he has committed an "aggravated felony" involving "illicit trafficking in a controlled substance." 8 U. S. C. §§ 1101(a)(43)(B), 1227(a)(2)(A)(iii). Under the comparable-grounds rule, the immigration judge would look to see if that deportation ground covers substantially the same offenses as an exclusion ground. And according to the BIA in *Matter of Meza*, 20 I. & N. Dec. 257 (1991), the judge would find an adequate match—the exclusion ground applicable to aliens who have committed offenses "relating to a controlled substance," 8 U. S. C. §§ 1182(a)(2)(A)(i)(II) and (a)(2)(C).

Now consider an alien convicted of first-degree sexual abuse of a child, whom DHS wishes to deport on the ground that he has committed an "aggravated felony" involving "sexual abuse of a minor." §§ 1101(a)(43)(A), 1227(a)(2)(A)(iii). May this alien seek § 212(c) relief? According to the BIA, he may not do so—not because his crime is too serious (that is irrelevant to the analysis), but instead because no statutory ground of exclusion covers substantially the same offenses. To be sure, the alien's own offense is a "crime involving moral turpitude," 8 U. S. C. § 1182(a)(2)(A)(i)(I), and so fits within an exclusion ground. Indeed, that will be true of most or all offenses included in this deportation category. See *supra*, at 49. But on the BIA's view, the "moral turpitude" exclusion ground "addresses a distinctly different and much broader category of offenses than the aggravated felony sexual abuse of a minor charge." *Blake*, 23 I. & N. Dec., at 728. And the much greater sweep

of the exclusion ground prevents the alien from seeking discretionary relief from deportation.[4]

Those mathematically inclined might think of the comparable-grounds approach as employing Venn diagrams. Within one circle are all the criminal offenses composing the particular ground of deportation charged. Within other circles are the offenses composing the various exclusion grounds. When, but only when, the "deportation circle" sufficiently corresponds to one of the "exclusion circles" may an alien apply for § 212(c) relief.

B

Petitioner Joel Judulang is a native of the Philippines who entered the United States in 1974 at the age of eight. Since that time, he has lived continuously in this country as a lawful permanent resident. In 1988, Judulang took part in a fight in which another person shot and killed someone. Judulang was charged as an accessory and eventually pleaded guilty to voluntary manslaughter. He received a 6-year suspended sentence and was released on probation immediately after his plea.

In 2005, after Judulang pleaded guilty to another criminal offense (this one involving theft), DHS commenced an action to deport him. DHS charged Judulang with having committed an "aggravated felony" involving "a crime of violence," based on his old manslaughter conviction. 8 U. S. C. §§ 1101(a)(43)(F), 1227(a)(2)(A)(iii).[5] The Immigration Judge

[4] Careful readers may note that the example involving controlled substances offered in the last paragraph also involves an exclusion ground that sweeps more broadly than the deportation ground charged. The deportation ground requires "trafficking" in a controlled substance, whereas the exclusion ground includes all possession offenses as well. The BIA nonetheless held in *Meza* that the degree of overlap between the two grounds was sufficient to make the alien eligible for § 212(c) relief. That holding reveals the broad discretion that the BIA currently exercises in deciding when two statutory grounds are comparable *enough*.

[5] DHS also charged two other grounds for deportation, but the BIA did not rule on those grounds and they are not before us.

ordered Judulang's deportation, and the BIA affirmed. As part of its decision, the BIA considered whether Judulang could apply for § 212(c) relief. It held that he could not do so because the "crime of violence" deportation ground is not comparable to any exclusion ground, including the one for crimes involving moral turpitude. App. to Pet. for Cert. 8a. The Court of Appeals for the Ninth Circuit denied Judulang's petition for review in reliance on circuit precedent upholding the BIA's comparable-grounds approach. *Judulang* v. *Gonzales*, 249 Fed. Appx. 499, 502 (2007) (citing *Abebe* v. *Gonzales*, 493 F. 3d 1092 (2007)).

We granted certiorari, 563 U. S. 935 (2011), to resolve a circuit split on the approach's validity.[6] We now reverse.

II

This case requires us to decide whether the BIA's policy for applying § 212(c) in deportation cases is "arbitrary [or] capricious" under the Administrative Procedure Act (APA), 5 U. S. C. § 706(2)(A).[7] The scope of our review under this

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[6] Compare *Blake* v. *Carbone*, 489 F. 3d 88, 103 (CA2 2007) (rejecting the BIA's approach and holding instead that "[i]f the offense that renders [an alien] deportable would render a similarly situated [alien] excludable, the deportable [alien] is eligible for a waiver of deportation"), with *Koussan* v. *Holder*, 556 F. 3d 403, 412–414 (CA6 2009) (upholding the comparable-grounds policy); *Caroleo* v. *Gonzales*, 476 F. 3d 158, 162–163, 168 (CA3 2007) (same); *Kim* v. *Gonzales*, 468 F. 3d 58, 62–63 (CA1 2006) (same).

[7] The Government urges us instead to analyze this case under the second step of the test we announced in *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), to govern judicial review of an agency's statutory interpretations. See Brief for Respondent 19. Were we to do so, our analysis would be the same, because under *Chevron* step two, we ask whether an agency interpretation is "'arbitrary or capricious in substance.'" *Mayo Foundation for Medical Ed. and Research* v. *United States*, 562 U. S. 44, 53 (2011) (quoting *Household Credit Services, Inc.* v. *Pfennig*, 541 U. S. 232, 242 (2004)). But we think the more apt analytic framework in this case is standard "arbitrary [or] capricious" review under the APA. The BIA's comparable-grounds policy, as articulated in *In re Blake*, 23 I. & N. Dec. 722 (2005), and *In re Brieva-*

standard is "narrow"; as we have often recognized, "a court is not to substitute its judgment for that of the agency." *Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 43 (1983); see *Citizens to Preserve Overton Park, Inc.* v. *Volpe*, 401 U. S. 402, 416 (1971). Agencies, the BIA among them, have expertise and experience in administering their statutes that no court can properly ignore. But courts retain a role, and an important one, in ensuring that agencies have engaged in reasoned decisionmaking. When reviewing an agency action, we must assess, among other matters, "'whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.'" *State Farm*, 463 U. S., at 43 (quoting *Bowman Transp., Inc.* v. *Arkansas-Best Freight System, Inc.*, 419 U. S. 281, 285 (1974)). That task involves examining the reasons for agency decisions—or, as the case may be, the absence of such reasons. See *FCC* v. *Fox Television Stations, Inc.*, 556 U. S. 502, 515 (2009) (noting "the requirement that an agency provide reasoned explanation for its action").

The BIA has flunked that test here. By hinging a deportable alien's eligibility for discretionary relief on the chance correspondence between statutory categories—a matter irrelevant to the alien's fitness to reside in this country—the BIA has failed to exercise its discretion in a reasoned manner.

A

The parties here spend much time disputing whether the BIA must make discretionary relief available to deportable and excludable aliens on identical terms. As this case illustrates, the comparable-grounds approach does not do so. If Judulang were seeking entry to this country, he would be

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Perez, 23 I. & N. Dec. 766 (2005), is not an interpretation of any statutory language—nor could it be, given that § 212(c) does not mention deportation cases, see *infra*, at 60–61, and n. 11.

eligible for § 212(c) relief; voluntary manslaughter is "a crime involving moral turpitude," and so his conviction falls within an exclusion ground. But Judulang cannot apply for relief from deportation because the "crime of violence" ground charged in his case does not match any exclusion ground (including the one for "turpitudinous" crimes). See *infra*, at 57. Judulang argues that this disparity is impermissible because *any* disparity between excludable and deportable aliens is impermissible: If an alien may seek § 212(c) relief in an exclusion case, he also must be able to seek such relief in a deportation case. See Brief for Petitioner 47–51.[8] But the Government notes that the immigration laws have always drawn distinctions between exclusion and deportation. See Brief for Respondent 51. And the Government presses a policy reason for making § 212(c) relief more readily available in exclusion cases. Doing so, it argues, will provide an incentive for some resident aliens (*i. e.*, those eligible for a waiver from exclusion, but not deportation) to report themselves to immigration officials, by applying for advance permission to exit and reenter the country. In contrast, applying § 212(c) uniformly might lead all aliens to "try to

[8] Judulang also argues that the BIA is making an impermissible distinction between two groups of deportable aliens—those who have recently left and returned to the country and those who have not. According to Judulang, the BIA is treating the former as if they were seeking admission, while applying the "comparable grounds" approach only to the latter. See Reply Brief for Petitioner 16–18. That is the kind of distinction the Second Circuit held in *Francis* v. *INS*, 532 F. 2d 268 (1976), violated equal protection. See *supra*, at 47. But the Government contends that it is drawing no such line—that it is applying the comparable-grounds policy to all deportable aliens. Brief for Respondent 29. We think the available evidence tends to support the Government's representation. See *In re Meza-Castillo*, No. A091 366 529, 2009 WL 455596 (BIA, Feb. 9, 2009) (applying comparable-grounds analysis to a deportable alien who had left and returned to the country); *In re Valenzuela-Morales*, No. A40 443 512, 2008 WL 2079382 (BIA, Apr. 23, 2008) (same). But in light of our holding that the comparable-grounds approach is arbitrary and capricious, we need not resolve this dispute about the BIA's practice.

evade immigration officials for as long as possible," because they could in any event "seek [discretionary] relief if caught." *Id.*, at 52.

In the end, we think this dispute beside the point, and we do not resolve it. The BIA may well have legitimate reasons for limiting § 212(c)'s scope in deportation cases. But still, it must do so in some rational way. If the BIA proposed to narrow the class of deportable aliens eligible to seek § 212(c) relief by flipping a coin—heads an alien may apply for relief, tails he may not—we would reverse the policy in an instant. That is because agency action must be based on non-arbitrary, "'relevant factors,'" *State Farm*, 463 U. S., at 43 (quoting *Bowman Transp.*, 419 U. S., at 285), which here means that the BIA's approach must be tied, even if loosely, to the purposes of the immigration laws or the appropriate operation of the immigration system. A method for disfavoring deportable aliens that bears no relation to these matters—that neither focuses on nor relates to an alien's fitness to remain in the country—is arbitrary and capricious. And that is true regardless whether the BIA might have acted to limit the class of deportable aliens eligible for § 212(c) relief on other, more rational bases.

The problem with the comparable-grounds policy is that it does not impose such a reasonable limitation. Rather than considering factors that might be thought germane to the deportation decision, that policy hinges § 212(c) eligibility on an irrelevant comparison between statutory provisions. Recall that the BIA asks whether the set of offenses in a particular deportation ground lines up with the set in an exclusion ground. But so what if it does? Does an alien charged with a particular deportation ground become more worthy of relief because that ground happens to match up with another? Or less worthy of relief because the ground does not? The comparison in no way changes the alien's prior offense or his other attributes and circumstances. So it is difficult to see why that comparison should matter. Each

of these statutory grounds contains a slew of offenses. Whether each contains the same slew has nothing to do with whether a deportable alien whose prior conviction falls within both grounds merits the ability to seek a waiver.[9]

This case well illustrates the point. In commencing Judulang's deportation proceeding, the Government charged him with an "aggravated felony" involving a "crime of violence" based on his prior manslaughter conviction. See App. to Pet. for Cert. 11a–12a. That made him ineligible for § 212(c) relief because the "crime of violence" deportation ground does not sufficiently overlap with the most similar exclusion ground, for "crime[s] involving moral turpitude." The problem, according to the BIA, is that the "crime of violence" ground includes a few offenses—simple assault, minor burglary, and unauthorized use of a vehicle—that the "moral turpitude" ground does not. See *Brieva-Perez*, 23 I. & N. Dec., at 772–773; Tr. of Oral Arg. 28–29, 40–41. But this statutory difference in no way relates to Judulang—or to most other aliens charged with committing a "crime of violence." Perhaps aliens like Judulang should be eligible for § 212(c) relief, or perhaps they should not. But that determination is not sensibly made by establishing that simple assaults and minor burglaries fall outside a ground for exclusion. That fact is as extraneous to the merits of the case as a coin flip would be. It makes Judulang no less deserving of the opportunity to seek discretionary relief—just as its converse (the inclusion of simple assaults and burglaries in the "moral turpitude" exclusion ground) would make him no more so.

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[9] The case would be different if Congress had intended for § 212(c) relief to depend on the interaction of exclusion grounds and deportation grounds. But the Government has presented us with no evidence to this effect, nor have we found any. See *Blake*, 489 F. 3d, at 102 (Congress never contemplated, in drafting the immigration laws, "that its grounds of deportation would have any connection with the grounds of exclusion" in the application of § 212(c)); see also *infra*, at 60–61.

Or consider a different headscratching oddity of the comparable-grounds approach—that it may deny § 212(c) eligibility to aliens whose deportation ground fits entirely inside an exclusion ground. The BIA's *Blake* decision, noted earlier, provides an example. See *supra*, at 50. The deportation ground charged was "aggravated felony" involving "sexual abuse of a minor"; the closest exclusion ground was, once again, a "crime [of] moral turpitude." 23 I. & N. Dec., at 727. Here, the BIA's problem was not that the deportation ground covered too many offenses; all or virtually all the crimes within that ground also are crimes of moral turpitude. Rather, the BIA objected that the deportation ground covered too few crimes—or put oppositely, that "the moral turpitude ground of exclusion addresses a . . . much broader category of offenses." *Id.*, at 728. But *providing* relief in exclusion cases to a broad class of aliens hardly justifies *denying* relief in deportation cases to a subset of that group.[10] (The better argument would surely be the reverse—that giving relief in the one context supports doing so in the other.) Again, we do not say today that the BIA must give all deportable aliens meeting § 212(c)'s requirements the chance to apply for a waiver. See *supra*, at 55–56. The point is instead that the BIA cannot make that opportunity turn on the meaningless matching of statutory grounds.

And underneath this layer of arbitrariness lies yet another, because the outcome of the Board's comparable-grounds analysis itself may rest on the happenstance of an immigration official's charging decision. This problem arises because an alien's prior conviction may fall within a number of deportation grounds, only one of which corresponds to an exclusion ground. Consider, for example, an alien who entered the country in 1984 and committed volun-

[10] Perhaps that is why the BIA declined to apply similar reasoning in *Meza*—a case also involving an exclusion ground that sweeps more broadly than a deportation ground (although not to the same extent as in *Blake*). See *supra*, at 50.

tary manslaughter in 1988. That person could be charged (as Judulang was) with an "aggravated felony" involving a "crime of violence," see 8 U. S. C. §§ 1101(a)(43)(F), 1227(a)(2)(A)(iii). If so, the alien could not seek a waiver because of the absence of a comparable exclusion ground. But the alien also could be charged with "a crime involving moral turpitude committed within five years . . . after the date of admission," see § 1227(a)(2)(A)(i)(I). And if that were the deportation charge, the alien *could* apply for relief, because the ground corresponds to the "moral turpitude" ground used in exclusion cases. See *In re Salmon*, 16 I. & N. Dec. 734 (1978). So everything hangs on the charge. And the Government has provided no reason to think that immigration officials must adhere to any set scheme in deciding what charges to bring, or that those officials are exercising their charging discretion with § 212(c) in mind. See Tr. of Oral Arg. 34–36. So at base everything hangs on the fortuity of an individual official's decision. An alien appearing before one official may suffer deportation; an identically situated alien appearing before another may gain the right to stay in this country.

In a foundational deportation case, this Court recognized the high stakes for an alien who has long resided in this country, and reversed an agency decision that would "make his right to remain here dependent on circumstances so fortuitous and capricious." *Delgadillo* v. *Carmichael*, 332 U. S. 388, 391 (1947). We think the policy before us similarly flawed. The comparable-grounds approach does not rest on any factors relevant to whether an alien (or any group of aliens) should be deported. It instead distinguishes among aliens—decides who should be eligible for discretionary relief and who should not—solely by comparing the metes and bounds of diverse statutory categories into which an alien falls. The resulting Venn diagrams have no connection to the goals of the deportation process or the rational operation of the immigration laws. Judge Learned Hand wrote in

another early immigration case that deportation decisions cannot be made a "sport of chance." See *Di Pasquale* v. *Karnuth*, 158 F. 2d 878, 879 (CA2 1947) (quoted in *Rosenberg* v. *Fleuti*, 374 U. S. 449, 455 (1963)). That is what the comparable-grounds rule brings about, and that is what the APA's "arbitrary and capricious" standard is designed to thwart.

B

The Government makes three arguments in defense of the comparable-grounds rule—the first based on statutory text, the next on history, the last on cost. We find none of them persuasive.

1

The Government initially contends that the comparable-grounds approach is more faithful to "the statute's language," Brief for Respondent 21—or otherwise said, that "lifting that limit 'would take immigration practice even further from the statutory text,'" *id.*, at 22 (quoting *Matter of Hernandez-Casillas*, 20 I. & N. Dec. 262, 287 (1990)). In the Government's view, § 212(c) is "phrased in terms of waiving statutorily specified grounds of exclusion"; that phrasing, says the Government, counsels a comparative analysis of grounds when applying § 212(c) in the deportation context. Brief for Respondent 21; see Tr. of Oral Arg. 34 ("[T]he reason [the comparable-grounds approach] makes sense is because the statute only provides for relief from grounds of . . . exclusion").

The first difficulty with this argument is that it is based on an inaccurate description of the statute. Section 212(c) instructs that certain resident aliens "may be admitted in the discretion of the Attorney General" notwithstanding any of "the provisions of subsection (a) . . . (other than paragraphs (3) and (9)(C))." 8 U. S. C. § 1182(c) (1994 ed.). Subsection (a) contains the full list of exclusion grounds; paragraphs (3) and (9)(C) (which deal with national security

and international child abduction) are two among these. What § 212(c) actually says, then, is that the Attorney General may admit any excludable alien, except if the alien is charged with two specified grounds. And that means that once the Attorney General determines that the alien is *not* being excluded for those two reasons, the ground of exclusion no longer matters. At that point, the alien is eligible for relief, and the thing the Attorney General waives is not a particular exclusion ground, but the simple denial of entry. So the premise of the Government's argument is wrong. And if the premise, so too the conclusion—that is, because § 212(c)'s text is *not* "phrased in terms of waiving statutorily specified grounds of exclusion," Brief for Respondent 21, it cannot counsel a search for corresponding grounds of deportation.

More fundamentally, the comparable-grounds approach would not follow from § 212(c) even were the Government right about the section's phrasing. That is because § 212(c) simply has nothing to do with deportation: The provision was not meant to interact with the statutory grounds for deportation, any more than those grounds were designed to interact with the provision. Rather, § 212(c) refers solely to exclusion decisions; its extension to deportation cases arose from the agency's extra-textual view that some similar relief should be available in that context to avoid unreasonable distinctions. Cf., *e. g., Matter of L-*, 1 I. & N. Dec., at 5; see also *supra*, at 47.[11] Accordingly, the text of § 212(c), whether or

[11] Congress amended § 212(c), just five months before repealing it, to include a first-time reference to deportation cases. That amendment prohibited the Attorney General from granting discretionary relief to aliens deportable on several specified grounds. See Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1277 (effective Apr. 24, 1996). The change does not affect our analysis, nor does the Government argue it should. As the Government notes, the amendment "did not speak to the viability of the Board's" comparable-grounds rule, but instead made categorically ineligible for § 212(c) relief "those deportable by reason of certain crimes." Brief for Respondent 20. Presumably, Congress thought those crimes particularly incompatible with an alien's continued residence in this country.

not phrased in terms of "waiving grounds of exclusion," cannot support the BIA's use of the comparable-grounds rule—or, for that matter, any other method for extending discretionary relief to deportation cases. We well understand the difficulties of operating in such a text-free zone; indeed, we appreciate the Government's yearning for a textual anchor. But § 212(c), no matter how many times read or parsed, does not provide one.

2

In disputing Judulang's contentions, the Government also emphasizes the comparable-grounds rule's vintage. See Brief for Respondent 22–23, 30–43. As an initial matter, we think this a slender reed to support a significant government policy. Arbitrary agency action becomes no less so by simple dint of repetition. (To use a prior analogy, flipping coins to determine § 212(c) eligibility would remain as arbitrary on the thousandth try as on the first.) And longstanding capriciousness receives no special exemption from the APA. In any event, we cannot detect the consistency that the BIA claims has marked its approach to this issue. To the contrary, the BIA has repeatedly vacillated in its method for applying § 212(c) to deportable aliens.

Prior to 1984, the BIA endorsed a variety of approaches. In *Matter of T*, 5 I. & N. Dec. 389, 390 (1953), for example, the BIA held that an alien was not eligible for § 212(c) relief because her "ground of deportation" did not appear in the exclusion statute. That decision anticipated the comparable-grounds approach that the BIA today uses. But in *Tanori*, the BIA pronounced that a deportable alien could apply for a waiver because "the same facts"—in that case, a marijuana conviction—would have allowed him to seek § 212(c) relief in an exclusion proceeding. 15 I. & N. Dec., at 568. That approach is more nearly similar to the one Judulang urges here. And then, in *Matter of Granados*, 16 I. & N. Dec. 726, 728 (1979), the BIA tried to have it both ways: It denied § 212(c) eligibility *both* because the deportation ground charged did not correspond to, *and* because the alien's prior

conviction did not fall within, a waivable ground of exclusion. In short, the BIA's cases were all over the map.

The Government insists that the BIA imposed order in *Matter of Wadud*, 19 I. & N. Dec. 182, 185–186 (1984), when it held that a deportable alien could not seek § 212(c) relief unless the deportation ground charged had an "analogous ground of inadmissibility." See Brief for Respondent 40–41. But the BIA's settlement, if any, was fleeting. Just seven years later, the BIA adopted a new policy entirely, extending § 212(c) eligibility to "aliens deportable under any ground of deportability except those where there is a comparable ground of exclusion which has been specifically excepted from section 212(c)." *Hernandez-Casillas*, 20 I. & N. Dec., at 266. That new rule turned the comparable-grounds approach inside-out, allowing aliens to seek § 212(c) relief in deportation cases except when the ground charged corresponded to an exclusion ground that could *not* be waived. To be sure, the Attorney General (on referral of the case from the BIA), disavowed this position in favor of the more standard version of the comparable-grounds rule. *Id.*, at 287. But even while doing so, the Attorney General stated that "an alien subject to deportation must have the same opportunity to seek discretionary relief as an alien . . . subject to exclusion." *Ibid.* That assertion is exactly the one Judulang makes in this case; it is consonant not with the comparable-grounds rule the BIA here defends, but instead with an inquiry into whether an alien's prior conviction falls within an exclusion ground.

Given these mixed signals, it is perhaps not surprising that the BIA continued to alternate between approaches in the years that followed. Immediately after the Attorney General's opinion in *Hernandez-Casillas*, the BIA endorsed the comparable-grounds approach on several occasions. See *Meza*, 20 I. & N. Dec., at 259; *Matter of Montenegro*, 20 I. & N. Dec. 603, 604–605 (1992); *Matter of Gabryelsky*, 20 I. & N. Dec. 750, 753–754 (1993); *In re Esposito*, 21 I. & N.

Dec. 1, 6–7 (1995); *In re Jimenez-Santillano*, 21 I. & N. Dec. 567, 571–572 (1996). But just a few years later, the BIA issued a series of unpublished opinions that asked only whether a deportable alien's prior conviction fell within an exclusion ground. See, *e. g.*, *In re Manzueta*, No. A93 022 672, 2003 WL 23269892 (Dec. 1, 2003). Not until the BIA's decisions in *Blake* and *Brieva-Perez* did the pendulum stop swinging. That history hardly supports the Government's view of a consistent agency practice.[12]

3

The Government finally argues that the comparable-grounds rule saves time and money. The Government claims that comparing deportation grounds to exclusion grounds can be accomplished in just a few "precedential decision[s]," which then can govern broad swaths of cases. See Brief for Respondent 46. By contrast, the Government argues, Judulang's approach would force it to determine whether each and every crime of conviction falls within an exclusion ground. Further, the Government contends that Judulang's approach would grant eligibility to a greater number of deportable aliens, which in turn would force the Government to make additional individualized assessments of whether to actually grant relief. *Id.*, at 47.

Once again, the Government's rationale comes up short. Cost is an important factor for agencies to consider in many

[12] Because we find the BIA's prior practice so unsettled, we likewise reject Judulang's argument that *Blake* and *Brieva-Perez* were impermissibly retroactive. To succeed on that theory, Judulang would have to show, at a minimum, that in entering his guilty plea, he had reasonably relied on a legal rule from which *Blake* and *Brieva-Perez* departed. See *Landgraf* v. *USI Film Products*, 511 U. S. 244, 270 (1994) (stating that retroactivity analysis focuses on "considerations of fair notice, reasonable reliance, and settled expectations"). The instability of the BIA's prior practice prevents Judulang from making this showing: The BIA sometimes recognized aliens in Judulang's position as eligible for § 212(c) relief, but sometimes did not.

contexts. But cheapness alone cannot save an arbitrary agency policy. (If it could, flipping coins would be a valid way to determine an alien's eligibility for a waiver.) And in any event, we suspect the Government exaggerates the cost savings associated with the comparable-grounds rule. Judulang's proposed approach asks immigration officials only to do what they have done for years in exclusion cases; that means, for one thing, that officials can make use of substantial existing precedent governing whether a crime falls within a ground of exclusion. And Judulang's proposal may not be the only alternative to the comparable-grounds rule. See *supra*, at 55–56. In rejecting that rule, we do not preclude the BIA from trying to devise another, equally economical policy respecting eligibility for § 212(c) relief, so long as it comports with everything held in both this decision and *St. Cyr*.

III

We must reverse an agency policy when we cannot discern a reason for it. That is the trouble in this case. The BIA's comparable-grounds rule is unmoored from the purposes and concerns of the immigration laws. It allows an irrelevant comparison between statutory provisions to govern a matter of the utmost importance—whether lawful resident aliens with longstanding ties to this country may stay here. And contrary to the Government's protestations, it is not supported by text or practice or cost considerations. The BIA's approach therefore cannot pass muster under ordinary principles of administrative law.

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

It is so ordered.

Syllabus

HARDY, WARDEN *v.* CROSS

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

No. 11–74. Decided December 12, 2011

After a mistrial, Illinois decided to retry respondent Cross for several counts of sexual assault, but the victim, who had testified at respondent's first trial despite her extreme fear, could not be located. The State thus sought to introduce the victim's prior testimony and detailed its numerous attempts to locate her. Concluding that the State had exercised due diligence, the trial court allowed the witness' prior testimony to be read to the jury. Respondent was convicted on several counts, and the Illinois Appellate Court affirmed. After the State Supreme Court denied review, respondent petitioned for habeas relief in Federal District Court, arguing, *inter alia*, that the state court had unreasonably applied this Court's clearly established Confrontation Clause precedents. The District Court denied the petition, but the Seventh Circuit reversed, holding that the state appeals court unreasonably held that the State had made a sufficient effort to secure the victim's presence at the retrial, when the State in fact failed to make certain inquiries or to serve the victim with a subpoena in light of her fear about testifying.

Held: The Seventh Circuit departed from the "'highly deferential standard for evaluating state-court rulings,'" *Felkner* v. *Jackson*, 562 U. S. 594, 598, imposed by the Antiterrorism and Effective Death Penalty Act of 1996. The Sixth Amendment's Confrontation Clause requires the prosecution to make a good-faith effort to obtain a witness' presence at trial before that witness' prior testimony may be admitted, *Barber* v. *Page*, 390 U. S. 719, 724–725, and "'[t]he lengths to which the prosecution must go . . . is a question of reasonableness,'" *Ohio* v. *Roberts*, 448 U. S. 56, 74. Here, the Illinois Appellate Court identified the correct Sixth Amendment standard and applied it in a reasonable manner. This Court has never held that the prosecution must have issued a subpoena if it wishes to prove that a witness who goes into hiding is unavailable for Confrontation Clause purposes. Nor does the Sixth Amendment require the prosecution to exhaust every avenue of inquiry, no matter how unpromising, to locate a missing witness.

Certiorari granted; 632 F. 3d 356, reversed.

PER CURIAM.

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U. S. C. § 2254, "imposes a highly deferential standard for evaluating state-court rulings and demands that state-court decisions be given the benefit of the doubt." *Felkner* v. *Jackson*, 562 U. S. 594, 598 (2011) *(per curiam)* (internal quotation marks omitted). In this case, the Court of Appeals departed from this standard, and we therefore grant certiorari and reverse.

Irving Cross was tried for kidnaping and sexually assaulting A. S. at knifepoint. Cross claimed that A. S. had consented to sex in exchange for money and drugs. Despite her avowed fear of taking the stand, A. S. testified as the State's primary witness at Cross' trial in November 1999 and was cross-examined by Cross' attorney. According to the trial judge, A. S.'s testimony was halting. The jury found Cross not guilty of kidnaping but was unable to reach a verdict on the sexual assault charges, and the trial judge declared a mistrial. The State decided to retry Cross on those counts, and the retrial was scheduled for March 29, 2000.

On March 20, 2000, the prosecutor informed the trial judge that A. S. could not be located. A week later, on March 28, the State moved to have A. S. declared unavailable and to introduce her prior testimony at the second trial.

The State represented that A. S. had said after the first trial that she was willing to testify at the retrial. The State said that it had remained in "constant contact" with A. S. and her mother and that "[e]very indication" had been that A. S., "though extremely frightened, would be willing to again come to court and testify." Record, Exh. J, p. 111 (hereinafter Exh. J). On March 3, however, A. S.'s mother and brother told the State's investigator that they did not know where she was, and A. S.'s mother reported that A. S. was "very fearful and very concerned" about testifying again. Record, Exh. K, p. E–9 (hereinafter Exh. K); *id.*, at E–14. On March 9 or 10, the investigator interviewed

A. S.'s father, who also had "no idea where [A. S.] was." *Id.*, at E–12. The father's only suggestion was to refer the investigator back to the mother.

On March 10, the State learned from A. S.'s mother that A. S. had run away from home the day before and had not returned.* Exh. J, at 111. Thereafter, "efforts began by members of the Cook County State's Attorney's Office and by law enforcement personnel to locate" A. S. *Id.*, at 112. The State averred that its efforts included the following:

> "Constant personal visits to the home of [A. S.] and her mother, at all hours of the day and night. This is where the victim has lived since the sexual assault occurred.
>
> "Personal visits to the home of [A. S.'s] father. This is where the victim lived when the sexual assault occurred.
>
> "Personal conversations, in English and in Spanish, with the victim's mother, father, and other family members.
>
> "Telephone calls, in English and in Spanish, to the victim's mother, father, and other family members.
>
> "Checks at the Office of the Medical Examiner of Cook County.
>
> "Checks at local hospitals.
>
> "Checks at the Cook County Department of Corrections.
>
> "Check at the victim's school.
>
> "Check with the family of an old boyfriend of the victim.
>
> "Check with the Illinois Secretary of State's Office.
>
> "[Department of] Public [A]id check." *Id.*, at 112–113.

The State also inquired at the Department of Public Health, the morgue, the Cook County Jail, the Illinois De-

*The State's motion does not mention the investigator's March 3 visit with A. S.'s mother and brother, and the record in this case does not make entirely clear when A. S. disappeared and when the State's attorney actually became aware of this fact. In any event, the parties do not dispute the facts in this case regarding the State's efforts to locate A. S. See App. to Pet. for Cert. 17a.

partment of Corrections, the Immigration Department, and the post office. See Exh. K, at E–14 to E–17, E–21; App. to Pet. for Cert. 18a. The State's investigator was assisted in the search by a police detective and a victim's advocate. The detective visited A. S.'s father's home once and went to A. S.'s mother's home—A. S.'s last-known residence—on numerous occasions, approximately once every three days, at different hours of the day and night. Exh. K, at E–27 to E–29, E–35. On one visit, A. S.'s mother told the victim's advocate that A. S. could be staying with an ex-boyfriend in Waukegan, Illinois, 40 miles away. *Id.*, at E–42 to E–43. The police detective visited the Waukegan address but was informed by the ex-boyfriend's mother that she had not seen A. S. in several months and that A. S. was not staying with her or her son. *Id.*, at E–33 to E–34. The efforts to find A. S. continued until March 28, the day of the hearing on the State's motion. *Id.*, at E–30.

On a final visit to A. S.'s mother on the morning of March 28, the mother informed the police detective that A. S. had called approximately two weeks earlier and had said that she did not want to testify and would not return to Chicago. See *id.*, at E–30; 632 F. 3d 356, 359 (CA7 2011). A. S.'s mother told the detective that she still did not know where A. S. was or how to contact her. Exh. K, at E–30.

The trial court granted the State's motion and admitted A. S.'s earlier testimony. The trial court concluded that the State had "expended efforts that go way beyond due diligence," *id.*, at E–65, and that A. S. "ha[d] made it impossible for anybody to find where she is . . . in spite of what I think are superhuman efforts to locate [her]," *id.*, at E–67. At Cross' retrial, a legal intern from the State's attorney's office read A. S.'s prior, cross-examined testimony to the jury. According to the opinion below, the clerk's reading of the prior testimony did not include the long pauses that occurred at the first trial, and the clerk read the transcript with a slight inflection. See 632 F. 3d, at 359. The jury acquitted

Cross of aggravated sexual assault but found him guilty of two counts of criminal sexual assault.

On appeal, the Illinois Appellate Court agreed that A. S. was unavailable because "[i]t is clear from her telephone conversation with her mother that she was not in the city" and "also evident that she was in hiding and did not want to be located." App. to Pet. for Cert. 83a. The court found that the State had conducted a good-faith, diligent search to locate A. S., and that the trial court had properly allowed the introduction of A. S.'s cross-examined testimony from the first trial. The court, therefore, affirmed Cross' convictions and sentence. The Supreme Court of Illinois denied Cross' petition for leave to appeal, and we denied Cross' petition for a writ of certiorari.

Cross then filed a petition for a writ of habeas corpus under 28 U. S. C. § 2254 in the United States District Court for the Northern District of Illinois. Cross argued, among other things, that the state court had unreasonably applied clearly established Supreme Court precedents holding that the Confrontation Clause of the Sixth Amendment precludes the admission of the prior testimony of an allegedly unavailable witness unless the prosecution made a good-faith effort to obtain the declarant's presence at trial. The District Court denied Cross' petition, but the Seventh Circuit reversed. According to the Seventh Circuit, the Illinois Appellate Court was unreasonable in holding that the State had made a sufficient effort to secure A. S.'s presence at the retrial. The Seventh Circuit stressed the importance of A. S.'s testimony and the manner of her testimony at the first trial.

In *Barber* v. *Page*, 390 U. S. 719 (1968), we held that "a witness is not 'unavailable' for purposes of the . . . confrontation requirement unless the prosecutorial authorities have made a good-faith effort to obtain his presence at trial." *Id.*, at 724–725. In *Barber*, we held that a witness had not been unavailable for Confrontation Clause purposes because the

State, which could have brought the witness to court by seeking a writ of habeas corpus *ad testificandum*, had "made absolutely no effort to obtain [his] presence . . . at trial" apart from determining that he was serving a sentence in a federal prison. *Id.*, at 723; see also *id.*, at 725.

We again addressed the question of witness unavailability in *Ohio* v. *Roberts*, 448 U. S. 56 (1980). In that case, we held, the State had discharged its "duty of good-faith effort." *Id.*, at 75. We noted that the prosecutor had spoken to the witness' mother, who reported that she had no knowledge of her daughter's whereabouts and "knew of no way to reach [her] even in an emergency." *Ibid.* We also noted that the State had served five subpoenas in the witness' name to her parents' residence over a 4-month period prior to the trial. "'The lengths to which the prosecution must go to produce a witness,'" the Court made clear, "'is a question of reasonableness.'" *Id.*, at 74 (quoting *California* v. *Green*, 399 U. S. 149, 189, n. 22 (1970) (Harlan, J., concurring)). We acknowledged that there were some additional steps that the prosecutor might have taken in an effort to find the witness, but we observed that "[o]ne, in hindsight, may always think of other things." 448 U. S., at 75. But "the great improbability that such efforts would have resulted in locating the witness, and would have led to her production at trial, neutralizes any intimation that a concept of reasonableness required their execution." *Id.*, at 76.

In the present case, the holding of the Illinois Appellate Court that the State conducted the requisite good-faith search for A. S. did not represent an unreasonable application of our Confrontation Clause precedents. Whether or not the state court went too far in characterizing the prosecution's efforts as "superhuman," the state court identified the correct Sixth Amendment standard and applied it in a reasonable manner.

The Seventh Circuit found that the State's efforts were inadequate for three main reasons. First, the Seventh Cir-

cuit faulted the State for failing to contact "A. S.'s current boyfriend—whom she was with just moments before the alleged assault—or any of her other friends in the Chicago area." 632 F. 3d, at 362. But the record does not show that any of A. S.'s family members or any other persons interviewed by the State provided any reason to believe that any of these individuals had information about A. S.'s whereabouts.

Second, the Seventh Circuit criticized the State because it did not make inquiries at the cosmetology school where A. S. had once been enrolled, *ibid.*, but the court's own opinion observed that the information about A. S.'s enrollment at the cosmetology school after the mistrial was not "noteworthy" or "particularly helpful," *ibid.* Since A. S. had not attended the school for some time, Exh. K, at E–42, there is no reason to believe that anyone at the school had better information about A. S.'s location than did the members of her family.

Finally, the Seventh Circuit found that the State's efforts were insufficient because it had neglected to serve her with a subpoena after she expressed fear about testifying at the retrial. A. S., however, had expressed fear about testifying at the first trial but had nevertheless appeared in court and had taken the stand. The State represented that A. S., although fearful, had agreed to testify at the retrial as well. 632 F. 3d, at 362. We have never held that the prosecution must have issued a subpoena if it wishes to prove that a witness who goes into hiding is unavailable for Confrontation Clause purposes, and the issuance of a subpoena may do little good if a sexual assault witness is so fearful of an assailant that she is willing to risk his acquittal by failing to testify at trial.

As we observed in *Roberts*, when a witness disappears before trial, it is always possible to think of additional steps that the prosecution might have taken to secure the witness' presence, see 448 U. S., at 75, but the Sixth Amendment does not require the prosecution to exhaust every avenue of in-

quiry, no matter how unpromising. And, more to the point, the deferential standard of review set out in 28 U. S. C. § 2254(d) does not permit a federal court to overturn a state court's decision on the question of unavailability merely because the federal court identifies additional steps that might have been taken. Under AEDPA, if the state-court decision was reasonable, it cannot be disturbed.

The petition for a writ of certiorari and Cross' motion to proceed *in forma pauperis* are granted, and the judgment of the Court of Appeals for the Seventh Circuit is

Reversed.

Syllabus

SMITH *v.* CAIN, WARDEN

CERTIORARI TO THE CRIMINAL DISTRICT COURT OF LOUISIANA, ORLEANS PARISH

No. 10–8145. Argued November 8, 2011—Decided January 10, 2012

Petitioner Juan Smith was convicted of first-degree murder based on the testimony of a single eyewitness. During state postconviction relief proceedings, Smith obtained police files containing statements by the eyewitness contradicting his testimony. Smith argued that the prosecution's failure to disclose those statements violated *Brady* v. *Maryland*, 373 U. S. 83. *Brady* held that due process bars a State from withholding evidence that is favorable to the defense and material to the defendant's guilt or punishment. See *id.*, at 87. The state trial court rejected Smith's *Brady* claim, and the Louisiana Court of Appeal and Louisiana Supreme Court denied review.

Held: Brady requires that Smith's conviction be reversed. The State does not dispute that the eyewitness statements were favorable to Smith and that those statements were not disclosed to Smith. Under *Brady*, evidence is material if there is a "reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." *Cone* v. *Bell*, 556 U. S. 449, 469–470. A "reasonable probability" means that the likelihood of a different result is great enough to "undermine[ ] confidence in the outcome of the trial." *Kyles* v. *Whitley*, 514 U. S. 419, 434. Evidence impeaching eyewitness testimony may not be material if the State's other evidence is strong enough to sustain confidence in the verdict. *United States* v. *Agurs*, 427 U. S. 97, 112–113, and n. 21. Here, however, the eyewitness testimony was the *only* evidence linking Smith to the crime, and the eyewitness undisclosed statements contradicted his testimony. The eyewitness statements were plainly material, and the State's failure to disclose those statements to the defense thus violated *Brady*. Pp. 75–77.

Reversed and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, GINSBURG, BREYER, ALITO, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed a dissenting opinion, *post*, p. 77.

Kannon K. Shanmugam argued the cause for petitioner. With him on the briefs were *David E. Kendall*, *Thomas H.*

L. Selby, George W. Hicks, Jr., April R. Rieger, and *Kathleen Kelly.*

Donna R. Andrieu argued the cause for respondent. With her on the brief was *Graymond F. Martin.**

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The State of Louisiana charged petitioner Juan Smith with killing five people during an armed robbery. At Smith's trial a single witness, Larry Boatner, linked Smith to the crime. Boatner testified that he was socializing at a friend's house when Smith and two other gunmen entered the home, demanded money and drugs, and shortly thereafter began shooting, resulting in the death of five of Boatner's friends. In court Boatner identified Smith as the first gunman to come through the door. He claimed that he had been face to face with Smith during the initial moments of the robbery. No other witnesses and no physical evidence implicated Smith in the crime.

The jury convicted Smith of five counts of first-degree murder. The Louisiana Court of Appeal affirmed Smith's conviction. *State* v. *Smith*, 797 So. 2d 193 (2001). The Louisiana Supreme Court denied review, as did this Court. 2001–2416 (La. 9/13/02), 824 So. 2d 1189; 537 U. S. 1201 (2003).

Smith then sought postconviction relief in the state courts. As part of his effort, Smith obtained files from the police investigation of his case, including those of the lead investigator, Detective John Ronquillo. Ronquillo's notes contain

*Briefs of *amici curiae* urging reversal were filed for the Innocence Network by *David B. Hird, M. Jarrad Wright,* and *Keith A. Findley;* for the National Association of Criminal Defense Lawyers by *Daryl Joseffer, Adam Conrad,* and *Jonathan D. Hacker;* and for the Orleans Public Defenders Office by *Mark C. Fleming* and *Annie L. Owens.*

Briefs of *amici curiae* were filed for the American Bar Association by *William T. Robinson III, Jenny M. Roberts, Pedro J. Martinez-Fraga,* and *Melissa L. Mackiewicz;* and for the National District Attorneys Association by *Albert C. Locher.*

statements by Boatner that conflict with his testimony identifying Smith as a perpetrator. The notes from the night of the murder state that Boatner "could not . . . supply a description of the perpetrators other then [*sic*] they were black males." App. 252–253. Ronquillo also made a handwritten account of a conversation he had with Boatner five days after the crime, in which Boatner said he "could not ID anyone because [he] couldn't see faces" and "would not know them if [he] saw them." *Id.*, at 308. And Ronquillo's typewritten report of that conversation states that Boatner told Ronquillo he "could not identify any of the perpetrators of the murder." *Id.*, at 259–260.

Smith requested that his conviction be vacated, arguing, *inter alia*, that the prosecution's failure to disclose Ronquillo's notes violated this Court's decision in *Brady* v. *Maryland*, 373 U. S. 83 (1963). The state trial court rejected Smith's *Brady* claim, and the Louisiana Court of Appeal and Louisiana Supreme Court denied review. We granted certiorari, 564 U. S. 1004 (2011), and now reverse.

Under *Brady*, the State violates a defendant's right to due process if it withholds evidence that is favorable to the defense and material to the defendant's guilt or punishment. See 373 U. S., at 87. The State does not dispute that Boatner's statements in Ronquillo's notes were favorable to Smith and that those statements were not disclosed to him. The sole question before us is thus whether Boatner's statements were material to the determination of Smith's guilt. We have explained that "evidence is 'material' within the meaning of *Brady* when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." *Cone* v. *Bell*, 556 U. S. 449, 469–470 (2009). A reasonable probability does not mean that the defendant "would more likely than not have received a different verdict with the evidence," only that the likelihood of a different result is great enough to "undermine[ ] confidence in the outcome of the trial." *Kyles* v.

Whitley, 514 U. S. 419, 434 (1995) (internal quotation marks omitted).

We have observed that evidence impeaching an eyewitness may not be material if the State's other evidence is strong enough to sustain confidence in the verdict. See *United States* v. *Agurs*, 427 U. S. 97, 112–113, and n. 21 (1976). That is not the case here. Boatner's testimony was the *only* evidence linking Smith to the crime. And Boatner's undisclosed statements directly contradict his testimony: Boatner told the jury that he had "[n]o doubt" that Smith was the gunman he stood "face to face" with on the night of the crime, but Ronquillo's notes show Boatner saying that he "could not ID anyone because [he] couldn't see faces" and "would not know them if [he] saw them." App. 196, 200, 308. Boatner's undisclosed statements were plainly material.

The State and the dissent advance various reasons why the jury might have discounted Boatner's undisclosed statements. They stress, for example, that Boatner made other remarks on the night of the murder indicating that he could identify the first gunman to enter the house, but not the others. That merely leaves us to speculate about which of Boatner's contradictory declarations the jury would have believed. The State also contends that Boatner's statements made five days after the crime can be explained by fear of retaliation. Smith responds that the record contains no evidence of any such fear. Again, the State's argument offers a reason that the jury *could* have disbelieved Boatner's undisclosed statements, but gives us no confidence that it *would* have done so.

The police files that Smith obtained in state postconviction proceedings contain other evidence that Smith contends is both favorable to him and material to the verdict. Because we hold that Boatner's undisclosed statements alone suffice to undermine confidence in Smith's conviction, we have no need to consider his arguments that the other undisclosed evidence also requires reversal under *Brady*.

The judgment of the Orleans Parish Criminal District Court of Louisiana is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE THOMAS, dissenting.

The Court holds that Juan Smith is entitled to a new murder trial because the State, in violation of *Brady* v. *Maryland*, 373 U. S. 83 (1963), did not disclose that the eyewitness who identified Smith at trial stated shortly after the murders that he could not identify any of the perpetrators. I respectfully dissent. In my view, Smith has not shown a "reasonable probability" that the jury would have been persuaded by the undisclosed evidence. *United States* v. *Bagley*, 473 U. S. 667, 682 (1985) (opinion of Blackmun, J.). That materiality determination must be made "in the context of the entire record," *United States* v. *Agurs*, 427 U. S. 97, 112 (1976), and "turns on the cumulative effect of all such evidence suppressed by the government," *Kyles* v. *Whitley*, 514 U. S. 419, 421 (1995). Applying these principles, I would affirm the judgment of the Louisiana trial court.

I

The evidence presented at trial showed the following facts. On March 1, 1995, Larry Boatner and several friends gathered at Rebe Espadron's home in New Orleans. Boatner and others were drinking and talking in the kitchen when Boatner heard the loud sound of a car without a muffler outside. As Boatner opened the kitchen's outside door to investigate the noise, armed men pushed their way through the door, demanding drugs and money. Tr. 153–154 (Dec. 5, 1995). The first man through the door put a gun in Boatner's face and pushed him backwards. *Id.*, at 154–155. The men initially ordered Boatner and his friends to the floor, but then ordered Boatner to stand up. At that time, the man who had been the first one through the door placed his

gun under Boatner's chin. *Id.*, at 156–157. When Boatner asked what the men wanted him to do, the first man struck Boatner on the back of the head with his gun, knocking Boatner back to the ground. *Id.*, at 157–158.

After hearing the commotion, Espadron emerged from a back bedroom, where she had been when the men entered the house. As Espadron opened an inside door leading to the kitchen, a man with a "covering" over his mouth pointed his gun at her face and ordered her to the floor. *Id.*, at 70–71. Disregarding his command, Espadron ran back toward the bedroom, at which point the intruders opened fire. *Id.*, at 71–72, 159.

When the shooting was over, four people lay dead. A fifth person, 17-year-old Shelita Russell, was mortally wounded and died later at the hospital. Of those originally gathered in the house, the only survivors were Boatner, who suffered a severe laceration to his head from the first man's blow but was otherwise uninjured; Espadron, who escaped unharmed; and Reginald Harbor, who had remained in a back bedroom during the shooting. The police also found a man named Phillip Young at the scene. Young was alive but had suffered a gunshot wound to the head. Because Boatner, Espadron, and Harbor had never seen Young before, the police surmised that Young had been one of the perpetrators.[1]

New Orleans police officer Joseph Narcisse was a first responder to the scene of the shooting. He testified at trial that he encountered Boatner in the bathroom of Espadron's home, where Boatner was attempting to care for the laceration to his head. According to Narcisse, "Mr. Boatner . . . had let inside the perpetrators and did see them." *Id.*, at 21 (Dec. 4, 1995). Narcisse further explained that Boatner "had a description" of the person that he saw, the details of which Narcisse could not recall. *Id.*, at 32.

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[1] Young was indicted along with Smith for the murders, but he was deemed incompetent to stand trial due to the brain damage he suffered as a result of being shot. 1 Record 49.

Detective John Ronquillo, the lead investigator of the shootings, testified that Boatner had described the first man through the kitchen door as having a "short-type haircut," "a lot of golds in his teeth," and "brown-ski[n]."[2] *Id.*, at 115 (Dec. 5, 1995). Ronquillo further testified that Boatner could describe no other perpetrator, but that Boatner had viewed the first man twice: once when the man initially came through the door and again when Boatner was ordered to stand up and the man held a gun to his chin. *Id.*, at 117–118.

Ronquillo also testified that, during the four months following the shootings, Boatner viewed 14 six-person photograph arrays of potential suspects—only one of which contained a picture of Smith. *Id.*, at 89–100. Three weeks after the crime, Ronquillo presented Boatner with one of the arrays that did not include a picture of Smith. Ronquillo recalled that Boatner noted that one man in the array had a "similar haircut" and "a similar expression on his face" as the "gentleman that came into the house initially with the gun that [Boatner] confronted," but that Boatner "was positive this wasn't the individual." *Id.*, at 97; see also 5 Record 828. A few months later, Ronquillo presented Boatner with the array that included a photograph of Smith. Tr. 99–101 (Dec. 5, 1995). Ronquillo testified that Boatner identified Smith "immediately," stating, "'This is it. I'll never forget that face.'" *Id.*, at 100. Of the 84 photographs that Boatner viewed, Smith's photograph was the only one that Boatner identified.

Boatner identified Smith again when he was called to the stand during Smith's trial. Boatner testified that Smith's face was the "[s]ame face," *id.*, at 174, and that Smith's mouth was the "[s]ame mouth" "full of gold," *ibid.*, as that of the

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[2] "Golds" are permanent or removable mouth jewelry, also referred to as "grills." See Mouth Jewelry Wearers Love Gleam of the Grill, South Florida Sun-Sentinel, Feb. 4, 2007, p. 5, 2007 WLNR 2187080. See also A. Westbrook, Hip Hoptionary 59 (2002) (defining a "grill" as a "teeth cover, usually made of gold and diamonds").

first man who came through the kitchen door on the night of the attack. Boatner also testified that Smith's hair at trial was "shaved on the sides" as it was during the crime, but that "the top was a little bit lower" at the time of the murders. *Id.*, at 165. Boatner explained that, during the attack, he had focused on the first man through the door—who was unmasked—but that he "didn't notice" the faces of any of the other assailants or whether they were masked. *Id.*, at 154. On cross-examination, Boatner testified that he had described the first man's build, haircut, and gold teeth jewelry to the police. *Id.*, at 178.

Based on this evidence, the jury convicted Smith of first-degree murder. Following the conclusion of direct review, Smith petitioned the trial court for postconviction relief. Smith argued that the State had failed to disclose various police notes revealing favorable evidence material to Smith's guilt. As relevant here, those items include pretrial statements by Boatner; statements by victim Shelita Russell and Espadron's neighbor, Dale Mims; a pretrial statement by firearms examiner Kenneth Leary; statements by cosuspect Robert Trackling and Trackling's fellow inmate, Eric Rogers; and a statement by cosuspect Phillip Young. After holding a 4-day evidentiary hearing, the postconviction judge—who had also presided over Smith's 2-day trial—denied Smith's *Brady* claims.

Like the postconviction court below, I conclude that Smith is not entitled to a new trial under *Brady*. In my view, Smith has not established a reasonable probability that the cumulative effect of this evidence would have caused the jury to change its verdict.

II

A

Smith first identifies two undisclosed statements by Boatner, which the Court concludes are "plainly material." *Ante*, at 76. First, a note by Ronquillo, documenting a

conversation he had with Boatner at the scene, states that Boatner "could not . . . supply a description of the perpetrators other th[a]n they were black males." 5 Record 809. Second, a handwritten note by Ronquillo, documenting a phone conversation he had with Boatner on March 6, five days after the murders, states that "Boatner . . . could not ID anyone because couldn't see faces . . . glanced at 1st one—saw man—through door—can't tell if had—faces covered didn't see anyone . . . Could not ID—would not know them if—I saw them." 13 *id.*, at 2515. Ronquillo's typed summary of this note states that Boatner advised him that he "could not identify any perpetrators of the murder." 5 *id.*, at 817.

Smith is correct that these undisclosed statements could have been used to impeach Boatner and Ronquillo during cross-examination. But the statements are not material for purposes of *Brady* because they cannot "reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Kyles*, 514 U. S., at 435. When weighed against the substantial evidence that Boatner had opportunities to view the first perpetrator, offered consistent descriptions of him on multiple occasions, and even identified him as Smith, the undisclosed statements do not warrant a new trial.

The evidence showed that, notwithstanding Ronquillo's on-scene note, Boatner offered a description of the perpetrator at the scene. Officer Narcisse testified that Boatner provided him with a description of the perpetrator whom Boatner saw. Narcisse's testimony thus corroborated Boatner's trial testimony that he saw the first man and described him to police.[3] Narcisse's testimony also mitigated the impeach-

[3] In a pretrial hearing, Boatner testified that he "gave a description to the officer that came to the scene." Tr. 24 (Oct. 27, 1995). Boatner responded negatively when asked whether this officer was Detective Ronquillo. *Ibid.* Boatner further testified that he told the officer that the first man through the door was "heavy built with his hair with a fade,

ment value of Ronquillo's on-scene note by indicating that, although Boatner may have provided no detailed description to Ronquillo at the scene, Boatner had described the first man to another officer.[4]

In any event, Ronquillo's notes reflect that Boatner provided a description of the first perpetrator at the police station only a few hours after the shootings occurred. Tr. 403 (Jan. 22, 2009). Boatner was asked if he could "describe the subjects wh[o] shot the people in the house." 5 Record 866. He responded: "I can tell you about one, the one who put the pistol in my face, he was a black male with a low cut, gold[s] in his mouth . . . about my complexion, brown skinned." *Ibid.* When asked, "[Y]ou say you can't describe any of the other shooters besides the one who put the gun in your face after you opened the door," Boatner replied, "No, I can't." *Ibid.* In his brief, Smith cites this station house statement as an example of favorable, undisclosed evidence. But this statement actually *corroborates* Boatner's trial testimony that he saw and described the first perpetrator to police and that he did not get a good look at the other assailants. Moreover, the description Boatner provided was consistent with Smith's appearance. The Court completely ignores Boatner's station house statement, but our cases instruct us to evaluate "the net effect of the evidence withheld by the State" in assessing materiality. See *Kyles*, *supra*, at 421–422.

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with a little small top with a lot of gold teeth in his mouth." *Ibid.* That testimony was consistent with the testimony that Boatner and Officer Narcisse gave at trial.

[4] Moreover, Boatner's reticence toward Ronquillo at the scene of the crime was entirely understandable. As Ronquillo noted at the postconviction hearing, "there were dead bodies everywhere," and Boatner was "a little shook up." *Id.*, at 402–403 (Jan. 22, 2009). Similarly, Narcisse testified at trial that Boatner, while "not as frantic" as Espadron, was a "bit emotional" when Narcisse encountered him at the scene. *Id.*, at 34 (Dec. 4, 1995).

The evidence not only shows that Boatner described the first perpetrator twice in the immediate aftermath of the crime, but also that Boatner described him again three weeks later when he viewed a photograph array and eliminated a similar-looking individual. The evidence before the jury further indicated that, several months after the crime, Boatner confidently identified Smith in an array, after evincing a discriminating, careful eye over a 4-month investigative period. What is more, the reliability of Boatner's out-of-court identification was extensively tested during cross-examination at Smith's trial. In particular, Boatner was asked whether the fact that he saw Smith's picture in a newspaper article naming Smith as a suspect had tainted his identification. Boatner did not waver, responding, "I picked out the person I seen come in that house that held a gun to my head and under my chin and the person that was there when all my friends died." Tr. 190 (Dec. 5, 1995). That Boatner credibly rejected defense counsel's "suggestion" theory is supported by the fact that Boatner did *not* identify cosuspect Robert Trackling—whose photograph was included in a separate array shown to Boatner on the same day that Boatner identified Smith—even though Trackling's picture was next to Smith's in the same newspaper article. 5 Record 833, 835.

When weighed against Boatner's repeated and consistent descriptions and confident out-of-court and in-court identifications, Boatner's March 6 statement is also immaterial. As an initial matter, Ronquillo's note of his March 6 conversation with Boatner contains an internal contradiction that undercuts its impeachment value. Although the note states that Boatner "didn't see anyone," it also states that Boatner "glanced at 1st one—saw man—through door." 13 *id.*, at 2515. The latter part is consistent with Boatner's repeated statements that he only saw the first man through the door. Moreover, the jury would have evaluated any equivocation in Boatner's statement in light of the fact that he made it a mere five days after a traumatic shooting, when the perpe-

trators were still at large. The jury would have considered Boatner's trial testimony that, following the murders of his friends, he began having nightmares, had difficulty sleeping, quit his job, and began drinking heavily—so much so that he checked into a hospital for substance abuse treatment and grief counseling. Tr. 162–163, 170–171, 182 (Dec. 5, 1995). Any impeachment value in the March 6 note would have been further mitigated by the fact that, as Ronquillo explained, "on the night of the incident [Boatner] said that he could [identify someone] and he gave a description that was very close to Mr. Smith's description." *Id.*, at 401 (Jan. 22, 2009). And, following his March 6 conversation with Ronquillo, Boatner viewed numerous photograph arrays, described the first perpetrator, and ultimately identified him as Smith.

Of course, had the jury been presented with Ronquillo's notes of Boatner's on-scene and March 6 statements, it might have believed that Boatner could not identify any of the perpetrators, but a *possibility* of a different verdict is insufficient to establish a *Brady* violation. See *Strickler* v. *Greene*, 527 U. S. 263, 291 (1999); see also *Agurs*, 427 U. S., at 109–110 ("The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense"). Rather, a "petitioner's burden is to establish a reasonable *probability* of a different result." *Strickler*, *supra*, at 291.

Instead of requiring Smith to show a reasonable probability that Boatner's undisclosed statements would have caused the jury to acquit, the Court improperly requires the *State* to show that the jury would have given Boatner's undisclosed statements no weight. See *ante*, at 76 ("[T]he State's argument offers a reason that the jury *could* have disbelieved Boatner's undisclosed statements, but gives us no confidence that it *would* have done so"). But Smith is not entitled to a new trial simply because the jury could have accorded some

weight to Boatner's undisclosed statements. Smith's burden is to show a reasonable probability that the jury would have accorded those statements sufficient weight to alter its verdict. In light of the record as a whole—which the Court declines to consider—Smith has not carried that burden.

B

Smith also argues that statements by Shelita Russell and Dale Mims documented in Ronquillo's handwritten notes could have been used to impeach Boatner's identification of Smith because the statements indicate that the perpetrators were masked. One undated note, which contains several entries about various aspects of the investigation, states, "female—face down against cabinets—conscious." On the next line, the note continues, "said—in kitchen saw people barge in—one—black cloth across face—first one through door—[no further statement]." 13 Record 2556. When cross-examined during the postconviction hearing about whether this note documented the statement of Russell, Ronquillo confirmed that the note was in his handwriting, but he testified that he never talked to Russell, that he did not know when the note was made, and that someone else could have relayed the information to him. Tr. 415–418 (Jan. 22, 2009).[5] I will assume, *arguendo*, that, had this note been disclosed, it would have been admissible at Smith's trial as a dying declaration of Russell.[6] But the note would have

[5] Russell did not make this statement to Officer Narcisse. He testified that Russell "was not able to give us any information or any details of what had happened." *Id.*, at 20.

[6] Louisiana law provides that "[a] statement made by a declarant while believing that his death was imminent, concerning the cause or circumstances of what he believed to be his impending death[,]" is "not excluded by the hearsay rule if the declarant is unavailable as a witness." La. Code Evid. Ann., Art. 804(B)(2) (West Supp. 2012). Assuming this statement was actually Russell's, it likely qualifies as a dying declaration. At trial, Boatner testified that, in the aftermath of the shooting, Russell told him, "Feel like I'm about to die." Tr. 161 (Dec. 5, 1995) (internal quota-

had minimal impeachment value because, contrary to Smith's assertions, it is ambiguous in light of the context in which the statement was made. Officer Narcisse testified that Russell was conscious and able to talk, but that she was in "bad condition." *Id.*, at 20 (Dec. 4, 1995). Similarly, Reginald Harbor testified that, as Russell lay wounded, she was "whining" and he "didn't catch nothing [t]hat she said." *Id.*, at 205 (Dec. 5, 1995). And, although Smith contends that the note says "exactly" that the "first person through the door had a black cloth across his face," that is not how the note reads. Reply Brief for Petitioner 11 (hereinafter Reply Brief) (emphasis deleted; internal quotation marks omitted). The note first states that the declarant "saw people barge in," then states "*one*—black cloth across face—first one through door—[no further statement]." 13 Record 2556 (emphasis added). It is at least as logical to read this statement as indicating only that "one" of the "people" had a "black cloth across [his] face." Russell, suffering from fatal wounds, said nothing further after "first one through door," and it is impossible to know whether the "first one" was also the "one" with a "black cloth across [his] face."

The second statement Smith identifies is that of Dale Mims, who lived down the street from Espadron's home and who heard the shooting. A note by Ronquillo states that Mims saw four males fleeing Espadron's home, "all wearing mask[s]." *Id.*, at 2518. Like Russell's purported statement, this statement has minimal impeachment value in light of the record. Mims' undisclosed statement does not address whether some or all of the perpetrators were masked inside Espadron's home.[7] Moreover, had Mims been called as a

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tion marks omitted). Espadron also testified that Russell told her, "I'm gonna die," and, "Don't let me die." *Id.*, at 73–74 (internal quotation marks omitted).

[7] Smith ridicules the "exceedingly peculiar" notion that the perpetrators would have remained unmasked inside Espadron's home, only to mask themselves before leaving the scene. Reply Brief 12–13. But that notion

witness at trial, he presumably would have testified, as he did at the postconviction hearing, that he was "positive" that he only saw three perpetrators fleeing, and that, of those three, only two were masked. Tr. 269, 271–273, 275 (Jan. 13, 2009).

Both Russell's purported statement and Mims' testimony are consistent with Boatner's testimony that he did not know whether any of the other perpetrators were masked, *id.*, at 154 (Dec. 5, 1995), and with Officer Narcisse's and Espadron's testimony that the single perpetrator whom Espadron observed was wearing some sort of face covering, *id.*, at 30–31 (Dec. 4, 1995); *id.*, at 71 (Dec. 5, 1995). Thus, the totality of the evidence indicates that some, but not all, of the perpetrators were masked, a conclusion that in no way undermines Boatner's consistent assertions that the only perpetrator *he* saw was unmasked.

C

Smith also contends that Ronquillo's undisclosed note documenting a pretrial statement by firearms examiner Kenneth Leary is material for purposes of *Brady*. The note states that "Leary advised Ronquillo that the 9MM ammunition confiscated from [the scene of the murders] was typed to have been fired from a[n] [Intratec], 'Mac[-]11' model type, semi automatic weapon." 5 Record 831. According to Smith, this statement conflicts with Leary's trial testimony that the 9-millimeter ammunition found at the scene "was fired by one particular weapon, one 9-millimeter handgun," Tr. 132 (Dec. 5, 1995), because an Intratec or Mac-11 pistol is not a "handgun." Smith further argues that Leary's pretrial statement could have been used to exculpate Smith, whose guilt the prosecution attempted to show by calling a pathologist to testify that Shelita Russell's wounds could

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is eminently reasonable if the perpetrators intended to massacre the witnesses who were inside the home—as they did—and were concerned only with disguising themselves from neighbors outside who might see or hear the burglary.

have been inflicted by a 9-millimeter "handgun," *id.*, at 39 (Dec. 4, 1995), and by calling Boatner to testify that the gun Smith held under his chin was a 9-millimeter silver "hand gun," *id.*, at 157 (Dec. 5, 1995).

Contrary to Smith's contentions, Leary's pretrial statement does not undermine the evidence presented at trial. Leary's pretrial statement is consistent with his and Boatner's trial testimony because an Intratec or Mac-11 pistol *is* a 9-millimeter handgun. Smith concedes that such a weapon uses 9-millimeter cartridges. Brief for Petitioner 48. Moreover, a "handgun" is simply "[a] firearm that can be used with one hand," American Heritage Dictionary 819 (3d ed. 1992), and no one disputes that an Intratec or Mac-11 pistol can be used with one hand. Smith nonetheless insists that, "as a colloquial matter, machine pistols of the Intratec or MAC-11 type would be considered automatic or semiautomatic weapons, rather than handguns." Reply Brief 18. But even assuming that Smith is correct, he fails to explain why Leary, a firearms expert, would have been expected to use colloquial rather than technical terminology.[8]

The record also makes clear that, when Boatner used the term "handgun," he did not understand it to exclude automatic or semiautomatic machine pistols. In the immediate aftermath of the murders, as well as at trial, Boatner stated that a second perpetrator carried a "Ma[c] 10" or "Tech Nine" "Uzi" type weapon, Tr. 159, 179 (Dec. 5, 1995); 5 Record 809, 813, 866, and Boatner described that weapon as a

[8] Smith argues that Leary himself considered an "[Intratec] or 'Mac[-]11' " model type to be different from a 9-millimeter handgun. Smith relies on the fact that Leary's pretrial statement indicated that the ammunition recovered from the scene did not come from the handgun recovered from Donielle Bannister, another suspect in the murders. *Id.*, at 18. Leary's pretrial statement did not describe the handgun recovered from Bannister as a 9-millimeter, contrary to Smith's representation. More importantly, Leary's statement suggests only that *Bannister's* handgun did not fire the 9-millimeter ammunition found at the scene, not that Leary did not consider an "[Intratec] or 'Mac[-]11' " model type to be a handgun.

"handgun," *id.*, at 809. Moreover, Boatner's pretrial description of the silver or chrome "handgun" that the first man held was consistent with Leary's undisclosed statement that the gun that fired the 9-millimeter ammunition found at the scene was a semiautomatic weapon. In his station house statement, Boatner described the first man's weapon as a "big," "automatic pistol." *Id.*, at 813, 866. Because Leary's pretrial statement is neither impeaching nor exculpatory, Leary's undisclosed statement cannot form the basis of a *Brady* violation. See *Strickler*, 527 U. S., at 281–282 (To make out a *Brady* violation, "[t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching").

D

Smith next points to purportedly exculpatory and material undisclosed pretrial statements made by Robert Trackling, a member of the "Cut Throat Posse" street gang with which Smith was allegedly associated, and by Eric Rogers, an inmate who was incarcerated with Trackling. 5 Record 845. Police notes reflect that Eric Rogers gave an interview to investigators on May 19, 1995, during which he described a conversation that he had with Trackling while in prison. During that conversation, Trackling described the murders at Espadron's home and stated that he had committed the crime along with "Fat, Buckle, and a guy they call uh, Short Dog." *Id.*, at 841. According to Rogers, Fat's real name was "Darnell [Donielle] Banister," Buckle's real name was "Contez [Kintad] Phillips," and Short Dog's real name was "Juan." *Id.*, at 843–844.

Smith contends that Rogers' interview was exculpatory in two respects. First, he points to the following comment by Rogers later during the interview: "They call Contez Philip Buckle, they call Darnell Banister Fat, Short Dog that's what they call him, they call Robert Home." *Id.*, at 845. Smith suggests that Rogers' prior identification of "Short Dog" as "Juan [Smith]" was equivocal in light of his later statement

that "Short Dog" was a man named "Robert Home." Reply Brief 21. Second, Smith asserts that disclosure of Rogers' interview would have led the defense and the jury to learn of Rogers' allegation—made for the first time 10 years after Smith's trial—that the police had asked him to implicate Juan Smith as "Short Dog." Tr. 284–285 (Jan. 13, 2009).

Neither argument is persuasive. If the jury had learned of Rogers' statement, it would have heard information directly *inculpating* Smith as "Short Dog," a perpetrator of the shootings. Rogers' physical description of "Short Dog"—"he['s] short[,] he['s] got golds going across his mouth[,] and . . . he's like built," 5 Record 844—also corroborated Boatner's description of the first man through the door as having a "mouth full of gold" and a "heavy" build. Furthermore, Smith ignores other inculpatory information documented in Ronquillo's notes of Rogers' statement. Those notes reflect Trackling's own interview with police on June 1, 1995, in which Trackling identified Phillips, Bannister, and "Juan Smith" as the perpetrators of the murders at Espadron's home. *Id.*, at 832; see also *id.*, at 854–855. Trackling's statement only strengthens the inculpatory nature of Rogers' interview.

Further, the jury assuredly would not have believed Smith's suggestion that Rogers identified "Short Dog" as a man named "Robert Home." When this statement is taken in context, it appears that Rogers was describing the nickname—"Home"[9]—of Robert Trackling, the "Robert" whom Rogers had repeatedly referenced throughout his interview.

[9] See 2 Dictionary of American Regional English 1064–1065, 1069 (F. Cassidy & J. Hall eds. 1991) (defining "Home" as "a term of address used by two black people either from the same Southern state or simply from the South," similar to "homey" or "home boy"); 2 Green's Dictionary of Slang 828 (2010) (defining "home," an abbreviation of homeboy, as "a friend, often used in direct address"); Concise New Partridge Dictionary of Slang and Unconventional English (T. Dalzell & T. Victor eds. 2008) (defining "home" as "a very close male friend," an abbreviation of "Homeboy").

See *id.*, at 839–850. Indeed, Rogers' phraseology, "they call Robert *Home*," was consistent with his previous comments that "[t]hey call Contez Philip *Buckle*," and "they call Darnell Banister *Fat*." *Id.*, at 845 (emphasis added). Unsurprisingly, in the thousands of pages of record material, I have not found, nor have the parties cited, a single reference to anyone named "Robert Home."

If the jury had heard Rogers' postconviction testimony that police asked him to implicate Smith and that Trackling's description of the murders did not include Smith, Tr. 284–285 (Jan. 13, 2009), it would have weighed Rogers' allegation against Trackling's own statement to the police that Smith had participated in the murders at Espadron's home, 5 Record 832. The prosecution also would have called Smith's sister, Trinieze Smith, to testify that she believed her brother was known as "Short Dog," as she did at the postconviction hearing. Tr. 371 (Jan. 14, 2009). On this record, the undisclosed statements by Rogers and Trackling actually strengthen rather than weaken confidence in the jury's guilty verdict.[10]

E

Finally, Smith argues that an undisclosed handwritten note by Ronquillo documenting a statement by Phillip Young—the man found injured at the scene and suspected of having participated in the crime—is also material evidence warranting a new trial. At trial, Ronquillo testified that he

[10] Detective Byron Adams, who took Rogers' statement, did not testify at the postconviction hearing because he had died in the meantime. He thus had no opportunity to address Rogers' recantation or his newly minted allegation that Detective Adams asked Rogers to implicate Smith. Smith argues that "there is no reason to believe that . . . Adams would have contradicted Rogers—much less that the jury would have believed [him] if [he] did." Reply Brief 21. But Smith offers no support for his dubious assertion that Detective Adams would have admitted to framing Smith, or that, had the detective denied the allegation, the jury would have believed Rogers—a convicted murderer who never explained any motive Adams would have had to frame Smith—over the detective.

met with Young while Young was hospitalized as a result of permanent brain damage suffered in the shootings. *Id.*, at 102 (Dec. 5, 1995). According to Ronquillo, Young "was strapped to a chair. He really couldn't talk, [h]e mumbled. He could use his left hand, that was all. He couldn't walk or anything. He was fed through a tube by the people there. He was in really bad shape." *Id.*, at 102–103. When asked whether Young was able to communicate with him "at all," Ronquillo responded, "No. I couldn't understand anything that he was saying." *Id.*, at 103.

The undisclosed note from Ronquillo's meeting with Young reads as follows: "Short Dog/Bucko/Fats—No—Didn't shoot me—No—Not with me when went to house—Yes—one of people in house shot me—No—Not responsible—'Posse'—Didn't drive to house—'Posse'—Yes—Knows names of perps—Yes—Drove in car—Yes—girlfriend's car." App. 311. Smith contends that this note is exculpatory in that it suggests that he was "not involved" in the shootings. Brief for Petitioner 43.

Young's statement is only exculpatory if Smith concedes (as the statement asserts) that he is, in fact, "Short Dog" and a member of the "Cut Throat Posse." Such a concession would only have strengthened the inculpatory value of the statements by Rogers and Trackling indicating that Smith was the "Short Dog" who committed the murders at Espadron's home. In any event, the exculpatory value of the note is minimal for several other reasons. First, it is unclear whether Ronquillo's note reflects a statement by Young that the "Posse" was not responsible for shooting the victims or a statement that the "Posse" was not responsible for shooting *Young*. Further, the statement that "Short Dog" and others were not with Young when he *went to the house* is certainly not a clear statement that "Short Dog" did not commit the murders, especially in light of evidence in the record that the assailants used two cars on the night of the

murders.[11] Second, had the jury learned of Ronquillo's note, it would have presumably heard Ronquillo testify, as he did at the postconviction hearing, that he was not even sure whether his note actually reflected statements by Young, given that Young "couldn't talk," was "jumbled," could only "kind of move his head," and sometimes would just sit and stare when Ronquillo asked a question.[12] Tr. 423–424 (Jan. 22, 2009). Accordingly, Ronquillo explained, "I never had hide nor hair actually of what [Young] said." *Id.*, at 423.

The jury thus would have evaluated Ronquillo's note, of unclear exculpatory value on its face, against a backdrop of doubt as to what, if anything, Young actually communicated. The jury also would have weighed this evidence against the strongly inculpatory nature of Boatner's descriptions and identifications and Rogers' and Trackling's statements, which corroborated Boatner's identification. When all of the evidence is considered cumulatively, as it must be, Smith has not shown a reasonable probability that the jury would have reached a different verdict.

* * *

The question presented here is not whether a prudent prosecutor should have disclosed the information that Smith

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[11] In his station house statement, Boatner explained that the loud car that arrived at Espadron's home was white. 5 Record 866. In Rogers' interview with the police, Rogers said that Trackling escaped from Espadron's home in a burgundy car. *Id.*, at 842.

[12] Smith also contends that the defense could have used the undisclosed note to impeach Ronquillo's trial testimony that Young was not able to communicate with him "at all." That argument lacks merit. Ronquillo's trial testimony, when read in context, does not suggest that no communication occurred. Rather, Ronquillo made clear that he simply "couldn't understand anything that [Young] was *saying*." See Tr. 103 (Dec. 5, 1995) (emphasis added). That testimony is consistent with the garbled nature of the note, and the note thus would have had little, if any, impeachment value.

identifies. Rather, the question is whether the cumulative effect of the disclosed and undisclosed evidence in Smith's case "put[s] the whole case in such a different light as to undermine confidence in the verdict." *Kyles*, 514 U. S., at 435. When, as in this case, the Court departs from its usual practice of declining to review alleged misapplications of settled law to particular facts, *id.*, at 456 (SCALIA, J., joined by Rehnquist, C. J., and KENNEDY and THOMAS, JJ., dissenting), the Court should at least consider all of the facts. And, the Court certainly should not decline to review all of the facts on the assumption that the remainder of the record would only further *support* Smith's claims, as the Court appears to have done here. *Ante*, at 76.

Such an assumption is incorrect. Here, much of the record evidence confirms that, from the night of the murders through trial, Boatner consistently described—with one understandable exception—the first perpetrator through the door, that Boatner's description matched Smith, and that Boatner made strong out-of-court and in-court identifications implicating Smith. Some of the undisclosed evidence cited by Smith is not favorable to him at all, either because it is of no impeachment or exculpatory value or because it actually inculpates him. Because what remains is evidence of such minimal impeachment and exculpatory value as to be immaterial in light of the whole record, I must dissent from the Court's holding that the State violated *Brady*.

Syllabus

COMPUCREDIT CORP. ET AL. *v.* GREENWOOD ET AL.

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

No. 10–948. Argued October 11, 2011—Decided January 10, 2012

Although respondents' credit card agreement required their claims to be resolved by binding arbitration, they filed a lawsuit against petitioner CompuCredit Corporation and a division of petitioner bank, alleging, *inter alia*, violations of the Credit Repair Organizations Act (CROA or Act). The Federal District Court denied the defendants' motion to compel arbitration, concluding that Congress intended CROA claims to be nonarbitrable. The Ninth Circuit affirmed.

Held: Because the CROA is silent on whether claims under the Act can proceed in an arbitrable forum, the Federal Arbitration Act (FAA) requires the arbitration agreement to be enforced according to its terms. Pp. 97–105.

(a) Section 2 of the FAA establishes "a liberal federal policy favoring arbitration." *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U. S. 1, 24. It requires that courts enforce arbitration agreements according to their terms. See *Dean Witter Reynolds Inc.* v. *Byrd*, 470 U. S. 213, 221. That is the case even when federal statutory claims are at issue, unless the FAA's mandate has been "overridden by a contrary congressional command." *Shearson/American Express Inc.* v. *McMahon*, 482 U. S. 220, 226. Pp. 97–98.

(b) The CROA provides no such command. Respondents contend that the CROA's disclosure provision—which requires credit repair organizations to provide consumers with a statement that includes the sentence "'You have a right to sue a credit repair organization that violates the [Act],'" 15 U. S. C. § 1679c(a)—gives consumers the right to bring an action in a court of law; and that, because the CROA prohibits the waiver of "any right of the consumer under this subchapter," § 1679f(a), the arbitration agreement's waiver of the "right" to bring a court action cannot be enforced. Respondents' premise is flawed. The disclosure provision creates only a right for consumers to receive a specific statement describing the consumer protections that the law elsewhere provides, one of which is the right to enforce a credit repair organization's "liab[ility]" for "fail[ure] to comply with [the Act]." § 1679g(a). That provision does not override the FAA's mandate. Its mere contemplation of judicial enforcement does not demonstrate that

the Act provides consumers with a "right" to initial judicial enforcement. Pp. 98–103.

(c) At the time of the CROA's enactment in 1996, arbitration clauses such as the one at issue were no rarity in consumer contracts generally, or in financial services contracts in particular. Had Congress meant to prohibit these very common provisions in the CROA, it would have done so in a manner less obtuse than what respondents suggest. Pp. 103–104.

615 F. 3d 1204, reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, BREYER, and ALITO, JJ., joined. SOTOMAYOR, J., filed an opinion concurring in the judgment, in which KAGAN, J., joined, *post*, p. 108. GINSBURG, J., filed a dissenting opinion, *post*, p. 110.

Michael W. McConnell argued the cause for petitioners. On the brief were *Sri Srinivasan*, *Anton Metlitsky*, *David L. Hartsell*, *Deanne E. Maynard*, *Brian R. Matsui*, and *Susan L. Germaise.*

Scott L. Nelson argued the cause for respondents. With him on the brief were *Allison M. Zieve*, *W. Lloyd Copeland*, *Gregory Hawley*, and *Richard R. Rosenthal.**

JUSTICE SCALIA delivered the opinion of the Court.

We consider whether the Credit Repair Organizations Act (CROA or Act), 15 U. S. C. § 1679 *et seq.*, precludes enforcement of an arbitration agreement in a lawsuit alleging violations of that Act.

I

Respondents are individuals who applied for and received an Aspire Visa credit card marketed by petitioner Compu-

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*Briefs of *amici curiae* urging reversal were filed for the Consumer Data Industry Association by *Anne P. Fortney;* and for DRI–The Voice of the Defense Bar by *R. Matthew Cairns*, *Linda T. Coberly*, and *Gene C. Schaerr.*

John Vail filed a brief for the American Association for Justice as *amicus curiae* urging affirmance.

Julie Nepveu, *Michael Schuster*, and *Rochelle Bobroff* filed a brief for AARP et al. as *amici curiae.*

Credit Corporation and issued by Columbus Bank and Trust, now a division of petitioner Synovus Bank. In their applications they agreed to be bound by a provision which read: "Any claim, dispute or controversy (whether in contract, tort, or otherwise) at any time arising from or relating to your Account, any transferred balances or this Agreement (collectively, 'Claims'), upon the election of you or us, will be resolved by binding arbitration . . . ." App. 62.

In 2008, respondents filed a class-action complaint against CompuCredit and Columbus in the United States District Court for the Northern District of California, alleging, as relevant here, violations of the CROA. The claims largely involved the defendants' allegedly misleading representation that the credit card could be used to rebuild poor credit and their assessment of multiple fees upon opening of the accounts, which greatly reduced the advertised credit limit.

The District Court denied the defendants' motion to compel arbitration of the claims, concluding that "Congress intended claims under the CROA to be non-arbitrable." 617 F. Supp. 2d 980, 988 (2009). A panel of the United States Court of Appeals for the Ninth Circuit affirmed, Judge Tashima dissenting. 615 F. 3d 1204 (2010). We granted certiorari, 563 U. S. 973 (2011).

II

The background law governing the issue before us is the Federal Arbitration Act (FAA), 9 U. S. C. § 1 *et seq.*, enacted in 1925 as a response to judicial hostility to arbitration. *AT&T Mobility LLC* v. *Concepcion*, 563 U. S. 333, 339 (2011). As relevant here, the FAA provides:

> "A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U. S. C. § 2.

This provision establishes "a liberal federal policy favoring arbitration agreements." *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U. S. 1, 24 (1983). See also, *e. g.*, *Concepcion*, *supra*, at 339; *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20, 25 (1991). It requires courts to enforce agreements to arbitrate according to their terms. See *Dean Witter Reynolds Inc.* v. *Byrd*, 470 U. S. 213, 221 (1985). That is the case even when the claims at issue are federal statutory claims, unless the FAA's mandate has been "overridden by a contrary congressional command." *Shearson/American Express Inc.* v. *McMahon*, 482 U. S. 220, 226 (1987). See also *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614, 628 (1985). Respondents contend that the CROA contains such a command.

That statute regulates the practices of credit repair organizations, defined as certain entities that offer services for the purpose of "(i) improving any consumer's credit record, credit history, or credit rating; or (ii) providing advice or assistance to any consumer with regard to any activity or service described in clause (i)."[1] 15 U. S. C. § 1679a(3). In its principal substantive provisions, the CROA prohibits certain practices, § 1679b, establishes certain requirements for contracts with consumers, § 1679d, and gives consumers a right to cancel, § 1679e. Enforcement is achieved through the Act's provision of a private cause of action for violation, § 1679g, as well as through federal and state administrative enforcement, § 1679h.

III

Like the District Court and the Ninth Circuit, respondents focus on the CROA's disclosure and nonwaiver provisions. The former, which is reproduced in full in the Appendix, *infra*, sets forth a statement that the credit repair organiza-

[1] The District Court said that petitioners do not dispute that they come within this definition. See 617 F. Supp. 2d 980, 984, n. 2 (ND Cal. 2009). The Ninth Circuit did not address that issue, see 615 F. 3d 1204, 1207, n. 3 (2010), nor do we.

tion must provide to the consumer before any contract is executed. § 1679c(a). One sentence of that required statement reads, "'You have a right to sue a credit repair organization that violates the Credit Repair Organization Act.'" The Act's nonwaiver provision states, "Any waiver by any consumer of any protection provided by or any right of the consumer under this subchapter—(1) shall be treated as void; and (2) may not be enforced by any Federal or State court or any other person." § 1679f(a).

The Ninth Circuit adopted the following line of reasoning, urged upon us by respondents here: The disclosure provision gives consumers the "right to sue," which "clearly involves the right to bring an action in a court of law." 615 F. 3d, at 1208. Because the nonwaiver provision prohibits the waiver of "any right of the consumer under this subchapter," the arbitration agreement—which waived the right to bring an action in a court of law—cannot be enforced. *Id.*, at 1214.

The flaw in this argument is its premise: that the disclosure provision provides consumers with a right to bring an action in a court of law. It does not. Rather, it imposes an obligation on credit repair organizations to supply consumers with a specific statement set forth (in quotation marks) in the statute. The only consumer right it *creates* is the right to receive the statement, which is meant to describe the consumer protections that the law *elsewhere* provides. The statement informs consumers, for instance, that they can dispute the accuracy of information in their credit file and that "'[t]he credit bureau must then reinvestigate and modify or remove inaccurate or incomplete information.'" 15 U. S. C. § 1679c(a). That description is derived from § 1681i(a), which sets out in great detail the procedures to be followed by a credit bureau in the event of challenges to the accuracy of its information. Similarly, the required statement informs consumers that they may "'cancel your contract with any credit repair organization for any reason within 3 business days from the date you signed it'"—the right created

and set forth in more detail in § 1679e. And the "right to sue" language describes the consumer's right to enforce the credit repair organization's "liab[ility]" for "fail[ure] to comply with any provision of this subchapter" provided for in § 1679g(a).[2] Thus, contrary to the dissent's assertion, our interpretation does not "[r]educ[e] the required disclosure to insignificance," *post*, at 115. The disclosure provision informs consumers of their right to enforce liability for *any* failure to conform to the statute—information they might otherwise not possess. It is the dissent's interpretation that effectively reduces a portion of the CROA to a nullity. Interpreting the "right to sue" language in § 1679c(a) to "create" a right to sue in court not only renders it strikingly out of place in a section that is otherwise devoted to giving the consumer notice of rights created elsewhere; it also renders the creation of the "right to sue" elsewhere superfluous.

Respondents suggest that the CROA's civil-liability provision, § 1679g (set forth in full in the Appendix, *infra*), demonstrates that the Act provides consumers with a "right" to bring an action in court. They cite the provision's repeated use of the terms "action," "class action," and "court"—terms that they say call to mind a judicial proceeding. These references cannot do the heavy lifting that respondents assign them. It is utterly commonplace for statutes that create civil causes of action to describe the details of those causes of action, including the relief available, in the context of a court suit. If the mere formulation of the cause of action in this standard fashion were sufficient to establish the "con-

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[2] Accordingly, when a consumer sues to enforce liability under the CROA, he does so under § 1679g(a), not "in light of § 1679c," *post*, at 113 (GINSBURG, J., dissenting). An action under the CROA need not refer to § 1679c at all, unless it is based on the company's failure to provide the statement required under that section. Section 1679g(a) creates the "right" at issue and describes it in detail not contained in § 1679c's summary. When determining the scope of that right, it is therefore § 1679g(a)—and not § 1679c—that must govern.

trary congressional command" overriding the FAA, *McMahon*, 482 U. S., at 226, valid arbitration agreements covering federal causes of action would be rare indeed. But that is not the law. In *Gilmer* we enforced an arbitration agreement with respect to a cause of action created by the Age Discrimination in Employment Act of 1967 (ADEA) which read, in part: "Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter." 29 U. S. C. § 626(c)(1). In *McMahon* we enforced an arbitration agreement with respect to a cause of action created by a provision of the Racketeer Influenced and Corrupt Organizations Act which read, in part: "Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit . . . ." 18 U. S. C. § 1964(c). And in *Mitsubishi Motors* we enforced an arbitration agreement with respect to a cause of action created by a provision of the Clayton Act which read, in part: "[A]ny person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States . . . and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee." 15 U. S. C. § 15(a). Thus, we have repeatedly recognized that contractually required arbitration of claims satisfies the statutory prescription of civil liability in court. See *Gilmer*, 500 U. S., at 28; *McMahon*, *supra*, at 240; *Mitsubishi Motors*, 473 U. S., at 637. To be sure, none of the statutes described above contained a nonwaiver provision, as the statute before us does. But if a cause-of-action provision mentioning judicial enforcement does not create a right to initial judicial enforcement, the waiver of initial judicial enforcement is not the waiver of a "right of the consumer," § 1679f(a). It takes a considerable stretch to regard the non-

waiver provision as a "congressional command" that the FAA shall not apply.[3]

Moreover, if one believes that § 1679g's contemplation of court suit (combined with § 1679f(a)) establishes a nonwaivable right to initial judicial enforcement, one must also believe that it establishes a nonwaivable right to initial judicial enforcement in *any* competent judicial tribunal, since it contains no limitation. We think it clear, however, that this mere "contemplation" of suit in any competent court does not *guarantee* suit in all competent courts, disabling the parties from adopting a reasonable forum-selection clause. And just as the contemplated availability of all judicial forums may be reduced to a single forum by contractual specification, so also can the contemplated availability of judicial action be limited to judicial action compelling or reviewing initial arbitral adjudication. The parties remain free to specify such matters, so long as the *guarantee* of § 1679g—*the guarantee of the legal power to impose liability*—is preserved.

Respondents and the dissent maintain that if the CROA does not create a right to a judicial forum, then the disclosure provision effectively requires that credit repair organizations mislead consumers. We think not. The disclosure provision is meant to describe the law to consumers in a manner that is concise and comprehensible to the layman—which necessarily means that it will be imprecise. The required statement says, for example, that the CROA "'prohibits deceptive practices by credit repair organizations,'" 15 U. S. C. § 1679c(a). This is in some respects an overstatement, and in some respects an understatement, of the "Prohibited practices" set forth in § 1679b. It would include, for example,

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[3] *Gilmer* noted that the ADEA had been amended after conclusion of the arbitration agreement in that case to preclude waiver of "rights or claims that may arise after the date the waiver is executed." 29 U. S. C. § 626(f)(1)(C). The Court said in dictum that this provision "did not explicitly preclude arbitration or other nonjudicial resolution of claims," 500 U. S., at 29.

deception apart from "the offer or sale of the services of the credit repair organization," § 1679b(a)(4). Yet we would not hold, in order to prevent the required statement from being "misleading," that a consumer has a right to be protected from deceptive practices beyond those actually covered by § 1679b. So also with respect to the statement's description of a "right to sue." This is a colloquial method of communicating to consumers that they have the legal right, enforceable in court, to recover damages from credit repair organizations that violate the CROA. We think most consumers would understand it this way, without regard to whether the suit in court has to be preceded by an arbitration proceeding. Leaving that possibility out may be imprecise, but it is not misleading—and certainly not so misleading as to demand, in order to avoid that result, reading the statute to contain a guaranteed right it does not in fact contain.

IV

At the time of the CROA's enactment in 1996, arbitration clauses in contracts of the type at issue here were no rarity. Quite the contrary, the early 1990's saw the increased use of arbitration clauses in consumer contracts generally, and in financial services contracts in particular. See Ware, Arbitration and Unconscionability After *Doctor's Associates, Inc.* v. *Casarotto*, 31 Wake Forest L. Rev. 1001, 1001, and n. 3 (1996); J. Shimabukuro, Congressional Research Service Report for Congress, The Federal Arbitration Act: Background and Recent Developments 1 (2002).

Had Congress meant to prohibit these very common provisions in the CROA, it would have done so in a manner less obtuse than what respondents suggest. When it has restricted the use of arbitration in other contexts, it has done so with a clarity that far exceeds the claimed indications in the CROA. See, *e. g.*, 7 U. S. C. § 26(n)(2) (2006 ed., Supp. IV) ("No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of

a dispute arising under this section"); 15 U. S. C. § 1226(a)(2) (2006 ed.) ("Notwithstanding any other provision of law, whenever a motor vehicle franchise contract provides for the use of arbitration to resolve a controversy arising out of or relating to such contract, arbitration may be used to settle such controversy only if after such controversy arises all parties to such controversy consent in writing to use arbitration to settle such controversy"); cf. 12 U. S. C. § 5518(b) (2006 ed., Supp. IV) (granting authority to the newly created Consumer Financial Protection Bureau to regulate predispute arbitration agreements in contracts for consumer financial products or services).[4] That Congress would have sought to achieve the same result in the CROA through combination of the nonwaiver provision with the "right to sue" phrase in the disclosure provision, and the references to "action" and "court" in the description of damages recoverable, is unlikely.

* * *

Because the CROA is silent on whether claims under the Act can proceed in an arbitral forum, the FAA requires the arbitration agreement to be enforced according to its terms. The judgment of the Ninth Circuit is reversed, and the case

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[4] The dissent questions the relevance of these statutes, since they postdated the CROA and since this Court's intervening decisions compelling arbitration "increasingly alerted Congress to the utility of drafting antiwaiver prescriptions with meticulous care." *Post*, at 116. But as the dissent implicitly recognizes, Congress had been "alerted" much before these post-CROA statutes were passed. The CROA itself followed a series of this Court's seminal decisions compelling arbitration, decisions which held that the FAA had established a "'federal policy favoring arbitration,'" *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20, 26 (1991), and that "[t]he burden is on the party opposing arbitration . . . to show that Congress intended to preclude a waiver of judicial remedies," *Shearson/American Express Inc.* v. *McMahon*, 482 U. S. 220, 227 (1987). To the extent Congress is ever "stimulated" by this Court's decisions, *post*, at 116, there is no reason to think the Congress that enacted the CROA was any less stimulated than subsequent Congresses.

is remanded for further proceedings consistent with this opinion.

It is so ordered.

APPENDIX

Title 15 U. S. C. § 1679c provides:

"(a) Disclosure required

"Any credit repair organization shall provide any consumer with the following written statement before any contract or agreement between the consumer and the credit repair organization is executed:

" 'Consumer Credit File Rights Under State and Federal Law

" 'You have a right to dispute inaccurate information in your credit report by contacting the credit bureau directly. However, neither you nor any "credit repair" company or credit repair organization has the right to have accurate, current, and verifiable information removed from your credit report. The credit bureau must remove accurate, negative information from your report only if it is over 7 years old. Bankruptcy information can be reported for 10 years.

" 'You have a right to obtain a copy of your credit report from a credit bureau. You may be charged a reasonable fee. There is no fee, however, if you have been turned down for credit, employment, insurance, or a rental dwelling because of information in your credit report within the preceding 60 days. The credit bureau must provide someone to help you interpret the information in your credit file. You are entitled to receive a free copy of your credit report if you are unemployed and intend to apply for employment in the next 60 days, if you are a recipient of public welfare assistance, or if you have reason to believe that there is inaccurate information in your credit report due to fraud.

" 'You have a right to sue a credit repair organization that violates the Credit Repair Organization Act. This law prohibits deceptive practices by credit repair organizations.

"'You have the right to cancel your contract with any credit repair organization for any reason within 3 business days from the date you signed it.

"'Credit bureaus are required to follow reasonable procedures to ensure that the information they report is accurate. However, mistakes may occur.

"'You may, on your own, notify a credit bureau in writing that you dispute the accuracy of information in your credit file. The credit bureau must then reinvestigate and modify or remove inaccurate or incomplete information. The credit bureau may not charge any fee for this service. Any pertinent information and copies of all documents you have concerning an error should be given to the credit bureau.

"'If the credit bureau's reinvestigation does not resolve the dispute to your satisfaction, you may send a brief statement to the credit bureau, to be kept in your file, explaining why you think the record is inaccurate. The credit bureau must include a summary of your statement about disputed information with any report it issues about you.

"'The Federal Trade Commission regulates credit bureaus and credit repair organizations. For more information contact:

"'The Public Reference Branch
"'Federal Trade Commission
"'Washington, D. C. 20580'.

"(b) Separate statement requirement

"The written statement required under this section shall be provided as a document which is separate from any written contract or other agreement between the credit repair organization and the consumer or any other written material provided to the consumer.

"(c) Retention of compliance records

"(1) In general

"The credit repair organization shall maintain a copy of the statement signed by the consumer acknowledging receipt of the statement.

"(2) Maintenance for 2 years

"The copy of any consumer's statement shall be maintained in the organization's files for 2 years after the date on which the statement is signed by the consumer."

* * *

Section 1679g provides:

"(a) Liability established

"Any person who fails to comply with any provision of this subchapter with respect to any other person shall be liable to such person in an amount equal to the sum of the amounts determined under each of the following paragraphs:

"(1) Actual damages

"The greater of—

"(A) the amount of any actual damage sustained by such person as a result of such failure; or

"(B) any amount paid by the person to the credit repair organization.

"(2) Punitive damages

"(A) Individual actions

"In the case of any action by an individual, such additional amount as the court may allow.

"(B) Class actions

"In the case of a class action, the sum of—

"(i) the aggregate of the amount which the court may allow for each named plaintiff; and

"(ii) the aggregate of the amount which the court may allow for each other class member, without regard to any minimum individual recovery.

"(3) Attorneys' fees

"In the case of any successful action to enforce any liability under paragraph (1) or (2), the costs of the action, together with reasonable attorneys' fees.

"(b) Factors to be considered in awarding punitive damages

"In determining the amount of any liability of any credit repair organization under subsection (a)(2) of this section, the court shall consider, among other relevant factors—

"(1) the frequency and persistence of noncompliance by the credit repair organization;

"(2) the nature of the noncompliance;

"(3) the extent to which such noncompliance was intentional; and

"(4) in the case of any class action, the number of consumers adversely affected."

JUSTICE SOTOMAYOR, with whom JUSTICE KAGAN joins, concurring in the judgment.

Claims alleging the violation of a statute, such as the Credit Repair Organizations Act (Act), 15 U. S. C. § 1679 *et seq.*, are generally subject to valid arbitration agreements unless Congress evinces a contrary intent in the text, history, or purpose of the statute. See *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20, 26 (1991). I agree with the Court that Congress has not shown that intent here. But for the reasons stated by the dissent, I find this to be a much closer case than the majority opinion suggests.

The Act creates a cause of action in its liability provision, see § 1679g(a), denominates the cause of action a "right to sue" in the mandatory disclosure statement, § 1679c(a), and then provides that "right[s]" may not be waived, § 1679f(a). Those for whom Congress wrote the Act—lay readers "of limited economic means and . . . inexperienced in credit matters," § 1679(a)(2)—reasonably may interpret the phrase "right to sue" as promising a right to sue *in court*. And it is plausible to think that Congress, aware of the impact of its words, intended such a construction of the liability provision.

But while this interpretation of the Act is plausible, it is in my view no more compelling than the contrary construc-

tion that petitioners urge. As the majority opinion notes, the disclosure provision does not itself confer a cause of action, and the liability provision that does is materially indistinguishable from other statutes that we have held not to preclude arbitration. In my mind this leaves the parties' arguments in equipoise, and our precedents require that petitioners prevail in this circumstance. This is because respondents, as the opponents of arbitration, bear the burden of showing that Congress disallowed arbitration of their claims, and because we resolve doubts in favor of arbitration. See *id.*, at 26. Of course, if we have misread Congress' intent, then Congress can correct our error by amending the statute.

I add one more point. The majority opinion contrasts the liability provision of the Act with other, more recently enacted statutes that expressly disallow arbitration. I do not understand the majority opinion to hold that Congress must speak so explicitly in order to convey its intent to preclude arbitration of statutory claims. We have never said as much, and on numerous occasions have held that proof of Congress' intent may also be discovered in the history or purpose of the statute in question. See *ibid.* ("If such an intention exists, it will be discoverable in the text of the [statute], its legislative history, or an 'inherent conflict' between arbitration and the [statute's] underlying purposes"); *Shearson/American Express Inc.* v. *McMahon*, 482 U. S. 220, 227 (1987) ("If Congress did intend to limit or prohibit waiver of a judicial forum for a particular claim, such an intent 'will be deducible from [the statute's] text or legislative history,' or from an inherent conflict between arbitration and the statute's underlying purposes" (quoting *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614, 628 (1985); citation omitted)). I agree with the dissent that the statutes the majority opinion cites shed little light on the thoughts of the Congress that passed the Act. But the Act's text is not dispositive, and respondents identify nothing in

the legislative history or purpose of the Act that would tip the balance of the scale in favor of their interpretation.

JUSTICE GINSBURG, dissenting.

Congress enacted the Credit Repair Organizations Act (CROA or Act) to protect consumers "who have experienced credit problems"—"particularly those of limited economic means"—against the unfair and deceptive practices of credit repair organizations. 15 U. S. C. § 1679(a). Central to the legislation, Congress sought to arm consumers with information needed to make intelligent decisions about purchasing a repair organization's services. To that end, Congress directed that, "before [execution of] any contract . . . between [a] consumer and [a] credit repair organization," the organization must make certain disclosures. § 1679c(a). One of the required disclosures reads:

> "You have a right to sue a credit repair organization that violates the [CROA]. This law prohibits deceptive practices by [such] organizations." *Ibid.* (internal quotation marks omitted).

The Act's civil-liability provision describes suits consumers may bring in court: individual and class actions for damages (actual and punitive) and attorneys' fees. A further provision renders void any purported waiver of any protection or right the Act grants to consumers.

The Court today holds that credit repair organizations can escape suit by providing in their take-it-or-leave-it contracts that arbitration will serve as the parties' sole dispute-resolution mechanism. The "right to sue," the Court explains, merely connotes the vindication of legal rights, whether in court or before an arbitrator. That reading may be comprehensible to one trained to "think like a lawyer." But Congress enacted the CROA with vulnerable consumers in mind—consumers likely to read the words "right to sue" to mean the right to litigate in court, not the obligation to submit disputes to binding arbitration.

In accord with the Ninth Circuit, I would hold that Congress, in an Act meant to curb deceptive practices, did not authorize credit repair organizations to make a false or misleading disclosure—telling consumers of a right they do not, in fact, possess. If the Act affords consumers a nonwaivable right to sue in court, as I believe it does, a credit repair organization cannot retract that right by making arbitration the consumer's sole recourse.

I

CompuCredit Corporation marketed a credit card to consumers with weak credit ratings. It did so through massive direct-mail and Internet solicitations, urging recipients to acquire a card under the brand name Aspire Visa, and thereby "rebuild poor credit" and "improve [their] credit rating." App. 40, Complaint ¶11 (internal quotation marks omitted). Plaintiffs, individuals who applied for and received CompuCredit's card, sought redress for multiple violations of the CROA.

Their complaint alleged that CompuCredit's promotional materials told potential customers that no deposit would be required, and that cardholders would receive, upfront, a credit line of $300. In fact, plaintiffs asserted, they were charged an initial finance fee of $29, a monthly fee of $6.50, and an annual fee of $150, assessed immediately against the $300 limit. In the aggregate, plaintiffs calculated, fees charged the first year amounted to $257. CompuCredit's fee exactions did appear in the promotional materials: in small print, buried amidst other information, and removed from the clearer representation that no deposit would be required. *Id.*, at 40–41, ¶¶12–13. Far from improving their credit rating, plaintiffs complained, CompuCredit knew that its card, saddled with these fees, "would not provide any meaningful assistance whatsoever with regard to rebuilding credit and improving a credit rating." *Id.*, at 48, ¶41(b). Furthermore, plaintiffs stated, CompuCredit did not provide them

with the written disclosures of their rights required by the CROA. *Id.*, at 42, ¶23.

Seeking damages for the alleged violations, along with attorneys' fees, plaintiffs requested class certification. In the District Court and Court of Appeals, they successfully resisted CompuCredit's motion to compel arbitration pursuant to a form contract that barred class proceedings.[1] This Court, however, interprets the CROA to permit CompuCredit's demand that plaintiffs proceed, if at all, before an arbitrator.[2] I read the governing statute differently.

II

Three sections of the CROA, considered together, indicate Congress' intention to preclude mandatory, creditor-imposed, arbitration of CROA claims. See 15 U. S. C. §§1679c(a), 1679g, and 1679f. Before entering into any consumer contract, credit repair organizations must give potential customers a written statement of rights they possess under that Act and related consumer-protection laws. §1679c(a). Congress dictated every word of the required notification. Credit repair organizations must tell consumers, in plain terms, how they may enforce their rights: "You have a right to sue a credit repair organization that violates the [CROA]." *Ibid.* (internal quotation marks omitted).

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[1] The contract signed by cardholders did not itself require arbitration. Rather, it incorporated by reference an "enclosed insert" providing that all disputes would be resolved by arbitration at the discretion of CompuCredit or the cardholder. App. 61–63.

[2] CompuCredit's form contract specified that arbitration was to occur under the auspices of the National Arbitration Forum (NAF). In 2009, after the Attorney General of Minnesota filed an action alleging that NAF had engaged in numerous violations of consumer-protection laws, NAF entered into a consent decree barring it from handling consumer arbitrations. See Press Release, Lori Swanson, Attorney General of Minnesota, National Arbitration Forum Barred From Credit Card and Consumer Arbitrations Under Agreement With Attorney General Swanson (July 19, 2009).

The "right to sue" refers to the claim for relief Congress afforded consumers in § 1679g. "Any person" who violates another's rights under the CROA "shall be liable" for actual damages and attorneys' fees, and may be liable for punitive damages as well. § 1679g(a)(1)–(3). The Act sets out the factors "the court shall consider" in determining the amount of punitive damages "the court may allow" aggrieved consumers to recover, either individually or as a class. § 1679g(a)(2) and (b). The liability created here, in § 1679g, is precisely what the consumer, in light of § 1679c, may sue to enforce.

The Act renders void and unenforceable "[a]ny waiver by any consumer of any protection provided by or *any right* of the consumer under this subchapter." § 1679f (emphasis added).[3] The rights listed in § 1679c(a) rendered nonwaivable by § 1679f are the "right to sue" and the "right to cancel [a] contract . . . for any reason within 3 business days from the date [the consumer] signed it." [4]

The question on which this case turns is what Congress meant when it created a nonwaivable "right to sue." Recall that Congress' target audience in the CROA is not composed

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[3] Section 1679f(a), omitted from the Court's statutory appendix, *ante*, at 105–108, provides in full:

"Any waiver by any consumer of any protection provided by or any right of the consumer under this subchapter—

"(1) shall be treated as void; and

"(2) may not be enforced by any Federal or State court or any other person."

[4] Two provisions, although described by § 1679c(a) as consumer "right[s]," are not rendered nonwaivable by § 1679f because they are not "right[s] . . . under this subchapter." Rather, the "right to dispute inaccurate information in your credit report" and the "right to obtain a copy of your credit report" referred to in § 1679c(a) are rights conferred elsewhere in the U. S. Code. See §§ 1681i(a), 1681j. Section 1679f also makes nonwaivable the "*protection[s]* provided . . . under this subchapter" (emphasis added); these protections include the prohibition of certain business practices, see § 1679b, and the provision, in writing, of certain contractual terms and conditions, see § 1679d.

of lawyers and judges accustomed to nuanced reading of statutory texts, but laypersons who receive a disclosure statement in the mail. Recall, as well, Congress' findings that these individuals are often "of limited economic means and . . . inexperienced in credit matters." § 1679(a)(2). Attributing little importance to this context, the Court construes the right to sue as "the legal right, enforceable in court, to recover damages . . . without regard to whether the suit in court has to be preceded by an arbitration proceeding." *Ante*, at 103. I read Congress' words without that sophisticated gloss: The right to sue, I would hold, means the right to litigate in court.

The Court is quite right in recognizing that consumers "have the legal right, enforceable in court, to recover damages from credit repair organizations that violate the CROA." *Ibid.* But the Court is quite wrong, as I see it, to characterize as merely "imprecise," *ibid.*, Congress' failure to include the caveat that access to court may be conditioned upon an anterior arbitration. The "right to sue" may well be "a colloquial method of communicating to consumers." See *ibid.* But it surely is not colloquially *understood* by recipients of the required disclosures as the right, not to adjudicate in court, but only to seek, or defend against, court enforcement of an award rendered by the arbitrator chosen by the credit repair organization. Few, if any, credit repair customers would equate the "right to sue," § 1679c(a), with the extremely limited judicial review given to an arbitrator's award, see, *e. g.*, *Hall Street Associates, L. L. C.* v. *Mattel, Inc.*, 552 U. S. 576, 586–589 (2008).

The Court discounts the references to "action," "class action," and "court" in § 1679g, the provision that "create[s]" the consumers' claim for relief. See *ante*, at 100. Despite similar statutory language, the Court observes, we have enforced arbitration agreements to settle disputes arising under other Acts of Congress. The CROA, however, is distinguished by its disclosure requirements, prime among

them, the obligation imposed on the credit repair organization to inform potential customers they "have a right to sue" an organization that violates the Act. § 1679c(a). Yet the Court refuses to read this language in concert with § 1679g, notwithstanding our frequent acknowledgment that "a statute is to be read as a whole, since the meaning of statutory language . . . depends on context." *King* v. *St. Vincent's Hospital*, 502 U. S. 215, 221 (1991) (citation omitted). As just explained, I believe Congress meant what an ordinary reader of the disclosure requirement would likely comprehend: A credit repair organization that engages in deceptive practices may be sued *in court*.

Reducing the required disclosure to insignificance, see *ante*, at 99–100, the Court's construction of the CROA scarcely advances the Act's goals. Congress aimed to ensure prospective customers "are provided with the information necessary to make an informed decision," and also to "protect the public from unfair or deceptive advertising and business practices." 15 U. S. C. § 1679(b). The Court's interpretation, however, enables the very deception Congress sought to suppress. Today's decision permits credit repair organizations to deny consumers, through fine print in a contract, an important right whose disclosure is decreed in the U. S. Code.

This unfortunate result is not compelled by our precedents. The Court cites three decisions for the proposition, by now uncontroversial, that the mere existence of a statutory right of action does not preclude agreements to arbitrate disputes. See *ante*, at 101 (citing *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20, 28 (1991); *Shearson/American Express Inc.* v. *McMahon*, 482 U. S. 220, 240 (1987); and *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614, 637 (1985)). As the Court acknowledges, *ante*, at 101, none of the statutes at issue in those cases contained a nonwaiver clause analogous to § 1679f. Yet the presence of such a clause would not have affected the outcome, the Court

maintains; a nonwaiver provision would not have precluded arbitration because the statutes conferred no underlying right to proceed in court.

Precisely the point: The CROA differs from the statutes we have construed in the past in just that respect. The Act does not merely create a claim for relief. It designates that claim as an action entailing a "right to sue"; mandates that consumers be informed, prior to entering any contract, of that right; and precludes the waiver of any "right" conferred by the Act. Neither *Gilmer*, *McMahon*, nor *Mitsubishi* construed a statute of a similar order.[5]

III

The Court's final point is that, elsewhere, Congress has spoken with particular clarity in guaranteeing a judicial forum and proscribing arbitration, but here, it did not do so. The two statutes the Court cites as exemplary postdate the CROA's enactment by 14 and 6 years, respectively. (A third merely delegates regulatory authority over certain arbitration agreements.) See *ante*, at 103–104. Notably, these recent statutes were framed following a string of this Court's decisions compelling arbitration pursuant to contractual stipulations.[6] Our decisions have increasingly alerted Congress to the utility of drafting antiwaiver prescriptions with meticulous care. But the Congress that drafted the CROA was not similarly stimulated, and we cannot fairly assess that

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[5] "[I]f one believes [the CROA] . . . establishes a nonwaivable right to initial judicial enforcement," the Court states, "one must also believe that it establishes a nonwaivable right to initial judicial enforcement in *any* competent judicial tribunal." *Ante*, at 102. In Sportin' Life's words, "it ain't necessarily so." While there is good reason to believe Congress cared about the *institutional* location of consumers' suits under the CROA, there is no reason to think Congress sought to disturb the personal jurisdiction and venue rules that determine in which court a civil action may be brought.

[6] See Brief for American Association for Justice as *Amicus Curiae* 12, and n. 5 (listing arbitration decisions since the CROA's enactment).

enactment in the light of subsequent legislative responses to developments unknown to the CROA's drafters. Cf. *United States* v. *Price*, 361 U. S. 304, 313 (1960) ("[T]he views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one.").

Beyond question, the Federal Arbitration Act, "standing alone," favors the enforcement of arbitration agreements. *McMahon*, 482 U. S., at 226. To depart from that rule, however, Congress need not employ "magic words." See Tr. of Oral Arg. 6. In determining whether the Arbitration Act's general rule has been displaced by another statutory prescription, it remains our responsibility to examine carefully "the text of the [statute], its legislative history," and Congress' "underlying purposes." *Gilmer*, 500 U. S., at 26 (citing *McMahon*, 482 U. S., at 227). See also *14 Penn Plaza LLC* v. *Pyett*, 556 U. S. 247, 258 (2009) (arbitration agreements will be enforced "unless Congress itself has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue" (quoting *Gilmer*, 500 U. S., at 26, in turn quoting *Mitsubishi*, 473 U. S., at 628)). No "unmistakably clear" statement is necessary to proscribe the arbitration clause CompuCredit seeks to enforce.

* * *

The CROA mandates that potential customers shall be told of their "right to sue a credit repair organization" for damages arising from deceptive practices. 15 U. S. C. § 1679c(a). But CompuCredit's adhesion contract provided that consumers would "not have the right to go to court." App. 61 (capitalization omitted). Congress' direction must prevail over CompuCredit's opposing declaration. Accordingly, I would affirm the judgment of the Court of Appeals for the Ninth Circuit.

Syllabus

MINNECI ET AL. *v.* POLLARD ET AL.

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

No. 10–1104. Argued November 1, 2011—Decided January 10, 2012

Respondent Pollard sought damages from employees at a privately run federal prison in California, claiming that they had deprived him of adequate medical care in violation of the Eighth Amendment's prohibition against cruel and unusual punishment. The Federal District Court dismissed the complaint, ruling that the Eighth Amendment does not imply an action under *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, against a privately managed prison's personnel. The Ninth Circuit reversed.

Held: Because in the circumstance of this case, state tort law authorizes adequate alternative damages actions—providing both significant deterrence and compensation—no *Bivens* remedy can be implied here. Pp. 122–131.

(a) *Wilkie* v. *Robbins*, 551 U. S. 537, fairly summarizes the basic considerations the Court applies here. In deciding whether to recognize a *Bivens* remedy, a court must first ask "whether any alternative, existing process for protecting the [constitutionally recognized] interest amounts to a convincing reason for the Judicial Branch to refrain from providing a new and freestanding" damages remedy. Even absent an alternative, "a *Bivens* remedy is a subject of judgment: 'the federal courts must make the kind of remedial determination that is appropriate for a common-law tribunal, paying particular heed . . . to any special factors counselling hesitation before authorizing a new kind of federal litigation.'" *Id.*, at 550. In *Bivens* itself, the Court held that the Fourth Amendment implicitly authorized a court to order federal agents to pay damages to a person injured by the agents' violation of the Amendment's strictures, 403 U. S., at 389, noting that the Fourth Amendment prohibited conduct that state law might permit, *id.*, at 392–393, and that the interests protected on the one hand by state "trespass" and "invasion of privacy" laws and on the other hand by the Fourth Amendment "may be inconsistent or even hostile," *id.*, at 394. It also stated that "[h]istorically, damages have been regarded as the ordinary remedy for an invasion of personal interests in liberty," *id.*, at 395, and found "no special factors counselling hesitation in the absence of affirmative action by Congress," *id.*, at 396. *Bivens* actions were allowed in *Davis* v. *Passman*, 442 U. S. 228, for a Fifth Amendment due process claim in-

volving gender-based employment discrimination, and in *Carlson* v. *Green*, 446 U. S. 14, for an Eighth Amendment claim based on federal government officials' "deliberat[e] indifferen[ce]" to a federal prisoner's medical needs, *id.*, at 16, n. 1, 17. Since *Carlson*, this Court has declined to imply a *Bivens* action in several different instances. See, *e. g.*, *Bush* v. *Lucas*, 462 U. S. 367; *Correctional Services Corp.* v. *Malesko*, 534 U. S. 61.

Applying *Wilkie*'s approach here, Pollard cannot assert a *Bivens* claim, primarily because his Eighth Amendment claim focuses on a kind of conduct that typically falls within the scope of traditional state tort law. And in the case of a privately employed defendant, state tort law provides an "alternative, existing process" capable of protecting the constitutional interests at stake. *Wilkie*, 551 U. S., at 550. The existence of that alternative remedy constitutes a "convincing reason for the Judicial Branch to refrain from providing a new and freestanding" damages remedy. *Ibid.* Pp. 122–126.

(b) Pollard's contrary arguments are rejected. First, he claims that *Carlson* authorizes an Eighth Amendment-based *Bivens* action here, but *Carlson* involved Government, not privately employed, personnel. The potential existence of an adequate "alternative, existing process" differs dramatically for public and private employees, as prisoners ordinarily can bring state tort actions against private employees, but not against public ones. Second, Pollard's argument that this Court should consider only whether federal laws provide adequate alternative remedies because of the "vagaries" of state tort law, *Carlson*, *supra*, at 23, was rejected in *Malesko*, *supra*, at 72–73. Third, Pollard claims that state tort law does not provide remedies adequate to protect the constitutional interests at issue here, but California, like every other State (as far as the Court is aware), has tort law that provides for negligence actions for claims such as his. That the state law may prove less generous than would a *Bivens* action does not render the state law inadequate, and state remedies and a potential *Bivens* remedy need not be perfectly congruent. Fourth, Pollard argues that there may be similar Eighth Amendment claims that state tort law does not cover, but he offers no supporting cases. The possibility of a future case, where an Eighth Amendment claim or state law differs significantly from those at issue, provides insufficient grounds for reaching a different conclusion here. Pp. 126–131.

607 F. 3d 583 and 629 F. 3d 843, reversed.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, THOMAS, ALITO, SOTOMAYOR, and KAGAN, JJ.,

joined. SCALIA, J., filed a concurring opinion, in which THOMAS, J., joined, *post*, p. 131. GINSBURG, J., filed a dissenting opinion, *post*, p. 132.

Jonathan S. Franklin argued the cause for petitioners and The GEO Group, Inc., respondent under this Court's Rule 12.6 in support of petitioners. With him on the briefs was *Mark Emery.*

Pratik A. Shah argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Verrilli, Assistant Attorney General West, Leondra R. Kruger, Barbara L. Herwig,* and *Howard S. Scher.*

John F. Preis argued the cause for respondent Pollard. With him on the brief were *Brian Wolfman* and *Scott L. Nelson.**

JUSTICE BREYER delivered the opinion of the Court.

The question is whether we can imply the existence of an Eighth Amendment-based damages action (a *Bivens* action) against employees of a privately operated federal prison. See generally *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, 389 (1971) ("[V]iolation of [the Fourth Amendment] by a federal agent . . . gives rise to a cause of action for damages" against a Federal Government employee). Because we believe that in the circumstances present here state tort law authorizes adequate alternative damages actions—actions that provide both significant deterrence and compensation—we cannot do so. See *Wilkie* v. *Robbins*, 551 U. S. 537, 550 (2007) (no *Bivens* action

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**R. Matthew Cairns, Raymond A. Cardozo,* and *David J. de Jesus* filed a brief for DRI as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *Mark H. Lynch, Steven R. Shapiro, David C. Fathi, Steven Banks,* and *John Boston;* for Law Professors by *Matthew S. Hellman* and *Alexander A. Reinert* and *Lumen N. Mulligan,* both *pro se;* and for the United Mexican States by *Joshua Karsh.*

where "alternative, existing" processes provide adequate protection).

I

Richard Lee Pollard was a prisoner at a federal facility operated by a private company, the Wackenhut Corrections Corporation. In 2002 he filed a *pro se* complaint in federal court against several Wackenhut employees, who (now) include a security officer, a food-services supervisor, and several members of the medical staff. As the Federal Magistrate Judge interpreted Pollard's complaint, he claimed that these employees had deprived him of adequate medical care, had thereby violated the Eighth Amendment's prohibition against "cruel and unusual" punishment, and had caused him injury. He sought damages.

Pollard said that a year earlier he had slipped on a cart left in the doorway of the prison's butcher shop. The prison medical staff took X rays, thought he might have fractured both elbows, brought him to an outside clinic for further orthopedic evaluation, and subsequently arranged for surgery. In particular, Pollard claimed:

(1) Despite his having told a prison guard that he could not extend his arm, the guard forced him to put on a jumpsuit (to travel to the outside clinic), causing him "the most excruciating pain," App. 32;

(2) During several visits to the outside clinic, prison guards made Pollard wear arm restraints that were connected in a way that caused him continued pain;

(3) Prison medical (and other) personnel failed to follow the outside clinic's instructions to put Pollard's left elbow in a posterior splint, failed to provide necessary physical therapy, and failed to conduct necessary studies, including nerve conduction studies;

(4) At times when Pollard's arms were in casts or similarly disabled, prison officials failed to make alternative arrangements for him to receive meals, with the result that (to avoid "being humiliated" in the general food service area, *id.*, at

35) Pollard had to auction off personal items to obtain funds to buy food at the commissary;

(5) Prison officials deprived him of basic hygienic care to the point where he could not bathe for two weeks;

(6) Prison medical staff provided him with insufficient medicine, to the point where he was in pain and could not sleep; and

(7) Prison officials forced him to return to work before his injuries had healed.

After concluding that the Eighth Amendment did not provide for a *Bivens* action against a privately managed prison's personnel, the Magistrate Judge recommended that the District Court dismiss Pollard's complaint. The District Court did so. But on appeal the Ninth Circuit found that the Eighth Amendment provided Pollard with a *Bivens* action, and it reversed the District Court. *Pollard* v. *The GEO Group, Inc.*, 607 F. 3d 583, 603, as amended, 629 F. 3d 843, 868 (2010).

The defendants sought certiorari. And, in light of a split among the Courts of Appeals, we granted the petition. Compare *ibid.* (finding an Eighth Amendment *Bivens* action where prisoner sues employees of a privately operated federal prison) with, *e. g.*, *Alba* v. *Montford*, 517 F. 3d 1249, 1254–1256 (CA11 2008) (no *Bivens* action available), and *Holly* v. *Scott*, 434 F. 3d 287, 288 (CA4 2006) (same).

II

Recently, in *Wilkie* v. *Robbins*, *supra*, we rejected a claim that the Fifth Amendment impliedly authorized a *Bivens* action that would permit landowners to obtain damages from government officials who unconstitutionally interfere with their exercise of property rights. After reviewing the Court's earlier *Bivens* cases, the Court stated:

> "[T]he decision whether to recognize a *Bivens* remedy may require two steps. In the first place, there is the question whether any alternative, existing process for

> protecting the [constitutionally recognized] interest amounts to a convincing reason for the Judicial Branch to refrain from providing a new and freestanding remedy in damages. . . . But even in the absence of an alternative, a *Bivens* remedy is a subject of judgment: 'the federal courts must make the kind of remedial determination that is appropriate for a common-law tribunal, paying particular heed, however, to any special factors counselling hesitation before authorizing a new kind of federal litigation.'" 551 U. S., at 550 (quoting *Bush* v. *Lucas*, 462 U. S. 367, 378 (1983)).

These standards seek to reflect and to reconcile the Court's reasoning set forth in earlier cases. In *Bivens* itself the Court held that the Fourth Amendment implicitly authorized a court to order federal agents to pay damages to a person injured by the agents' violation of the Amendment's constitutional strictures. 403 U. S., at 389. The Court noted that "'where federally protected rights have been invaded,'" courts can "'adjust their remedies so as to grant the necessary relief.'" *Id.*, at 392 (quoting *Bell* v. *Hood*, 327 U. S. 678, 684 (1946)). See also *Correctional Services Corp.* v. *Malesko*, 534 U. S. 61, 66 (2001) ("authority to imply a new constitutional tort" anchored within general "'arising under'" jurisdiction). It pointed out that the Fourth Amendment prohibited, among other things, conduct that state law might permit (such as the conduct at issue in that very case). *Bivens*, 403 U. S., at 392–393. It added that the interests protected on the one hand by state "trespass" and "invasion of privacy" laws and on the other hand by the Fourth Amendment's guarantees "may be inconsistent or even hostile." *Id.*, at 394. It stated that "[h]istorically, damages have been regarded as the ordinary remedy for an invasion of personal interests in liberty." *Id.*, at 395. And it found "no special factors counselling hesitation in the absence of affirmative action by Congress." *Id.*, at 396.

In *Davis* v. *Passman*, 442 U. S. 228 (1979), the Court considered a former congressional employee's claim for damages suffered as a result of her employer's unconstitutional discrimination based on gender. The Court found a damages action implicit in the Fifth Amendment's Due Process Clause. *Id.*, at 248–249. In doing so, the Court emphasized the unavailability of "other alternative forms of judicial relief." *Id.*, at 245. And the Court noted that there was "no evidence" that Congress (or the Constitution) intended to foreclose such a remedy. *Id.*, at 247.

In *Carlson* v. *Green*, 446 U. S. 14 (1980), the Court considered a claim for damages brought by the estate of a federal prisoner who (the estate said) had died as the result of Government officials' "deliberat[e] indifferen[ce]" to his medical needs—indifference that violated the Eighth Amendment. *Id.*, at 16, n. 1, 17 (citing *Estelle* v. *Gamble*, 429 U. S. 97 (1976)). The Court implied an action for damages from the Eighth Amendment. 446 U. S., at 17–18. It noted that state law offered the particular plaintiff no meaningful damages remedy. *Id.*, at 17, n. 4. Although the estate might have brought a damages claim under the Federal Tort Claims Act, the defendant in any such lawsuit was the employer, namely, the United States, not the individual officers who had committed the violation. *Id.*, at 21. A damages remedy against an individual officer, the Court added, would prove a more effective deterrent. *Ibid.* And, rather than leave compensation to the "vagaries" of state tort law, a federal *Bivens* action would provide "uniform rules." 446 U. S., at 23.

Since *Carlson*, the Court has had to decide in several different instances whether to imply a *Bivens* action. And in each instance it has decided against the existence of such an action. These instances include:

(1) A federal employee's claim that his federal employer dismissed him in violation of the First Amendment, *Bush*, *supra*, at 386–388 (congressionally created federal civil service procedures provide meaningful redress);

(2) A claim by military personnel that military superiors violated various constitutional provisions, *Chappell* v. *Wallace*, 462 U. S. 296, 298–300 (1983) (special factors related to the military counsel against implying a *Bivens* action), see also *United States* v. *Stanley*, 483 U. S. 669, 683–684 (1987) (similar);

(3) A claim by recipients of Social Security disability benefits that benefits had been denied in violation of the Fifth Amendment, *Schweiker* v. *Chilicky*, 487 U. S. 412, 414, 425 (1988) (elaborate administrative scheme provides meaningful alternative remedy);

(4) A former bank employee's suit against a federal banking agency, claiming that he lost his job due to agency action that violated the Fifth Amendment's Due Process Clause, *FDIC* v. *Meyer*, 510 U. S. 471, 484–486 (1994) (no *Bivens* actions against government agencies rather than particular individuals who act unconstitutionally);

(5) A prisoner's Eighth Amendment-based suit against a private corporation that managed a federal prison, *Malesko*, 534 U. S., at 70–73 (to permit suit against the employer-corporation would risk skewing relevant incentives; at the same time, the ability of a prisoner to bring state tort law damages action against *private* individual defendants means that the prisoner does not "lack effective remedies," *id.*, at 72).

Although the Court, in reaching its decisions, has not always similarly emphasized the same aspects of the cases, *Wilkie* fairly summarizes the basic considerations that underlie those decisions. 551 U. S., at 550. We consequently apply its approach here. And we conclude that Pollard cannot assert a *Bivens* claim.

That is primarily because Pollard's Eighth Amendment claim focuses upon a kind of conduct that typically falls within the scope of traditional state tort law. And in the case of a privately employed defendant, state tort law provides an "alternative, existing process" capable of protecting the constitutional interests at stake. 551 U. S., at 550. The

existence of that alternative here constitutes a "convincing reason for the Judicial Branch to refrain from providing a new and freestanding remedy in damages." *Ibid.* Our reasoning is best understood if we set forth and explain why we reject Pollard's arguments to the contrary.

III

Pollard (together with supporting *amici*) asks us to imply a *Bivens* action for four basic reasons—none of which we find convincing. First, Pollard argues that this Court has already decided in *Carlson* that a federal prisoner may bring an Eighth Amendment-based *Bivens* action against prison personnel; and we need do no more than simply apply *Carlson*'s holding here. *Carlson*, however, was a case in which a federal prisoner sought damages from personnel employed by the *government*, not personnel employed by a *private* firm. 446 U. S., at 25. And for present purposes that fact—of employment status—makes a critical difference.

For one thing, the potential existence of an adequate "alternative, existing process" differs dramatically in the two sets of cases. Prisoners ordinarily *cannot* bring state-law tort actions against employees of the Federal Government. See 28 U. S. C. §§ 2671, 2679(b)(1) (Westfall Act) (substituting United States as defendant in tort action against federal employee); *Osborn* v. *Haley*, 549 U. S. 225, 238, 241 (2007) (Westfall Act immunizes federal employee through removal and substitution of United States as defendant). But prisoners ordinarily *can* bring state-law tort actions against employees of a private firm. *Infra*, at 128–129.

For another thing, the Court specifically rejected Justice Stevens' somewhat similar suggestion in his dissenting opinion in *Malesko*, namely, that a prisoner's suit against a private prison-management firm should fall within *Carlson*'s earlier holding because such a firm, like a federal employee, is a "federal agent." Compare *Malesko*, 534 U. S., at 70, and n. 4 (majority opinion), with *id.*, at 76–77, 82 (dissenting opin-

ion). In rejecting the dissent's suggestion, the Court explained that the context in *Malesko* was "fundamentally different" from the contexts at issue in earlier cases, including *Carlson*. 534 U. S., at 70. That difference, the Court said, reflected in part the nature of the defendant, *i. e.*, a corporate employer rather than an individual employee, *ibid.*, and in part reflected the existence of alternative "effective" state tort remedies, *id.*, at 72–73. This last-mentioned factor makes it difficult to square Pollard's argument with *Malesko*'s reasoning.

Second, Pollard argues that, because of the "vagaries" of state tort law, *Carlson*, 446 U. S., at 23, we should consider only whether *federal* law provides adequate alternative remedies. See *id.*, at 18–19, 23 (considering adequacy of federal remedies); see also, *e. g.*, *Schweiker*, *supra*, at 423 (similar); *Bush*, 462 U. S., at 378 (similar). But cf. *Carlson*, *supra*, at 24 ("'[R]elevant Indiana statute would not permit survival of the [state tort] claim'"). This argument flounders, however, on the fact that the Court rejected it in *Malesko*. Compare 534 U. S., at 72–73 (majority opinion), with *id.*, at 79–80 (Stevens, J., dissenting) (making similar suggestion). State tort law, after all, can help to deter constitutional violations as well as to provide compensation to a violation's victim. And it is consequently unsurprising that several cases have considered the adequacy or inadequacy of state-law remedies when determining whether to imply a *Bivens* remedy. See, *e. g.*, *Bivens*, 403 U. S., at 394 (state tort law "inconsistent or even hostile" to Fourth Amendment); *Davis*, 442 U. S., at 245, n. 23 (noting no state-law remedy available); cf. *Malesko*, *supra*, at 70 (noting that the Court has implied *Bivens* action only where any alternative remedy against individual officers was "nonexistent" or where plaintiff "lacked *any alternative remedy*" at all).

Third, Pollard argues that state tort law does not provide remedies *adequate* to protect the constitutional interests at issue here. Pollard's claim, however, is a claim for physical

or related emotional harm suffered as a result of aggravated instances of the kind of conduct that state tort law typically forbids. That claim arose in California, where state tort law provides for ordinary negligence actions, for actions based upon "want of ordinary care or skill," for actions for "negligent failure to diagnose or treat," and for actions based upon the failure of one with a custodial duty to care for another to protect that other from "'unreasonable risk of physical harm.'" See Cal. Civ. Code Ann. §§ 1714(a), 1714.8(a) (West 2009 and Supp. 2012); *Giraldo* v. *Department of Corrections and Rehabilitation*, 168 Cal. App. 4th 231, 248, 85 Cal. Rptr. 3d 371, 384 (2008) (quoting *Haworth* v. *State*, 60 Haw. 557, 563, 592 P. 2d 820, 824 (1979)). California courts have specifically applied this law to jailers, including private operators of prisons. *Giraldo*, *supra*, at 252, 85 Cal. Rptr. 3d, at 387 ("[J]ailers owe prisoners a duty of care to protect them from foreseeable harm"); see also *Lawson* v. *Superior Ct.*, 180 Cal. App. 4th 1372, 1389–1390, 1397, 103 Cal. Rptr. 3d 834, 849–850, 855 (2010) (same).

Moreover, California's tort law basically reflects general principles of tort law present, as far as we can tell, in the law of every State. See Restatement (Second) of Torts §§ 314A(4), 320 (1963–1964). We have found specific authority indicating that state law imposes general tort duties of reasonable care (including medical care) on prison employees in every one of the eight States where privately managed secure federal facilities are currently located. See Dept. of Justice, Federal Bureau of Prisons, Weekly Population Report (Dec 22, 2011), http://www.bop.gov/locations/weekly_report.jsp (listing States) (as visited Dec. 29, 2011, and available in Clerk of Court's case file); *Thomas* v. *Williams*, 105 Ga. App. 321, 326, 124 S. E. 2d 409, 412–413 (1962) (In Georgia, "'sheriff owes to a prisoner placed in his custody a duty to keep the prisoner safely and free from harm, to render him medical aid when necessary, and to treat him humanely and refrain from oppressing him'"); *Giraldo*, *supra*, at 248,

85 Cal. Rptr. 3d, at 384 (California, same); *Farmer* v. *State ex rel. Russell*, 224 Miss. 96, 105, 79 So. 2d 528, 531 (1955) (Mississippi, same); *Doe* v. *Albuquerque*, 96 N. M. 433, 438, 631 P. 2d 728, 733 (App. 1981) (New Mexico, same); *Multiple Claimants* v. *North Carolina Dept. of Health and Human Servs.*, 176 N. C. App. 278, 280, 626 S. E. 2d 666, 668 (2006) (North Carolina, same); *Clemets* v. *Heston*, 20 Ohio App. 3d 132, 135–136, 485 N. E. 2d 287, 291 (1985) (Ohio, same); *Williams* v. *Syed*, 782 A. 2d 1090, 1093–1094 (Pa. Commw. 2001) (Pennsylvania, same); *Salazar* v. *Collins*, 255 S. W. 3d 191, 198–200 (Tex. App. 2008) (Texas, same); see also Schellenger, 14 A. L. R. 2d 353, § 2[a] (Later Case Service and Supp. 2011) (same). But cf. Miss. Code Ann. § 11–46–9(1)(m) (Supp. 2011) (statute forbidding such actions against *state*—though not private—employees); N. Y. Correc. Law Ann. §§ 24 (West 2003), 121 (2011 Cum. Supp.) (similar).

We note, as Pollard points out, that state tort law may sometimes prove less generous than would a *Bivens* action, say, by capping damages, see Cal. Civ. Code Ann. § 3333.2(b) (West 1997), or by forbidding recovery for emotional suffering unconnected with physical harm, see 629 F. 3d, at 864, or by imposing procedural obstacles, say, initially requiring the use of expert administrative panels in medical malpractice cases, see, *e. g.*, Me. Rev. Stat. Ann., Tit. 24, § 2853 (Supp. 2010); Mass. Gen. Laws, ch. 231, § 60B (West 2010). But we cannot find in this fact sufficient basis to determine state law inadequate.

State-law remedies and a potential *Bivens* remedy need not be perfectly congruent. See *Bush*, *supra*, at 388 (administrative remedies adequate even though they "do not provide complete relief"). Indeed, federal law as well as state law contains limitations. Prisoners bringing federal lawsuits, for example, ordinarily may not seek damages for mental or emotional injury unconnected with physical injury. See 42 U. S. C. § 1997e(e). And *Bivens* actions, even if more generous to plaintiffs in some respects, may be less generous

in others. For example, to show an Eighth Amendment violation a prisoner must typically show that a defendant acted, not just negligently, but with "deliberate indifference." *Farmer* v. *Brennan*, 511 U. S. 825, 834 (1994). And a *Bivens* plaintiff, unlike a state tort law plaintiff, normally could not apply principles of *respondeat superior* and thereby obtain recovery from a defendant's potentially deep-pocketed employer. See *Ashcroft* v. *Iqbal*, 556 U. S. 662, 676 (2009).

Rather, in principle, the question is whether, in general, state tort law remedies provide roughly similar incentives for potential defendants to comply with the Eighth Amendment while also providing roughly similar compensation to victims of violations. The features of the two kinds of actions just mentioned suggest that, in practice, the answer to this question is "yes." And we have found nothing here to convince us to the contrary.

Fourth, Pollard argues that there "may" be similar kinds of Eighth Amendment claims that state tort law does not cover. But Pollard does not convincingly show that there are such cases. Compare Brief for Respondent Pollard 32 (questioning the availability of state tort remedies for "prisoners [who] suffer attacks by other inmates, preventable suicides, or the denial of heat, ventilation or movement") with *Giraldo*, *supra*, at 248–249, 85 Cal. Rptr. 3d, at 384–385 (courts have long held that prison officials must protect, *e. g.*, transgender inmate from foreseeable harm by other inmates), and Restatement (Second) of Torts §§ 314A(4), 320.

Regardless, we concede that we cannot prove a negative or be totally certain that the features of state tort law relevant here will universally prove to be, or remain, as we have described them. Nonetheless, we are certain enough about the shape of present law as applied to the kind of case before us to leave different cases and different state laws to another day. That is to say, we can decide whether to imply a *Bivens* action in a case where an Eighth Amendment claim or state law differs significantly from those at issue here

when and if such a case arises. The possibility of such a different future case does not provide sufficient grounds for reaching a different conclusion here.

For these reasons, where, as here, a federal prisoner seeks damages from privately employed personnel working at a privately operated federal prison, where the conduct allegedly amounts to a violation of the Eighth Amendment, and where that conduct is of a kind that typically falls within the scope of traditional state tort law (such as the conduct involving improper medical care at issue here), the prisoner must seek a remedy under state tort law. We cannot imply a *Bivens* remedy in such a case.

The judgment of the Ninth Circuit is reversed.

So ordered.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, concurring.

I join the opinion of the Court because I agree that a narrow interpretation of the rationale of *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971), would not cause the holding of that case to apply to the circumstances of this case. Even if the narrowest rationale of *Bivens* did apply here, however, I would decline to extend its holding. *Bivens* is "a relic of the heady days in which this Court assumed common-law powers to create causes of action" by constitutional implication. *Correctional Services Corp.* v. *Malesko*, 534 U. S. 61, 75 (2001) (SCALIA, J., concurring); see also *Wilkie* v. *Robbins*, 551 U. S. 537, 568 (2007) (THOMAS, J., concurring). We have abandoned that power in the statutory field, see *Alexander* v. *Sandoval*, 532 U. S. 275, 287 (2001), and we should do the same in the constitutional field, where (presumably) an imagined "implication" cannot even be repudiated by Congress. As I have previously stated, see *Malesko*, *supra*, at 75, I would limit *Bivens* and its two follow-on cases (*Davis* v. *Passman*, 442

U. S. 228 (1979), and *Carlson* v. *Green*, 446 U. S. 14 (1980)) to the precise circumstances that they involved.

JUSTICE GINSBURG, dissenting.

Were Pollard incarcerated in a federal- or state-operated facility, he would have a federal remedy for the Eighth Amendment violations he alleges. See *Carlson* v. *Green*, 446 U. S. 14 (1980) (*Bivens* action); *Estelle* v. *Gamble*, 429 U. S. 97 (1976) (42 U. S. C. § 1983 action). For the reasons stated in the dissenting opinion I joined in *Correctional Services Corp.* v. *Malesko*, 534 U. S. 61, 75–83 (2001) (opinion of Stevens, J.), I would not deny the same character of relief to Pollard, a prisoner placed by federal contract in a privately operated prison. Pollard may have suffered "aggravated instances" of conduct state tort law forbids, *ante*, at 128 (opinion of the Court), but that same aggravated conduct, when it is engaged in by official actors,* also offends the Federal Constitution, see *Estelle*, 429 U. S., at 105–106. Rather than remitting Pollard to the "vagaries" of state tort law, *Carlson*, 446 U. S., at 23, I would hold his injuries, sustained while serving a federal sentence, "compensable according to uniform rules of federal law," *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, 409 (1971) (Harlan, J., concurring in judgment).

Indeed, there is stronger cause for providing a federal remedy in this case than there was in *Malesko*. There, the question presented was whether a *Bivens* action lies against a private corporation that manages a facility housing federal prisoners. 534 U. S., at 63. Suing a corporate employer, the majority observed in *Malesko*, would not serve to deter individual officers from conduct transgressing constitutional limitations on their authority. *Id.*, at 70–71.

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*The Ninth Circuit ruled that petitioners acted under color of federal law, *Pollard* v. *The GEO Group, Inc.*, 629 F. 3d 843, 854 (2010), and petitioners did not seek this Court's review of that determination, see Brief for Petitioners 37, n. 8.

Individual deterrence, the Court reminded, was the consideration central to the *Bivens* decision. *Malesko*, 534 U. S., at 70. Noting the availability of state tort remedies, the majority in *Malesko* declined to "exten[d] *Bivens* beyond [that decision's] core premise," *i. e.*, deterring individual officers. *Id.*, at 71–73. Pollard's case, in contrast, involves *Bivens*' core concern: His suit seeking damages directly from individual officers would have precisely the deterrent effect the Court found absent in *Malesko*.

For the reasons stated, I would hold that relief potentially available under state tort law does not block Pollard's recourse to a federal remedy for the affront to the Constitution he suffered. Accordingly, I would affirm the Ninth Circuit's judgment.

Syllabus

GONZALEZ *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION

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

No. 10–895. Argued November 2, 2011—Decided January 10, 2012

After the intermediate state appellate court affirmed his state-court conviction, petitioner Gonzalez allowed his time for seeking discretionary review with the State's highest court for criminal appeals to expire. Roughly six weeks later, the intermediate state appellate court issued its mandate. When Gonzalez subsequently sought federal habeas relief, the District Court dismissed Gonzalez's petition as time barred by the 1-year statute of limitations in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Under 28 U. S. C. § 2244(d)(1)(A), state prisoners have one year to file federal habeas petitions running from "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." The District Court held that Gonzalez's judgment had become "final" when his time for seeking discretionary review in the State's highest court expired, and that running the limitations period from that date, his petition was untimely.

Under AEDPA, a habeas petitioner must obtain a certificate of appealability (COA) to appeal a district court's final order in a habeas proceeding. 28 U. S. C. § 2253(c)(1). The COA may issue only if the petitioner has made a "substantial showing of the denial of a constitutional right," § 2253(c)(2), and "shall indicate which specific issue" satisfies that showing, § 2253(c)(3). A Fifth Circuit Judge granted Gonzalez a COA on the question whether his petition was timely. The issued COA, however, failed to "indicate" a constitutional issue.

The Fifth Circuit affirmed, holding that Gonzalez's petition was untimely because the limitations period begins to run for petitioners who fail to appeal to a State's highest court when the time for seeking further direct review in the state court expires. The Fifth Circuit did not mention, and the State did not raise, the § 2253(c)(3) defect. When Gonzalez petitioned this Court for review, the State argued for the first time that the Fifth Circuit lacked jurisdiction to adjudicate Gonzalez's appeal based on the § 2253(c)(3) defect.

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Held:

1. Section 2253(c)(3) is a mandatory but nonjurisdictional rule. A COA's failure to "indicate" a constitutional issue does not deprive a Court of Appeals of jurisdiction to adjudicate the appeal. Pp. 140–148.

(a) A rule is jurisdictional "[i]f the Legislature clearly states that a threshold limitation on a statute's scope shall count as jurisdictional," *Arbaugh* v. *Y & H Corp.*, 546 U. S. 500, 515. Here, the only clear jurisdictional language in § 2253(c) appears in § 2253(c)(1). The parties agree that § 2253(c)(1)'s plain terms make the issuance of a COA a jurisdictional prerequisite. The parties also agree that § 2253(c)(2), which speaks only to when a COA may issue and does not contain § 2253(c)(1)'s jurisdictional terms, is nonjurisdictional. It follows that § 2253(c)(3) is also nonjurisdictional. Like § 2253(c)(2), it reflects a threshold condition for issuing a COA, and "'does not speak in jurisdictional terms or refer . . . to the jurisdiction of the [appeals] courts.'" *Arbaugh*, 546 U. S., at 515. Jurisdictional treatment also would thwart Congress' intent in AEDPA "to eliminate delays in the federal habeas review process." *Holland* v. *Florida*, 560 U. S. 631, 648. Once a judge has determined that a COA is warranted and resources are deployed in briefing and argument, the COA has fulfilled its gatekeeping function. Pp. 140–145.

(b) The State's contrary arguments are unpersuasive. Section 2253(c)(3)'s cross-reference to § 2253(c)(1) does not mean § 2253(c)(3) can be read as part of § 2253(c)(1), as Congress set off the requirements in distinct paragraphs with distinct terms. The word "shall" in § 2253(c)(3), meanwhile, underscores the rule's mandatory nature, but not all mandatory rules are jurisdictional. Nor does § 2253(c)(3)'s mere proximity to other jurisdictional provisions turn a rule that speaks in nonjurisdictional terms into a jurisdictional hurdle. Finally, the Court rejects the State's attempt to analogize a COA to a notice of appeal. Pp. 145–148.

2. For a state prisoner who does not seek review in a State's highest court, the judgment becomes "final" for purposes of § 2244(d)(1)(A) on the date that the time for seeking such review expires. Pp. 148–154.

(a) In *Clay* v. *United States*, 537 U. S. 522, the Court held that a federal conviction becomes final "when this Court affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari," or, if a petitioner does not seek certiorari, "when the time for filing a certiorari petition expires." *Id.*, at 527. In *Jimenez* v. *Quarterman*, 555 U. S. 113, the Court adopted *Clay*'s "most natural reading of the statutory text" in construing "the similar language of § 2244(d)(1)(A)." 555 U. S., at 119. The Court made no mention of when Jimenez's appeal concluded and held that his judgment became

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final when his time for seeking certiorari expired. Section 2244(d)(1)(A) thus consists of two prongs corresponding to two categories of petitioners. For petitioners pursuing direct review all the way to this Court, the judgment becomes final at the "conclusion of direct review," when this Court affirms a conviction on the merits or denies certiorari. For all other petitioners, the judgment becomes final at the "expiration of the time for seeking such review," when the time for pursuing direct review in this Court, or in state court, expires. Because Gonzalez did not appeal to the State's highest court, his judgment became final when his time for seeking review with that court expired. Pp. 149–150.

(b) Gonzalez argues that courts should determine both prongs for every petitioner who does not seek certiorari, then start the 1-year clock from the latest of the two dates. Gonzalez further contends that when a petitioner does not seek certiorari, state law should define the "conclusion of direct review." The words "latest of," however, appear in § 2244(d)(1), not § 2244(d)(1)(A). Nothing in § 2244(d)(1)(A) contemplates any conflict between the two prongs or instructs that the later of the two shall prevail. Gonzalez's approach of scouring each State's laws and cases to determine how the State defines finality, moreover, would contradict the uniform meaning of "conclusion of direct review" that *Clay* and *Jimenez* accepted. It will be a rare situation in which a delay in the mandate's issuance is so severe as to prevent a petitioner from filing a federal habeas petition within a year or requesting a stay and abeyance. Finally, the Court rejects Gonzalez's alternative argument that his petition is timely because it was filed within a year of when his time for seeking certiorari review expired. Pp. 150–154.

623 F. 3d 222, affirmed.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, GINSBURG, BREYER, ALITO, and KAGAN, JJ., joined. SCALIA, J., filed a dissenting opinion, *post*, p. 154.

Patricia A. Millett argued the cause for petitioner. With her on the briefs were *J. Carl Cecere* and *Amit Kurlekar*.

Jonathan F. Mitchell, Solicitor General of Texas, argued the cause for respondent. With him on the brief were *Greg Abbott*, Attorney General, *James P. Sullivan* and *Arthur C. D'Andrea*, Assistant Solicitors General, *Daniel T. Hodge*, First Assistant Attorney General, *Don Clemmer*, Deputy Attorney General, and *Edward L. Marshall*, Assistant Attorney General.

Ann O'Connell argued the cause for the United States as *amicus curiae* in support of respondent. With her on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Breuer*, *Deputy Solicitor General Dreeben*, and *Scott A. C. Meisler.**

JUSTICE SOTOMAYOR delivered the opinion of the Court.

This case interprets two provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). The first, 28 U. S. C. § 2253(c), provides that a habeas petitioner must obtain a certificate of appealability (COA) to appeal a federal district court's final order in a habeas proceeding. § 2253(c)(1). The COA may issue only if the petitioner has made a "substantial showing of the denial of a constitutional right," § 2253(c)(2), and "shall indicate which specific issue" satisfies that showing, § 2253(c)(3). We hold that § 2253(c)(3) is not a jurisdictional requirement. Accordingly, a judge's failure to "indicate" the requisite constitutional issue in a COA does not deprive a court of appeals of subject-matter jurisdiction to adjudicate the habeas petitioner's appeal.

The second provision, 28 U. S. C. § 2244(d)(1)(A), establishes a 1-year limitations period for state prisoners to file federal habeas petitions, running from "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." We hold that, for a state prisoner who does not seek review in a State's highest court, the judgment becomes "final" on the date that the time for seeking such review expires.

**Douglas Hallward-Driemeier*, *Ryan M. Malone*, *Barbara E. Bergman*, *Peter Goldberger*, and *Keith A. Findley* filed a brief for the National Association of Criminal Defense Lawyers et al. as *amici curiae* urging reversal.

John W. Whitehead filed a brief for The Rutherford Institute as *amicus curiae*.

I

Petitioner Rafael Gonzalez was convicted of murder in Texas state court. The intermediate state appellate court, the Texas Court of Appeals, affirmed Gonzalez's conviction on July 12, 2006. Gonzalez then allowed his time for seeking discretionary review with the Texas Court of Criminal Appeals (Texas CCA)—the State's highest court for criminal appeals—to expire on August 11, 2006. Tex. Rule App. Proc. 68.2(a) (2011). The Texas Court of Appeals issued its mandate on September 26, 2006.

After Gonzalez, proceeding *pro se*, petitioned unsuccessfully for state habeas relief, he filed a federal habeas petition under 28 U. S. C. § 2254 on January 24, 2008, in the U. S. District Court for the Northern District of Texas. His petition alleged, *inter alia*, that the nearly 10-year delay between his indictment and trial violated his Sixth Amendment right to a speedy trial. The District Court, without discussing Gonzalez's constitutional claims, dismissed Gonzalez's petition as time barred by the 1-year statute of limitations in § 2244(d)(1)(A). Although Gonzalez argued that his judgment had not become final until the Texas Court of Appeals issued its mandate, the District Court held that Gonzalez's judgment had become final when his time for seeking discretionary review in the Texas CCA expired on August 11, 2006. Counting from that date, and tolling the limitations period for the time during which Gonzalez's state habeas petition was pending, Gonzalez's limitations period elapsed on December 17, 2007—over a month before he filed his federal habeas petition. The District Court denied a COA.

Gonzalez applied to the U. S. Court of Appeals for the Fifth Circuit for a COA on two grounds: (1) his habeas petition was timely, and (2) his Sixth Amendment speedy-trial right was violated. A Court of Appeals Judge granted a COA on the question "whether the habeas application was timely filed because Gonzalez's conviction became final, and thus the limitation[s] period commenced, on the date the in-

termediate state appellate court issued its mandate." App. 347. The COA did not mention the Sixth Amendment question.

The Court of Appeals affirmed. 623 F. 3d 222 (2010). Acknowledging that a sister Circuit had run the limitations period from the date of a state court's issuance of a mandate, the Court of Appeals deemed the mandate's issuance "irrelevant" to determining finality under § 2244(d)(1)(A). *Id.*, at 224, 226 (disagreeing with *Riddle* v. *Kemna*, 523 F. 3d 850 (CA8 2008) (en banc)). The Court of Appeals held that because a judgment becomes final at "the conclusion of direct review or the expiration of the time for seeking such review," § 2244(d)(1)(A), the limitations period begins to run for petitioners who fail to appeal to a State's highest court when the time for seeking further direct review in the state court expires. The Court of Appeals therefore concluded that Gonzalez's conviction became final on August 11, 2006, and his habeas petition was time barred.

The Court of Appeals did not address Gonzalez's Sixth Amendment claim or discuss whether the COA had been improperly issued. Nor did the State allege any defect in the COA or move to dismiss for lack of jurisdiction.

Gonzalez petitioned this Court for a writ of certiorari. In its brief in opposition, the State argued for the first time that the Court of Appeals lacked jurisdiction to adjudicate Gonzalez's appeal because the COA identified only a procedural issue, without also "indicat[ing]" a constitutional issue as required by § 2253(c)(3). We granted certiorari to decide two questions, both of which implicate splits in authority: (1) whether the Court of Appeals had jurisdiction to adjudicate Gonzalez's appeal, notwithstanding the § 2253(c)(3) defect;[1] and (2) whether Gonzalez's habeas petition was time

[1] The Circuits have divided over whether a defect in a COA is a jurisdictional bar. Compare, *e. g.*, *Phelps* v. *Alameda*, 366 F. 3d 722, 726 (CA9 2004) (no); *Porterfield* v. *Bell*, 258 F. 3d 484, 485 (CA6 2001) (no); *Young* v. *United States*, 124 F. 3d 794, 798–799 (CA7 1997) (no), with *United States* v. *Cepero*, 224 F. 3d 256, 259–262 (CA3 2000) (en banc) (yes).

barred under § 2244(d)(1) due to the date on which his judgment became final.[2] 564 U. S. 1003 (2011).

II

We first consider whether the Court of Appeals had jurisdiction to adjudicate Gonzalez's appeal.

A

Section 2253, as amended by AEDPA, governs appeals in habeas corpus proceedings. The first subsection, § 2253(a), is a general grant of jurisdiction, providing that district courts' final orders in habeas proceedings "shall be subject to review, on appeal, by the court of appeals." 28 U. S. C. § 2253(a). The second, § 2253(b), limits jurisdiction over a particular type of final order. See § 2253(b) ("There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant [of] remov[al] . . . "). This case concerns the third, § 2253(c), which provides:

> "(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals . . .
>
> . . . . . .
>
> "(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.
>
> "(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2)."

When, as here, the district court denies relief on procedural grounds, the petitioner seeking a COA must show both "that

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[2] The Circuits have divided over when a judgment becomes final if a petitioner forgoes review in a State's highest court. Compare, *e. g.*, 623 F. 3d 222, 226 (CA5 2010) (case below) (date when time for seeking such review expires); *Hemmerle* v. *Schriro*, 495 F. 3d 1069, 1073–1074 (CA9 2007) (same), with *Riddle* v. *Kemna*, 523 F. 3d 850, 855–856 (CA8 2008) (en banc) (date when state court issues its mandate).

jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack* v. *McDaniel*, 529 U. S. 473, 484 (2000).

In this case, the Court of Appeals Judge granted a COA that identified a debatable procedural ruling, but did not "indicate" the issue on which Gonzalez had made a substantial showing of the denial of a constitutional right, as required by § 2253(c)(3). The question before us is whether that defect deprived the Court of Appeals of the power to adjudicate Gonzalez's appeal. We hold that it did not.

This Court has endeavored in recent years to "bring some discipline" to the use of the term "jurisdictional." *Henderson* v. *Shinseki*, 562 U. S. 428, 435 (2011). Recognizing our "less than meticulous" use of the term in the past, we have pressed a stricter distinction between truly jurisdictional rules, which govern "a court's adjudicatory authority," and nonjurisdictional "claim-processing rules," which do not. *Kontrick* v. *Ryan*, 540 U. S. 443, 454–455 (2004). When a requirement goes to subject-matter jurisdiction, courts are obligated to consider *sua sponte* issues that the parties have disclaimed or have not presented. See *United States* v. *Cotton*, 535 U. S. 625, 630 (2002). Subject-matter jurisdiction can never be waived or forfeited. The objections may be resurrected at any point in the litigation, and a valid objection may lead a court midway through briefing to dismiss a complaint in its entirety. "[M]any months of work on the part of the attorneys and the court may be wasted." *Henderson*, 562 U. S., at 435. Courts, we have said, should not lightly attach those "drastic" consequences to limits Congress has enacted. *Ibid.*

We accordingly have applied the following principle: A rule is jurisdictional "[i]f the Legislature clearly states that a threshold limitation on a statute's scope shall count as jurisdictional." *Arbaugh* v. *Y & H Corp.*, 546 U. S. 500, 515

(2006). But if "Congress does not rank a statutory limitation on coverage as jurisdictional, courts should treat the restriction as nonjurisdictional." *Id.*, at 516.[3] That clear-statement principle makes particular sense in this statute, as we consider—against the backdrop of § 2253(a)'s clear jurisdictional grant to the courts of appeals and § 2253(b)'s clear limit on that grant—the extent to which Congress intended the COA process outlined in § 2253(c) to further limit the courts of appeals' jurisdiction over habeas appeals.

Here, the only "clear" jurisdictional language in § 2253(c) appears in § 2253(c)(1). As we explained in *Miller-El* v. *Cockrell*, 537 U. S. 322 (2003), § 2253(c)(1)'s plain terms—"Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals"—establish that "until a COA has been issued federal courts of appeals lack jurisdiction to rule on the merits of appeals from habeas petitioners." *Id.*, at 336. The parties thus agree that § 2253(c)(1) is jurisdictional.

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[3] We have also held that "context, including this Court's interpretation of similar provisions in many years past, is relevant to whether a statute ranks a requirement as jurisdictional." *Reed Elsevier, Inc.* v. *Muchnick*, 559 U. S. 154, 168 (2010). Here, however, even though the requirement of a COA (or its predecessor, the certificate of probable cause (CPC)) dates back to 1908, Congress did not enact the indication requirement until 1996. There is thus no "long line of this Court's decisions left undisturbed by Congress" on which to rely. *Union Pacific R. Co.* v. *Locomotive Engineers*, 558 U. S. 67, 82 (2009).

The issuance of a CPC, like the issuance of a COA, was jurisdictional. Contrary to the dissent's assertions, *post*, at 161–163 (opinion of SCALIA, J.), that fact does not suggest that the indication requirement is jurisdictional as well. If anything, the inference runs the other way. For nearly a century, a judge's granting or withholding of a CPC, absent any indication of issues, was the fully effective "expression of opinion," *post*, at 161, required for an appeal to proceed. AEDPA's new requirement that judges indicate the specific issues to be raised on appeal has no predecessor provision—indeed, it is the primary difference between a CPC and COA.

The parties also agree that § 2253(c)(2) is nonjurisdictional.[4] That is for good reason. Section 2253(c)(2) speaks only to *when* a COA may issue—upon "a substantial showing of the denial of a constitutional right." It does not contain § 2253(c)(1)'s jurisdictional terms. See *Russello* v. *United States*, 464 U. S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally . . . "). And it would be passing strange if, after a COA has issued, each court of appeals adjudicating an appeal were dutybound to revisit the threshold showing and gauge its "substantial[ity]" to verify its jurisdiction. That inquiry would be largely duplicative of the merits question before the court.

It follows that § 2253(c)(3) is nonjurisdictional as well. Like § 2253(c)(2), it too reflects a threshold condition for the issuance of a COA—the COA's indication of "which specific issue or issues satisfy the showing required by paragraph (2)." It too "does not speak in jurisdictional terms or refer in any way to the jurisdiction of the [appeals] courts." *Arbaugh*, 546 U. S., at 515 (internal quotation marks omitted). The unambiguous jurisdictional terms of §§ 2253(a), (b), and (c)(1) show that Congress would have spoken in clearer terms if it intended § 2253(c)(3) to have similar jurisdictional force. Instead, the contrast underscores that the failure to obtain a COA is jurisdictional, while a COA's failure to indicate an issue is not. A defective COA is not equivalent to the lack of any COA.

It is telling, moreover, that Congress placed the power to issue COAs in the hands of a "circuit justice or judge."[5] It

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[4] The United States as *amicus curiae* contends that § 2253(c)(2) is jurisdictional, but the State concedes that it is not. Tr. of Oral Arg. 31.

[5] The courts of appeals uniformly interpret "circuit justice or judge" to encompass district judges. See *United States* v. *Mitchell*, 216 F. 3d 1126, 1129 (CADC 2000) (collecting cases); Fed. Rule App. Proc. 22(b). Habeas

would seem somewhat counterintuitive to render a panel of court of appeals judges powerless to act on appeals based on COAs that Congress specifically empowered one court of appeals judge to grant. Indeed, whereas § 2253(c)(2)'s substantial-showing requirement at least describes a burden that "the applicant" seeking a COA bears, § 2253(c)(3)'s indication requirement binds only the judge issuing the COA. Notably, Gonzalez advanced both the timeliness and Sixth Amendment issues in his application for a COA. A petitioner, having successfully obtained a COA, has no control over how the judge drafts the COA and, as in Gonzalez's case, may have done everything required of him by law. That fact would only compound the "unfai[r] prejudice" resulting from the *sua sponte* dismissals and remands that jurisdictional treatment would entail. *Henderson*, 562 U. S., at 434.[6]

Treating § 2253(c)(3) as jurisdictional also would thwart Congress' intent in AEDPA "to eliminate delays in the federal habeas review process." *Holland* v. *Florida*, 560 U. S.

Corpus Rule 11(a) requires district judges to decide whether to grant or deny a COA in the first instance.

[6] That fact also distinguishes the indication requirement from every "similar provisio[n]" that the dissent claims we have deemed jurisdictional. *Post*, at 159. None of our cases addressing those provisions, moreover, recognized or relied on the sweeping "rule" that the dissent now invokes, whereby this Court should enforce as jurisdictional all "procedural conditions for appealing a case from one Article III court to another." *Ibid.;* but see, *e. g.*, *post*, at 160, n. 2 (conceding that the "rule" does not apply to criminal appeals); *Becker* v. *Montgomery*, 532 U. S. 757, 763 (2001) (failure to sign notice of appeal is a nonjurisdictional omission). All the cases, meanwhile, involved time limits (save one involving Federal Rule of Appellate Procedure 3(c)(1), which we address *infra*). In *Bowles* v. *Russell*, 551 U. S. 205 (2007), we emphasized our "century's worth of precedent" for treating statutory time limits on appeals as jurisdictional, *id.*, at 209, n. 2, but even "*Bowles* did not hold . . . that all statutory conditions imposing a time limit should be considered jurisdictional," *Reed Elsevier*, 559 U. S., at 167. This case, in any event, involves a different type of procedural condition.

631, 648 (2010). The COA process screens out issues unworthy of judicial time and attention and ensures that frivolous claims are not assigned to merits panels. Once a judge has made the determination that a COA is warranted and resources are deployed in briefing and argument, however, the COA has fulfilled that gatekeeping function. Even if additional screening of already-issued COAs for § 2253(c)(3) defects could further winnow the cases before the courts of appeals, that would not outweigh the costs of further delay from the extra layer of review. This case, in which the alleged defect would be dispositive, exemplifies those inefficiencies; the State requests that we vacate and remand with instructions to dismiss the appeal based on a § 2253(c)(3) defect that it raised for the first time in response to a petition for certiorari. And delay would be particularly fruitless in the numerous cases where, as here, the district court dismissed the petition on procedural grounds and the court of appeals affirms, without having to address the omitted constitutional issue at all.

B

The State, aided by the United States as *amicus curiae*, makes several arguments in support of jurisdictional treatment of § 2253(c)(3). None is persuasive.

First, the State notes that although § 2253(c)(3) does not speak in jurisdictional terms, it refers back to § 2253(c)(1), which does. The State argues that it is as if § 2253(c)(1) provided: "Unless a circuit justice or judge issues a certificate of appealability *that shall indicate the specific issue or issues that satisfy the showing required by paragraph (2)*, an appeal may not be taken to the court of appeals." The problem is that the statute provides no such thing. Instead, Congress set off the requirements in distinct paragraphs and, rather than mirroring their terms, excluded the jurisdictional terms in one from the other. Notably, the State concedes that § 2253(c)(2) is nonjurisdictional, even though it too cross-references § 2253(c)(1) and is cross-referenced by § 2253(c)(3).

Second, the State seizes on the word "shall" in § 2253(c)(3), arguing that an omitted indication renders the COA no COA at all. But calling a rule nonjurisdictional does not mean that it is not mandatory or that a timely objection can be ignored. If a party timely raises the COA's failure to indicate a constitutional issue, the court of appeals panel must address the defect by considering an amendment to the COA or remanding to the district judge for specification of the issues.[7] This Court, moreover, has long "rejected the notion that 'all mandatory prescriptions, however emphatic, are . . . properly typed jurisdictional.'" *Henderson*, 562 U. S., at 439; see also *Dolan* v. *United States*, 560 U. S. 605, 620 (2010) (statute's reference to "'shall'" alone does not render statutory deadline jurisdictional). Nothing in § 2253(c)(3)'s prescription establishes that an omitted indication should remain an open issue throughout the case.

Third, the United States argues that the placement of § 2253(c)(3) in a section containing jurisdictional provisions signals that it too is jurisdictional. In characterizing certain requirements as nonjurisdictional, we have on occasion observed their "'separat[ion]'" from jurisdictional provisions. *E. g.*, *Reed Elsevier, Inc.* v. *Muchnick*, 559 U. S. 154, 162 (2010); *Arbaugh*, 546 U. S., at 515. The converse, how-

[7] The dissent's insistence that there is "no practical, real-world effect" to treating this rule as mandatory, *post*, at 158, ignores the real world. Courts of appeals regularly amend COAs or remand for specification of issues, notwithstanding the supposed potential to "embarras[s] a colleague." *Ibid.;* see, *e. g.*, *Saunders* v. *Senkowski*, 587 F. 3d 543, 545 (CA2 2009) *(per curiam)* (amending COA to add issue); *United States* v. *Weaver*, 195 F. 3d 52, 53 (CADC 1999) (remanding for specification of issues). The government frequently alleges COA defects as grounds for dismissal (as the State did here, at this late stage), apparently not sharing the dissent's concern that such efforts "yield nothing but additional litigation expenses." *Post*, at 158; see, *e. g.*, *Porterfield*, 258 F. 3d, at 485; *Cepero*, 224 F. 3d, at 257. Habeas petitioners, too, have every incentive to request that defects be resolved, not only to defuse potential problems later in the litigation, but also to ensure that the issue on which they sought appeal is certified and will receive full briefing and consideration.

ever, is not necessarily true: Mere proximity will not turn a rule that speaks in nonjurisdictional terms into a jurisdictional hurdle. In fact, § 2253(c)(3)'s proximity to §§ 2253(a), (b), and (c)(1) highlights the absence of clear jurisdictional terms in § 2253(c)(3).

Finally, the State analogizes a COA to a notice of appeal, pointing out that both a notice and its contents are jurisdictional prerequisites. Federal Rule of Appellate Procedure 3(c)(1) provides that a notice of appeal must: "(A) specify the party or parties taking the appeal"; "(B) designate the judgment, order, or part thereof being appealed"; and "(C) name the court to which the appeal is taken." We have held that "Rule 3's dictates are jurisdictional in nature." *Smith* v. *Barry*, 502 U. S. 244, 248 (1992).

We reject this analogy. We construed the content requirements for notices of appeal as jurisdictional because we were "convinced that the harshness of our construction [wa]s 'imposed by the legislature.' " *Torres* v. *Oakland Scavenger Co.*, 487 U. S. 312, 318 (1988). Rule 4, we noted, establishes mandatory time limits for filing a notice of appeal. Excusing a failure to name a party in a notice of appeal, in violation of Rule 3, would be "equivalent to permitting courts to extend the time for filing a notice of appeal," in violation of Rule 4. *Id.*, at 315. And "time limits for filing a notice of appeal have been treated as jurisdictional in American law for well over a century." *Bowles* v. *Russell*, 551 U. S. 205, 209, n. 2 (2007). Accordingly, the Advisory Committee Note "makes no distinction among the various requirements of Rule 3 and Rule 4," treating them "as a single jurisdictional threshold." *Torres*, 487 U. S., at 315; see also *id.*, at 316 ("[T]he Advisory Committee viewed the requirements of Rule 3 as jurisdictional in nature"). Here, we find no similar basis for treating the paragraphs of § 2253(c) as a single jurisdictional threshold.

Moreover, in explaining why the naming requirement was jurisdictional in *Torres*, we reasoned that an unnamed party

leaves the notice's "intended recipient[s]"—the appellee and court—"unable to determine with certitude whether [that party] should be bound by an adverse judgment or held liable for costs or sanctions." *Id.*, at 318. The party could sit on the fence, await the outcome, and opt to participate only if it was favorable. That possibility of gamesmanship is not present here. Unlike the party who fails to submit a compliant notice of appeal, the habeas petitioner who obtains a COA cannot control how that COA is drafted.[8] And whereas a party's failure to be named in a notice of appeal gives absolutely no "notice of [his or her] appeal," a judge's issuance of a COA reflects his or her judgment that the appeal should proceed and supplies the State with notice that the habeas litigation will continue.

Because we conclude that § 2253(c)(3) is a nonjurisdictional rule, the Court of Appeals had jurisdiction to adjudicate Gonzalez's appeal.

III

We next consider whether Gonzalez's habeas petition was time barred. AEDPA establishes a 1-year limitations period for state prisoners to file for federal habeas relief, which "run[s] from the latest of" four specified dates.[9] § 2244(d)(1).

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[8] The dissent claims that we fail to give *stare decisis* effect to *Torres*. *Post*, at 163–164. Setting aside the fact that *Torres* involved an unrelated Federal Rule featuring a different textual, contextual, and historical backdrop, the dissent notably fails to grapple with—indeed, its opinion is bereft of quotation to—any supporting reasoning in that opinion. That reasoning is simply not applicable here.

[9] Title 28 U. S. C. § 2244(d)(1) provides:

"A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

"(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

"(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

This case concerns the first of those dates: "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). The question before us is when the judgment becomes "final" if a petitioner does not appeal to a State's highest court.

A

In construing the language of § 2244(d)(1)(A), we do not write on a blank slate. In *Clay* v. *United States*, 537 U. S. 522 (2003), we addressed AEDPA's statute of limitations for federal prisoners seeking postconviction relief. See § 2255(f)(1) (2006 ed., Supp. IV) (beginning 1-year period of limitations from "the date on which the judgment of conviction becomes final"). We held that the federal judgment becomes final "when this Court affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari," or, if a petitioner does not seek certiorari, "when the time for filing a certiorari petition expires." *Id.*, at 527. In so holding, we rejected the argument that, if a petitioner declines to seek certiorari, the limitations period "starts to run on the date the court of appeals issues its mandate." *Id.*, at 529.

In *Jimenez* v. *Quarterman*, 555 U. S. 113 (2009), we described *Clay*'s interpretation as comporting "with the most natural reading of the statutory text" and saw "no reason to depart" from it in "construing the similar language of § 2244(d)(1)(A)." 555 U. S., at 119. The state court had permitted Jimenez to file an out-of-time direct appeal. We held that this "reset" the limitations period; Jimenez's judgment would now become final at "the conclusion of the out-of-time direct appeal, or the expiration of the time for seeking re-

"(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

"(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence."

view of that [out-of-time] appeal." *Id.*, at 120–121. Because Jimenez did not seek certiorari, we made no mention of when the out-of-time appeal "conclu[ded]." Rather, we held that his judgment became final when his "time for seeking certiorari review in this Court expired." *Id.*, at 120. Nor did we mention the date on which the state court issued its mandate. Both *Clay* and *Jimenez* thus suggested that the direct review process either "concludes" or "expires," depending on whether the petitioner pursues or forgoes direct appeal to this Court.

We now make clear what we suggested in those cases: The text of § 2244(d)(1)(A), which marks finality as of "the conclusion of direct review or the expiration of the time for seeking such review," consists of two prongs. Each prong—the "conclusion of direct review" and the "expiration of the time for seeking such review"—relates to a distinct category of petitioners. For petitioners who pursue direct review all the way to this Court, the judgment becomes final at the "conclusion of direct review"—when this Court affirms a conviction on the merits or denies a petition for certiorari. For all other petitioners, the judgment becomes final at the "expiration of the time for seeking such review"—when the time for pursuing direct review in this Court, or in state court, expires. We thus agree with the Court of Appeals that because Gonzalez did not appeal to the State's highest court, his judgment became final when his time for seeking review with the State's highest court expired.

B

Gonzalez offers an alternative reading of § 2244(d)(1)(A): Courts should determine both the "conclusion of direct review" and the "expiration of the time for seeking such review" for every petitioner who does not seek certiorari, then start the 1-year clock from the "latest of" the two dates. Gonzalez rejects our uniform definition of the "conclusion of direct review" as the date on which this Court affirms a con-

viction on the merits or denies a petition for certiorari. In his view, whenever a petitioner does not seek certiorari, the "conclusion of direct review" is the date on which state law marks finality—in Texas, the date on which the mandate issues. *Ex parte Johnson*, 12 S. W. 3d 472, 473 (Crim. App. 2000) *(per curiam)*. Applying this approach, Gonzalez contends that his habeas petition was timely because his direct review "concluded" when the mandate issued (on September 26, 2006), later than the date on which his time for seeking Texas CCA review "expired" (August 11, 2006). We find his construction of the statute unpersuasive.

First, Gonzalez lacks a textual anchor for his later-in-time approach. The words "latest of" do not appear anywhere in § 2244(d)(1)(A). Rather, they appear in § 2244(d)(1) and refer to the "latest of" the dates in subparagraphs (A), (B), (C), and (D)—the latter three of which are inapplicable here. Nothing in § 2244(d)(1)(A) contemplates any conflict between the "conclusion of direct review" and the "expiration of the time for seeking such review," much less instructs that the later of the two shall prevail.

Nor is Gonzalez's later-in-time reading necessary to give both prongs of § 2244(d)(1)(A) full effect. Our reading does so by applying one "or" the other, depending on whether the direct review process concludes or expires. Treating the judgment as final on one date "or" the other is consistent with the disjunctive language of the provision.

Second, Gonzalez misreads our precedents. Gonzalez asserts that in *Jimenez*, we made a later-in-time choice between the two prongs. That is mistaken. Rather, we chose between two "expiration" dates corresponding to different appeals: Jimenez initially failed to appeal to the Texas Court of Appeals and that appeal became final when his "time for seeking discretionary review . . . expired." 555 U. S., at 117, 119. When Jimenez was later allowed to file an out-of-time appeal, he pursued appeals with both the Texas Court of Appeals and Texas CCA; the out-of-time appeal thus became

final when his "[t]ime for seeking certiorari review . . . with this Court expired." *Id.*, at 116, 120. We adopted the out-of-time appeal's date of finality over the initial appeal's date of finality. *Id.*, at 119–121. Critically, by deeming the initial appeal final at the expiration of time for seeking review in state court, and the out-of-time appeal final at the expiration of time for seeking certiorari in this Court, we reinforced *Clay*'s suggestion that the "expiration" prong governs all petitioners who do not pursue direct review all the way to this Court.[10]

Third, Gonzalez argues that AEDPA's federalism concerns and respect for state-law procedures mean that we should not read § 2244(d)(1)(A) to disregard state law. We agree. That is why a state court's reopening of direct review will reset the limitations period. 555 U. S., at 121. That is also why, just as we determine the "expiration of the time for seeking [direct] review" from this Court's filing deadlines when petitioners forgo certiorari, we look to state-court filing deadlines when petitioners forgo state-court appeals. Referring to state-law procedures in that context makes sense because such deadlines are inherently court specific. There is no risk of relying on "state-law rules that may differ from the general federal rule." *Clay*, 537 U. S., at 531.

By contrast, Gonzalez urges us to scour each State's laws and cases to determine how it defines finality for every petitioner who forgoes a state-court appeal. That approach would usher in state-by-state definitions of the conclusion of direct review. It would be at odds with the uniform definition we adopted in *Clay* and accepted in the § 2244(d)(1)(A) context in *Jimenez*. And it would pose serious administra-

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[10] Gonzalez also argues that *Lawrence* v. *Florida*, 549 U. S. 327 (2007), supports his focus on the state court's issuance of the mandate because it referred to a mandate in determining when state postconviction proceedings were no longer pending. *Lawrence*, however, is inapposite. The case involved a different provision, 28 U. S. C. § 2244(d)(2), which by its terms refers to "State" procedures.

bility concerns. Even if roughly "half of the States define the conclusion of direct review as the issuance of the mandate or similar process," Brief for Petitioner 40, that still leaves half with either different rules or no settled rules at all.[11]

Fourth, Gonzalez speculates that our reading will rob some habeas petitioners of the full 1-year limitations period. Gonzalez asserts that our reading starts the clock running from the date that his time for seeking Texas CCA review expired, even though, under Texas law, he could not file for state habeas relief until six weeks later, on the date the Texas Court of Appeals issued its mandate. Tex. Code Crim. Proc. Ann., Art. 11.07, § 3(a) (Vernon Supp. 2011). His inability to initiate state habeas proceedings during those six weeks, he argues, reduced his 1-year federal habeas filing period by six weeks. We expect, however, that it will be a rare situation where a petitioner confronting similar state laws faces a delay in the mandate's issuance so excessive that it prevents him or her from filing a federal habeas petition within a year.[12] A petitioner who has exhausted his or her claims in state court need not await state habeas proceedings to seek federal habeas relief on those claims. To the extent a petitioner has had his or her federal filing period severely truncated by a delay in the mandate's issuance and has unexhausted claims that must be raised on state habeas review,

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[11] Compare, *e. g.*, *PSL Realty Co.* v. *Granite Inv. Co.*, 86 Ill. 2d 291, 304, 427 N. E. 2d 563, 569 (1981) (judgment is final "when entered"); *Gillis* v. *F & A Enterprises*, 934 P. 2d 1253, 1256 (Wyo. 1997) (judgment is final when "opinion is filed with the clerk"), with *Ex parte Johnson*, 12 S. W. 3d 472, 473 (Texas CCA 2000) *(per curiam)* (judgment is final at "issuance of the mandate").

[12] We note that Gonzalez waited four months from the date of the mandate's issuance before filing a state habeas petition. See 623 F. 3d, at 223. When that petition was dismissed as improperly filed, Gonzalez waited another three months before refiling. *Ibid.* Even then, his state habeas proceedings concluded several weeks before his 1-year federal deadline elapsed. *Id.*, at 225.

such a petitioner could file a request for a stay and abeyance from the federal district court. See *Rhines* v. *Weber*, 544 U. S. 269, 277 (2005).

Finally, Gonzalez argues, as an alternative to his later-in-time construction, that his petition should be considered timely because it was filed within a year of when his time for seeking this Court's review—as opposed to the Texas CCA's review—expired. We can review, however, only judgments of a "state court of last resort" or of a lower state court if the "state court of last resort" has denied discretionary review. This Court's Rule 13.1; see also 28 U. S. C. § 1257(a) (2006 ed.). Because Gonzalez did not appeal to the Texas CCA, this Court would have lacked jurisdiction over a petition for certiorari from the Texas Court of Appeals' decision affirming Gonzalez's conviction. We therefore decline to incorporate the 90-day period for seeking certiorari in determining when Gonzalez's judgment became final.

* * *

In sum, we hold that § 2253(c)(3) is a mandatory but nonjurisdictional rule. Here, the COA's failure to "indicate" a constitutional issue did not deprive the Court of Appeals of jurisdiction to adjudicate Gonzalez's appeal. We further hold that, with respect to a state prisoner who does not seek review in a State's highest court, the judgment becomes "final" under § 2244(d)(1)(A) when the time for seeking such review expires—here, August 11, 2006. We thus agree with the Court of Appeals that Gonzalez's federal habeas petition was time barred.

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

Affirmed.

JUSTICE SCALIA, dissenting.

The obvious, undeniable, purpose of 28 U. S. C. § 2253(c) is to spare three-judge courts of appeals the trouble of enter-

taining (and the prosecution the trouble of defending against) appeals from the denials of relief in habeas and § 2255 proceedings, unless a district or circuit judge has identified an issue on which the applicant has made a substantial showing of a constitutional violation. Where no such constitutional issue has been identified, an appeal on other, nonconstitutional, issues (such as the statute-of-limitations issue that the Court decides today) will not lie.

Today's opinion transforms this into a provision that allows appeal so long as a district or circuit judge, for whatever reason or for no reason at all, approves it. This makes a hash of the statute. The opinion thinks this alchemy required by the Court's previously expressed desire to " 'bring some discipline' to the use of the term 'jurisdictional,' " *ante*, at 141 (quoting *Henderson* v. *Shinseki*, 562 U. S. 428, 435 (2011)). If that is true, discipline has become a code word for eliminating inconvenient statutory limits on our jurisdiction. I would reverse the judgment below for want of jurisdiction.

I

Fair Meaning of the Text

Congress amended § 2253 to its current form in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). In its entirety, the section reads as follows:

> "(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.
>
> "(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

> "(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—
>
> "(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
>
> "(B) the final order in a proceeding under section 2255.
>
> "(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.
>
> "(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2)."

As the Court acknowledges, *ante*, at 142, all three subsections—(a), (b), and (c)—clearly speak to the jurisdiction of the courts of appeals. Subsection (a) gives appellate jurisdiction to "the court of appeals for the circuit in which the proceeding is held"; subsection (b) carves out certain classes of cases from that appellate jurisdiction; and subsection (c) imposes a procedural hurdle to the exercise of that appellate jurisdiction—a judge's issuance of a certificate of appealability, see *Miller-El* v. *Cockrell*, 537 U. S. 322, 336 (2003).

Paragraph 2253(c)(3) says that a certificate of appealability (or COA) must "indicate" which issue or issues in the case involve a substantial showing of a constitutional violation. Everyone agrees that the certificate issued below contains no such indication. See *ante*, at 141. It appears, in fact, that the issuing judge never considered whether any of Gonzalez's constitutional claims satisfied paragraph (2). As far as we know, *no* federal judge has ever determined that Gonzalez "has made a substantial showing of the denial of a constitutional right." § 2253(c)(2). The Court *does not even suggest that he has*—but it goes on to decide the statute-of-limitations issue in the case.

Its basis for proceeding in this fashion is the remarkable statement that "[a] defective COA is not equivalent to the

lack of any COA." *Ante*, at 143. That is simply not true with respect to a significant defect in a legal document. Would one say that a deed which lacks the words of conveyance is not equivalent to the lack of a deed? Or that a passport which lacks the Secretary of State's affirmance of the bearer's citizenship is not equivalent to the lack of a passport? Minor technical defects are one thing, but a defect that goes to the whole purpose of the instrument is something else. And the *whole purpose* of the certificate-of-appealability procedure is to make sure that, before a case can proceed to the court of appeals, a judge has made the determination that it presents a substantial showing of the denial of a constitutional right. To call something a valid certificate of appealability which does not contain the central finding that is the whole purpose of a certificate of appealability is quite absurd.

The Court says that "[o]nce a judge has made the determination that a COA is warranted and resources are deployed in briefing and argument, . . . the COA has fulfilled [its] gatekeeping function." *Ante*, at 145. But of course it has *not* done so—it has performed no gatekeeping function whatever—if "the determination that a COA is warranted" has not been accompanied by the issuing judge's opinion required to support the determination: that there is an issue as to which the applicant has made a "substantial showing of the denial of a constitutional right," §2253(c)(2). As the very next sentence of today's opinion discloses, what the *Court* means by "has fulfilled [its] gatekeeping function" is simply that it will not be worth the trouble of going back, since that would "not outweigh the costs of further delay," *ibid.*

That is doubtless true, and it demonstrates the hollowness of the Court's assurance that "calling a rule nonjurisdictional does not mean that it is not mandatory or that a timely objection can be ignored," *ante*, at 146. That statement is true enough as a general proposition: Calling the numerosity requirement in *Arbaugh* v. *Y & H Corp.*, 546 U. S. 500 (2006), nonjurisdictional, for example, did not eliminate it, where

protest was made, as a continuing mandatory requirement for relief on the merits, *id.*, at 516. Even the time-of-filing requirement in *Eberhart* v. *United States*, 546 U. S. 12 (2005) *(per curiam)*, continued to have "bite" even though it was held nonjurisdictional: It prevented relief when the failure to observe it was properly challenged, *id.*, at 19. But the Court has managed to create today a "mandatory" requirement which—precisely because it will not be worth the trouble of going back—has no practical, real-world effect.[1] What is the consequence when the issuing judge, over properly preserved objection, produces a COA like the one here, which does not contain the required opinion? None whatever. The habeas petitioner already has what he wants, argument before the court of appeals. The government, for its part, is either confident in its view that there has been no substantial showing of denial of a constitutional right—in which case it is just as easy (if not easier) to win before three judges as it is before one; or else it is not—in which case a crusade to enforce § 2253(c) is likely to yield nothing but additional litigation expenses. As for the three-judge panel of the court of appeals, it remains free, as always, to choose whichever mandatory-but-not-jurisdictional basis it wishes for resolving the case. Cf. *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 93–94 (1998). Why not choose the one that is sure to be final and that might avoid embarrassing a colleague? No one has any interest in enforcing the "mandatory" requirement. Which is perhaps why, as I proceed to discuss, mandatory requirements for court-to-court appeal are always made jurisdictional.

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[1] The Court suggests that I "ignor[e] the real world," *ante*, at 146, n. 7, in which litigants and courts *have* taken steps to correct a defective COA. But these actions are unsurprising in a world in which there was the possibility that this Court would treat § 2253(c)(3) as a jurisdictional requirement and a Court of Appeals had already done so. The New World of the Court's making, in which it is *certain* that an issuing judge's failure to identify any issue justifying a COA will not have jurisdictional consequences, is yet unexplored.

Past Treatment of Similar Provisions

As the Court acknowledges, " 'context, including this Court's interpretation of similar provisions in many years past, is relevant to whether a statute ranks a requirement as jurisdictional.' " *Ante*, at 142, n. 3 (quoting *Reed Elsevier, Inc.* v. *Muchnick*, 559 U. S. 154, 168 (2010)). Thus, we have said that a requirement prescribed as a condition to obtaining judicial review of agency action is quite different (nonjurisdictional) from a requirement prescribed as a condition to appeal from one court to another (jurisdictional). See *Henderson*, 562 U. S., at 434. We have always—*always, without exception*—held that procedural conditions for appealing a case from one Article III court to another are jurisdictional. When an appeal is "not taken within the time prescribed by law," the "Court of Appeals [is] without jurisdiction." *George* v. *Victor Talking Machine Co.*, 293 U. S. 377, 379 (1934) *(per curiam);* see also *United States* v. *Robinson*, 361 U. S. 220, 229–230 (1960). When a party's name is not listed in the notice of appeal, as the Federal Rules of Appellate Procedure require, the court has no jurisdiction over that party's appeal. *Torres* v. *Oakland Scavenger Co.*, 487 U. S. 312, 314–315 (1988).

When this Court reviewed cases by writ of error, the law required that the lower-court record be filed with the Court "before the end of the term next succeeding the issue of the writ." *Edmonson* v. *Bloomshire*, 7 Wall. 306, 309 (1869). The Court routinely dismissed cases that did not comply with that requirement. See, *e. g., Mesa* v. *United States*, 2 Black 721, 722 (1863) *(per curiam); Edmonson*, *supra*, at 309–310; *Steamer Virginia* v. *West*, 19 How. 182, 183 (1857). The same jurisdictional treatment was accorded to failure to serve notice on the defendant in error within the succeeding Term, see, *e. g., United States* v. *Curry*, 6 How. 106, 112–113 (1848); *Villabolos* v. *United States*, 6 How. 81, 88, 91 (1848), and to failure to file the writ of error with the clerk of the lower court, see, *e. g., Credit Co.* v. *Arkansas Central R. Co.*, 128 U. S. 258, 261 (1888); *Scarborough* v. *Pargoud*, 108 U. S.

567 (1883). Today, when a petition for certiorari in a civil case is not filed within the time prescribed by 28 U. S. C. § 2101(c), this Court lacks jurisdiction. *Federal Election Comm'n* v. *NRA Political Victory Fund*, 513 U. S. 88, 90 (1994) (citing *Missouri* v. *Jenkins*, 495 U. S. 33, 45 (1990)); see also *Matton S. S. Co.* v. *Murphy*, 319 U. S. 412, 415 (1943) *(per curiam)*.[2]

So strict has been the rule enforcing as jurisdictional those requirements attached to court-from-court appeals, that we have applied it to a requirement contained in a statute not even addressed to the courts. Section 518(a) of Title 28 charges the Solicitor General with "conduct[ing] and argu[ing] suits and appeals in the Supreme Court . . . in which the United States is interested." We held that, absent independent statutory authority, an agency's petition for certiorari filed without authorization from the Solicitor General does not suffice to invoke our jurisdiction. *NRA Political Victory Fund*, *supra*, at 98–99.[3]

Jurisdictional enforcement of procedural requirements for appeal has deep roots in our jurisprudence. Chief Justice

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[2] Since the time limits for filing petitions for certiorari in *criminal* cases are "not enacted by Congress but [are] promulgated by this Court under authority of Congress to prescribe rules," we have held that they may "be relaxed by the Court in the exercise of its discretion when the ends of justice so require." *Schacht* v. *United States*, 398 U. S. 58, 64 (1970). The indication requirement of § 2253(c)(3), of course, has been "imposed by the legislature and not by the judicial process." *Schiavone* v. *Fortune*, 477 U. S. 21, 31 (1986).

[3] The Court cites *Becker* v. *Montgomery*, 532 U. S. 757 (2001), as a counterexample. *Ante*, at 144, n. 6. We held there that an appellant's failure to sign his notice of appeal, see Fed. Rule Civ. Proc. 11(a), within the time prescribed for filing a notice of appeal, see Fed. Rule App. Proc. 4(a)(1), did not require dismissal where the notice itself was timely filed. 532 U. S., at 762–763. We did not hold, however, that the signing requirement was nonjurisdictional; we had no occasion to do so. We held that Becker had complied with Civil Rule 11(a) because the error was "'corrected promptly after being called to [his] attention,'" *id.*, at 764 (quoting Fed. Rule Civ. Proc. 11(a)).

Taney dismissed an appeal in which the citation was not issued and served in time, because "we have no power to receive an appeal in any other mode than that provided by law." *Villabolos*, *supra*, at 90. And Chief Justice Chase wrote, in a case dismissing an appeal for failure to file in time:

> "In the Judiciary Act of 1789, and in many acts since, Congress has provided for [appellate courts'] exercise [of jurisdiction] in such cases and classes of cases, and under such regulations as seemed to the legislative wisdom convenient and appropriate. The court has always regarded appeals in other cases as excepted from the grant of appellate power, and has always felt itself bound to give effect to the regulations by which Congress has prescribed the manner of its exercise." *Castro* v. *United States*, 3 Wall. 46, 49 (1866).

Jurisdictional Nature of Predecessor Provision

But similarity to a general type of provision that has always been held jurisdictional is not all that supports the jurisdictional character of § 2253(c)(3). Its very predecessor statute made a judge's expression of opinion a condition of appellate jurisdiction. The certificate of probable cause, of which the COA was born, arrived on the scene over 100 years ago in "An Act Restricting in certain cases the right of appeal to the Supreme Court in habeas corpus proceedings," Act of Mar. 10, 1908, ch. 76, 35 Stat. 40:

> "[F]rom a final decision by a court of the United States in a proceeding in habeas corpus where the detention complained of is by virtue of process issued out of a State court no appeal to the Supreme Court shall be allowed unless the United States court by which the final decision was rendered or a justice of the Supreme Court shall be of opinion that there exists probable cause for an appeal, in which event, on allowing the

> same, the said court or justice shall certify that there is probable cause for such allowance."

The last version of this statute, before it was amended to its current form in AEDPA, provided for issuance of the certificate of probable cause by a circuit judge instead of a justice. See § 2253, 62 Stat. 967 (codified at 28 U. S. C. § 2253 (1946 ed., Supp. II)). Even applying the Court's simplistic rule that the jurisdictional restriction must be contained in the very same paragraph as the procedural requirement, there is no doubt that under this statute a judge's certification *that there was probable cause for an appeal* was jurisdictional. See, *e. g.*, *Ex parte Patrick*, 212 U. S. 555 (1908) *(per curiam); Bilik* v. *Strassheim*, 212 U. S. 551 (1908) *(per curiam)*. There is no reason whatever to think that Congress rendered the statement of opinion unnecessary for jurisdiction by (1) extending the requirement for it to § 2255 proceedings; (2) requiring the opinion to address a more specific point (not just probable cause for an appeal but presence of an issue presenting a "substantial showing of the denial of a constitutional right");[4] and (3) giving the document in which the judge *is required to express the opinion* a name ("certificate of appealability")—so that now a "certificate of appealability" without opinion will suffice. Neither any one of these steps, nor all of them combined, suggest elimination of jurisdictional status for the required expression of opinion.[5]

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[4] The Court believes that the fact that this "new requirement . . . has no predecessor provision" suggests that it is nonjurisdictional. *Ante*, at 142, n. 3. To begin with, it is not *that* new, and it *has* a predecessor provision; it merely adds detail to the jurisdictional opinion that was previously required. But even if the requirement were entirely unprecedented, when it appears within a textual structure that makes it jurisdictional (as our opinion in *Torres* v. *Oakland Scavenger Co.*, 487 U. S. 312 (1988), held, see *infra*, at 163–166), it would be an entirely unprecedented jurisdictional provision.

[5] The Court's opinion suggests that "[i]t would seem somewhat counterintuitive to render a panel of court of appeals judges powerless to act on appeals based on COAs that Congress specifically empowered one court

It would be an entirely strange way of achieving that result. It was not a strange way, however, of dividing the now more complex and lengthy provision into manageable subsections.

Stare Decisis Effect of *Torres*

In addition to the fact that conditions attached to court-to-court appeal have always been held jurisdictional, and the fact that this statute's predecessor was held to be so, we have considered, and found to be jurisdictional, a statute presenting *precisely* what is at issue here: a provision governing court-to-court appeals which made particular content a required element of a document that the statute said was necessary for jurisdiction; and which did that in a separate section that "excluded the jurisdictional terms," *ante*, at 145. That case flatly contradicts today's holding. In *Torres* v. *Oakland Scavenger Co.*, 487 U. S. 312, we dealt with Rule 3(c)(1) of the Federal Rules of Appellate Procedure. Rule 3(a) of those Rules makes a notice of appeal necessary to appellate jurisdiction—just as § 2253(c)(1) makes a certificate of appealability necessary. And Rule 3(c)(1), which, like § 2253(c)(3), does not contain jurisdictional language, says what the requisite notice of appeal must contain—just as § 2253(c)(3) says what the requisite certificate of appealability must contain:

> "The notice of appeal must:
>
> "(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice . . . ;
>
> "(B) designate the judgment, order, or part thereof being appealed; and
>
> "(C) name the court to which the appeal is taken."

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of appeals judge to grant." *Ante*, at 143–144. To begin with, I do not think that an anomaly. It makes entire sense to enable a single circuit judge to nip improper appeals in the bud, sparing parties the trouble of an appeal, and courts the expenditure of three times as much judicial energy. But if it were an anomaly, it would be one that existed as well under the prior statute, which was held to be jurisdictional.

In *Torres* we held that the Court of Appeals lacked jurisdiction over the appeal of a party not properly named in the notice of appeal. 487 U. S., at 314–315. The parallel is perfect.

The Court claims that the jurisdictional consequences of Rule 3(c) were "'"imposed by the legislature,"'" *ante,* at 147 (quoting *Torres*, *supra,* at 318), which according to the Court's analysis "'clearly state[d],'" *ante,* at 141 (quoting *Arbaugh*, 546 U. S., at 515), that Rule 3(c) is jurisdictional. But the Legislature there did *precisely* what it did here: made a particular document necessary to jurisdiction and then specified what that document must contain.[6] I certainly agree that that is a clear statement that a document with the requisite content is necessary to jurisdiction. But the Court does not. So to distinguish *Torres* it has to find something *else* in Rule 3(c) that provided a "clear statement" of what "Congress intended," *ante,* at 142. The best it can come up with, *ante,* at 147, is an *un*clear statement, and that not from Congress but from Advisory Committee Notes referred to in the *Torres* opinion. Such Notes are (of course) "the product of the Advisory Committee, and not Congress," and "they are transmitted to Congress before the rule is enacted into law." *United States* v. *Vonn*, 535 U. S. 55, 64, n. 6 (2002). They are, in other words, a species of legislative history. I know

[6] The Court's claim that "*Torres* involved . . . a different textual, contextual, and historical backdrop," *ante,* at 148, n. 8, does not withstand scrutiny. First, consider the "textual backdrop." The Court cannot really believe that Rule 3(c)(1)'s statement that a notice of appeal "must . . . specify" the appealing party is "'clear' jurisdictional language," *ante,* at 142, while § 2253(c)(3)'s "shall indicate" the issue or issues is not. If it did, it would say as much, since that would readily distinguish *Torres*. And then consider the "contextual" (whatever that means) and "historical backdrop." Each provision, in mandatory-but-not-jurisdictional language, specifies what another document, itself jurisdictional in light of statutory text and history, must contain. The two cases are, of course, literally "different," *ante,* at 148, n. 8, but not in any legally relevant way.

of no precedent for the proposition that legislative history can satisfy a clear-statement requirement imposed by this Court's opinions. Does today's distinguishing of *Torres* mean that legislative history can waive the sovereign immunity of the United States? See *United States* v. *Nordic Village, Inc.*, 503 U. S. 30, 33–34 (1992). Or abrogate the sovereign immunity of the States? See *Atascadero State Hospital* v. *Scanlon*, 473 U. S. 234, 242 (1985). Or give retroactive effect to new legislation? See *Greene* v. *United States*, 376 U. S. 149, 160 (1964). Or foreclose review of agency actions? See *Abbott Laboratories* v. *Gardner*, 387 U. S. 136, 141 (1967). Today's opinion is in this respect a timebomb.

To make matters worse, the Advisory Committee Note considered by the *Torres* Court—as "support for [its] view," 487 U. S., at 315—did *not* clearly say that Rule 3(c)'s requirements were jurisdictional. It said this:

> "'Rule 3 and Rule 4 combine to require that a notice of appeal be filed with the clerk of the district court within the time prescribed for taking an appeal. Because *the timely filing of a notice of appeal* is "mandatory and jurisdictional," *United States* v. *Robinson*, 361 U. S. 220, 224 (1960), compliance with the provisions of those rules *is of the utmost importance*.'" *Id.*, at 315 (quoting 28 U. S. C. App., p. 467 (1982 ed.); brackets omitted; emphasis added).

To say that timely filing of a notice of appeal is jurisdictional, and that placing within the notice of appeal what Rule 3 says it must contain is "*of the utmost importance*," does not remotely add up to a clear statement that placing within the notice of appeal what Rule 3 says it must contain is *jurisdictional*. There is simply no principled basis for saying that *Torres* satisfies the "clear-statement principle," *ante*, at 142, except the commonsense notion that when a document is

made jurisdictional, and the required contents of that document specified, a document that does not contain those contents cannot confer jurisdiction.[7]

The Court is not willing to say that *Torres* is no longer good law, but I doubt whether future litigants will be so coy. They know that in the past, to avoid the uncongenial rigidity of the rule that procedures attending court-to-court appeals are jurisdictional, we have performed wondrous contortions to find compliance with those rules. For example, in *Smith* v. *Barry*, 502 U. S. 244, 248 (1992), we held that an "informal brief" filed after a defective notice of appeal counted as a valid notice of appeal. In *Foman* v. *Davis*, 371 U. S. 178, 181 (1962), we held that a notice of appeal from the denial of a motion to vacate the judgment was also a notice of appeal from the underlying judgment. And in *Houston* v. *Lack*, 487 U. S. 266, 270 (1988), we held that a prisoner's notice of appeal was "filed" when it was delivered to prison authorities for forwarding to the District Court. These (shall we say) creative interpretations of the procedural requirements were made necessary by the background principle that is centuries old: "[I]f the mode prescribed for removing cases by writ of error or appeal be too strict and technical, and likely to produce inconvenience or injustice, it is for Congress to provide a remedy by altering the existing laws; not for the court." *Curry*, 6 How., at 113. But if we have been willing to expose ourselves to ridicule in order to approve implausible compliance with procedural prerequisites to appeal, surely we may be willing to continue and expand the process

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[7] The Court also tries to distinguish *Torres* on the ground that failure to comply with Rule 3 presented a different "possibility of gamesmanship," *ante*, at 148, from that presented here. I fail to see the relevance of that happenstance. The premise of the Court's opinion is that the question of jurisdiction *vel non* is governed by a "clear-statement principle," *ante*, at 142. The statement here is precisely as clear as the statement in *Torres*. Do we enforce clear statements only when there is a "possibility of gamesmanship"? The Court's freewheeling purposivism defies textual analysis.

of simply converting those obnoxious prerequisites into the now favored "claims processing rules," enabling us to avoid unseemly contortions by simply invoking the ever-judge-friendly principles of equity.

What began as an effort to "'bring some discipline' to the use of the term 'jurisdictional,'" *ante*, at 141 (quoting *Henderson*, 562 U. S., at 435), shows signs of becoming a libertine, liberating romp through our established jurisprudence.

II

A few remaining points raised by the Court's opinion warrant response.

The Court holds that the requirement imposed by paragraph (c)(2) (that a COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right") is not jurisdictional, and says that "[i]t follows that § 2253(c)(3) is nonjurisdictional as well." *Ante*, at 143. I need not reach the issue whether (c)(2) is jurisdictional—though it seems to me that the Court disposes rather summarily of the Solicitor General's view that it is. And I need not confront the Court with the back-at-you argument that if (c)(3) is jurisdictional (as I think) then (c)(2) is as well. For whether one runs it backwards or forwards, the argument is a bad one. Assuming that (c)(2) is nonjurisdictional, it does not at all "follow" that (c)(3) is nonjurisdictional as well. Paragraph (c)(3) is jurisdictional not because it is located in subsection (c), but because it describes the required content of a COA. Paragraph (c)(2) does not; it sets forth the criterion for a COA's issuance. A judge may apply that criterion erroneously but still produce a COA that (as paragraph (c)(3) requires) "indicate[s] which specific issue or issues satisfy the showing required by paragraph (2)." It no more follows that the erroneousness of the judge's indication must destroy the jurisdiction that the COA creates, than it followed under the predecessor statute that the erroneousness of the certification of probable cause for an appeal de-

stroyed the jurisdiction that the certification created.[8] The two issues are quite separate: what the judge must find, and what the COA (or certification) must contain.

The Court points out that Gonzalez raised the Sixth Amendment issue in his application for a COA, that "[a] petitioner, having successfully obtained a COA, has no control over how the judge drafts the COA," and that the petitioner, "as in Gonzalez's case, may have done everything required of him by law." *Ante*, at 144. Perhaps it is true that the defective COA was not at all Gonzalez's fault—though he could have promptly moved to amend it. But no-fault elimination of jurisdiction is not forbidden. In *Bowles* v. *Russell*, 551 U. S. 205 (2007), we enforced a time limit on notice of appeal where the District Court had purported to extend the time to file and the appellant had complied with the court's order. *Id.*, at 207, 213–214. It did not matter that the fault lay with the court.

Finally, the Court points out that treating § 2253(c)(3) as jurisdictional would waste a lot of time. "Even if additional screening of already-issued COAs for § 2253(c)(3) defects could further winnow the cases before the courts of appeals, that would not outweigh the costs of further delay from the extra layer of review." *Ante*, at 145. But that is not an argument directed to the statute before us; it is an argument directed against enforcement of *all* jurisdictional requirements (*all* of which, I suspect, are the object of the Court's mounting disfavor). And the argument may not even be true, except in the (presumably rare) case where the jurisdictional prescription is disregarded. Over the long term,

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[8] We held in *Nowakowski* v. *Maroney*, 386 U. S. 542, 543 (1967) *(per curiam)*, that "when a district judge grants [a certificate of probable cause], the court of appeals must grant an appeal . . . and proceed to a disposition of the appeal in accord with its ordinary procedure." See also *Carafas* v. *LaVallee*, 391 U. S. 234, 242 (1968) (*Nowakowski* requires "that the appeal [be] considered on its merits . . . in cases where a certificate of probable cause has been granted").

the time saved to judges and lawyers by an *enforceable* requirement that appeals be screened by a single judge may vastly outweigh the time wasted by the occasional need for enforcement. That, it seems to me, is what Congress believed.

* * *

Terminology is destiny. Today's holding, and the erosion of our prior jurisprudence that will perhaps follow upon it, is foreshadowed and facilitated by the unfortunate terminology with which we have chosen to accompany our campaign to "bring some discipline" to determinations of jurisdiction. We have said that the universe of rules placing limitations upon the courts is divided into (1) "claims processing rules," and (2) jurisdiction-removing rules. Unless our prior jurisprudence is to be repudiated, that is a false dichotomy. The requirement that the unsuccessful litigant file a timely notice of appeal, for example, is (if the term is to have any meaning) a claims-processing rule, ordering the process by which claims are adjudicated. Yet as discussed above, that, and all procedures that must be followed to proceed from one court to another, have always been deemed jurisdictional. The proper dichotomy is between claims-processing rules that are jurisdictional, and those that are not. To put it otherwise suggests a test for jurisdiction that is not to be found in our cases.[9]

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[9] It may well be that what I have called a false dichotomy was indeed meant to revise our jurisprudence. In *Kontrick* v. *Ryan*, 540 U. S. 443, 455 (2004), we said by way of dictum the following: "Clarity would be facilitated if courts and litigants used the label 'jurisdictional' not for claim-processing rules, but only for prescriptions delineating the classes of cases (subject-matter jurisdiction) and the persons (personal jurisdiction) falling within a court's adjudicatory authority." Unless an appeal lacking a timely filing of a notice of appeal can be considered one that falls outside the appellate court's "subject-matter jurisdiction" (which would be an odd usage), *Kontrick*'s dictum effectively announced today's decision, the overruling of *Torres* and *Browder* v. *Director, Dept. of Corrections of Ill.*, 434 U. S. 257 (1978), and the elimination of jurisdictional treatment for all

At the end of the day, the indication requirement in § 2253(c)(3) is "'imposed by the legislature and not by the judicial process.'" *Torres*, 487 U. S., at 318 (quoting *Schiavone* v. *Fortune*, 477 U. S. 21, 31 (1986)). Whether or not its enforcement leads to a harsh result, wastes time in this particular case, or (though the Court does not give this as a reason) prevents us from reaching a Circuit conflict we are dying to resolve, we are obliged to enforce it. I respectfully dissent.

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procedural requirements for appeal. That the announcement has not been heeded is demonstrated by *Bowles* v. *Russell*, 551 U. S. 205 (2007) (decided after *Kontrick*), which (over the dissent of the author of *Kontrick*) reaffirmed *Browder*. I confess error in joining the quoted portion of *Kontrick*.

Syllabus

HOSANNA-TABOR EVANGELICAL LUTHERAN CHURCH AND SCHOOL *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL.

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

No. 10–553. Argued October 5, 2011—Decided January 11, 2012

Petitioner Hosanna-Tabor Evangelical Lutheran Church and School is a member congregation of the Lutheran Church—Missouri Synod. The Synod classifies its schoolteachers into two categories: "called" and "lay." "Called" teachers are regarded as having been called to their vocation by God. To be eligible to be considered "called," a teacher must complete certain academic requirements, including a course of theological study. Once called, a teacher receives the formal title "Minister of Religion, Commissioned." "Lay" teachers, by contrast, are not required to be trained by the Synod or even to be Lutheran. Although lay and called teachers at Hosanna-Tabor generally performed the same duties, lay teachers were hired only when called teachers were unavailable.

After respondent Cheryl Perich completed the required training, Hosanna-Tabor asked her to become a called teacher. Perich accepted the call and was designated a commissioned minister. In addition to teaching secular subjects, Perich taught a religion class, led her students in daily prayer and devotional exercises, and took her students to a weekly school-wide chapel service. Perich led the chapel service herself about twice a year.

Perich developed narcolepsy and began the 2004–2005 school year on disability leave. In January 2005, she notified the school principal that she would be able to report to work in February. The principal responded that the school had already contracted with a lay teacher to fill Perich's position for the remainder of the school year. The principal also expressed concern that Perich was not yet ready to return to the classroom. The congregation subsequently offered to pay a portion of Perich's health insurance premiums in exchange for her resignation as a called teacher. Perich refused to resign. In February, Perich presented herself at the school and refused to leave until she received written documentation that she had reported to work. The principal later called Perich and told her that she would likely be fired. Perich responded that she had spoken with an attorney and intended to assert

her legal rights. In a subsequent letter, the chairman of the school board advised Perich that the congregation would consider whether to rescind her call at its next meeting. As grounds for termination, the letter cited Perich's "insubordination and disruptive behavior," as well as the damage she had done to her "working relationship" with the school by "threatening to take legal action." The congregation voted to rescind Perich's call, and Hosanna-Tabor sent her a letter of termination.

Perich filed a charge with the Equal Employment Opportunity Commission, claiming that her employment had been terminated in violation of the Americans with Disabilities Act. The EEOC brought suit against Hosanna-Tabor, alleging that Perich had been fired in retaliation for threatening to file an ADA lawsuit. Perich intervened in the litigation. Invoking what is known as the "ministerial exception," Hosanna-Tabor argued that the suit was barred by the First Amendment because the claims concerned the employment relationship between a religious institution and one of its ministers. The District Court agreed and granted summary judgment in Hosanna-Tabor's favor. The Sixth Circuit vacated and remanded. It recognized the existence of a ministerial exception rooted in the First Amendment, but concluded that Perich did not qualify as a "minister" under the exception.

Held:

1. The Establishment and Free Exercise Clauses of the First Amendment bar suits brought on behalf of ministers against their churches, claiming termination in violation of employment discrimination laws. Pp. 181–190.

(a) The First Amendment provides, in part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Familiar with life under the established Church of England, the founding generation sought to foreclose the possibility of a national church. By forbidding the "establishment of religion" and guaranteeing the "free exercise thereof," the Religion Clauses ensured that the new Federal Government—unlike the English Crown—would have no role in filling ecclesiastical offices. Pp. 181–185.

(b) This Court first considered the issue of government interference with a church's ability to select its own ministers in the context of disputes over church property. This Court's decisions in that area confirm that it is impermissible for the government to contradict a church's determination of who can act as its ministers. See *Watson* v. *Jones*, 13 Wall. 679; *Kedroff* v. *Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U. S. 94; *Serbian Eastern Orthodox Diocese for United States and Canada* v. *Milivojevich*, 426 U. S. 696. Pp. 185–187.

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(c) Since the passage of Title VII of the Civil Rights Act of 1964 and other employment discrimination laws, the Courts of Appeals have uniformly recognized the existence of a "ministerial exception," grounded in the First Amendment, that precludes application of such legislation to claims concerning the employment relationship between a religious institution and its ministers. The Court agrees that there is such a ministerial exception. Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments. According the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions.

The EEOC and Perich contend that religious organizations can defend against employment discrimination claims by invoking their First Amendment right to freedom of association. They thus see no need—and no basis—for a special rule for ministers grounded in the Religion Clauses themselves. Their position, however, is hard to square with the text of the First Amendment itself, which gives special solicitude to the rights of religious organizations. The Court cannot accept the remarkable view that the Religion Clauses have nothing to say about a religious organization's freedom to select its own ministers.

The EEOC and Perich also contend that *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S. 872, precludes recognition of a ministerial exception. But *Smith* involved government regulation of only outward physical acts. The present case, in contrast, concerns government interference with an internal church decision that affects the faith and mission of the church itself. Pp. 188–190.

2. Because Perich was a minister within the meaning of the ministerial exception, the First Amendment requires dismissal of this employment discrimination suit against her religious employer. Pp. 190–196.

(a) The ministerial exception is not limited to the head of a religious congregation. The Court, however, does not adopt a rigid formula for deciding when an employee qualifies as a minister. Here, it is enough to conclude that the exception covers Perich, given all the circumstances of her employment. Hosanna-Tabor held her out as a minister, with a role distinct from that of most of its members. That title represented a significant degree of religious training followed by a formal process of commissioning. Perich also held herself out as a minister by, for exam-

ple, accepting the formal call to religious service. And her job duties reflected a role in conveying the Church's message and carrying out its mission: As a source of religious instruction, Perich played an important part in transmitting the Lutheran faith.

In concluding that Perich was not a minister under the exception, the Sixth Circuit committed three errors. First, it failed to see any relevance in the fact that Perich was a commissioned minister. Although such a title, by itself, does not automatically ensure coverage, the fact that an employee has been ordained or commissioned as a minister is surely relevant, as is the fact that significant religious training and a recognized religious mission underlie the description of the employee's position. Second, the Sixth Circuit gave too much weight to the fact that lay teachers at the school performed the same religious duties as Perich. Though relevant, it cannot be dispositive that others not formally recognized as ministers by the church perform the same functions—particularly when, as here, they did so only because commissioned ministers were unavailable. Third, the Sixth Circuit placed too much emphasis on Perich's performance of secular duties. Although the amount of time an employee spends on particular activities is relevant in assessing that employee's status, that factor cannot be considered in isolation, without regard to the other considerations discussed above. Pp. 190–194.

(b) Because Perich was a minister for purposes of the exception, this suit must be dismissed. An order reinstating Perich as a called teacher would have plainly violated the Church's freedom under the Religion Clauses to select its own ministers. Though Perich no longer seeks reinstatement, she continues to seek frontpay, backpay, compensatory and punitive damages, and attorney's fees. An award of such relief would operate as a penalty on the Church for terminating an unwanted minister, and would be no less prohibited by the First Amendment than an order overturning the termination. Such relief would depend on a determination that Hosanna-Tabor was wrong to have relieved Perich of her position, and it is precisely such a ruling that is barred by the ministerial exception.

Any suggestion that Hosanna-Tabor's asserted religious reason for firing Perich was pretextual misses the point of the ministerial exception. The purpose of the exception is not to safeguard a church's decision to fire a minister only when it is made for a religious reason. The exception instead ensures that the authority to select and control who will minister to the faithful is the church's alone. Pp. 194–195.

(c) Today the Court holds only that the ministerial exception bars an employment discrimination suit brought on behalf of a minister, chal-

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lenging her church's decision to fire her. The Court expresses no view on whether the exception bars other types of suits. Pp. 195–196.

597 F. 3d 769, reversed.

ROBERTS, C. J., delivered the opinion for a unanimous Court. THOMAS, J., filed a concurring opinion, *post*, p. 196. ALITO, J., filed a concurring opinion, in which KAGAN, J., joined, *post*, p. 198.

Douglas Laycock argued the cause for petitioner. With him on the briefs were *Kevin J. Hasson*, *Eric C. Rassbach*, *Hannah C. Smith*, *Luke W. Goodrich*, *Lori H. Windham*, and *James W. Erwin*.

Leondra R. Kruger argued the cause for the federal respondent. With her on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Perez*, *Joseph R. Palmore*, *Dennis J. Dimsey*, *Sharon M. McGowan*, *P. David Lopez*, *Lorraine C. Davis*, and *Carolyn L. Wheeler*. *Walter Dellinger* argued the cause for respondent Perich. With him on the brief were *Sri Srinivasan*, *Anton Metlitsky*, *Loren L. Alikhan*, *James E. Roach*, and *Robert M. Vercruysse*.*

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*Briefs of *amici curiae* urging reversal were filed for the American Association of Christian Schools by *Robert J. McCully;* for the American Bible Society et al. by *Stuart J. Lark;* for the American Center for Law and Justice et al. by *Jay Alan Sekulow*, *Stuart J. Roth*, *Colby M. May*, *James M. Henderson, Sr.*, *David French*, *Walter M. Weber*, and *Michael S. Anderson;* for the American Jewish Committee et al. by *David Dunn* and *Marc Stern;* for the Council for Christian Colleges and Universities by *Aaron D. Lindstrom* and *Matthew T. Nelson;* for the Evangelical Covenant Church et al. by *Michael W. McConnell;* for the International Mission Board of the Southern Baptist Convention et al. by *Gene C. Schaerr*, *Steffen N. Johnson*, *Michael T. Morley, Linda T. Coberly*, and *William P. Ferranti;* for the Jewish Educational Center et al. by *Kelly J. Shackelford* and *Hiram S. Sasser III;* for the Justice and Freedom Fund by *James L. Hirsen* and *Deborah J. Dewart;* for the Lutheran Church—Missouri Synod by *Christopher C. Lund* and *T. Michael Ward;* for the Muslim-American Public Affairs Council et al. by *Douglas R. Bush* and *Eric S. Baxter;* for the National Jewish Commission on Law and Public Affairs by *Nathan Lewin* and *Alyza D. Lewin;* for Religious Organizations and Institutions by *Carter G. Phillips*, *Edward R. McNicholas*, *David S. Petron*, and *Gor-*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Certain employment discrimination laws authorize employees who have been wrongfully terminated to sue their employers for reinstatement and damages. The question presented is whether the Establishment and Free Exercise Clauses of the First Amendment bar such an action when

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don D. Todd; for Religious Tribunal Experts by *Megan L. Brown;* for Trinity Baptist Church of Jacksonville, Inc., by *Edward H. Trent* and *Joseph W. Hatchett;* for the United States Conference of Catholic Bishops et al. by *Kevin T. Baine*, *Anthony R. Picarello, Jr.*, *Jeffrey Hunter Moon*, *Michael F. Moses*, *Von G. Keetch*, and *R. Shawn Gunnarson;* and for WallBuilders, Inc. by *Steven W. Fitschen.*

Briefs of *amici curiae* urging affirmance were filed for the American Humanist Association et al. by *Elizabeth L. Hileman;* for Americans United for Separation of Church and State et al. by *Ayesha N. Khan*, *Gregory M. Lipper*, *Steven R. Shapiro*, *Daniel Mach*, and *Michael J. Steinberg;* for the NAACP Legal Defense Fund et al. by *Kevin K. Russell*, *John Payton*, *Debo P. Adegbile*, *ReNika C. Moore*, *Ray P. McClain*, *Linda D. Kilb*, *Fatima Goss Graves*, *Dina Lassow*, *Judith L. Lichtman*, and *Sarah C. Crawford;* for the National Employment Lawyers Association by *Eric Schnapper* and *Rebecca M. Hamburg;* for the People for the American Way Foundation by *David J. Bederman* and *Margery F. Baker;* and for Neil H. Cogan by *Mr. Cogan*, *pro se.*

Briefs of *amici curiae* were filed for the State of Michigan et al. by *Bill Schuette*, Attorney General of Michigan, *John J. Bursch*, Solicitor General, and *B. Eric Restuccia*, Deputy Solicitor General, and by the Attorneys General for their respective States as follows: *Luther Strange* of Alabama, *Pamela Jo Bondi* of Florida, *Gregory F. Zoeller* of Indiana, *James D. "Buddy" Caldwell* of Louisiana, *Wayne Stenehjem* of North Dakota, *E. Scott Pruitt* of Oklahoma, and *Greg Abbott* of Texas; for the Anti-Defamation League by *Ian Scharfman*, *Steven M. Freeman*, and *Steven C. Sheinberg;* for Antitrust Professors and Scholars by *Harry First*, *pro se;* for BishopAccountability.org et al. by *Marci A. Hamilton;* for the International Center for Law and Religion Studies at Brigham Young University by *W. Cole Durham, Jr.*, and *Robert T. Smith;* for Law and Religion Professors by *Leslie C. Griffin;* for The Rutherford Institute by *John W. Whitehead*, *Bradley J. Andreozzi*, and *Jason P. Gosselin;* and for Eugene Volokh et al. by *Thomas C. Berg*, *Carl H. Esbeck*, *Richard W. Garnett*, *K. Hollyn Hollman*, *Melissa Rogers*, and *Kimberlee Wood Colby.*

the employer is a religious group and the employee is one of the group's ministers.

I

A

Petitioner Hosanna-Tabor Evangelical Lutheran Church and School is a member congregation of the Lutheran Church—Missouri Synod, the second largest Lutheran denomination in America. Hosanna-Tabor operated a small school in Redford, Michigan, offering a "Christ-centered education" to students in kindergarten through eighth grade. 582 F. Supp. 2d 881, 884 (ED Mich. 2008) (internal quotation marks omitted).

The Synod classifies teachers into two categories: "called" and "lay." "Called" teachers are regarded as having been called to their vocation by God through a congregation. To be eligible to receive a call from a congregation, a teacher must satisfy certain academic requirements. One way of doing so is by completing a "colloquy" program at a Lutheran college or university. The program requires candidates to take eight courses of theological study, obtain the endorsement of their local Synod district, and pass an oral examination by a faculty committee. A teacher who meets these requirements may be called by a congregation. Once called, a teacher receives the formal title "Minister of Religion, Commissioned." App. 42, 48. A commissioned minister serves for an open-ended term; at Hosanna-Tabor, a call could be rescinded only for cause and by a supermajority vote of the congregation.

"Lay" or "contract" teachers, by contrast, are not required to be trained by the Synod or even to be Lutheran. At Hosanna-Tabor, they were appointed by the school board, without a vote of the congregation, to one-year renewable terms. Although teachers at the school generally performed the same duties regardless of whether they were lay or called, lay teachers were hired only when called teachers were unavailable.

Respondent Cheryl Perich was first employed by Hosanna-Tabor as a lay teacher in 1999. After Perich completed her colloquy later that school year, Hosanna-Tabor asked her to become a called teacher. Perich accepted the call and received a "diploma of vocation" designating her a commissioned minister. *Id.*, at 42.

Perich taught kindergarten during her first four years at Hosanna-Tabor and fourth grade during the 2003–2004 school year. She taught math, language arts, social studies, science, gym, art, and music. She also taught a religion class four days a week, led the students in prayer and devotional exercises each day, and attended a weekly school-wide chapel service. Perich led the chapel service herself about twice a year.

Perich became ill in June 2004 with what was eventually diagnosed as narcolepsy. Symptoms included sudden and deep sleeps from which she could not be roused. Because of her illness, Perich began the 2004–2005 school year on disability leave. On January 27, 2005, however, Perich notified the school principal, Stacey Hoeft, that she would be able to report to work the following month. Hoeft responded that the school had already contracted with a lay teacher to fill Perich's position for the remainder of the school year. Hoeft also expressed concern that Perich was not yet ready to return to the classroom.

On January 30, Hosanna-Tabor held a meeting of its congregation at which school administrators stated that Perich was unlikely to be physically capable of returning to work that school year or the next. The congregation voted to offer Perich a "peaceful release" from her call, whereby the congregation would pay a portion of her health insurance premiums in exchange for her resignation as a called teacher. *Id.*, at 178, 186. Perich refused to resign and produced a note from her doctor stating that she would be able to return to work on February 22. The school board urged Perich to

reconsider, informing her that the school no longer had a position for her, but Perich stood by her decision not to resign.

On the morning of February 22—the first day she was medically cleared to return to work—Perich presented herself at the school. Hoeft asked her to leave but she would not do so until she obtained written documentation that she had reported to work. Later that afternoon, Hoeft called Perich at home and told her that she would likely be fired. Perich responded that she had spoken with an attorney and intended to assert her legal rights.

Following a school board meeting that evening, board chairman Scott Salo sent Perich a letter stating that Hosanna-Tabor was reviewing the process for rescinding her call in light of her "regrettable" actions. *Id.*, at 229. Salo subsequently followed up with a letter advising Perich that the congregation would consider whether to rescind her call at its next meeting. As grounds for termination, the letter cited Perich's "insubordination and disruptive behavior" on February 22, as well as the damage she had done to her "working relationship" with the school by "threatening to take legal action." *Id.*, at 55. The congregation voted to rescind Perich's call on April 10, and Hosanna-Tabor sent her a letter of termination the next day.

B

Perich filed a charge with the Equal Employment Opportunity Commission, alleging that her employment had been terminated in violation of the Americans with Disabilities Act of 1990, 104 Stat. 327, 42 U. S. C. § 12101 *et seq.* The ADA prohibits an employer from discriminating against a qualified individual on the basis of disability. § 12112(a). It also prohibits an employer from retaliating "against any individual because such individual has opposed any act or practice made unlawful by [the ADA] or because such individual

made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [the ADA]." § 12203(a).[1]

The EEOC brought suit against Hosanna-Tabor, alleging that Perich had been fired in retaliation for threatening to file an ADA lawsuit. Perich intervened in the litigation, claiming unlawful retaliation under both the ADA and the Michigan Persons with Disabilities Civil Rights Act, Mich. Comp. Laws § 37.1602(a) (1979). The EEOC and Perich sought Perich's reinstatement to her former position (or frontpay in lieu thereof), along with backpay, compensatory and punitive damages, attorney's fees, and other injunctive relief.

Hosanna-Tabor moved for summary judgment. Invoking what is known as the "ministerial exception," the Church argued that the suit was barred by the First Amendment because the claims at issue concerned the employment relationship between a religious institution and one of its ministers. According to the Church, Perich was a minister, and she had been fired for a religious reason—namely, that her threat to sue the Church violated the Synod's belief that Christians should resolve their disputes internally.

The District Court agreed that the suit was barred by the ministerial exception and granted summary judgment in

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[1] The ADA itself provides religious entities with two defenses to claims of discrimination that arise under subchapter I of the Act. The first provides that "[t]his subchapter shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such [entity] of its activities." § 12113(d)(1) (2006 ed., Supp. III). The second provides that "[u]nder this subchapter, a religious organization may require that all applicants and employees conform to the religious tenets of such organization." § 12113(d)(2). The ADA's prohibition against retaliation, § 12203(a), appears in a different subchapter—subchapter IV. The EEOC and Perich contend, and Hosanna-Tabor does not dispute, that these defenses therefore do not apply to retaliation claims.

Hosanna-Tabor's favor. The court explained that "Hosanna-Tabor treated Perich like a minister and held her out to the world as such long before this litigation began," and that the "facts surrounding Perich's employment in a religious school with a sectarian mission" supported the Church's characterization. 582 F. Supp. 2d, at 891–892. In light of that determination, the court concluded that it could "inquire no further into her claims of retaliation." *Id.*, at 892.

The Court of Appeals for the Sixth Circuit vacated and remanded, directing the District Court to proceed to the merits of Perich's retaliation claims. The Court of Appeals recognized the existence of a ministerial exception barring certain employment discrimination claims against religious institutions—an exception "rooted in the First Amendment's guarantees of religious freedom." 597 F. 3d 769, 777 (2010). The court concluded, however, that Perich did not qualify as a "minister" under the exception, noting in particular that her duties as a called teacher were identical to her duties as a lay teacher. *Id.*, at 778–781. Judge White concurred. She viewed the question whether Perich qualified as a minister to be closer than did the majority, but agreed that the "fact that the duties of the contract teachers are the same as the duties of the called teachers is telling." *Id.*, at 782, 784.

We granted certiorari. 563 U. S. 903 (2011).

II

The First Amendment provides, in part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." We have said that these two Clauses "often exert conflicting pressures," *Cutter* v. *Wilkinson*, 544 U. S. 709, 719 (2005), and that there can be "internal tension . . . between the Establishment Clause and the Free Exercise Clause," *Tilton* v. *Richardson*, 403 U. S. 672, 677 (1971) (plurality opinion). Not so here. Both Religion Clauses bar the government from interfering with the decision of a religious group to fire one of its ministers.

A

Controversy between church and state over religious offices is hardly new. In 1215, the issue was addressed in the very first clause of Magna Carta. There, King John agreed that "the English church shall be free, and shall have its rights undiminished and its liberties unimpaired." The King in particular accepted the "freedom of elections," a right "thought to be of the greatest necessity and importance to the English church." J. Holt, Magna Carta App. IV, p. 317, cl. 1 (1965).

That freedom in many cases may have been more theoretical than real. See, *e. g.*, W. Warren, Henry II 312 (1973) (recounting the writ sent by Henry II to the electors of a bishopric in Winchester, stating: "I order you to hold a free election, but forbid you to elect anyone but Richard my clerk"). In any event, it did not survive the reign of Henry VIII, even in theory. The Act of Supremacy of 1534, 26 Hen. 8, ch. 1, made the English monarch the supreme head of the Church, and the Act in Restraint of Annates, 25 Hen. 8, ch. 20, passed that same year, gave him the authority to appoint the Church's high officials. See G. Elton, The Tudor Constitution: Documents and Commentary 331–332 (1960). Various Acts of Uniformity, enacted subsequently, tightened further the government's grip on the exercise of religion. See, *e. g.*, Act of Uniformity, 1559, 1 Eliz., ch. 2; Act of Uniformity, 1549, 2 & 3 Edw. 6, ch. 1. The Uniformity Act of 1662, for instance, limited service as a minister to those who formally assented to prescribed tenets and pledged to follow the mode of worship set forth in the Book of Common Prayer. Any minister who refused to make that pledge was "deprived of all his Spiritual Promotions." Act of Uniformity, 1662, 14 Car. 2, ch. 4.

Seeking to escape the control of the national church, the Puritans fled to New England, where they hoped to elect their own ministers and establish their own modes of worship. See T. Curry, The First Freedoms: Church and State

in America to the Passage of the First Amendment 3 (1986); McConnell, The Origins and Historical Understanding of Free Exercise of Religion, 103 Harv. L. Rev. 1409, 1422 (1990). William Penn, the Quaker proprietor of what would eventually become Pennsylvania and Delaware, also sought independence from the Church of England. The charter creating the province of Pennsylvania contained no clause establishing a religion. See S. Cobb, The Rise of Religious Liberty in America 440–441 (1970).

Colonists in the South, in contrast, brought the Church of England with them. But even they sometimes chafed at the control exercised by the Crown and its representatives over religious offices. In Virginia, for example, the law vested the governor with the power to induct ministers presented to him by parish vestries, 2 Hening's Statutes at Large 46 (1642), but the vestries often refused to make such presentations and instead chose ministers on their own. See H. Eckenrode, Separation of Church and State in Virginia 13–19 (1910). Controversies over the selection of ministers also arose in other Colonies with Anglican establishments, including North Carolina. See C. Antieau, A. Downey, & E. Roberts, Freedom From Federal Establishment: Formation and Early History of the First Amendment Religion Clauses 10–11 (1964). There, the royal governor insisted that the right of presentation lay with the Bishop of London, but the colonial assembly enacted laws placing that right in the vestries. Authorities in England intervened, repealing those laws as inconsistent with the rights of the Crown. See *id.*, at 11; Weeks, Church and State in North Carolina, Johns Hopkins U. Studies in Hist. & Pol. Sci., 11th Ser., Nos. 5–6, pp. 29–36 (1893).

It was against this background that the First Amendment was adopted. Familiar with life under the established Church of England, the founding generation sought to foreclose the possibility of a national church. See 1 Annals of Cong. 730–731 (1789) (remarks of J. Madison) (noting that the

Establishment Clause addressed the fear that "one sect might obtain a pre-eminence, or two combine together, and establish a religion to which they would compel others to conform"). By forbidding the "establishment of religion" and guaranteeing the "free exercise thereof," the Religion Clauses ensured that the new Federal Government—unlike the English Crown—would have no role in filling ecclesiastical offices. The Establishment Clause prevents the Government from appointing ministers, and the Free Exercise Clause prevents it from interfering with the freedom of religious groups to select their own.

This understanding of the Religion Clauses was reflected in two events involving James Madison, "'the leading architect of the religion clauses of the First Amendment.'" *Arizona Christian School Tuition Organization* v. *Winn*, 563 U. S. 125, 141 (2011) (quoting *Flast* v. *Cohen*, 392 U. S. 83, 103 (1968)). The first occurred in 1806, when John Carroll, the first Catholic bishop in the United States, solicited the Executive's opinion on who should be appointed to direct the affairs of the Catholic Church in the territory newly acquired by the Louisiana Purchase. After consulting with President Jefferson, then-Secretary of State Madison responded that the selection of church "functionaries" was an "entirely ecclesiastical" matter left to the Church's own judgment. Letter from James Madison to Bishop Carroll (Nov. 20, 1806), reprinted in 20 Records of the American Catholic Historical Society 63 (1909). The "scrupulous policy of the Constitution in guarding against a political interference with religious affairs," Madison explained, prevented the Government from rendering an opinion on the "selection of ecclesiastical individuals." *Id.*, at 63–64.

The second episode occurred in 1811, when Madison was President. Congress had passed a bill incorporating the Protestant Episcopal Church in the town of Alexandria in what was then the District of Columbia. Madison vetoed the bill, on the ground that it "exceeds the rightful authority

to which Governments are limited, by the essential distinction between civil and religious functions, and violates, in particular, the article of the Constitution of the United States, which declares, that 'Congress shall make no law respecting a religious establishment.'" 22 Annals of Cong. 982–983 (1811). Madison explained:

> "The bill enacts into, and establishes by law, sundry rules and proceedings relative purely to the organization and polity of the church incorporated, *and comprehending even the election and removal of the Minister of the same*; so that no change could be made therein by the particular society, or by the general church of which it is a member, and whose authority it recognises." *Id.*, at 983 (emphasis added).

B

Given this understanding of the Religion Clauses—and the absence of government employment regulation generally—it was some time before questions about government interference with a church's ability to select its own ministers came before the courts. This Court touched upon the issue indirectly, however, in the context of disputes over church property. Our decisions in that area confirm that it is impermissible for the government to contradict a church's determination of who can act as its ministers.

In *Watson* v. *Jones*, 13 Wall. 679 (1872), the Court considered a dispute between antislavery and proslavery factions over who controlled the property of the Walnut Street Presbyterian Church in Louisville, Kentucky. The General Assembly of the Presbyterian Church had recognized the antislavery faction, and this Court—applying not the Constitution but a "broad and sound view of the relations of church and state under our system of laws"—declined to question that determination. *Id.*, at 727. We explained that "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of [the]

church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them." *Ibid.* As we would put it later, our opinion in *Watson* "radiates . . . a spirit of freedom for religious organizations, an independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff* v. *Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U. S. 94, 116 (1952).

Confronting the issue under the Constitution for the first time in *Kedroff*, the Court recognized that the "[f]reedom to select the clergy, where no improper methods of choice are proven," is "part of the free exercise of religion" protected by the First Amendment against government interference. *Ibid.* At issue in *Kedroff* was the right to use a Russian Orthodox cathedral in New York City. The Russian Orthodox churches in North America had split from the Supreme Church Authority in Moscow, out of concern that the Authority had become a tool of the Soviet Government. The North American churches claimed that the right to use the cathedral belonged to an archbishop elected by them; the Supreme Church Authority claimed that it belonged instead to an archbishop appointed by the patriarch in Moscow. New York's highest court ruled in favor of the North American churches, based on a state law requiring every Russian Orthodox church in New York to recognize the determination of the governing body of the North American churches as authoritative. *Id.*, at 96–97, 99, n. 3, 106, n. 10.

This Court reversed, concluding that the New York law violated the First Amendment. *Id.*, at 107. We explained that the controversy over the right to use the cathedral was "strictly a matter of ecclesiastical government, the power of the Supreme Church Authority of the Russian Orthodox Church to appoint the ruling hierarch of the archdiocese of

North America." *Id.*, at 115. By "pass[ing] the control of matters strictly ecclesiastical from one church authority to another," the New York law intruded the "power of the state into the forbidden area of religious freedom contrary to the principles of the First Amendment." *Id.*, at 119. Accordingly, we declared the law unconstitutional because it "directly prohibit[ed] the free exercise of an ecclesiastical right, the Church's choice of its hierarchy." *Ibid.*

This Court reaffirmed these First Amendment principles in *Serbian Eastern Orthodox Diocese for United States and Canada* v. *Milivojevich*, 426 U. S. 696 (1976), a case involving a dispute over control of the American-Canadian Diocese of the Serbian Orthodox Church, including its property and assets. The Church had removed Dionisije Milivojevich as bishop of the American-Canadian Diocese because of his defiance of the church hierarchy. Following his removal, Dionisije brought a civil action in state court challenging the Church's decision, and the Illinois Supreme Court "purported in effect to reinstate Dionisije as Diocesan Bishop," on the ground that the proceedings resulting in his removal failed to comply with church laws and regulations. *Id.*, at 708.

Reversing that judgment, this Court explained that the First Amendment "permit[s] hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters." *Id.*, at 724. When ecclesiastical tribunals decide such disputes, we further explained, "the Constitution requires that civil courts accept their decisions as binding upon them." *Id.*, at 725. We thus held that by inquiring into whether the Church had followed its own procedures, the State Supreme Court had "unconstitutionally undertaken the resolution of quintessentially religious controversies whose resolution the First Amendment commits exclusively to the highest ecclesiastical tribunals" of the Church. *Id.*, at 720.

C

Until today, we have not had occasion to consider whether this freedom of a religious organization to select its ministers is implicated by a suit alleging discrimination in employment. The Courts of Appeals, in contrast, have had extensive experience with this issue. Since the passage of Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.*, and other employment discrimination laws, the Courts of Appeals have uniformly recognized the existence of a "ministerial exception," grounded in the First Amendment, that precludes application of such legislation to claims concerning the employment relationship between a religious institution and its ministers.[2]

We agree that there is such a ministerial exception. The members of a religious group put their faith in the hands of their ministers. Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments. According the state

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[2] See *Natal* v. *Christian and Missionary Alliance*, 878 F. 2d 1575, 1578 (CA1 1989); *Rweyemamu* v. *Cote*, 520 F. 3d 198, 204–209 (CA2 2008); *Petruska* v. *Gannon Univ.*, 462 F. 3d 294, 303–307 (CA3 2006); *EEOC* v. *Roman Catholic Diocese*, 213 F. 3d 795, 800–801 (CA4 2000); *Combs* v. *Central Tex. Annual Conference*, 173 F. 3d 343, 345–350 (CA5 1999); *Hollins* v. *Methodist Healthcare, Inc.*, 474 F. 3d 223, 225–227 (CA6 2007); *Schleicher* v. *Salvation Army*, 518 F. 3d 472, 475 (CA7 2008); *Scharon* v. *St. Luke's Episcopal Presbyterian Hospitals*, 929 F. 2d 360, 362–363 (CA8 1991); *Werft* v. *Desert Southwest Annual Conference*, 377 F. 3d 1099, 1100–1104 (CA9 2004) *(per curiam)*; *Bryce* v. *Episcopal Church*, 289 F. 3d 648, 655–657 (CA10 2002); *Gellington* v. *Christian Methodist Episcopal Church, Inc.*, 203 F. 3d 1299, 1301–1304 (CA11 2000); *EEOC* v. *Catholic Univ.*, 83 F. 3d 455, 460–463 (CADC 1996).

the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions.

The EEOC and Perich acknowledge that employment discrimination laws would be unconstitutional as applied to religious groups in certain circumstances. They grant, for example, that it would violate the First Amendment for courts to apply such laws to compel the ordination of women by the Catholic Church or by an Orthodox Jewish seminary. Brief for Federal Respondent 31; Brief for Respondent Perich 35–36. According to the EEOC and Perich, religious organizations could successfully defend against employment discrimination claims in those circumstances by invoking the constitutional right to freedom of association—a right "implicit" in the First Amendment. *Roberts* v. *United States Jaycees*, 468 U. S. 609, 622 (1984). The EEOC and Perich thus see no need—and no basis—for a special rule for ministers grounded in the Religion Clauses themselves.

We find this position untenable. The right to freedom of association is a right enjoyed by religious and secular groups alike. It follows under the EEOC's and Perich's view that the First Amendment analysis should be the same, whether the association in question is the Lutheran Church, a labor union, or a social club. See Perich Brief 31; Tr. of Oral Arg. 28. That result is hard to square with the text of the First Amendment itself, which gives special solicitude to the rights of religious organizations. We cannot accept the remarkable view that the Religion Clauses have nothing to say about a religious organization's freedom to select its own ministers.

The EEOC and Perich also contend that our decision in *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S. 872 (1990), precludes recognition of a ministerial exception. In *Smith*, two members of the Native American Church were denied state unemployment benefits

after it was determined that they had been fired from their jobs for ingesting peyote, a crime under Oregon law. We held that this did not violate the Free Exercise Clause, even though the peyote had been ingested for sacramental purposes, because the "right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." *Id.*, at 879 (internal quotation marks omitted).

It is true that the ADA's prohibition on retaliation, like Oregon's prohibition on peyote use, is a valid and neutral law of general applicability. But a church's selection of its ministers is unlike an individual's ingestion of peyote. *Smith* involved government regulation of only outward physical acts. The present case, in contrast, concerns government interference with an internal church decision that affects the faith and mission of the church itself. See *id.*, at 877 (distinguishing the government's regulation of "physical acts" from its "lend[ing] its power to one or the other side in controversies over religious authority or dogma"). The contention that *Smith* forecloses recognition of a ministerial exception rooted in the Religion Clauses has no merit.

III

Having concluded that there is a ministerial exception grounded in the Religion Clauses of the First Amendment, we consider whether the exception applies in this case. We hold that it does.

Every Court of Appeals to have considered the question has concluded that the ministerial exception is not limited to the head of a religious congregation, and we agree. We are reluctant, however, to adopt a rigid formula for deciding when an employee qualifies as a minister. It is enough for us to conclude, in this our first case involving the ministerial exception, that the exception covers Perich, given all the circumstances of her employment.

To begin with, Hosanna-Tabor held Perich out as a minister, with a role distinct from that of most of its members. When Hosanna-Tabor extended her a call, it issued her a "diploma of vocation" according her the title "Minister of Religion, Commissioned." App. 42. She was tasked with performing that office "according to the Word of God and the confessional standards of the Evangelical Lutheran Church as drawn from the Sacred Scriptures." *Ibid.* The congregation prayed that God "bless [her] ministrations to the glory of His holy name, [and] the building of His church." *Id.*, at 43. In a supplement to the diploma, the congregation undertook to periodically review Perich's "skills of ministry" and "ministerial responsibilities," and to provide for her "continuing education as a professional person in the ministry of the Gospel." *Id.*, at 49.

Perich's title as a minister reflected a significant degree of religious training followed by a formal process of commissioning. To be eligible to become a commissioned minister, Perich had to complete eight college-level courses in subjects including biblical interpretation, church doctrine, and the ministry of the Lutheran teacher. She also had to obtain the endorsement of her local Synod district by submitting a petition that contained her academic transcripts, letters of recommendation, personal statement, and written answers to various ministry-related questions. Finally, she had to pass an oral examination by a faculty committee at a Lutheran college. It took Perich six years to fulfill these requirements. And when she eventually did, she was commissioned as a minister only upon election by the congregation, which recognized God's call to her to teach. At that point, her call could be rescinded only upon a supermajority vote of the congregation—a protection designed to allow her to "preach the Word of God boldly." Brief for Lutheran Church—Missouri Synod as *Amicus Curiae* 15.

Perich held herself out as a minister of the Church by accepting the formal call to religious service, according to its terms. She did so in other ways as well. For example, she

claimed a special housing allowance on her taxes that was available only to employees earning their compensation "'in the exercise of the ministry.'" App. 220 ("If you are not conducting activities 'in the exercise of the ministry,' you cannot take advantage of the parsonage or housing allowance exclusion" (quoting Lutheran Church—Missouri Synod Brochure on Whether the IRS Considers Employees as a Minister (2007)). In a form she submitted to the Synod following her termination, Perich again indicated that she regarded herself as a minister at Hosanna-Tabor, stating: "I feel that God is leading me to serve in the teaching ministry . . . . I am anxious to be in the teaching ministry again soon." App. 53.

Perich's job duties reflected a role in conveying the Church's message and carrying out its mission. Hosanna-Tabor expressly charged her with "lead[ing] others toward Christian maturity" and "teach[ing] faithfully the Word of God, the Sacred Scriptures, in its truth and purity and as set forth in all the symbolical books of the Evangelical Lutheran Church." *Id.*, at 48. In fulfilling these responsibilities, Perich taught her students religion four days a week, and led them in prayer three times a day. Once a week, she took her students to a school-wide chapel service, and—about twice a year—she took her turn leading it, choosing the liturgy, selecting the hymns, and delivering a short message based on verses from the Bible. During her last year of teaching, Perich also led her fourth graders in a brief devotional exercise each morning. As a source of religious instruction, Perich performed an important role in transmitting the Lutheran faith to the next generation.

In light of these considerations—the formal title given Perich by the Church, the substance reflected in that title, her own use of that title, and the important religious functions she performed for the Church—we conclude that Perich was a minister covered by the ministerial exception.

In reaching a contrary conclusion, the Court of Appeals committed three errors. First, the Sixth Circuit failed to

see any relevance in the fact that Perich was a commissioned minister. Although such a title, by itself, does not automatically ensure coverage, the fact that an employee has been ordained or commissioned as a minister is surely relevant, as is the fact that significant religious training and a recognized religious mission underlie the description of the employee's position. It was wrong for the Court of Appeals—and Perich, who has adopted the court's view, see Perich Brief 45—to say that an employee's title does not matter.

Second, the Sixth Circuit gave too much weight to the fact that lay teachers at the school performed the same religious duties as Perich. We express no view on whether someone with Perich's duties would be covered by the ministerial exception in the absence of the other considerations we have discussed. But though relevant, it cannot be dispositive that others not formally recognized as ministers by the church perform the same functions—particularly when, as here, they did so only because commissioned ministers were unavailable.

Third, the Sixth Circuit placed too much emphasis on Perich's performance of secular duties. It is true that her religious duties consumed only 45 minutes of each workday, and that the rest of her day was devoted to teaching secular subjects. The EEOC regards that as conclusive, contending that any ministerial exception "should be limited to those employees who perform exclusively religious functions." Brief for Federal Respondent 51. We cannot accept that view. Indeed, we are unsure whether any such employees exist. The heads of congregations themselves often have a mix of duties, including secular ones such as helping to manage the congregation's finances, supervising purely secular personnel, and overseeing the upkeep of facilities.

Although the Sixth Circuit did not adopt the extreme position pressed here by the EEOC, it did regard the relative amount of time Perich spent performing religious functions as largely determinative. The issue before us, however, is

not one that can be resolved by a stopwatch. The amount of time an employee spends on particular activities is relevant in assessing that employee's status, but that factor cannot be considered in isolation, without regard to the nature of the religious functions performed and the other considerations discussed above.

Because Perich was a minister within the meaning of the exception, the First Amendment requires dismissal of this employment discrimination suit against her religious employer. The EEOC and Perich originally sought an order reinstating Perich to her former position as a called teacher. By requiring the Church to accept a minister it did not want, such an order would have plainly violated the Church's freedom under the Religion Clauses to select its own ministers.

Perich no longer seeks reinstatement, having abandoned that relief before this Court. See Perich Brief 58. But that is immaterial. Perich continues to seek frontpay in lieu of reinstatement, backpay, compensatory and punitive damages, and attorney's fees. An award of such relief would operate as a penalty on the Church for terminating an unwanted minister, and would be no less prohibited by the First Amendment than an order overturning the termination. Such relief would depend on a determination that Hosanna-Tabor was wrong to have relieved Perich of her position, and it is precisely such a ruling that is barred by the ministerial exception.[3]

The EEOC and Perich suggest that Hosanna-Tabor's asserted religious reason for firing Perich—that she violated the Synod's commitment to internal dispute resolution—was pretextual. That suggestion misses the point of the ministerial exception. The purpose of the exception is not to safeguard a church's decision to fire a minister only when it is made for a religious reason. The exception instead ensures

[3] Perich does not dispute that if the ministerial exception bars her retaliation claim under the ADA, it also bars her retaliation claim under Michigan law.

that the authority to select and control who will minister to the faithful—a matter "strictly ecclesiastical," *Kedroff*, 344 U. S., at 119—is the church's alone.[4]

IV

The EEOC and Perich foresee a parade of horribles that will follow our recognition of a ministerial exception to employment discrimination suits. According to the EEOC and Perich, such an exception could protect religious organizations from liability for retaliating against employees for reporting criminal misconduct or for testifying before a grand jury or in a criminal trial. What is more, the EEOC contends, the logic of the exception would confer on religious employers "unfettered discretion" to violate employment laws by, for example, hiring children or aliens not authorized to work in the United States. Brief for Federal Respondent 29.

Hosanna-Tabor responds that the ministerial exception would not in any way bar criminal prosecutions for interfering with law enforcement investigations or other proceedings. Nor, according to the Church, would the exception bar government enforcement of general laws restricting eligibil-

[4] A conflict has arisen in the Courts of Appeals over whether the ministerial exception is a jurisdictional bar or a defense on the merits. Compare *Hollins*, 474 F. 3d, at 225 (treating the exception as jurisdictional); and *Tomic* v. *Catholic Diocese of Peoria*, 442 F. 3d 1036, 1038–1039 (CA7 2006) (same), with *Petruska*, 462 F. 3d, at 302 (treating the exception as an affirmative defense); *Bryce*, 289 F. 3d, at 654 (same); *Bollard* v. *California Province of Soc. of Jesus*, 196 F. 3d 940, 951 (CA9 1999) (same); and *Natal*, 878 F. 2d, at 1576 (same). We conclude that the exception operates as an affirmative defense to an otherwise cognizable claim, not a jurisdictional bar. That is because the issue presented by the exception is "whether the allegations the plaintiff makes entitle him to relief," not whether the court has "power to hear [the] case." *Morrison* v. *National Australia Bank Ltd.*, 561 U. S. 247, 254 (2010) (internal quotation marks omitted). District courts have power to consider ADA claims in cases of this sort, and to decide whether the claim can proceed or is instead barred by the ministerial exception.

ity for employment, because the exception applies only to suits by or on behalf of ministers themselves. Hosanna-Tabor also notes that the ministerial exception has been around in the lower courts for 40 years, see *McClure* v. *Salvation Army*, 460 F. 2d 553, 558 (CA5 1972), and has not given rise to the dire consequences predicted by the EEOC and Perich.

The case before us is an employment discrimination suit brought on behalf of a minister, challenging her church's decision to fire her. Today we hold only that the ministerial exception bars such a suit. We express no view on whether the exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers. There will be time enough to address the applicability of the exception to other circumstances if and when they arise.

* * *

The interest of society in the enforcement of employment discrimination statutes is undoubtedly important. But so too is the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission. When a minister who has been fired sues her church alleging that her termination was discriminatory, the First Amendment has struck the balance for us. The church must be free to choose those who will guide it on its way.

The judgment of the Court of Appeals for the Sixth Circuit is reversed.

It is so ordered.

JUSTICE THOMAS, concurring.

I join the Court's opinion. I write separately to note that, in my view, the Religion Clauses require civil courts to apply the ministerial exception and to defer to a religious organization's good-faith understanding of who qualifies as its minister. As the Court explains, the Religion Clauses guarantee

religious organizations autonomy in matters of internal governance, including the selection of those who will minister the faith. A religious organization's right to choose its ministers would be hollow, however, if secular courts could second-guess the organization's sincere determination that a given employee is a "minister" under the organization's theological tenets. Our country's religious landscape includes organizations with different leadership structures and doctrines that influence their conceptions of ministerial status. The question whether an employee is a minister is itself religious in nature, and the answer will vary widely. Judicial attempts to fashion a civil definition of "minister" through a bright-line test or multifactor analysis risk disadvantaging those religious groups whose beliefs, practices, and membership are outside of the "mainstream" or unpalatable to some. Moreover, uncertainty about whether its ministerial designation will be rejected, and a corresponding fear of liability, may cause a religious group to conform its beliefs and practices regarding "ministers" to the prevailing secular understanding. See *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints* v. *Amos*, 483 U. S. 327, 336 (1987) ("[I]t is a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court will consider religious. The line is hardly a bright one, and an organization might understandably be concerned that a judge would not understand its religious tenets and sense of mission. Fear of potential liability might affect the way an organization carried out what it understood to be its religious mission" (footnote omitted)). These are certainly dangers that the First Amendment was designed to guard against.

The Court thoroughly sets forth the facts that lead to its conclusion that Cheryl Perich was one of Hosanna-Tabor's ministers, and I agree that these facts amply demonstrate Perich's ministerial role. But the evidence demonstrates

that Hosanna-Tabor sincerely considered Perich a minister. That would be sufficient for me to conclude that Perich's suit is properly barred by the ministerial exception.

JUSTICE ALITO, with whom JUSTICE KAGAN joins, concurring.

I join the Court's opinion, but I write separately to clarify my understanding of the significance of formal ordination and designation as a "minister" in determining whether an "employee"[1] of a religious group falls within the so-called "ministerial" exception. The term "minister" is commonly used by many Protestant denominations to refer to members of their clergy, but the term is rarely if ever used in this way by Catholics, Jews, Muslims, Hindus, or Buddhists.[2] In addition, the concept of ordination as understood by most Christian churches and by Judaism has no clear counterpart in some Christian denominations and some other religions. Because virtually every religion in the world is represented in the population of the United States, it would be a mistake if the term "minister" or the concept of ordination were viewed as central to the important issue of religious autonomy that is presented in cases like this one. Instead, courts should focus on the function performed by persons who work for religious bodies.

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[1] It is unconventional to refer to many persons who clearly fall within the "ministerial" exception, such as Protestant ministers, Catholic priests, and Jewish rabbis, as "employees," but I use the term in the sense in which it is used in the antidiscrimination laws that are often implicated in cases involving the exception. See, *e. g.*, 42 U. S. C. § 2000e(f) (Title VII); § 12111(4) (Americans with Disabilities Act of 1990); 29 U. S. C. § 630(f) (Age Discrimination in Employment Act); § 206(e) (Equal Pay Act and Fair Labor Standards Act).

[2] See 9 Oxford English Dictionary 818 (2d ed. 1989) (def. 4(b)) (noting the term "minister" used in various phrases "applied as general designations for a person officially charged with spiritual functions in the Christian Church"); 9 Encyclopedia of Religion 6044–6045 (2d ed. 2005). See also, *e. g.*, 9 New Catholic Encyclopedia 870 (1967).

The First Amendment protects the freedom of religious groups to engage in certain key religious activities, including the conducting of worship services and other religious ceremonies and rituals, as well as the critical process of communicating the faith. Accordingly, religious groups must be free to choose the personnel who are essential to the performance of these functions.

The "ministerial" exception should be tailored to this purpose. It should apply to any "employee" who leads a religious organization, conducts worship services or important religious ceremonies or rituals, or serves as a messenger or teacher of its faith. If a religious group believes that the ability of such an employee to perform these key functions has been compromised, then the constitutional guarantee of religious freedom protects the group's right to remove the employee from his or her position.

I

Throughout our Nation's history, religious bodies have been the preeminent example of private associations that have "act[ed] as critical buffers between the individual and the power of the State." *Roberts* v. *United States Jaycees*, 468 U. S. 609, 619 (1984). In a case like the one now before us—where the goal of the civil law in question, the elimination of discrimination against persons with disabilities, is so worthy—it is easy to forget that the autonomy of religious groups, both here in the United States and abroad, has often served as a shield against oppressive civil laws. To safeguard this crucial autonomy, we have long recognized that the Religion Clauses protect a private sphere within which religious bodies are free to govern themselves in accordance with their own beliefs. The Constitution guarantees religious bodies "independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of church government as well as

those of faith and doctrine." *Kedroff* v. *Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U. S. 94, 116 (1952).

Religious autonomy means that religious authorities must be free to determine who is qualified to serve in positions of substantial religious importance. Different religions will have different views on exactly what qualifies as an important religious position, but it is nonetheless possible to identify a general category of "employees" whose functions are essential to the independence of practically all religious groups. These include those who serve in positions of leadership, those who perform important functions in worship services and in the performance of religious ceremonies and rituals, and those who are entrusted with teaching and conveying the tenets of the faith to the next generation.

Applying the protection of the First Amendment to roles of religious leadership, worship, ritual, and expression focuses on the objective functions that are important for the autonomy of any religious group, regardless of its beliefs. As we have recognized in a similar context, "[f]orcing a group to accept certain members may impair [its ability] to express those views, and only those views, that it intends to express." *Boy Scouts of America* v. *Dale*, 530 U. S. 640, 648 (2000). That principle applies with special force with respect to religious groups, whose very existence is dedicated to the collective expression and propagation of shared religious ideals. See *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S. 872, 882 (1990) (noting that the constitutional interest in freedom of association may be "reinforced by Free Exercise Clause concerns"). As the Court notes, the First Amendment "gives special solicitude to the rights of religious organizations," *ante*, at 189, but our expressive-association cases are nevertheless useful in pointing out what those essential rights are. Religious groups are the archetype of associations formed for expressive purposes, and their fundamental rights surely include the free-

dom to choose who is qualified to serve as a voice for their faith.

When it comes to the expression and inculcation of religious doctrine, there can be no doubt that the messenger matters. Religious teachings cover the gamut from moral conduct to metaphysical truth, and both the content and credibility of a religion's message depend vitally on the character and conduct of its teachers. A religion cannot depend on someone to be an effective advocate for its religious vision if that person's conduct fails to live up to the religious precepts that he or she espouses. For this reason, a religious body's right to self-governance must include the ability to select, and to be selective about, those who will serve as the very "embodiment of its message" and "its voice to the faithful." *Petruska* v. *Gannon Univ.*, 462 F. 3d 294, 306 (CA3 2006). A religious body's control over such "employees" is an essential component of its freedom to speak in its own voice, both to its own members and to the outside world.

The connection between church governance and the free dissemination of religious doctrine has deep roots in our legal tradition:

> "The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed." *Watson* v. *Jones*, 13 Wall. 679, 728–729 (1872).

The "ministerial" exception gives concrete protection to the free "expression and dissemination of any religious doctrine." The Constitution leaves it to the collective conscience of each religious group to determine for itself who is qualified to serve as a teacher or messenger of its faith.

II

A

The Court's opinion today holds that the "ministerial" exception applies to Cheryl Perich (hereinafter respondent), who is regarded by the Lutheran Church—Missouri Synod as a commissioned minister. But while a ministerial title is undoubtedly relevant in applying the First Amendment rule at issue, such a title is neither necessary nor sufficient. As previously noted, most faiths do not employ the term "minister," and some eschew the concept of formal ordination.[3] And at the opposite end of the spectrum, some faiths consider the ministry to consist of all or a very large percentage of their members.[4] Perhaps this explains why, although every circuit to consider the issue has recognized the "ministerial" exception, no circuit has made ordination status or formal title determinative of the exception's applicability.

The Fourth Circuit was the first to use the term "ministerial exception," but in doing so it took pains to clarify that the label was a mere shorthand. See *Rayburn* v. *General Conference of Seventh-day Adventists*, 772 F. 2d 1164, 1168

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[3] In Islam, for example, "every Muslim can perform the religious rites, so there is no class or profession of ordained clergy. Yet there are religious leaders who are recognized for their learning and their ability to lead communities of Muslims in prayer, study, and living according to the teaching of the Qur'an and Muslim law." 10 Encyclopedia of Religion 6858 (2d ed. 2005).

[4] For instance, Jehovah's Witnesses consider all baptized disciples to be ministers. See The Watchtower, Who Are God's Ministers Today? Nov. 15, 2000, p. 16 ("According to the Bible, all Jehovah's worshippers—heavenly and earthly—are ministers").

(1985) (noting that the exception's applicability "does not depend upon ordination but upon the function of the position"). The Fourth Circuit traced the exception back to *McClure* v. *Salvation Army*, 460 F. 2d 553 (CA5 1972), which invoked the Religion Clauses to bar a Title VII sex-discrimination suit brought by a woman who was described by the court as a Salvation Army "minister," *id.*, at 554, although her actual title was "officer." See *McClure* v. *Salvation Army*, 323 F. Supp. 1100, 1101 (ND Ga. 1971). A decade after *McClure*, the Fifth Circuit made clear that formal ordination was not necessary for the "ministerial" exception to apply. The court held that the members of the faculty at a Baptist seminary were covered by the exception because of their religious function in conveying church doctrine, even though some of them were not ordained ministers. See *EEOC* v. *Southwestern Baptist Theological Seminary*, 651 F. 2d 277 (1981).

The functional consensus has held up over time, with the D. C. Circuit recognizing that "[t]he ministerial exception has not been limited to members of the clergy." *EEOC* v. *Catholic Univ.*, 83 F. 3d 455, 461 (1996). The court in that case rejected a Title VII suit brought by a Catholic nun who claimed that the Catholic University of America had denied her tenure for a canon-law teaching position because of her gender. The court noted that "members of the Canon Law Faculty perform the vital function of instructing those who will in turn interpret, implement, and teach the law governing the Roman Catholic Church and the administration of its sacraments. Although Sister McDonough is not a priest, she is a member of a religious order who sought a tenured professorship in a field that is of fundamental importance to the spiritual mission of her Church." *Id.*, at 464. See also *Natal* v. *Christian and Missionary Alliance*, 878 F. 2d 1575, 1578 (CA1 1989) (stating that "a religious organization's fate is inextricably bound up with those whom it entrusts with the responsibilities of preaching its word and ministering to

its adherents," and noting "the difficulties inherent in separating the message from the messenger").

The Ninth Circuit too has taken a functional approach, just recently reaffirming that "the ministerial exception encompasses more than a church's ordained ministers." *Alcazar* v. *Corporation of Catholic Archbishop of Seattle*, 627 F. 3d 1288, 1291 (2010) (en banc); see also *Elvig* v. *Calvin Presbyterian Church*, 375 F. 3d 951, 958 (2004). The Court's opinion today should not be read to upset this consensus.

B

The ministerial exception applies to respondent because, as the Court notes, she played a substantial role in "conveying the Church's message and carrying out its mission." *Ante*, at 192. She taught religion to her students four days a week and took them to chapel on the fifth day. She led them in daily devotional exercises, and led them in prayer three times a day. She also alternated with the other teachers in planning and leading worship services at the school chapel, choosing liturgies, hymns, and readings, and composing and delivering a message based on Scripture.

It makes no difference that respondent also taught secular subjects. While a purely secular teacher would not qualify for the "ministerial" exception, the constitutional protection of religious teachers is not somehow diminished when they take on secular functions in addition to their religious ones. What matters is that respondent played an important role as an instrument of her church's religious message and as a leader of its worship activities. Because of these important religious functions, Hosanna-Tabor had the right to decide for itself whether respondent was religiously qualified to remain in her office.

Hosanna-Tabor discharged respondent because she threatened to file suit against the church in a civil court. This threat contravened the Lutheran doctrine that disputes among Christians should be resolved internally without re-

sort to the civil court system and all the legal wrangling it entails.[5] In Hosanna-Tabor's view, respondent's disregard for this doctrine compromised her religious function, disqualifying her from serving effectively as a voice for the church's faith. Respondent does not dispute that the Lutheran Church subscribes to a doctrine of internal dispute resolution, but she argues that this was a mere pretext for her firing, which was really done for nonreligious reasons.

For civil courts to engage in the pretext inquiry that respondent and the Solicitor General urge us to sanction would dangerously undermine the religious autonomy that lower court case law has now protected for nearly four decades. In order to probe the *real reason* for respondent's firing, a civil court—and perhaps a jury—would be required to make a judgment about church doctrine. The credibility of Hosanna-Tabor's asserted reason for terminating respondent's employment could not be assessed without taking into account both the importance that the Lutheran Church attaches to the doctrine of internal dispute resolution and the degree to which that tenet compromised respondent's religious function. If it could be shown that this belief is an obscure and minor part of Lutheran doctrine, it would be much more plausible for respondent to argue that this doctrine was not the real reason for her firing. If, on the other hand, the doctrine is a central and universally known tenet of Lutheranism, then the church's asserted reason for her discharge would seem much more likely to be nonpretextual. But whatever the truth of the matter might be, the mere adjudication of such questions would pose grave problems

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[5] See The Lutheran Church-Missouri Synod, Commission on Theology and Church Relations, 1 Corinthians 6:1–11: An Exegetical Study, p. 10 (Apr. 1991) (stating that instead of suing each other, Christians should seek "an amicable settlement of differences by means of a decision by fellow Christians"). See also 1 Corinthians 6:1 ("If any of you has a dispute with another, dare he take it before the ungodly for judgment instead of before the saints?").

for religious autonomy: It would require calling witnesses to testify about the importance and priority of the religious doctrine in question, with a civil factfinder sitting in ultimate judgment of what the accused church really believes, and how important that belief is to the church's overall mission.

At oral argument, both respondent and the United States acknowledged that a pretext inquiry would sometimes be prohibited by principles of religious autonomy, and both conceded that a Roman Catholic priest who is dismissed for getting married could not sue the church and claim that his dismissal was actually based on a ground forbidden by the federal antidiscrimination laws. See Tr. of Oral Arg. 38–39, 50. But there is no principled basis for proscribing a pretext inquiry in such a case while permitting it in a case like the one now before us. The Roman Catholic Church's insistence on clerical celibacy may be much better known than the Lutheran Church's doctrine of internal dispute resolution, but popular familiarity with a religious doctrine cannot be the determinative factor.

What matters in the present case is that Hosanna-Tabor believes that the religious function that respondent performed made it essential that she abide by the doctrine of internal dispute resolution; and the civil courts are in no position to second-guess that assessment. This conclusion rests not on respondent's ordination status or her formal title, but rather on her functional status as the type of employee that a church must be free to appoint or dismiss in order to exercise the religious liberty that the First Amendment guarantees.

Syllabus

PACIFIC OPERATORS OFFSHORE, LLP, ET AL. *v.* VALLADOLID ET AL.

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

No. 10–507. Argued October 11, 2011—Decided January 11, 2012

Petitioner Pacific Operators Offshore, LLP (Pacific), operates two drilling platforms on the Outer Continental Shelf (OCS) off the California coast and an onshore oil and gas processing facility. Employee Juan Valladolid spent 98 percent of his time working on an offshore platform, but he was killed in an accident while working at the onshore facility. His widow, a respondent here, sought benefits under the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U. S. C. § 901 *et seq.*, pursuant to the Outer Continental Shelf Lands Act (OCSLA), which extends LHWCA coverage to injuries "occurring as the result of operations conducted on the [OCS]" for the purpose of extracting natural resources from the shelf, 43 U. S. C. § 1333(b). The Administrative Law Judge dismissed her claim, reasoning that § 1333(b) did not cover Valladolid's fatal injury because his accident occurred on land, not on the OCS. The Labor Department's Benefits Review Board affirmed, but the Ninth Circuit reversed. Rejecting tests used by the Third and the Fifth Circuits, the Ninth Circuit concluded that a claimant seeking benefits under the OCSLA "must establish a substantial nexus between the injury and extractive operations on the shelf."

Held: The OCSLA extends coverage to an employee who can establish a substantial nexus between his injury and his employer's extractive operations on the OCS. Pp. 211–222.

(a) The Courts of Appeals have offered competing interpretations of § 1333(b)'s scope. According to the Third Circuit, because Congress intended LHWCA coverage to be expansive, § 1333(b) extends to all injuries that would not have occurred "but for" operations on the OCS. Thus, an employee who worked on a semisubmersible drill rig, but who died in a car accident on his way to board a helicopter to be flown to the rig, was eligible for benefits because he would not have been injured but for his traveling to the rig. In contrast, the Fifth Circuit has concluded that Congress intended to establish "a bright-line geographic boundary," extending § 1333(b) coverage only to employees whose injuries or death occurred on an OCS platform or the waters above the OCS. Under its "situs-of-injury" test, a welder injured on land while constructing an offshore oil platform was ineligible for § 1333(b) benefits.

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In the decision below, the Ninth Circuit held that § 1333(b) extends coverage to injured workers who can establish a "substantial nexus" between their injury and extractive operations on the OCS. The Solicitor General offers a fourth interpretation, which would provide coverage for off-OCS injuries only to those employees whose duties contribute to operations on the OCS and who perform work on the OCS itself that is substantial in both duration and nature. Pp. 211–214.

(b) Contrary to Pacific's position, the Fifth Circuit's "situs-of-injury" test is not the best interpretation of § 1333(b). Pp. 214–220.

(1) Nothing in the text of § 1333(b) suggests that an injury must occur on the OCS. The provision has only two requirements: The extractive operations must be "conducted on the [OCS]," and the employee's injury must occur "as the result of" those operations. If, as Pacific suggests, the purpose of § 1333(b) was to geographically limit the scope of OCSLA coverage to injuries that occur on the OCS, Congress could easily have achieved that goal by omitting from § 1333(b) the words "as the result of operations conducted." Moreover, Congress' decision to specify situs limitations in other subsections, but not in § 1333(b), indicates that it did not intend to so limit § 1333(b). This conclusion is not foreclosed by *Herb's Welding, Inc.* v. *Gray*, 470 U. S. 414, or *Offshore Logistics, Inc.* v. *Tallentire*, 477 U. S. 207, neither of which held that § 1333(b) coverage was limited to on-OCS injuries. Section 1333(b)'s text also gives no indication that Congress intended to exclude OCS workers who are eligible for state benefits from LHWCA coverage. To the contrary, the LHWCA scheme incorporated by the OCSLA explicitly anticipates that injured employees might be eligible for both state and federal benefits. Pp. 215–219.

(2) Also unpersuasive is Pacific's alternative argument that § 1333(b) imports the LHWCA's strict situs-of-injury requirement, which provides benefits only for injuries occurring "upon the navigable waters" of the United States, 33 U. S. C. § 903(a). It is unlikely that Congress intended to restrict the scope of the OCSLA workers' compensation scheme through a nonintuitive and convoluted combination of two separate legislative Acts. In addition, under Pacific's alternative theory, LHWCA coverage would not be extended to the navigable waters above the shelf. Thus, even employees on a crew ship immediately adjacent to an OCS platform who are injured in a platform explosion would be excluded from § 1333(b) coverage. That view cannot be squared with § 1333(b)'s language. Pp. 219–220.

(3) Pacific's policy concerns also cannot justify an interpretation of § 1333(b) that is inconsistent with the OCSLA's text. P. 220.

(c) Neither the Solicitor General's status-based inquiry nor the Third Circuit's "but for" test are compatible with § 1333(b). The Solicitor

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General's inquiry has no basis in the OCSLA's text, because § 1333(b)'s "occurring as the result of operations" language plainly suggests causation. And when taken to its logical conclusion, the Third Circuit's test, though nominally based on causation, is essentially a status-based inquiry because it would extend coverage to all employees of a business engaged in extracting natural resources from the OCS, no matter where those employees work or what they are doing at the time of injury. Because LHWCA coverage was extended only to injuries "occurring as the result of operations conducted on the [OCS]," § 1333(b)'s focus should be on injuries resulting from those "operations." Pp. 220–222.

(d) The Ninth Circuit's "substantial-nexus" test is more faithful to § 1333(b)'s text. This Court understands that test to require the injured employee to establish a significant causal link between his injury and his employer's on-OCS extractive operations. The test may not be the easiest to administer, but administrative law judges and courts should be able to determine if an injured employee has established the required significant causal link. Whether an employee injured while performing an off-OCS task qualifies will depend on the circumstances of each case. It was thus proper for the Ninth Circuit to remand this case for the Benefits Review Board to apply the "substantial-nexus" test. P. 222.

604 F. 3d 1126, affirmed and remanded.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. SCALIA, J., filed an opinion concurring in part and concurring in the judgment, in which ALITO, J., joined, *post*, p. 222.

Paul D. Clement argued the cause for petitioners. With him on the briefs were *Erin E. Murphy*, *Peder K. Batalden*, *Peter Abrahams*, and *Michael W. Thomas*.

Joseph R. Palmore argued the cause for the federal respondent. With him on the brief were *Solicitor General Verrilli*, *Deputy Solicitor General Kneedler*, and *M. Patricia Smith*.

David C. Frederick argued the cause for respondent Valladolid. With him on the brief were *Gregory G. Rapawy*, *Beverly C. Moore*, *Michael F. Sturley*, *Lynn E. Blais*, *Erin Glenn Busby*, *Joshua T. Gillelan II*, *Timothy K. Sprinkles*, and *Charles D. Naylor*.

JUSTICE THOMAS delivered the opinion of the Court.

The Outer Continental Shelf Lands Act (OCSLA) extends the federal workers' compensation scheme established in the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U. S. C. § 901 *et seq.*, to injuries "occurring as the result of operations conducted on the outer Continental Shelf" for the purpose of extracting natural resources from the shelf. 43 U. S. C. § 1333(b). The United States Court of Appeals for the Ninth Circuit determined that the OCSLA extends coverage to an employee who can establish a substantial nexus between his injury and his employer's extractive operations on the Outer Continental Shelf. We affirm.

I

Petitioner Pacific Operators Offshore, LLP (Pacific), operates two drilling platforms on the Outer Continental Shelf off the coast of California and an onshore oil and gas processing facility in Ventura County, California. Pacific employed Juan Valladolid as a general manual laborer—known in the trade as a roustabout—in its oil exploration and extraction business. Valladolid spent about 98 percent of his time on one of Pacific's offshore drilling platforms performing maintenance duties, such as picking up litter, emptying trashcans, washing decks, painting, maintaining equipment, and helping to load and unload the platform crane. Valladolid spent the remainder of his time working at Pacific's onshore processing facility, where he also performed maintenance duties, including painting, sandblasting, pulling weeds, cleaning drain culverts, and operating a forklift.

While on duty at the onshore facility, Valladolid died in a forklift accident. His widow, a respondent here (hereinafter respondent), filed a claim for benefits under the LHWCA pursuant to the extension of that Act contained within the OCSLA. The OCSLA provides, in relevant part:

> "With respect to disability or death of an employee resulting from any injury occurring as the result of op-

> erations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf, compensation shall be payable under the provisions of the [LHWCA]." 43 U. S. C. § 1333(b).

After a hearing, an Administrative Law Judge (ALJ) dismissed respondent's claim. The ALJ reasoned that Valladolid's fatal injury was not covered under § 1333(b) because his accident occurred on land, rather than on the Outer Continental Shelf. On appeal, the United States Department of Labor's Benefits Review Board affirmed, concluding that Congress intended to limit the coverage provided by the OCSLA to injuries suffered by employees within the "geographical locale" of the Outer Continental Shelf. *L. V.* v. *Pacific Operations Offshore, LLP*, 42 BRBS 67, 71 (2008) *(per curiam)*.

The Ninth Circuit reversed, holding that § 1333(b) neither contains a "situs-of-injury" requirement, as the Fifth Circuit has held, nor imposes a "but for" causation requirement, as the Third Circuit has held. See 604 F. 3d 1126, 1130–1140 (2010) (rejecting the holdings of *Mills* v. *Director, Office of Workers' Compensation Programs*, 877 F. 2d 356 (CA5 1989) (en banc); *Curtis* v. *Schlumberger Offshore Service, Inc.*, 849 F. 2d 805 (CA3 1988)). Instead, the Ninth Circuit concluded that "the claimant must establish a substantial nexus between the injury and extractive operations on the shelf" to qualify for workers' compensation benefits under the OCSLA. 604 F. 3d, at 1139. We granted Pacific's petition for a writ of certiorari to resolve this conflict. 562 U. S. 1215 (2011).

II

In 1953, Congress enacted the Submerged Lands Act, 67 Stat. 29, 43 U. S. C. § 1301 *et seq.*, which extended the bound-

aries of Coastal States up to three geographic miles into the Atlantic and Pacific Oceans and up to three marine leagues into the Gulf of Mexico. At the same time, Congress enacted the OCSLA, affirming the Federal Government's authority and control over the "outer Continental Shelf," defined as the submerged lands subject to the jurisdiction and control of the United States lying seaward and outside of the submerged lands within the extended state boundaries. 67 Stat. 462, 43 U. S. C. §§ 1331(a), 1332(1). As defined by the OCSLA, the Outer Continental Shelf includes the "submerged lands" beyond the extended state boundaries, § 1331(a), but not the waters above those submerged lands or artificial islands or installations attached to the seabed. For simplicity's sake, we refer to the entire geographical zone as the "OCS."

Section 1333 extends various provisions of state and federal law to certain aspects of the OCS. For example, § 1333(a)(1) extends the Constitution and federal laws of civil and political jurisdiction "to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed," for the purpose of extracting its natural resources. Section 1333(a)(2)(A) makes the civil and criminal laws of each adjacent State applicable to "that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf." Section 1333(b), the provision involved in this case, makes LHWCA workers' compensation benefits available for the "disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf" for the purpose of extracting its natural resources.

The question before us is the scope of coverage under § 1333(b). The parties agree that § 1333(b) covers employ-

ees, such as oil rig and drilling platform workers, who are injured while working directly on the OCS to extract its natural resources. They disagree, however, whether employees who are involved in extraction operations but who are injured beyond the OCS are also covered under the OCSLA. This dispute focuses on the meaning of the phrase "any injury occurring as the result of operations conducted on the outer Continental Shelf" in § 1333(b).

The Courts of Appeals have offered competing interpretations. In *Curtis* v. *Schlumberger Offshore Service, Inc.*, 849 F. 2d, at 811, the Third Circuit held that, because Congress intended LHWCA coverage to be expansive, § 1333(b) extends to all injuries that would not have occurred "but for" operations on the OCS. The Third Circuit thus concluded that an employee who worked on a semisubmersible drill rig, but who was killed in a car accident on the way to the helicopter that was to fly him to that rig, was eligible for § 1333(b) benefits. *Id.*, at 806, 811. As the Third Circuit summarized, "'But for' [Curtis'] travelling to [his drill rig] for the purpose of conducting 'operations' within § 1333(b), employee Curtis would not have sustained injuries in the automobile accident." *Id.*, at 811.

In *Mills* v. *Director, supra*, the Fifth Circuit, sitting en banc, adopted a narrower interpretation of § 1333(b). The court concluded that Congress intended to establish "a bright-line geographic boundary for § 1333(b) coverage," and held that § 1333(b) extends coverage only to employees engaged in OCS extractive activities who "suffer injury or death on an OCS platform or the waters above the OCS." *Id.*, at 362. Applying its "situs-of-injury" test, the Fifth Circuit held that a welder who was injured on land during the construction of an offshore oil platform was not eligible for § 1333(b) benefits. *Id.*, at 357, 362.

In the case below, the Ninth Circuit rejected the Fifth Circuit's "situs-of-injury" requirement as unsupported by the text of § 1333(b), and the Third Circuit's "but for" test as too

broad to be consistent with Congress' intent. 604 F. 3d, at 1137, 1139. Instead, the Ninth Circuit adopted a third interpretation of § 1333(b), holding that a "claimant must establish a substantial nexus between the injury and extractive operations on the shelf" to be eligible for § 1333(b) benefits. *Id.*, at 1139. "To meet the standard," the Ninth Circuit explained, "the claimant must show that the work performed directly furthers outer continental shelf operations and is in the regular course of such operations." *Ibid.*

The Solicitor General suggests yet a fourth interpretation of § 1333(b).[1] This interpretation would extend coverage to two categories of injuries: (1) all on-OCS injuries suffered by employees of companies engaged in resource extraction on the OCS; and (2) the off-OCS injuries of those employees who spend a substantial portion of their worktime on the OCS engaging in extractive operations. Brief for Federal Respondent 32–33. According to the Solicitor General, this test would provide § 1333(b) coverage for off-OCS injuries only to those employees whose duties contribute to operations on the OCS and who perform work on the OCS itself that is substantial in both duration and nature. *Id.*, at 35.

III

Pacific argues that the Fifth Circuit's "situs-of-injury" test presents the best interpretation of § 1333(b). The crux of Pacific's argument is that off-OCS injuries cannot be "the result of operations conducted on the outer Continental Shelf" for purposes of § 1333(b). Pacific asserts that because Valladolid was injured on dry land, his death did not occur as the result of extraction operations conducted on the OCS, and therefore respondent is ineligible for LHWCA workers' compensation benefits. We disagree.

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[1] The Director, Office of Workers' Compensation Programs, United States Department of Labor, is a respondent in this case because the Director administers the OCSLA workers' compensation scheme established by § 1333(b).

A

The OCSLA extends the provisions of the LHWCA to the "disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf." § 1333(b). Contrary to the view of Pacific and the Fifth Circuit, nothing in that language suggests that the injury to the employee must occur on the OCS. Section 1333(b) states only two requirements: The extractive operations must be "conducted on the outer Continental Shelf," and the employee's injury must occur "as the result of" those operations.

Despite the lack of a textual "situs-of-injury" requirement in § 1333(b), Pacific argues that it is logically impossible for an off-OCS employee to be injured "as the result of" on-OCS operations. Pacific offers no basis for this assertion, and we find none. Indeed, given that many OCS platforms are physically connected to onshore processing facilities via oil and gas pipelines, it is not difficult to imagine an accident occurring on an OCS platform that could injure employees located off the OCS.

Moreover, if, as Pacific suggests, the purpose of § 1333(b) was to geographically limit the extension of LHWCA coverage to injuries that occurred on the OCS, Congress could easily have achieved that goal by omitting the following six words in § 1333(b)'s text: "as the result of operations conducted." Had Congress done so, the statute would extend LHWCA coverage to the "disability or death of an employee resulting from any injury occurring on the outer Continental Shelf." But that is not the text of the statute Congress enacted.

Pacific also argues that, because all of § 1333(b)'s neighboring subsections contain specific situs limitations, we should infer that Congress intended to include a situs-of-injury requirement in § 1333(b). See, *e. g.*, § 1333(a)(2)(A) (adopting the civil and criminal laws of the adjacent State as federal law "for that portion of the subsoil and seabed of the outer

Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf").[2] But our usual practice is to make the opposite inference. *Russello* v. *United States*, 464 U. S. 16, 23 (1983) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion" (alteration and internal quotation marks omitted)). Congress' decision to specify, in scrupulous detail, exactly where the other subsections of § 1333 apply, but to include no similar restriction on injuries in § 1333(b), convinces us that Congress did not intend § 1333(b) to apply only to injuries suffered on the OCS. Rather, § 1333(b) extends LHWCA workers' compensation coverage to any employee injury, regardless of where it happens, as long as it occurs

[2] See also 43 U. S. C. § 1333(a)(1) (extending the Constitution and federal laws of civil and political jurisdiction "to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State"); § 1333(c) (making the National Labor Relations Act applicable to any unfair labor act "occurring upon any artificial island, installation, or other device referred to in subsection (a) of this section"); § 1333(d)(1) (granting the Coast Guard enforcement authority "on the artificial islands, installations, and other devices referred to in subsection (a) of this section or on the waters adjacent thereto"); § 1333(d)(2) (granting the Coast Guard authority to mark "any artificial island, installation, or other device referred to in subsection (a) of this section" for the protection of navigation); § 1333(e) (granting the Army authority to prevent the obstruction of access "to the artificial islands, installations, and other devices referred to in subsection (a) of this section"); § 1333(f) (saving clause applying "to the subsoil and seabed of the outer Continental Shelf and the artificial islands, installations, and other devices referred to in subsection (a) of this section").

"as the result of operations conducted on the outer Continental Shelf."

Pacific argues that this conclusion is foreclosed by language in *Herb's Welding, Inc.* v. *Gray*, 470 U. S. 414 (1985), and *Offshore Logistics, Inc.* v. *Tallentire*, 477 U. S. 207 (1986); but neither of those cases held that § 1333(b) extends only to injuries that occur on the OCS. In *Herb's Welding*, this Court considered whether an oil platform welder, who worked both within the territorial waters of Louisiana and on the OCS, was covered under the LHWCA after suffering an injury in the waters of Louisiana. 470 U. S., at 416–417. The Court explicitly declined to address whether the employee was eligible for workers' compensation benefits under § 1333(b) because that question was neither passed upon by the Court of Appeals nor fully briefed and argued before this Court. *Id.*, at 426, n. 12. Although the Court acknowledged that an employee might walk in and out of workers' compensation coverage during his employment due to the "explicit geographic limitation to the [OCSLA's] incorporation of the LHWCA," *id.*, at 427, the exact meaning of that statement is unclear. We cannot ascertain whether the comment was a reference to § 1333(b)'s explicit situs-of-operations requirement, as respondents suggest, or the recognition of an implicit situs-of-injury requirement, as Pacific argues. In any event, the ambiguous comment was made without analysis in dicta and does not control this case.

The same is true of the Court's opinion in *Offshore Logistics*. In that case, the Court considered whether the widows of oil platform workers who were killed when their helicopter crashed into the high seas could file wrongful-death suits under Louisiana law. In the Court's analysis of § 1333, it stated, "Congress determined that the general scope of OCSLA's coverage . . . would be determined principally by locale, not by the status of the individual injured or killed." 477 U. S., at 219–220 (citing the situs requirement in § 1333(a)(2)(A)). In a footnote, the Court commented: "Only

one provision of OCSLA superimposes a status requirement on the otherwise determinative OCSLA situs requirement; § 1333(b) makes compensation for the death or injury of an 'employee' resulting from certain operations on the Outer Continental Shelf payable under the [LHWCA]." *Ibid.*, n. 2. These comments about the scope of the OCSLA's coverage and its determinative "situs requirement" do not provide definitive evidence that § 1333(b) applies only to injuries that occur on the OCS. As in *Herb's Welding*, it is unclear whether the statement in the *Offshore Logistics* footnote regarding § 1333(b) was referring to the explicit situs-of-operations requirement or to an implicit situs-of-injury requirement. Moreover, the entire footnote is dictum because, as the Court explicitly stated, § 1333(b) had no bearing on the case. 470 U. S., at 219–220.

Finally, Pacific argues that including off-OCS injuries within the scope of the workers' compensation coverage created by § 1333(b) runs counter to Congress' intent in drafting the OCSLA. According to Pacific, Congress intended to create a uniform OCS compensation scheme that both filled the jurisdictional voids and eliminated jurisdictional overlaps between existing state and federal programs. Pacific points out that, without a situs-of-injury requirement to narrow the scope of § 1333(b), an off-OCS worker could be eligible for both state and federal workers' compensation coverage.

There is no indication in the text, however, that the OCSLA excludes OCS workers from LHWCA coverage when they are also eligible for state benefits. To the contrary, the LHWCA workers' compensation scheme incorporated by the OCSLA explicitly anticipates that injured employees might be eligible for both state and federal benefits. An offsetting provision in the LHWCA provides that "any amounts paid to an employee for the same injury, disability, or death for which benefits are claimed under [the LHWCA] pursuant to any other workers' compensation law or [the

Jones Act] shall be credited against any liability imposed by [the LHWCA]." 33 U. S. C. § 903(e). This provision, in addition to the lack of any textual support for Pacific's argument, convinces us that Congress did not limit the scope of 43 U. S. C. § 1333(b)'s coverage to only those geographic areas where state workers' compensation schemes do not apply.

B

Pacific also offers an alternative argument derived from the interaction of § 1333(b) and a provision of the LHWCA. Specifically, Pacific argues that because the LHWCA contains an explicit situs-of-injury requirement, see 33 U. S. C. § 903(a) (providing benefits only for injuries occurring "upon the navigable waters" of the United States), and because 43 U. S. C. § 1333(b) extends the LHWCA workers' compensation scheme to the OCS, § 1333(b) incorporates the strict LHWCA situs-of-injury requirement from § 903(a). According to Pacific, the words "occurring as the result of operations" in § 1333(b) impose a status requirement in addition to the imported LHWCA situs-of-injury requirement, with the result that employees who are injured on the OCS, but whose jobs are not related to extractive operations, are excluded from the workers' compensation coverage created by § 1333(b). Thus, an accountant who is injured on a field trip to the drilling platform would be ineligible under § 1333(b) despite being an employee who is injured on the OCS.

Although this alternative argument has the advantage of assigning some meaning to the words "occurring as the result of operations" in § 1333(b), we still find it unpersuasive. First, it is unlikely that Congress intended to impose a situs-of-injury requirement in § 1333(b) through such a nonintuitive and convoluted combination of two separate legislative Acts. As we have already noted, creating an express situs-of-injury requirement in the text of § 1333(b) would have been simple. Second, combining the § 1333(b) definition of "United States" with the LHWCA situs-of-injury require-

ment in 33 U. S. C. § 903(a) would result in an OCS workers' compensation scheme that applies only to the seabed of the OCS and to any artificial islands and fixed structures thereon. See 43 U. S. C. § 1333(b)(3) (stating that "the term 'United States' when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structures thereon"). Pacific concedes that this scheme would exclude the navigable waters above the shelf, including the waters immediately adjacent to any drilling platforms. Consequently, under Pacific's view, even employees on a crew ship immediately adjacent to an OCS platform who are injured during a platform explosion would be excluded from § 1333(b) coverage. That view cannot be squared with the text of the statute, which applies to "any injury occurring as the result of operations conducted" on the OCS.

C

Pacific also makes several policy arguments in favor of a situs-of-injury requirement, but policy concerns cannot justify an interpretation of § 1333(b) that is inconsistent with the text of the OCSLA. "[I]f Congress' coverage decisions are mistaken as a matter of policy, it is for Congress to change them. We should not legislate for them." *Herb's Welding*, 470 U. S., at 427. The language of § 1333(b) simply does not support a categorical exclusion of injuries that occur beyond the OCS.

IV

The Solicitor General urges us to adopt a status-based inquiry that applies one test to on-OCS injuries and a different test to off-OCS injuries. Specifically, the Government proposes that when a worker is injured on the OCS, he is eligible for workers' compensation benefits if he is employed by a company engaged in extractive operations on the OCS. But if the employee is injured off the OCS, the employee will be covered only if his "duties contribute to operations" on the OCS and if he performs "work on the [OCS] itself that is

substantial in terms of both its duration and nature." Brief for Federal Respondent 35. This approach is derived from our decision in *Chandris, Inc.* v. *Latsis*, 515 U. S. 347 (1995) (establishing criteria by which an employee qualifies as a "seaman" under the Jones Act), and might well have merit as legislation. But it has no basis in the text of the OCSLA as presently enacted. The "occurring as the result of operations" language in § 1333(b) plainly suggests causation. Although the Government asserts that a status-based test would be preferable to a causation-based test, we cannot ignore the language enacted by Congress.

The Third Circuit's "but for" test is nominally based on causation, but it is also incompatible with § 1333(b). Taken to its logical conclusion, the "but for" test would extend workers' compensation coverage to all employees of a business engaged in the extraction of natural resources from the OCS, no matter where those employees work or what they are doing when they are injured. This test could reasonably be interpreted to cover land-based office employees whose jobs have virtually nothing to do with extractive operations on the OCS. Because Congress extended LHWCA coverage only to injuries "occurring as the result of operations conducted on the outer Continental Shelf," we think that § 1333(b) should be interpreted in a manner that focuses on injuries that result from those "operations." This view is consistent with our past treatment of similar language in other contexts. In *Holmes* v. *Securities Investor Protection Corporation*, 503 U. S. 258 (1992), we considered a provision of the Racketeer Influenced and Corrupt Organizations Act that provided a cause of action to "[a]ny person injured in his business or property *by reason of* a violation of section 1962." 18 U. S. C. § 1964(c) (emphasis added). We rejected a "but for" interpretation, stating that such a construction was "hardly compelled" and that it was highly unlikely that Congress intended to allow all factually injured plaintiffs to recover. 503 U. S., at 265–266. Instead, we adopted a

proximate-cause standard consistent with our prior interpretation of the same language in the Sherman and Clayton Acts. *Id.*, at 267–268. Similarly, 43 U. S. C. § 1333(b)'s language hardly compels the Third Circuit's expansive "but for" interpretation.

Accordingly, we conclude that the Ninth Circuit's "substantial-nexus" test is more faithful to the text of § 1333(b). We understand the Ninth Circuit's test to require the injured employee to establish a significant causal link between the injury that he suffered and his employer's on-OCS operations conducted for the purpose of extracting natural resources from the OCS.

Although the Ninth Circuit's test may not be the easiest to administer, it best reflects the text of § 1333(b), which establishes neither a situs-of-injury nor a "but for" test. We are confident that ALJs and courts will be able to determine whether an injured employee has established a significant causal link between the injury he suffered and his employer's on-OCS extractive operations. Although we expect that employees injured while performing tasks on the OCS will regularly satisfy the test, whether an employee injured while performing an off-OCS task qualifies—like Valladolid, who died while tasked with onshore scrap metal consolidation—is a question that will depend on the individual circumstances of each case. The Ninth Circuit remanded the case for the Benefits Review Board to apply the "substantial-nexus" test in the first instance, and we agree with that disposition.

The judgment is affirmed, and the case is remanded to the Court of Appeals for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SCALIA, with whom JUSTICE ALITO joins, concurring in part and concurring in the judgment.

I join the Court's judgment that the Ninth Circuit properly remanded this case to the Benefits Review Board, and

I agree with almost all of the Court's opinion. My disagreement is limited to the last two substantive paragraphs of Part IV, which endorse the Ninth Circuit's "substantial-nexus" test for determining the scope of coverage under 43 U. S. C. § 1333(b). The Court indulges in considerable understatement when it acknowledges that this test "may not be the easiest to administer," *ante*, at 222. "Substantial nexus" is novel legalese with no established meaning in the present context. I agree with the Court's rejection of some of the clearer rules proposed by the parties—which, though easier to apply, are unmoored from the text of § 1333(b). But if we must adopt an indeterminate standard (and the statute's "as the result of" language leaves us no choice) I prefer the devil we know to the devil of the Ninth Circuit's imagining. I would hold that an employee may recover under § 1333(b) if his injury was *proximately caused* by operations on the Outer Continental Shelf (OCS).

The term "proximate cause" is "shorthand for a concept: Injuries have countless causes, and not all should give rise to legal liability." *CSX Transp., Inc.* v. *McBride*, 564 U. S. 685, 692 (2011). Life is too short to pursue every event to its most remote, "but-for," consequences, and the doctrine of proximate cause provides a rough guide for courts in cutting off otherwise endless chains of cause and effect. See *Holmes* v. *Securities Investor Protection Corporation*, 503 U. S. 258, 287 (1992) (SCALIA, J., concurring in judgment). Thus, as the Court notes in rejecting the Third Circuit's "but for" test for § 1333(b) coverage, we have interpreted statutes with language similar to § 1333(b) as prescribing a proximate-cause standard. See *ante*, at 221–222.

Although the doctrine of proximate cause is rooted in tort law and most commonly applied in negligence actions, it can also provide a useful guide in no-fault compensation schemes like this one. In *Brown* v. *Gardner*, 513 U. S. 115, 119 (1994), we considered a no-fault veterans' compensation statute covering injuries that occurred "as the result of" medical treat-

ment (precisely the language at issue here); we suggested that the requisite "causal connection" between the injury and medical treatment may be "limited to proximate causation so as to narrow the class of compensable cases . . . by eliminating remote consequences." Similarly, some state workers' compensation laws use the concept of proximate cause to determine entitlement. See, *e. g.*, *Ex parte Patton*, 77 So. 3d 591, 595 (Ala. 2011); *Marandino* v. *Prometheus Pharmacy*, 294 Conn. 564, 591, 986 A. 2d 1023, 1041 (2010); *Grant* v. *Grant Textiles*, 372 S. C. 196, 201, 641 S. E. 2d 869, 871 (2007). Indeed, the statutory law of California, where Mr. Valladolid died while at work, limits workers' compensation liability to cases "[w]here the injury is proximately caused by the employment, either with or without negligence." Cal. Lab. Code Ann. § 3600(a)(3) (West 2011).* I see no reason why the scope of 43 U. S. C. § 1333(b) could not similarly be cabined by the familiar limits of proximate causation.

To be sure, proximate cause is an imperfect legal doctrine; I have no illusions that its tenets are easy to describe or straightforward to apply. Judicial opinions do not provide a uniform formulation of the test, and borderline cases are rarely clear. But "it is often easier to disparage the product of centuries of common law than to devise a plausible substitute." *McBride*, 564 U. S., at 707 (ROBERTS, C. J., dissenting). Unlike the substantial-nexus test, proximate cause provides a "vocabulary" for answering questions like the one

*Strange to say, the California Supreme Court has held that this unmistakable term-of-art reference to a rule found in the common law of torts does *not* establish a rule "identical to that found in the common law of torts," but merely "elaborat[es] the general requirement that the injury arise out of the employment." *LaTourette* v. *Workers' Compensation App. Bd.*, 17 Cal. 4th 644, 651, n. 1, 951 P. 2d 1184, 1187, n. 1 (1998) (internal quotation marks omitted). Perhaps (who knows?) later California Supreme Court cases will "clarify" this general requirement by saying that it requires a "substantial nexus" between the employment and the injury.

raised by the facts of this case. It may be productive, for example, to consider whether the injury was "within the scope of the risk" created by OCS operations, or whether some "superseding or intervening cause" exists. *Id.*, at 719. In addition to that vocabulary, precedents on proximate cause "furnish illustrations of situations which judicious men upon careful consideration have adjudged to be on one side of the line or the other." *Exxon Co., U. S. A.* v. *Sofec, Inc.*, 517 U. S. 830, 839 (1996) (internal quotation marks omitted).

"Substantial nexus," by contrast, is an indeterminate phrase that lacks all pedigree. Our case law has used it as a term of art in only one context, first appearing in Justice Blackmun's opinion for the Court in *Complete Auto Transit, Inc.* v. *Brady*, 430 U. S. 274, 279 (1977): We sustain state taxes against Commerce Clause challenges if they are, *inter alia*, "applied to an activity with a *substantial nexus* with the taxing State." *Oklahoma Tax Comm'n* v. *Jefferson Lines, Inc.*, 514 U. S. 175, 183 (1995) (emphasis added; internal quotation marks omitted). "[S]uch a nexus is established when the taxpayer 'avails itself of the substantial privilege of carrying on business' in that jurisdiction." *Polar Tankers, Inc.* v. *City of Valdez*, 557 U. S. 1, 11 (2009). That clarification—and any further clarification in the Commerce Clause context—will not be remotely helpful to lower courts attempting to apply the substantial-nexus test in the very different legal context of workers' compensation under § 1333(b). In this latter context, I assume the Court means by "substantial nexus" a substantial *causal* nexus—since § 1333(b)'s "as the result of" language "plainly suggests causation," *ante*, at 221. Like the word "nexus" itself, the definition of "substantial nexus" in our state-tax cases does not require any *causal* relationship whatsoever. The proximate-cause test, by comparison, represents a much more natural interpretation of a statute that turns on causation.

Does the Court mean to establish, by the novel "substantial [causal] nexus" test, a new *tertium quid* of causality—somewhere between but-for causality and proximate cause? One might think so, since there is no other sensible reason to (1) reject but-for cause, (2) say nothing about the natural alternative (proximate cause), and (3) embrace the "substantial [causal] nexus" novelty. On the other hand, the Court's opinion suggests at least some connection (that is to say, in the Court's favored lawspeak, some "nexus") between the proximate-cause standard and the substantial-nexus test, since it cites one of our proximate-cause cases just before concluding that "[a]ccordingly, . . . the Ninth Circuit's 'substantial-nexus' test is more faithful to the text of § 1333(b)" than the Third Circuit's but-for test. *Ante*, at 222. In the opinion below, moreover, the Ninth Circuit purported to endorse the Fifth Circuit's pre-1989 case law, which required "'that the claimant show a nexus . . . similar to the proximate cause test in tort law.'" 604 F. 3d 1126, 1140 (CA9 2010) (quoting *Mills* v. *Director, Office of Workers' Compensation Programs*, 846 F. 2d 1013, 1015 (CA5 1988), rev'd en banc, 877 F. 2d 356 (1989)). Who knows whether this is a *tertium quid* or not? The Court has given us a new test whose contours are entirely undescribed, and which has nothing to be said for it except that it will add complexity to the law and litigation to the courts.

Finally, I must note an additional uncertainty (or else a peculiarity) that the Court's opinion creates: The statutory text at issue requires compensation for "disability or death of an employee *resulting from* any injury *occurring as the result of* operations conducted on the outer Continental Shelf . . . ." § 1333(b) (emphasis added). Before today, I would have thought it clear that courts must apply proximate-cause analysis to the "resulting from" provision; but that would seem quite peculiar if (as the Court holds today) we apply substantial-nexus analysis to the neighboring "occurring as the result of" provision. Surely both

phrases express the same concept. What a tangled web we weave.

I would affirm the Ninth Circuit's judgment to remand the case to the Benefits Review Board, but with instructions to apply a proximate-cause test.

Syllabus

PERRY *v.* NEW HAMPSHIRE

CERTIORARI TO THE SUPREME COURT OF NEW HAMPSHIRE

No. 10–8974. Argued November 2, 2011—Decided January 11, 2012

Around 3 a.m. on August 15, 2008, the Nashua, New Hampshire, Police Department received a call reporting that an African-American male was trying to break into cars parked in the lot of the caller's apartment building. When an officer responding to the call asked eyewitness Nubia Blandon to describe the man, Blandon pointed to her kitchen window and said the man she saw breaking into the car was standing in the parking lot, next to a police officer. Petitioner Barion Perry's arrest followed this identification.

Before trial, Perry moved to suppress Blandon's identification on the ground that admitting it at trial would violate due process. The New Hampshire trial court denied the motion. To determine whether due process prohibits the introduction of an out-of-court identification at trial, the Superior Court said, this Court's decisions instruct a two-step inquiry: The trial court must first decide whether the police used an unnecessarily suggestive identification procedure; if they did, the court must next consider whether that procedure so tainted the resulting identification as to render it unreliable and thus inadmissible. Perry's challenge, the court found, failed at step one, for Blandon's identification did not result from an unnecessarily suggestive procedure employed by the police. A jury subsequently convicted Perry of theft by unauthorized taking.

On appeal, Perry argued that the trial court erred in requiring an initial showing that police arranged a suggestive identification procedure. Suggestive circumstances alone, Perry contended, suffice to require court evaluation of the reliability of an eyewitness identification before allowing it to be presented to the jury. The New Hampshire Supreme Court rejected Perry's argument and affirmed his conviction.

Held: The Due Process Clause does not require a preliminary judicial inquiry into the reliability of an eyewitness identification when the identification was not procured under unnecessarily suggestive circumstances arranged by law enforcement. Pp. 237–248.

(a) The Constitution protects a defendant against a conviction based on evidence of questionable reliability, not by prohibiting introduction of the evidence, but by affording the defendant means to persuade the jury that the evidence should be discounted as unworthy of credit. Only when evidence "is so extremely unfair that its admission violates fundamental conceptions of justice," *Dowling* v. *United States*, 493 U. S.

342, 352 (internal quotation marks omitted), does the Due Process Clause preclude its admission.

Contending that the Due Process Clause is implicated here, Perry relies on a series of decisions involving police-arranged identification procedures. See *Stovall* v. *Denno*, 388 U. S. 293; *Simmons* v. *United States*, 390 U. S. 377; *Foster* v. *California*, 394 U. S. 440; *Neil* v. *Biggers*, 409 U. S. 188; and *Manson* v. *Brathwaite*, 432 U. S. 98. These cases detail the approach appropriately used to determine whether due process requires suppression of an eyewitness identification tainted by police arrangement. First, due process concerns arise only when law enforcement officers use an identification procedure that is both suggestive and unnecessary. *Id.*, at 107, 109; *Biggers*, 409 U. S., at 198. Even when the police use such a procedure, however, suppression of the resulting identification is not the inevitable consequence. *Brathwaite*, 432 U. S., at 112–113; *Biggers*, 409 U. S., at 198–199. Instead, due process requires courts to assess, on a case-by-case basis, whether improper police conduct created a "substantial likelihood of misidentification." *Id.*, at 201. "[R]eliability [of the eyewitness identification] is the linchpin" of that evaluation. *Brathwaite*, 432 U. S., at 114. Where the "indicators of [a witness'] ability to make an accurate identification" are "outweighed by the corrupting effect" of law enforcement suggestion, the identification should be suppressed. *Id.*, at 114, 116. Otherwise, the identification, assuming no other barrier to its admission, should be submitted to the jury. Pp. 237–240.

(b) Perry argues that it was mere happenstance that all of the cases in the *Stovall* line involved improper police action. The rationale underlying this Court's decisions, Perry asserts, calls for a rule requiring trial judges to prescreen eyewitness evidence for reliability any time an identification is made under suggestive circumstances. This Court disagrees.

If "reliability is the linchpin" of admissibility under the Due Process Clause, *Brathwaite*, 432 U. S., at 114, Perry contends, it should not matter whether law enforcement was responsible for creating the suggestive circumstances that marred the identification. This argument removes *Brathwaite*'s statement from its mooring, attributing to it a meaning that a fair reading of the opinion does not bear. The due process check for reliability, *Brathwaite* made plain, comes into play only after the defendant establishes improper police conduct.

Perry's contention also ignores a key premise of *Brathwaite*: A primary aim of excluding identification evidence obtained under unnecessarily suggestive circumstances is to deter law enforcement use of improper procedures in the first place. This deterrence rationale is inapposite in cases, like Perry's, where there is no improper police conduct. Perry also places significant weight on *United States* v. *Wade*, 388 U. S. 218, describing it as a decision not anchored to improper police

conduct. But the risk of police rigging was the very danger that prompted the Court in *Wade* to extend a defendant's right to counsel to cover postindictment lineups and showups.

Perry's position would also open the door to judicial preview, under the banner of due process, of most, if not all, eyewitness identifications. There is no reason why an identification made by an eyewitness with poor vision or one who harbors a grudge against the defendant, for example, should be regarded as inherently more reliable than Blandon's identification here. Even if this Court could, as Perry contends, distinguish "suggestive circumstances" from other factors bearing on the reliability of eyewitness evidence, Perry's limitation would still involve trial courts, routinely, in preliminary examinations, for most eyewitness identifications involve some element of suggestion. Pp. 240–244.

(c) In urging a broadly applicable rule, Perry maintains that eyewitness identifications are uniquely unreliable. The fallibility of eyewitness evidence does not, without the taint of improper state conduct, warrant a due process rule requiring a trial court to screen the evidence for reliability before allowing the jury to assess its creditworthiness. The Court's unwillingness to adopt such a rule rests, in large part, on its recognition that the jury, not the judge, traditionally determines the reliability of evidence. It also takes account of other safeguards built into the adversary system that caution juries against placing undue weight on eyewitness testimony of questionable reliability. These protections include the defendant's Sixth Amendment rights to counsel and to confront and cross-examine the eyewitness, eyewitness-specific instructions warning juries to take care in appraising identification evidence, and State and Federal Rules of Evidence permitting trial judges to exclude relevant evidence if its probative value is substantially outweighed by its prejudicial impact or potential for misleading the jury. Many of these safeguards were availed of by Perry's defense. Given the safeguards generally applicable in criminal trials, the introduction of Blandon's eyewitness testimony, without a preliminary judicial assessment of its reliability, did not render Perry's trial fundamentally unfair. Pp. 244–248.

Affirmed.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, THOMAS, BREYER, ALITO, and KAGAN, JJ., joined. THOMAS, J., filed a concurring opinion, *post*, p. 249. SOTOMAYOR, J., filed a dissenting opinion, *post*, p. 249.

Richard Guerriero argued the cause for petitioner. With him on the briefs were *David M. Rothstein*, *Christopher Johnson*, and *Heather Ward*.

Michael A. Delaney, Attorney General of New Hampshire, argued the cause for respondent. With him on the brief were *Stephen D. Fuller,* Senior Assistant Attorney General, *Thomas E. Bocian,* Assistant Attorney General, and *Susan P. McGinnis,* Senior Assistant Attorney General.

Nicole A. Saharsky argued the cause for the United States as *amicus curiae* in support of respondent. With her on the brief were *Solicitor General Verrilli, Assistant Attorney General Breuer, Deputy Solicitor General Dreeben,* and *Joel M. Gershowitz.**

JUSTICE GINSBURG delivered the opinion of the Court.

In our system of justice, fair trial for persons charged with criminal offenses is secured by the Sixth Amendment, which

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*Briefs of *amici curiae* urging reversal were filed for the American Psychological Association by *David W. Ogden, Daniel S. Volchok, Francesco Valentini,* and *Nathalie F. P. Gilfoyle;* and for the Innocence Network by *Timothy P. O'Toole* and *Jeffrey Hahn.* A brief of *amicus curiae* urging vacation was filed for the National Association of Criminal Defense Lawyers by *Mark D. Harris* and *David M. Porter.*

Briefs of *amici curiae* urging affirmance were filed for the State of Louisiana et al. by *James D. "Buddy" Caldwell,* Attorney General of Louisiana, *S. Kyle Duncan,* and *Ross W. Bergethon,* Assistant Attorney General, by *Kevin T. Kane,* Chief State's Attorney of Connecticut, and *Leonardo M. Rapadas,* Attorney General of Guam, and by the Attorneys General for their respective States as follows: *Luther Strange* of Alabama, *Tom Horne* of Arizona, *John W. Suthers* of Colorado, *Joseph R. Biden III* of Delaware, *Pamela Jo Bondi* of Florida, *Samuel S. Olens* of Georgia, *Lawrence G. Wasden* of Idaho, *Lisa Madigan* of Illinois, *Derek Schmidt* of Kansas, *Jack Conway* of Kentucky, *William Schneider* of Maine, *Douglas F. Gansler* of Maryland, *Martha Coakley* of Massachusetts, *Bill Schuette* of Michigan, *Jon Bruning* of Nebraska, *Catherine Cortez Masto* of Nevada, *Paula T. Dow* of New Jersey, *Gary K. King* of New Mexico, *Wayne Stenehjem* of North Dakota, *E. Scott Pruitt* of Oklahoma, *John R. Kroger* of Oregon, *Peter F. Kilmartin* of Rhode Island, *Alan Wilson* of South Carolina, *Marty J. Jackley* of South Dakota, *Mark L. Shurtleff* of Utah, *J. B. Van Hollen* of Wisconsin, and *Gregory A. Phillips* of Wyoming; for the Criminal Justice Legal Foundation by *Kent S. Scheidegger;* and for the National District Attorneys Association by *Thomas R. McCarthy* and *William S. Consovoy.*

Steven A. Reiss and *Gregory Silbert* filed a brief for Wilton Dedge et al. as *amici curiae.*

guarantees to defendants the right to counsel, compulsory process to obtain defense witnesses, and the opportunity to cross-examine witnesses for the prosecution. Those safeguards apart, admission of evidence in state trials is ordinarily governed by state law, and the reliability of relevant testimony typically falls within the province of the jury to determine. This Court has recognized, in addition, a due process check on the admission of eyewitness identification, applicable when the police have arranged suggestive circumstances leading the witness to identify a particular person as the perpetrator of a crime.

An identification infected by improper police influence, our case law holds, is not automatically excluded. Instead, the trial judge must screen the evidence for reliability pretrial. If there is "a very substantial likelihood of irreparable misidentification," *Simmons* v. *United States*, 390 U. S. 377, 384 (1968), the judge must disallow presentation of the evidence at trial. But if the indicia of reliability are strong enough to outweigh the corrupting effect of the police-arranged suggestive circumstances, the identification evidence ordinarily will be admitted, and the jury will ultimately determine its worth.

We have not extended pretrial screening for reliability to cases in which the suggestive circumstances were not arranged by law enforcement officers. Petitioner requests that we do so because of the grave risk that mistaken identification will yield a miscarriage of justice.[1] Our decisions,

[1] The dissent, too, appears to urge that all suggestive circumstances raise due process concerns warranting a pretrial ruling. See *post*, at 254, 257, 262–265. Neither Perry nor the dissent, however, points to a single case in which we have required pretrial screening absent a police-arranged identification procedure. Understandably so, for there are no such cases. Instead, the dissent surveys our decisions, heedless of the police arrangement that underlies every one of them, and inventing a "longstanding rule," *post*, at 254, that never existed. Nor are we, as the dissent suggests, imposing a *mens rea* requirement, *post*, at 250, 255, or otherwise altering our precedent in any way. As our case law makes clear, what triggers due

however, turn on the presence of state action and aim to deter police from rigging identification procedures, for example, at a lineup, showup, or photograph array. When no improper law enforcement activity is involved, we hold, it suffices to test reliability through the rights and opportunities generally designed for that purpose, notably, the presence of counsel at postindictment lineups, vigorous cross-examination, protective rules of evidence, and jury instructions on both the fallibility of eyewitness identification and the requirement that guilt be proved beyond a reasonable doubt.

I

A

Around 3 a.m. on August 15, 2008, Joffre Ullon called the Nashua, New Hampshire, Police Department and reported that an African-American male was trying to break into cars parked in the lot of Ullon's apartment building. Officer Nicole Clay responded to the call. Upon arriving at the parking lot, Clay heard what "sounded like a metal bat hitting the ground." App. 37a–38a. She then saw petitioner Barion Perry standing between two cars. Perry walked toward Clay, holding two car-stereo amplifiers in his hands. A metal bat lay on the ground behind him. Clay asked Perry where the amplifiers came from. "[I] found them on the ground," Perry responded. *Id.*, at 39a.

Meanwhile, Ullon's wife, Nubia Blandon, woke her neighbor, Alex Clavijo, and told him she had just seen someone break into his car. Clavijo immediately went downstairs to the parking lot to inspect the car. He first observed that one of the rear windows had been shattered. On further inspection, he discovered that the speakers and amplifiers from his car stereo were missing, as were his bat and

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process concerns is police use of an unnecessarily suggestive identification procedure, whether or not they intended the arranged procedure to be suggestive.

wrench. Clavijo then approached Clay and told her about Blandon's alert and his own subsequent observations.

By this time, another officer had arrived at the scene. Clay asked Perry to stay in the parking lot with that officer, while she and Clavijo went to talk to Blandon. Clay and Clavijo then entered the apartment building and took the stairs to the fourth floor, where Blandon's and Clavijo's apartments were located. They met Blandon in the hallway just outside the open door to her apartment.

Asked to describe what she had seen, Blandon stated that, around 2:30 a.m., she saw from her kitchen window a tall, African-American man roaming the parking lot and looking into cars. Eventually, the man circled Clavijo's car, opened the trunk, and removed a large box.[2]

Clay asked Blandon for a more specific description of the man. Blandon pointed to her kitchen window and said the person she saw breaking into Clavijo's car was standing in the parking lot, next to the police officer. Perry's arrest followed this identification.

About a month later, the police showed Blandon a photographic array that included a picture of Perry and asked her to point out the man who had broken into Clavijo's car. Blandon was unable to identify Perry.

B

Perry was charged in New Hampshire state court with one count of theft by unauthorized taking and one count of criminal mischief.[3] Before trial, he moved to suppress Blandon's identification on the ground that admitting it at trial would violate due process. Blandon witnessed what

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[2] The box, which Clay found on the ground near where she first encountered Perry, contained car-stereo speakers. App. 177a–178a.

[3] The theft charge was based on the taking of items from Clavijo's car, while the criminal mischief count was founded on the shattering of Clavijo's car window.

amounted to a one-person showup in the parking lot, Perry asserted, which all but guaranteed that she would identify him as the culprit. *Id.*, at 15a–16a.

The New Hampshire Superior Court denied the motion. *Id.*, at 82a–88a. To determine whether due process prohibits the introduction of an out-of-court identification at trial, the Superior Court said, this Court's decisions instruct a two-step inquiry. First, the trial court must decide whether the police used an unnecessarily suggestive identification procedure. *Id.*, at 85a. If they did, the court must next consider whether the improper identification procedure so tainted the resulting identification as to render it unreliable and therefore inadmissible. *Ibid.* (citing *Neil* v. *Biggers*, 409 U. S. 188 (1972), and *Manson* v. *Brathwaite*, 432 U. S. 98 (1977)).

Perry's challenge, the Superior Court concluded, failed at step one: Blandon's identification of Perry on the night of the crime did not result from an unnecessarily suggestive procedure "manufacture[d] . . . by the police." App. 86a–87a. Blandon pointed to Perry "spontaneously," the court noted, "without any inducement from the police." *Id.*, at 85a–86a. Clay did not ask Blandon whether the man standing in the parking lot was the man Blandon had seen breaking into Clavijo's car. *Ibid.* Nor did Clay ask Blandon to move to the window from which she had observed the break-in. *Id.*, at 86a.

The Superior Court recognized that there were reasons to question the accuracy of Blandon's identification: The parking lot was dark in some locations; Perry was standing next to a police officer; Perry was the only African-American man in the vicinity; and Blandon was unable, later, to pick Perry out of a photographic array. *Id.*, at 86a–87a. But "[b]ecause the police procedures were not unnecessarily suggestive," the court ruled that the reliability of Blandon's testimony was for the jury to consider. *Id.*, at 87a.

At the ensuing trial, Blandon and Clay testified to Blandon's out-of-court identification. The jury found Perry guilty of theft and not guilty of criminal mischief.

On appeal, Perry repeated his challenge to the admissibility of Blandon's out-of-court identification. The trial court erred, Perry contended, in requiring an initial showing that the police arranged the suggestive identification procedure. Suggestive circumstances alone, Perry argued, suffice to trigger the court's duty to evaluate the reliability of the resulting identification before allowing presentation of the evidence to the jury.

The New Hampshire Supreme Court rejected Perry's argument and affirmed his conviction. *Id.*, at 9a–11a. Only where the police employ suggestive identification techniques, that court held, does the Due Process Clause require a trial court to assess the reliability of identification evidence before permitting a jury to consider it. *Id.*, at 10a–11a.

We granted certiorari to resolve a division of opinion on the question whether the Due Process Clause requires a trial judge to conduct a preliminary assessment of the reliability of an eyewitness identification made under suggestive circumstances not arranged by the police. 563 U. S. 1020 (2011).[4]

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[4] Compare *United States* v. *Bouthot*, 878 F. 2d 1506, 1516 (CA1 1989) (Due process requires federal courts to "scrutinize all suggestive identification procedures, not just those orchestrated by the police."); *Dunnigan* v. *Keane*, 137 F. 3d 117, 128 (CA2 1998) (same); *Thigpen* v. *Cory*, 804 F. 2d 893, 895 (CA6 1986) (same), with *United States* v. *Kimberlin*, 805 F. 2d 210, 233 (CA7 1986) (Due process check is required only in cases involving improper state action.); *United States* v. *Zeiler*, 470 F. 2d 717, 720 (CA3 1972) (same); *State* v. *Addison*, 160 N. H. 792, 801, 8 A. 3d 118, 125 (2010) (same); *State* v. *Reid*, 91 S. W. 3d 247, 272 (Tenn. 2002) (same); *State* v. *Nordstrom*, 200 Ariz. 229, 241, 25 P. 3d 717, 729 (2001) (same); *Semple* v. *State*, 271 Ga. 416, 417–418, 519 S. E. 2d 912, 913–914 (1999) (same); *Harris* v. *State*, 619 N. E. 2d 577, 581 (Ind. 1993) (same); *State* v. *Pailon*, 590 A. 2d 858, 862–863 (R. I. 1991) (same); *Commonwealth* v. *Colon-Cruz*, 408 Mass. 533, 541–542, 562 N. E. 2d 797, 805 (1990) (same); *State* v. *Brown*,

II

A

The Constitution, our decisions indicate, protects a defendant against a conviction based on evidence of questionable reliability, not by prohibiting introduction of the evidence, but by affording the defendant means to persuade the jury that the evidence should be discounted as unworthy of credit. Constitutional safeguards available to defendants to counter the State's evidence include the Sixth Amendment rights to counsel, *Gideon* v. *Wainwright*, 372 U. S. 335, 343–345 (1963); compulsory process, *Taylor* v. *Illinois*, 484 U. S. 400, 408–409 (1988); and confrontation plus cross-examination of witnesses, *Delaware* v. *Fensterer*, 474 U. S. 15, 18–20 (1985) *(per curiam)*. Apart from these guarantees, we have recognized, state and federal statutes and rules ordinarily govern the admissibility of evidence, and juries are assigned the task of determining the reliability of the evidence presented at trial. See *Kansas* v. *Ventris*, 556 U. S. 586, 594, n. (2009) ("Our legal system . . . is built on the premise that it is the province of the jury to weigh the credibility of competing witnesses."). Only when evidence "is so extremely unfair that its admission violates fundamental conceptions of justice," *Dowling* v. *United States*, 493 U. S. 342, 352 (1990) (internal quotation marks omitted), have we imposed a constraint tied to the Due Process Clause. See, *e. g.*, *Napue* v. *Illinois*, 360 U. S. 264, 269 (1959) (Due process prohibits the State's "knowin[g] use [of] false evidence," because such use violates "any concept of ordered liberty.").

Contending that the Due Process Clause is implicated here, Perry relies on a series of decisions involving police-arranged identification procedures. In *Stovall* v. *Denno*, 388 U. S. 293 (1967), first of those decisions, a witness identified the defendant as her assailant after police officers brought

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38 Ohio St. 3d 305, 310–311, 528 N. E. 2d 523, 533 (1988) (same); *Wilson* v. *Commonwealth*, 695 S. W. 2d 854, 857 (Ky. 1985) (same).

the defendant to the witness' hospital room. *Id.*, at 295. At the time the witness made the identification, the defendant—the only African-American in the room—was handcuffed and surrounded by police officers. *Ibid.* Although the police-arranged showup was undeniably suggestive, the Court held that no due process violation occurred. *Id.*, at 302. Crucial to the Court's decision was the procedure's necessity: The witness was the only person who could identify or exonerate the defendant; the witness could not leave her hospital room; and it was uncertain whether she would live to identify the defendant in more neutral circumstances. *Ibid.*

A year later, in *Simmons* v. *United States*, 390 U. S. 377 (1968), the Court addressed a due process challenge to police use of a photographic array. When a witness identifies the defendant in a police-organized photo lineup, the Court ruled, the identification should be suppressed only where "the photographic identification procedure was so [unnecessarily] suggestive as to give rise to a very substantial likelihood of irreparable misidentification." *Id.*, at 384–385. Satisfied that the photo array used by Federal Bureau of Investigation agents in *Simmons* was both necessary and unlikely to have led to a mistaken identification, the Court rejected the defendant's due process challenge to admission of the identification. *Id.*, at 385–386. In contrast, the Court held in *Foster* v. *California*, 394 U. S. 440 (1969), that due process required the exclusion of an eyewitness identification obtained through police-arranged procedures that "made it all but inevitable that [the witness] would identify [the defendant]." *Id.*, at 443.

Synthesizing previous decisions, we set forth in *Neil* v. *Biggers*, 409 U. S. 188 (1972), and reiterated in *Manson* v. *Brathwaite*, 432 U. S. 98 (1977), the approach appropriately used to determine whether the Due Process Clause requires suppression of an eyewitness identification tainted by police arrangement. The Court emphasized, first, that due process concerns arise only when law enforcement officers use an

identification procedure that is both suggestive and unnecessary. *Id.*, at 107, 109; *Biggers*, 409 U. S., at 198. Even when the police use such a procedure, the Court next said, suppression of the resulting identification is not the inevitable consequence. *Brathwaite*, 432 U. S., at 112–113; *Biggers*, 409 U. S., at 198–199.

A rule requiring automatic exclusion, the Court reasoned, would "g[o] too far," for it would "kee[p] evidence from the jury that is reliable and relevant," and "may result, on occasion, in the guilty going free." *Brathwaite*, 432 U. S., at 112; see *id.*, at 113 (when an "identification is reliable despite an unnecessarily suggestive [police] identification procedure," automatic exclusion "is a Draconian sanction," one "that may frustrate rather than promote justice").

Instead of mandating a *per se* exclusionary rule, the Court held that the Due Process Clause requires courts to assess, on a case-by-case basis, whether improper police conduct created a "substantial likelihood of misidentification." *Biggers*, 409 U. S., at 201; see *Brathwaite*, 432 U. S., at 116. "[R]eliability [of the eyewitness identification] is the linchpin" of that evaluation, the Court stated in *Brathwaite*. *Id.*, at 114. Where the "indicators of [a witness'] ability to make an accurate identification" are "outweighed by the corrupting effect" of law enforcement suggestion, the identification should be suppressed. *Id.*, at 114, 116. Otherwise, the evidence (if admissible in all other respects) should be submitted to the jury.[5]

Applying this "totality of the circumstances" approach, *id.*, at 110, the Court held in *Biggers* that law enforcement's use

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[5] Among "factors to be considered" in evaluating a witness' "ability to make an accurate identification," the Court listed: "the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of his prior description of the criminal, the level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation." *Manson* v. *Brathwaite*, 432 U. S. 98, 114 (1977) (citing *Neil* v. *Biggers*, 409 U. S. 188, 199–200 (1972)).

of an unnecessarily suggestive showup did not require suppression of the victim's identification of her assailant. 409 U. S., at 199–200. Notwithstanding the improper procedure, the victim's identification was reliable: She saw her assailant for a considerable period of time under adequate light, provided police with a detailed description of her attacker long before the showup, and had "no doubt" that the defendant was the person she had seen. *Id.*, at 200 (internal quotation marks omitted). Similarly, the Court concluded in *Brathwaite* that police use of an unnecessarily suggestive photo array did not require exclusion of the resulting identification. 432 U. S., at 114–117. The witness, an undercover police officer, viewed the defendant in good light for several minutes, provided a thorough description of the suspect, and was certain of his identification. *Id.*, at 115. Hence, the "indicators of [the witness'] ability to make an accurate identification [were] hardly outweighed by the corrupting effect of the challenged identification." *Id.*, at 116.

B

Perry concedes that, in contrast to every case in the *Stovall* line, law enforcement officials did not arrange the suggestive circumstances surrounding Blandon's identification. See Brief for Petitioner 34; Tr. of Oral Arg. 5 (counsel for Perry) ("[W]e do not allege any manipulation or intentional orchestration by the police."). He contends, however, that it was mere happenstance that each of the *Stovall* cases involved improper police action. The rationale underlying our decisions, Perry asserts, supports a rule requiring trial judges to prescreen eyewitness evidence for reliability any time an identification is made under suggestive circumstances. We disagree.

Perry's argument depends, in large part, on the Court's statement in *Brathwaite* that "reliability is the linchpin in determining the admissibility of identification testimony." 432 U. S., at 114. If reliability is the linchpin of admissibility

under the Due Process Clause, Perry maintains, it should make no difference whether law enforcement was responsible for creating the suggestive circumstances that marred the identification.

Perry has removed our statement in *Brathwaite* from its mooring, and thereby attributes to the statement a meaning a fair reading of our opinion does not bear. As just explained, *supra*, at 238–239, the *Brathwaite* Court's reference to reliability appears in a portion of the opinion concerning the appropriate remedy *when the police use an unnecessarily suggestive identification procedure.* The Court adopted a judicial screen for reliability as a course preferable to a *per se* rule requiring exclusion of identification evidence whenever law enforcement officers employ an improper procedure. The due process check for reliability, *Brathwaite* made plain, comes into play only after the defendant establishes improper police conduct. The very purpose of the check, the Court noted, was to avoid depriving the jury of identification evidence that is reliable, *notwithstanding* improper police conduct. 432 U. S., at 112–113.[6]

Perry's contention that improper police action was not essential to the reliability check *Brathwaite* required is echoed by the dissent. *Post*, at 252. Both ignore a key premise of the *Brathwaite* decision: A primary aim of excluding identification evidence obtained under unnecessarily suggestive circumstances, the Court said, is to deter law enforcement use of improper lineups, showups, and photo arrays in the first place. See 432 U. S., at 112. Alerted to the prospect that identification evidence improperly obtained may be excluded, the Court reasoned, police officers will "guard

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[6] The Court's description of the question presented in *Brathwaite* assumes that improper state action occurred: "[Does] the Due Process Clause of the Fourteenth Amendment compe[l] the exclusion, in a state criminal trial, apart from any consideration of reliability, of pretrial identification evidence obtained by a police procedure that was both suggestive and unnecessary." 432 U. S., at 99.

against unnecessarily suggestive procedures." *Ibid.* This deterrence rationale is inapposite in cases, like Perry's, in which the police engaged in no improper conduct.

Coleman v. *Alabama*, 399 U. S. 1 (1970), another decision in the *Stovall* line, similarly shows that the Court has linked the due process check, not to suspicion of eyewitness testimony generally, but only to improper police arrangement of the circumstances surrounding an identification. The defendants in *Coleman* contended that a witness' in-court identifications violated due process, because a pretrial stationhouse lineup was "so unduly prejudicial and conducive to irreparable misidentification as fatally to taint [the later identifications]." 399 U. S., at 3 (plurality opinion). The Court rejected this argument. *Id.*, at 5–6 (plurality opinion), 13–14 (Black, J., concurring), 22, n. 2 (Burger, C. J., dissenting), 28, n. 2 (Stewart, J., dissenting). No due process violation occurred, the plurality explained, because nothing "the police said or did prompted [the witness'] virtually spontaneous identification of [the defendants]." *Id.*, at 6. True, Coleman was the only person in the lineup wearing a hat, the plurality noted, but "nothing in the record show[ed] that he was required to do so." *Ibid.* See also *Colorado* v. *Connelly*, 479 U. S. 157, 163, 167 (1986) (Where the "crucial element of police overreaching" is missing, the admissibility of an allegedly unreliable confession is "a matter to be governed by the evidentiary laws of the forum, . . . and not by the Due Process Clause.").

Perry and the dissent place significant weight on *United States* v. *Wade*, 388 U. S. 218 (1967), describing it as a decision not anchored to improper police conduct. See Brief for Petitioner 12, 15, 21–22, 28; *post,* at 250–253, 256–258. In fact, the risk of police rigging was the very danger to which the Court responded in *Wade* when it recognized a defendant's right to counsel at postindictment, police-organized identification procedures. 388 U. S., at 233, 235–236. "[T]he confrontation *compelled by the State* between the accused and the

victim or witnesses," the Court began, "is peculiarly riddled with innumerable dangers and variable factors which might seriously, even crucially, derogate from a fair trial." *Id.*, at 228 (emphasis added). "A major factor contributing to the high incidence of miscarriage of justice from mistaken identification," the Court continued, "has been the degree of suggestion inherent in the manner in which *the prosecution* presents the suspect to witnesses for pretrial identification." *Ibid.* (emphasis added). To illustrate the improper suggestion it was concerned about, the Court pointed to police-designed lineups where "all in the lineup but the suspect were known to the identifying witness, . . . the other participants in [the] lineup were grossly dissimilar in appearance to the suspect, . . . only the suspect was required to wear distinctive clothing which the culprit allegedly wore, . . . the witness is told by the police that they have caught the culprit after which the defendant is brought before the witness alone or is viewed in jail, . . . the suspect is pointed out before or during a lineup, . . . the participants in the lineup are asked to try on an article of clothing which fits only the suspect." *Id.*, at 233. Beyond genuine debate, then, prevention of unfair police practices prompted the Court to extend a defendant's right to counsel to cover postindictment lineups and showups. *Id.*, at 235.

Perry's argument, reiterated by the dissent, thus lacks support in the case law he cites. Moreover, his position would open the door to judicial preview, under the banner of due process, of most, if not all, eyewitness identifications. External suggestion is hardly the only factor that casts doubt on the trustworthiness of an eyewitness' testimony. As one of Perry's *amici* points out, many other factors bear on "the likelihood of misidentification," *post*, at 258—for example, the passage of time between exposure to and identification of the defendant, whether the witness was under stress when he first encountered the suspect, how much time the witness had to observe the suspect, how far the witness was

from the suspect, whether the suspect carried a weapon, and the race of the suspect and the witness. Brief for American Psychological Association as *Amicus Curiae* 9–12. There is no reason why an identification made by an eyewitness with poor vision, for example, or one who harbors a grudge against the defendant, should be regarded as inherently more reliable, less of a "threat to the fairness of trial," *post*, at 262, than the identification Blandon made in this case. To embrace Perry's view would thus entail a vast enlargement of the reach of due process as a constraint on the admission of evidence.

Perry maintains that the Court can limit the due process check he proposes to identifications made under "suggestive circumstances." Tr. of Oral Arg. 11–14. Even if we could rationally distinguish suggestiveness from other factors bearing on the reliability of eyewitness evidence, Perry's limitation would still involve trial courts, routinely, in preliminary examinations. Most eyewitness identifications involve some element of suggestion. Indeed, all in-court identifications do. Out-of-court identifications volunteered by witnesses are also likely to involve suggestive circumstances. For example, suppose a witness identifies the defendant to police officers after seeing a photograph of the defendant in the press captioned "theft suspect," or hearing a radio report implicating the defendant in the crime. Or suppose the witness knew that the defendant ran with the wrong crowd and saw him on the day and in the vicinity of the crime. Any of these circumstances might have "suggested" to the witness that the defendant was the person the witness observed committing the crime.

C

In urging a broadly applicable due process check on eyewitness identifications, Perry maintains that eyewitness identifications are a uniquely unreliable form of evidence. See Brief for Petitioner 17–22 (citing studies showing that

eyewitness misidentifications are the leading cause of wrongful convictions); Brief for American Psychological Association as *Amicus Curiae* 14–17 (describing research indicating that as many as one in three eyewitness identifications is inaccurate). See also *post*, at 262–265. We do not doubt either the importance or the fallibility of eyewitness identifications. Indeed, in recognizing that defendants have a constitutional right to counsel at postindictment police lineups, we observed that "the annals of criminal law are rife with instances of mistaken identification." *Wade*, 388 U. S., at 228.

We have concluded in other contexts, however, that the potential unreliability of a type of evidence does not alone render its introduction at the defendant's trial fundamentally unfair. See, *e. g.*, *Ventris*, 556 U. S., at 594, n. (declining to "craft a broa[d] exclusionary rule for uncorroborated statements obtained [from jailhouse snitches]," even though "rewarded informant testimony" may be inherently untrustworthy); *Dowling*, 493 U. S., at 353 (rejecting argument that the introduction of evidence concerning acquitted conduct is fundamentally unfair because such evidence is "inherently unreliable"). We reach a similar conclusion here: The fallibility of eyewitness evidence does not, without the taint of improper state conduct, warrant a due process rule requiring a trial court to screen such evidence for reliability before allowing the jury to assess its creditworthiness.

Our unwillingness to enlarge the domain of due process as Perry and the dissent urge rests, in large part, on our recognition that the jury, not the judge, traditionally determines the reliability of evidence. See *supra*, at 237. We also take account of other safeguards built into our adversary system that caution juries against placing undue weight on eyewitness testimony of questionable reliability. These protections include the defendant's Sixth Amendment right to confront the eyewitness. See *Maryland* v. *Craig*, 497 U. S. 836, 845 (1990) ("The central concern of the Confrontation Clause

is to ensure the reliability of the evidence against a criminal defendant."). Another is the defendant's right to the effective assistance of an attorney, who can expose the flaws in the eyewitness' testimony during cross-examination and focus the jury's attention on the fallibility of such testimony during opening and closing arguments. Eyewitness-specific jury instructions, which many federal and state courts have adopted,[7] likewise warn the jury to take care in appraising identification evidence. See, *e. g.*, *United States* v. *Telfaire*, 469 F. 2d 552, 558–559 (CADC 1972) *(per curiam)* (D. C. Circuit Model Jury Instructions) ("If the identification by the witness may have been influenced by the circumstances under which the defendant was presented to him for identification, you should scrutinize the identification with great care."). See also *Ventris*, 556 U. S., at 594, n. (citing jury instructions that informed jurors about the unreliability of uncorroborated jailhouse-informant testimony as a reason to

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[7] See Model Crim. Jury Instr. No. 4.15 (CA3 2009); *United States* v. *Holley*, 502 F. 2d 273, 277–278 (CA4 1974); Pattern Crim. Jury Instr. No. 1.29 (CA5 2001); Pattern Crim. Jury Instr. No. 7.11 (CA6 2011); Fed. Crim. Jury Instr. No. 3.08 (CA7 1999); Model Crim. Jury Instr. for the District Courts No. 4.08 (CA8 2011); Model Crim. Jury Instr. No. 4.11 (CA9 2010); Pattern Crim. Jury Instr. No. 1.29 (CA10 2011); Pattern Jury Instr., Crim. Cases, Spec. Instr. No. 3 (CA11 2010); Rev. Ariz. Jury Instr., Crim., No. 39 (3d ed. 2008); 1 Judicial Council of Cal., Crim. Jury Instr., No. 315 (Summer 2011); Conn. Crim. Jury Instr. No. 2.6–4 (4th ed. 2007); 2 Ga. Suggested Pattern Jury Instr., Crim. Cases, No. 1.35.10 (4th ed. 2011); Ill. Pattern Jury Instr., Crim., No. 3.15 (Supp. 2011); Pattern Instr., Kan. 3d, Crim., No. 52.20 (2011); 1 Md. Crim. Jury Instr. & Commentary §§ 2.56, 2.57(A), 2.57(B) (3d ed. 2009 and Supp. 2010); Mass. Crim. Model Jury Instr. No. 9.160 (2009); 10 Minn. Jury Instr. Guides, Crim., No. 3.19 (Supp. 2006); N. H. Crim. Jury Instr. No. 3.06 (1985); N. Y. Crim. Jury Instr. "Identification—One Witness" and "Identification—Witness Plus" (2d ed. 2011); Okla. Uniform Jury Instr., Crim., No. 9–19 (Supp. 2000); 1 Pa. Suggested Standard Crim. Jury Instr. No. 4.07B (2d ed. 2010); Tenn. Pattern Jury Instr., Crim., No. 42.05 (15th ed. 2011); Model Utah Jury Instr. CR404 (2d ed. 2011); Model Instructions from the Vt. Crim. Jury Instr. Comm. Nos. CR5–601, CR5–605 (2003); W. Va. Crim. Jury Instr. No. 5.05 (6th ed. 2003).

resist a ban on such testimony); *Dowling*, 493 U. S., at 352–353. The constitutional requirement that the government prove the defendant's guilt beyond a reasonable doubt also impedes convictions based on dubious identification evidence.

State and Federal Rules of Evidence, moreover, permit trial judges to exclude relevant evidence if its probative value is substantially outweighed by its prejudicial impact or potential for misleading the jury. See, *e. g.*, Fed. Rule Evid. 403; N. H. Rule Evid. 403 (2011). See also Tr. of Oral Arg. 19–22 (inquiring whether the standard Perry seeks differs materially from the one set out in Rule 403). In appropriate cases, some States also permit defendants to present expert testimony on the hazards of eyewitness identification evidence. See, *e. g.*, *State* v. *Clopten*, 2009 UT 84, ¶33, 223 P. 3d 1103, 1113 ("We expect . . . that in cases involving eyewitness identification of strangers or near-strangers, trial courts will routinely admit expert testimony [on the dangers of such evidence].").

Many of the safeguards just noted were at work at Perry's trial. During her opening statement, Perry's court-appointed attorney cautioned the jury about the vulnerability of Blandon's identification. App. 115a (Blandon, "the eyewitness that the State needs you to believe[,] can't pick [Perry] out of a photo array. How carefully did she really see what was going on? . . . How well could she really see him?"). While cross-examining Blandon and Officer Clay, Perry's attorney constantly brought up the weaknesses of Blandon's identification. She highlighted: (1) the significant distance between Blandon's window and the parking lot, *id.*, at 226a; (2) the lateness of the hour, *id.*, at 225a; (3) the van that partly obstructed Blandon's view, *id.*, at 226a; (4) Blandon's concession that she was "so scared [she] really didn't pay attention" to what Perry was wearing, *id.*, at 233a; (5) Blandon's inability to describe Perry's facial features or other identifying marks, *id.*, at 205a, 233a–235a; (6) Blandon's failure to pick Perry out of a photo array, *id.*, at 235a; and (7)

Perry's position next to a uniformed, gun-bearing police officer at the moment Blandon made her identification, *id.*, at 202a–205a. Perry's counsel reminded the jury of these frailties during her summation. *Id.*, at 374a–375a (Blandon "wasn't able to tell you much about who she saw . . . . She couldn't pick [Perry] out of a lineup, out of a photo array . . . . [Blandon said] [t]hat guy that was with the police officer, that's who was circling. Again, think about the context with the guns, the uniforms. Powerful, powerful context clues.").

After closing arguments, the trial court read the jury a lengthy instruction on identification testimony and the factors the jury should consider when evaluating it. *Id.*, at 399a–401a. The court also instructed the jury that the defendant's guilt must be proved beyond a reasonable doubt, *id.*, at 390a, 392a, 395a–396a, and specifically cautioned that "one of the things the State must prove [beyond a reasonable doubt] is the identification of the defendant as the person who committed the offense," *id.*, at 398a–399a.

Given the safeguards generally applicable in criminal trials, protections availed of by the defense in Perry's case, we hold that the introduction of Blandon's eyewitness testimony, without a preliminary judicial assessment of its reliability, did not render Perry's trial fundamentally unfair.

* * *

For the foregoing reasons, we agree with the New Hampshire courts' appraisal of our decisions. See *supra*, at 235–236. Finding no convincing reason to alter our precedent, we hold that the Due Process Clause does not require a preliminary judicial inquiry into the reliability of an eyewitness identification when the identification was not procured under unnecessarily suggestive circumstances arranged by law enforcement. Accordingly, the judgment of the New Hampshire Supreme Court is

Affirmed.

JUSTICE THOMAS, concurring.

The Court correctly concludes that its precedents establish a due process right to the pretrial exclusion of an unreliable eyewitness identification only if the identification results from police suggestion. I therefore join its opinion. I write separately because I would not extend *Stovall* v. *Denno*, 388 U. S. 293 (1967), and its progeny even if the reasoning of those opinions applied to this case. The *Stovall* line of cases is premised on a "substantive due process" right to "fundamental fairness." See, *e. g.*, *id.*, at 299 (concluding that whether a suggestive identification "resulted in such unfairness that it infringed [the defendant's] right to due process of law" is "open to all persons to allege and prove"); *Manson* v. *Brathwaite*, 432 U. S. 98, 113 (1977) ("The standard, after all, is that of fairness as required by the Due Process Clause of the Fourteenth Amendment"). In my view, those cases are wrongly decided because the Fourteenth Amendment's Due Process Clause is not a "secret repository of substantive guarantees against 'unfairness.'" *BMW of North America, Inc.* v. *Gore*, 517 U. S. 559, 598–599 (1996) (SCALIA, J., joined by THOMAS, J., dissenting); see also *McDonald* v. *Chicago*, 561 U. S. 742, 811 (2010) (THOMAS, J., concurring in part and concurring in judgment) ("The notion that a constitutional provision that guarantees only 'process' before a person is deprived of life, liberty, or property could define the substance of those rights strains credulity"). Accordingly, I would limit the Court's suggestive eyewitness identification cases to the precise circumstances that they involved.

JUSTICE SOTOMAYOR, dissenting.

This Court has long recognized that eyewitness identifications' unique confluence of features—their unreliability, susceptibility to suggestion, powerful impact on the jury, and resistance to the ordinary tests of the adversarial process—can undermine the fairness of a trial. Our cases thus es-

tablish a clear rule: The admission at trial of out-of-court eyewitness identifications derived from impermissibly suggestive circumstances that pose a very substantial likelihood of misidentification violates due process. The Court today announces that that rule does not even "com[e] into play" unless the suggestive circumstances are improperly "police-arranged." *Ante*, at 232, 241.

Our due process concern, however, arises not from the act of suggestion, but rather from the corrosive effects of suggestion on the reliability of the resulting identification. By rendering protection contingent on improper police arrangement of the suggestive circumstances, the Court effectively grafts a *mens rea* inquiry onto our rule. The Court's holding enshrines a murky distinction—between suggestive confrontations intentionally orchestrated by the police and, as here, those inadvertently caused by police actions—that will sow confusion. It ignores our precedents' acute sensitivity to the hazards of intentional and unintentional suggestion alike and unmoors our rule from the very interest it protects, inviting arbitrary results. And it recasts the driving force of our decisions as an interest in police deterrence, rather than reliability. Because I see no warrant for declining to assess the circumstances of this case under our ordinary approach, I respectfully dissent.[1]

I

The "driving force" behind *United States* v. *Wade*, 388 U. S. 218 (1967), *Gilbert* v. *California*, 388 U. S. 263 (1967), and *Stovall* v. *Denno*, 388 U. S. 293 (1967), was "the Court's concern with the problems of eyewitness identification"—specifically, "the concern that the jury not hear eyewitness testimony unless that evidence has aspects of reliability." *Manson* v. *Brathwaite*, 432 U. S. 98, 111–112 (1977). We

[1] Because the facts of this case involve police action, I do not reach the question whether due process is triggered in situations involving no police action whatsoever.

have pointed to the "'formidable'" number of "miscarriage[s] of justice from mistaken identification" in the annals of criminal law. *Wade*, 388 U. S., at 228. We have warned of the "vagaries" and "'proverbially untrustworthy'" nature of eyewitness identifications. *Ibid.* And we have singled out a "major factor contributing" to that proverbial unreliability: "the suggestibility inherent in the context of the pretrial identification." *Id.*, at 228, 235.

Our precedents make no distinction between intentional and unintentional suggestion. To the contrary, they explicitly state that "[s]uggestion can be created intentionally or unintentionally in many subtle ways." *Id.*, at 229. Rather than equate suggestive conduct with misconduct, we specifically have disavowed the assumption that suggestive influences may only be "the result of police procedures intentionally designed to prejudice an accused." *Id.*, at 235; see also *id.*, at 236 (noting "grave potential for prejudice, intentional or not, in the pretrial lineup"); *id.*, at 239 (describing lack of lineup regulations addressing "risks of abuse and unintentional suggestion"). "Persons who conduct the identification procedure may suggest, intentionally or unintentionally, that they expect the witness to identify the accused." *Moore* v. *Illinois*, 434 U. S. 220, 224 (1977). The implication is that even police acting with the best of intentions can inadvertently signal "'that's the man.'" *Wade*, 388 U. S., at 236; see also *Kirby* v. *Illinois*, 406 U. S. 682, 690–691 (1972) ("[I]t is always necessary to 'scrutinize *any* pretrial confrontation . . .'").[2]

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[2] *Wade* held that the dangers of pretrial identification procedures necessitated a right to counsel; that same day, *Stovall* v. *Denno*, 388 U. S. 293 (1967), held that a defendant ineligible for the *Wade* rule was still entitled to challenge the confrontation as a due process violation. Because the two were companion cases advancing interrelated rules to avoid unfairness at trial resulting from suggestive pretrial confrontations, *Wade*'s exposition of the dangers of suggestiveness informs both contexts. See *Manson* v. *Brathwaite*, 432 U. S. 98, 112 (1977) ("*Wade* and its companion cases

In *Wade* itself, we noted that the "potential for improper influence [in pretrial confrontations] is illustrated by the circumstances . . . [i]n the present case." 388 U. S., at 233–234. We then highlighted not the lineup procedure, but rather a preprocedure encounter: The two witnesses who later identified Wade in the lineup had seen Wade outside while "await[ing] assembly of the lineup." *Id.*, at 234. Wade had been standing in the hallway, which happened to be "observable to the witnesses through an open door." *Ibid.* One witness saw Wade "within sight of an FBI agent"; the other saw him "in the custody of the agent." *Ibid.* In underscoring the hazards of these circumstances, we made no mention of whether the encounter had been arranged; indeed, the facts suggest that it was not.

More generally, our precedents focus not on the act of suggestion, but on suggestion's "corrupting effect" on reliability. *Brathwaite*, 432 U. S., at 114. Eyewitness evidence derived from suggestive circumstances, we have explained, is uniquely resistant to the ordinary tests of the adversary process. An eyewitness who has made an identification often becomes convinced of its accuracy. "*Regardless of how the initial misidentification comes about*, the witness thereafter is apt to retain in his memory the image of the photograph rather than of the person actually seen, reducing the trustworthiness of subsequent . . . courtroom identification." *Simmons* v. *United States*, 390 U. S. 377, 383–384 (1968) (emphasis added); see also *Wade*, 388 U. S., at 229 (witness is "not likely" to recant). Suggestion bolsters that confidence.

At trial, an eyewitness' artificially inflated confidence in an identification's accuracy complicates the jury's task of assessing witness credibility and reliability. It also impairs the defendant's ability to attack the eyewitness' credibility. *Stovall*, 388 U. S., at 298. That in turn jeopardizes the de-

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reflect the concern that the jury not hear eyewitness testimony unless that evidence has aspects of reliability").

fendant's basic right to subject his accuser to meaningful cross-examination. See *Wade*, 388 U. S., at 235 ("[C]ross-examination . . . cannot be viewed as an absolute assurance of accuracy and reliability . . . where so many variables and pitfalls exist"). The end result of suggestion, whether intentional or unintentional, is to fortify testimony bearing directly on guilt that juries find extremely convincing and are hesitant to discredit. See *id.*, at 224 ("[A]t pretrial proceedings . . . the results might well settle the accused's fate and reduce the trial itself to a mere formality"); *Gilbert*, 388 U. S., at 273 ("[T]he witness' testimony of his lineup identification will enhance the impact of his in-court identification on the jury").

Consistent with our focus on reliability, we have declined to adopt a *per se* rule excluding all suggestive identifications. Instead, "reliability is the linchpin" in deciding admissibility. *Brathwaite*, 432 U. S., at 114. We have explained that a suggestive identification procedure "does not in itself intrude upon a constitutionally protected interest." *Id.*, at 113, n. 13; see also *Neil* v. *Biggers*, 409 U. S. 188, 198–199 (1972) (rejecting the proposition that "unnecessary suggestiveness alone requires the exclusion of evidence"). "Suggestive confrontations are disapproved because they increase the likelihood of misidentification"—and "[i]t is the likelihood of misidentification which violates a defendant's right to due process." *Id.*, at 198; see also *United States ex rel. Kirby* v. *Sturges*, 510 F. 2d 397, 406 (CA7 1975) (Stevens, J.) ("The due process clause applies only to proceedings which result in a deprivation of life, liberty or property. . . . [I]f a constitutional violation results from a showup, it occurs in the courtroom, not in the police station"). In short, "'what the *Stovall* due process right protects is an evidentiary interest.'" *Brathwaite*, 432 U. S., at 113, n. 14.

To protect that evidentiary interest, we have applied a two-step inquiry: First, the defendant has the burden of showing that the eyewitness identification was derived

through "impermissibly suggestive" means.[3] *Simmons*, 390 U. S., at 384. Second, if the defendant meets that burden, courts consider whether the identification was reliable under the totality of the circumstances. That step entails considering the witness' opportunity to view the perpetrator, degree of attention, accuracy of description, level of certainty, and the time between the crime and pretrial confrontation, then weighing such factors against the "corrupting effect of the suggestive identification." *Brathwaite*, 432 U. S., at 108, 114. Most identifications will be admissible. The standard of "fairness as required by the Due Process Clause," *id.*, at 113, however, demands that a subset of the most unreliable identifications—those carrying a "'very substantial likelihood of . . . misidentification'"—will be excluded, *Biggers*, 409 U. S., at 198.

II

A

The majority today creates a novel and significant limitation on our longstanding rule: Eyewitness identifications so impermissibly suggestive that they pose a very substantial likelihood of an unreliable identification will be deemed inadmissible at trial *only* if the suggestive circumstances were "police-arranged." *Ante*, at 232. Absent "improper police

[3] Our precedents refer to "impermissibly," "unnecessarily," and "unduly" suggestive circumstances interchangeably. See, *e. g.*, *id.*, at 105, n. 8, 107–108, 110, 112–113 ("impermissibly" and "unnecessarily"); *Neil* v. *Biggers*, 409 U. S. 188, 196–199 (1972) (same); *Coleman* v. *Alabama*, 399 U. S. 1, 3–5 (1970) (plurality opinion) ("unduly" and "impermissibly"); *Simmons* v. *United States*, 390 U. S. 377, 383–384 (1968) (same). The Circuits have followed suit. *E. g.*, *Thigpen* v. *Cory*, 804 F. 2d 893, 895 (CA6 1986) ("unduly"); *Green* v. *Loggins*, 614 F. 2d 219, 223 (CA9 1980) ("unnecessarily or impermissibly"). All reinforce our focus not on the act of suggestion, but on whether the suggestiveness rises to such a level that it undermines reliability. Police machinations can heighten the likelihood of misidentification, but they are no prerequisite to finding a confrontation "so impermissibly suggestive as to give rise to a very substantial likelihood of . . . misidentification." *Simmons*, 390 U. S., at 384.

arrangement," "improper police conduct," or "rigging," the majority holds, our two-step inquiry does not even "com[e] into play." *Ante*, at 233, 241–242. I cannot agree.

The majority does not simply hold that an eyewitness identification must be the product of police action to trigger our ordinary two-step inquiry. Rather, the majority maintains that the suggestive circumstances giving rise to the identification must be "police-arranged," "police rigg[ed]," "police-designed," or "police-organized." *Ante*, at 232, 242–243. Those terms connote a degree of intentional orchestration or manipulation. See Brief for Respondent 19 (no indication that police "deliberately tried to manipulate any evidence"); Brief for United States as *Amicus Curiae* 18 ("[N]o one deliberately arranged the circumstances to obtain an identification"). The majority categorically exempts all eyewitness identifications derived from suggestive circumstances that were not police manipulated—however suggestive, and however unreliable—from our due process check. The majority thus appears to graft a *mens rea* requirement onto our existing rule.[4]

As this case illustrates, police intent is now paramount. As the Court acknowledges, Perry alleges an "*accidental* showup." Brief for Petitioner 34 (emphasis added); see *ante*, at 235. He was the only African-American at the scene of the crime standing next to a police officer. For the majority, the fact that the police did not intend that showup, even if they inadvertently caused it in the course of a police procedure, ends the inquiry. The police were questioning the eyewitness, Blandon, about the perpetrator's identity, and

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[4] The majority denies that it has imposed a *mens rea* requirement, see *ante*, at 232, n. 1, but by confining our due process concerns to police-arranged identification procedures, that is just what it has done. The majority acknowledges that "whether or not [the police] intended the arranged procedure to be suggestive" is irrelevant under our precedents, *ante*, at 233, n. 1, but still places dispositive weight on whether or not the police intended the procedure itself.

were intentionally detaining Perry in the parking lot—but had not intended for Blandon to identify the perpetrator from her window. Presumably, in the majority's view, had the police asked Blandon to move to the window to identify the perpetrator, that could have made all the difference. See Tr. of Oral Arg. 32, 37.

I note, however, that the majority leaves what is required by its arrangement-focused inquiry less than clear. In parts, the opinion suggests that the police must arrange an identification "procedure," regardless of whether they "inten[d] the arranged procedure to be suggestive." *Ante*, at 232–233, n. 1; see also *ante*, at 237–238. Elsewhere, it indicates that the police must arrange the "suggestive circumstances" that lead the witness to identify the accused. See *ante*, at 232, 240–241, 244, 248. Still elsewhere it refers to "improper" police conduct, *ante*, at 232–233, 239–243, connoting bad faith. Does police "arrangement" relate to the procedure, the suggestiveness, or both? If it relates to the procedure, do suggestive preprocedure encounters no longer raise the same concerns? If the police need not "inten[d] the arranged procedure to be suggestive," *ante*, at 233, n. 1, what makes the police action "improper"? And does that mean that good-faith, unintentional police suggestiveness in a police-arranged lineup can be "impermissibly suggestive"? If no, the majority runs headlong into *Wade*. If yes, on what basis—if not deterrence—does it distinguish unintentional police suggestiveness in an accidental confrontation?

The arrangement-focused inquiry will sow needless confusion. If the police had called Perry and Blandon to the police station for interviews, and Blandon saw Perry being questioned, would that be sufficiently "improper police arrangement"? If Perry had voluntarily come to the police station, would that change the result? Today's opinion renders the applicability of our ordinary inquiry contingent on a murky line-drawing exercise. Whereas our two-step inquiry focuses on overall reliability—and could account for

the spontaneity of the witness' identification and degree of police manipulation under the totality of the circumstances—today's opinion forecloses that assessment by establishing a new and inflexible step zero.

B

The majority regards its limitation on our two-step rule as compelled by precedent. Its chief rationale, *ante*, at 237–243, is that none of our prior cases involved situations where the police "did not arrange the suggestive circumstances." *Ante*, at 240; see also *ante*, at 232, n. 1. That is not necessarily true, given the seemingly unintentional encounter highlighted in *Wade*. But even if it were true, it is unsurprising. The vast majority of eyewitness identifications that the State uses in criminal prosecutions are obtained in lineup, showup, and photograph displays arranged by the police. Our precedents reflect that practical reality.

It is also beside the point. Our due process concerns were not predicated on the source of suggestiveness. Rather, "[i]t is the likelihood of misidentification which violates a defendant's right to due process," *Biggers*, 409 U. S., at 198, and we are concerned with suggestion insofar as it has "corrupting effect[s]" on the identification's reliability, *Brathwaite*, 432 U. S., at 114. Accordingly, whether the police have created the suggestive circumstances intentionally or inadvertently, the resulting identification raises the same due process concerns. It is no more or less likely to misidentify the perpetrator. It is no more or less powerful to the jury. And the defendant is no more or less equipped to challenge the identification through cross-examination or prejudiced at trial. The arrangement-focused inquiry thus untethers our doctrine from the very "'evidentiary interest'" it was designed to protect, inviting arbitrary results. *Id.*, at 113, n. 14.

Indeed, it is the majority's approach that lies in tension with our precedents. Whereas we previously disclaimed the

crabbed view of suggestiveness as "the result of police procedures intentionally designed to prejudice an accused," *Wade*, 388 U. S., at 235, the majority's focus on police rigging and improper conduct will revive it. Whereas our precedents were sensitive to intentional and unintentional suggestiveness alike, see *supra*, at 251–252, today's decision narrows our concern to intentionally orchestrated suggestive confrontations. We once described the "primary evil to be avoided" as the likelihood of misidentification. *Biggers*, 409 U. S., at 198. Today's decision, however, means that even if that primary evil is at its apex, we need not avoid it at all so long as the suggestive circumstances do not stem from improper police arrangement.

C

The majority gives several additional reasons for why applying our due process rule beyond improperly police-arranged circumstances is unwarranted. In my view, none withstands close inspection.

First, the majority insists that our precedents "aim to deter police from rigging identification procedures," so our rule should be limited to applications that advance that "primary aim" and "key premise." *Ante*, at 233, 241 (citing *Brathwaite*, 432 U. S., at 112). That mischaracterizes our cases. We discussed deterrence in *Brathwaite* because Brathwaite challenged our two-step inquiry as *lacking* deterrence value. Brathwaite argued that deterrence demanded a *per se* rule excluding all suggestive identifications. He said that our rule, which probes the reliability of suggestive identifications under the totality of the circumstances, "cannot be expected to have a significant deterrent impact." *Id.*, at 111.

We rebutted Brathwaite's criticism in language the majority now wrenches from context: Upon summarizing Brathwaite's argument, we acknowledged "several interests to be considered." *Ibid.* We then compared the two rules under each interest: First, we noted the "driving force" behind *Wade* and its companion cases—"the concern that the jury

not hear eyewitness testimony unless that evidence has aspects of reliability"—and found both approaches "responsive to this concern," but the *per se* rule to go "too far" in suppressing reliable evidence. 432 U. S., at 111–112. We noted a "second factor"—deterrence—conceding that the *per se* rule had "more significant deterrent effect," but noting that our rule "also has an influence on police behavior." *Id.*, at 112. Finally, we noted a "third factor"—"the effect on the administration of justice"—describing the *per se* rule as having serious drawbacks on this front. *Ibid.* That was no list of "primary aim[s]." Nor was it a ringing endorsement of the primacy of deterrence. We simply underscored, in responding to Brathwaite, that our rule was not without deterrence benefits. To the contrary, we clarified that deterrence was a subsidiary concern to reliability, the "driving force" of our doctrine. It is a stretch to claim that our rule cannot apply wherever "[t]his deterrence rationale is inapposite." *Ante*, at 242.

Second, the majority states that *Coleman* v. *Alabama*, 399 U. S. 1 (1970), held that "[n]o due process violation occurred . . . because nothing 'the police said or did prompted'" the identification and shows that our rule is linked "only to improper police arrangement." *Ante*, at 242. That misreads the decision. In *Coleman*, the petitioners challenged a witness' in-court identification of them at trial on grounds that it had been tainted by a suggestive pretrial lineup. We held that no due process violation occurred because the in-court identification appeared to be "entirely based upon observations at the time of the assault and not at all induced by the conduct of the lineup," and thus could not be said to stem from an identification procedure "'so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.'" 399 U. S., at 5–6 (plurality opinion). We then dismissed each of the asserted suggestive influences as having had no bearing on the identification at all: The petitioners claimed that the police intimated to the

witness that his attackers were in the lineup; we found the record "devoid of evidence that anything the police said or did" induced the identification. *Id.*, at 6. The petitioners claimed that they alone were made to say certain words; we found that the witness identified petitioners before either said anything. One petitioner claimed he was singled out to wear a hat; we found that the witness' identification "d[id] not appear . . . based on the fact that he remembered that [the attacker] had worn a hat." *Ibid.* Thus, far from indicating that improper police conduct is a prerequisite, *Coleman* merely held that there had been no influence on the witness. In fact, in concluding that the lineup was not "'so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification,'" *Coleman* indicates that the two-step inquiry is not truncated at the threshold by the absence of police misconduct.

Third, the majority emphasizes that we should rely on the jury to determine the reliability of evidence. See *ante*, at 245–247. But our cases are rooted in the assumption that eyewitness identifications upend the ordinary expectation that it is "the province of the jury to weigh the credibility of competing witnesses." *Kansas* v. *Ventris*, 556 U. S. 586, 594, n. (2009). As noted, jurors find eyewitness evidence unusually powerful and their ability to assess credibility is hindered by a witness' false confidence in the accuracy of his or her identification. That disability in no way depends on the intent behind the suggestive circumstances.

The majority's appeals to protecting the jury's domain, moreover, appeared in dissent after dissent from our decisions. See *Foster* v. *California*, 394 U. S. 440, 447 (1969) (Black, J., dissenting) ("[T]he jury is the sole tribunal to weigh and determine facts" and "must . . . be allowed to hear eyewitnesses and decide for itself whether it can recognize the truth"); *Simmons*, 390 U. S., at 395 (Black, J., concurring in part and dissenting in part) ("The weight of the evidence . . . is not a question for the Court but for the jury"). So

too does the majority's assurance that other constitutional protections like the Sixth Amendment rights to compulsory process and confrontation can suffice to expose unreliable identifications. Compare *ante*, at 237, with *Foster*, 394 U. S., at 448–449 (Black, J., dissenting) ("The Constitution sets up its own standards of unfairness in criminal trials," including the Sixth Amendment "right to compulsory process" and "right to confront . . . witnesses"). So too does the majority's appeal to leave reliability to the rules of evidence. Compare *ante*, at 247, with *Foster*, 394 U. S., at 448 (Black, J., dissenting) (" 'Rules of evidence are designed in the interests of fair trials' "), and *Stovall*, 388 U. S., at 306 (Black, J., dissenting) ("[T]he result . . . is to put into a constitutional mould a rule of evidence"). Those arguments did not prevail then; they should not prevail here.

Fourth, the majority suggests that applying our rule beyond police-arranged suggestive circumstances would entail a heavy practical burden, requiring courts to engage in "preliminary judicial inquiry" into "most, if not all, eyewitness identifications." *Ante*, at 243, 248. But that is inaccurate. The burden of showing "impermissibly suggestive" circumstances is the defendant's, so the objection falls to the defendant to raise. And as is implicit in the majority's reassurance that Perry may resort to the rules of evidence in lieu of our due process precedents, trial courts will be entertaining defendants' objections, pretrial or at trial, to unreliable eyewitness evidence in any event. The relevant question, then, is what the standard of admissibility governing such objections should be. I see no reason to water down the standard for an equally suggestive and unreliable identification simply because the suggestive confrontation was unplanned.

It bears reminding, moreover, that we set a high bar for suppression. The vast majority of eyewitnesses proceed to testify before a jury. To date, *Foster* is the only case in which we have found a due process violation. 394 U. S., at

443. There has been no flood of claims in the four Federal Circuits that, having seen no basis for an arrangement-based distinction in our precedents, have long indicated that due process scrutiny applies to all suggestive identification procedures. See *Dunnigan* v. *Keane*, 137 F. 3d 117, 128 (CA2 1998); *United States* v. *Bouthot*, 878 F. 2d 1506, 1516 (CA1 1989); *Thigpen* v. *Cory*, 804 F. 2d 893, 895 (CA6 1986); see also *Green* v. *Loggins*, 614 F. 2d 219, 223 (CA9 1980). Today's decision nonetheless precludes even the possibility that an unintended confrontation will meet that bar, mandating summary dismissal of every such claim at the threshold.

Finally, the majority questions how to "rationally distinguish suggestiveness from other factors bearing on the reliability of eyewitness evidence," such as "poor vision" or a prior "grudge," *ante*, at 244, and more broadly, how to distinguish eyewitness evidence from other kinds of arguably unreliable evidence, *ante*, at 244–245. Our precedents, however, did just that. We emphasized the "'formidable number of instances in the records of English and American trials'" of "miscarriage[s] of justice from mistaken identification." *Wade*, 388 U. S., at 228. We then observed that "'[t]he influence of improper suggestion upon identifying witnesses probably accounts for more miscarriages of justice than any other single factor.'" *Id.*, at 229. Moreover, the majority points to no other type of evidence that shares the rare confluence of characteristics that makes eyewitness evidence a unique threat to the fairness of trial. Jailhouse informants, cf. *ante*, at 245, unreliable as they may be, are not similarly resistant to the traditional tools of the adversarial process and, if anything, are met with particular skepticism by juries.

It would be one thing if the passage of time had cast doubt on the empirical premises of our precedents. But just the opposite has happened. A vast body of scientific literature

has reinforced every concern our precedents articulated nearly a half century ago, though it merits barely a parenthetical mention in the majority opinion. *Ante*, at 244–245. Over the past three decades, more than 2,000 studies related to eyewitness identification have been published. One State Supreme Court recently appointed a Special Master to conduct an exhaustive survey of the current state of the scientific evidence and concluded that "[t]he research . . . is not only extensive," but "it represents the 'gold standard in terms of the applicability of social science research to the law.'" *State* v. *Henderson*, 208 N. J. 208, 283, 27 A. 3d 872, 916 (2011). "Experimental methods and findings have been tested and retested, subjected to scientific scrutiny through peer-reviewed journals, evaluated through the lens of meta-analyses, and replicated at times in real-world settings." *Ibid.;* see also Schmechel, O'Toole, Easterly, & Loftus, Beyond the Ken? Testing Jurors' Understanding of Eyewitness Reliability Evidence, 46 Jurimetrics 177, 180 (2006) (noting "nearly unanimous consensus among researchers about the [eyewitness reliability] field's core findings").

The empirical evidence demonstrates that eyewitness misidentification is "'the single greatest cause of wrongful convictions in this country.'"[5] Researchers have found that a staggering 76% of the first 250 convictions overturned due to DNA evidence since 1989 involved eyewitness misidenti-

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[5] *State* v. *Henderson*, 208 N. J. 208, 231, 27 A. 3d 872, 885 (2011); see also, *e. g., Benn* v. *United States*, 978 A. 2d 1257, 1266 (D. C. 2009); *State* v. *Dubose*, 2005 WI 126, ¶¶29–32, 285 Wis. 2d 143, 162–164, 699 N. W. 2d 582, 592; Dept. of Justice, Office of Justice Programs, E. Connors, T. Lundregan, N. Miller, & T. McEwen, Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence To Establish Innocence After Trial 24 (1996); B. Cutler & S. Penrod, Mistaken Identification: The Eyewitness, Psychology, and the Law 8 (1995); Wells & Bradfield, "Good, You Identified the Suspect": Feedback to Eyewitnesses Distorts Their Reports of the Witnessing Experience, 83 J. Applied Psychology 360 (1998).

fication.[6] Study after study demonstrates that eyewitness recollections are highly susceptible to distortion by post-event information or social cues;[7] that jurors routinely overestimate the accuracy of eyewitness identifications;[8] that jurors place the greatest weight on eyewitness confidence in assessing identifications[9] even though confidence is a poor gauge of accuracy;[10] and that suggestiveness can stem from sources beyond police-orchestrated procedures.[11] The majority today nevertheless adopts an artificially narrow con-

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[6] B. Garrett, Convicting the Innocent: Where Criminal Prosecutions Go Wrong 9, 48, 279 (2011); see also, *e. g.*, Innocence Project, Facts on Post-Conviction DNA Exonerations (75% of postconviction DNA exoneration cases in the U. S. involved eyewitness misidentification), http://www.innocenceproject.org/Content/Facts_on_PostConviction_DNA_Exonerations.php (as visited Jan. 11, 2012, and available in Clerk of Court's case file); Dept. of Justice, National Institute of Justice, Eyewitness Evidence: A Guide for Law Enforcement, p. iii (1999) (85% of 28 felony convictions overturned on DNA evidence involved eyewitness misidentification).

[7] See, *e. g.*, Gabbert, Memon, Allan, & Wright, Say It to My Face: Examining the Effects of Socially Encountered Misinformation, 9 Legal & Criminological Psychology 215 (2004); Douglass & Steblay, Memory Distortion in Eyewitnesses: A Meta-Analysis of the Post-Identification Feedback Effect, 20 Applied Cognitive Psychology 859, 864–865 (2006).

[8] See Brigham & Bothwell, The Ability of Prospective Jurors To Estimate the Accuracy of Eyewitness Identifications, 7 Law & Human Behavior 19, 22–24, 28 (1983) (nearly 84% of study respondents overestimated accuracy rates of identifications); see also, *e. g.*, Sigler & Couch, Eyewitness Testimony and the Jury Verdict, 4 N. Am. J. Psychology 143, 146 (2002).

[9] See Cutler & Penrod, Mistaken Identification, at 181–209; Lindsay, Wells, & Rumpel, Can People Detect Eyewitness-Identification Accuracy Within and Across Situations? 66 J. Applied Psychology 79, 83 (1981).

[10] See Brewer, Keast, & Rishworth, The Confidence-Accuracy Relationship in Eyewitness Identification, 8 J. Experimental Psychology: Applied 44, 44–45 (2002) ("average confidence-accuracy correlations generally estimated between little more than 0 and .29"); see also, *e. g.*, Sporer, Penrod, Read, & Cutler, Choosing, Confidence, and Accuracy: A Meta-Analysis of the Confidence-Accuracy Relation in Eyewitness Identification Studies, 118 Psychological Bull. 315 (1995).

[11] See Brief for Wilton Dedge et al. as *Amici Curiae* 8, n. 13.

ception of the dangers of suggestive identifications at a time when our concerns should have deepened.

III

There are many reasons why Perry's particular situation might not violate due process. The trial court found that the circumstances surrounding Blandon's identification did not rise to an impermissibly suggestive level. It is not at all clear, moreover, that there was a very substantial likelihood of misidentification, given Blandon's lack of equivocation on the scene, the short time between crime and confrontation, and the "fairly well lit" parking lot. App. 56. The New Hampshire Supreme Court, however, never made findings on either point and, under the majority's decision today, never will.

* * *

The Court's opinion today renders the defendant's due process protection contingent on whether the suggestive circumstances giving rise to the eyewitness identification stem from improper police arrangement. That view lies in tension with our precedents' more holistic conception of the dangers of suggestion and is untethered from the evidentiary interest the due process right protects. In my view, the ordinary two-step inquiry should apply, whether the police created the suggestive circumstances intentionally or inadvertently. Because the New Hampshire Supreme Court truncated its inquiry at the threshold, I would vacate the judgment and remand for a proper analysis. I respectfully dissent.

Syllabus

MAPLES *v.* THOMAS, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS

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

No. 10–63. Argued October 4, 2011—January 18, 2012

Petitioner Cory R. Maples was found guilty of murder and sentenced to death in Alabama state court. In 2001, Maples sought postconviction relief in state court under Alabama Rule of Criminal Procedure 32. Maples alleged, among other things, that his underpaid and inexperienced trial attorneys failed to afford him the effective assistance guaranteed by the Sixth Amendment. His petition was written by two *pro bono* attorneys, Jaasi Munanka and Clara Ingen-Housz, both associated with the New York offices of the Sullivan & Cromwell law firm. As required by Alabama law, the two attorneys engaged an Alabama lawyer, John Butler, to move their admission *pro hac vice*. Butler made clear, however, that he would undertake no substantive involvement in the case.

In 2002, while Maples' state postconviction petition was pending, Munanka and Ingen-Housz left Sullivan & Cromwell. Their new employment disabled them from representing Maples. They did not inform Maples of their departure and consequent inability to serve as his counsel. In disregard of Alabama law, neither sought the trial court's leave to withdraw. No other Sullivan & Cromwell attorney entered an appearance, moved to substitute counsel, or otherwise notified the court of a change in Maples' representation. Thus, Munanka, Ingen-Housz, and Butler remained Maples' listed, and only, attorneys of record.

The trial court denied Maples' petition in May 2003. Notices of the order were posted to Munanka and Ingen-Housz at Sullivan & Cromwell's address. When those postings were returned, unopened, the trial court clerk attempted no further mailing. Butler also received a copy of the order, but did not act on it. With no attorney of record in fact acting on Maples' behalf, the 42-day period Maples had to file a notice of appeal ran out.

About a month later, an Alabama Assistant Attorney General sent a letter directly to Maples. The letter informed Maples of the missed deadline and notified him that he had four weeks remaining to file a federal habeas petition. Maples immediately contacted his mother, who called Sullivan & Cromwell. Three Sullivan & Cromwell attorneys, through Butler, moved the trial court to reissue its order, thereby re-

starting the 42-day appeal period. The court denied the motion. The Alabama Court of Criminal Appeals then denied a writ of mandamus that would have granted Maples leave to file an out-of-time appeal, and the State Supreme Court affirmed.

Thereafter, Maples sought federal habeas relief. Both the District Court and the Eleventh Circuit denied his request, pointing to the procedural default in state court, *i. e.*, Maples' failure timely to appeal the state trial court's order denying his Rule 32 petition for postconviction relief.

Held: Maples has shown the requisite "cause" to excuse his procedural default. Pp. 280–290.

(a) As a rule, a federal court may not entertain a state prisoner's habeas claims "when (1) 'a state court [has] declined to address [those] 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.'" *Walker* v. *Martin*, 562 U. S. 307, 316. The bar to federal review may be lifted, however, if "the prisoner can demonstrate cause for the [procedural] default [in state court] and actual prejudice as a result of the alleged violation of federal law." *Coleman* v. *Thompson*, 501 U. S. 722, 750.

Cause for a procedural default exists where "something *external* to the petitioner, something that cannot fairly be attributed to him[,] . . . 'impeded [his] efforts to comply with the State's procedural rule.'" *Id.*, at 753. A prisoner's postconviction attorney's negligence does not qualify as "cause," *ibid.*, because the attorney is the prisoner's agent, and under "well-settled" agency law, the principal bears the risk of his agent's negligent conduct, *id.*, at 753–754. Thus, a petitioner is bound by his attorney's failure to meet a filing deadline and cannot rely on that failure to establish cause. *Ibid.*

A markedly different situation arises, however, when an attorney abandons his client without notice, and thereby occasions the default. In such cases, the principal-agent relationship is severed and the attorney's acts or omissions "cannot fairly be attributed to [the client]." *Id.*, at 753. Nor can the client be faulted for failing to act on his own behalf when he lacks reason to believe his attorneys of record, in fact, are not representing him.

Holland v. *Florida*, 560 U. S. 631, is instructive. There, the Court found that the one-year deadline for filing a federal habeas petition can be tolled for equitable reasons, and that an attorney's unprofessional conduct may sometimes be an "extraordinary circumstance" justifying equitable tolling. *Id.*, at 649, 651. The Court recognized that an attorney's negligence does not provide a basis for tolling a statutory time

limit. *Id.*, at 651–652. Holland's claim that he was abandoned by his attorney, however, if true, "would suffice to establish extraordinary circumstances beyond his control," *id.*, at 659 (opinion of ALITO, J.). Pp. 280–283.

(b) From the time of his initial Rule 32 petition until well after time ran out for appealing the trial court's denial of that petition, Maples' sole attorneys of record were Munanka, Ingen-Housz, and Butler. Unknown to Maples, none of those lawyers was in fact serving as his attorney during the 42-day appeal period. Pp. 283–289.

(1) The State contends that Sullivan & Cromwell represented Maples throughout his state postconviction proceedings, and that, as a result, Maples cannot establish abandonment by counsel during the 42-day period. But it is undisputed that Munanka and Ingen-Housz severed their agency relationship with Maples long before the default occurred. Furthermore, because the attorneys did not seek the trial court's permission to withdraw, they allowed court records to convey that they remained the attorneys of record. As such, the attorneys, not Maples, would be the addressees of court orders Alabama law requires the clerk to furnish.

The State asserts that, after Munanka's and Ingen-Housz's departure, other Sullivan & Cromwell attorneys came forward to serve as Maples' counsel. At the time of the default, however, those attorneys had not been admitted to practice in Alabama, had not entered their appearances on Maples' behalf, and had done nothing to inform the Alabama court that they wished to substitute for Munanka and Ingen-Housz. Thus, they lacked the legal authority to act on Maples' behalf before his time to appeal expired. Pp. 283–287.

(2) Maples' only other attorney of record, local counsel Butler, did not even begin to represent Maples. Butler told Munanka and Ingen-Housz that he would serve as local counsel only for the purpose of enabling them to appear *pro hac vice* and would play no substantive role in the case. Other factors confirm that Butler was not Maples' "agent in any meaningful sense of that word." *Holland*, 560 U. S., at 659 (opinion of ALITO, J.). Upon receiving a copy of the trial court's order, Butler did not contact Sullivan & Cromwell to ensure that firm lawyers were taking appropriate action. Nor did the State treat Butler as Maples' actual representative. Notably, the Alabama Assistant Attorney General wrote directly and only to Maples, notwithstanding an ethical obligation to refrain from communicating directly with an opposing party known to be represented by counsel. Pp. 287–288.

(3) Not only was Maples left without any functioning attorney of record; the very listing of Munanka, Ingen-Housz, and Butler as his representatives meant that he had no right personally to receive notice. He in fact received none within the 42 days allowed for commencing an

appeal. Given no reason to suspect that he lacked counsel able and willing to represent him, Maples surely was blocked from complying with the State's procedural rule. Pp. 288–289.

(c) "The cause and prejudice requirement shows due regard for States' finality and comity interests while ensuring that 'fundamental fairness [remains] the central concern of the writ of habeas corpus.'" *Dretke* v. *Haley*, 541 U. S. 386, 393. In the unusual circumstances of this case, agency law principles and fundamental fairness point to the same conclusion: There was indeed cause to excuse Maples' procedural default. Through no fault of his own, he lacked the assistance of any authorized attorney during the 42-day appeal period. And he had no reason to suspect that, in reality, he had been reduced to *pro se* status. P. 289.

(d) The question of prejudice, which neither the District Court nor the Eleventh Circuit reached, remains open for decision on remand. P. 290.

586 F. 3d 879, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, BREYER, ALITO, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed a concurring opinion, *post*, p. 290. SCALIA, J., filed a dissenting opinion, in which THOMAS, J., joined, *post*, p. 292.

Gregory G. Garre argued the cause for petitioner. With him on the briefs were *J. Scott Ballenger* and *Derek D. Smith*.

John C. Neiman, Jr., Solicitor General of Alabama, argued the cause for respondent. With him on the brief were *Luther Strange*, Attorney General, *William G. Parker, Jr.*, Assistant Attorney General, and *Nicholas Q. Rosenkranz*, Deputy Attorney General.*

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*Briefs of *amici curiae* urging reversal were filed for The Constitution Project et al. by *Jonathan S. Franklin, Mark Emery, Virginia E. Sloan, Timothy Lynch,* and *Ilya Shapiro;* for Former Alabama Appellate Court Justices et al. by *Lisa W. Borden;* for the NAACP Legal Defense & Educational Fund, Inc., by *John Payton, Debo P. Adegbile, Christina Swarns, Joshua Civin,* and *Samuel Spital;* for the National Association of Criminal Defense Lawyers et al. by *Lisa S. Blatt, Anthony J. Franze, Steven R. Shapiro,* and *Jonathan Hacker;* and for Deborah A. DeMott by *Walter Dellinger, Anton Metlitsky,* and *Ms. DeMott, pro se.*

Briefs of *amici curiae* urging affirmance were filed for the State of Texas et al. by *Greg Abbott,* Attorney General of Texas, *Daniel T. Hodge,*

JUSTICE GINSBURG delivered the opinion of the Court.

Cory R. Maples is an Alabama capital prisoner sentenced to death in 1997 for the murder of two individuals. At trial, he was represented by two appointed lawyers, minimally paid and with scant experience in capital cases. Maples sought postconviction relief in state court, alleging ineffective assistance of counsel and several other trial infirmities. His petition, filed in August 2001, was written by two New York attorneys serving *pro bono*, both associated with the same New York-based large law firm. An Alabama attorney, designated as local counsel, moved the admission of the out-of-state counsel *pro hac vice*. As understood by New York counsel, local counsel would facilitate their appearance, but would undertake no substantive involvement in the case.

In the summer of 2002, while Maples' postconviction petition remained pending in the Alabama trial court, his New York attorneys left the law firm; their new employment disabled them from continuing to represent Maples. They did not inform Maples of their departure and consequent inability to serve as his counsel. Nor did they seek the Alabama trial court's leave to withdraw. Neither they nor anyone

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First Assistant Attorney General, *Don Clemmer*, Deputy Attorney General, *Jonathan F. Mitchell*, Solicitor General, and *Adam W. Aston*, Assistant Solicitor General, and by the Attorneys General for their respective States as follows: *Tom Horne* of Arizona, *Joseph R. Biden III* of Delaware, *Pamela Jo Bondi* of Florida, *Samuel S. Olens* of Georgia, *Lawrence G. Wasden* of Idaho, *James D. "Buddy" Caldwell* of Louisiana, *Jim Hood* of Mississippi, *Jon Bruning* of Nebraska, *Gary K. King* of New Mexico, *E. Scott Pruitt* of Oklahoma, *Linda L. Kelly* of Pennsylvania, *Alan Wilson* 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 *Gregory A. Phillips* of Wyoming; and for the Criminal Justice Legal Foundation by *Kent S. Scheidegger*.

Briefs of *amici curiae* were filed for the Alabama Criminal Defense Lawyers Association by *Wayne Morse, Jr.*, and *Susan J. Walker;* and for Legal Ethics Professors et al. by *Lawrence J. Fox* and *Susan D. Reece Martyn*, both *pro se*.

else moved for the substitution of counsel able to handle Maples' case.

In May 2003, the Alabama trial court denied Maples' petition. Notices of the court's order were posted to the New York attorneys at the address of the law firm with which they had been associated. Those postings were returned, unopened, to the trial court clerk, who attempted no further mailing. With no attorney of record in fact acting on Maples' behalf, the time to appeal ran out.

Thereafter, Maples petitioned for a writ of habeas corpus in federal court. The District Court and, in turn, the Eleventh Circuit, rejected his petition, pointing to the procedural default in state court, *i. e.*, Maples' failure timely to appeal the Alabama trial court's order denying him postconviction relief. Maples, it is uncontested, was blameless for the default.

The sole question this Court has taken up for review is whether, on the extraordinary facts of Maples' case, there is "cause" to excuse the default. Maples maintains that there is, for the lawyers he believed to be vigilantly representing him had abandoned the case without leave of court, without informing Maples they could no longer represent him, and without securing any recorded substitution of counsel. We agree. Abandoned by counsel, Maples was left unrepresented at a critical time for his state postconviction petition, and he lacked a clue of any need to protect himself *pro se*. In these circumstances, no just system would lay the default at Maples' death-cell door. Satisfied that the requisite cause has been shown, we reverse the Eleventh Circuit's judgment.

I

A

Alabama sets low eligibility requirements for lawyers appointed to represent indigent capital defendants at trial. American Bar Association, Evaluating Fairness and Accu-

racy in State Death Penalty Systems: The Alabama Death Penalty Assessment Report 117–120 (June 2006) (hereinafter ABA Report); Brief for Former Alabama Appellate Court Justices et al. as *Amici Curiae* 7–8 (hereinafter Former Justices Brief). Appointed counsel need only be a member of the Alabama Bar and have "five years' prior experience in the active practice of criminal law." Ala. Code § 13A–5–54 (2006). Experience with capital cases is not required. Former Justices Brief 7–8. Nor does the State provide, or require appointed counsel to gain, any capital-case-specific professional education or training. ABA Report 129–131; Former Justices Brief 14–16.

Appointed counsel in death penalty cases are also undercompensated. ABA Report 124–129; Former Justices Brief 12–14. Until 1999, the State paid appointed capital defense attorneys just "$40.00 per hour for time expended in court and $20.00 per hour for time reasonably expended out of court in the preparation of [the defendant's] case." Ala. Code § 15–12–21(d) (1995). Although death penalty litigation is plainly time intensive,[1] the State capped at $1,000 fees recoverable by capital defense attorneys for out-of-court work. *Ibid.*[2] Even today, court-appointed attorneys receive only $70 per hour. § 15–12–21(d) (2011).

Nearly alone among the States, Alabama does not guarantee representation to indigent capital defendants in postconviction proceedings. ABA Report 111–112, 158–160;

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[1] One study of federal capital trials from 1990 to 1997 found that defense attorneys spent an average of 1,480 out-of-court hours preparing a defendant's case. Subcommittee on Federal Death Penalty Cases, Committee on Defender Services, Judicial Conference of the United States, Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation 14 (May 1998).

[2] In 1999, the State removed the cap on fees for out-of-court work in capital cases. Ala. Code § 15–12–21(d) (2010 Cum. Supp.). Perhaps not coincidentally, 70% of the inmates on Alabama's death row in 2006, including Maples, had been convicted when the $1,000 cap was in effect. ABA Report 126.

Former Justices Brief 33. The State has elected, instead, "to rely on the efforts of typically well-funded [out-of-state] volunteers." Brief in Opposition in *Barbour* v. *Allen*, O. T. 2006, No. 06–10605, p. 23. Thus, as of 2006, 86% of the attorneys representing Alabama's death row inmates in state collateral review proceedings "either worked for the Equal Justice Initiative (headed by NYU Law professor Bryan Stevenson), out-of-state public interest groups like the Innocence Project, or an out-of-state mega-firm." Brief in Opposition 16, n. 4. On occasion, some prisoners sentenced to death receive no postconviction representation at all. See ABA Report 112 ("[A]s of April 2006, approximately fifteen of Alabama's death row inmates in the final rounds of state appeals had no lawyer to represent them.").

B

This system was in place when, in 1997, Alabama charged Maples with two counts of capital murder; the victims, Stacy Alan Terry and Barry Dewayne Robinson II, were Maples' friends who, on the night of the murders, had been out on the town with him. Maples pleaded not guilty, and his case proceeded to trial, where he was represented by two court-appointed Alabama attorneys. Only one of them had earlier served in a capital case. See Tr. 3081. Neither counsel had previously tried the penalty phase of a capital case. Compensation for each lawyer was capped at $1,000 for time spent out of court preparing Maples' case, and at $40 per hour for in-court services. See Ala. Code § 15–12–21 (1995).

Finding Maples guilty on both counts, the jury recommended that he be sentenced to death. The vote was 10 to 2, the minimum number Alabama requires for a death recommendation. See Ala. Code § 13A–5–46(f) (1994) ("The decision of the jury to recommend a sentence of death must be based on a vote of at least 10 jurors."). Accepting the jury's recommendation, the trial court sentenced Maples to death.

On direct appeal, the Alabama Court of Criminal Appeals and the Alabama Supreme Court affirmed the convictions and sentence. *Ex parte Maples*, 758 So. 2d 81 (Ala. 1999); *Maples* v. *State*, 758 So. 2d 1 (Ala. Crim. App. 1999). We denied certiorari. *Maples* v. *Alabama*, 531 U. S. 830 (2000).

Two out-of-state volunteers represented Maples in postconviction proceedings: Jaasi Munanka and Clara Ingen-Housz, both associates at the New York offices of the Sullivan & Cromwell law firm. At the time, Alabama required out-of-state attorneys to associate local counsel when seeking admission to practice *pro hac vice* before an Alabama court, regardless of the nature of the proceeding. Rule Governing Admission to the Ala. State Bar VII (2000) (hereinafter Rule VII).[3] The Alabama Rule further prescribed that the local attorney's name "appear on all notices, orders, pleadings, and other documents filed in the cause," and that local counsel "accept joint and several responsibility with the foreign attorney to the client, to opposing parties and counsel, and to the court or administrative agency in all matters [relating to the case]." Rule VII(C).

Munanka and Ingen-Housz associated Huntsville, Alabama, attorney John Butler as local counsel. Notwithstanding his obligations under Alabama law, Butler informed Munanka and Ingen-Housz, "at the outset," that he would serve as local counsel only for the purpose of allowing the two New York attorneys to appear *pro hac vice* on behalf of Maples. App. to Pet. for Cert. 255a. Given his lack of "resources, available time [and] experience," Butler told the Sullivan & Cromwell lawyers, he could not "deal with substantive issues in the case." *Ibid.* The Sullivan & Cromwell attorneys accepted Butler's conditions. *Id.*, at 257a. This arrangement between out-of-state and local attorneys, it appears, was

[3] In 2006, Alabama revised Rule VII. See Rule Governing Admission to the Ala. State Bar VII (2009). Under the new rule, the State allows out-of-state counsel to represent *pro bono* indigent criminal defendants in postconviction proceedings without involvement of local counsel. *Ibid.*

hardly atypical. See Former Justices Brief 36 ("The fact is that local counsel for out-of-state attorneys in postconviction litigation most often do nothing other than provide the mechanism for foreign attorneys to be admitted.").

With the aid of his *pro bono* counsel, Maples filed a petition for postconviction relief under Alabama Rule of Criminal Procedure 32.[4] Among other claims, Maples asserted that his court-appointed attorneys provided constitutionally ineffective assistance during both guilt and penalty phases of his capital trial. App. 29–126. He alleged, in this regard, that his inexperienced and underfunded attorneys failed to develop and raise an obvious intoxication defense, did not object to several egregious instances of prosecutorial misconduct, and woefully underprepared for the penalty phase of his trial. The State responded by moving for summary dismissal of Maples' petition. On December 27, 2001, the trial court denied the State's motion.

Some seven months later, in the summer of 2002, both Munanka and Ingen-Housz left Sullivan & Cromwell. App. to Pet. for Cert. 258a. Munanka gained a clerkship with a federal judge; Ingen-Housz accepted a position with the European Commission in Belgium. *Ibid.* Neither attorney told Maples of their departure from Sullivan & Cromwell or of their resulting inability to continue to represent him. In disregard of Alabama law, see Ala. Rule Crim. Proc. 6.2, Comment, neither attorney sought the trial court's leave to withdraw, App. to Pet. for Cert. 223a. Compounding Munanka's and Ingen-Housz's inaction, no other Sullivan & Cromwell lawyer entered an appearance on Maples' behalf, moved to substitute counsel, or otherwise notified the court of any change in Maples' representation. *Ibid.*

Another nine months passed. During this time period, no Sullivan & Cromwell attorneys assigned to Maples' case sought admission to the Alabama Bar, entered appearances

[4] Originally filed in August 2001, the petition was resubmitted, with only minor alterations, in December 2001. See App. 22–24, 28–142.

on Maples' behalf, or otherwise advised the Alabama court that Munanka and Ingen-Housz were no longer Maples' attorneys. Thus, Munanka and Ingen-Housz (along with Butler) remained Maples' listed, and only, "attorneys of record." *Ibid.*

There things stood when, in May 2003, the trial court, without holding a hearing, entered an order denying Maples' Rule 32 petition. App. 146–225.[5] The clerk of the Alabama trial court mailed copies of the order to Maples' three attorneys of record. He sent Munanka's and Ingen-Housz's copies to Sullivan & Cromwell's New York address, which the pair had provided upon entering their appearances.

When those copies arrived at Sullivan & Cromwell, Munanka and Ingen-Housz had long since departed. The notices, however, were not forwarded to another Sullivan & Cromwell attorney. Instead, a mailroom employee sent the unopened envelopes back to the court. "Returned to Sender—Attempted, Unknown" was stamped on the envelope addressed to Munanka. App. to Reply to Brief in Opposition 8a. A similar stamp appeared on the envelope addressed to Ingen-Housz, along with the handwritten notation "Return to Sender—Left Firm." *Id.*, at 7a.

Upon receiving back the unopened envelopes he had mailed to Munanka and Ingen-Housz, the Alabama court clerk took no further action. In particular, the clerk did not contact Munanka or Ingen-Housz at the personal telephone numbers or home addresses they had provided in their *pro hac vice* applications. See Ingen-Housz Verified Application for Admission To Practice Under Rule VII, p. 1; and Munanka Verified Application for Admission To Practice Under Rule VII, p. 1, in *Maples* v. *State*, No. CC–95–842.60 (C. C. Morgan Cty., Ala.). Nor did the clerk alert Sullivan &

[5] One of Maples' attorneys observed, without contradiction, that the trial court's order was a "word for word copy of the proposed Order that the State had submitted [with] its [December 2001] Motion to Dismiss." *Id.*, at 300.

Cromwell or Butler. Butler received his copy of the order, but did not act on it. App. to Pet. for Cert. 256a. He assumed that Munanka and Ingen-Housz, who had been "CC'd" on the order, would take care of filing an appeal. *Ibid.*

Meanwhile, the clock ticked on Maples' appeal. Under Alabama's Rules of Appellate Procedure, Maples had 42 days to file a notice of appeal from the trial court's May 22, 2003 order denying Maples' petition for postconviction relief. Rule 4(a)(1) (2000). No appeal notice was filed, and the time allowed for filing expired on July 7, 2003.

A little over a month later, on August 13, 2003, Alabama Assistant Attorney General Jon Hayden, the attorney representing the State in Maples' collateral review proceedings, sent a letter directly to Maples. App. to Pet. for Cert. 253a–254a. Hayden's letter informed Maples of the missed deadline for initiating an appeal within the State's system, and notified him that four weeks remained during which he could file a federal habeas petition. *Ibid.* Hayden mailed the letter to Maples only, using his prison address. *Ibid.* No copy was sent to Maples' attorneys of record, or to anyone else acting on Maples' behalf. *Ibid.*

Upon receiving the State's letter, Maples immediately contacted his mother. *Id.*, at 258a. She telephoned Sullivan & Cromwell to inquire about her son's case. *Ibid.* Prompted by her call, Sullivan & Cromwell attorneys Marc De Leeuw, Felice Duffy, and Kathy Brewer submitted a motion, through Butler, asking the trial court to reissue its order denying Maples' Rule 32 petition, thereby restarting the 42-day appeal period. *Id.*, at 222a.

The trial court denied the motion, *id.*, at 222a–225a, noting that Munanka and Ingen-Housz had not withdrawn from the case and, consequently, were "still attorneys of record for the petitioner," *id.*, at 223a. Furthermore, the court added, attorneys De Leeuw, Duffy, and Brewer had not "yet been admitted to practice in Alabama" or "entered appearances as attorneys of record." *Ibid.* "How," the court asked, "can

a Circuit Clerk in Decatur, Alabama know what is going on in a law firm in New York, New York?" *Id.*, at 223a–224a. Declining to blame the clerk for the missed notice of appeal deadline, the court said it was "unwilling to enter into subterfuge in order to gloss over mistakes made by counsel for the petitioner." *Ibid.*

Maples next petitioned the Alabama Court of Criminal Appeals for a writ of mandamus, granting him leave to file an out-of-time appeal. Rejecting Maples' plea, the Court of Criminal Appeals determined that, although the clerk had "assumed a duty to notify the parties of the resolution of Maples's Rule 32 petition," the clerk had satisfied that obligation by sending notices to the attorneys of record at the addresses those attorneys provided. *Id.*, at 234a–235a. Butler's receipt of the order, the court observed, sufficed to notify all attorneys "in light of their apparent co-counsel status." *Id.*, at 235a–236a (quoting *Thomas* v. *Kellett*, 489 So. 2d 554, 555 (Ala. 1986)). The Alabama Supreme Court summarily affirmed the Court of Criminal Appeals' judgment, App. to Pet. for Cert. 237a, and this Court denied certiorari, *Maples* v. *Alabama*, 543 U. S. 1148 (2005).

Having exhausted his state postconviction remedies, Maples sought federal habeas corpus relief. Addressing the ineffective-assistance-of-trial-counsel claims Maples stated in his federal petition, the State urged that Maples had forever forfeited those claims. Maples did, indeed, present the claims in his state postconviction (Rule 32) petition, the State observed, but he did not timely appeal from the trial court's denial of his petition. That procedural default, the State maintained, precluded federal-court consideration of the claims.[6] Maples replied that the default should be

[6] In opposing Maples' request for an out-of-time appeal, the State argued to the Alabama Supreme Court that such an appeal was unwarranted. In that context, the State noted that Maples "may still present his postconviction claims to [the federal habeas] court." 35 Record, Doc. No. 55, p. 22, n. 4. The State's current position is in some tension with that observation.

excused, because he missed the appeal deadline "through no fault of his own." App. 262 (internal quotation marks omitted).

The District Court determined that Maples had defaulted his ineffective-assistance claims, and that he had not shown "cause" sufficient to overcome the default. App. to Pet. for Cert. 49a–55a. The court understood Maples to argue that errors committed by his postconviction counsel, not any lapse on the part of the court clerk in Alabama, provided the requisite "cause" to excuse his failure to meet Alabama's 42-days-to-appeal Rule. *Id.*, at 55a. Such an argument was inadmissible, the court ruled, because this Court, in *Coleman* v. *Thompson*, 501 U. S. 722 (1991), had held that the ineffectiveness of postconviction appellate counsel could not qualify as cause. App. to Pet. for Cert. 55a (citing *Coleman*, 501 U. S., at 751).

A divided panel of the Eleventh Circuit affirmed. *Maples* v. *Allen*, 586 F. 3d 879 (2009) *(per curiam)*. In accord with the District Court, the Court of Appeals' majority held that Maples defaulted his ineffective-assistance claims in state court by failing to file a timely notice of appeal, *id.*, at 890, and that *Coleman* rendered Maples' assertion of "cause" unacceptable, 586 F. 3d, at 891.

Judge Barkett dissented. *Id.*, at 895–898. She concluded that the Alabama Court of Criminal Appeals had acted "arbitrarily" in refusing to grant Maples' request for an out-of-time appeal. *Id.*, at 896. In a case involving "indistinguishable facts," Judge Barkett noted, the Alabama appellate court had allowed the petitioner to file a late appeal. *Ibid.* (citing *Marshall* v. *State*, 884 So. 2d 898, 899 (Ala. Crim. App. 2002)). Inconsistent application of the 42-days-to-appeal rule, Judge Barkett said, "render[ed] the rule an inadequate ground on which to bar federal review of Maples's claims." 586 F. 3d, at 897. The interests of justice, she added, required review of Maples' claims in view of the exceptional circumstances and high stakes involved, and the absence of any fault on Maples' part. *Ibid.*

We granted certiorari to decide whether the uncommon facts presented here establish cause adequate to excuse Maples' procedural default. 562 U. S. 1286 (2011).

II

A

As a rule, a state prisoner's habeas claims may not be entertained by a federal court "when (1) 'a state court [has] declined to address [those] 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.'" *Walker* v. *Martin*, 562 U. S. 307, 316 (2011) (quoting *Coleman*, 501 U. S., at 729–730). The bar to federal review may be lifted, however, if "the prisoner can demonstrate cause for the [procedural] default [in state court] and actual prejudice as a result of the alleged violation of federal law." *Id.*, at 750; see *Wainwright* v. *Sykes*, 433 U. S. 72, 84–85 (1977).

Given the single issue on which we granted review, we will assume, for purposes of this decision, that the Alabama Court of Criminal Appeals' refusal to consider Maples' ineffective-assistance claims rested on an independent and adequate state procedural ground: namely, Maples' failure to satisfy Alabama's Rule requiring a notice of appeal to be filed within 42 days from the trial court's final order. Accordingly, we confine our consideration to the question whether Maples has shown cause to excuse the missed notice of appeal deadline.

Cause for a procedural default exists where "something *external* to the petitioner, something that cannot fairly be attributed to him[,] . . . 'impeded [his] efforts to comply with the State's procedural rule.'" *Coleman*, 501 U. S., at 753 (quoting *Murray* v. *Carrier*, 477 U. S. 478, 488 (1986); emphasis in original). Negligence on the part of a prisoner's postconviction attorney does not qualify as "cause." *Coleman*, 501 U. S., at 753. That is so, we reasoned in *Coleman*, because the attorney is the prisoner's agent, and under "well-

settled principles of agency law," the principal bears the risk of negligent conduct on the part of his agent. *Id.*, at 753–754. See also *Irwin* v. *Department of Veterans Affairs*, 498 U. S. 89, 92 (1990) ("Under our system of representative litigation, 'each party is deemed bound by the acts of his lawyer-agent.' " (quoting *Link* v. *Wabash R. Co.*, 370 U. S. 626, 634 (1962))). Thus, when a petitioner's postconviction attorney misses a filing deadline, the petitioner is bound by the oversight and cannot rely on it to establish cause. *Coleman*, 501 U. S., at 753–754. We do not disturb that general rule.

A markedly different situation is presented, however, when an attorney abandons his client without notice, and thereby occasions the default. Having severed the principal-agent relationship, an attorney no longer acts, or fails to act, as the client's representative. See 1 Restatement (Third) of Law Governing Lawyers § 31, Comment *f* (1998) ("Withdrawal, whether proper or improper, terminates the lawyer's authority to act for the client."). His acts or omissions therefore "cannot fairly be attributed to [the client]." *Coleman*, 501 U. S., at 753. See, *e. g.*, *Jamison* v. *Lockhart*, 975 F. 2d 1377, 1380 (CA8 1992) (attorney conduct may provide cause to excuse a state procedural default where, as a result of a conflict of interest, the attorney "ceased to be [petitioner's] agent"); *Porter* v. *State*, 339 Ark. 15, 16–19, 2 S. W. 3d 73, 74–76 (1999) (finding "good cause" for petitioner's failure to file a timely habeas petition where the petitioner's attorney terminated his representation without notifying petitioner and without taking "any formal steps to withdraw as the attorney of record").

Our recent decision in *Holland* v. *Florida*, 560 U. S. 631 (2010), is instructive. That case involved a missed one-year deadline, prescribed by 28 U. S. C. § 2244(d), for filing a federal habeas petition. *Holland* presented two issues: first, whether the § 2244(d) time limitation can be tolled for equitable reasons, and, second, whether an attorney's unprofessional conduct can ever count as an "extraordinary circumstance" justifying equitable tolling. 560 U. S., at 649,

651 (internal quotation marks omitted). We answered yes to both questions.

On the second issue, the Court recognized that an attorney's negligence, for example, miscalculating a filing deadline, does not provide a basis for tolling a statutory time limit. *Id.*, at 651–652; *id.*, at 656 (ALITO, J., concurring in part and concurring in judgment); see *Lawrence* v. *Florida*, 549 U. S. 327, 336 (2007). The *Holland* petitioner, however, urged that attorney negligence was not the gravamen of his complaint. Rather, he asserted that his lawyer had detached himself from any trust relationship with his client: "[My lawyer] has abandoned me," the petitioner complained to the court. 560 U. S., at 637 (brackets and internal quotation marks omitted); see *Nara* v. *Frank*, 264 F. 3d 310, 320 (CA3 2001) (ordering a hearing on whether a client's effective abandonment by his lawyer merited tolling of the one-year deadline for filing a federal habeas petition).

In a concurring opinion in *Holland*, JUSTICE ALITO homed in on the essential difference between a claim of attorney error, however egregious, and a claim that an attorney had essentially abandoned his client. 560 U. S., at 659. Holland's plea fit the latter category: He alleged abandonment "evidenced by counsel's near-total failure to communicate with petitioner or to respond to petitioner's many inquiries and requests over a period of several years." *Ibid.*; see *id.*, at 636–637, 652 (majority opinion). If true, JUSTICE ALITO explained, "petitioner's allegations would suffice to establish extraordinary circumstances beyond his control[:] Common sense dictates that a litigant cannot be held constructively responsible for the conduct of an attorney who is not operating as his agent in any meaningful sense of that word." *Id.*, at 659.[7]

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[7] *Holland* v. *Florida*, 560 U. S. 631 (2010), involved tolling of a federal time bar, while *Coleman* v. *Thompson*, 501 U. S. 722 (1991), concerned cause for excusing a procedural default in state court. See *Holland*, 560 U. S., at 650–651. We see no reason, however, why the distinction be-

We agree that, under agency principles, a client cannot be charged with the acts or omissions of an attorney who has abandoned him. Nor can a client be faulted for failing to act on his own behalf when he lacks reason to believe his attorneys of record, in fact, are not representing him. We therefore inquire whether Maples has shown that his attorneys of record abandoned him, thereby supplying the "extraordinary circumstances beyond his control," *ibid.*, necessary to lift the state procedural bar to his federal petition.

B

From the time he filed his initial Rule 32 petition until well after time ran out for appealing the trial court's denial of that petition, Maples had only three attorneys of record: Munanka, Ingen-Housz, and Butler. Unknown to Maples, not one of these lawyers was in fact serving as his attorney during the 42 days permitted for an appeal from the trial court's order.

1

The State contends that Sullivan & Cromwell represented Maples throughout his state postconviction proceedings. Accordingly, the State urges, Maples cannot establish abandonment by counsel continuing through the six weeks allowed for noticing an appeal from the trial court's denial of his Rule 32 petition. We disagree. It is undisputed that Munanka and Ingen-Housz severed their agency relationship with Maples long before the default occurred. See Brief for Respondent 47 (conceding that the two attorneys erred in failing to file motions to withdraw from the case). Both Munanka and Ingen-Housz left Sullivan & Cromwell's employ in the summer of 2002, at least nine months before the Alabama trial court entered its order denying Rule 32 relief. App. to Pet. for Cert. 258a. Their new employment—Munanka as a

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tween attorney negligence and attorney abandonment should not hold in both contexts.

law clerk for a federal judge, Ingen-Housz as an employee of the European Commission in Belgium—disabled them from continuing to represent Maples. See Code of Conduct for Judicial Employees, Canon 4(D)(3) (1999) (prohibiting judicial employees from participating in "litigation against federal, state or local government"); European Commission, Staff Regulations of Officials of the European Communities, Tit. I, Art. 12b (2004) (employees cannot perform outside work without first obtaining authorization from the Commission), available at http://ec.europa.eu/civil_service/docs/toc100_en.pdf (as visited Jan. 13, 2012, and in Clerk of Court's case file). Hornbook agency law establishes that the attorneys' departure from Sullivan & Cromwell and their commencement of employment that prevented them from representing Maples ended their agency relationship with him. See 1 Restatement (Second) of Agency § 112 (1957) (hereinafter Restatement (Second)) ("[T]he authority of an agent terminates if, without knowledge of the principal, he acquires adverse interests or if he is otherwise guilty of a serious breach of loyalty to the principal."); 2 *id.*, § 394, Comment *a* ("[T]he agent commits a breach of duty [of loyalty] to his principal by acting for another in an undertaking which has a substantial tendency to cause him to disregard his duty to serve his principal with only his principal's purposes in mind.").

Furthermore, the two attorneys did not observe Alabama's Rule requiring them to seek the trial court's permission to withdraw. See Ala. Rule Crim. Proc. 6.2, Comment. Cf. 1 Restatement (Second) § 111, Comment *b* ("[I]t is ordinarily inferred that a principal does not intend an agent to do an illegal act."). By failing to seek permission to withdraw, Munanka and Ingen-Housz allowed the court's records to convey that they represented Maples. As listed attorneys of record, they, not Maples, would be the addressees of court orders Alabama law requires the clerk to furnish. See Ala. Rule Crim. Proc. 34.5 ("Upon the entry of any order in a criminal proceeding made in response to a motion, . . . the

clerk shall, without undue delay, furnish all parties a copy thereof by mail or by other appropriate means.") and 34.4 ("[W]here the defendant is represented by counsel, service shall be made upon the attorney of record.").

Although acknowledging that Munanka and Ingen-Housz severed their agency relationship with Maples upon their departure from Sullivan & Cromwell, the State argues that, nonetheless, Maples was not abandoned. Other attorneys at the firm, the State asserts, continued to serve as Maples' counsel. Regarding this assertion, we note, first, that the record is cloudy on the role other Sullivan & Cromwell attorneys played. In an affidavit submitted to the Alabama trial court in support of Maples' request that the court reissue its Rule 32 order, see *supra*, at 277, partner Marc De Leeuw stated that he had been "involved in [Maples'] case since the summer of 2001." App. to Pet. for Cert. 257a. After the trial court initially denied the State's motion to dismiss in December 2001, De Leeuw informed the court, Sullivan & Cromwell "lawyers working on this case for Mr. Maples prepared for [an anticipated] evidentiary hearing." *Id.*, at 258a. Another Sullivan & Cromwell attorney, Felice Duffy, stated, in an affidavit submitted to the Alabama trial court in September 2003, that she "ha[d] worked on [Maples'] case since October 14, 2002." App. 231. But neither De Leeuw nor Duffy described what their "involve[ment]" or "wor[k] on [Maples'] case" entailed. And neither attorney named the lawyers, other than Munanka and Ingen-Housz (both of them still with Sullivan & Cromwell in December 2001), engaged in preparation for the expected hearing. Nor did De Leeuw identify the specific work, if any, other lawyers performed on Maples' case between Munanka's and Ingen-Housz's departures and the firm's receipt of the telephone call from Maples' mother.[8]

[8] The unclear state of the record is perhaps not surprising, given Sullivan & Cromwell's representation of Maples after the default. As *amici* for Maples explain, a significant conflict of interest arose for the firm once

The slim record on activity at Sullivan & Cromwell, however, does not warrant a remand to determine more precisely the work done by firm lawyers other than Munanka and Ingen-Housz. For the facts essential to our decision are not in doubt. At the time of the default, the Sullivan & Cromwell attorneys who later came forward—De Leeuw, Duffy, and Kathy Brewer—had not been admitted to practice law in Alabama, had not entered their appearances on Maples' behalf, and had done nothing to inform the Alabama court that they wished to substitute for Munanka and Ingen-Housz. Thus, none of these attorneys had the legal authority to act on Maples' behalf before his time to appeal expired. Cf. 1 Restatement (Second) § 111 (The "failure to acquire a qualification by the agent without which it is illegal to do an authorized act . . . terminates the agent's authority to act.").[9]

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the crucial deadline passed. Brief for Legal Ethics Professors et al. as *Amici Curiae* 23–27. Following the default, the firm's interest in avoiding damage to its own reputation was at odds with Maples' strongest argument—*i. e.*, that his attorneys had abandoned him, therefore he had cause to be relieved from the default. Yet Sullivan & Cromwell did not cede Maples' representation to a new attorney, who could have made Maples' abandonment argument plain to the Court of Appeals. Instead, the firm represented Maples through briefing and oral argument in the Eleventh Circuit, where they attempted to cast responsibility for the mishap on the clerk of the Alabama trial court. Given Sullivan & Cromwell's conflict of interest, Maples' federal habeas petition, prepared and submitted by the firm, is not persuasive evidence that Maples, prior to the default, ever "viewed himself" as represented by "the firm," see *post*, at 295 (SCALIA, J., dissenting), rather than by his attorneys of record, Munanka and Ingen-Housz.

[9] The dissent argues that the Sullivan & Cromwell attorneys had no basis "to infer that Maples no longer wanted them to represent him, simply because they had *not yet* qualified before the Alabama court." *Post*, at 297. While that may be true, it is irrelevant. What the attorneys could have inferred is that Maples would not have wanted them to file a notice of appeal on his behalf prior to their admission to practice in Alabama, for doing so would be "illegal," *ibid.* (internal quotation marks omitted). See also 1 Restatement (Second) § 111, Comment *b*, quoted *supra*, at 284. For the critical purpose of filing a notice of appeal, then, the other Sullivan & Cromwell attorneys had no authority to act for Maples.

What they did or did not do in their New York offices is therefore beside the point. At the time critical to preserving Maples' access to an appeal, they, like Munanka and Ingen-Housz, were not Maples' authorized agents.

2

Maples' only other attorney of record, local counsel Butler, also left him abandoned. Indeed, Butler did not even begin to represent Maples. Butler informed Munanka and Ingen-Housz that he would serve as local counsel only for the purpose of enabling the two out-of-state attorneys to appear *pro hac vice*. *Supra*, at 274. Lacking the necessary "resources, available time [and] experience," Butler told the two Sullivan & Cromwell lawyers, he would not "deal with substantive issues in the case." *Ibid.* That the minimal participation he undertook was inconsistent with Alabama law, see Rule VII, quoted *supra*, at 274, underscores the absurdity of holding Maples barred because Butler signed on as local counsel.

In recognizing that Butler had no role in the case other than to allow Munanka and Ingen-Housz to appear *pro hac vice*, we need not rely solely on Butler's and De Leeuw's statements to that effect. App. to Pet. for Cert. 255a–258a. Other factors confirm that Butler did not "operat[e] as [Maples'] agent in any meaningful sense of that word." *Holland*, 560 U. S., at 659 (ALITO, J., concurring in part and concurring in judgment). The first is Butler's own conduct. Upon receiving a copy of the trial court's Rule 32 order, Butler did not contact Sullivan & Cromwell to ensure that firm lawyers were taking appropriate action. Although Butler had reason to believe that Munanka and Ingen-Housz had received a copy of the court's order, see App. 225 (indicating that Munanka and Ingen-Housz were CC'd on the order), Butler's failure even to place a phone call to the New York firm substantiates his disclaimer of any genuinely representative role in the case.

Notably, the State did not treat Butler as Maples' actual representative. Assistant Attorney General Hayden ad-

dressed the letter informing Maples of the default directly to Maples in prison. See *supra*, at 277. Hayden sent no copy to, nor did he otherwise notify, any of the attorneys listed as counsel of record for Maples. Lawyers in Alabama have an ethical obligation to refrain from communicating directly with an opposing party known to be represented by counsel. See Ala. Rule of Professional Conduct 4.2 (2003); Ala. Rule Crim. Proc. 34.4 (requiring that the service of all documents "be made upon the attorney of record"). In writing directly and only to Maples, notwithstanding this ethical obligation, Assistant Attorney General Hayden must have believed that Maples was no longer represented by counsel, out-of-state or local.[10]

In sum, the record admits of only one reading: At no time before the missed deadline was Butler serving as Maples' agent "in any meaningful sense of that word." *Holland*, 560 U. S., at 659 (opinion of ALITO, J.).

3

Not only was Maples left without any functioning attorney of record, the very listing of Munanka, Ingen-Housz, and Butler as his representatives meant that he had no right personally to receive notice. See *supra*, at 284–285. He in fact received none or any other warning that he had better fend for himself. Had counsel of record or the State's attorney

[10] It bears note, as well, that the State served its response to Maples' Rule 32 petition only on Munanka at Sullivan & Cromwell's New York address, not on Butler. App. 26. While the State may not be obligated to serve more than one attorney of record, its selection of New York rather than local counsel is some indication that, from the start, the State was cognizant of the limited role Butler would serve. Conforming the State's Rule to common practice, in 2006, the Alabama Supreme Court amended the provision on appearances by out-of-state counsel to eliminate the requirement that such attorneys associate local counsel when representing indigent criminal defendants *pro bono* in postconviction proceedings. See *supra*, at 274, n. 3.

informed Maples of his plight before the time to appeal ran out, he could have filed a notice of appeal himself [11] or enlisted the aid of new volunteer attorneys.[12] Given no reason to suspect that he lacked counsel able and willing to represent him, Maples surely was blocked from complying with the State's procedural rule.

C

"The cause and prejudice requirement," we have said, "shows due regard for States' finality and comity interests while ensuring that 'fundamental fairness [remains] the central concern of the writ of habeas corpus.'" *Dretke* v. *Haley*, 541 U. S. 386, 393 (2004) (quoting *Strickland* v. *Washington*, 466 U. S. 668, 697 (1984)). In the unusual circumstances of this case, principles of agency law and fundamental fairness point to the same conclusion: There was indeed cause to excuse Maples' procedural default. Through no fault of his own, Maples lacked the assistance of any authorized attorney during the 42 days Alabama allows for noticing an appeal from a trial court's denial of postconviction relief. As just observed, he had no reason to suspect that, in reality, he had been reduced to *pro se* status. Maples was disarmed by extraordinary circumstances quite beyond his control. He has shown ample cause, we hold, to excuse the procedural default into which he was trapped when counsel of record abandoned him without a word of warning.

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[11] The notice is a simple document. It need specify only: the party taking the appeal, the order or judgment appealed from, and the name of the court to which appeal is taken. Ala. Rule App. Proc. 3(c) (2000).

[12] Alabama grants out-of-time appeals to prisoners proceeding *pro se* who were not timely served with copies of court orders. See *Maples* v. *Allen*, 586 F. 3d 879, 888, and n. 6 (CA11 2009) *(per curiam)* (citing *Ex parte Miles*, 841 So. 2d 242, 243 (Ala. 2002), and *Ex parte Robinson*, 865 So. 2d 1250, 1251–1252 (Ala. Crim. App. 2003) *(per curiam)*). Though Maples was not a *pro se* petitioner on the record, he was, in fact, without authorized counsel.

III

Having found no cause to excuse the failure to file a timely notice of appeal in state court, the District Court and the Eleventh Circuit did not reach the question of prejudice. See *supra*, at 279. That issue, therefore, remains open for decision on remand.

* * *

For the reasons stated, the judgment of the Court of Appeals for the Eleventh Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE ALITO, concurring.

I join the opinion of the Court. Unbeknownst to petitioner, he was effectively deprived of legal representation due to the combined effect of no fewer than eight unfortunate events: (1) the departure from their law firm of the two young lawyers who appeared as counsel of record in his state postconviction proceeding; (2) the acceptance by these two attorneys of new employment that precluded them from continuing to represent him; (3) their failure to notify petitioner of their new situation; (4) their failure to withdraw as his counsel of record; (5) the apparent failure of the firm that they left to monitor the status of petitioner's case when these attorneys departed; (6) when notice of the decision denying petitioner's request for state postconviction relief was received in that firm's offices, the failure of the firm's mailroom to route that important communication to either another member of the firm or to the departed attorneys' new addresses; (7) the failure of the clerk's office to take any action when the envelope containing that notice came back unopened; and (8) local counsel's very limited conception of the role that he was obligated to play in petitioner's representation. Under these unique circumstances, I agree that petitioner's attorneys effectively abandoned him and that this

abandonment was a "cause" that is sufficient to overcome petitioner's procedural default.

In an effort to obtain relief for his client, petitioner's counsel in the case now before us cast blame for what occurred on Alabama's system of providing legal representation for capital defendants at trial and in state collateral proceedings. See Brief for Petitioner 3–6. But whatever may be said about Alabama's system, I do not think that Alabama's system had much if anything to do with petitioner's misfortune. The quality of petitioner's representation at trial obviously played no role in the failure to meet the deadline for filing his notice of appeal from the denial of his state postconviction petition. Nor do I see any important connection between what happened in this case and Alabama's system for providing representation for prisoners who are sentenced to death and who wish to petition the state courts for collateral relief. Unlike other States, Alabama relies on attorneys who volunteer to represent these prisoners *pro bono*, and we are told that most of these volunteers work for large, out-of-state firms. *Id.*, at 4. Petitioner's brief states that the Alabama system had "a direct bearing on the events giving rise . . . to the procedural default at issue," *id.*, at 3, but a similar combination of untoward events could have occurred if petitioner had been represented by Alabama attorneys who were appointed by the court and paid for with state funds. The firm whose lawyers represented petitioner *pro bono* is one of the country's most prestigious and expensive, and I have little doubt that the vast majority of criminal defendants would think that they had won the lottery if they were given the opportunity to be represented by attorneys from such a firm. See *id.*, at 9 (stating that it "seemed as though Maples had won the lottery when two attorneys working at an elite New York law firm . . . agreed to represent Maples *pro bono*").

What occurred here was not a predictable consequence of the Alabama system but a veritable perfect storm of misfor-

tune, a most unlikely combination of events that, without notice, effectively deprived petitioner of legal representation. Under these unique circumstances, I agree that petitioner's procedural default is overcome.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, dissenting.

The Alabama Court of Criminal Appeals held that Cory Maples' appeal from the denial of his state postconviction petition was barred because he had not filed a notice of appeal within the allotted time. The Court now concludes that Maples has established cause for his procedural default by reason of abandonment by his attorneys. Because I cannot agree with that conclusion, and because Maples' alternative argument fares no better, I would affirm the judgment.

I

A

Our doctrine of procedural default reflects, and furthers, the principle that errors in state criminal trials should be remedied in state court. As we have long recognized, federal habeas review for state prisoners imposes significant costs on the States, undermining not only their practical interest in the finality of their criminal judgments, see *Engle* v. *Isaac*, 456 U. S. 107, 126–127 (1982), but also the primacy of their courts in adjudicating the constitutional rights of defendants prosecuted under state law, *id.*, at 128. We have further recognized that "[t]hese costs are particularly high . . . when a state prisoner, through a procedural default, prevents adjudication of his constitutional claims in state court." *Coleman* v. *Thompson*, 501 U. S. 722, 748 (1991). In that situation, the prisoner has "deprived the state courts of an opportunity to address those claims in the first instance," *id.*, at 732, thereby leaving the state courts without "a chance to mend their own fences and avoid federal intrusion," *Engle*, 456 U. S., at 129. For that reason, and because permitting

federal-court review of defaulted claims would "undercu[t] the State's ability to enforce its procedural rules," *ibid.*, we have held that when a state court has relied on an adequate and independent state procedural ground in denying a prisoner's claims, the prisoner ordinarily may not obtain federal habeas relief. *Coleman*, 501 U. S., at 729–730.

To be sure, the prohibition on federal-court review of defaulted claims is not absolute. A habeas petitioner's default in state court will not bar federal habeas review if "the petitioner demonstrates cause and actual prejudice," *id.*, at 748—"cause" constituting "something *external* to the petitioner, something that cannot fairly be attributed to him," that impeded compliance with the State's procedural rule, *id.*, at 753. As a general matter, an attorney's mistakes (or omissions) do not meet the standard "because the attorney is the petitioner's agent when acting, or failing to act, in furtherance of the litigation, and the petitioner must 'bear the risk of attorney error.'" *Ibid.* (quoting *Murray* v. *Carrier*, 477 U. S. 478, 488 (1986)). See also *Link* v. *Wabash R. Co.*, 370 U. S. 626, 633–634, and n. 10 (1962).

When an attorney's error occurs at a stage of the proceedings at which the defendant has a constitutional right to effective assistance of counsel, that error may constitute cause to excuse a resulting procedural default. A State's failure in its duty to provide an effective attorney, as measured by the standard set forth in *Strickland* v. *Washington*, 466 U. S. 668 (1984), makes the attorney's error chargeable to the State, and hence external to the defense. See *Murray*, *supra*, at 488. But when the client has no right to counsel—as is the case in the postconviction setting, see *Pennsylvania* v. *Finley*, 481 U. S. 551, 555 (1987)—the client bears the risk of all attorney errors made in the course of the representation, regardless of the egregiousness of the mistake. *Coleman*, *supra*, at 754 ("[I]t is not the gravity of the attorney's error that matters, but that it constitutes a violation of peti-

tioner's right to counsel, so that the error must be seen as an external factor").

B

In light of the principles just set out, the Court is correct to conclude, *ante*, at 283, that a habeas petitioner's procedural default may be excused when it is attributable to abandonment by his attorney. In such a case, *Coleman*'s rationale for attributing the attorney's acts and omissions to the client breaks down; for once the attorney has ceased acting as the client's agent, "well-settled principles of agency law," 501 U. S., at 754, no longer support charging the client with his lawyer's mistakes. The attorney's mistakes may therefore be understood as an "external factor," *ibid.*, and in appropriate circumstances may justify excusing the prisoner's procedural default.

I likewise agree with the Court's conclusion, *ante*, at 283, that Maples' two out-of-state attorneys of record, Jaasi Munanka and Clara Ingen-Housz, had abandoned Maples by the time the Alabama trial court entered its order denying his petition for postconviction relief. As the Court observes, *ante*, at 283–284, without informing Maples or seeking leave from the Alabama trial court to withdraw from Maples' case, both Munanka and Ingen-Housz left Sullivan & Cromwell's employ and accepted new positions that precluded them from continuing to represent Maples. This conduct amounted to renunciation of their roles as Maples' agents, see 1 Restatement (Second) of Agency § 119, Comment *b* (1957) (hereinafter Restatement 2d), and thus terminated their authority to act on Maples' behalf, *id.*, § 118. As a result, Munanka's and Ingen-Housz's failure to take action in response to the trial court's order should not be imputed to Maples.

It is an unjustified leap, however, to conclude that Maples was left unrepresented during the relevant window between the Alabama trial court's dismissal of his postconviction petition and expiration of the 42-day period for filing a notice of

appeal established by Alabama Rule of Appellate Procedure 4(a)(1) (2009). Start with Maples' own allegations: In his amended federal habeas petition, Maples alleged that, at the time he sought postconviction relief in Alabama trial court, he "was represented by Sullivan & Cromwell of New York, New York." App. 256. Although the petition went on to identify Munanka and Ingen-Housz as "the two Sullivan lawyers handling the matter," *id.*, at 257, its statement that Maples was "represented" by the firm itself strongly suggests that Maples viewed himself as having retained the services of the firm as a whole, a perfectly natural understanding. "When a client retains a lawyer who practices with a firm, the presumption is that both the lawyer and the firm have been retained." 1 Restatement (Third) of the Law Governing Lawyers § 31, Comment *f,* p. 222 (1998). Admittedly, in connection with the attempt before the Alabama trial court to extend the time for appeal, Sullivan & Cromwell partner Marc De Leeuw submitted an affidavit stating that the firm's lawyers "handle *pro bono* cases on an individual basis" and that the lawyers who had appeared in Maples' case had followed that practice, "attempt[ing] not to use the firm name on correspondence or court papers." App. to Pet. for Cert. 257a. But Maples' habeas petition is the pleading that initiated the current litigation; and surely the allegations that it contained should be given priority over representations made to prior courts.*

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*The Court says that the allegations in Maples' own habeas petition are not "persuasive evidence," *ante*, at 286, n. 8, because Maples' lawyers at Sullivan & Cromwell labored under a conflict of interest when they prepared the document. This is a curious point, since the effect of Maples' statement was to *implicate* Sullivan & Cromwell as a firm in missing the filing deadline. The conflict would have induced the Sullivan & Cromwell lawyers to *exonerate* the firm. To be sure, as the case later developed (at this stage abandonment had not yet been conceived as the litigating strategy), it would have been in Maples' interest to say he had no lawyers. But the issue the petition's statement raises is not whether Maples was

In any case, even if Maples had no attorney-client relationship with the Sullivan & Cromwell firm, Munanka and Ingen-Housz were surely not the only Sullivan & Cromwell lawyers who represented Maples on an individual basis. De Leeuw's affidavit acknowledged that he had "been involved in [Maples'] case since the summer of 2001," *ibid.*, roughly a year before Munanka and Ingen-Housz left Sullivan & Cromwell, and it further stated that after "Ms. Ingen-Housz and Mr. Munanka" learned of the court's initial order denying the State's motion to dismiss Maples' postconviction petition in December 2001, "the lawyers working on this case for Mr. Maples prepared for the evidentiary hearing" Maples had requested, *id.*, at 258a. Moreover, when Sullivan & Cromwell attorney Felice Duffy filed a motion to appear *pro hac vice* before the Alabama trial court in connection with the attempt to extend the deadline, she stated that she had "worked on [Maples'] case since October 14, 2002," App. 231, months before the procedural default took place.

According to the Court, see *ante*, at 285, De Leeuw's affidavit does not make clear how he was "involved" in Maples' case or whether lawyers other than Munanka and Ingen-Housz were among those who prepared for the anticipated evidentiary hearing; and Duffy's motion does not make clear what her "wor[k]" entailed. But there is little doubt that Munanka and Ingen-Housz were not the only attorneys who engaged in the preparations; and that De Leeuw was "involved" and Duffy "worked" as lawyers for Maples (what other role could they have taken on?). De Leeuw's distinction between "Ms. Ingen-Housz and Mr. Munanka" and "the lawyers working on this case for Mr. Maples" would have been senseless if the latter category did not extend beyond the two named attorneys.

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cleverly represented; it is whether the statement was *true*. And if Sullivan & Cromwell's involvement in preparing the petition has any bearing upon that, it only reinforces the truth.

In sum, there is every indication that when the trial court entered its order dismissing Maples' postconviction petition in May 2003, Maples continued to be represented by a team of attorneys in Sullivan & Cromwell's New York office. The Court nonetheless insists that the actions of these attorneys are irrelevant because they had not been admitted to practice law in Alabama, had not entered appearances in the Alabama trial court, and had not sought to substitute for Munanka and Ingen-Housz. See *ante*, at 286–287. The Court does not, however, explain why these facts establish that the attorneys were not Maples' agents for the purpose of attending to those aspects of the case that did not require court appearance—which would certainly include keeping track of orders issued and filing deadlines. The Court's quotation from the Restatement of Agency, *ante*, at 286, that the "failure to acquire a qualification by the agent without which it is illegal to do an authorized act . . . terminates the agent's authority to act," 1 Restatement 2d, § 111, at 290, omits the crucial condition contained at the end of the section: "if thereafter he [the agent] should infer that the principal, if he knew the facts, would not consent to the further exercise of the authority." There was no basis whatever for these attorneys to infer that Maples no longer wanted them to represent him, simply because they had *not yet* qualified before the Alabama court. Though it would have been "illegal" for these attorneys to file a notice of appeal without being authorized to practice in Alabama, nothing prevented them from first seeking to secure admission to practice, as Munanka and Ingen-Housz initially had done, and *then* filing a notice of appeal.

It would create a huge gap in our *Coleman* jurisprudence to disregard all attorney errors committed before admission to the relevant court; and an even greater gap to disregard (as the Court suggests) all errors committed before the attorney enters an appearance. Moreover, even if these attorneys cannot be regarded as Maples' agents for purposes of

conducting the Alabama litigation, they were *at least* his agents for purposes of advising him of the impending deadline. His unawareness was the fault of counsel who were his agents, and must be charged to him. What happened here is simply "[a]ttorney ignorance or inadvertence" of the sort that does not furnish cause to excuse a procedural default. *Coleman*, 501 U. S., at 753.

But even leaving aside the question of Maples' "unadmitted" attorneys at Sullivan & Cromwell, Maples had a fully admitted attorney, who had entered an appearance, in the person of local counsel, John Butler. There is no support for the Court's conclusion that Butler "did not even begin to represent Maples." *Ante*, at 287. True, the affidavit Butler filed with the Alabama trial court in the proceeding seeking extension of the deadline stated that he had "no substantive involvement" with the case, and that he had "agreed to serve as local counsel only." App. to Pet. for Cert. 255a. But a disclaimer of "substantive involvement" in a case, whether or not it violates a lawyer's ethical obligations, see *ante*, at 287, is not equivalent to a denial of any agency role at all. A local attorney's "nonsubstantive" involvement would surely include, *at a minimum*, keeping track of local court orders and advising "substantive" counsel of impending deadlines. Nor did Butler's explanation for his failure to act when he received a copy of the trial court's order sound in abandonment. Butler did not say, for instance, that he ignored the order because he did not consider Maples to be his client. Instead, based on "past practice" and the content of the order, Butler "assumed" that Maples' lawyers at Sullivan & Cromwell would receive a copy. App. to Pet. for Cert. 256a.

The Court gets this badly wrong when it states that "Butler's failure even to place a phone call to the New York firm" demonstrates Butler's "disclaimer of any genuinely representative role." *Ante*, at 287. By equating the very attorney error that contributed to Maples' procedural default with the absence of an agency relationship, the Court ensures that

today's opinion will serve as a template for future habeas petitioners seeking to evade *Coleman*'s holding that ineffectiveness of postconviction counsel will not furnish cause to excuse a procedural default. See 501 U. S., at 752–754. The trick will be to allege, not that counsel was ineffective, but rather that counsel's ineffectiveness demonstrates that he was not a genuinely representative agent. No precedent should be so easily circumvented by word games, but the damage is particularly acute when the affected precedent is so firmly "grounded in concerns of comity and federalism." *Id.*, at 730.

The Court's last-gasp attempt to justify its conclusion that Butler was not Maples' agent is to point out that a prosecutor sent a letter to Maples directly, informing him of the defaulted appeal. See *ante*, at 287–288. The Court reasons that the prosecutor must have thought that Maples had been abandoned by his lawyers, since to communicate with a represented party would have been a violation of ethical standards. *Ibid.* But even if this supposition is correct, it is hard to understand what it proves. What matters, after all, is not whether the prosecutor *thought* Maples had been abandoned, but whether Maples *really was* abandoned. And as it turns out, Butler's conduct after learning about the default further belies any such contention. Almost immediately, Butler began to cooperate with Maples' lawyers at Sullivan & Cromwell, filing papers as "Counsel for Mr. Maples" or "Local Counsel for Petitioner Cory Maples" in multiple courts in an attempt to rectify the mistake. See App. 229, 230, 236, 238. Had Butler reassumed his representational duties after having abandoned them? Hardly. There is no proper basis for a conclusion of abandonment *interruptus*.

II

Maples argues in the alternative that his default should be excused because his right to due process was violated when the trial-court clerk failed to take action after Munanka's and

Ingen-Housz's copies of the court's dismissal order were returned undeliverable. According to Maples, our decision in *Jones* v. *Flowers*, 547 U. S. 220 (2006), establishes that the clerk had a duty to do more.

We held in *Jones* that, when a mailed notice of a tax sale is returned unclaimed, a State must take additional reasonable steps to attempt to provide notice to the property owner before selling his property. See *id.*, at 234. It is questionable whether that holding has any relevance to the circumstances here, which involved not the institution of proceedings against an unwitting litigant, but rather the issuance of an order in a pending case that was instituted by Maples himself. Indeed, I think it doubtful whether due process entitles a litigant to *any* notice of a court's order in a pending case. The Federal Rules certainly reject the notion that notice is an absolute requirement. Federal Rule of Civil Procedure 77(d)(2) provides that "[l]ack of notice of the entry [of an order or judgment] does not affect the time for appeal or relieve—or authorize the court to relieve—a party for failing to appeal within the time allowed, except as allowed by Federal Rule of Appellate Procedure (4)(a)." And although Federal Rule of Appellate Procedure 4(a)(6) in turn provides that the time for filing an appeal can be reopened when a litigant did not receive notice, it establishes 180 days after the judgment or order is entered as the outer limit by which a motion to reopen must be filed. See Rule 4(a)(6)(B).

There is no need to grapple with this question, however, because Butler received a copy of the trial court's order. "Under our system of representative litigation, 'each party . . . is considered to have "notice of all facts, notice of which can be charged upon [his] attorney."'" *Irwin* v. *Department of Veterans Affairs*, 498 U. S. 89, 92 (1990) (quoting *Link*, 370 U. S., at 634). The notice to Butler was therefore constitutionally sufficient.

* * *

One suspects that today's decision is motivated in large part by an understandable sense of frustration with the State's refusal to waive Maples' procedural default in the interest of fairness. Indeed, that frustration may well explain the Court's lengthy indictment of Alabama's general procedures for providing representation to capital defendants, *ante*, at 271–273, a portion of the Court's opinion that is so disconnected from the rest of its analysis as to be otherwise inexplicable.

But if the interest of fairness justifies our excusing Maples' procedural default here, it does so whenever a defendant's procedural default is caused by his attorney. That is simply not the law—and cannot be, if the States are to have an orderly system of criminal litigation conducted by counsel. Our precedents allow a State to stand on its rights and enforce a habeas petitioner's procedural default even when counsel is to blame. Because a faithful application of those precedents leads to the conclusion that Maples has not demonstrated cause to excuse his procedural default; and because the reasoning by which the Court justifies the opposite conclusion invites future evisceration of the principle that defendants are responsible for the mistakes of their attorneys; I respectfully dissent.

Syllabus

GOLAN ET AL. *v.* HOLDER, ATTORNEY GENERAL, ET AL.

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

No. 10–545. Argued October 5, 2011—Decided January 18, 2012

The Berne Convention for the Protection of Literary and Artistic Works (Berne), which took effect in 1886, is the principal accord governing international copyright relations. Berne's 164 member states agree to provide a minimum level of copyright protection and to treat authors from other member countries as well as they treat their own. Of central importance in this case, Article 18 of Berne requires countries to protect the works of other member states unless the works' copyright term has expired in either the country where protection is claimed or the country of origin. A different system of transnational copyright protection long prevailed in this country. Throughout most of the 20th century, the only foreign authors eligible for Copyright Act protection were those whose countries granted reciprocal rights to American authors and whose works were printed in the United States. Despite Article 18, when the United States joined Berne in 1989, it did not protect any foreign works lodged in the U. S. public domain, many of them works never protected here. In 1994, however, the Agreement on Trade-Related Aspects of Intellectual Property Rights mandated implementation of Berne's first 21 articles, on pain of enforcement by the World Trade Organization.

In response, Congress applied the term of protection available to U. S. works to pre-existing works from Berne member countries. Section 514 of the Uruguay Round Agreements Act (URAA) grants copyright protection to works protected in their country of origin, but lacking protection in the United States for any of three reasons: The United States did not protect works from the country of origin at the time of publication; the United States did not protect sound recordings fixed before 1972; or the author had not complied with certain U. S. statutory formalities. Works encompassed by § 514 are granted the protection they would have enjoyed had the United States maintained copyright relations with the author's country or removed formalities incompatible with Berne. As a consequence of the barriers to U. S. copyright protection prior to § 514's enactment, foreign works "restored" to protection by the measure had entered the public domain in this country. To cushion the impact of their placement in protected status, § 514 provides

ameliorating accommodations for parties who had exploited affected works before the URAA was enacted.

Petitioners are orchestra conductors, musicians, publishers, and others who formerly enjoyed free access to works § 514 removed from the public domain. They maintain that Congress, in passing § 514, exceeded its authority under the Copyright Clause and transgressed First Amendment limitations. The District Court granted the Attorney General's motion for summary judgment. Affirming in part, the Tenth Circuit agreed that Congress had not offended the Copyright Clause, but concluded that § 514 required further First Amendment inspection in light of *Eldred* v. *Ashcroft*, 537 U. S. 186. On remand, the District Court granted summary judgment to petitioners on the First Amendment claim, holding that § 514's constriction of the public domain was not justified by any of the asserted federal interests. The Tenth Circuit reversed, ruling that § 514 was narrowly tailored to fit the important government aim of protecting U. S. copyright holders' interests abroad.

Held:

1. Section 514 does not exceed Congress' authority under the Copyright Clause. Pp. 318–327.

(a) The text of the Copyright Clause does not exclude application of copyright protection to works in the public domain. *Eldred* is largely dispositive of petitioners' claim that the Clause's confinement of a copyright's lifespan to a "limited Tim[e]" prevents the removal of works from the public domain. In *Eldred*, the Court upheld the Copyright Term Extension Act (CTEA), which extended, by 20 years, the terms of existing copyrights. The text of the Copyright Clause, the Court observed, contains no "command that a time prescription, once set, becomes forever 'fixed' or 'inalterable,'" and the Court declined to infer any such command. 537 U. S., at 199. The construction petitioners tender here is similarly infirm. The terms afforded works restored by § 514 are no less "limited" than those the CTEA lengthened. Nor had the "limited Tim[e]" already passed for the works at issue here—many of them works formerly denied any U. S. copyright protection—for a period of exclusivity must begin before it may end. Petitioners also urge that the Government's position would allow Congress to legislate perpetual copyright terms by instituting successive "limited" terms as prior terms expire. But as in *Eldred*, such hypothetical misbehavior is far afield from this case. In aligning the United States with other nations bound by Berne, Congress can hardly be charged with a design to move stealthily toward a perpetual copyright regime. Pp. 318–320.

(b) Historical practice corroborates the Court's reading of the Copyright Clause to permit the protection of previously unprotected

works. In the Copyright Act of 1790, the First Congress protected works that had been freely reproducible under state copyright laws. Subsequent actions confirm that Congress has not understood the Copyright Clause to preclude protection for existing works. Several private bills restored the copyrights and patents of works and inventions previously in the public domain. Congress has also passed generally applicable legislation granting copyrights and patents to works and inventions that had lost protection. Pp. 320–324.

(c) Petitioners also argue that § 514 fails to "promote the Progress of Science" as contemplated by the initial words of the Copyright Clause. Specifically, they claim that because § 514 affects only works already created, it cannot meet the Clause's objective. The creation of new works, however, is not the sole way Congress may promote "Science," *i. e.*, knowledge and learning. In *Eldred*, this Court rejected a nearly identical argument, concluding that the Clause does not demand that each copyright provision, examined discretely, operate to induce new works. Rather the Clause "empowers Congress to determine the intellectual property regimes that, overall, in that body's judgment, will serve the ends of the Clause." 537 U. S., at 222. Nothing in the text or history of the Copyright Clause, moreover, confines the "Progress of Science" exclusively to "incentives for creation." Historical evidence, congressional practice, and this Court's decisions, in fact, suggest that inducing the dissemination of existing works is an appropriate means to promote science. Pp. 324–326.

(d) Considered against this backdrop, § 514 falls comfortably within Congress' Copyright Clause authority. Congress had reason to believe that a well-functioning international copyright system would encourage the dissemination of existing and future works. And testimony informed Congress that full compliance with Berne would expand the foreign markets available to U. S. authors and invigorate protection against piracy of U. S. works abroad, thus benefiting copyright-intensive industries stateside and inducing greater investment in the creative process. This Court has no warrant to reject Congress' rational judgment that exemplary adherence to Berne would serve the objectives of the Copyright Clause. Pp. 326–327.

2. The First Amendment does not inhibit the restoration authorized by § 514. Pp. 327–336.

(a) The pathmarking *Eldred* decision is again instructive. There, the Court held that the CTEA's enlargement of a copyright's duration did not offend the First Amendment's freedom of expression guarantee. Recognizing that some restriction on expression is the inherent and intended effect of every grant of copyright, the Court observed that the Framers regarded copyright protection not simply as a limit on the man-

ner in which expressive works may be used, but also as an "engine of free expression." 537 U. S., at 219. The "traditional contours" of copyright protection, *i. e.*, the "idea/expression dichotomy" and the "fair use" defense, moreover, serve as "built-in First Amendment accommodations." *Ibid.* Given the speech-protective purposes and safeguards embraced by copyright law, there was no call for the heightened review sought in *Eldred*. The Court reaches the same conclusion here. Section 514 leaves undisturbed the idea/expression distinction and the fair use defense. Moreover, Congress adopted measures to ease the transition from a national scheme to an international copyright regime. Pp. 327–330.

(b) Petitioners claim that First Amendment interests of a higher order are at stake because they—unlike their *Eldred* counterparts—enjoyed "vested rights" in works that had already entered the public domain. Their contentions depend on an argument already considered and rejected, namely, that the Constitution renders the public domain largely untouchable by Congress. Nothing in the historical record, subsequent congressional practice, or this Court's jurisprudence warrants exceptional First Amendment solicitude for copyrighted works that were once in the public domain. Congress has several times adjusted copyright law to protect new categories of works as well as works previously in the public domain. Section 514, moreover, does not impose a blanket prohibition on public access. The question is whether would-be users of certain foreign works must pay for their desired use of the author's expression, or else limit their exploitation to "fair use" of those works. By fully implementing Berne, Congress ensured that these works, like domestic and most other foreign works, would be governed by the same legal regime. Section 514 simply placed foreign works in the position they would have occupied if the current copyright regime had been in effect when those works were created and first published. Pp. 330–335.

609 F. 3d 1076, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, THOMAS, and SOTOMAYOR, JJ., joined. BREYER, J., filed a dissenting opinion, in which ALITO, J., joined, *post*, p. 344. KAGAN, J., took no part in the consideration or decision of the case.

Anthony T. Falzone argued the cause for petitioners. With him on the briefs were *Julie A. Ahrens*, *Daniel K. Nazer*, *Hugh Q. Gottschalk*, *Carolyn J. Fairless*, *Thomas C. Goldstein*, *Amy Howe*, *Kevin K. Russell*, and *Pamela S. Karlan*.

Solicitor General Verrilli argued the cause for respondents. With him on the brief were *Assistant Attorney General West*, *Deputy Solicitor General Stewart*, *Melissa Arbus Sherry*, *William Kanter*, and *John S. Koppel*.*

JUSTICE GINSBURG delivered the opinion of the Court.

The Berne Convention for the Protection of Literary and Artistic Works (Berne Convention, Convention, or Berne), which took effect in 1886, is the principal accord governing

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*Briefs of *amici curiae* urging reversal were filed for the American Civil Liberties Union by *Aden J. Fine* and *Steven R. Shapiro;* for the American Library Association et al. by *Corynne McSherry*, *Michael Barclay*, *Jonathan Band*, and *Geoffrey Brigham;* for the Cato Institute by *Nicholas Quinn Rosenkranz* and *Ilya Shapiro;* for the Conductors Guild et al. by *Steven A. Hirsch;* for Creative Commons Corp. by *Lawrence Lessig;* for the Eagle Forum Education & Legal Defense Fund by *Andrew L. Schlafly;* for Google, Inc., by *David T. Goldberg* and *Sean H. Donahue;* for Heartland Angels, Inc., by *Michael W. Carroll;* for the Information Society Project at Yale Law School Professors and Fellows by *Priscilla J. Smith;* for the Justice and Freedom Fund by *James L. Hirsen* and *Deborah J. Dewart;* for Project Petrucci, LLC, by *Charles Nesson;* for Public Domain Interests by *Jennifer M. Urban*, *Jeffrey P. Cunard*, *Peter Jaszi*, and *Pamela Samuelson;* and for Public Knowledge by *Gigi B. Sohn*.

Briefs of *amici curiae* urging affirmance were filed for the American Bar Association by *William T. Robinson III*, *Steven M. Lieberman*, and *June M. Besek;* for the American Intellectual Property Law Association by *Edward R. Reines* and *David W. Hill;* for the American Society of Composers, Authors and Publishers et al. by *Christopher A. Mohr*, *Paul Bender*, and *Michael R. Klipper;* for the International Coalition for Copyright Protection by *Eric M. Lieberman* and *David B. Goldstein;* for the International Publishers Association et al. by *Gloria C. Phares;* for the Intellectual Property Owners Association by *J. Michael Jakes*, *Robert D. Litowitz*, *Margaret A. Esquenet*, *Mary Beth Walker*, *Douglas K. Norman*, and *Kevin H. Rhodes;* and for the Motion Picture Association of America by *Seth P. Waxman* and *Randolph D. Moss*.

Briefs of *amici curiae* were filed for the Franklin Pierce Center for Intellectual Property by *Ann McCrackin;* for Peter Decherney by *Messrs. Carroll* and *Jaszi;* for Daniel J. Gervais by *Alan C. Friedberg;* and for H. Tomas Gomez-Arostegui et al. by *Tyler T. Ochoa* and *Mr. Gomez-Arostegui*, both *pro se*.

international copyright relations. Latecomer to the international copyright regime launched by Berne, the United States joined the Convention in 1989. To perfect U. S. implementation of Berne, and as part of our response to the Uruguay round of multilateral trade negotiations, Congress, in 1994, gave works enjoying copyright protection abroad the same full term of protection available to U. S. works. Congress did so in § 514 of the Uruguay Round Agreements Act (URAA), which grants copyright protection to preexisting works of Berne member countries, protected in their country of origin, but lacking protection in the United States for any of three reasons: The United States did not protect works from the country of origin at the time of publication; the United States did not protect sound recordings fixed before 1972; or the author had failed to comply with U. S. statutory formalities (formalities Congress no longer requires as prerequisites to copyright protection).

The URAA accords no protection to a foreign work after its full copyright term has expired, causing it to fall into the public domain, whether under the laws of the country of origin or of this country. Works encompassed by § 514 are granted the protection they would have enjoyed had the United States maintained copyright relations with the author's country or removed formalities incompatible with Berne. Foreign authors, however, gain no credit for the protection they lacked in years prior to § 514's enactment. They therefore enjoy fewer total years of exclusivity than do their U. S. counterparts. As a consequence of the barriers to U. S. copyright protection prior to the enactment of § 514, foreign works "restored" to protection by the measure had entered the public domain in this country. To cushion the impact of their placement in protected status, Congress included in § 514 ameliorating accommodations for parties who had exploited affected works before the URAA was enacted.

Petitioners include orchestra conductors, musicians, publishers, and others who formerly enjoyed free access to

works § 514 removed from the public domain. They maintain that the Constitution's Copyright and Patent Clause, Art. I, § 8, cl. 8, and First Amendment both decree the invalidity of § 514. Under those prescriptions of our highest law, petitioners assert, a work that has entered the public domain, for whatever reason, must forever remain there.

In accord with the judgment of the Tenth Circuit, we conclude that § 514 does not transgress constitutional limitations on Congress' authority. Neither the Copyright and Patent Clause nor the First Amendment, we hold, makes the public domain, in any and all cases, a territory that works may never exit.

I

A

Members of the Berne Union agree to treat authors from other member countries as well as they treat their own. Berne Convention, Sept. 9, 1886, as revised at Stockholm on July 14, 1967, Arts. 1, 5(1), 828 U. N. T. S. 221, 225, 231–233. Nationals of a member country, as well as any author who publishes in one of Berne's 164 member states, thus enjoy copyright protection in nations across the globe. Arts. 2(6), 3. Each country, moreover, must afford at least the minimum level of protection specified by Berne. The copyright term must span the author's lifetime, plus at least 50 additional years, whether or not the author has complied with a member state's legal formalities. Arts. 5(2), 7(1). And, as relevant here, a work must be protected abroad unless its copyright term has expired in either the country where protection is claimed or the country of origin. Art. 18(1)–(2).[1]

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[1] Article 18 of the Berne Convention provides:

"(1) This Convention shall apply to all works which, at the moment of its coming into force, have not yet fallen into the public domain in the country of origin through the expiry of the term of protection.

"(2) If, however, through the expiry of the term of protection which was previously granted, a work has fallen into the public domain of the

A different system of transnational copyright protection long prevailed in this country. Until 1891, foreign works were categorically excluded from Copyright Act protection. Throughout most of the 20th century, the only eligible foreign authors were those whose countries granted reciprocal rights to U. S. authors and whose works were printed in the United States. See Act of Mar. 3, 1891, §§3, 13, 26 Stat. 1107, 1110; Patry, The United States and International Copyright Law, 40 Houston L. Rev. 749, 750 (2003).[2] For domestic and foreign authors alike, protection hinged on compliance with notice, registration, and renewal formalities.

The United States became party to Berne's multilateral, formality-free copyright regime in 1989. Initially, Congress adopted a "minimalist approach" to compliance with the Convention. H. R. Rep. No. 100–609, p. 7 (1988) (hereinafter BCIA House Report). The Berne Convention Implementation Act of 1988 (BCIA), 102 Stat. 2853, made "only those changes to American copyright law that [were] clearly re-

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country where protection is claimed, that work shall not be protected anew.

"(3) The application of this principle shall be subject to any provisions contained in special conventions to that effect existing or to be concluded between countries of the Union. In the absence of such provisions, the respective countries shall determine, each in so far as it is concerned, the conditions of application of this principle.

"(4) The preceding provisions shall also apply in the case of new accessions to the Union and to cases in which protection is extended by the application of Article 7 or by the abandonment of reservations." 828 U. N. T. S. 251.

[2] As noted by the Government's *amici*, the United States excluded foreign works from copyright not to swell the number of unprotected works available to the consuming public, but to favor domestic publishing interests that escaped paying royalties to foreign authors. See Brief for International Publishers Association et al. as *Amici Curiae* 8–15. This free riding, according to Senator Jonathan Chace, champion of the 1891 Act, made the United States "the Barbary coast of literature" and its people "the buccaneers of books." S. Rep. No. 622, 50th Cong., 1st Sess., 2 (1888).

quired under the treaty's provisions," BCIA House Report, at 7. Despite Berne's instruction that member countries—including "new accessions to the Union"—protect foreign works under copyright in the country of origin, Art. 18(1) and (4), 828 U. N. T. S., at 251, the BCIA accorded no protection for "any work that is in the public domain in the United States," § 12, 102 Stat. 2860. Protection of future foreign works, the BCIA indicated, satisfied Article 18. See § 2(3), 102 Stat. 2853 ("The amendments made by this Act, together with the law as it exists on the date of the enactment of this Act, satisfy the obligations of the United States in adhering to the Berne Convention . . . ."). Congress indicated, however, that it had not definitively rejected "retroactive" protection for pre-existing foreign works; instead it had punted on this issue of Berne's implementation, deferring consideration until "a more thorough examination of Constitutional, commercial, and consumer considerations is possible." BCIA House Report, at 51, 52.[3]

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[3] See also S. Rep. No. 103–412, p. 225 (1994) ("While the United States declared its compliance with the Berne Convention in 1989, it never addressed or enacted legislation to implement Article 18 of the Convention."); Memorandum from Chris Schroeder, Counselor to the Assistant Attorney General, Office of Legal Counsel, Dept. of Justice (DOJ), to Ira S. Shapiro, General Counsel, Office of the U. S. Trade Representative (July 29, 1994), in W. Patry, Copyright and the GATT, p. C–15 (1995) ("At the time Congress was debating the BCIA, it reserved the issue of removing works from the public domain."); General Agreement on Tariffs and Trade (GATT): Intellectual Property Provisions, Joint Hearing before the Subcommittee on Intellectual Property and Judicial Administration of the House Committee on the Judiciary and the Subcommittee on Patents, Copyrights and Trademarks of the Senate Committee on the Judiciary, 103d Cong., 2d Sess., 120 (1994) (URAA Joint Hearing) (app. to statement of Bruce A. Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks (Commerce Dept.) ("When the United States adhered to the Berne Convention, Congress . . . acknowledged that the possibility of restoring copyright protection for foreign works that had fallen into the public domain in the United States for failure to comply with formalities was an issue that merited further discussion.")).

The minimalist approach essayed by the United States did not sit well with other Berne members.[4] While negotiations were ongoing over the North American Free Trade Agreement (NAFTA), Mexican authorities complained about the United States' refusal to grant protection, in accord with Article 18, to Mexican works that remained under copyright domestically. See Intellectual Property and International Issues, Hearings before the Subcommittee on Intellectual Property and Judicial Administration, House Committee on the Judiciary, 102d Cong., 1st Sess., 168 (1991) (statement of Ralph Oman, U. S. Register of Copyrights).[5] The Register of Copyrights also reported "questions" from Turkey, Egypt, and Austria. *Ibid.* Thailand and Russia balked at protect-

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[4] The dissent implicitly agrees that, whatever tentative conclusion Congress reached in 1988, Article 18 requires the United States to "protect the foreign works at issue," at least absent a special convention the United States did not here negotiate. *Post*, at 365. See also *post*, at 366 (citing Gervais, *Golan* v. *Holder*: A Look at the Constraints Imposed by the Berne Convention, 64 Vand. L. Rev. En Banc 147, 151–152 (2011)); *id.*, at 152 ("[T]he Convention clearly requires that *some* level of protection be given to foreign authors whose works have entered the public domain (other than by expiration of previous copyright)."). Accord S. Ricketson, The Berne Convention for the Protection of Literary and Artistic Works 1886–1986, p. 675 (1987) ("There is no basis on which [protection of existing works under Article 18] can be completely denied. The conditions and reservations," authorized by Article 18(3) (and stressed by the dissent, *post*, at 366–367), are of "limited" and "transitional" duration and "would not be permitted to deny [protection] altogether in relation to a particular class . . . of works.").

[5] NAFTA ultimately included a limited retroactivity provision—a precursor to § 514 of the URAA—granting U. S. copyright protection to certain Mexican and Canadian films. These films had fallen into the public domain, between 1978 and 1988, for failure to meet U. S. notice requirements. See North American Free Trade Agreement Implementation Act, § 334, 107 Stat. 2115; Brief for Franklin Pierce Center for Intellectual Property as *Amicus Curiae* 14–16. One year later, Congress replaced this provision with the version of 17 U. S. C. § 104A at issue here. See 3 M. Nimmer & D. Nimmer, Copyright § 9A.03, 9A.04, pp. 9A–17, 9A–22 (2011) (hereinafter Nimmer).

ing U. S. works, copyrighted here but in those countries' public domains, until the United States reciprocated with respect to their authors' works. URAA Joint Hearing 137 (statement of Ira S. Shapiro, General Counsel, Office of the U. S. Trade Representative (USTR)); *id.*, at 208 (statement of Professor Shira Perlmutter); *id.*, at 291 (statement of Jason S. Berman, Recording Industry Association of America (RIAA)).[6]

Berne, however, did not provide a potent enforcement mechanism. The Convention contemplates dispute resolution before the International Court of Justice. Art. 33(1). But it specifies no sanctions for noncompliance and allows parties, at any time, to declare themselves "not . . . bound" by the Convention's dispute resolution provision. Art. 33(2)–(3), 828 U. N. T. S., at 277. Unsurprisingly, no enforcement actions were launched before 1994. D. Gervais, The TRIPS Agreement 213, and n. 134 (3d ed. 2008). Although "several Berne Union Members disagreed with [our] interpretation of Article 18," the USTR told Congress, the Berne Convention did "not provide a meaningful dispute resolution process." URAA Joint Hearing 137 (statement of Shapiro). This shortcoming left Congress "free to adopt a minimalist approach and evade Article 18." Karp, Final Report, Berne Article 18 Study on Retroactive United States Copyright Protection for Berne and other Works, 20 Colum.-VLA J. L. & Arts 157, 172 (1996).

The landscape changed in 1994. The Uruguay round of multilateral trade negotiations produced the World Trade Organization (WTO) and the Agreement on Trade-Related

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[6] This tension between the United States and its new Berne counterparties calls into question the dissent's assertion that, despite the 1988 Act's minimalist approach, "[t]he United States obtained the benefits of Berne for many years." *Post*, at 365. During this six-year period, Congress had reason to doubt that U. S. authors enjoyed the *full* benefits of Berne membership.

Aspects of Intellectual Property Rights (TRIPS).[7] The United States joined both. TRIPS mandates, on pain of WTO enforcement, implementation of Berne's first 21 articles. TRIPS, Art. 9.1, 33 I. L. M. 1197, 1201 (requiring adherence to all but the "moral rights" provisions of Article 6*bis*). The WTO gave teeth to the Convention's requirements: Noncompliance with a WTO ruling could subject member countries to tariffs or cross-sector retaliation. See Gervais, *supra*, at 213; 7 W. Patry, Copyright § 24:1, pp. 24–8 to 24–9 (2011). The specter of WTO enforcement proceedings bolstered the credibility of our trading partners' threats to challenge the United States for inadequate compliance with Article 18. See URAA Joint Hearing 137 (statement of Shapiro, USTR) ("It is likely that other WTO members would challenge the current U. S. implementation of Berne Article 18 under [WTO] procedures.").[8]

Congress' response to the Uruguay agreements put to rest any questions concerning U. S. compliance with Article 18. Section 514 of the URAA, 108 Stat. 4976 (codified at 17 U. S. C. § 104A, 109(a)),[9] extended copyright to works that

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[7] Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U. N. T. S. 154.

[8] Proponents of prompt congressional action urged that avoiding a trade enforcement proceeding—potentially the WTO's first—would be instrumental in preserving the United States' "reputation as a world leader in the copyright field." URAA Joint Hearing 241 (statement of Eric Smith, International Intellectual Property Alliance (IIPA)). In this regard, U. S. negotiators reported that widespread perception of U. S. noncompliance was undermining our leverage in copyright negotiations. Unimpeachable adherence to Berne, Congress was told, would help ensure enhanced foreign protection, and hence profitable dissemination, for existing and future U. S. works. See *id.*, at 120 (app. to statement of Lehman, Commerce Dept.) ("Clearly, providing for [retroactive] protection for existing works in our own law will improve our position in future negotiations."); *id.*, at 268 (statement of Berman, RIAA).

[9] Title 17 U. S. C. § 104A is reproduced in full in an appendix to this opinion.

garnered protection in their countries of origin,[10] but had no right to exclusivity in the United States for any of three reasons: lack of copyright relations between the country of origin and the United States at the time of publication; lack of subject-matter protection for sound recordings fixed before 1972; and failure to comply with U. S. statutory formalities (*e. g.*, failure to provide notice of copyright status, or to register and renew a copyright). See § 104A(h)(6)(B)–(C).[11]

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[10] Works from most, but not all, foreign countries are eligible for protection under § 514. The provision covers only works that have "at least one author or rightholder who was, at the time the work was created, a national or domiciliary of an eligible country." 17 U. S. C. § 104A(h)(6)(D). An "eligible country" includes any "nation, other than the United States, that—(A) becomes a WTO member country after the date of the enactment of the [URAA]; [or] (B) on such date of enactment is, or after such date of enactment becomes, a nation adhering to the Berne Convention." § 104A(h)(3). As noted above, see *supra*, at 308, 164 countries adhere to the Berne Convention. World Intellectual Property Organization, Contracting Parties: Berne Convention, www.wipo.int/treaties (as visited Jan. 13, 2012, and in Clerk of Court's case file).

[11] From the first Copyright Act until late in the 20th century, Congress conditioned copyright protection on compliance with certain statutory formalities. The most notable required an author to register her work, renew that registration, and affix to published copies notice of copyrighted status. The formalities drew criticism as a trap for the unwary. See, *e. g.*, 2 Nimmer § 7.01[A], at 7–8; Doyle, Cary, McCannon, & Ringer, Notice of Copyright, Study No. 7, p. 46 (1957), reprinted in 1 Studies on Copyright 229, 272 (1963).

In 1976, Congress eliminated the registration renewal requirement for future works. Copyright Act of 1976, §§ 302, 408, 90 Stat. 2572, 2580. In 1988, it repealed the mandatory notice prerequisite. BCIA § 7, 102 Stat. 2857. And in 1992, Congress made renewal automatic for works still in their first term of protection. Copyright Amendments Act of 1992, 106 Stat. 264–266. The Copyright Act retains, however, incentives for authors to register their works and provide notice of the works' copyrighted status. See, *e. g.*, 17 U. S. C. § 405(b) (precluding actual and statutory damages against "innocent infringers" of a work that lacked notice of copyrighted status); § 411(a) (requiring registration of U. S. "work[s]," but not foreign works, before an owner may sue for infringement). The revisions

Works that have fallen into the public domain after the expiration of a full copyright term—either in the United States or the country of origin—receive no further protection under § 514. *Ibid.*[12] Copyrights "restored"[13] under URAA § 514 "subsist for the remainder of the term of copyright that the work would have otherwise been granted . . . if the work never entered the public domain." § 104A(a)(1)(B). Prospectively, restoration places foreign works on an equal footing with their U. S. counterparts; assuming a foreign and domestic author died the same day, their works will enter the public domain simultaneously. See § 302(a) (copyrights generally expire 70 years after the author's death). Restored works, however, receive no compensatory time for the period of exclusivity they would have enjoyed before § 514's enactment, had they been protected at the outset in the United States. Their total term, therefore, falls short of that available to similarly situated U. S. works.

The URAA's disturbance of the public domain hardly escaped Congress' attention. Section 514 imposed no liability for any use of foreign works occurring before restoration. In addition, anyone remained free to copy and use restored

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successively made accord with Berne Convention Article 5(2), which proscribes application of copyright formalities to foreign authors. Berne, however, affords domestic authors no escape from domestic formalities. See Art. 5(3) (protection within country of origin is a matter of domestic law).

[12] Title 17 U. S. C. § 104A(h)(6)(B) defines a "restored work" to exclude "an original work of authorship" that is "in the public domain in its source country through expiration of [its] term of protection." This provision tracks Berne's denial of protection for any work that has "fallen into the public domain in the country of origin through the expiry of the term of protection." Art. 18(1), 828 U. N. T. S., at 251.

[13] Restoration is a misnomer insofar as it implies that all works protected under § 104A previously enjoyed protection. Each work in the public domain because of lack of national eligibility or subject-matter protection, and many that failed to comply with formalities, never enjoyed U. S. copyright protection. See, *e. g.*, 3 Nimmer § 9A.04[A][1][b][iii], at 9A–26, and n. 29.4.

works for one year following § 514's enactment. See 17 U. S. C. § 104A(h)(2)(A). Concerns about § 514's compatibility with the Fifth Amendment's Takings Clause led Congress to include additional protections for "reliance parties"—those who had, before the URAA's enactment, used or acquired a foreign work then in the public domain. See § 104A(h)(3)–(4).[14] Reliance parties may continue to exploit a restored work until the owner of the restored copyright gives notice of intent to enforce—either by filing with the U. S. Copyright Office within two years of restoration, or by actually notifying the reliance party. § 104A(c), (d)(2)(A)(i), and (B)(i). After that, reliance parties may continue to exploit existing copies for a grace period of one year. § 104A(d)(2)(A)(ii) and (B)(ii). Finally, anyone who, before the URAA's enactment, created a "derivative work" based on a restored work may indefinitely exploit the derivation upon payment to the copyright holder of "reasonable compensation," to be set by a district judge if the parties cannot agree. § 104A(d)(3).

B

In 2001, petitioners filed this lawsuit challenging § 514. They maintain that Congress, when it passed the URAA, exceeded its authority under the Copyright Clause and transgressed First Amendment limitations.[15] The District

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[14] A reliance party must have used the work in a manner that would constitute infringement had a valid copyright been in effect. See § 104A(h)(4)(A). After restoration, the reliance party is limited to her previous uses. A performer of a restored work, for example, cannot, post-restoration, venture to sell copies of the script. See 3 Nimmer § 9A.04[C][1][a], at 9A–45 to 9A–46.

[15] Petitioners' complaint also challenged the constitutionality of the Copyright Term Extension Act, 112 Stat. 2827, which added 20 years to the duration of existing and future copyrights. After this Court rejected a similar challenge in *Eldred* v. *Ashcroft*, 537 U. S. 186 (2003), the District Court dismissed this portion of petitioners' suit on the pleadings, *Golan* v. *Ashcroft*, 310 F. Supp. 2d 1215 (D Colo. 2004). The Tenth Circuit affirmed, *Golan* v. *Gonzales*, 501 F. 3d 1179 (2007), and petitioners do not

Court granted the Attorney General's motion for summary judgment. *Golan* v. *Gonzales*, No. Civ. 01–B–1854, 2005 WL 914754 (D Colo., Apr. 20, 2005). In rejecting petitioners' Copyright Clause argument, the court stated that Congress "has historically demonstrated little compunction about removing copyrightable materials from the public domain." *Id.*, at *14. The court next declined to part from "the settled rule that private censorship via copyright enforcement does not implicate First Amendment concerns." *Id.*, at *17.

The Court of Appeals for the Tenth Circuit affirmed in part. *Golan* v. *Gonzales*, 501 F. 3d 1179 (2007). The public domain, it agreed, was not a "threshold that Congress" was powerless to "traverse in both directions." *Id.*, at 1187 (internal quotations marks omitted). But § 514, as the Court of Appeals read our decision in *Eldred* v. *Ashcroft*, 537 U. S. 186 (2003), required further First Amendment inspection, 501 F. 3d, at 1187. The measure "'altered the traditional contours of copyright protection,'" the court said—specifically, the "bedrock principle" that once works enter the public domain, they do not leave. *Ibid.* (quoting *Eldred*, 537 U. S., at 221). The case was remanded with an instruction to the District Court to address the First Amendment claim in light of the Tenth Circuit's opinion.

On remand, the District Court's starting premise was uncontested: Section 514 does not regulate speech on the basis of its content; therefore the law would be upheld if "narrowly tailored to serve a significant government interest." 611 F. Supp. 2d 1165, 1170–1171 (Colo. 2009) (quoting *Ward* v. *Rock Against Racism*, 491 U. S. 781, 791 (1989)). Summary judgment was due petitioners, the court concluded, because § 514's constriction of the public domain was not justified by any of the asserted federal interests: compliance with Berne,

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attempt to revive that claim in this Court, Pet. for Cert. 7, n. 2. Neither have petitioners challenged the District Court's entry of summary judgment for the Government on the claim that § 514 violates the substantive component of the Due Process Clause.

securing greater protection for U. S. authors abroad, or remediation of the inequitable treatment suffered by foreign authors whose works lacked protection in the United States. 611 F. Supp. 2d, at 1172–1177.

The Tenth Circuit reversed. Deferring to Congress' predictive judgments in matters relating to foreign affairs, the appellate court held that § 514 survived First Amendment scrutiny. Specifically, the court determined that the law was narrowly tailored to fit the important government aim of protecting U. S. copyright holders' interests abroad. 609 F. 3d 1076 (2010).

We granted certiorari to consider petitioners' challenge to § 514 under both the Copyright Clause and the First Amendment, 562 U. S. 1270 (2011), and now affirm.

II

We first address petitioners' argument that Congress lacked authority, under the Copyright Clause, to enact § 514. The Constitution states that "Congress shall have Power . . . [t]o promote the Progress of Science . . . by securing for limited Times to Authors . . . the exclusive Right to their . . . Writings." Art. I, § 8, cl. 8. Petitioners find in this grant of authority an impenetrable barrier to the extension of copyright protection to authors whose writings, for whatever reason, are in the public domain. We see no such barrier in the text of the Copyright Clause, historical practice, or our precedents.

A

The text of the Copyright Clause does not exclude application of copyright protection to works in the public domain. Symposium, Congressional Power and Limitations Inherent in the Copyright Clause, 30 Colum. J. L. & Arts 259, 266 (2007). Petitioners' contrary argument relies primarily on the Constitution's confinement of a copyright's lifespan to a "limited Tim[e]." "Removing works from the public domain," they contend, "violates the 'limited [t]imes' restriction

by turning a fixed and predictable period into one that can be reset or resurrected at any time, even after it expires." Brief for Petitioners 22.

Our decision in *Eldred* is largely dispositive of petitioners' limited-time argument. There we addressed the question whether Congress violated the Copyright Clause when it extended, by 20 years, the terms of existing copyrights. 537 U. S., at 192–193 (upholding Copyright Term Extension Act (CTEA)). Ruling that Congress acted within constitutional bounds, we declined to infer from the text of the Copyright Clause "the command that a time prescription, once set, becomes forever 'fixed' or 'inalterable.'" *Id.*, at 199. "The word 'limited,'" we observed, "does not convey a meaning so constricted." *Ibid.* Rather, the term is best understood to mean "confine[d] within certain bounds," "restrain[ed]," or "circumscribed." *Ibid.* (internal quotation marks omitted). The construction petitioners tender closely resembles the definition rejected in *Eldred* and is similarly infirm.

The terms afforded works restored by § 514 are no less "limited" than those the CTEA lengthened. In light of *Eldred*, petitioners do not here contend that the term Congress has granted U. S. authors—their lifetimes, plus 70 years—is unlimited. See 17 U. S. C. § 302(a). Nor do petitioners explain why terms of the same duration, as applied to foreign works, are not equally "circumscribed" and "confined." See *Eldred*, 537 U. S., at 199. Indeed, as earlier noted, see *supra*, at 307, 315, the copyrights of restored foreign works typically last for fewer years than those of their domestic counterparts.

The difference, petitioners say, is that the limited time had already passed for works in the public domain. What was that limited term for foreign works once excluded from U. S. copyright protection? Exactly "zero," petitioners respond. Brief for Petitioners 22 (works in question "received a specific term of protection . . . sometimes expressly set to zero"; "at the end of that period," they "entered the public do-

main"); Tr. of Oral Arg. 52 (by "refusing to provide any protection for a work," Congress "set[s] the term at zero," and thereby "tell[s] us when the end has come"). We find scant sense in this argument, for surely a "limited time" of exclusivity must begin before it may end.[16]

Carried to its logical conclusion, petitioners persist, the Government's position would allow Congress to institute a second "limited" term after the first expires, a third after that, and so on. Thus, as long as Congress legislated in installments, perpetual copyright terms would be achievable. As in *Eldred*, the hypothetical legislative misbehavior petitioners posit is far afield from the case before us. See 537 U. S., at 198–200, 209–210. In aligning the United States with other nations bound by the Berne Convention, and thereby according equitable treatment to once disfavored foreign authors, Congress can hardly be charged with a design to move stealthily toward a regime of perpetual copyrights.

B

Historical practice corroborates our reading of the Copyright Clause to permit full U. S. compliance with Berne. Undoubtedly, federal copyright legislation generally has not affected works in the public domain. Section 514's disturbance of that domain, petitioners argue, distinguishes their suit from Eldred's. In adopting the CTEA, petitioners note, Congress acted in accord with "an unbroken congressional practice" of granting preexpiration term extensions, 537 U. S., at 200. No comparable practice, they maintain, supports § 514.

On occasion, however, Congress has seen fit to protect works once freely available. Notably, the Copyright Act of 1790 granted protection to many works previously in the public domain. Act of May 31, 1790 (1790 Act), § 1, 1

[16] Cf. 3 Nimmer § 9A.02[A][2], at 9A–11, n. 28 ("[I]t stretches the language of the Berne Convention past the breaking point to posit that following 'expiry of the zero term' the . . . work need not be resurrected.").

Stat. 124 (covering "any map, chart, book, or books already printed within these United States"). Before the Act launched a uniform national system, three States provided no statutory copyright protection at all.[17] Of those that did afford some protection, seven failed to protect maps;[18] eight did not cover previously published books;[19] and all ten denied protection to works that failed to comply with formalities.[20] The First Congress, it thus appears, did not view the public domain as inviolate. As we have recognized, the "construction placed upon the Constitution by [the drafters of] the first [copyright] act of 1790, and the act of 1802 . . . men who were contemporary with [the Constitution's] formation, many of whom were members of the convention which framed it, is of itself entitled to very great weight." *Burrow-Giles Lithographic Co.* v. *Sarony*, 111 U. S. 53, 57 (1884).[21]

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[17] See B. Bugbee, Genesis of American Patent and Copyright Law 123–124 (1967) (hereinafter Bugbee) (Delaware, Maryland, and Pennsylvania).

[18] See 1783 Mass. Acts p. 236; 1783 N. J. Laws p. 47; 1783 N. H. Laws p. 521; 1783 R. I. Laws pp. 6–7; 1784 S. C. Acts p. 49; 1785 Va. Acts ch. VI; 1786 N. Y. Laws p. 298.

[19] 1783 Conn. Pub. Acts p. 617; 1783 N. J. Laws p. 47; 1785 N. C. Laws p. 563; 1786 Ga. Laws p. 323. In four States, copyright enforcement was restricted to works "not yet printed" or "hereinafter published." 1783 Mass. Acts p. 236; 1783 N. H. Laws p. 521; 1783 R. I. Laws pp. 6–7; 1784 S. C. Acts p. 49.

[20] See Bugbee 109–123.

[21] The parties debate the extent to which the First Congress removed works from the public domain. We have held, however, that at least some works protected by the 1790 Act previously lacked protection. In *Wheaton* v. *Peters*, 8 Pet. 591 (1834), the Court ruled that before enactment of the 1790 Act, common-law copyright protection expired upon first publication. *Id.*, at 657, 663. Thus published works covered by the 1790 Act previously would have been in the public domain unless protected by state statute. Had the founding generation perceived the constitutional boundary petitioners advance today, the First Congress could have designed a prospective scheme that left the public domain undisturbed. Accord *Luck's Music Library, Inc.* v. *Gonzales*, 407 F. 3d 1262, 1265 (CADC 2005) (Section 514 does not offend the Copyright Clause because, *inter alia*, "evidence from the First Congress," as confirmed by *Wheaton*, "points toward constitutionality.").

Subsequent actions confirm that Congress has not understood the Copyright Clause to preclude protection for existing works. Several private bills restored the copyrights of works that previously had been in the public domain. See Act of Feb. 19, 1849 (Corson Act), ch. 57, 9 Stat. 763; Act of June 23, 1874 (Helmuth Act), ch. 534, 18 Stat. 618; Act of Feb. 17, 1898 (Jones Act), ch. 29, 30 Stat. 1396. These bills were unchallenged in court.

Analogous patent statutes, however, were upheld in litigation.[22] In 1808, Congress passed a private bill restoring patent protection to Oliver Evans' flour mill. When Evans sued for infringement, first Chief Justice Marshall in the Circuit Court, *Evans* v. *Jordan*, 8 F. Cas. 872 (No. 4,564) (Va. 1813), and then Justice Bushrod Washington for this Court, *Evans* v. *Jordan*, 9 Cranch 199 (1815), upheld the restored patent's validity. After the patent's expiration, the Court said, "a general right to use [Evans'] discovery was not so vested in the public" as to allow the defendant to continue using the machinery, which he had constructed between the patent's expiration and the bill's passage. *Id.*, at 202. See also *Blanchard* v. *Sprague*, 3 F. Cas. 648, 650 (No. 1,518) (CC Mass. 1839) (Story, J.) ("I never have entertained any doubt of the constitutional authority of congress" to "give a patent for an invention, which . . . was in public use and enjoyed by the community at the time of the passage of the act.").

This Court again upheld Congress' restoration of an invention to protected status in *McClurg* v. *Kingsland*, 1 How. 202 (1843). There we enforced an 1839 amendment that recognized a patent on an invention despite its prior use by the inventor's employer. Absent such dispensation, the employer's use would have rendered the invention unpatentable,

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[22] Here, as in *Eldred*, "[b]ecause the Clause empowering Congress to confer copyrights also authorizes patents, congressional practice with respect to patents informs our inquiry." 537 U. S., at 201.

and therefore open to exploitation without the inventor's leave. *Id.*, at 206–209.

Congress has also passed generally applicable legislation granting patents and copyrights to inventions and works that had lost protection. An 1832 statute authorized a new patent for any inventor whose failure, "by inadvertence, accident, or mistake," to comply with statutory formalities rendered the original patent "invalid or inoperative." Act of July 3, § 3, 4 Stat. 559. An 1893 measure similarly allowed authors who had not timely deposited their work to receive "all the rights and privileges" the Copyright Act affords, if they made the required deposit by March 1, 1893. Act of Mar. 3, ch. 215, 27 Stat. 743.[23] And in 1919 and 1941, Congress authorized the President to issue proclamations granting protection to foreign works that had fallen into the public domain during World Wars I and II. See Act of Dec. 18, 1919, ch. 11, 41 Stat. 368; Act of Sept. 25, 1941, ch. 421, 55 Stat. 732.[24]

Pointing to dictum in *Graham* v. *John Deere Co. of Kansas City*, 383 U. S. 1 (1966), petitioners would have us look past this history. In *Graham*, we stated that "Congress may not authorize the issuance of patents whose effects are

[23] Section 514 is in line with these measures; like them, it accords protection to works that had lapsed into the public domain because of failure to comply with U. S. statutory formalities. See *supra*, at 314, and n. 11.

[24] Legislation of this order, petitioners argue, is best understood as an exercise of Congress' power to remedy excusable neglect. Even so, the remedy sheltered creations that, absent congressional action, would have been open to free exploitation. Such action, according to petitioners' dominant argument, see *supra*, at 318–320, is ever and always impermissible. Accord *Luck's Music Library*, 407 F. 3d, at 1265–1266 ("Plaintiffs urge that [the 1790 Act and the wartime legislation] simply extended the time limits for filing and [did] not purport to modify the prohibition on removing works from the public domain. But to the extent that potential copyright holders failed to satisfy procedural requirements, such works"—like those protected by § 514—"would necessarily have already entered the public domain . . . .").

to remove existent knowledge from the public domain, or to restrict free access to materials already available." *Id.*, at 6; *post*, at 358. But as we explained in *Eldred*, this passage did not speak to the constitutional limits on Congress' copyright and patent authority. Rather, it "addressed an invention's very eligibility for patent protection." 537 U. S., at 202, n. 7.

Installing a federal copyright system and ameliorating the interruptions of global war, it is true, presented Congress with extraordinary situations. Yet the TRIPS accord, leading the United States to comply in full measure with Berne, was also a signal event. See *supra*, at 312–313; cf. *Eldred*, 537 U. S., at 259, 264–265 (BREYER, J., dissenting) (acknowledging importance of international uniformity advanced by U. S. efforts to conform to the Berne Convention). Given the authority we hold Congress has, we will not second-guess the political choice Congress made between leaving the public domain untouched and embracing Berne unstintingly. Cf. *id.*, at 212–213.

C

Petitioners' ultimate argument as to the Copyright and Patent Clause concerns its initial words. Congress is empowered to "promote the Progress of Science and useful Arts" by enacting systems of copyright and patent protection. U. S. Const., Art. I, § 8, cl. 8. Perhaps counterintuitively for the contemporary reader, Congress' copyright authority is tied to the progress of science; its patent authority, to the progress of the useful arts. See *Graham*, 383 U. S., at 5, and n. 1; *Evans*, 8 F. Cas., at 873 (Marshall, J.).

The "Progress of Science," petitioners acknowledge, refers broadly to "the creation and spread of knowledge and learning." Brief for Petitioners 21; accord *post*, at 344–345. They nevertheless argue that federal legislation cannot serve the Clause's aim unless the legislation "spur[s] the creation of . . . new works." Brief for Petitioners 24; accord *post*, at 345, 351, 360. Because § 514 deals solely with works

already created, petitioners urge, it "provides no plausible incentive to create new works" and is therefore invalid. Reply Brief 4.[25]

The creation of at least one new work, however, is not the sole way Congress may promote knowledge and learning. In *Eldred*, we rejected an argument nearly identical to the one petitioners rehearse. The *Eldred* petitioners urged that the "CTEA's extension of existing copyrights categorically fails to 'promote the Progress of Science,' . . . because it does not stimulate the creation of new works." 537 U. S., at 211–212. In response to this argument, we held that the Copyright Clause does not demand that each copyright provision, examined discretely, operate to induce new works. Rather, we explained, the Clause "empowers Congress to determine the intellectual property regimes that, overall, in that body's judgment, will serve the ends of the Clause." *Id.*, at 222. And those permissible ends, we held, extended beyond the creation of new works. See *id.*, at 205–206 (rejecting the notion that "'the only way to promote the progress of science [is] to provide incentives to create new works'" (quoting Perlmutter, Participation in the International Copyright System as a Means To Promote the Progress of Science and Useful Arts, 36 Loyola (LA) L. Rev. 323, 332 (2002))).[26]

Even were we writing on a clean slate, petitioners' argument would be unavailing. Nothing in the text of the Copy-

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[25] But see Brief for Motion Picture Association of America as *Amicus Curiae* 27 (observing that income from existing works can finance the creation and publication of new works); *Eldred*, 537 U. S., at 208, n. 15 (noting that Noah Webster "supported his entire family from the earnings on his speller and grammar during the twenty years he took to complete his dictionary" (internal quotation marks omitted)).

[26] The dissent also suggests, more tentatively, that at least where copyright legislation extends protection to works previously in the public domain, Congress must counterbalance that restriction with new incentives to create. *Post*, at 351. Even assuming the public domain were a category of constitutional significance, contra *supra*, at 318–324, we would not understand "the Progress of Science" to have this contingent meaning.

right Clause confines the "Progress of Science" exclusively to "incentives for creation." *Id.*, at 324, n. 5 (internal quotation marks omitted). Evidence from the founding, moreover, suggests that inducing *dissemination*—as opposed to creation—was viewed as an appropriate means to promote science. See Nachbar, Constructing Copyright's Mythology, 6 Green Bag 2d 37, 44 (2002) ("The scope of copyright protection existing at the time of the framing," trained as it was on "publication, not creation," "is inconsistent with claims that copyright must promote creative activity in order to be valid." (internal quotation marks omitted)). Until 1976, in fact, Congress made "federal copyright contingent on publication[,] [thereby] providing incentives not primarily for creation," but for dissemination. Perlmutter, *supra*, at 324, n. 5. Our decisions correspondingly recognize that "copyright supplies the economic incentive to create *and disseminate* ideas." *Harper & Row, Publishers, Inc.* v. *Nation Enterprises*, 471 U. S. 539, 558 (1985) (emphasis added). See also *Eldred*, 537 U. S., at 206.[27]

Considered against this backdrop, § 514 falls comfortably within Congress' authority under the Copyright Clause. Congress rationally could have concluded that adherence to Berne "promotes the diffusion of knowledge," Brief for Petitioners 4. A well-functioning international copyright system would likely encourage the dissemination of existing and future works. See URAA Joint Hearing 189 (statement of Professor Perlmutter). Full compliance with Berne, Congress had reason to believe, would expand the foreign markets available to U. S. authors and invigorate protection against piracy of U. S. works abroad, S. Rep. No. 103–412, pp. 224, 225 (1994); URAA Joint Hearing 291 (statement of Berman, RIAA); *id.*, at 244, 247 (statement of Smith, IIPA),

[27] That the same economic incentives might also induce the dissemination of futons, fruit, or Bibles, see *post*, at 363, is no answer to this evidence that legislation furthering the dissemination of literary property has long been thought a legitimate way to "promote the Progress of Science."

thereby benefiting copyright-intensive industries stateside and inducing greater investment in the creative process.

The provision of incentives for the creation of new works is surely an essential means to advance the spread of knowledge and learning. We hold, however, that it is not the sole means Congress may use "[t]o promote the Progress of Science." See Perlmutter, *supra*, at 332 (United States would "lose all flexibility" were the provision of incentives to create the exclusive way to promote the progress of science).[28] Congress determined that exemplary adherence to Berne would serve the objectives of the Copyright Clause. We have no warrant to reject the rational judgment Congress made.

III

A

We next explain why the First Amendment does not inhibit the restoration authorized by § 514. To do so, we first recapitulate the relevant part of our pathmarking decision in *Eldred*. The petitioners in *Eldred*, like those here, argued that Congress had violated not only the "limited Times" prescription of the Copyright Clause. In addition, and independently, the *Eldred* petitioners charged, Congress had offended the First Amendment's freedom of expression guarantee. The CTEA's 20-year enlargement of a copyright's duration, we held in *Eldred*, offended neither provision.

Concerning the First Amendment, we recognized that some restriction on expression is the inherent and intended

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[28] The dissent suggests that the "utilitarian view of copyrigh[t]" embraced by Jefferson, Madison, and our case law sets us apart from continental Europe and inhibits us from harmonizing our copyright laws with those of countries in the civil-law tradition. See *post*, at 348–349, 365. For persuasive refutation of that suggestion, see Austin, Does the Copyright Clause Mandate Isolationism? 26 Colum. J. L. & Arts 17, 59 (2002) (cautioning against "an isolationist reading of the Copyright Clause that is in tension with . . . America's international copyright relations over the last hundred or so years").

effect of every grant of copyright. Noting that the "Copyright Clause and the First Amendment were adopted close in time," 537 U. S., at 219, we observed that the Framers regarded copyright protection not simply as a limit on the manner in which expressive works may be used. They also saw copyright as an "engine of free expression[:] By establishing a marketable right to the use of one's expression, copyright supplies the economic incentive to create and disseminate ideas." *Ibid.* (quoting *Harper & Row*, 471 U. S., at 558 (internal quotation marks omitted)); see *id.*, at 546 ("rights conferred by copyright are designed to assure contributors to the store of knowledge a fair return for their labors").

We then described the "traditional contours" of copyright protection, *i. e.*, the "idea/expression dichotomy" and the "fair use" defense.[29] Both are recognized in our jurisprudence as "built-in First Amendment accommodations." *Eldred*, 537 U. S., at 219; see *Harper & Row*, 471 U. S., at 560 (First Amendment protections are "embodied in the Copyright Act's distinction between copyrightable expression and uncopyrightable facts and ideas," and in the "latitude for scholarship and comment" safeguarded by the fair use defense).

The idea/expression dichotomy is codified at 17 U. S. C. § 102(b): "In no case does copyright protec[t] . . . any idea, procedure, process, system, method of operation, concept, principle, or discovery . . . described, explained, illustrated, or embodied in [the copyrighted] work." "Due to this [idea/expression] distinction, every idea, theory, and fact in a copyrighted work becomes instantly available for public exploitation at the moment of publication"; the author's expression alone gains copyright protection. *Eldred*, 537 U. S., at 219; see *Harper & Row*, 471 U. S., at 556 ("idea/expression di-

[29] On the initial appeal in this case, the Tenth Circuit gave an unconfined reading to our reference in *Eldred* to "traditional contours of copyright." 501 F. 3d, at 1187–1196. That reading was incorrect, as we here clarify.

chotomy strike[s] a definitional balance between the First Amendment and the Copyright Act by permitting free communication of facts while still protecting an author's expression" (internal quotation marks omitted)).

The second "traditional contour," the fair use defense, is codified at 17 U. S. C. § 107: "[T]he fair use of a copyrighted work, including such use by reproduction in copies . . . , for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright." This limitation on exclusivity "allows the public to use not only facts and ideas contained in a copyrighted work, but also [the author's] expression itself in certain circumstances." *Eldred*, 537 U. S., at 219; see *id.*, at 220 ("fair use defense affords considerable latitude for scholarship and comment, . . . even for parody" (internal quotation marks omitted)).

Given the "speech-protective purposes and safeguards" embraced by copyright law, see *id.*, at 219, we concluded in *Eldred* that there was no call for the heightened review petitioners sought in that case.[30] We reach the same conclusion here.[31] Section 514 leaves undisturbed the "idea/expression" distinction and the "fair use" defense. Moreover, Congress adopted measures to ease the transition from a national scheme to an international copyright regime: It deferred the date from which enforcement runs, and it cushioned the impact of restoration on "reliance parties" who exploited foreign works denied protection before § 514 took effect. See *supra*, at 315–316 (describing 17 U. S. C. § 104A(c), (d), and (h)). See also *Eldred*, 537 U. S., at 220

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[30] See *Eldred*, 537 U. S., at 221 ("Protection of [an author's original expression from unrestricted exploitation] does not raise the free speech concerns present when the government compels or burdens the communication of particular facts or ideas.").

[31] Focusing narrowly on the specific problem of orphan works, the dissent overlooks these principal protections against "the dissemination-restricting harms of copyright." *Post*, at 357.

(describing supplemental allowances and exemptions available to certain users to mitigate the CTEA's impact).

B

Petitioners attempt to distinguish their challenge from the one turned away in *Eldred*. First Amendment interests of a higher order are at stake here, petitioners say, because they—unlike their counterparts in *Eldred*—enjoyed "vested rights" in works that had already entered the public domain. The limited rights they retain under copyright law's "built-in safeguards" are, in their view, no substitute for the unlimited use they enjoyed before § 514's enactment. Nor, petitioners urge, does § 514's "unprecedented" foray into the public domain possess the historical pedigree that supported the term extension at issue in *Eldred*. Brief for Petitioners 42–43.

However spun, these contentions depend on an argument we considered and rejected above, namely, that the Constitution renders the public domain largely untouchable by Congress. Petitioners here attempt to achieve under the banner of the First Amendment what they could not win under the Copyright Clause: On their view of the Copyright Clause, the public domain is inviolable; as they read the First Amendment, the public domain is policed through heightened judicial scrutiny of Congress' means and ends. As we have already shown, see *supra*, at 318–327, the text of the Copyright Clause and the historical record scarcely establish that "once a work enters the public domain," Congress cannot permit anyone—"not even the creator—[to] copyright it," 501 F. 3d, at 1184. And nothing in the historical record, congressional practice, or our own jurisprudence warrants exceptional First Amendment solicitude for copyrighted works that were once in the public domain.[32] Neither this chal-

[32] "[R]equir[ing] works that have already fallen into the public domain to stay there" might, as the dissent asserts, supply an "easily administrable standard." *Post*, at 358. However attractive this bright-line rule might

lenge nor that raised in *Eldred*, we stress, allege Congress transgressed a generally applicable First Amendment prohibition; we are not faced, for example, with copyright protection that hinges on the author's viewpoint.

The Tenth Circuit's initial opinion determined that petitioners marshaled a stronger First Amendment challenge than did their predecessors in *Eldred*, who never "possessed unfettered access to any of the works at issue." 501 F. 3d, at 1193. See also *id.*, at 1194 ("[O]nce the works at issue became free for anyone to copy, [petitioners] had vested First Amendment interests in the expressions, [thus] § 514's interference with [petitioners'] rights is subject to First Amendment scrutiny."). As petitioners put it in this Court, Congress impermissibly revoked their right to exploit foreign works that "belonged to them" once the works were in the public domain. Brief for Petitioners 44–45.

To copyright lawyers, the "vested rights" formulation might sound exactly backwards: Rights typically vest at the *outset* of copyright protection, in an author or rightholder. See, *e. g.*, 17 U. S. C. § 201(a) ("Copyright in a work protected . . . vests initially in the author . . . ."). Once the term of protection ends, the works do not revest in any rightholder. Instead, the works simply lapse into the public domain.

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be, it is not a rule rooted in the constitutional text or history. Nor can it fairly be gleaned from our case law. The dissent cites three decisions to document its assertion that "this Court has assumed the particular importance of public domain material in roughly analogous circumstances." *Ibid.* The dictum in *Graham* v. *John Deere Co. of Kansas City*, 383 U. S. 1, 6 (1966), noted earlier, did not treat the public domain as a constitutional limit—certainly not under the rubric of the First Amendment. See *supra*, at 323–324. The other two decisions the dissent cites considered whether the federal Patent Act preempted a state trade-secret law, *Kewanee Oil Co.* v. *Bicron Corp.*, 416 U. S. 470, 479–484 (1974), and whether the freedom of the press shielded reporters from liability for publishing material drawn from public court documents, *Cox Broadcasting Corp.* v. *Cohn*, 420 U. S. 469, 495–497 (1975). Neither decision remotely ascribed constitutional significance to a work's public domain status.

See, *e. g.*, Berne, Art. 18(1), 828 U. N. T. S., at 251 ("This Convention shall apply to all works which . . . have not yet fallen into the public domain . . . ."). Anyone has free access to the public domain, but no one, after the copyright term has expired, acquires ownership rights in the once-protected works.

Congress recurrently adjusts copyright law to protect categories of works once outside the law's compass. For example, Congress broke new ground when it extended copyright protection to foreign works in 1891, Act of Mar. 3, § 13, 26 Stat. 1110; to dramatic works in 1856, Act of Aug. 18, 11 Stat. 138; to photographs and photographic negatives in 1865, Act of Mar. 3, § 1, 13 Stat. 540; to motion pictures in 1912, Act of Aug. 24, 37 Stat. 488; to fixed sound recordings in 1972, Act of Oct. 15, 1971, 85 Stat. 391; and to architectural works in 1990, Architectural Works Copyright Protection Act, 104 Stat. 5133. And on several occasions, as recounted above, Congress protected works previously in the public domain, hence freely usable by the public. See *supra*, at 320–324. If Congress could grant protection to these works without hazarding heightened First Amendment scrutiny, then what free speech principle disarms it from protecting works prematurely cast into the public domain for reasons antithetical to the Berne Convention?[33]

Section 514, we add, does not impose a blanket prohibition on public access. Petitioners protest that fair use and the idea/expression dichotomy "are plainly inadequate to protect the speech and expression rights that Section 514 took from

[33] It was the Fifth Amendment's Takings Clause—not the First Amendment—that Congress apparently perceived to be a potential check on its authority to protect works then freely available to the public. See URAA Joint Hearing 3 (statement of Rep. Hughes); *id.*, at 121 (app. to statement of Lehman, Commerce Dept.); *id.*, at 141 (statement of Shapiro, USTR); *id.*, at 145 (statement of Christopher Schroeder, DOJ). The reliance-party protections supplied by § 514, see *supra*, at 316, were meant to address such concerns. See URAA Joint Hearing 148–149 (prepared statement of Schroeder).

petitioners, or . . . the public"—that is, "the unrestricted right to perform, copy, teach and distribute the *entire* work, for any reason." Brief for Petitioners 46–47. "Playing a few bars of a Shostakovich symphony," petitioners observe, "is no substitute for performing the entire work." *Id.*, at 47.[34]

But Congress has not put petitioners in this bind. The question here, as in *Eldred*, is whether would-be users must pay for their desired use of the author's expression, or else limit their exploitation to "fair use" of that work. Prokofiev's Peter and the Wolf could once be performed free of charge; after § 514 the right to perform it must be obtained in the marketplace. This is the same marketplace, of course, that exists for the music of Prokofiev's U. S. contemporaries: works of Copland and Bernstein, for example, that enjoy copyright protection, but nevertheless appear regularly in the programs of U. S. concertgoers.

Before we joined Berne, domestic works and some foreign works were protected under U. S. statutes and bilateral international agreements, while other foreign works were available at an artificially low (because royalty-free) cost. By fully implementing Berne, Congress ensured that most works, whether foreign or domestic, would be governed by the same legal regime. The phenomenon to which Congress responded is not new: Distortions of the same order occurred with greater frequency—and to the detriment of both foreign and domestic authors—when, before 1891, foreign works were excluded entirely from U. S. copyright protection. See Kampelman, The United States and International Copyright, 41 Am. J. Int'l L. 406, 413 (1947) ("American readers were less inclined to read the novels of Cooper or Haw-

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[34] Because Shostakovich was a pre-1973 Russian composer, his works were not protected in the United States. See U. S. Copyright Office, Circular No. 38A: The International Copyright Relations of the United States 9, 11, n. 2 (2010) (copyright relations between the Soviet Union and the United States date to 1973).

thorne for a dollar when they could buy a novel of Scott or Dickens for a quarter."). Section 514 continued the trend toward a harmonized copyright regime by placing foreign works in the position they would have occupied if the current regime had been in effect when those works were created and first published. Authors once deprived of protection are spared the continuing effects of that initial deprivation; § 514 gives them nothing more than the benefit of their labors during whatever time remains before the normal copyright term expires.[35]

Unlike petitioners, the dissent makes much of the so-called "orphan works" problem. See *post*, at 354–357, 366–367. We readily acknowledge the difficulties would-be users of copyrightable materials may face in identifying or locating copyright owners. See generally U. S. Copyright Office, Report on Orphan Works 21–40 (2006). But as the dissent concedes, see *post*, at 357, this difficulty is hardly peculiar to works restored under § 514. It similarly afflicts, for instance, U. S. libraries that attempt to catalogue U. S. books. See *post*, at 355–356. See also Brief for American Library Association et al. as *Amici Curiae* 22 (Section 514 "exacerbated," but did not create, the problem of orphan works); U. S. Copyright Office, *supra*, at 41–44 (tracing orphan-works problem to Congress' elimination of formalities, commencing with the 1976 Copyright Act).[36]

Nor is this a matter appropriate for judicial, as opposed to legislative, resolution. Cf. *Authors Guild* v. *Google, Inc.*,

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[35] Persistently deploring "'restored copyright' protection [because it] removes material from the public domain," *post*, at 357, the dissent does not pause to consider when and why the material came to be lodged in that domain. Most of the works affected by § 514 got there after a term of zero or a term cut short by failure to observe U. S. formalities. See *supra*, at 314.

[36] The pervasive problem of copyright piracy, noted *post*, at 356–357, likewise is scarcely limited to protected foreign works formerly in the public domain.

770 F. Supp. 2d 666, 677–678 (SDNY 2011) (rejecting proposed "Google Books" class settlement because, *inter alia*, "the establishment of a mechanism for exploiting unclaimed books is a matter more suited for Congress than this Court" (citing *Eldred*, 537 U. S., at 212)). Indeed, the host of policy and logistical questions identified by the dissent speak for themselves. *Post*, at 355–356. Despite "longstanding efforts," see *Authors Guild*, 770 F. Supp. 2d, at 678 (quoting statement of Marybeth Peters), Congress has not yet passed ameliorative orphan-works legislation of the sort enacted by other Berne members, see, *e. g.*, Canada Copyright Act, R. S. C., 1985, c. C–42, § 77 (authorizing Copyright Board to license use of orphan works by persons unable, after making reasonable efforts, to locate the copyright owner). Heretofore, no one has suggested that the orphan-works issue should be addressed through our implementation of Berne, rather than through overarching legislation of the sort proposed in Congress and cited by the dissent. See *post*, at 366–367; U. S. Copyright Office, Legal Issues in Mass Digitization 25–29 (2011) (discussing recent legislative efforts). Our unstinting adherence to Berne may add impetus to calls for the enactment of such legislation. But resistance to Berne's prescriptions surely is not a necessary or proper response to the pervasive question, what should Congress do about orphan works.

IV

Congress determined that U. S. interests were best served by our full participation in the dominant system of international copyright protection. Those interests include ensuring exemplary compliance with our international obligations, securing greater protection for U. S. authors abroad, and remedying unequal treatment of foreign authors. The judgment § 514 expresses lies well within the ken of the political branches. It is our obligation, of course, to determine whether the action Congress took, wise or not, encounters any constitutional shoal. For the reasons stated, we are sat-

isfied it does not. The judgment of the Court of Appeals for the Tenth Circuit is therefore

Affirmed.

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

APPENDIX

Title 17 U. S. C. § 104A provides:

"(a) AUTOMATIC PROTECTION AND TERM.—

"(1) TERM.—

"(A) Copyright subsists, in accordance with this section, in restored works, and vests automatically on the date of restoration.

"(B) Any work in which copyright is restored under this section shall subsist for the remainder of the term of copyright that the work would have otherwise been granted in the United States if the work never entered the public domain in the United States.

"(2) EXCEPTION.—Any work in which the copyright was ever owned or administered by the Alien Property Custodian and in which the restored copyright would be owned by a government or instrumentality thereof, is not a restored work.

"(b) OWNERSHIP OF RESTORED COPYRIGHT.—A restored work vests initially in the author or initial rightholder of the work as determined by the law of the source country of the work.

"(c) FILING OF NOTICE OF INTENT TO ENFORCE RESTORED COPYRIGHT AGAINST RELIANCE PARTIES.—On or after the date of restoration, any person who owns a copyright in a restored work or an exclusive right therein may file with the Copyright Office a notice of intent to enforce that person's copyright or exclusive right or may serve such a notice directly on a reliance party. Acceptance of a notice by the

Copyright Office is effective as to any reliance parties but shall not create a presumption of the validity of any of the facts stated therein. Service on a reliance party is effective as to that reliance party and any other reliance parties with actual knowledge of such service and of the contents of that notice.

"(d) REMEDIES FOR INFRINGEMENT OF RESTORED COPYRIGHTS.—

"(1) ENFORCEMENT OF COPYRIGHT IN RESTORED WORKS IN THE ABSENCE OF A RELIANCE PARTY.—As against any party who is not a reliance party, the remedies provided in chapter 5 of this title shall be available on or after the date of restoration of a restored copyright with respect to an act of infringement of the restored copyright that is commenced on or after the date of restoration.

"(2) ENFORCEMENT OF COPYRIGHT IN RESTORED WORKS AS AGAINST RELIANCE PARTIES.—As against a reliance party, except to the extent provided in paragraphs (3) and (4), the remedies provided in chapter 5 of this title shall be available, with respect to an act of infringement of a restored copyright, on or after the date of restoration of the restored copyright if the requirements of either of the following subparagraphs are met:

"(A)(i) The owner of the restored copyright (or such owner's agent) or the owner of an exclusive right therein (or such owner's agent) files with the Copyright Office, during the 24-month period beginning on the date of restoration, a notice of intent to enforce the restored copyright; and

"(ii)(I) the act of infringement commenced after the end of the 12-month period beginning on the date of publication of the notice in the Federal Register;

"(II) the act of infringement commenced before the end of the 12-month period described in subclause (I) and continued after the end of that 12-month period, in which case remedies shall be available only for infringement occurring after the end of that 12-month period; or

"(III) copies or phonorecords of a work in which copyright has been restored under this section are made after publication of the notice of intent in the Federal Register.

"(B)(i) The owner of the restored copyright (or such owner's agent) or the owner of an exclusive right therein (or such owner's agent) serves upon a reliance party a notice of intent to enforce a restored copyright; and

"(ii)(I) the act of infringement commenced after the end of the 12-month period beginning on the date the notice of intent is received;

"(II) the act of infringement commenced before the end of the 12-month period described in subclause (I) and continued after the end of that 12-month period, in which case remedies shall be available only for the infringement occurring after the end of that 12-month period; or

"(III) copies or phonorecords of a work in which copyright has been restored under this section are made after receipt of the notice of intent.

"In the event that notice is provided under both subparagraphs (A) and (B), the 12-month period referred to in such subparagraphs shall run from the earlier of publication or service of notice.

"(3) EXISTING DERIVATIVE WORKS.—(A) In the case of a derivative work that is based upon a restored work and is created—

"(i) before the date of the enactment of the Uruguay Round Agreements Act, if the source country of the restored work is an eligible country on such date, or

"(ii) before the date on which the source country of the restored work becomes an eligible country, if that country is not an eligible country on such date of enactment,

"a reliance party may continue to exploit that derivative work for the duration of the restored copyright if the reliance party pays to the owner of the restored copyright reasonable compensation for conduct which would be subject to a remedy for infringement but for the provisions of this paragraph.

"(B) In the absence of an agreement between the parties, the amount of such compensation shall be determined by an action in United States district court, and shall reflect any harm to the actual or potential market for or value of the restored work from the reliance party's continued exploitation of the work, as well as compensation for the relative contributions of expression of the author of the restored work and the reliance party to the derivative work.

"(4) COMMENCEMENT OF INFRINGEMENT FOR RELIANCE PARTIES.—For purposes of section 412, in the case of reliance parties, infringement shall be deemed to have commenced before registration when acts which would have constituted infringement had the restored work been subject to copyright were commenced before the date of restoration.

"(e) NOTICES OF INTENT TO ENFORCE A RESTORED COPYRIGHT.—

"(1) NOTICES OF INTENT FILED WITH THE COPYRIGHT OFFICE.—(A)(i) A notice of intent filed with the Copyright Office to enforce a restored copyright shall be signed by the owner of the restored copyright or the owner of an exclusive right therein, who files the notice under subsection (d)(2)(A)(i) (hereafter in this paragraph referred to as the 'owner'), or by the owner's agent, shall identify the title of the restored work, and shall include an English translation of the title and any other alternative titles known to the owner by which the restored work may be identified, and an address and telephone number at which the owner may be contacted. If the notice is signed by an agent, the agency relationship must have been constituted in a writing signed by the owner before the filing of the notice. The Copyright Office may specifically require in regulations other information to be included in the notice, but failure to provide such other information shall not invalidate the notice or be a basis for refusal to list the restored work in the Federal Register.

"(ii) If a work in which copyright is restored has no formal title, it shall be described in the notice of intent in detail sufficient to identify it.

"(iii) Minor errors or omissions may be corrected by further notice at any time after the notice of intent is filed. Notices of corrections for such minor errors or omissions shall be accepted after the period established in subsection (d)(2)(A)(i). Notices shall be published in the Federal Register pursuant to subparagraph (B).

"(B)(i) The Register of Copyrights shall publish in the Federal Register, commencing not later than 4 months after the date of restoration for a particular nation and every 4 months thereafter for a period of 2 years, lists identifying restored works and the ownership thereof if a notice of intent to enforce a restored copyright has been filed.

"(ii) Not less than 1 list containing all notices of intent to enforce shall be maintained in the Public Information Office of the Copyright Office and shall be available for public inspection and copying during regular business hours pursuant to sections 705 and 708.

"(C) The Register of Copyrights is authorized to fix reasonable fees based on the costs of receipt, processing, recording, and publication of notices of intent to enforce a restored copyright and corrections thereto.

"(D)(i) Not later than 90 days before the date the Agreement on Trade-Related Aspects of Intellectual Property referred to in section 101(d)(15) of the Uruguay Round Agreements Act enters into force with respect to the United States, the Copyright Office shall issue and publish in the Federal Register regulations governing the filing under this subsection of notices of intent to enforce a restored copyright.

"(ii) Such regulations shall permit owners of restored copyrights to file simultaneously for registration of the restored copyright.

"(2) NOTICES OF INTENT SERVED ON A RELIANCE PARTY.—(A) Notices of intent to enforce a restored copyright may be served on a reliance party at any time after the date of restoration of the restored copyright.

"(B) Notices of intent to enforce a restored copyright served on a reliance party shall be signed by the owner or the owner's agent, shall identify the restored work and the work in which the restored work is used, if any, in detail sufficient to identify them, and shall include an English translation of the title, any other alternative titles known to the owner by which the work may be identified, the use or uses to which the owner objects, and an address and telephone number at which the reliance party may contact the owner. If the notice is signed by an agent, the agency relationship must have been constituted in writing and signed by the owner before service of the notice.

"(3) EFFECT OF MATERIAL FALSE STATEMENTS.—Any material false statement knowingly made with respect to any restored copyright identified in any notice of intent shall make void all claims and assertions made with respect to such restored copyright.

"(f) IMMUNITY FROM WARRANTY AND RELATED LIABILITY.—

"(1) IN GENERAL.—Any person who warrants, promises, or guarantees that a work does not violate an exclusive right granted in section 106 shall not be liable for legal, equitable, arbitral, or administrative relief if the warranty, promise, or guarantee is breached by virtue of the restoration of copyright under this section, if such warranty, promise, or guarantee is made before January 1, 1995.

"(2) PERFORMANCES.—No person shall be required to perform any act if such performance is made infringing by virtue of the restoration of copyright under the provisions of this section, if the obligation to perform was undertaken before January 1, 1995.

"(g) PROCLAMATION OF COPYRIGHT RESTORATION.—Whenever the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States, restored copyright protection on substantially the same basis as provided under this section, the

President may by proclamation extend restored protection provided under this section to any work—

"(1) of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation; or

"(2) which was first published in that nation.

"The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under such a proclamation.

"(h) DEFINITIONS.—For purposes of this section and section 109(a):

"(1) The term 'date of adherence or proclamation' means the earlier of the date on which a foreign nation which, as of the date the WTO Agreement enters into force with respect to the United States, is not a nation adhering to the Berne Convention or a WTO member country, becomes—

"(A) a nation adhering to the Berne Convention;

"(B) a WTO member country;

"(C) a nation adhering to the WIPO Copyright Treaty;

"(D) a nation adhering to the WIPO Performances and Phonograms Treaty; or

"(E) subject to a Presidential proclamation under subsection (g).

"(2) The 'date of restoration' of a restored copyright is—

"(A) January 1, 1996, if the source country of the restored work is a nation adhering to the Berne Convention or a WTO member country on such date, or

"(B) the date of adherence or proclamation, in the case of any other source country of the restored work.

"(3) The term 'eligible country' means a nation, other than the United States, that—

"(A) becomes a WTO member country after the date of the enactment of the Uruguay Round Agreements Act;

"(B) on such date of enactment is, or after such date of enactment becomes, a nation adhering to the Berne Convention;

"(C) adheres to the WIPO Copyright Treaty;

"(D) adheres to the WIPO Performances and Phonograms Treaty; or

"(E) after such date of enactment becomes subject to a proclamation under subsection (g).

"(4) The term "reliance party" means any person who—

"(A) with respect to a particular work, engages in acts, before the source country of that work becomes an eligible country, which would have violated section 106 if the restored work had been subject to copyright protection, and who, after the source country becomes an eligible country, continues to engage in such acts;

"(B) before the source country of a particular work becomes an eligible country, makes or acquires 1 or more copies or phonorecords of that work; or

"(C) as the result of the sale or other disposition of a derivative work covered under subsection (d)(3), or significant assets of a person described in subparagraph (A) or (B), is a successor, assignee, or licensee of that person.

"(5) The term 'restored copyright' means copyright in a restored work under this section.

"(6) The term 'restored work' means an original work of authorship that—

"(A) is protected under subsection (a);

"(B) is not in the public domain in its source country through expiration of term of protection;

"(C) is in the public domain in the United States due to—

"(i) noncompliance with formalities imposed at any time by United States copyright law, including failure of renewal, lack of proper notice, or failure to comply with any manufacturing requirements;

"(ii) lack of subject matter protection in the case of sound recordings fixed before February 15, 1972; or

"(iii) lack of national eligibility;

"(D) has at least one author or rightholder who was, at the time the work was created, a national or domiciliary of

an eligible country, and if published, was first published in an eligible country and not published in the United States during the 30-day period following publication in such eligible country; and

"(E) if the source country for the work is an eligible country solely by virtue of its adherence to the WIPO Performances and Phonograms Treaty, is a sound recording.

"(7) The term 'rightholder' means the person—

"(A) who, with respect to a sound recording, first fixes a sound recording with authorization, or

"(B) who has acquired rights from the person described in subparagraph (A) by means of any conveyance or by operation of law.

"(8) The 'source country' of a restored work is—

"(A) a nation other than the United States;

"(B) in the case of an unpublished work—

"(i) the eligible country in which the author or rightholder is a national or domiciliary, or, if a restored work has more than 1 author or rightholder, of which the majority of foreign authors or rightholders are nationals or domiciliaries; or

"(ii) if the majority of authors or rightholders are not foreign, the nation other than the United States which has the most significant contacts with the work; and

"(C) in the case of a published work—

"(i) the eligible country in which the work is first published, or

"(ii) if the restored work is published on the same day in 2 or more eligible countries, the eligible country which has the most significant contacts with the work."

JUSTICE BREYER, with whom JUSTICE ALITO joins, dissenting.

In order "[t]o promote the Progress of Science" (by which term the Founders meant "learning" or "knowledge"), the Constitution's Copyright Clause grants Congress the power

to "secur[e] for limited Times to Authors . . . the exclusive Right to their . . . Writings." Art. I, § 8, cl. 8. This "exclusive Right" allows its holder to charge a fee to those who wish to use a copyrighted work, and the ability to charge that fee encourages the production of new material. In this sense, a copyright is, in Macaulay's words, a "tax on readers for the purpose of giving a bounty to writers"—a bounty designed to encourage new production. As the Court said in *Eldred*, "'[t]he economic philosophy behind the [Copyright] [C]lause . . . is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors.'" *Eldred* v. *Ashcroft*, 537 U. S. 186, 212, n. 18 (2003) (quoting *Mazer* v. *Stein*, 347 U. S. 201, 219 (1954)). See T. Macaulay, Speeches on Copyright 25 (E. Miller ed. 1913); E. Walterscheid, The Nature of the Intellectual Property Clause: A Study in Historical Perspective 125–126 (2002) (hereinafter Walterscheid).

The statute before us, however, does not encourage anyone to produce a single new work. By definition, it bestows monetary rewards only on owners of old works—works that have already been created and already are in the American public domain. At the same time, the statute inhibits the dissemination of those works, foreign works published abroad after 1923, of which there are many millions, including films, works of art, innumerable photographs, and, of course, books—books that (in the absence of the statute) would assume their rightful places in computer-accessible databases, spreading knowledge throughout the world. See *infra*, at 354–357. In my view, the Copyright Clause does not authorize Congress to enact this statute. And I consequently dissent.

I

The possibility of eliciting new production is, and always has been, an essential precondition for American copyright protection. The Constitution's words, "exclusive Right,"

"limited Times," "Progress of Science," viewed through the lens of history underscore the legal significance of what the Court in *Eldred* referred to as the "economic philosophy behind the Copyright Clause." 537 U. S., at 212, n. 18 (brackets omitted). That philosophy understands copyright's grants of limited monopoly privileges to authors as private benefits that are conferred for a public reason—to elicit new creation.

Yet, as the Founders recognized, monopoly is a two-edged sword. On the one hand, it can encourage production of new works. In the absence of copyright protection, anyone might freely copy the products of an author's creative labor, appropriating the benefits without incurring the nonrepeatable costs of creation, thereby deterring authors from exerting themselves in the first place. On the other hand, copyright tends to restrict the dissemination (and use) of works once produced either because the absence of competition translates directly into higher consumer prices or because the need to secure copying permission sometimes imposes administrative costs that make it difficult for potential users of a copyrighted work to find its owner and strike a bargain. See W. Landes & R. Posner, The Economic Structure of Intellectual Property Law 68–70, 213–214 (2003). Consequently, the original British copyright statute, the Constitution's Framers, and our case law all have recognized copyright's resulting and necessary call for balance.

At the time the Framers wrote the Constitution, they were well aware of Britain's 18th-century copyright statute, the Statute of Anne, 8 Anne, ch. 19 (1710), and they were aware of the legal struggles that produced it. That statute sought in part to control, and to limit, pre-existing monopolies that had emerged in the book trade as a result of the Crown's having previously granted special privileges to royal favorites. The Crown, for example, had chartered the Stationers' Company, permitting it to regulate and to censor

works on the government's behalf. The Stationers had thereby acquired control over the disposition of copies of published works, from which emerged the Stationers' copyright—a right conferred on company members, not authors, that was deemed to exist in perpetuity. See L. Patterson, Copyright in Historical Perspective 1–16, 114–150 (1968) (hereinafter Patterson); Walterscheid 59–65; Gómez-Arostegui, The Untold Story of the First Copyright Suit Under the Statute of Anne in 1710, 25 Berkeley Tech. L. J. 1247, 1250–1256 (2010).

To prevent the continuation of the booksellers' monopoly and to encourage authors to write new books, Parliament enacted the Statute of Anne. It bore the title: "An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned." And it granted authors (not publishers) and their assignees the "sole Right and Liberty of printing" their works for limited periods of time *in order to encourage them "to compose and write useful Books*." 8 Anne, ch. 19, § 1 (emphasis added). As one historian has put it: "The central plank of the . . . Act was . . . a cultural *quid pro quo*. To encourage 'learned Men to compose and write useful Books' the state would provide a guaranteed, if temporally limited, right to print and reprint those works." Deazley, The Myth of Copyright at Common Law, 62 Camb. L. J. 106, 108 (2003). At first, in their attempts to minimize their losses, the booksellers argued that authors had a perpetual common-law copyright in their works deriving from their natural rights as creators. But the House of Lords ultimately held in *Donaldson* v. *Beckett*, 1 Eng. Rep. 837 (1774), that the Statute of Anne had transformed any such perpetual common-law copyright into a copyright of a limited term designed to serve the public interest. Patterson 15–16, 153, 158–179; Deazley, *supra*, at 114–126.

Many early colonial copyright statutes, patterned after the Statute of Anne, also stated that copyright's objective was

to encourage authors to produce new works and thereby improve learning. See U. S. Copyright Office, Copyright Enactments, Bulletin No. 3, pp. 1, 6, 10, 11, 17, 19 (rev. 1963) (statutes of Connecticut, New Jersey, Pennsylvania, South Carolina, Georgia, and New York); Walterscheid 74–75; Bracha, The Adventures of the Statute of Anne in the Land of Unlimited Possibilities: The Life of a Legal Transplant, 25 Berkeley Tech. L. J. 1427, 1444–1450 (2010).

At least, that was the predominant view expressed to, or by, the Founders. Patterson 93. Thomas Jefferson, for example, initially expressed great uncertainty as to whether the Constitution should authorize the grant of copyrights and patents at all, writing that "the benefit even of limited monopolies is too doubtful" to warrant anything other than their "suppression." Letter from Thomas Jefferson to James Madison (July 31, 1788), in 13 Papers of Thomas Jefferson 440, 443 (J. Boyd ed. 1956). James Madison also thought that "Monopolies . . . are justly classed among the greatest nu[i]sances in Government." Letter from James Madison to Thomas Jefferson (Oct. 17, 1788), in 14 *id.*, at 16, 21 (J. Boyd ed. 1958). But he argued that "in certain cases" such as copyright, monopolies should "be granted" ("with caution, and guarded with strictness agst abuse") to serve as "*compensation for a benefit actually gained to the community* . . . which the owner might otherwise withhold from public use." Monopolies. Perpetuities. Corporations. Ecclesiastical Endowments., in J. Madison, Writings 756 (J. Rakove ed. 1999) (emphasis added). Jefferson eventually came to agree with Madison, supporting a limited conferral of monopoly rights but only "*as an encouragement to men to pursue ideas which may produce utility.*" Letter from Thomas Jefferson to Isaac McPherson (Aug. 13, 1813), in 6 Papers of Thomas Jefferson, at 379, 383 (J. Looney ed. 2009) (emphasis added).

This utilitarian view of copyrights and patents, embraced by Jefferson and Madison, stands in contrast to the "natural

rights" view underlying much of continental European copyright law—a view that the English booksellers promoted in an effort to limit their losses following the enactment of the Statute of Anne and that in part motivated the enactment of some of the colonial statutes. Patterson 158–179, 183–192. Premised on the idea that an author or inventor has an inherent right to the fruits of his labor, it mythically stems from a legendary 6th-century statement of King Diarmed "'to every cow her calf, and accordingly to every book its copy.'" A. Birrell, Seven Lectures on the Law and History of Copyright in Books 42 (1899). That view, though perhaps reflected in the Court's opinion, *ante*, at 334, runs contrary to the more utilitarian views that influenced the writing of our own Constitution's Copyright Clause. See S. Ricketson, The Berne Convention for the Protection of Literary and Artistic Works: 1886–1986, pp. 5–6 (1987) (The first French copyright laws "placed authors' rights on a more elevated basis than the Act of Anne had done," on the understanding that they were "simply according formal recognition to what was already inherent in the 'very nature of things'"); S. Stewart, International Copyright and Neighbouring Rights 6–7 (2d ed. 1989) (describing the European system of *droit d'auteur*).

This utilitarian understanding of the Copyright Clause has long been reflected in the Court's case law. In *Mazer*, for example, the Court refers to copyright as embodying the view that "*encouragement of individual effort by personal gain* is the best way to advance public welfare through the talents of authors and inventors." 347 U. S., at 219 (emphasis added). In *Twentieth Century Music Corp.* v. *Aiken*, 422 U. S. 151 (1975), the Court says that underlying copyright is the understanding that "*[c]reative work is to be encouraged and rewarded, but private motivation must ultimately serve the cause of promoting broad public availability of literature, music, and the other arts.*" *Id.*, at 156 (emphasis added). And in *Sony Corp. of America* v. *Universal City*

Studios, Inc., 464 U. S. 417 (1984), the Court, speaking of both copyrights and patents, points out that the "monopoly privileges that Congress may authorize are . . . [not] primarily designed to provide a special private benefit. Rather, the limited grant is a means by which an important public purpose may be achieved. It is intended *to motivate the creative activity of authors . . . by the provision of a special reward.*" *Id.*, at 429 (emphasis added); see also, *e. g.*, *Graham* v. *John Deere Co. of Kansas City*, 383 U. S. 1, 6 (1966) (The "constitutional command . . . '[to] promote the Progress [of Science]' . . . is the *standard* expressed in the Constitution and it may not be ignored"); *Fox Film Corp.* v. *Doyal*, 286 U. S. 123, 127 (1932) ("The sole interest of the United States . . . lie[s] in the general benefits derived by the public from the labors of authors").

Congress has expressed similar views in congressional Reports on copyright legislation. Thus, for example, an 1892 House Report states:

> "The object to be attained and the reason for the constitutional grant of power are imbedded in the grant itself. They are 'to promote the progress of science and the useful arts.' . . . [The Clause says] nothing . . . about any desire or purpose to secure to the author or inventor his 'natural right to his property.'" H. R. Rep. No. 1494, 52d Cong., 1st Sess., 2.

Similarly, the congressional authors of the landmark 1909 Copyright Act wrote:

> "The Constitution . . . provides that Congress shall have the power to grant [copyrights] . . . [n]ot primarily for the benefit of the author, . . . but because the policy is believed to be for the benefit of the great body of people, *in that it will stimulate writing and invention*, to give some bonus to authors and inventors." H. R. Rep. No. 2222, 60th Cong., 2d Sess., 7 (1909).

And they went on to say:

> "Congress must consider . . . two questions: First, how much will the legislation stimulate the producer and so benefit the public; and, second, how much will the monopoly granted be detrimental to the public? The granting of such exclusive rights, under the proper terms and conditions, confers a benefit upon the public that outweighs the evils of the temporary monopoly." *Ibid.*

The upshot is that text, history, and precedent demonstrate that the Copyright Clause places great value on the power of copyright to elicit new production. Congress in particular cases may determine that copyright's ability to do so outweighs any concomitant high prices, administrative costs, and restrictions on dissemination. And when it does so, we must respect its judgment. See *Eldred*, 537 U. S., at 222. But does the Clause empower Congress to enact a statute that withdraws works from the public domain, brings about higher prices and costs, and in doing so seriously restricts dissemination, particularly to those who need it for scholarly, educational, or cultural purposes—all *without providing any additional incentive* for the production of new material? That is the question before us. And, as I have said, I believe the answer is no. Congress in this statute has exceeded what are, under any plausible reading of the Copyright Clause, its permissible limits.

II

The Act before us says that it "restores" American copyright to a set of works, which, for the most part, did not previously enjoy American copyright protection. These works had fallen into America's public domain, but as of the "restoration" date, they had not yet fallen into the public domain of the foreign country where they originated.

The statute covers works originating almost anywhere outside the United States. See 17 U. S. C. § 104A(h)(3) (setting out eligibility criteria); U. S. Copyright Office, Circular No. 38A: International Copyright Relations of the United States (2010). The relevant set of works consists primarily of works originating abroad that did not obtain, or at some point lost, American copyright protection because (1) the author failed to comply with applicable American copyright formalities (such as notice or renewal), or (2) the nation in which they were first published then lacked copyright relations with the United States, or (3) they are sound recordings fixed before February 15, 1972. § 104A(h)(6)(C). A work must also satisfy other technical requirements: It must have had a rightholder who was a national or resident of an eligible country on the day it was created; and it cannot have been published in the United States within 30 days of its first publication. § 104A(h)(6)(D). The Act grants these works a copyright that expires at the time it would have expired had the author obtained a full American copyright term starting from the date on which the work was first published (in the foreign country). § 104A(a)(1)(B).

The Act mainly applies to works first published abroad between 1923 and 1989. It does not apply significantly to earlier works because any work published before 1921 would have fallen into the public domain before 1977 had it received a full American copyright term, while works published between 1921 and 1923 obtained a "restored" copyright that expired before the 1998 Sonny Bono Copyright Term Extension Act, and so could have lasted two years at most. See Tit. I, § 101, 90 Stat. 2574 (extending the copyright term of works still under copyright in 1977 to 75 years); 17 U. S. C. § 304(b) (extending the copyright term of works still under copyright in 1998 to 95 years). It has less impact on more recent works because in 1989 the United States became a Berne member, abolished the copyright notice requirement, and thenceforth provided prospective copyright protection

throughout the Berne Union. See R. Schechter & J. Thomas, Intellectual Property: The Law of Copyrights, Patents and Trademarks 75–77 (2003); § 7, 102 Stat. 2857–2858 (codified as amended at 17 U. S. C. §§ 401–406).

Despite these temporal limitations, the Act covers vast numbers of works. The first category includes works published in countries that had copyright relations with the United States during this time period, such as most of Western Europe and Latin America, Australia, and Japan, see Circular No. 38A, at 2–10, whose authors did not satisfy American copyright formalities, perhaps because the author, who may not have sought an American copyright, published the book abroad without proper American notice, or perhaps because the author obtained a valid American copyright but failed to renew it.

The second category (works that entered the public domain due to a lack of copyright relations) includes, among others, all works published in Russia and other countries of the former Soviet Union before May 1973 (when the U. S. S. R. joined the Universal Copyright Convention (UCC)), all works published in the People's Republic of China before March 1992 (when bilateral copyright relations between the People's Republic and the United States were first established), all South Korean works published before October 1987 (when South Korea joined the UCC), and all Egyptian and Turkish works published before March 1989 (when the United States joined Berne). See *id.*, at 2–10, and 11, nn. 2, 5, 6.

The third category covers all sound recordings from eligible foreign countries published after February 15, 1972. The practical significance of federal copyright restoration to this category of works is less clear, since these works received, and continued to receive, copyright protection under state law. See 17 U. S. C. § 301(c).

Apparently there are no precise figures about the number of works the Act affects, but in 1996 the then-Register of

Copyrights, Marybeth Peters, thought that they "probably number in the millions." The Year in Review: Accomplishments and Objectives of the U. S. Copyright Office, 7 Ford. Intellectual Property Media & Entertainment L. J. 25, 31 (1996).

A

The provision before us takes works from the public domain, at least as of January 1, 1996. See § 104A(h)(2)(A) (setting "restoration" dates). It then restricts the dissemination of those works in two ways.

First, "restored copyright" holders can now charge fees for works that consumers previously used for free. The price of a score of Shostakovich's Preludes and Fugues Op. 87, for example, has risen by a multiple of seven. Brief for Conductors Guild et al. as *Amici Curiae* 11. And, as the Court recognizes, an orchestra that once could perform "Peter and the Wolf . . . free of charge" will now have to buy the "right to perform it . . . in the marketplace." *Ante*, at 333. But for the case of certain "derivative" works, § 104A(d)(3), the "restored copyright" holder, like other copyright holders, can charge what the market will bear. If a school orchestra or other nonprofit organization cannot afford the new charges, so be it. They will have to do without—aggravating the already serious problem of cultural education in the United States. See Brief for Conductors Guild et al. as *Amici Curiae* 4–5, 7–8 (describing the inability of many orchestras to pay for the rental of sheet music covered by "restored copyright[s]").

Second, and at least as important, the statute creates administrative costs, such as the costs of determining whether a work is the subject of a "restored copyright," searching for a "restored copyright" holder, and negotiating a fee. Congress has tried to ease the administrative burden of contacting copyright holders and negotiating prices for those whom the statute calls "reliance part[ies]," namely those who previously had used such works when they were freely available

in the public domain. § 104A(h)(4). But Congress has done nothing to ease the administrative burden of securing permission from copyright owners that is placed upon those who want to use a work that they did not previously use, and this is a particular problem when it comes to "orphan works"—older and more obscure works with minimal commercial value that have copyright owners who are difficult or impossible to track down. Unusually high administrative costs threaten to limit severely the distribution and use of those works—works which, despite their characteristic lack of economic value, can prove culturally invaluable.

There are millions of such works. For example, according to European Union figures, there are 13 million orphan books in the European Union (13% of the total number of books in copyright there), 225,000 orphan films in European film archives, and 17 million orphan photographs in United Kingdom museums. A. Vuopala, Assessment of the Orphan Works Issue and Costs for Rights Clearance 19, 25 (2010), online at http://ec.europa.eu/information_society/activities/digital_libraries/doc/reports_orphan/anna_report.pdf (all Internet materials as visited Jan. 13, 2012, and available in Clerk of Court's case file). How is a university, a film collector, a musician, a database compiler, or a scholar now to obtain permission to use any such lesser known foreign work previously in the American public domain? Consider the questions that any such individual, group, or institution usually must answer: Is the work eligible for restoration under the statute? If so, who now holds the copyright—the author? an heir? a publisher? an association? a long-lost cousin? Whom must we contact? What is the address? Suppose no one answers? How do we conduct a negotiation?

To find answers to these, and similar, questions costs money. The cost to the University of Michigan and the Institute of Museum and Library Services, for example, to determine the copyright status of books contained in the HathiTrust Digital Library that were published in the

United States from 1923 to 1963 will exceed $1 million. Brief for American Library Association et al. as *Amici Curiae* 15.

It is consequently not surprising to learn that the Los Angeles Public Library has been unable to make its collection of Mexican folk music publicly available because of problems locating copyright owners, that a Jewish cultural organization has abandoned similar efforts to make available Jewish cultural music and other materials, or that film preservers, museums, universities, scholars, database compilers, and others report that the administrative costs associated with trying to locate foreign copyright owners have forced them to curtail their cultural, scholarly, or other work-preserving efforts. See, *e. g.*, Comments of the Library Copyright Alliance in Response to the U. S. Copyright Office's Inquiry on Orphan Works 5 (Mar. 25, 2005), online at http://www.arl.org/bm~doc/lcacomment0305.pdf; Comments of Creative Commons and Save The Music in Response to the U. S. Copyright Office's Inquiry on Orphan Works (Mar. 25, 2005), online at http://www.copyright.gov/orphan/comments/OW0643-STM-CreativeCommons.pdf; General Agreement on Tariffs and Trade (GATT): Intellectual Property Provisions, Joint Hearing before the Subcommittee on Intellectual Property and Judicial Administration of the House Committee on the Judiciary and the Subcommittee on Patents, Copyrights and Trademarks of the Senate Committee on the Judiciary, 103d Cong., 2d Sess., 131, 273 (1994) (hereinafter Joint Hearing) (statement of Larry Urbanski, Chairman of the Fairness in Copyright Coalition and President of Moviecraft, Inc.); Brief for American Library Association et al. as *Amici Curiae* 6–23; Brief for Creative Commons Corp. as *Amicus Curiae* 7–8; Brief for Project Petrucci, LLC, as *Amicus Curiae* 10–11.

These high administrative costs can prove counterproductive in another way. They will tempt some potential users to "steal" or "pirate" works rather than do without. And

piracy often begets piracy, breeding the destructive habit of taking copyrighted works without paying for them, even where payment is possible. Such habits ignore the critical role copyright plays in the creation of new works, while reflecting a false belief that new creation appears by magic without thought or hope of compensation.

B

I recognize that ordinary copyright protection also comes accompanied with dissemination-restricting royalty charges and administrative costs. But here the restrictions work special harm. For one thing, the foreign location of restored works means higher than ordinary administrative costs. For another, the statute's technical requirements make it very difficult to establish whether a work has had its copyright restored by the statute. Gard, In the Trenches With § 104A: An Evaluation of the Parties' Arguments in *Golan v. Holder* as It Heads to the Supreme Court, 64 Vand. L. Rev. En Banc 199, 216–220 (2011) (describing difficulties encountered in compiling the information necessary to create an online tool to determine whether the statute applies in any given case).

Worst of all, "restored copyright" protection removes material from the public domain. In doing so, it reverses the payment expectations of those who used, or intended to use, works that they thought belonged to them. Were Congress to act similarly with respect to well-established property rights, the problem would be obvious. This statute analogously restricts, and thereby diminishes, Americans' preexisting freedom to use formerly public domain material in their expressive activities.

Thus, while the majority correctly observes that the dissemination-restricting harms of copyright normally present problems appropriate for legislation to resolve, *ante*, at 334–335, the question is whether the Copyright Clause permits Congress seriously to exacerbate such a problem by

taking works out of the public domain without a countervailing benefit. This question *is* appropriate for judicial resolution. Indeed, unlike *Eldred* where the Court had to decide a complicated line-drawing question—when is a copyright term too long?—here an easily administrable standard is available—a standard that would require works that have already fallen into the public domain to stay there.

The several, just mentioned features of the present statute are important, for they distinguish it from other copyright laws. By removing material from the public domain, the statute, in literal terms, "abridges" a pre-existing freedom to speak. In practical terms, members of the public might well have decided what to say, as well as when and how to say it, in part by reviewing with a view to repeating, expression that they reasonably believed was, or would be, freely available. Given these speech implications, it is not surprising that Congress has long sought to protect public domain material when revising the copyright laws. See *infra*, at 362 (listing instances). And this Court has assumed the particular importance of public domain material in roughly analogous circumstances. See *Graham*, 383 U. S., at 6 ("Congress may not authorize the issuance of patents whose effects are to remove existent knowledge from the public domain"); *Kewanee Oil Co.* v. *Bicron Corp.*, 416 U. S. 470, 484 (1974) (trade secret protection is not incompatible with "policy that matter once in the public domain must remain in the public domain"); *Cox Broadcasting Corp.* v. *Cohn*, 420 U. S. 469, 496 (1975) (First Amendment prohibits sanctioning press for publishing material disclosed in public court documents); see also *Dastar Corp.* v. *Twentieth Century Fox Film Corp.*, 539 U. S. 23, 33 (2003) ("The right to copy . . . once a copyright has expired . . . passes to the public" (internal quotation marks omitted)).

Moreover, whereas forward-looking copyright laws tend to benefit those whose identities are not yet known (the writer who has not yet written a book, the musician who has not

yet composed a song), when a copyright law is primarily backward looking the risk is greater that Congress is trying to help known beneficiaries at the expense of badly organized unknown users who find it difficult to argue and present their case to Congress. In *Eldred*, I thought this problem was severe. See generally 537 U. S., at 243–266 (dissenting opinion). And in light of the fact that Congress, with one minor exception, heard testimony only from the representatives of existing copyright holders, who hoped that passage of the statute would enable them to benefit from reciprocal treatment of American authors abroad, *infra*, at 364–365, I cannot say that even here the problem, while much diminished, was nonexistent.

I agree with the majority that, in doing so, this statute does not discriminate among speakers based on their viewpoints or subject matter. *Ante*, at 330–331. But such considerations do not exhaust potential First Amendment problems. Cf. *Sorrell* v. *IMS Health Inc.*, 564 U. S. 552, 566 (2011) (finding First Amendment problem in statute that prohibits drug manufacturers from using publicly available prescriber-identifying information in their marketing efforts in part because it "disfavor[ed] specific speakers"); *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622, 659 (1994) ("Regulations that discriminate among media, or among different speakers within a single medium, often present serious First Amendment concerns").

Taken together, these speech-related harms (*e. g.*, restricting use of previously available material; reversing payment expectations; rewarding rent-seekers at the public's expense) at least show the presence of a First Amendment interest. And that is enough. For present purposes, I need not decide whether the harms to that interest show a violation of the First Amendment. I need only point to the importance of interpreting the Constitution as a single document—a document that we should not read as setting the Copyright Clause and the First Amendment at cross-

purposes. Nor need I advocate the application here of strict or specially heightened review. I need only find that the First Amendment interest is important enough to require courts to scrutinize with some care the reasons claimed to justify the Act in order to determine whether they constitute reasonable copyright-related justifications for the serious harms, including speech-related harms, which the Act seems likely to impose.

C

1

This statute does not serve copyright's traditional public ends, namely the creation of monetary awards that "motivate the creative activity of authors," *Sony*, 464 U. S., at 429, "encourag[e] individual effort," *Mazer*, 347 U. S., at 219, and thereby "serve the cause of promoting broad public availability of literature, music, and the other arts," *Twentieth Century Music*, 422 U. S., at 156. The statute grants its "restored copyright[s]" *only* to works *already produced*. It provides no monetary incentive to produce anything new. Unlike other American copyright statutes from the time of the Founders onwards, including the statute at issue in *Eldred*, it lacks any significant copyright-related *quid pro quo*.

The majority seeks to avoid this awkward fact by referring to past congressional practice that mostly suggests that Congress may provide new or increased protection *both* to newly created *and* to previously created works. *Ante*, at 320–321, 323; Act of May 31, 1790, § 1, 1 Stat. 124 (conferring its new federal copyright on new works as well as old); Act of July 3, 1832, § 3, 4 Stat. 559 (authorizing new patents for past and future inventors who inadvertently failed to comply with applicable statutory formalities); *McClurg* v. *Kingsland*, 1 How. 202 (1843) (applying an act deeming a past or future inventor's patent valid despite it being briefly used by, for example, the inventor's employer). I do not dispute

that copyright power. Insofar as such a statute does the former, *i. e.*, extends protection to newly created material, it embodies copyright's traditional justification—eliciting new production. And I do not doubt that Congress may then also include existing works within the scope of, say, increased protection for equitable and administrative reasons. See *Eldred*, 537 U. S., at 204, 214–215 (describing equitable reasons for applying newly extended copyright terms to future and existing copyrights alike). The statute before us, however, does not directly elicit any new production. Compare *id.*, at 204–208 (majority opinion) (noting that statute's extended term would apply to newly created material, and finding that the determination of the likelihood of its eliciting new production in practice was a matter for Congress to determine), with *id.*, at 243–267 (BREYER, J., dissenting) (expressing the view that there is little likelihood, in practice, that the statute would elicit new material). See also Walterscheid 219 (the 1790 Congress likely thought it was substituting federal protection for pre-existing state common-law protections); Maher, Copyright Term, Retrospective Extension, and the Copyright Law of 1790 in Historical Context, 49 J. Copyright Soc. USA 1021, 1023–1024, and n. 8 (2002) (numerical estimate suggesting that 1790 Act removed only a small number of books from public domain).

The other statutes to which the majority refers are private bills, statutes retroactively granting protection in wartime, or the like. *Ante*, at 320–323; Act of Feb. 19, 1849, ch. 57, 9 Stat. 763 (Levi Corson); Act of June 23, 1874, ch. 534, 18 Stat., pt. 3, p. 618 (Tod Helmuth); Act of Feb. 17, 1898, ch. 29, 30 Stat. 1396 (Judson Jones); Act of Dec. 18, 1919, ch. 11, 41 Stat. 368; Act of Sept. 25, 1941, ch. 421, 55 Stat. 732; see also *Evans* v. *Jordan*, 9 Cranch 199 (1815) (upholding a private bill restoring patent protection to a flour mill). But special circumstances, like wars, hurricanes, earthquakes, and other disasters, prevent the realization in practice of a reasonable expectation of securing or maintaining a pre-existing right.

Private bills are designed to provide special exceptions for comparable equitable reasons. See also Act of Mar. 3, 1893, ch. 215, 27 Stat. 743 (similar, as far as I can tell). To find in these laws an important analogy to the present law, which for the most part covers works that the author did not expect to protect in America (and often did not particularly want to protect), seems somewhat farfetched.

In fact, congressional practice shows the contrary. It consists of a virtually unbroken string of legislation preventing the withdrawal of works from the public domain. See, *e. g.*, Berne Convention Implementation Act of 1988, § 12, 102 Stat. 2860 (the Act "does not provide copyright protection for any work that is in the public domain in the United States"); Copyright Act of 1976, Tit. I, § 101, 90 Stat. 2573 (declining to extend copyright protection to any work that is in the public domain prior to the Act taking effect); Copyright Act of 1909, § 7, 35 Stat. 1077 ("[N]o copyright shall subsist in the original text of any work which is in the public domain, or in any work which was published in this country or any foreign country prior to the going into effect of this Act and has not been already copyrighted in the United States"); Act to Amend the Several Acts Respecting Copy Rights § 16, 4 Stat. 439 (the Act "shall not extend to any copyright heretofore secured, the term of which has already expired"); see also H. R. Rep. No. 1742, 87th Cong., 2d Sess., 3 (1962) (expressing concern that because "it is not possible to revive expired terms of copyright, it seems to the committee to be desirable to suspend further expiration of copyright for a period long enough to enable the working out of remaining obstacles to the overall revision of the copyright law").

2

The majority makes several other arguments. First, it argues that the Clause does not require the "creation of at least one new work," *ante*, at 325, but may instead "promote the Progress of Science" in other ways. And it specifically

mentions the "dissemination of existing and future works" as determinative here. *Ante*, at 324–327, and n. 25. The industry experts to whom the majority refers argue that copyright protection of already existing works can help, say, music publishers or film distributers raise prices, produce extra profits, and consequently lead them to publish or distribute works they might otherwise have ignored. But ordinarily a copyright—since it is a *monopoly* on copying—*restricts* dissemination of a work once produced compared to a competitive market. And simply making the industry richer does not mean that the industry, when it makes an ordinary *forward-looking* economic calculus, will distribute works not previously distributed. The industry experts might mean that temporary extra profits will lead them to invest in the development of a market, say, by advertising. But this kind of argument, which can be made by distributers of all sorts of goods, ranging from kiwi fruit to Swedish furniture, has little if anything to do with the nonrepeatable costs of initial creation, which is the special concern of copyright protection. See *supra*, at 346.

Moreover, the argument proves too much. It is the kind of argument that the Stationers' Company might well have made and which the British Parliament rejected. Cf. Patterson 154–155 (describing failed booksellers' bill seeking protection from foreign competition through an extension of the copyright term). It is the kind of argument that could justify a legislature's withdrawing from the public domain the works, say, of Hawthorne or of Swift or for that matter the King James Bible in order to encourage further publication of those works; and, it could even more easily justify similar action in the case of lesser known early works, perhaps those of the Venerable Bede. The Court has not, to my knowledge, previously accepted such a rationale—a rationale well removed from the special economic circumstances that surround the nonrepeatable costs of the initial creation of a "Writing." *Supra*, at 346. And I fear that doing so would

read the Copyright Clause as if it were a blank check made out in favor of those who are not themselves creators.

It is not surprising that the copyright holders' representatives who appeared before Congress did not emphasize this argument. (With one minor exception only those representatives appeared, see generally Joint Hearing; the Copyright Office did not testify, *id.*, at 239.) Rather, they focused on the Berne Convention itself. By that time, Congress had already protected all *new* works of Berne members. But it had not provided additional protection to pre-existing foreign works that were then in the American public domain. Industry witnesses testified that withdrawing such works from the American public domain would permit foreign copyright owners to charge American consumers more for their products; and that, as a result, the United States would be able to persuade foreign countries to allow American holders of pre-existing copyrights to charge foreign customers more money for their products. See *id.*, at 241 (statement of Eric Smith, Executive Director and General Counsel, International Intellectual Property Alliance) ("[F]ailure to [comply with Article 18] will . . . undermine the ability of the United States to press other countries to implement the same sort of protection in their implementing legislation currently pending in many legislatures around the globe"); *id.*, at 253 (statement of Matt Gerson, Vice President for Congressional Affairs, Motion Picture Assn. of America) (similar). See also *id.*, at 85 (statement of Xavier Becerra, House Judiciary Committee member) ("[R]etroactivity . . . is probably the best way to ensure that some of our older American works, anything from Motown, to 'Star Trek,' to 'The Hardy Boys' get the protection in some of these emerging foreign markets. It is important to ensure that countries no longer use our U. S. law as an excuse for not extending retroactive copyright protections to some of our own works"). But see *id.*, at 272–279 (statement of Larry Urbanski, Chairman of the Fairness in Copyright Coalition and President of Moviecraft

Inc.) (testifying against restoration on grounds similar to those set out, *supra*, at 354–357).

This argument, whatever its intrinsic merits, is an argument that directly concerns a private benefit: how to obtain more money from the sales of existing products. It is not an argument about a public benefit, such as how to promote or to protect the creative process.

Third, the majority points out that the statute "gives [authors] nothing more than the benefit of their labors during whatever time remains before the normal copyright term expires." *Ante*, at 334. But insofar as it suggests that copyright should in general help authors obtain greater monetary rewards than needed to elicit new works, it rests upon primarily European, but not American, copyright concepts. See *supra*, at 348–349.

Fourth, the majority argues that this statutory provision is necessary to fulfill our Berne Convention obligations. *Ante*, at 309–313. The Treaty, in Article 18, says that the "Convention shall apply to all works which, at the moment of its coming into force [*i. e.*, 1989 in the case of the United States] have not yet fallen into the public domain in the country of origin through the expiry of the term of protection." Berne Convention for the Protection of Literary and Artistic Works, Art. 18(1), Sept. 9, 1886, as revised at Stockholm on July 14, 1967, 828 U. N. T. S. 221, 251. The majority and Government say that this means we must protect the foreign works at issue here. And since the Berne Convention, taken as a whole, provides incentives for the creation of new works, I am willing to speculate, for argument's sake, that the statute might indirectly encourage production of new works by making the United States' place in the international copyright regime more secure.

Still, I cannot find this argument sufficient to save the statute. For one thing, this is a dilemma of the Government's own making. The United States obtained the benefits of Berne for many years despite its failure to enact a statute

implementing Article 18. But in 1994, the United States and other nations signed the Agreement on Trade-Related Aspects of Intellectual Property Rights, which enabled signatories to use World Trade Organization dispute resolution mechanisms to complain about other members' Berne Convention violations. And at that time the Government, although it successfully secured reservations protecting other special features of American copyright law, made no effort to secure a reservation permitting the United States to keep some or all restored works in the American public domain. Indeed, it made no effort to do so despite the fact that Article 18 explicitly authorizes countries to negotiate exceptions to the Article's retroactivity principle. See Art. 18(3), *ibid.* ("The application of [the retroactivity] principle *shall be subject to any provisions contained in special conventions to that effect* existing or to be concluded between countries of the Union" (emphasis added)); Gervais, *Golan v. Holder*: A Look at the Constraints Imposed by the Berne Convention, 64 Vand. L. Rev. En Banc 147, 151–152 (2011); Gard, 64 Vand. L. Rev. En Banc, at 206.

For another thing, the Convention does not require Congress to enact a statute that causes so much damage to public domain material. Article 18(3) also states that "the respective countries shall determine, each in so far as it is concerned, *the conditions of application of this principle.*" 18 U. N. T. S., at 251 (emphasis added). Congress could have alleviated many of the costs that the statute imposes by, for example, creating forms of compulsory licensing, requiring "restored copyright" holders to provide necessary administrative information as a condition of protection, or insisting upon "reasonable royalties." Cf. S. 2913, 110th Cong., 2d Sess. (2008) (legislation that would have limited judicial remedies against users of orphan works); H. R. 5889, 110th Cong., 2d Sess. (2008) (House version of same); American Society of Composers, Authors and Publishers, http://www.ascap.com/licensing/termsdefined.aspx (society of

music copyright owners offering blanket licenses that give users the unlimited right to perform any of its members' songs for a fixed fee, thus reducing negotiation and enforcement costs).

To say this is not to criticize the Convention or our joining it. Rather, it is to argue that the other branches of Government should have tried to *follow* the Convention and in particular its provisions offering compliance flexibility. The fact that the statute has significant First Amendment costs is relevant in this respect, for that Amendment ordinarily requires courts to evaluate less restrictive, alternative possibilities. Doing so here reveals that neither Congress nor the Executive took advantage of less restrictive methods of compliance that the Convention itself provides. And that fact means that the Convention cannot provide the statute with a constitutionally sufficient justification that is otherwise lacking.

III

The fact that, by withdrawing material from the public domain, the statute inhibits an important pre-existing flow of information is sufficient, when combined with the other features of the statute that I have discussed, to convince me that the Copyright Clause, interpreted in the light of the First Amendment, does not authorize Congress to enact this statute.

I respectfully dissent from the Court's contrary conclusion.

Syllabus

MIMS *v.* ARROW FINANCIAL SERVICES, LLC

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

No. 10–1195. Argued November 28, 2011—Decided January 18, 2012

Consumer complaints about abuses of telephone technology—for example, computerized calls to private homes—prompted Congress to pass the Telephone Consumer Protection Act of 1991 (TCPA or Act), 47 U. S. C. § 227. Congress determined that federal legislation was needed because telemarketers, by operating interstate, were escaping state-law prohibitions on intrusive nuisance calls. The Act bans certain invasive telemarketing practices and directs the Federal Communications Commission to prescribe implementing regulations. It authorizes States to bring civil actions to enjoin prohibited practices and recover damages on their residents' behalf, § 227(g)(1) (2006 ed., Supp. IV), and provides that jurisdiction over these state-initiated suits lies exclusively in the U. S. district courts, § 227(g)(2). It also permits a private person to seek redress for violations of the Act or regulations "in an appropriate court of [a] State," "if [such an action is] otherwise permitted by the laws or rules of court of [that] State." §§ 227(b)(3), (c)(5).

Petitioner Mims filed a damages action in Federal District Court, alleging that respondent Arrow, seeking to collect a debt, violated the TCPA by repeatedly using an automatic telephone dialing system or prerecorded or artificial voice to call Mims's cellular phone without his consent. Mims invoked the court's "federal question" jurisdiction, *i. e.*, its authority to adjudicate claims "arising under the . . . laws . . . of the United States," 28 U. S. C. § 1331. The District Court, affirmed by the Eleventh Circuit, dismissed Mims's complaint for want of subject-matter jurisdiction, concluding that the TCPA had vested jurisdiction over private actions exclusively in state courts.

Held: The TCPA's permissive grant of jurisdiction to state courts does not deprive the U. S. district courts of federal-question jurisdiction over private TCPA suits. Pp. 376–387.

(a) Because federal law creates the right of action and provides the rules of decision, Mims's TCPA claim, in § 1331's words, plainly "aris[es] under" the "laws . . . of the United States." Arrow agrees that this action arises under federal law, but urges that Congress vested exclusive adjudicatory authority over private TCPA actions in state courts. In cases "arising under" federal law, there is a presumption of concurrent state-court jurisdiction, rebuttable if "Congress affirmatively ousts the state courts of jurisdiction over a particular federal

claim." *Tafflin* v. *Levitt*, 493 U. S. 455, 458–459. Arrow acknowledges the presumption, but maintains that § 1331 creates no converse presumption in favor of federal-court jurisdiction. Instead, Arrow urges, the TCPA, a later, more specific statute, displaces § 1331, an earlier, more general prescription.

Section 1331 is not swept away so easily. The principle that district courts possess federal-question jurisdiction under § 1331 when federal law creates a private right of action and furnishes the substantive rules of decision endures unless Congress divests federal courts of their § 1331 adjudicatory authority. See, *e. g.*, *Verizon Md. Inc.* v. *Public Serv. Comm'n of Md.*, 535 U. S. 635, 642. Accordingly, the District Court retains § 1331 jurisdiction over Mims's complaint unless the TCPA, expressly or by fair implication, excludes federal-court adjudication. See *id.*, at 644. Pp. 376–379.

(b) Arrow's arguments do not persuade this Court that Congress eliminated § 1331 jurisdiction over private TCPA actions. Title 47 U. S. C. § 227(b)(3)'s language may be state-court oriented, but "the grant of jurisdiction to one court does not, of itself, imply that the jurisdiction is to be exclusive," *United States* v. *Bank of New York & Trust Co.*, 296 U. S. 463, 479. Nothing in § 227(b)(3)'s permissive language makes state-court jurisdiction exclusive, or otherwise purports to oust federal courts of their § 1331 jurisdiction. The provision does not state that a private plaintiff may bring a TCPA action "only" or "exclusively" in state court. In contrast, § 227(g)(2) (2006 ed., Supp. IV) vests "exclusive jurisdiction" over state-initiated TCPA suits in the federal courts. Section 227(g)(2)'s exclusivity prescription "reinforce[s] the conclusion that [§ 227(b)(3)'s] silence . . . leaves the jurisdictional grant of § 1331 untouched. For where otherwise applicable jurisdiction was meant to be excluded, it was excluded expressly." *Verizon Md.*, 535 U. S., at 644.

Arrow argues that Congress had no reason to provide for a private action "in an appropriate [state] court," § 227(b)(3), if it did not mean to make the state forum exclusive, for state courts would have concurrent jurisdiction even if Congress had said nothing at all. But, as already noted, Congress had simultaneously made federal-court jurisdiction exclusive in TCPA enforcement actions brought by state authorities, see § 227(g)(2) (2006 ed., Supp. IV), and may simply have wanted to avoid any argument that federal jurisdiction was also exclusive for private actions. Moreover, by providing that private actions may be brought in state court "if otherwise permitted by the laws or rules of court of [the] State," § 227(b)(3), Congress arguably gave States leeway they would otherwise lack to decide whether to entertain TCPA claims.

Arrow further asserts that making state-court jurisdiction over § 227(b)(3) claims exclusive serves Congress' objective of enabling States

to control telemarketers whose interstate operations evaded state law. Even so, jurisdiction conferred by 28 U. S. C. § 1331 should hold firm against "mere implication flowing from subsequent legislation." *Colorado River Water Conservation Dist.* v. *United States*, 424 U. S. 800, 808, 809, n. 15. Furthermore, had Congress sought only to fill a gap in the States' enforcement capabilities, it could have provided that out-of-state telemarketing calls directed into a State would be subject to the receiving State's laws. Instead, Congress enacted detailed, uniform, federal substantive prescriptions and provided for a regulatory regime administered by a federal agency.

Arrow's reliance on a statement by Senator Hollings, the TCPA's sponsor, is misplaced. The remarks nowhere mention federal-court jurisdiction or otherwise suggest that 47 U. S. C. § 227(b)(3) is intended to divest federal courts of authority over TCPA claims. Even if Hollings and other TCPA supporters expected private actions to proceed solely in state courts, their expectation would not control this Court's judgment on § 1331's compass. Arrow's arguments that federal courts will be inundated by $500-per-violation TCPA claims or that defendants could use federal-court removal to force small-claims-court plaintiffs to abandon suit seem more imaginary than real. Pp. 379–386.

421 Fed. Appx. 920, reversed and remanded.

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

Scott L. Nelson argued the cause for petitioner. With him on the briefs were *Gregory A. Beck* and *Allison M. Zieve*.

Gregory G. Garre argued the cause for respondent. With him on the brief were *Lori Alvino McGill*, *Eric D. Reicin*, *Barbara A. Sinsley*, and *Manuel Newburger*.*

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns enforcement, through private suits, of the Telephone Consumer Protection Act of 1991 (TCPA or Act), 47 U. S. C. § 227. Voluminous consumer complaints

*Briefs of *amici curiae* urging affirmance were filed for ACA International by *David M. Schultz*, *Joel D. Bertocchi*, and *Peter E. Pederson;* for DBA International by *Tomio B. Narita* and *Jeffrey A. Topor;* and for the National Federation of Independent Business Small Business Legal Center by *Lisa S. Blatt*, *Dirk C. Phillips*, *Karen R. Harned*, and *Elizabeth Milito*.

about abuses of telephone technology—for example, computerized calls dispatched to private homes—prompted Congress to pass the TCPA. Congress determined that federal legislation was needed because telemarketers, by operating interstate, were escaping state-law prohibitions on intrusive nuisance calls. The Act bans certain practices invasive of privacy and directs the Federal Communications Commission (FCC or Commission) to prescribe implementing regulations. It authorizes States to bring civil actions to enjoin prohibited practices and to recover damages on their residents' behalf. The Commission must be notified of such suits and may intervene in them. Jurisdiction over state-initiated TCPA suits, Congress provided, lies exclusively in the U. S. district courts. Congress also provided for civil actions by private parties seeking redress for violations of the TCPA or of the Commission's implementing regulations.

Petitioner Marcus D. Mims, complaining of multiple violations of the Act by respondent Arrow Financial Services, LLC (Arrow), a debt-collection agency, commenced an action for damages against Arrow in the U. S. District Court for the Southern District of Florida. Mims invoked the court's "federal question" jurisdiction, *i. e.*, its authority to adjudicate claims "arising under the . . . laws . . . of the United States," 28 U. S. C. § 1331. The District Court, affirmed by the U. S. Court of Appeals for the Eleventh Circuit, dismissed Mims's complaint for want of subject-matter jurisdiction. Both courts relied on Congress' specification, in the TCPA, that a private person may seek redress for violations of the Act (or of the Commission's regulations thereunder) "in an appropriate court of [a] State," "if [such an action is] otherwise permitted by the laws or rules of court of [that] State." 47 U. S. C. §§ 227(b)(3), (c)(5).

The question presented is whether Congress' provision for private actions to enforce the TCPA renders state courts the *exclusive* arbiters of such actions. We have long recognized

that "[a] suit arises under the law that creates the cause of action." *American Well Works Co.* v. *Layne & Bowler Co.*, 241 U. S. 257, 260 (1916). Beyond doubt, the TCPA is a federal law that both creates the claim Mims has brought and supplies the substantive rules that will govern the case. We find no convincing reason to read into the TCPA's permissive grant of jurisdiction to state courts any barrier to the U. S. district courts' exercise of the general federal-question jurisdiction they have possessed since 1875. See Act of Mar. 3, 1875, § 1, 18 Stat. 470; 13D C. Wright, A. Miller, E. Cooper, & R. Freer, Federal Practice and Procedure § 3561, p. 163 (3d ed. 2008) (hereinafter Wright & Miller). We hold, therefore, that federal and state courts have concurrent jurisdiction over private suits arising under the TCPA.

I

A

In enacting the TCPA, Congress made several findings relevant here. "Unrestricted telemarketing," Congress determined, "can be an intrusive invasion of privacy." TCPA, § 2, ¶ 5, 105 Stat. 2394, note following 47 U. S. C. § 227 (Congressional Findings) (internal quotation marks omitted). In particular, Congress reported, "[m]any consumers are outraged over the proliferation of intrusive, nuisance [telemarketing] calls to their homes." ¶ 6, *ibid.* (internal quotation marks omitted). "[A]utomated or prerecorded telephone calls" made to private residences, Congress found, were rightly regarded by recipients as "an invasion of privacy." ¶¶ 10, 12, *ibid.* (internal quotation marks omitted). Although over half the States had enacted statutes restricting telemarketing, Congress believed that federal law was needed because "telemarketers [could] evade [state-law] prohibitions through interstate operations." ¶ 7, *ibid.* (internal quotation marks omitted). See also S. Rep. No. 102–178,

p. 3 (1991) ("[B]ecause States do not have jurisdiction over interstate calls[,] [m]any States have expressed a desire for Federal legislation . . . .").[1]

Subject to exceptions not pertinent here, the TCPA principally outlaws four practices. First, the Act makes it unlawful to use an automatic telephone dialing system or an artificial or prerecorded voice message, without the prior express consent of the called party, to call any emergency telephone line, hospital patient, pager, cellular telephone, or other service for which the receiver is charged for the call. See 47 U. S. C. §227(b)(1)(A). Second, the TCPA forbids using artificial or prerecorded voice messages to call residential telephone lines without prior express consent. §227(b)(1)(B). Third, the Act proscribes sending unsolicited advertisements to fax machines. §227(b)(1)(C). Fourth, it bans using automatic telephone dialing systems to engage two or more of a business' telephone lines simultaneously. §227(b)(1)(D).[2]

The TCPA delegates authority to the FCC to ban artificial and prerecorded voice calls to businesses, §227(b)(2)(A), and to exempt particular types of calls from the law's requirements, §§227(b)(2)(B), (C). The Act also directs the FCC to prescribe regulations to protect the privacy of residential

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[1] In general, the Communications Act of 1934 grants to the Federal Communications Commission (Commission) authority to regulate interstate telephone communications and reserves to the States authority to regulate intrastate telephone communications. See *Louisiana Pub. Serv. Comm'n* v. *FCC*, 476 U. S. 355, 360, 369–370 (1986).

[2] In 2010, Congress amended the statute to prohibit an additional practice: the manipulation of caller-identification information. See Truth in Caller ID Act of 2009, Pub. L. 111–331, 124 Stat. 3572. This legislation inserted a new subsection (e) into 47 U. S. C. §227 and redesignated the former subsections (e), (f), and (g) as subsections (f), (g), and (h), respectively. *Ibid.* While the new subsection (e) does not bear on this case and is not here discussed, our citations of subsection (g) refer to the current, redesignated statutory text.

telephone subscribers, possibly through the creation of a national "do not call" system. § 227(c).[3]

Congress provided complementary means of enforcing the Act. State Attorneys General may "bring a civil action on behalf of [state] residents," if the Attorney General "has reason to believe that any person has engaged . . . in a pattern or practice" of violating the TCPA or FCC regulations thereunder. § 227(g)(1) (2006 ed., Supp. IV). "The district courts of the United States . . . have exclusive jurisdiction" over all TCPA actions brought by State Attorneys General. § 227(g)(2). The Commission may intervene in such suits. § 227(g)(3).[4]

Title 47 U. S. C. § 227(b)(3), captioned "Private right of action," provides:

> "A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State—
>
> "(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,
>
> "(B) an action to recover for actual monetary loss from such a violation, or to receive $500 in damages for each such violation, whichever is greater, or
>
> "(C) both such actions.
>
> "If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an

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[3] The National Do Not Call Registry is currently managed by the Federal Trade Commission. See 15 U. S. C. § 6151 (2006 ed., Supp. IV); 16 CFR § 310.4(b)(1)(iii) (2011).

[4] The TCPA envisions civil actions instituted by the Commission for violations of the implementing regulations. See 47 U. S. C. § 227(g)(7) (2006 ed., Supp. IV). The Commission may also seek forfeiture penalties for willful or repeated failure to comply with the Act or regulations. 47 U. S. C. § 503(b) (2006 ed. and Supp. IV), § 504(a) (2006 ed.).

amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph."

A similar provision authorizes a private right of action for a violation of the FCC's implementing regulations.[5]

B

Mims, a Florida resident, alleged that Arrow, seeking to collect a debt, repeatedly used an automatic telephone dialing system or prerecorded or artificial voice to call Mims's cellular phone without his consent. Commencing suit in the U. S. District Court for the Southern District of Florida, Mims charged that Arrow "willfully or knowingly violated the TCPA." App. 14. He sought declaratory relief, a permanent injunction, and damages. *Id.*, at 18–19.

The District Court held that it lacked subject-matter jurisdiction over Mims's TCPA claim. Under Eleventh Circuit precedent, the District Court explained, federal-question jurisdiction under 28 U. S. C. § 1331 was unavailable "because Congress vested jurisdiction over [private actions under] the TCPA exclusively in state courts." Civ. No. 09–22347 (SD Fla., Apr. 1, 2010), App. to Pet. for Cert. 4a–5a (citing *Nicholson* v. *Hooters of Augusta, Inc.*, 136 F. 3d 1287 (CA11 1998)). Adhering to Circuit precedent, the U. S. Court of Appeals for the Eleventh Circuit affirmed. 421 Fed. Appx.

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[5] Title 47 U. S. C. § 227(c)(5), also captioned "Private right of action," provides:

"A person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may, if otherwise permitted by the laws or rules of court of a State bring in an appropriate court of that State—

"(A) an action based on a violation of the regulations prescribed under this subsection to enjoin such violation,

"(B) an action to recover for actual monetary loss from such a violation, or to receive up to $500 in damages for each such violation, whichever is greater, or

"(C) both such actions."

920, 921 (2011) (*per curiam*) ("Congress granted state courts exclusive jurisdiction over private actions under the [TCPA]." (quoting *Nicholson*, 136 F. 3d, at 1287–1288)).

We granted certiorari, 564 U. S. 1036 (2011), to resolve a split among the Circuits as to whether Congress granted state courts exclusive jurisdiction over private actions brought under the TCPA. Compare *Murphey* v. *Lanier*, 204 F. 3d 911, 915 (CA9 2000) (U. S. district courts lack federal-question jurisdiction over private TCPA actions), *ErieNet, Inc.* v. *Velocity Net, Inc.*, 156 F. 3d 513, 519 (CA3 1998) (same), *Foxhall Realty Law Offices, Inc.* v. *Telecommunications Premium Servs., Ltd.*, 156 F. 3d 432, 434 (CA2 1998) (same), *Nicholson*, 136 F. 3d, at 1287–1288 (same), *Chair King, Inc.* v. *Houston Cellular Corp.*, 131 F. 3d 507, 514 (CA5 1997) (same), and *International Science & Technology Inst.* v. *Inacom Communications, Inc.*, 106 F. 3d 1146, 1158 (CA4 1997) (same), with *Charvat* v. *EchoStar Satellite, LLC*, 630 F. 3d 459, 463–465 (CA6 2010) (U. S. district courts have federal-question jurisdiction over private TCPA actions), *Brill* v. *Countrywide Home Loans, Inc.*, 427 F. 3d 446, 447 (CA7 2005) (same), and *ErieNet*, 156 F. 3d, at 521 (Alito, J., dissenting) (same). We now hold that Congress did not deprive federal courts of federal-question jurisdiction over private TCPA suits.

II

Federal courts, though "courts of limited jurisdiction," *Kokkonen* v. *Guardian Life Ins. Co. of America*, 511 U. S. 375, 377 (1994), in the main "have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given," *Cohens* v. *Virginia*, 6 Wheat. 264, 404 (1821). Congress granted federal courts general federal-question jurisdiction in 1875. See Act of Mar. 3, 1875, § 1, 18 Stat. 470.[6] As now codified, the law provides: "The district

[6] Congress had previously granted general federal-question jurisdiction to federal courts, but the grant was short lived. See *Steffel* v. *Thompson*, 415 U. S. 452, 464, n. 14 (1974) (describing Midnight Judges Act of 1801, § 11, 2 Stat. 92, repealed by Act of Mar. 8, 1802, § 1, 2 Stat. 132).

courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U. S. C. § 1331. The statute originally included an amount-in-controversy requirement, set at $500. See Act of Mar. 3, 1875, § 1, 18 Stat. 470. Recognizing the responsibility of federal courts to decide claims, large or small, arising under federal law, Congress in 1980 eliminated the amount-in-controversy requirement in federal question (but not diversity) cases. See Federal Question Jurisdictional Amendments Act of 1980, 94 Stat. 2369 (amending 28 U. S. C. § 1331). See also H. R. Rep. No. 96–1461, p. 1 (1980).[7] Apart from deletion of the amount-in-controversy requirement, the general federal-question provision has remained essentially unchanged since 1875. See 13D Wright & Miller 163.

Because federal law creates the right of action and provides the rules of decision, Mims's TCPA claim, in 28 U. S. C. § 1331's words, plainly "aris[es] under" the "laws . . . of the United States." As already noted, *supra*, at 371, "[a] suit arises under the law that creates the cause of action." *American Well Works*, 241 U. S., at 260. Although courts have described this formulation as "more useful for inclusion than for . . . exclusion," *Merrell Dow Pharmaceuticals Inc.* v. *Thompson*, 478 U. S. 804, 809, n. 5 (1986) (quoting *T. B. Harms Co.* v. *Eliscu*, 339 F. 2d 823, 827 (CA2 1964)), there is no serious debate that a federally created claim for relief is generally a "sufficient condition for federal-question jurisdiction," *Grable & Sons Metal Products, Inc.* v. *Darue Engineering & Mfg.*, 545 U. S. 308, 317 (2005).[8]

[7] At the time it was repealed, the amount-in-controversy requirement in federal-question cases had reached $10,000. See Act of July 25, 1958, 72 Stat. 415. Currently, the amount in controversy in diversity cases must exceed $75,000. See 28 U. S. C. § 1332.

[8] For a rare exception to the rule that a federal cause of action suffices to ground federal-question jurisdiction, see *Shoshone Mining Co.* v. *Rutter*, 177 U. S. 505 (1900), discussed in R. Fallon, J. Manning, D. Meltzer, & D. Shapiro, Hart and Wechsler's The Federal Courts and the Federal System 784–785 (6th ed. 2009). In *Shoshone Mining*, we held that a suit for

Arrow agrees that this action arises under federal law, see Tr. of Oral Arg. 27, but urges that Congress vested exclusive adjudicatory authority over private TCPA actions in state courts. In cases "arising under" federal law, we note, there is a "deeply rooted presumption in favor of concurrent state court jurisdiction," rebuttable if "Congress affirmatively ousts the state courts of jurisdiction over a particular federal claim." *Tafflin* v. *Levitt*, 493 U. S. 455, 458–459 (1990). *E. g.*, 28 U. S. C. § 1333 ("The district courts shall have original jurisdiction, exclusive of the courts of the States, of: (1) Any civil case of admiralty or maritime jurisdiction . . . ."). The presumption of concurrent state-court jurisdiction, we have recognized, can be overcome "by an explicit statutory directive, by unmistakable implication from legislative history, or by a clear incompatibility between state-court jurisdiction and federal interests." *Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U. S. 473, 478 (1981).

Arrow readily acknowledges the presumption of concurrent state-court jurisdiction, but maintains that 28 U. S. C. § 1331 creates no converse presumption in favor of federal-court jurisdiction. Instead, Arrow urges, the TCPA, a later, more specific statute, displaces § 1331, an earlier, more general prescription. See Tr. of Oral Arg. 28–29; Brief for Respondent 31.

Section 1331, our decisions indicate, is not swept away so easily. As stated earlier, see *supra*, at 377, when federal law creates a private right of action and furnishes the substantive rules of decision, the claim arises under federal law, and district courts possess federal-question jurisdiction

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a federal mining patent did not arise under federal law for jurisdictional purposes because "the right of possession" in controversy could be determined by "local rules or customs or state statutes," 177 U. S., at 509, 510, or "may present simply a question of fact," *id.*, at 509. Here, by contrast, the TCPA not only creates the claim for relief and designates the remedy; critically, the Act and regulations thereunder supply the governing substantive law.

under § 1331.[9] That principle endures unless Congress divests federal courts of their § 1331 adjudicatory authority. See, *e. g.*, *Verizon Md. Inc.* v. *Public Serv. Comm'n of Md.*, 535 U. S. 635, 642 (2002) (Nothing in 47 U. S. C. § 252(e)(6) "*divest[s]* the district courts of their authority under 28 U. S. C. § 1331 to review the [state agency's] order for compliance with federal law."); *K mart Corp.* v. *Cartier, Inc.*, 485 U. S. 176, 182–183 (1988) ("The District Court would be divested of [§ 1331] jurisdiction . . . if this action fell within one of several specific grants of exclusive jurisdiction to the Court of International Trade [under 28 U. S. C. § 1581(a) or § 1581(i)(3)].").

"[D]ivestment of district court jurisdiction" should be found no more readily than "divestmen[t] of state court jurisdiction," given "the longstanding and explicit grant of federal question jurisdiction in 28 U. S. C. § 1331." *ErieNet*, 156 F. 3d, at 523 (Alito, J., dissenting); see Gonell, Note, Statutory Interpretation of Federal Jurisdictional Statutes: Jurisdiction of the Private Right of Action Under the TCPA, 66 Ford. L. Rev. 1895, 1929–1930 (1998). Accordingly, the District Court retains § 1331 jurisdiction over Mims's complaint unless the TCPA, expressly or by fair implication, excludes federal-court adjudication. See *Verizon Md.*, 535 U. S., at 644; Gonell, *supra*, at 1929 (Jurisdiction over private TCPA actions "is proper under § 1331 unless Congress enacted a partial repeal of § 1331 in the TCPA.").

III

Arrow's arguments do not persuade us that Congress has eliminated § 1331 jurisdiction over private actions under the TCPA.

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[9] Even when a right of action is created by state law, if the claim requires resolution of significant issues of federal law, the case may arise under federal law for 28 U. S. C. § 1331 purposes. See *Grable & Sons Metal Products, Inc.* v. *Darue Engineering & Mfg.*, 545 U. S. 308, 312 (2005).

The language of the TCPA—"A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring [an action] in an appropriate court of that State," 47 U. S. C. § 227(b)(3)—Arrow asserts, is uniquely state-court oriented. See Brief for Respondent 13. That may be, but "[i]t is a general rule that the grant of jurisdiction to one court does not, of itself, imply that the jurisdiction is to be exclusive." *United States* v. *Bank of New York & Trust Co.*, 296 U. S. 463, 479 (1936).

Nothing in the permissive language of § 227(b)(3) makes state-court jurisdiction exclusive, or otherwise purports to oust federal courts of their 28 U. S. C. § 1331 jurisdiction over federal claims. See, *e. g.*, *Verizon Md.*, 535 U. S., at 643 ("[N]othing in 47 U. S. C. § 252(e)(6) purports to strip [§ 1331] jurisdiction."). Cf. *Yellow Freight System, Inc.* v. *Donnelly*, 494 U. S. 820, 823 (1990) (Title VII's language—"[e]ach United States district court . . . shall have jurisdiction of actions brought under this subchapter," 42 U. S. C. § 2000e–5(f)(3)—does not "ous[t] state courts of their presumptive jurisdiction." (internal quotation marks omitted)). Congress may indeed provide a track for a federal claim exclusive of § 1331. See, *e. g.*, 42 U. S. C. § 405(h) ("No action . . . shall be brought under [§ 1331] to recover on any claim arising under [Title II of the Social Security Act]."); *Weinberger* v. *Salfi*, 422 U. S. 749, 756–757 (1975). Congress has done nothing of that sort here, however.

Title 47 U. S. C. § 227(b)(3) does not state that a private plaintiff may bring an action under the TCPA "only" in state court, or "exclusively" in state court. The absence of such a statement contrasts with the Act's instruction on suits instituted by State Attorneys General. As earlier noted, see *supra*, at 374, § 227(g)(2) (2006 ed., Supp. IV) vests "exclusive jurisdiction over [such] actions" in "[t]he district courts of the United States."[10] Section 227(g)(2)'s exclusivity pre-

[10] "How strange it would be," the Seventh Circuit observed, "to make federal courts the exclusive forum for suits by the states, while making

scription "reinforce[s] the conclusion that [§ 227(b)(3)'s] silence . . . leaves the jurisdictional grant of § 1331 untouched. For where otherwise applicable jurisdiction was meant to be excluded, it was excluded expressly." *Verizon Md.*, 535 U. S., at 644; see *ErieNet*, 156 F. 3d, at 522 (Alito, J., dissenting) ("Section [227(g)(2)] reveals that, while drafting the TCPA, Congress knew full well how to grant exclusive jurisdiction with mandatory language. The most natural interpretation of Congress' failure to use similar language in section 227(b)(3) is that Congress did not intend to grant exclusive jurisdiction in that section."); *Brill*, 427 F. 3d, at 451 ("[Section 227(g)(2)] is explicit about exclusivity, while § 227(b)(3) is not; the natural inference is that the state forum mentioned in § 227(b)(3) is optional rather than mandatory.").[11]

Arrow urges that Congress would have had no reason to provide for a private action "in an appropriate [state] court,"

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state courts the exclusive forum for suits by private plaintiffs." *Brill* v. *Countrywide Home Loans, Inc.*, 427 F. 3d 446, 451 (2005).

[11] For TCPA actions brought by State Attorneys General, or "an[other] official or agency designated by a State," 47 U. S. C. § 227(g)(1) (2006 ed., Supp. IV), Arrow points out, Congress specifically addressed venue, service of process, § 227(g)(4), and potential conflicts between federal and state enforcement efforts, § 227(g)(7). No similar prescriptions appear in the section on private actions, 47 U. S. C. § 227(b)(3), for this obvious reason: "[As] the general rules governing venue and service of process in the district courts are well established, *see* 28 U. S. C. § 1391(b); Fed. Rules Civ. Proc. 4, 4.1, there was no need for Congress to reiterate them in section 227(b)(3). The fact that venue and service of process are discussed in section [227(g)(4) (2006 ed., Supp. IV)] and not section 227(b)(3) simply indicates that Congress wished to make adjustments to the general rules in the former section and not the latter. As for the conflict provision that appears in section [227(g) (2006 ed., Supp. IV)] but not section 227(b)(3), it is hardly surprising that Congress would be concerned about agency conflicts in the section of the TCPA dealing with official state enforcement efforts but not in the section governing private lawsuits." *ErieNet, Inc.* v. *Velocity Net, Inc.*, 156 F. 3d 513, 523 (CA3 1998) (Alito, J., dissenting).

§ 227(b)(3), if it did not mean to make the state forum exclusive. Had Congress said nothing at all about bringing private TCPA claims in state courts, Arrow observes, those courts would nevertheless have concurrent jurisdiction. See *supra*, at 378. True enough, but Congress had simultaneously provided for TCPA enforcement actions by state authorities, § 227(g) (2006 ed., Supp. IV), and had made federal district courts exclusively competent in such cases, § 227(g)(2). Congress may simply have wanted to avoid any argument that in private actions, as in actions brought by State Attorneys General, "federal jurisdiction is exclusive." *Brill*, 427 F. 3d, at 451 (emphasis deleted) (citing *Yellow Freight*, 494 U. S. 820 (holding, after 26 years of litigation, that claims under the Civil Rights Act of 1964 may be resolved in state as well as federal courts), and *Tafflin*, 493 U. S. 455 (holding, after 20 years of litigation, that claims under RICO may be resolved in state as well as federal courts)). Moreover, by providing that private actions may be brought in state court "if otherwise permitted by the laws or rules of court of [the] State," 47 U. S. C. § 227(b)(3), Congress arguably gave States leeway they would otherwise lack to "decide for [themselves] whether to entertain claims under the [TCPA]," *Brill*, 427 F. 3d, at 451. See Brief for Respondent 16 (Congress "le[ft] States free to decide what TCPA claims to allow.").[12]

Making state-court jurisdiction over § 227(b)(3) claims exclusive, Arrow further asserts, "fits hand in glove with

[12] The Supremacy Clause declares federal law the "supreme law of the land," and state courts must enforce it "in the absence of a valid excuse." *Howlett* v. *Rose*, 496 U. S. 356, 370, n. 16 (1990). "An excuse that is inconsistent with or violates federal law is not a valid excuse: The Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source." *Id.*, at 371. Without the "if otherwise permitted" language, 47 U. S. C. § 227(b)(3), there is little doubt that state courts would be obliged to hear TCPA claims. See *Testa* v. *Katt*, 330 U. S. 386, 394 (1947).

[Congress'] objective": enabling States to control telemarketers whose interstate operations evaded state law. *Id.*, at 15. Even so, we have observed, jurisdiction conferred by 28 U. S. C. § 1331 should hold firm against "mere implication flowing from subsequent legislation." *Colorado River Water Conservation Dist.* v. *United States*, 424 U. S. 800, 808, 809, n. 15 (1976) (quoting *Rosencrans* v. *United States*, 165 U. S. 257, 262 (1897)).

We are not persuaded, moreover, that Congress sought only to fill a gap in the States' enforcement capabilities. Had Congress so limited its sights, it could have passed a statute providing that out-of-state telemarketing calls directed into a State would be subject to the laws of the receiving State. Congress did not enact such a law. Instead, it enacted detailed, uniform, federal substantive prescriptions and provided for a regulatory regime administered by a federal agency. See 47 U. S. C. § 227. TCPA liability thus depends on violation of a federal statutory requirement or an FCC regulation, §§ 227(b)(3)(A), (c)(5), not on a violation of any state substantive law.

The federal interest in regulating telemarketing to "protec[t] the privacy of individuals" while "permit[ting] legitimate [commercial] practices," § 2, ¶ 9, 105 Stat. 2394, note following 47 U. S. C. § 227 (Congressional Findings) (internal quotation marks omitted), is evident from the regulatory role Congress assigned to the FCC. See, *e. g.*, § 227(b)(2) (delegating to the FCC authority to exempt calls from the Act's reach and prohibit calls to businesses). Congress' design would be less well served if consumers had to rely on "the laws or rules of court of a State," § 227(b)(3), or the accident of diversity jurisdiction,[13] to gain redress for TCPA violations.

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[13] Although all Courts of Appeals to have considered the question have held that the TCPA does not bar district courts from exercising diversity jurisdiction under 28 U. S. C. § 1332, see, *e. g., Gottlieb* v. *Carnival Corp.*, 436 F. 3d 335 (CA2 2006), at oral argument, Arrow's counsel maintained that diversity jurisdiction "should go, too," Tr. of Oral Arg. 39. Were we

Arrow emphasizes a statement made on the Senate floor by Senator Hollings, the TCPA's sponsor:

> "Computerized calls are the scourge of modern civilization. They wake us up in the morning; they interrupt our dinner at night; they force the sick and elderly out of bed; they hound us until we want to rip the telephone right out of the wall.
>
> . . . . .
>
> "The substitute bill contains a private right-of-action provision that will make it easier for consumers to recover damages from receiving these computerized calls. The provision would allow consumers to bring an action in State court against any entity that violates the bill. The bill does not, because of constitutional constraints, dictate to the States which court in each State shall be the proper venue for such an action, as this is a matter for State legislators to determine. Nevertheless, it is my hope that States will make it as easy as possible for consumers to bring such actions, preferably in small claims court. . . .
>
> "Small claims court or a similar court would allow the consumer to appear before the court without an attorney. The amount of damages in this legislation is set to be fair to both the consumer and the telemarketer. However, it would defeat the purposes of the bill if the attorneys' costs to consumers of bringing an action were greater than the potential damages. I thus expect that the States will act reasonably in permitting their citizens to go to court to enforce this bill." 137 Cong. Rec. 30821–30822 (1991).

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to accept Arrow's positions that diversity and federal-question jurisdiction are unavailable, and that state courts may refuse to hear TCPA claims, residents of States that choose not to hear TCPA claims would have no forum in which to sue.

This statement does not bear the weight Arrow would place on it.

First, the views of a single legislator, even a bill's sponsor, are not controlling. *Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U. S. 102, 118 (1980). Second, Senator Hollings did not mention federal-court jurisdiction or otherwise suggest that 47 U. S. C. § 227(b)(3) is intended to divest federal courts of authority to hear TCPA claims. Hollings no doubt believed that mine-run TCPA claims would be pursued most expeditiously in state small-claims court.[14] But one cannot glean from his statement any expectation that those courts, or state courts generally, would have exclusive jurisdiction over private actions alleging violations of the Act or of the FCC's implementing regulations. Third, even if we agreed with Arrow that Senator Hollings expected private TCPA actions to proceed solely in state courts, and even if other supporters shared his view, that expectation would not control our judgment on 28 U. S. C. § 1331's compass. Cf. *Yellow Freight*, 494 U. S., at 826 ("persuasive showing that most legislators, judges, and administrators . . . involved in the enactment, amendment, enforcement, and interpretation of Title VII expected that such litigation would be processed exclusively in federal courts" did not overcome presumption of concurrent state-court jurisdiction).

Among its arguments for state-court exclusivity, Arrow raises a concern about the impact on federal courts were we to uphold § 1331 jurisdiction over private actions under the TCPA. "[G]iven the enormous volume of telecommunica-

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[14] The complaint in this very case, we note, could not have been brought in small-claims court. Mims alleged some 12 calls, and sought treble damages ($1,500) for each. See App. 9–14; Tr. of Oral Arg. 12. The amount he sought to recover far exceeded the $5,000 ceiling on claims a Florida small-claims court can adjudicate. See Fla. Small Claims Rule 7.010(b) (rev. ed. 2011).

tions presenting potential claims," Arrow projects, federal courts could be inundated by $500-per-violation TCPA claims. Brief for Respondent 33. "Moreover, if plaintiffs are free to bring TCPA claims in federal court under § 1331, then defendants sued in state court would be equally free to remove those cases to federal court under 28 U. S. C. § 1441." *Id.*, at 22–23. Indeed, Arrow suggests, defendants could use removal as a mechanism to force small-claims-court plaintiffs to abandon suit rather than "figh[t] it out" in the "more expensive federal forum." *Id.*, at 23.

Arrow's floodgates argument assumes "a shocking degree of noncompliance" with the Act, Reply Brief 11, and seems to us more imaginary than real. The current federal district court civil filing fee is $350. 28 U. S. C. § 1914(a). How likely is it that a party would bring a $500 claim in, or remove a $500 claim to, federal court? Lexis and Westlaw searches turned up 65 TCPA claims removed to federal district courts in Illinois, Indiana, and Wisconsin since the Seventh Circuit held, in October 2005, that the Act does not confer exclusive jurisdiction on state courts. All 65 cases were class actions, not individual cases removed from small-claims court.[15] There were also 26 private TCPA claims brought initially in federal district courts; of those, 24 were class actions.

IV

Nothing in the text, structure, purpose, or legislative history of the TCPA calls for displacement of the federal-question jurisdiction U. S. district courts ordinarily have

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[15] When Congress wants to make federal claims instituted in state court nonremovable, it says just that. See *Breuer* v. *Jim's Concrete of Brevard, Inc.*, 538 U. S. 691, 696–697 (2003) (quoting, *e. g.*, 28 U. S. C. § 1445(a) ("A civil action in any State court against a railroad or its receivers or trustees, [arising under §§ 51–60 of Title 45,] may not be removed to any district court of the United States.") and 15 U. S. C. § 77v(a) ("[N]o case arising under this subchapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States.")).

under 28 U. S. C. § 1331. In the absence of direction from Congress stronger than any Arrow has advanced, we apply the familiar default rule: Federal courts have § 1331 jurisdiction over claims that arise under federal law. Because federal law gives rise to the claim for relief Mims has stated and specifies the substantive rules of decision, the Eleventh Circuit erred in dismissing Mims's case for lack of subject-matter jurisdiction.

* * *

For the reasons stated, the judgment of the United States Court of Appeals for the Eleventh Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

PERRY, GOVERNOR OF TEXAS, ET AL. *v.* PEREZ ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

No. 11–713 (11A520). Argued January 9, 2012—Decided January 20, 2012*

After the 2010 census, Texas redrew its electoral districts to comply with the Constitution's one-person, one-vote rule. Being a "covered jurisdiction" under § 5 of the Voting Rights Act of 1965, Texas submitted its newly enacted plans to the United States District Court for the District of Columbia to demonstrate that its proposed changes had neither the purpose nor the effect "of denying or abridging the right to vote on account of race or color." 42 U. S. C. § 1973c(a).

While the preclearance proceeding was pending, appellees filed suit in the United States District Court for the Western District of Texas, alleging that the State's plans violated the Constitution and § 2 of the Voting Rights Act by discriminating against, and diluting the voting strength of, Latinos and African-Americans. That court decided to withhold judgment pending resolution of the preclearance process, but when it became clear that preclearance would not happen in time for the 2012 primary elections, the court held hearings and issued interim plans. Texas appealed to this Court, arguing that the District Court's interim plans are unnecessarily inconsistent with the State's enacted plans.

Held: Because it is unclear whether the District Court in Texas followed the appropriate standards in drawing interim maps, the orders implementing those maps are vacated. When an intervening event compels a district court to create an interim plan, the court "should be guided by the legislative policies underlying" the state plan "to the extent those policies do not lead to violations of the Constitution or the Voting Rights Act." *Abrams* v. *Johnson*, 521 U. S. 74, 79. Where the State's policies are challenged under the Constitution or § 2 of the Voting Rights Act, a district court should take guidance from those policies, except to the extent such challenges are shown to have a likelihood of success on the merits. See *Winter* v. *Natural Resources Defense Council, Inc.*, 555 U. S. 7, 20. However, where the State's policies are challenged

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*Together with No. 11–714 (11A521), *Perry, Governor of Texas, et al.* v. *Davis et al.*, and No. 11–715 (11A536), *Perry, Governor of Texas, et al.* v. *Perez et al.*, also on appeal from the same court.

Syllabus

under § 5, a district court must not prejudge the merits of the preclearance proceedings, which can be addressed only by the District Court for the District of Columbia. A district court may satisfy the standard by taking guidance from the State's policies unless they reflect aspects of the plan that stand a reasonable probability of failing to gain § 5 preclearance, *i. e.*, the § 5 challenge is not insubstantial. This standard adequately balances the unique preclearance scheme with the State's sovereignty and a district court's need for policy guidance in constructing an interim map. *Lopez* v. *Monterey County*, 519 U. S. 9, and *McDaniel* v. *Sanchez*, 452 U. S. 130, hold only that a district court may not adopt an unprecleared plan as its own, not, as appellees argue, that a district court may not take guidance from the lawful policies incorporated in such a plan. To the extent the District Court here exceeded its mission and substituted its own concept of the public good for the Texas Legislature's, the court erred.

Vacated and remanded.

Paul D. Clement argued the cause for appellants in all cases. With him on the briefs were *Conor B. Dugan*, *Greg Abbott*, Attorney General of Texas, *Jonathan Mitchell*, Solicitor General, *David J. Schenck*, *James D. Blacklock*, *Matthew H. Frederick*, and *J. Reed Clay, Jr.*

Principal Deputy Solicitor General Srinivasan argued the cause for the United States as *amicus curiae* supporting affirmance in part and vacatur in part. With him on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Perez*, *William M. Jay*, *Sarah E. Harrington*, *Jessica Dunsay Silver*, and *Linda F. Thome.*

Jose Garza argued the cause for appellees in all cases. *Paul M. Smith*, *Michael B. DeSanctis*, *Jessica Ring Amunson*, *J. Gerald Hebert*, and *David Richards* filed briefs in all cases for appellees Wendy Davis et al. *Anita Earls*, *Gary Bledsoe*, and *Robert S. Notzon* filed briefs in all cases for appellees Texas State Conference of NAACP Branches et al. *Nina Perales*, *Pamela Karlan*, *Joaquin G. Avila*, *Richard E. Gray III*, *Mr. Garza*, and *David Richards* filed briefs in all cases for appellees Texas Latino Redistricting Task Force et al. *Renea Hicks*, *John M. Devaney*, *Marc E. Elias*, *Kevin J. Hamilton*, *Messrs. Smith*, *DeSanctis*, *Ms. Amunson*, and

Mr. Hebert filed briefs in all cases for appellees Eddie Rodriguez et al.†

PER CURIAM.

The 2010 census showed an enormous increase in Texas' population, with over four million new residents. That growth required the State to redraw its electoral districts for the United States Congress, the State Senate, and the State House of Representatives, in order to comply with the Constitution's one-person, one-vote rule. See *Georgia* v. *Ashcroft*, 539 U. S. 461, 488, n. 2 (2003). The State also had to create new districts for the four additional congressional seats it received.

Texas is a "covered jurisdiction" under § 5 of the Voting Rights Act of 1965. See 79 Stat. 439, 42 U. S. C. § 1973c(a); 28 CFR pt. 51, App. (2011). Section 5 suspends all changes to a covered jurisdiction's election procedures, including district lines, until those changes are submitted to and approved by a three-judge United States District Court for the District of Columbia, or the Attorney General. See *Northwest Austin Municipal Util. Dist. No. One* v. *Holder*, 557 U. S. 193, 198 (2009). This process, known as preclearance, re-

†A brief of *amici curiae* urging reversal in all cases was filed for the State of Alabama et al. by *Luther Strange*, Attorney General of Alabama, *John C. Neiman, Jr.*, Solicitor General, and *Andrew L. Brasher*, Deputy Solicitor General, and by the Attorneys General for their respective States as follows: *Thomas C. Horne* of Arizona, *Pamela Jo Bondi* of Florida, *Samuel S. Olens* of Georgia, *James D. "Buddy" Caldwell* of Louisiana, *Bill Schuette* of Michigan, *Alan Wilson* of South Carolina, and *Kenneth T. Cuccinelli II* of Virginia.

Briefs of *amici curiae* urging vacatur in all cases were filed for Congressman Francisco Canseco by *Chris K. Gober* and *Eric C. Opiela;* for the Eagle Forum Education & Legal Defense Fund, Inc., by *Lawrence J. Joseph;* and for Edward Chen et al. by *William S. Consovoy* and *Thomas R. McCarthy.*

Briefs of *amici curiae* were filed in all cases for the Cato Institute by *Ilya Shapiro;* and for the Organization of Chinese Americans Greater Houston Chapter by *Saul P. Morgenstern* and *Kenneth Kimerling.*

quires the covered jurisdiction to demonstrate that its proposed change "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color." § 1973c(a). This Court has been emphatic that a new electoral map cannot be used to conduct an election until it has been precleared. See, *e. g.*, *Clark* v. *Roemer*, 500 U. S. 646, 652 (1991).

The day after completing its new electoral plans, Texas submitted them to the United States District Court for the District of Columbia for preclearance. The preclearance process remains ongoing. Texas was unsuccessful in its bid for summary judgment, and a trial is scheduled in the coming weeks. Meanwhile, various plaintiffs—appellees here—brought suit in Texas, claiming that the State's newly enacted plans violate the United States Constitution and § 2 of the Voting Rights Act.[1] Appellees alleged, *inter alia*, that Texas' enacted plans discriminate against Latinos and African-Americans and dilute their voting strength, notwithstanding the fact that Latinos and African-Americans accounted for three-quarters of Texas' population growth since 2000. A three-judge panel of the United States District Court for the Western District of Texas was convened. See 28 U. S. C. § 2284. That court heard argument and held a trial with respect to the plaintiffs' claims, but withheld judgment pending resolution of the preclearance process in the D. C. court. Cf. *Branch* v. *Smith*, 538 U. S. 254, 283–285 (2003) (KENNEDY, J., concurring).

As Texas' 2012 primaries approached, it became increasingly likely that the State's newly enacted plans would not receive preclearance in time for the 2012 elections. And the State's old district lines could not be used, because population growth had rendered them inconsistent with the Consti-

[1] Section 2 prohibits "any State or political subdivision" from imposing any electoral practice "which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 42 U. S. C. § 1973(a).

tution's one-person, one-vote requirement. It thus fell to the District Court in Texas to devise interim plans for the State's 2012 primaries and elections. See *Connor* v. *Finch*, 431 U. S. 407, 414–415 (1977). After receiving proposals from the parties and holding extensive hearings, that court issued its interim plans. The court unanimously agreed on an interim State Senate plan, but Judge Smith dissented with respect to the congressional and State House plans. Texas asked this Court to stay the interim plans pending an appeal, arguing that they were unnecessarily inconsistent with the State's enacted plans. This Court granted the stay and noted probable jurisdiction. *Post*, p. 1090.

Redistricting is "primarily the duty and responsibility of the State." *Chapman* v. *Meier*, 420 U. S. 1, 27 (1975). The failure of a State's newly enacted plan to gain preclearance prior to an upcoming election does not, by itself, require a court to take up the state legislature's task. That is because, in most circumstances, the State's last enacted plan simply remains in effect until the new plan receives preclearance. But if an intervening event—most commonly, as here, a census—renders the current plan unusable, a court must undertake the "unwelcome obligation" of creating an interim plan. *Connor*, *supra*, at 415. Even then, the plan already in effect may give sufficient structure to the court's endeavor. Where shifts in a State's population have been relatively small, a court may need to make only minor or obvious adjustments to the State's existing districts in order to devise an interim plan.

But here the scale of Texas' population growth appears to require sweeping changes to the State's current districts. In areas where population shifts are so large that no semblance of the existing plan's district lines can be used, that plan offers little guidance to a court drawing an interim map. The problem is perhaps most obvious in adding new congressional districts: The old plan gives no suggestion as to where those new districts should be placed. In addition,

experience has shown the difficulty of defining neutral legal principles in this area, for redistricting ordinarily involves criteria and standards that have been weighed and evaluated by the elected branches in the exercise of their political judgment. See, *e. g.*, *Miller* v. *Johnson*, 515 U. S. 900, 915–916 (1995); *White* v. *Weiser*, 412 U. S. 783, 795–796 (1973). Thus, if the old state districts were the only source to which a district court could look, it would be forced to make the sort of policy judgments for which courts are, at best, ill suited.

To avoid being compelled to make such otherwise standardless decisions, a district court should take guidance from the State's recently enacted plan in drafting an interim plan. That plan reflects the State's policy judgments on where to place new districts and how to shift existing ones in response to massive population growth. This Court has observed before that "faced with the necessity of drawing district lines by judicial order, a court, as a general rule, should be guided by the legislative policies underlying" a state plan—even one that was itself unenforceable—"to the extent those policies do not lead to violations of the Constitution or the Voting Rights Act." *Abrams* v. *Johnson*, 521 U. S. 74, 79 (1997) (holding that the District Court properly declined to defer to a precleared plan that used race as a predominant factor). For example, in *White*, *supra*, an equal population challenge, this Court reversed a District Court's choice of interim plan and required the District Court to choose a plan more closely resembling an enacted state plan, even though the state plan itself had been held to violate the one-person, one-vote principle. Similarly, in *Upham* v. *Seamon*, 456 U. S. 37 (1982) *(per curiam)*, although the state plan as a whole had been denied § 5 preclearance, this Court directed a District Court to "defer to the legislative judgments the [state] plans reflect," insofar as they involved districts found to meet the preclearance standard. *Id.*, at 40–41. See also *Whitcomb* v. *Chavis*, 403 U. S. 124, 160–161 (1971) (equal protection challenge).

Section 5 prevents a state plan from being implemented if it has not been precleared. But that does not mean that the plan is of no account or that the policy judgments it reflects can be disregarded by a district court drawing an interim plan. On the contrary, the state plan serves as a starting point for the district court. It provides important guidance that helps ensure that the district court appropriately confines itself to drawing interim maps that comply with the Constitution and the Voting Rights Act, without displacing legitimate state policy judgments with the court's own preferences.

A district court making such use of a State's plan must, of course, take care not to incorporate into the interim plan any legal defects in the state plan. See *Abrams*, *supra*, at 85–86; *White*, *supra*, at 797. Where a State's plan faces challenges under the Constitution or § 2 of the Voting Rights Act, a district court should still be guided by that plan, except to the extent those legal challenges are shown to have a likelihood of success on the merits. Plaintiffs seeking a preliminary injunction of a statute must normally demonstrate that they are likely to succeed on the merits of their challenge to that law. See *Winter* v. *Natural Resources Defense Council, Inc.*, 555 U. S. 7, 20 (2008). There is no reason that plaintiffs seeking to defeat the policies behind a State's redistricting legislation should not also have to meet that standard. And because the local district court—here, the District Court for the Western District of Texas—will ultimately decide the merits of claims under § 2 and the Constitution, it is well equipped to apply that familiar standard.

The calculus with respect to § 5 challenges is somewhat different. Where a State has sought preclearance in the District Court for the District of Columbia, § 5 allows only that court to determine whether the state plan complies with § 5. Consistent with that design, we have made clear that other district courts may not address the merits of § 5 challenges. See, *e. g.*, *Perkins* v. *Matthews*, 400 U. S. 379, 385

(1971). The local district court drafting an interim plan must therefore be careful not to prejudge the merits of the preclearance proceedings. The court should presume neither that a State's effort to preclear its plan will succeed nor that it will fail.

The need to avoid prejudging the merits of preclearance is satisfied by taking guidance from a State's policy judgments unless they reflect aspects of the state plan that stand a reasonable probability of failing to gain § 5 preclearance. And by "reasonable probability" this Court means in this context that the § 5 challenge is not insubstantial. That standard ensures that a district court is not deprived of important guidance provided by a state plan due to § 5 challenges that have no reasonable probability of success but still respects the jurisdiction and prerogative of those responsible for the preclearance determination. And the reasonable probability standard adequately balances the unique preclearance scheme with the State's sovereignty and a district court's need for policy guidance in constructing an interim map. This Court recently noted the "serious constitutional questions" raised by § 5's intrusion on state sovereignty. *Northwest Austin*, 557 U. S., at 204. Those concerns would only be exacerbated if § 5 required a district court to wholly ignore the State's policies in drawing maps that will govern a State's elections, without any reason to believe those state policies are unlawful.

Appellees, however, contend that § 5 demands exactly that. In their view, this Court's precedents require district courts to ignore any state plan that has not received § 5 preclearance. But the cases upon which appellees rely hold only that a district court may not adopt an unprecleared plan as its own. See *Lopez* v. *Monterey County*, 519 U. S. 9 (1996); *McDaniel* v. *Sanchez*, 452 U. S. 130 (1981). They say nothing about whether a district court may take guidance from the lawful policies incorporated in such a plan for aid in drawing an interim map. Indeed, in *Upham* this Court or-

dered a District Court to defer to the unobjectionable aspects of a State's plan even though that plan had already been *denied* preclearance.

In this litigation, the District Court stated that it had "giv[en] effect to as much of the policy judgments in the Legislature's enacted map as possible." 1 App. 182. At the same time, however, the court said that it was required to draw an "independent map" following "neutral principles that advance the interest of the collective public good." *Id.*, at 169–170. In the court's view, it "was not required to give any deference to the Legislature's enacted plan," and it instead applied principles that it determined "place the interests of the citizens of Texas first." *Id.*, at 171. To the extent the District Court exceeded its mission to draw interim maps that do not violate the Constitution or the Voting Rights Act, and substituted its own concept of "the collective public good" for the Texas Legislature's determination of which policies serve "the interests of the citizens of Texas," the court erred.

In proclaiming its ability to draw an interim map "without regard to political considerations," the District Court relied heavily on *Balderas* v. *Texas*, No. 6:01cv158, 2001 U. S. Dist. LEXIS 25740 (ED Tex., Nov. 14, 2001) *(per curiam)*, summarily aff'd, 536 U. S. 919 (2002). 1 App. 182. But in *Balderas* there was no recently enacted state plan to which the District Court could turn. Without the benefit of legislative guidance in making distinctly legislative policy judgments, the *Balderas* court was perhaps compelled to design an interim map based on its own notion of the public good. Because the District Court here had the benefit of a recently enacted plan to assist it, the court had neither the need nor the license to cast aside that vital aid.

Some specific aspects of the District Court's plans seem to pay adequate attention to the State's policies, others do not, and the propriety of still others is unclear. For example, in drawing State House districts in north and east Texas, the

District Court closely followed the State's policies. See 1 App. 173; 5 *id.*, at 25–26. Although Texas' entire State House plan is challenged in the § 5 proceedings, there is apparently no serious allegation that the district lines in north and east Texas have a discriminatory intent or effect. 1 *id.*, at 187, n. 4. The District Court was thus correct to take guidance from the State's plan in drawing the interim map for those regions. But the court then altered those districts to achieve *de minimis* population variations—even though there was no claim that the population variations in those districts were unlawful. *Id.*, at 171, and n. 8. In the absence of any legal flaw in this respect in the State's plan, the District Court had no basis to modify that plan.[2]

The District Court also erred in refusing to split voting precincts (called "voter tabulation districts" in Texas) in drawing the interim plans. *Id.*, at 90, 102–103. That choice alone prevented the District Court from following the lead of Texas' enacted plan—which freely splits precincts—in many areas where there were no legal challenges to the plan's details. See *id.*, at 102–103, 116, n. 24. The District Court was apparently motivated by a well-intentioned desire to save Texas the time and expense of reconfiguring precincts, and to ensure that the court's interim plan could be implemented in time for the upcoming election. *Id.*, at 90, 102–103, 109. But the State's plan accepted the costs of splitting precincts in order to accomplish other goals, and Texas law expressly allows recasting precincts when redistricting. See Tex. Elec. Code Ann. § 42.032 (West 2010). If a State has chosen to accept the burden of changing its precincts,

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[2] This Court has stated that court-drawn maps are held to a higher standard of acceptable population variation than legislatively enacted maps. See, *e. g.*, *Abrams* v. *Johnson*, 521 U. S. 74, 98 (1997). But this Court has also explained that those "stricter standard[s]" are not triggered where a district court incorporates unchallenged portions of a State's map into an interim map. *Upham* v. *Seamon*, 456 U. S. 37, 42–43 (1982) *(per curiam)*.

and its decision to do so is otherwise lawful, there is no warrant for a district court to ignore the State's decision. Of course, in these cases it may well be that Texas will reexamine this issue in light of the exigencies caused by the impending election.

The District Court also appears to have unnecessarily ignored the State's plans in drawing certain individual districts. For example, the District Court drew an interim District 77 that resembles neither the State's newly enacted plan, nor the previous plan in effect prior to the 2010 census. The court said that it did so in response to alleged constitutional violations. 1 App. 174–175. But the court did not say that those allegations were plausible, much less likely to succeed. Nor did the District Court rely on a finding that the relevant aspects of the state plan stood a reasonable probability of failing to gain § 5 preclearance, see *supra,* at 395. Without such a determination, the District Court had no basis for drawing a district that does not resemble any legislatively enacted plan.

The court's approach in drawing other districts was unclear. The interim plan's Congressional District 33, for example, disregards aspects of the State's plan that appear to be subject to strong challenges in the § 5 proceeding. See 3 App. 600–601; 5 *id.*, at 12–14. That much seems appropriate, but there are grounds for concern with the path the District Court followed from there. The court's order suggests that it may have intentionally drawn District 33 as a "minority coalition opportunity district" in which the court expected two different minority groups to band together to form an electoral majority. 1 *id.*, at 147. The order is somewhat ambiguous on this point—some portions suggest that the court deliberately designed such a district, other parts suggest that it drew the district solely as a response to population growth in the area. Compare *id.*, at 146–147 ("Because much of the growth that occurred in the Dallas-Fort Worth metroplex was attributable to minorities, the

new district 33 was drawn as a minority coalition opportunity district"), with *id.*, at 144 ("The Court has nowhere expressly sought to increase the performance of any opportunity district above benchmark"). If the District Court did set out to create a minority coalition district, rather than drawing a district that simply reflected population growth, it had no basis for doing so. Cf. *Bartlett* v. *Strickland*, 556 U. S. 1, 13–15 (2009) (plurality opinion).

Because it is unclear whether the District Court for the Western District of Texas followed the appropriate standards in drawing interim maps for the 2012 Texas elections, the orders implementing those maps are vacated, and the cases are remanded for further proceedings consistent with this opinion.

The judgment shall issue forthwith.

It is so ordered.

JUSTICE THOMAS, concurring in the judgment.

The Court proceeds from the premise that court-drawn interim plans are necessary in part because Texas' newly enacted redistricting plans are unenforceable for lack of preclearance under § 5 of the Voting Rights Act of 1965. *Ante,* at 390–392. In my view, Texas' failure to timely obtain § 5 preclearance of its new plans is no obstacle to their implementation, because, as I have previously explained, § 5 is unconstitutional. See *Northwest Austin Municipal Util. Dist. No. One* v. *Holder*, 557 U. S. 193, 212 (2009) (opinion concurring in judgment in part and dissenting in part). Although Texas' new plans are being challenged on the grounds that they violate the Federal Constitution and § 2 of the Voting Rights Act, they have not yet been found to violate any law. Accordingly, Texas' duly enacted redistricting plans should govern the upcoming elections. I would therefore vacate the interim orders and remand for the United States District Court for the Western District of Texas to consider appellees' constitutional and § 2 challenges in the ordinary course.

Syllabus

UNITED STATES *v.* JONES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10–1259. Argued November 8, 2011—Decided January 23, 2012

The Government obtained a search warrant permitting it to install a Global-Positioning-System (GPS) tracking device on a vehicle registered to respondent Jones's wife. The warrant authorized installation in the District of Columbia and within 10 days, but agents installed the device on the 11th day and in Maryland. The Government then tracked the vehicle's movements for 28 days. It subsequently secured an indictment of Jones and others on drug-trafficking-conspiracy charges. The District Court suppressed the GPS data obtained while the vehicle was parked at Jones's residence, but held the remaining data admissible because Jones had no reasonable expectation of privacy when the vehicle was on public streets. Jones was convicted. The D. C. Circuit reversed, concluding that admission of the evidence obtained by warrantless use of the GPS device violated the Fourth Amendment.

Held: The Government's attachment of the GPS device to the vehicle, and its use of that device to monitor the vehicle's movements, constitutes a search under the Fourth Amendment. Pp. 404–413.

(a) The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Here, the Government's physical intrusion on an "effect" for the purpose of obtaining information constitutes a "search." This type of encroachment on an area enumerated in the Amendment would have been considered a search within the meaning of the Amendment at the time it was adopted. Pp. 404–405.

(b) This conclusion is consistent with this Court's Fourth Amendment jurisprudence, which until the latter half of the 20th century was tied to common-law trespass. Later cases, which have deviated from that exclusively property-based approach, have applied the analysis of Justice Harlan's concurrence in *Katz* v. *United States*, 389 U. S. 347, which said that the Fourth Amendment protects a person's "reasonable expectation of privacy," *id.*, at 360. Here, the Court need not address the Government's contention that Jones had no "reasonable expectation of privacy," because Jones's Fourth Amendment rights do not rise or fall with the *Katz* formulation. At bottom, the Court must "assur[e] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted." *Kyllo* v. *United States*, 533

Syllabus

U. S. 27, 34. *Katz* did not repudiate the understanding that the Fourth Amendment embodies a particular concern for government trespass upon the areas it enumerates. The *Katz* reasonable-expectation-of-privacy test has been added to, but not substituted for, the common-law trespassory test. See *Alderman* v. *United States*, 394 U. S. 165, 176; *Soldal* v. *Cook County*, 506 U. S. 56, 64. *United States* v. *Knotts*, 460 U. S. 276, and *United States* v. *Karo*, 468 U. S. 705—post-*Katz* cases rejecting Fourth Amendment challenges to "beepers," electronic tracking devices representing another form of electronic monitoring—do not foreclose the conclusion that a search occurred here. *New York* v. *Class*, 475 U. S. 106, and *Oliver* v. *United States*, 466 U. S. 170, also do not support the Government's position. Pp. 405–413

(c) The Government's alternative argument—that if the attachment and use of the device was a search, it was a reasonable one—is forfeited because it was not raised below. P. 413.

615 F. 3d 544, affirmed.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, and SOTOMAYOR, JJ., joined. SOTOMAYOR, J., filed a concurring opinion, *post*, p. 413. ALITO, J., filed an opinion concurring in the judgment, in which GINSBURG, BREYER, and KAGAN, JJ., joined, *post*, p. 418.

Deputy Solicitor General Dreeben argued the cause for the United States. With him on the briefs were *Solicitor General Verrilli*, *Assistant Attorney General Breuer*, *Ann O'Connell*, and *J. Campbell Barker*.

Stephen C. Leckar argued the cause for respondent. With him on the brief were *Walter Dellinger* and *Jonathan D. Hacker*.*

**Michael Y. Scudder, Jr.*, *Lara A. Riley*, and *Anthony S. Barkow* filed a brief for the Center on the Administration of Criminal Law, New York University School of Law, as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *Catherine Crump*, *Steven R. Shapiro*, *Jameel Jaffer*, *Arthur B. Spitzer*, and *Daniel I. Prywes;* for the Cato Institute by *Ilya Shapiro*, *James W. Harper*, and *Timothy Lynch;* for the Center for Democracy & Technology et al. by *Andrew J. Pincus*, *Charles A. Rothfeld*, and *Jeffrey A. Meyer;* for The Constitution Project by *Douglas Hallward-Driemeier*, *Michael Li-Ming Wong*, and *Sharon Bradford Franklin;* for the Council on American-Islamic Relations by *Nadhira Al-*

JUSTICE SCALIA delivered the opinion of the Court.

We decide whether the attachment of a Global-Positioning-System (GPS) tracking device to an individual's vehicle, and subsequent use of that device to monitor the vehicle's movements on public streets, constitutes a search or seizure within the meaning of the Fourth Amendment.

I

In 2004 respondent Antoine Jones, owner and operator of a nightclub in the District of Columbia, came under suspicion of trafficking in narcotics and was made the target of an investigation by a joint Federal Bureau of Investigation and Metropolitan Police Department task force. Officers employed various investigative techniques, including visual surveillance of the nightclub, installation of a camera focused on the front door of the club, and a pen register and wiretap covering Jones's cellular phone.

Based in part on information gathered from these sources, in 2005 the Government applied to the United States District Court for the District of Columbia for a warrant authorizing the use of an electronic tracking device on the Jeep Grand Cherokee registered to Jones's wife. A warrant issued, au-

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Khalili; for the Electronic Privacy Information Center et al. by *Marc Rotenberg;* for Fourth Amendment Historians by *Wesley M. Oliver* and *Fabio Arcila, Jr.;* for Gun Owners of America, Inc., et al. by *Herbert W. Titus, William J. Olson, John S. Miles, Jeremiah L. Morgan, Mark B. Weinberg, Joseph W. Miller,* and *Gary G. Kreep;* for the National Association of Criminal Defense Lawyers et al. by *Jeffrey T. Green, Norman L. Reimer, Patricia Cresta-Savage, Rich Gilbert, Stephen P. Hardwick, Sarah O'Rourke Shrup, H. Louis Sirkin, Jennifer M. Kinsley,* and *Richard D. Willstatter;* for the Owner-Operator Independent Drivers Association, Inc., by *Paul D. Cullen, Sr.,* and *Daniel E. Cohen;* and for the Yale Law School Information Society Project Scholars et al. by *Priscilla J. Smith.*

John W. Whitehead and *Rita M. Dunaway* filed a brief for The Rutherford Institute et al. as *amici curiae.*

thorizing installation of the device in the District of Columbia and within 10 days.

On the 11th day, and not in the District of Columbia but in Maryland,[1] agents installed a GPS tracking device on the undercarriage of the Jeep while it was parked in a public parking lot. Over the next 28 days, the Government used the device to track the vehicle's movements, and once had to replace the device's battery when the vehicle was parked in a different public lot in Maryland. By means of signals from multiple satellites, the device established the vehicle's location within 50 to 100 feet, and communicated that location by cellular phone to a Government computer. It relayed more than 2,000 pages of data over the 4-week period.

The Government ultimately obtained a multiple-count indictment charging Jones and several alleged co-conspirators with, as relevant here, conspiracy to distribute and possess with intent to distribute five kilograms or more of cocaine and 50 grams or more of cocaine base, in violation of 21 U. S. C. §§ 841 and 846. Before trial, Jones filed a motion to suppress evidence obtained through the GPS device. The District Court granted the motion only in part, suppressing the data obtained while the vehicle was parked in the garage adjoining Jones's residence. 451 F. Supp. 2d 71, 88 (2006). It held the remaining data admissible, because "'[a] person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another.'" *Ibid.* (quoting *United States* v. *Knotts*, 460 U. S. 276, 281 (1983)). Jones's trial in October 2006 produced a hung jury on the conspiracy count.

In March 2007, a grand jury returned another indictment, charging Jones and others with the same conspiracy. The Government introduced at trial the same GPS-derived locational data admitted in the first trial, which connected Jones

[1] In this litigation, the Government has conceded noncompliance with the warrant and has argued only that a warrant was not required. *United States* v. *Maynard*, 615 F. 3d 544, 566, n. (CADC 2010).

to the alleged conspirators' stash house that contained $850,000 in cash, 97 kilograms of cocaine, and 1 kilogram of cocaine base. The jury returned a guilty verdict, and the District Court sentenced Jones to life imprisonment.

The United States Court of Appeals for the District of Columbia Circuit reversed the conviction because of admission of the evidence obtained by warrantless use of the GPS device which, it said, violated the Fourth Amendment. *United States* v. *Maynard*, 615 F. 3d 544 (2010). The D. C. Circuit denied the Government's petition for rehearing en banc, with four judges dissenting. 625 F. 3d 766 (2010). We granted certiorari, 564 U. S. 1036 (2011).

II

A

The Fourth Amendment provides in relevant part that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." It is beyond dispute that a vehicle is an "effect" as that term is used in the Amendment. *United States* v. *Chadwick*, 433 U. S. 1, 12 (1977). We hold that the Government's installation of a GPS device on a target's vehicle,[2] and its use of that device to monitor the vehicle's movements, constitutes a "search."

It is important to be clear about what occurred in this case: The Government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a

[2] As we have noted, the Jeep was registered to Jones's wife. The Government acknowledged, however, that Jones was "the exclusive driver." *Id.*, at 555, n. (internal quotation marks omitted). If Jones was not the owner he had at least the property rights of a bailee. The Court of Appeals concluded that the vehicle's registration did not affect his ability to make a Fourth Amendment objection, *ibid.*, and the Government has not challenged that determination here. We therefore do not consider the Fourth Amendment significance of Jones's status.

"search" within the meaning of the Fourth Amendment when it was adopted. *Entick* v. *Carrington*, 95 Eng. Rep. 807 (C. P. 1765), is a "case we have described as a 'monument of English freedom' 'undoubtedly familiar' to 'every American statesman' at the time the Constitution was adopted, and considered to be 'the true and ultimate expression of constitutional law' " with regard to search and seizure. *Brower* v. *County of Inyo*, 489 U. S. 593, 596 (1989) (quoting *Boyd* v. *United States*, 116 U. S. 616, 626 (1886)). In that case, Lord Camden expressed in plain terms the significance of property rights in search-and-seizure analysis:

> "[O]ur law holds the property of every man so sacred, that no man can set his foot upon his neighbour's close without his leave; if he does he is a trespasser, though he does no damage at all; if he will tread upon his neighbour's ground, he must justify it by law." *Entick*, *supra*, at 817.

The text of the Fourth Amendment reflects its close connection to property, since otherwise it would have referred simply to "the right of the people to be secure against unreasonable searches and seizures"; the phrase "in their persons, houses, papers, and effects" would have been superfluous.

Consistent with this understanding, our Fourth Amendment jurisprudence was tied to common-law trespass, at least until the latter half of the 20th century. *Kyllo* v. *United States*, 533 U. S. 27, 31 (2001); Kerr, The Fourth Amendment and New Technologies: Constitutional Myths and the Case for Caution, 102 Mich. L. Rev. 801, 816 (2004). Thus, in *Olmstead* v. *United States*, 277 U. S. 438 (1928), we held that wiretaps attached to telephone wires on the public streets did not constitute a Fourth Amendment search because "[t]here was no entry of the houses or offices of the defendants," *id.*, at 464.

Our later cases, of course, have deviated from that exclusively property-based approach. In *Katz* v. *United States*,

389 U. S. 347, 351 (1967), we said that "the Fourth Amendment protects people, not places," and found a violation in attachment of an eavesdropping device to a public telephone booth. Our later cases have applied the analysis of Justice Harlan's concurrence in that case, which said that a violation occurs when government officers violate a person's "reasonable expectation of privacy," *id.*, at 360. See, *e. g.*, *Bond* v. *United States*, 529 U. S. 334 (2000); *California* v. *Ciraolo*, 476 U. S. 207 (1986); *Smith* v. *Maryland*, 442 U. S. 735 (1979).

The Government contends that the Harlan standard shows that no search occurred here, since Jones had no "reasonable expectation of privacy" in the area of the Jeep accessed by Government agents (its underbody) and in the locations of the Jeep on the public roads, which were visible to all. But we need not address the Government's contentions, because Jones's Fourth Amendment rights do not rise or fall with the *Katz* formulation. At bottom, we must "assur[e] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted." *Kyllo*, *supra*, at 34. As explained, for most of our history the Fourth Amendment was understood to embody a particular concern for government trespass upon the areas ("persons, houses, papers, and effects") it enumerates.[3] *Katz* did not

[3] JUSTICE ALITO's concurrence (hereinafter concurrence) doubts the wisdom of our approach because "it is almost impossible to think of late-18th-century situations that are analogous to what took place in this case." *Post*, at 420 (opinion concurring in judgment). But in fact it posits a situation that is not far afield—a constable's concealing himself in the target's coach in order to track its movements. *Ibid.* There is no doubt that the information gained by that trespassory activity would be the product of an unlawful search—whether that information consisted of the conversations occurring in the coach, or of the destinations to which the coach traveled.

In any case, it is quite irrelevant whether there was an 18th-century analog. Whatever new methods of investigation may be devised, our task, *at a minimum*, is to decide whether the action in question would have constituted a "search" within the original meaning of the Fourth Amendment. Where, as here, the Government obtains information by

repudiate that understanding. Less than two years later the Court upheld defendants' contention that the Government could not introduce against them conversations between *other* people obtained by warrantless placement of electronic surveillance devices in their homes. The opinion rejected the dissent's contention that there was no Fourth Amendment violation "unless the conversational privacy of the homeowner himself is invaded."[4] *Alderman* v. *United States*, 394 U. S. 165, 176 (1969). "[W]e [do not] believe that *Katz*, by holding that the Fourth Amendment protects persons and their private conversations, was intended to withdraw any of the protection which the Amendment extends to the home . . . ." *Id.*, at 180.

More recently, in *Soldal* v. *Cook County*, 506 U. S. 56 (1992), the Court unanimously rejected the argument that although a "seizure" had occurred "in a 'technical' sense" when a trailer home was forcibly removed, *id.*, at 62, no Fourth Amendment violation occurred because law enforcement had not "invade[d] the [individuals'] privacy," *id.*, at 60. *Katz*, the Court explained, established that "property rights are not the sole measure of Fourth Amendment violations," but did not "snuf[f] out the previously recognized protection for property." 506 U. S., at 64. As Justice Brennan explained in his concurrence in *Knotts*, *Katz* did not erode the principle "that, when the Government *does* engage in physical intrusion of a constitutionally protected area in order to obtain information, that intrusion may constitute a violation of the Fourth Amendment." 460 U. S., at 286 (opinion concurring in judgment). We have embodied that preservation

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physically intruding on a constitutionally protected area, such a search has undoubtedly occurred.

[4] Thus, the concurrence's attempt to recast *Alderman* as meaning that individuals have a "legitimate expectation of privacy in all conversations that [take] place under their roof," *post*, at 423–424, is foreclosed by the Court's opinion. The Court took as a given that the homeowner's "conversational privacy" had not been violated.

of past rights in our very definition of "reasonable expectation of privacy" which we have said to be an expectation "that has a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society." *Minnesota* v. *Carter*, 525 U. S. 83, 88 (1998) (internal quotation marks omitted). *Katz* did not narrow the Fourth Amendment's scope.[5]

The Government contends that several of our post-*Katz* cases foreclose the conclusion that what occurred here constituted a search. It relies principally on two cases in which we rejected Fourth Amendment challenges to "beepers," electronic tracking devices that represent another form of electronic monitoring. The first case, *Knotts*, upheld against Fourth Amendment challenge the use of a "beeper" that had been placed in a container of chloroform, allowing law enforcement to monitor the location of the container. 460 U. S., at 278. We said that there had been no infringement of Knotts' reasonable expectation of privacy since the information obtained—the location of the automobile carry-

[5] The concurrence notes that post-*Katz* we have explained that "'an actual trespass is neither necessary *nor sufficient* to establish a constitutional violation.'" *Post*, at 423 (quoting *United States* v. *Karo*, 468 U. S. 705, 713 (1984)). That is undoubtedly true, and undoubtedly irrelevant. *Karo* was considering whether a seizure occurred, and as the concurrence explains, a seizure of property occurs, not when there is a trespass, but "when there is some meaningful interference with an individual's possessory interests in that property." *Post*, at 419 (internal quotation marks omitted). Likewise with a search. Trespass alone does not qualify, but there must be conjoined with that what was present here: an attempt to find something or to obtain information.

Related to this, and similarly irrelevant, is the concurrence's point that, if analyzed separately, neither the installation of the device nor its use would constitute a Fourth Amendment search. See *post*, at 420. Of course not. A trespass on "houses" or "effects," or a *Katz* invasion of privacy, is not alone a search unless it is done to obtain information; and the obtaining of information is not alone a search unless it is achieved by such a trespass or invasion of privacy.

ing the container on public roads, and the location of the off-loaded container in open fields near Knotts' cabin—had been voluntarily conveyed to the public.[6] *Id.*, at 281–282. But as we have discussed, the *Katz* reasonable-expectation-of-privacy test has been *added to*, not *substituted for*, the common-law trespassory test. The holding in *Knotts* addressed only the former, since the latter was not at issue. The beeper had been placed in the container before it came into Knotts' possession, with the consent of the then-owner. 460 U. S., at 278. Knotts did not challenge that installation, and we specifically declined to consider its effect on the Fourth Amendment analysis. *Id.*, at 279, n. *Knotts* would be relevant, perhaps, if the Government were making the argument that what would otherwise be an unconstitutional search is not such where it produces only public information. The Government does not make that argument, and we know of no case that would support it.

The second "beeper" case, *United States* v. *Karo*, 468 U. S. 705 (1984), does not suggest a different conclusion. There we addressed the question left open by *Knotts*, whether the installation of a beeper in a container amounted to a search or seizure. 468 U. S., at 713. As in *Knotts*, at the time the beeper was installed the container belonged to a third party, and it did not come into possession of the defendant until later. 468 U. S., at 708. Thus, the specific question we considered was whether the installation "*with the consent of the original owner* constitute[d] a search or seizure . . . when the container is delivered to a buyer having no knowledge of the presence of the beeper." *Id.*, at 707 (emphasis added). We held not. The Government, we said, came into physical contact with the container only before it belonged to the de-

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[6] *Knotts* noted the "limited use which the government made of the signals from this particular beeper," 460 U. S., at 284, and reserved the question whether "different constitutional principles may be applicable" to "dragnet-type law enforcement practices" of the type that GPS tracking made possible here, *ibid.*

fendant Karo; and the transfer of the container with the unmonitored beeper inside did not convey any information and thus did not invade Karo's privacy. See *id.*, at 712. That conclusion is perfectly consistent with the one we reach here. Karo accepted the container as it came to him, beeper and all, and was therefore not entitled to object to the beeper's presence, even though it was used to monitor the container's location. Cf. *On Lee* v. *United States*, 343 U. S. 747, 751–752 (1952) (no search or seizure where an informant, who was wearing a concealed microphone, was invited into the defendant's business). Jones, who possessed the Jeep at the time the Government trespassorily inserted the information-gathering device, is on much different footing.

The Government also points to our exposition in *New York* v. *Class*, 475 U. S. 106 (1986), that "[t]he exterior of a car . . . is thrust into the public eye, and thus to examine it does not constitute a 'search.'" *Id.*, at 114. That statement is of marginal relevance here since, as the Government acknowledges, "the officers in this case did *more* than conduct a visual inspection of respondent's vehicle," Brief for United States 41 (emphasis added). By attaching the device to the Jeep, officers encroached on a protected area. In *Class* itself we suggested that this would make a difference, for we concluded that an officer's momentary reaching into the interior of a vehicle did constitute a search.[7] 475 U. S., at 114–115.

Finally, the Government's position gains little support from our conclusion in *Oliver* v. *United States*, 466 U. S. 170

[7] The Government also points to *Cardwell* v. *Lewis*, 417 U. S. 583 (1974), in which the Court rejected the claim that the inspection of an impounded vehicle's tire tread and the collection of paint scrapings from its exterior violated the Fourth Amendment. Whether the plurality said so because no search occurred or because the search was reasonable is unclear. Compare *id.*, at 591 (opinion of Blackmun, J.) ("[W]e fail to comprehend what expectation of privacy was infringed"), with *id.*, at 592 ("Under circumstances such as these, where probable cause exists, a warrantless examination of the exterior of a car is not unreasonable . . . ").

(1984), that officers' information-gathering intrusion on an "open field" did not constitute a Fourth Amendment search even though it was a trespass at common law, *id.*, at 183. Quite simply, an open field, unlike the curtilage of a home, see *United States* v. *Dunn*, 480 U. S. 294, 300 (1987), is not one of those protected areas enumerated in the Fourth Amendment. *Oliver*, *supra*, at 176–177. See also *Hester* v. *United States*, 265 U. S. 57, 59 (1924). The Government's physical intrusion on such an area—unlike its intrusion on the "effect" at issue here—is of no Fourth Amendment significance.[8]

B

The concurrence begins by accusing us of applying "18th-century tort law." *Post*, at 418. That is a distortion. What we apply is an 18th-century guarantee against unreasonable searches, which we believe must provide *at a minimum* the degree of protection it afforded when it was adopted. The concurrence does not share that belief. It would apply *exclusively Katz*'s reasonable-expectation-of-privacy test, even when that eliminates rights that previously existed.

The concurrence faults our approach for "present[ing] particularly vexing problems" in cases that do not involve physical contact, such as those that involve the transmission of electronic signals. *Post*, at 426. We entirely fail to understand that point. For unlike the concurrence, which would make *Katz* the *exclusive* test, we do not make trespass the exclusive test. Situations involving merely the transmission of electronic signals without trespass would *remain* subject to *Katz* analysis.

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[8] Thus, our theory is *not* that the Fourth Amendment is concerned with "*any* technical trespass that led to the gathering of evidence." *Post*, at 420 (ALITO, J., concurring in judgment) (emphasis added). The Fourth Amendment protects against trespassory searches only with regard to those items ("persons, houses, papers, and effects") that it enumerates. The trespass that occurred in *Oliver* may properly be understood as a "search," but not one "in the constitutional sense." 466 U. S., at 170, 183.

In fact, it is the concurrence's insistence on the exclusivity of the *Katz* test that needlessly leads us into "particularly vexing problems" in the present case. This Court has to date not deviated from the understanding that mere visual observation does not constitute a search. See *Kyllo*, 533 U. S., at 31–32. We accordingly held in *Knotts* that "[a] person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another." 460 U. S., at 281. Thus, even assuming that the concurrence is correct to say that "[t]raditional surveillance" of Jones for a 4-week period "would have required a large team of agents, multiple vehicles, and perhaps aerial assistance," *post*, at 429, our cases suggest that such visual observation is constitutionally permissible. It may be that achieving the same result through electronic means, without an accompanying trespass, is an unconstitutional invasion of privacy, but the present case does not require us to answer that question.

And answering it affirmatively leads us needlessly into additional thorny problems. The concurrence posits that "relatively short-term monitoring of a person's movements on public streets" is okay, but that "the use of longer term GPS monitoring in investigations *of most offenses*" is no good. *Post*, at 430 (emphasis added). That introduces yet another novelty into our jurisprudence. There is no precedent for the proposition that whether a search has occurred depends on the nature of the crime being investigated. And even accepting that novelty, it remains unexplained why a 4-week investigation is "surely" too long and why a drug-trafficking conspiracy involving substantial amounts of cash and narcotics is not an "extraordinary offens[e]" which may permit longer observation. See *post*, at 430–431. What of a 2-day monitoring of a suspected purveyor of stolen electronics? Or of a 6-month monitoring of a suspected terrorist? We may have to grapple with these "vexing problems" in some future case where a classic trespassory search is not involved

and resort must be had to *Katz* analysis; but there is no reason for rushing forward to resolve them here.

III

The Government argues in the alternative that even if the attachment and use of the device was a search, it was reasonable—and thus lawful—under the Fourth Amendment because "officers had reasonable suspicion, and indeed probable cause, to believe that [Jones] was a leader in a large-scale cocaine distribution conspiracy." Brief for United States 50–51. We have no occasion to consider this argument. The Government did not raise it below, and the D. C. Circuit therefore did not address it. See 625 F. 3d, at 767 (Ginsburg, Tatel, and Griffith, JJ., concurring in denial of rehearing en banc). We consider the argument forfeited. See *Sprietsma* v. *Mercury Marine*, 537 U. S. 51, 56, n. 4 (2002).

* * *

The judgment of the Court of Appeals for the D. C. Circuit is affirmed.

It is so ordered.

JUSTICE SOTOMAYOR, concurring.

I join the Court's opinion because I agree that a search within the meaning of the Fourth Amendment occurs, at a minimum, "[w]here, as here, the Government obtains information by physically intruding on a constitutionally protected area." *Ante*, at 406–407, n. 3. In this case, the Government installed a Global Positioning System (GPS) tracking device on respondent Antoine Jones' Jeep without a valid warrant and without Jones' consent, then used that device to monitor the Jeep's movements over the course of four weeks. The Government usurped Jones' property for the purpose of conducting surveillance on him, thereby invading privacy interests long afforded, and undoubtedly entitled to, Fourth

Amendment protection. See, *e. g.*, *Silverman* v. *United States*, 365 U. S. 505, 511–512 (1961).

Of course, the Fourth Amendment is not concerned only with trespassory intrusions on property. See, *e. g.*, *Kyllo* v. *United States*, 533 U. S. 27, 31–33 (2001). Rather, even in the absence of a trespass, "a Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable." *Id.*, at 33; see also *Smith* v. *Maryland*, 442 U. S. 735, 740–741 (1979); *Katz* v. *United States*, 389 U. S. 347, 361 (1967) (Harlan, J., concurring). In *Katz*, this Court enlarged its then-prevailing focus on property rights by announcing that the reach of the Fourth Amendment does not "turn upon the presence or absence of a physical intrusion." *Id.*, at 353. As the majority's opinion makes clear, however, *Katz*'s reasonable-expectation-of-privacy test augmented, but did not displace or diminish, the common-law trespassory test that preceded it. *Ante*, at 409. Thus, "when the Government *does* engage in physical intrusion of a constitutionally protected area in order to obtain information, that intrusion may constitute a violation of the Fourth Amendment." *United States* v. *Knotts*, 460 U. S. 276, 286 (1983) (Brennan, J., concurring in judgment); see also, *e. g.*, *Rakas* v. *Illinois*, 439 U. S. 128, 144, n. 12 (1978). JUSTICE ALITO's approach, which discounts altogether the constitutional relevance of the Government's physical intrusion on Jones' Jeep, erodes that longstanding protection for privacy expectations inherent in items of property that people possess or control. See *post*, at 422–424 (opinion concurring in judgment). By contrast, the trespassory test applied in the majority's opinion reflects an irreducible constitutional minimum: When the government physically invades personal property to gather information, a search occurs. The reaffirmation of that principle suffices to decide this case.

Nonetheless, as JUSTICE ALITO notes, physical intrusion is now unnecessary to many forms of surveillance. *Post*, at

426–429. With increasing regularity, the government will be capable of duplicating the monitoring undertaken in this case by enlisting factory- or owner-installed vehicle tracking devices or GPS-enabled smartphones. See *United States* v. *Pineda-Moreno*, 617 F. 3d 1120, 1125 (CA9 2010) (Kozinski, C. J., dissenting from denial of rehearing en banc). In cases of electronic or other novel modes of surveillance that do not depend upon a physical invasion on property, the majority opinion's trespassory test may provide little guidance. But "[s]ituations involving merely the transmission of electronic signals without trespass would *remain* subject to *Katz* analysis." *Ante*, at 411. As JUSTICE ALITO incisively observes, the same technological advances that have made possible nontrespassory surveillance techniques will also affect the *Katz* test by shaping the evolution of societal privacy expectations. *Post*, at 428. Under that rubric, I agree with JUSTICE ALITO that, at the very least, "longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy." *Post*, at 430.

In cases involving even short-term monitoring, some unique attributes of GPS surveillance relevant to the *Katz* analysis will require particular attention. GPS monitoring generates a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations. See, *e. g.*, *People* v. *Weaver*, 12 N. Y. 3d 433, 441–442, 909 N. E. 2d 1195, 1199 (2009) ("Disclosed in [GPS] data . . . will be trips the indisputably private nature of which takes little imagination to conjure: trips to the psychiatrist, the plastic surgeon, the abortion clinic, the AIDS treatment center, the strip club, the criminal defense attorney, the by-the-hour motel, the union meeting, the mosque, synagogue or church, the gay bar and on and on"). The government can store such records and efficiently mine them for information years into the future. *Pineda-Moreno*, 617 F. 3d, at 1124 (opinion of Kozinski, C. J.). And because GPS monitoring is

cheap in comparison to conventional surveillance techniques and, by design, proceeds surreptitiously, it evades the ordinary checks that constrain abusive law enforcement practices: "limited police resources and community hostility." *Illinois* v. *Lidster*, 540 U. S. 419, 426 (2004).

Awareness that the government may be watching chills associational and expressive freedoms. And the government's unrestrained power to assemble data that reveal private aspects of identity is susceptible to abuse. The net result is that GPS monitoring—by making available at a relatively low cost such a substantial quantum of intimate information about any person whom the government, in its unfettered discretion, chooses to track—may "alter the relationship between citizen and government in a way that is inimical to democratic society." *United States* v. *Cuevas-Perez*, 640 F. 3d 272, 285 (CA7 2011) (Flaum, J., concurring).

I would take these attributes of GPS monitoring into account when considering the existence of a reasonable societal expectation of privacy in the sum of one's public movements. I would ask whether people reasonably expect that their movements will be recorded and aggregated in a manner that enables the government to ascertain, more or less at will, their political and religious beliefs, sexual habits, and so on. I do not regard as dispositive the fact that the government might obtain the fruits of GPS monitoring through lawful conventional surveillance techniques. See *Kyllo*, 533 U. S., at 35, n. 2; *ante*, at 412 (leaving open the possibility that duplicating traditional surveillance "through electronic means, without an accompanying trespass, is an unconstitutional invasion of privacy"). I would also consider the appropriateness of entrusting to the Executive, in the absence of any oversight from a coordinate branch, a tool so amenable to misuse, especially in light of the Fourth Amendment's goal to curb arbitrary exercises of police power and prevent "a

too permeating police surveillance," *United States* v. *Di Re*, 332 U. S. 581, 595 (1948).*

More fundamentally, it may be necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties. *E. g.*, *Smith*, 442 U. S., at 742; *United States* v. *Miller*, 425 U. S. 435, 443 (1976). This approach is ill suited to the digital age, in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks. People disclose the phone numbers that they dial or text to their cellular providers; the URLs that they visit and the e-mail addresses with which they correspond to their Internet service providers; and the books, groceries, and medications they purchase to online retailers. Perhaps, as JUSTICE ALITO notes, some people may find the "tradeoff" of privacy for convenience "worthwhile," or come to accept this "diminution of privacy" as "inevitable," *post*,

United States v. *Knotts*, 460 U. S. 276 (1983), does not foreclose the conclusion that GPS monitoring, in the absence of a physical intrusion, is a Fourth Amendment search. As the majority's opinion notes, *Knotts* reserved the question whether "'different constitutional principles may be applicable'" to invasive law enforcement practices such as GPS tracking. See *ante*, at 409, n. 6 (quoting 460 U. S., at 284).

United States v. *Karo*, 468 U. S. 705 (1984), addressed the Fourth Amendment implications of the installation of a beeper in a container with the consent of the container's original owner, who was aware that the beeper would be used for surveillance purposes. *Id.*, at 707. Owners of GPS-equipped cars and smartphones do not contemplate that these devices will be used to enable covert surveillance of their movements. To the contrary, subscribers of one such service greeted a similar suggestion with anger. Quain, Changes to OnStar's Privacy Terms Rile Some Users, N. Y. Times (Sept. 22, 2011), online at http://wheels.blogs.nytimes.com/2011/09/22/changes-to-onstars-privacy-terms-rile-some-users (as visited Jan. 19, 2012, and available in Clerk of Court's case file). In addition, the bugged container in *Karo* lacked the close relationship with the target that a car shares with its owner. The bugged container in *Karo* was stationary for much of the Government's surveillance. See 468 U. S., at 708–710. A car's movements, by contrast, are its owner's movements.

at 427, and perhaps not. I for one doubt that people would accept without complaint the warrantless disclosure to the government of a list of every Web site they had visited in the last week, or month, or year. But whatever the societal expectations, they can attain constitutionally protected status only if our Fourth Amendment jurisprudence ceases to treat secrecy as a prerequisite for privacy. I would not assume that all information voluntarily disclosed to some member of the public for a limited purpose is, for that reason alone, disentitled to Fourth Amendment protection. See *Smith*, 442 U. S., at 749 (Marshall, J., dissenting) ("Privacy is not a discrete commodity, possessed absolutely or not at all. Those who disclose certain facts to a bank or phone company for a limited business purpose need not assume that this information will be released to other persons for other purposes"); see also *Katz*, 389 U. S., at 351–352 ("[W]hat [a person] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected").

Resolution of these difficult questions in this case is unnecessary, however, because the Government's physical intrusion on Jones' Jeep supplies a narrower basis for decision. I therefore join the majority's opinion.

JUSTICE ALITO, with whom JUSTICE GINSBURG, JUSTICE BREYER, and JUSTICE KAGAN join, concurring in the judgment.

This case requires us to apply the Fourth Amendment's prohibition of unreasonable searches and seizures to a 21st-century surveillance technique, the use of a Global Positioning System (GPS) device to monitor a vehicle's movements for an extended period of time. Ironically, the Court has chosen to decide this case based on 18th-century tort law. By attaching a small GPS device[1] to the underside of the

[1] Although the record does not reveal the size or weight of the device used in this case, there is now a device in use that weighs two ounces and is the size of a credit card. Tr. of Oral Arg. 27.

vehicle that respondent drove, the law enforcement officers in this case engaged in conduct that might have provided grounds in 1791 for a suit for trespass to chattels.[2] And for this reason, the Court concludes, the installation and use of the GPS device constituted a search. *Ante*, at 404–405.

This holding, in my judgment, is unwise. It strains the language of the Fourth Amendment; it has little if any support in current Fourth Amendment case law; and it is highly artificial.

I would analyze the question presented in this case by asking whether respondent's reasonable expectations of privacy were violated by the long-term monitoring of the movements of the vehicle he drove.

I

A

The Fourth Amendment prohibits "unreasonable searches and seizures," and the Court makes very little effort to explain how the attachment or use of the GPS device fits within these terms. The Court does not contend that there was a seizure. A seizure of property occurs when there is "some meaningful interference with an individual's possessory interests in that property," *United States* v. *Jacobsen*, 466 U. S. 109, 113 (1984), and here there was none. Indeed, the success of the surveillance technique that the officers employed was dependent on the fact that the GPS did not interfere in any way with the operation of the vehicle, for if any such interference had been detected, the device might have been discovered.

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[2] At common law, a suit for trespass to chattels could be maintained if there was a violation of "the dignitary interest in the inviolability of chattels," but today there must be "some actual damage to the chattel before the action can be maintained." W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts 87 (5th ed. 1984) (hereinafter Prosser & Keeton). Here, there was no actual damage to the vehicle to which the GPS device was attached.

The Court does claim that the installation and use of the GPS constituted a search, see *ante,* at 404–405, but this conclusion is dependent on the questionable proposition that these two procedures cannot be separated for purposes of Fourth Amendment analysis. If these two procedures are analyzed separately, it is not at all clear from the Court's opinion why either should be regarded as a search. It is clear that the attachment of the GPS device was not itself a search; if the device had not functioned or if the officers had not used it, no information would have been obtained. And the Court does not contend that the use of the device constituted a search either. On the contrary, the Court accepts the holding in *United States* v. *Knotts*, 460 U. S. 276 (1983), that the use of a surreptitiously planted electronic device to monitor a vehicle's movements on public roads did not amount to a search. See *ante*, at 408–409.

The Court argues—and I agree—that "we must 'assur[e] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted.'" *Ante*, at 406 (quoting *Kyllo* v. *United States*, 533 U. S. 27, 34 (2001)). But it is almost impossible to think of late-18th-century situations that are analogous to what took place in this case. (Is it possible to imagine a case in which a constable secreted himself somewhere in a coach and remained there for a period of time in order to monitor the movements of the coach's owner?[3]) The Court's theory seems to be that the concept of a search, as originally understood, comprehended any technical trespass that led to the gathering of evidence, but we know that this is incorrect. At common law, any unauthorized intrusion on private property was actionable, see Prosser & Keeton 75, but a trespass on open fields, as opposed to the "curtilage" of a home, does not fall

[3]The Court suggests that something like this might have occurred in 1791, but this would have required either a gigantic coach, a very tiny constable, or both—not to mention a constable with incredible fortitude and patience.

within the scope of the Fourth Amendment because private property outside the curtilage is not part of a "hous[e]" within the meaning of the Fourth Amendment. See *Oliver* v. *United State*s, 466 U. S. 170 (1984); *Hester* v. *United States*, 265 U. S. 57 (1924).

B

The Court's reasoning in this case is very similar to that in the Court's early decisions involving wiretapping and electronic eavesdropping, namely, that a technical trespass followed by the gathering of evidence constitutes a search. In the early electronic surveillance cases, the Court concluded that a Fourth Amendment search occurred when private conversations were monitored as a result of an "unauthorized physical penetration into the premises occupied" by the defendant. *Silverman* v. *United States*, 365 U. S. 505, 509 (1961). In *Silverman*, police officers listened to conversations in an attached home by inserting a "spike mike" through the wall that this house shared with the vacant house next door. *Id.*, at 506. This procedure was held to be a search because the mike made contact with a heating duct on the other side of the wall and thus "usurp[ed] . . . an integral part of the premises." *Id.*, at 511.

By contrast, in cases in which there was no trespass, it was held that there was no search. Thus, in *Olmstead* v. *United States*, 277 U. S. 438 (1928), the Court found that the Fourth Amendment did not apply because "[t]he taps from house lines were made in the streets near the houses." *Id.*, at 457. Similarly, the Court concluded that no search occurred in *Goldman* v. *United States*, 316 U. S. 129, 135 (1942), where a "detectaphone" was placed on the outer wall of defendant's office for the purpose of overhearing conversations held within the room.

This trespass-based rule was repeatedly criticized. In *Olmstead*, Justice Brandeis wrote that it was "immaterial where the physical connection with the telephone wires . . . was made." 277 U. S., at 479 (dissenting opinion). Al-

though a private conversation transmitted by wire did not fall within the literal words of the Fourth Amendment, he argued, the Amendment should be understood as prohibiting "every unjustifiable intrusion by the Government upon the privacy of the individual." *Id.*, at 478. See also, *e. g.*, *Silverman*, *supra*, at 513 (Douglas, J., concurring) ("The concept of 'an unauthorized physical penetration into the premises,' on which the present decision rests, seems to me beside the point. Was not the wrong . . . done when the intimacies of the home were tapped, recorded, or revealed? The depth of the penetration of the electronic device—even the degree of its remoteness from the inside of the house—is not the measure of the injury"); *Goldman*, *supra*, at 139 (Murphy, J., dissenting) ("[T]he search of one's home or office no longer requires physical entry, for science has brought forth far more effective devices for the invasion of a person's privacy than the direct and obvious methods of oppression which were detested by our forebears and which inspired the Fourth Amendment").

Katz v. *United States*, 389 U. S. 347 (1967), finally did away with the old approach, holding that a trespass was not required for a Fourth Amendment violation. *Katz* involved the use of a listening device that was attached to the outside of a public telephone booth and that allowed police officers to eavesdrop on one end of the target's phone conversation. This procedure did not physically intrude on the area occupied by the target, but the *Katz* Court "repudiate[ed]" the old doctrine, *Rakas* v. *Illinois*, 439 U. S. 128, 143 (1978), and held that "[t]he fact that the electronic device employed . . . did not happen to penetrate the wall of the booth can have no constitutional significance," 389 U. S., at 353; *ibid.* ("[T]he reach of th[e] [Fourth] Amendment cannot turn upon the presence or absence of a physical intrusion into any given enclosure"); see *Rakas*, *supra*, at 143 (describing *Katz* as holding that the "capacity to claim the protection for the Fourth Amendment depends not upon a property right in

the invaded place but upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place"); *Kyllo*, 533 U. S., at 32 ("We have since decoupled violation of a person's Fourth Amendment rights from trespassory violation of his property"). What mattered, the Court now held, was whether the conduct at issue "violated the privacy upon which [the defendant] justifiably relied while using the telephone booth." *Katz*, *supra*, at 353.

Under this approach, as the Court later put it when addressing the relevance of a technical trespass, "an actual trespass is neither necessary *nor sufficient* to establish a constitutional violation." *United States* v. *Karo*, 468 U. S. 705, 713 (1984) (emphasis added). *Ibid.* ("[c]ompar[ing] *Katz* v. *United States*, 389 U. S. 347 (1967) (no trespass, but Fourth Amendment violation), with *Oliver* v. *United States*, 466 U. S. 170 (1984) (trespass, but no Fourth Amendment violation)"). In *Oliver*, the Court wrote:

> "The existence of a property right is but one element in determining whether expectations of privacy are legitimate. 'The premise that property interests control the right of the Government to search and seize has been discredited.' *Katz*, 389 U. S., at 353 (quoting *Warden* v. *Hayden*, 387 U. S. 294, 304 (1967)." 466 U. S., at 183 (some internal quotation marks omitted).

II

The majority suggests that two post-*Katz* decisions—*Soldal* v. *Cook County*, 506 U. S. 56 (1992), and *Alderman* v. *United States*, 394 U. S. 165 (1969)—show that a technical trespass is sufficient to establish the existence of a search, but they provide little support.

In *Soldal*, the Court held that towing away a trailer home without the owner's consent constituted a seizure even if this did not invade the occupants' personal privacy. But in the

present case, the Court does not find that there was a seizure, and it is clear that none occurred.

In *Alderman*, the Court held that the Fourth Amendment rights of homeowners were implicated by the use of a surreptitiously planted listening device to monitor third-party conversations that occurred within their home. See 394 U. S., at 176–180. *Alderman* is best understood to mean that the homeowners had a legitimate expectation of privacy in all conversations that took place under their roof. See *Rakas*, *supra*, at 144, n. 12 (citing *Alderman* for the proposition that "the Court has not altogether abandoned use of property concepts in determining the presence or absence of the privacy interests protected by that Amendment"); 439 U. S., at 153 (Powell, J., concurring) (citing *Alderman* for the proposition that "property rights reflect society's explicit recognition of a person's authority to act as he wishes in certain areas, and therefore should be considered in determining whether an individual's expectations of privacy are reasonable); *Karo*, *supra*, at 732 (Stevens, J., concurring in part and dissenting in part) (citing *Alderman* in support of the proposition that "a homeowner has a reasonable expectation of privacy in the contents of his home, including items owned by others").

In sum, the majority is hard pressed to find support in post-*Katz* cases for its trespass-based theory.

III

Disharmony with a substantial body of existing case law is only one of the problems with the Court's approach in this case.

I will briefly note four others. First, the Court's reasoning largely disregards what is really important (the *use* of a GPS for the purpose of long-term tracking) and instead attaches great significance to something that most would view as relatively minor (attaching to the bottom of a car a small, light object that does not interfere in any way with the car's

operation). Attaching such an object is generally regarded as so trivial that it does not provide a basis for recovery under modern tort law. See Prosser & Keeton § 14, at 87 (harmless or trivial contact with personal property not actionable); D. Dobbs, Law of Torts 124 (2000) (same). But under the Court's reasoning, this conduct may violate the Fourth Amendment. By contrast, if long-term monitoring can be accomplished without committing a technical trespass—suppose, for example, that the Federal Government required or persuaded auto manufacturers to include a GPS tracking device in every car—the Court's theory would provide no protection.

Second, the Court's approach leads to incongruous results. If the police attach a GPS device to a car and use the device to follow the car for even a brief time, under the Court's theory, the Fourth Amendment applies. But if the police follow the same car for a much longer period using unmarked cars and aerial assistance, this tracking is not subject to any Fourth Amendment constraints.

In the present case, the Fourth Amendment applies, the Court concludes, because the officers installed the GPS device after respondent's wife, to whom the car was registered, turned it over to respondent for his exclusive use. See *ante*, at 404–405. But if the GPS had been attached prior to that time, the Court's theory would lead to a different result. The Court proceeds on the assumption that respondent "had at least the property rights of a bailee," *ante*, at 404, n. 2, but a bailee may sue for a trespass to chattel only if the injury occurs during the term of the bailment. See 8A Am. Jur. 2d, Bailment § 166, pp. 685–686 (2009). So if the GPS device had been installed before respondent's wife gave him the keys, respondent would have no claim for trespass—and, presumably, no Fourth Amendment claim either.

Third, under the Court's theory, the coverage of the Fourth Amendment may vary from State to State. If the events at issue here had occurred in a community-property

State[4] or a State that has adopted the Uniform Marital Property Act,[5] respondent would likely be an owner of the vehicle, and it would not matter whether the GPS was installed before or after his wife turned over the keys. In non-community-property States, on the other hand, the registration of the vehicle in the name of respondent's wife would generally be regarded as presumptive evidence that she was the sole owner. See 60 C. J. S., Motor Vehicles § 231, pp. 398–399 (2002); 8 Am. Jur. 2d, Automobiles § 1208, pp. 859–860 (2007).

Fourth, the Court's reliance on the law of trespass will present particularly vexing problems in cases involving surveillance that is carried out by making electronic, as opposed to physical, contact with the item to be tracked. For example, suppose that the officers in the present case had followed respondent by surreptitiously activating a stolen vehicle detection system that came with the car when it was purchased. Would the sending of a radio signal to activate this system constitute a trespass to chattels? Trespass to chattels has traditionally required a physical touching of the property. See Restatement (Second) of Torts § 217 and Comment *e* (1963 and 1964); Dobbs, *supra*, at 123. In recent years, courts have wrestled with the application of this old tort in cases involving unwanted electronic contact with computer systems, and some have held that even the transmission of electrons that occurs when a communication is sent from one computer to another is enough. See, *e. g.*, *CompuServe, Inc.* v. *Cyber Promotions, Inc.* 962 F. Supp. 1015, 1021 (SD Ohio 1997); *Thrifty-Tel, Inc.* v. *Bezenek*, 46 Cal. App. 4th 1559, 1566, n. 6, 54 Cal. Rptr. 2d 468, 473, n. 6 (1996). But may such decisions be followed in applying the Court's trespass theory? Assuming that what matters under the Court's theory is the law of trespass as it existed at the time of the adoption of the Fourth Amendment, do these recent

[4] See, *e. g.*, Cal. Fam. Code Ann. § 760 (West 2004).

[5] See Uniform Marital Property Act § 4, 9A U. L. A. 116 (1998).

decisions represent a change in the law or simply the application of the old tort to new situations?

IV

A

The *Katz* expectation-of-privacy test avoids the problems and complications noted above, but it is not without its own difficulties. It involves a degree of circularity, see *Kyllo*, 533 U. S., at 34, and judges are apt to confuse their own expectations of privacy with those of the hypothetical reasonable person to which the *Katz* test looks. See *Minnesota* v. *Carter*, 525 U. S. 83, 97 (1998) (SCALIA, J., concurring). In addition, the *Katz* test rests on the assumption that this hypothetical reasonable person has a well-developed and stable set of privacy expectations. But technology can change those expectations. Dramatic technological change may lead to periods in which popular expectations are in flux and may ultimately produce significant changes in popular attitudes. New technology may provide increased convenience or security at the expense of privacy, and many people may find the tradeoff worthwhile. And even if the public does not welcome the diminution of privacy that new technology entails, they may eventually reconcile themselves to this development as inevitable.[6]

On the other hand, concern about new intrusions on privacy may spur the enactment of legislation to protect against these intrusions. This is what ultimately happened with respect to wiretapping. After *Katz*, Congress did not leave it to the courts to develop a body of Fourth Amendment case law governing that complex subject. Instead, Congress promptly enacted a comprehensive statute, see 18 U. S. C.

[6] See, *e. g.*, NPR, The End of Privacy, http://www.npr.org/series/114250076/the-end-of-privacy (all Internet materials as visited Jan. 20, 2012, and available in Clerk of Court's case file); Time Magazine, Everything About You Is Being Tracked—Get Over It, Joel Stein, Mar. 21, 2011, Vol. 177, No. 11.

§§ 2510–2522 (2006 ed. and Supp. IV), and since that time, the regulation of wiretapping has been governed primarily by statute and not by case law.[7] In an ironic sense, although *Katz* overruled *Olmstead*, Chief Justice Taft's suggestion in the latter case that the regulation of wiretapping was a matter better left for Congress, see 277 U. S., at 465–466, has been borne out.

B

Recent years have seen the emergence of many new devices that permit the monitoring of a person's movements. In some locales, closed-circuit television video monitoring is becoming ubiquitous. On toll roads, automatic toll collection systems create a precise record of the movements of motorists who choose to make use of that convenience. Many motorists purchase cars that are equipped with devices that permit a central station to ascertain the car's location at any time so that roadside assistance may be provided if needed and the car may be found if it is stolen.

Perhaps most significant, cell phones and other wireless devices now permit wireless carriers to track and record the location of users—and as of June 2011, it has been reported, there were more than 322 million wireless devices in use in the United States.[8] For older phones, the accuracy of the location information depends on the density of the tower network, but new "smart phones," which are equipped with a GPS device, permit more precise tracking. For example, when a user activates the GPS on such a phone, a provider is able to monitor the phone's location and speed of movement and can then report back real-time traffic conditions after combining ("crowdsourcing") the speed of all such

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[7] See Kerr, The Fourth Amendment and New Technologies: Constitutional Myths and the Case for Caution, 102 Mich. L. Rev. 801, 850–851 (2004) (hereinafter Kerr).

[8] See CTIA Consumer Info, 50 Wireless Quick Facts, http://www.ctia.org/consumer_info/index.cfm/AID/10323.

phones on any particular road.[9] Similarly, phone-location-tracking services are offered as "social" tools, allowing consumers to find (or to avoid) others who enroll in these services. The availability and use of these and other new devices will continue to shape the average person's expectations about the privacy of his or her daily movements.

V

In the precomputer age, the greatest protections of privacy were neither constitutional nor statutory, but practical. Traditional surveillance for any extended period of time was difficult and costly and therefore rarely undertaken. The surveillance at issue in this case—constant monitoring of the location of a vehicle for four weeks—would have required a large team of agents, multiple vehicles, and perhaps aerial assistance.[10] Only an investigation of unusual importance could have justified such an expenditure of law enforcement resources. Devices like the one used in the present case, however, make long-term monitoring relatively easy and cheap. In circumstances involving dramatic technological change, the best solution to privacy concerns may be legislative. See, *e. g.*, Kerr 805–806. A legislative body is well situated to gauge changing public attitudes, to draw detailed

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[9] See, *e. g.*, The Bright Side of Sitting in Traffic: Crowdsourcing Road Congestion Data, Google Blog, http://googleblog.blogspot.com/2009/08/bright-side-of-sitting-in-traffic.html.

[10] Even with a radio transmitter like those used in *United States* v. *Knotts*, 460 U. S. 276 (1983), or *United States* v. *Karo*, 468 U. S. 705 (1984), such long-term surveillance would have been exceptionally demanding. The beepers used in those cases merely "emit[ted] periodic signals that [could] be picked up by a radio receiver." *Knotts*, 460 U. S., at 277. The signal had a limited range and could be lost if the police did not stay close enough. Indeed, in *Knotts* itself, officers lost the signal from the beeper, and only "with the assistance of a monitoring device located in a helicopter [was] the approximate location of the signal . . . picked up again about one hour later." *Id.*, at 278.

lines, and to balance privacy and public safety in a comprehensive way.

To date, however, Congress and most States have not enacted statutes regulating the use of GPS tracking technology for law enforcement purposes. The best that we can do in this case is to apply existing Fourth Amendment doctrine and to ask whether the use of GPS tracking in a particular case involved a degree of intrusion that a reasonable person would not have anticipated.

Under this approach, relatively short-term monitoring of a person's movements on public streets accords with expectations of privacy that our society has recognized as reasonable. See *Knotts*, 460 U. S., at 281–282. But the use of longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy. For such offenses, society's expectation has been that law enforcement agents and others would not—and indeed, in the main, simply could not—secretly monitor and catalogue every single movement of an individual's car for a very long period. In this case, for four weeks, law enforcement agents tracked every movement that respondent made in the vehicle he was driving. We need not identify with precision the point at which the tracking of this vehicle became a search, for the line was surely crossed before the 4-week mark. Other cases may present more difficult questions. But where uncertainty exists with respect to whether a certain period of GPS surveillance is long enough to constitute a Fourth Amendment search, the police may always seek a warrant.[11]

[11] In this case, the agents obtained a warrant, but they did not comply with two of the warrant's restrictions: They did not install the GPS device within the 10-day period required by the terms of the warrant and by Fed. Rule Crim. Proc. 41(e)(2)(B)(i), and they did not install the GPS device within the District of Columbia, as required by the terms of the warrant and by 18 U. S. C. §3117(a) and Rule 41(b)(4). In the courts below the Government did not argue, and has not argued here, that the Fourth Amendment does not impose these precise restrictions and that the violation of these restrictions does not demand the suppression of evidence

We also need not consider whether prolonged GPS monitoring in the context of investigations involving extraordinary offenses would similarly intrude on a constitutionally protected sphere of privacy. In such cases, long-term tracking might have been mounted using previously available techniques.

* * *

For these reasons, I conclude that the lengthy monitoring that occurred in this case constituted a search under the Fourth Amendment. I therefore agree with the majority that the decision of the Court of Appeals must be affirmed.

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obtained using the tracking device. See, *e. g.*, *United States* v. *Gerber*, 994 F. 2d 1556, 1559–1560 (CA11 1993); *United States* v. *Burke*, 517 F. 2d 377, 386–387 (CA2 1975). Because it was not raised, that question is not before us.

Syllabus

REYNOLDS *v.* UNITED STATES

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

No. 10–6549. Argued October 3, 2011—Decided January 23, 2012

The federal Sex Offender Registration and Notification Act (Act) requires convicted sex offenders to provide state governments with, and to update, information, *e. g.*, names and current addresses, for state and federal sex offender registries. It is a crime if a person who is "required to register under [the Act]" and who "travels in interstate . . . commerce" knowingly "fails to register or update a registration." 18 U. S. C. § 2250(a). The Act defines "sex offender" to include offenders who were convicted before the Act's effective date, 42 U. S. C. § 16911(1), and says that "[t]he Attorney General shall have the authority to specify the applicability of the [registration] requirements" to pre-Act offenders, § 16913(d). The Act, which seeks to make more uniform and effective a patchwork of pre-Act federal and 50 state registration systems, became law in July 2006. In February 2007, the Attorney General promulgated an Interim Rule specifying that the Act applies to all pre-Act offenders. He has since promulgated further rules, regulations, and specifications.

Petitioner Reynolds, a pre-Act offender, registered in Missouri in 2005 but moved to Pennsylvania in September 2007 without updating the Missouri registration or registering in Pennsylvania. He was indicted for failing to meet the Act's registration requirements between September 16 and October 16, 2007. He moved to dismiss the indictment on the ground that the Act was not applicable to pre-Act offenders during that time, arguing that the Attorney General's February 2007 Interim Rule was invalid because it violated the Constitution's "nondelegation" doctrine and the Administrative Procedure Act's notice and comment requirements. The District Court rejected on the merits Reynolds' legal attack on the Interim Rule, but the Third Circuit rejected his argument without reaching the merits, concluding that the Act's registration requirements applied to pre-Act offenders even in the absence of a rule by the Attorney General. Thus, it found, the Interim Rule's validity made no legal difference in the outcome.

Held: The Act does not require pre-Act offenders to register before the Attorney General validly specifies that the Act's registration provisions apply to them. Pp. 439–446.

(a) This conclusion is supported by a natural reading of the Act's text, which consists of four statements. *Statement One* says that "[a] sex

offender shall register, and keep the registration current." *Statement Two* says that, generally, the offender must initially register before completing his "sentence of imprisonment." *Statement Three* says that the sex offender must update a registration within three business days of any change of "name, residence, employment, or student status." *Statement Four* says that "[t]he Attorney General shall have the authority to specify the applicability of the requirements . . . to sex offenders convicted before the enactment of" the Act. § 16913. Read naturally, the *Fourth Statement* modifies the *First.* It deals specifically with a subset (pre-Act offenders) of the *First Statement*'s broad general class (all sex offenders) and thus should control the Act's application to that subset. See *Gozlon-Peretz* v. *United States*, 498 U. S. 395, 407. Also, by giving the Attorney General authority to specify the Act's "applicability," not its "nonapplicability," the *Fourth Statement* is more naturally read to confer authority to apply the Act, not authority to make exceptions. This reading efficiently resolves what may have been Congress' concern about the practical problems of applying the new registration requirements to a large number of pre-Act offenders, which could have been expensive and might not have proved feasible to do immediately. It might have thought that such concerns warranted different treatment for different categories of pre-Act offenders. And it could have concluded that it was efficient and desirable to ask the Justice Department, charged with responsibility for implementation, to examine pre-Act offender problems and to apply the new requirements accordingly. This reading also takes Congress to have filled potential lacunae (created by related Act provisions) in a manner consistent with basic criminal law principles. The *Second Statement*, *e. g.*, requires a sex offender to register before completing his prison term, but says nothing about when a pre-Act offender who has left prison is to register. An Attorney General ruling could diminish such uncertainties, helping to eliminate the kind of vagueness and uncertainty that criminal law must seek to avoid. Pp. 439–442.

(b) The Government's three principal contrary arguments—that the Court's reading conflicts with the Act's purpose of establishing a national registration system that includes pre-Act offenders; that the Court's reading could lead to an absurdly long implementation delay; and that the Act should be read to apply the requirements immediately and on their own to all pre-Act offenders to avoid the possibility that the Attorney General, who has, but is not required to use, "the authority to specify" requirements, might take no action—are unpersuasive. Some lower courts have read the Attorney General's authority to apply only to pre-Act sex offenders who are unable to comply with the stat-

ute's "initial registration" requirements, but that is not what the Act says. Pp. 442–445.

(c) Because the Act's registration requirements do not apply to pre-Act offenders until the Attorney General so specifies, the question whether the Attorney General's Interim Rule is a valid specification matters in this case. Pp. 445–446.

380 Fed. Appx. 125, reversed and remanded.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, ALITO, SOTOMAYOR, and KAGAN, JJ., joined. SCALIA, J., filed a dissenting opinion, in which GINSBURG, J., joined, *post*, p. 448.

Candace Cain argued the cause for petitioner. With her on the briefs were *Lisa B. Freeland*, *Renee D. Pietropaolo*, *Tara I. Allen*, *Kimberly R. Brunson*, and *Peter R. Moyers*.

Melissa Arbus Sherry argued the cause for the United States. With her on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Breuer*, *Deputy Solicitor General Dreeben*, and *J. Campbell Barker*.

JUSTICE BREYER delivered the opinion of the Court.

The federal Sex Offender Registration and Notification Act (Act), 120 Stat. 590, 42 U. S. C. § 16901 *et seq.* (2006 ed. and Supp. III), requires those convicted of certain sex crimes to provide state governments with (and to update) information, such as names and current addresses, for inclusion on state and federal sex offender registries. §§ 16912(a), 16913–16914, 16919(a) (2006 ed.). The Act makes it a crime for a person who is "required to register" under the Act and who "travels in interstate or foreign commerce" knowingly to "fai[l] to register or update a registration . . . ." 18 U. S. C. § 2250(a). The question before us concerns the date on which this federal registration requirement took effect with respect to sex offenders convicted before the Act became law.

The Act defines the term "sex offender" as including these pre-Act offenders. 42 U. S. C. § 16911(1); see *Carr* v. *United States*, 560 U. S. 438, 447 (2010). It says that "[a] sex offender

shall register." § 16913(a). And it further says that "*[t]he Attorney General shall have the authority to specify the applicability of the [registration] requirements* . . . to sex offenders convicted before the enactment of this chapter . . . ." § 16913(d) (emphasis added). In our view, these provisions, read together, mean that the Act's registration requirements do not apply to pre-Act offenders until the Attorney General specifies that they do apply. We reverse a Court of Appeals determination that, in effect, holds the contrary.

I

A

The new federal Act reflects Congress' awareness that pre-Act registration law consisted of a patchwork of federal and 50 individual state registration systems. See 73 Fed. Reg. 38045 (2008). The Act seeks to make those systems more uniform and effective. It does so by repealing several earlier federal laws that also (but less effectively) sought uniformity; by setting forth comprehensive registration-system standards; by making federal funding contingent on States' bringing their systems into compliance with those standards; by requiring both state and federal sex offenders to register with relevant jurisdictions (and to keep registration information current); and by creating federal criminal sanctions applicable to those who violate the Act's registration requirements. 18 U. S. C. § 2250(a) (criminal provision); 42 U. S. C. §§ 16911(10), 16913–16916 (2006 ed. and Supp. III) (registration requirements); § 16925 (federal funding); § 129, 120 Stat. 600 (repeal of earlier laws).

The Act's criminal penalty applies to "[w]ho[m]ever . . . is required to register under [the Act]." 18 U. S. C. § 2250(a). It says that such a person (a federal sex offender or a nonfederal sex offender who travels in interstate commerce) must not knowingly fail "to register or update a registration *as required by [the Act]*." *Ibid.* (emphasis added); see Appendix, *infra*, at 446.

The relevant registration requirements are set forth in an Act provision that states:

> "**Registry requirements for sex offenders**
>
> "**(a) In general**
>
> "*A sex offender* [defined to include any offender who was convicted of a sex offense] *shall register, and keep the registration current*, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student. . . .
>
> "**(b) Initial registration**
>
> "The sex offender shall initially register [either] before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement; or [for those not sentenced to prison] not later than 3 business days after being sentenced . . . .
>
> "**(c) Keeping the registration current**
>
> "A sex offender shall [update his registration within] 3 business days after each change of name, residence, employment, or student status [by] appear[ing] in person in at least 1 jurisdiction involved . . . and inform[ing] that jurisdiction of all [relevant] changes . . . .
>
> "**(d) Initial registration of sex offenders unable to comply with subsection (b)**
>
> "*The Attorney General shall have the authority to specify the applicability* of the [registration] requirements . . . to sex offenders convicted before the enactment of this chapter or its implementation in a particular jurisdiction, and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with subsection (b)." 42 U. S. C. § 16913 (emphasis added).

The new Act became law on July 27, 2006.

On February 28, 2007, the Attorney General promulgated an Interim Rule specifying that "[t]he requirements of [the Act] apply to all sex offenders, including sex offenders con-

victed of the offense for which registration is required prior to the enactment of that Act." 72 Fed. Reg. 8897 (2007) (codified at 28 CFR § 72.3). Subsequently, the Attorney General promulgated further rules, regulations, and specifications. See 73 Fed. Reg. 38030; 75 Fed. Reg. 81849 (2010); 76 Fed. Reg. 1630 (2011). The present case focuses upon the applicability of the Act's registration requirements to pre-Act offenders during the period between (1) July 27, 2006 (when the Act took effect) and (2) the moment when the Attorney General promulgated a valid rule specifying the registration requirements' applicability, namely, February 28, 2007 (or a later date if the February 28 specification was invalid).

B

Billy Joe Reynolds, the petitioner, is a pre-Act offender. He was convicted of a Missouri sex offense in October 2001; he served four years in prison; he was released in July 2005; he then registered as a Missouri sex offender; but he moved to Pennsylvania in September 2007 without updating his Missouri registration information (as Missouri law required) and without registering in Pennsylvania. A federal grand jury indicted him, charging him with, between September 16 and October 16, 2007, having "knowingly failed to register and update a registration as required by [the Act]." App. 13; see 18 U. S. C. § 2250(a). In the Government's view, Reynolds' failure to update his address information when he moved to Pennsylvania violated the requirement that a "sex offender" update registration information within "3 business days after each change of . . . residence." 42 U. S. C. § 16913(c).

Reynolds moved to dismiss the indictment on the ground that in September and October 2007 the Act's registration requirements had not yet become applicable to pre-Act offenders. He conceded that the Act had become law earlier (namely, in July 2006), and he conceded that the Attorney General had already (in February 2007) promulgated an

Interim Rule specifying that the Act's registration requirements were applicable to pre-Act offenders. But he claimed that the Interim Rule was invalid because it violated both the Constitution's "nondelegation" doctrine and the Administrative Procedure Act's (APA) requirement for "good cause" to promulgate a rule without "notice and comment" (as the Attorney General had done). See *A. L. A. Schechter Poultry Corp.* v. *United States*, 295 U. S. 495, 529 (1935) (nondelegation doctrine); 5 U. S. C. §§ 553(b)(3)(B), (d)(3) (APA). Because the Interim Rule is invalid, he added, the law must treat him like a pre-Act offender who traveled interstate and violated the Act's registration requirements *before* the Attorney General specified their applicability.

The District Court rejected on the merits Reynolds' legal attack on the Interim Rule. But the Court of Appeals rejected Reynolds' argument without reaching those merits. 380 Fed. Appx. 125 (CA3 2010). That court thought that the Act's registration requirements apply to pre-Act offenders such as Reynolds (who was subject to a pre-existing state-law registration requirement) from the date of the new law's enactment—even in the absence of any rule or regulation by the Attorney General specifying that the new registration requirements apply. That being so, the validity of the Interim Rule could make no legal difference, for the Act required Reynolds to follow the new federal registration requirements regardless of any rulemaking.

The Courts of Appeals have reached different conclusions about whether the Act's registration requirements apply to pre-Act offenders prior to the time that the Attorney General specifies their applicability, *i. e.*, from July 2006 until at least February 2007. Six Circuits have held that the Act's registration requirements do not apply to pre-Act offenders unless and until the Attorney General so specifies. *United States* v. *Johnson*, 632 F. 3d 912, 922–927 (CA5 2011); *United States* v. *Valverde*, 628 F. 3d 1159, 1162–1164 (CA9 2010); *United States* v. *Cain*, 583 F. 3d 408, 414–419 (CA6 2009);

United States v. *Hatcher*, 560 F. 3d 222, 226–229 (CA4 2009); *United States* v. *Dixon*, 551 F. 3d 578, 585 (CA7 2008); *United States* v. *Madera*, 528 F. 3d 852, 856–859 (CA11 2008) *(per curiam)*. Five Circuits have held that they apply from the date of the Act's enactment, and prior to any such specification, at least with respect to pre-Act offenders who had already registered under state law. *United States* v. *Fuller*, 627 F. 3d 499, 506 (CA2 2010); *United States* v. *DiTomasso*, 621 F. 3d 17, 24 (CA1 2010); *United States* v. *Shenandoah*, 595 F. 3d 151, 163 (CA3 2010); *United States* v. *Hinckley*, 550 F. 3d 926, 932 (CA10 2008); *United States* v. *May*, 535 F. 3d 912, 918–919 (CA8 2008). In light of this split, we agreed to consider the question.

II

A

The question before us is whether the Act requires pre-Act offenders to register before the Attorney General validly specifies that the Act's registration provisions apply to them. We believe that it does not. For one thing, a natural reading of the textual language supports our conclusion. The text consists of four statements. See *supra*, at 436. *Statement One* says that "[a] sex offender shall register, and keep the registration current." *Statement Two* says that a sex offender must initially register before completing his "sentence of imprisonment" (or, if the sentence does not involve imprisonment, within three days of conviction). *Statement Three* says that the sex offender must update a registration within three business days of any change of "name, residence, employment, or student status." *Statement Four* says that "[t]he Attorney General shall have the authority to specify the applicability of the requirements of this subchapter to sex offenders convicted before the enactment of this chapter."

Read naturally, the *Fourth Statement* modifies the *First*. It specifically deals with a subset (pre-Act offenders) of a broad general class (all sex offenders) to which the *First*

Statement applies. And it therefore should control the Act's application to that subset. See *Gozlon-Peretz* v. *United States*, 498 U. S. 395, 407 (1991) (specific statutory provision normally controls over one of more general application); see also *Bloate* v. *United States*, 559 U. S. 196, 207 (2010) (same).

At the same time, the *Fourth Statement* says that the Attorney General has authority to specify the Act's "applicability," not its "nonapplicability." And it consequently is more naturally read as conferring the authority to *apply* the Act, not the authority to make exceptions. That is how we normally understand a term such as "authority to specify" in the context of applying new rules to persons already governed by pre-existing rules. If, for example, the Major League Baseball Players Association and the team owners agreed that the Commissioner of Baseball "shall have the authority to specify the applicability" to the major leagues of the more stringent minor league drug testing policy, we should think that the minor league policy would not apply unless and until the commissioner so specified.

For another thing, this reading of the Act efficiently resolves what Congress may well have thought were practical problems arising when the Act sought to apply the new registration requirements to pre-Act offenders. The problems arise out of the fact that the Act seeks to make more uniform a patchwork of pre-existing state systems. Doing so could require newly registering or reregistering "a large number" of pre-Act offenders. That effort could prove expensive. And it might not prove feasible to do so immediately. See 73 Fed. Reg. 38063 (recognizing these problems). Congress' concern about these problems is reflected in the Act's providing the States with three years to bring their systems into compliance with federal standards while permitting the Attorney General to extend that 3-year grace period to five years. 42 U. S. C. § 16924.

These same considerations might have warranted different federal registration treatment of different categories of pre-

Act offenders. Cf. 73 Fed. Reg. 38035–38036 and 38046–38047 (final Department of Justice guidelines allowing States to meet Act requirements without registering certain categories of pre-Act offenders); 76 Fed. Reg. 1635–1636 (supplemental guidelines allowing the same). At least Congress might well have so thought. And consequently, Congress might well have looked for a solution. Asking the Department of Justice, charged with responsibility for implementation, to examine these pre-Act offender problems and to apply the new registration requirements accordingly could have represented one efficient and desirable solution (though we express no view on Reynolds' related constitutional claim). Cf. 42 U. S. C. §§ 16912(b), 16914(a)(7), (b)(7), 16919, 16941, 16945 (granting the Attorney General authority to administer various aspects of the Act). And that is just the solution that the Act's language says that Congress adopted.

Finally, our reading of the Act takes Congress to have filled potential lacunae (created by related Act provisions) in a manner consistent with basic background principles of criminal law. The *Second Statement*, for example, says that a sex offender must register before completing his prison term, but the provision says nothing about when a pre-Act offender who completed his prison term pre-Act must register. Although a state pre-Act offender could not be prosecuted until he traveled interstate, there is no interstate requirement for a federal pre-Act offender. And to apply the Act to either of these pre-Act offenders from the date of enactment would require reading into the statute, silent on the point, some kind of unsaid equivalent (*e. g.*, registering or updating within a "reasonable time" or "within three days of first post-Act travel in interstate commerce" or "as preexisting state law requires").

Pre-Act offenders, aware of such complexities, lacunae, and difficulties, might, on their own, reach different conclusions about whether, or how, the new registration requirements applied to them. A ruling from the Attorney General, how-

ever, could diminish or eliminate those uncertainties, thereby helping to eliminate the very kind of vagueness and uncertainty that criminal law must seek to avoid. Cf., *e. g.*, *United States* v. *Lanier*, 520 U. S. 259, 266 (1997) (noting that "the canon of strict construction of criminal statutes, or rule of lenity, ensures fair warning by so resolving ambiguity in a criminal statute as to apply it only to conduct clearly covered").

B

The Government makes three principal arguments to the contrary. First, it says that our interpretation of the Act conflicts with one basic statutory purpose, namely, the "establish[ment of] a comprehensive national system for the registration of [sex] offenders," 42 U. S. C. § 16901, that *includes* offenders who committed their offenses before the Act became law. The Act reflects that purpose when it defines "sex offender" broadly to include any "individual who was convicted of a sex offense." § 16911(1). And we have recognized that purpose in stating that, in general, the Act's criminal provisions apply to any pre-Act offender required to register under the Act who later travels interstate and fails to register. See *Carr*, 560 U. S., at 447.

The Act's history also reveals that many of its supporters placed considerable importance upon the registration of pre-Act offenders. See, *e. g.*, H. R. Rep. No. 109–218, pt. 1, p. 24 (2005) (H. R. Rep.) ("[Twenty] percent of sexual offenders are 'lost,' and there is a strong public interest in finding them and having them register with current information to mitigate the risks of additional crimes against children"); 152 Cong. Rec. 15333 (2006) (statement of Sen. Cantwell) ("Child sex offenders have exploited this stunning lack of uniformity, and the consequences have been tragic. Twenty percent of the Nation's 560,000 sex offenders are 'lost' because State offender registry programs are not coordinated well enough"); *id.*, at 15338 (statement of Sen. Kyl) ("There currently are over 100,000 sex offenders in this country who are

required to register but are 'off the system.' They are not registered. The penalties in this bill should be adequate to ensure that these individuals register"); *id.*, at 13050 (statement of Sen. Frist) ("There are currently 550,000 registered sex offenders in the U. S. and at least 100,000 of them are missing from the system. Every day that we don't have this national sex offender registry, these missing sex predators are out there somewhere").

The difficulty with the Government's argument, however, is that it overstates the need for *instantaneous* registration of pre-Act offenders. Our different reading, we concede, involves implementation delay. But that delay need not be long (the Attorney General issued his Interim Rule 217 days after the effective date of the new law). And that delay can be justified by the need to accommodate other Act-related interests. See *supra*, at 440–442.

Second, the Government suggests that our reading leads to an absurd result. As it points out, the *Fourth Statement* grants the Attorney General the "authority to specify" the registration requirements' applicability not only to pre-Act offenders but also to those convicted prior to the "implementation" of the new Act "in a particular jurisdiction." Some jurisdictions might not implement the Act for up to five years. See 42 U. S. C. § 16924; see also Dept. of Justice, Office of Justice Programs, Justice Department Finds 24 Jurisdictions Have Substantially Implemented SORNA Requirements (July 28, 2011) (stating that as of July 28, 2011, 14 States had implemented the Act's requirements), http://www.ojp.usdoj.gov/newsroom/pressreleases/2011/SMART_PR-072811.htm (all Internet materials as visited Jan. 19, 2012, and available in Clerk of Court's case file). Yet, the Government concludes, it is absurd to believe that Congress would have desired so long a delay in the application of its new registration requirements.

The problem with this argument, however, is that reading the two categories similarly (a matter which we need not

decide) would not require a long delay in applying the registration requirements to post-Act offenders who committed a crime in a jurisdiction that is slow to implement the new requirements. At most, that reading would require the Attorney General to promulgate a rule applicable to all preimplementation offenders. That rule could specify that the Act's preregistration provisions apply to some or to all those offenders. And it could do so quickly, well before a jurisdiction implements the Act's requirements. Indeed, the Attorney General's Interim Rule and the Department of Justice's final guidelines, both issued before any jurisdiction implemented the Act's requirements, state that the Act's requirements apply to "all sex offenders," including all preimplementation offenders. See 72 Fed. Reg. 8897 (codified at 28 CFR § 72.3); 73 Fed. Reg. 38036; cf. Dept. of Justice, Office of Justice Programs, Justice Department Announces First Two Jurisdictions To Implement Sex Offender Registration and Notification Act (Sept. 23, 2009), http://www.ojp.usdoj.gov/newsroom/pressreleases/2009/SMART09154.htm.

Third, the Government argues against our interpretation on the ground that the Act says only that the Attorney General "shall have *the authority* to specify the applicability" of the Act's registration requirements to pre-Act offenders; it does not say that he "*shall* specify" or otherwise *require* him to do so. The Act's language, the Government continues, consequently gives the Attorney General the power *not* to specify anything; that power is inconsistent with Congress' intent to ensure the speedy registration of thousands of "lost" pre-Act offenders, *supra,* at 442–443; and we can avoid this result only by reading the Act's registration requirements as applying immediately and on their own to all pre-Act offenders (though the Attorney General would have the power to make exceptions).

This argument bases too much upon too little. There is no reason to believe that Congress feared that the Attorney General would refuse to apply the new requirements to pre-

Act offenders. See, *e. g.*, H. R. Rep., at 23–24; Protecting Our Nation's Children From Sexual Predators and Violent Criminals: What Needs To Be Done? Hearing before the Subcommittee on Crime, Terrorism, and Homeland Security of the House Committee on the Judiciary, 109th Cong., 1st Sess., 4–13 (2005); Office of the Press Secretary, The White House, President Signs H. R. 4472, the Adam Walsh Child Protection and Safety Act of 2006 (July 27, 2006), http://georgewbush-whitehouse.archives.gov/news/releases/2006/07/20060727-6.html. And there was no need for a mandatory requirement to avoid that unrealistic possibility. There is consequently no need to read the language unnaturally as giving the Attorney General the authority only to make exceptions from an implicit (unstated) rule that would otherwise apply the new registration requirements to all pre-Act offenders across the board and immediately.

Finally, we note that some lower courts have read the Attorney General's specification authority as applying only to those pre-Act sex offenders unable to comply with the statute's "initial registration" requirements. See 42 U. S. C. § 16913(b). That, however, is not what the statute says. Rather, its *Fourth Statement*, § 16913(d), says that the Attorney General has the authority (1) to specify the applicability of the registration requirements to pre-Act (and preimplementation) offenders, "*and*" (2) to prescribe rules for their registration, "*and*" (3) to prescribe registration rules for other categories of sex offenders who are unable to comply with the initial registration requirements. See *supra*, at 436. The word "and" means that the Attorney General's authority extends beyond those pre-Act "sex offenders who are unable to comply" with the initial registration requirements.

III

For these reasons, we conclude that the Act's registration requirements do not apply to pre-Act offenders until the Attorney General so specifies. Whether the Attorney Gener-

al's Interim Rule sets forth a valid specification consequently matters in the case before us. And we reverse the Third Circuit's judgment to the contrary. We remand the case for further proceedings consistent with this opinion.

So ordered.

APPENDIX

18 U. S. C. § 2250(a)

"In General.—Whoever—

"(1) is required to register under the Sex Offender Registration and Notification Act;

"(2)(A) is a sex offender as defined for the purposes of the Sex Offender Registration and Notification Act by reason of a conviction under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States; or

"(B) travels in interstate or foreign commerce, or enters or leaves, or resides in, Indian country; and

"(3) knowingly fails to register or update a registration as required by the Sex Offender Registration and Notification Act;

"shall be fined under this title or imprisoned not more than 10 years, or both."

42 U. S. C. § 16913

"Registry requirements for sex offenders

"(a) In general

"A sex offender shall register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student. For initial registration purposes only, a sex offender shall also register in the jurisdiction

in which convicted if such jurisdiction is different from the jurisdiction of residence.

"(b) Initial registration

"The sex offender shall initially register—(1) before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement; or (2) not later than 3 business days after being sentenced for that offense, if the sex offender is not sentenced to a term of imprisonment.

"(c) Keeping the registration current

"A sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least 1 jurisdiction involved pursuant to subsection (a) and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry. That jurisdiction shall immediately provide that information to all other jurisdictions in which the offender is required to register.

"(d) Initial registration of sex offenders unable to comply with subsection (b)

"The Attorney General shall have the authority to specify the applicability of the requirements of this subchapter to sex offenders convicted before the enactment of this chapter or its implementation in a particular jurisdiction, and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with subsection (b).

"(e) State penalty for failure to comply

"Each jurisdiction, other than a Federally recognized Indian tribe, shall provide a criminal penalty that includes a maximum term of imprisonment that is greater than 1 year for the failure of a sex offender to comply with the requirements of this subchapter."

JUSTICE SCALIA, with whom JUSTICE GINSBURG joins, dissenting.

In my view, the registration requirements of the Sex Offender Registration and Notification Act (Act), 120 Stat. 590, 42 U. S. C. § 16901 *et seq.* (2006 ed. and Supp. III), apply of their own force, without action by the Attorney General. The Act's statement that "[t]he Attorney General shall have the authority to specify the applicability of the [registration] requirements" to pre-Act sex offenders, § 16913(d), is best understood as conferring on the Attorney General an authority to make exceptions to the otherwise applicable registration requirements.

To begin with, I do not share the Court's belief that to "specify the applicability" more naturally means, in the present context, to "make applicable" rather than to "make inapplicable." See *ante*, at 439–440. The example the Court gives, the Commissioner of Baseball's " 'authority to specify the applicability' " of more stringent minor-league drug testing policies to the major leagues, *ibid.*, is entirely inapt, because it deals with a policy that on its face is otherwise not applicable. Since the major leagues are not covered by the policies, the Commissioner's " 'authority to specify [their] applicability' " *can mean nothing else* but the authority to render them applicable. What we have here, however, is a statute that states in unqualified terms that "[a] sex offender shall register," § 16913(a)—and that the Court rightly believes was meant to cover pre-Act offenders.* The issue is whether "specify the applicability" means that no pre-Act offenders need register unless the Attorney General says so, or rather

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*The Court reaches this conclusion based on an inquiry into legislative history. See *ante*, at 442–443. That inquiry is quite superfluous, however, since the text of the Act itself makes clear that Congress sought to "establis[h] a comprehensive national system for the registration of [sex offenders]," 42 U. S. C. § 16901, with "sex offender" defined broadly to "mea[n] an individual who *was* convicted of a sex offense," § 16911(1) (emphasis added).

that the Attorney General may excuse the unqualified requirement for pre-Act offenders. In *that* context, it seems to me that the latter meaning is more natural. One specifies the applicability of an application that already exists by describing or revising its contours.

I think it preferable to give "specify" this meaning not only because here it is more natural, but also because the alternative is to read the statute as leaving it up to the Attorney General whether the registration requirement would *ever* apply to pre-Act offenders, even though registration of pre-Act offenders was (as the Court acknowledges) what the statute sought to achieve. For the statute does not *instruct* the Attorney General to specify; it merely gives him "authority" to do so. In this respect, the provision at issue here stands in marked contrast to other provisions of the Act which clearly impose duties on the Attorney General. See, *e. g.*, § 16912(b) ("The Attorney General shall issue guidelines and regulations to interpret and implement this subchapter"); § 16917(b) ("The Attorney General shall prescribe rules for the notification of [certain] sex offenders"); § 16919(a) ("The Attorney General shall maintain a national database"); § 16926(a) ("The Attorney General shall establish and implement a Sex Offender Management Assistance program").

The Court's response to this—that "there was no need for a mandatory requirement to avoid [the] unrealistic possibility" that the Attorney General would not specify, *ante*, at 445—seems to me a fine answer to the question "What mandatory requirements must a poorly drafted statute contain in order to be workable?" It is an inadequate answer, however, to the question that is relevant here: "Would Congress have written the provision this way if it wanted pre-Act offenders covered and did not think they were covered absent specification by the Attorney General?" Intelligently drafted statutes make mandatory those executive acts essential to their functioning, *whether or not* those acts would likely occur anyway. It would have taken little effort (in

fact, less effort) for Congress to write "the Attorney General shall specify the applicability" instead of "[t]he Attorney General shall have the authority to specify the applicability." The latter formulation confers discretion, and it is simply implausible that the Attorney General was given discretion to determine whether coverage of pre-Act offenders (one of the purposes of the Act) should exist.

Indeed, it is not entirely clear to me that Congress can constitutionally leave it to the Attorney General to decide—with no statutory standard whatever governing his discretion—whether a criminal statute will or will not apply to certain individuals. That seems to me sailing close to the wind with regard to the principle that legislative powers are nondelegable, see *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457, 472–476 (2001); *Loving* v. *United States*, 517 U. S. 748, 776–777 (1996) (SCALIA, J., concurring in part and concurring in judgment), and "[i]t is our settled policy to avoid an interpretation of a federal statute that engenders constitutional issues if a reasonable alternative interpretation poses no constitutional question," *Gomez* v. *United States*, 490 U. S. 858, 864 (1989). Construing the Act to give the Attorney General the power to *reduce* congressionally imposed requirements fits that bill, because such a power is little more than a formalized version of the time-honored practice of prosecutorial discretion.

The Court points out that there might have been need for "different federal registration treatment of different categories of pre-Act offenders," *ante*, at 440–441, and that absent a "ruling from the Attorney General" pre-Act offenders would be uncertain "about whether, or how, the new registration requirements applied to them," *ante*, at 441. But attending to those details would certainly come within the Attorney General's authority to "specify" application of the Act—and so would the temporary suspension of registration requirements pending the Attorney General's resolution of those details. And of course the uncertainty of where to

register could form the basis for the Attorney General's exercise of his discretion not to prosecute in individual cases. Neither problem, it seems to me, justifies the extraordinary interpretation that this Act does not apply to pre-Act offenders unless and until the Attorney General, in his discretion, says so.

For these reasons, I respectfully dissent.

Syllabus

NATIONAL MEAT ASSOCIATION *v.* HARRIS, ATTORNEY GENERAL OF CALIFORNIA, ET AL.

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

No. 10–224. Argued November 9, 2011—Decided January 23, 2012

The Federal Meat Inspection Act (FMIA or Act), 21 U. S. C. § 601 *et seq.*, regulates a broad range of activities at slaughterhouses to ensure the safety of meat and the humane handling of animals. The Department of Agriculture's Food Safety and Inspection Service (FSIS), which administers the FMIA, has issued extensive regulations to govern the inspection of animals and meat, as well as other aspects of slaughterhouses' operations and facilities. See 9 CFR § 300.1 *et seq.* The FSIS inspection procedure begins with an "ante-mortem" inspection of each animal brought to a slaughterhouse. If, at that inspection, a nonambulatory animal is found to suffer from a particularly severe disease or condition, it must be classified as "U. S. Condemned" and killed apart from the slaughtering facilities where food is produced. §§ 309.3, 311.1 *et seq.* Nonambulatory animals that are not condemned are classified as "U. S. Suspect." § 309.2(b). They are set apart, specially monitored, and "slaughtered separately from other livestock." § 309.2(n). Following slaughter, an inspector decides at a "post-mortem" examination which parts, if any, of the suspect animal's carcass may be processed into food for humans. See 9 CFR pts. 310, 311. FSIS regulations additionally prescribe methods for handling animals humanely at all stages of the slaughtering process, 9 CFR pt. 313, including specific provisions for the humane treatment of nonambulatory animals, 9 CFR § 313.2(d).

The FMIA's preemption clause, § 678, precludes States from imposing requirements that are "within the scope" of the FMIA, relate to slaughterhouse "premises, facilities and operations," and are "in addition to, or different than those made under" the FMIA. In 2008, California amended its penal code to provide that no slaughterhouse shall "buy, sell, or receive a nonambulatory animal"; "process, butcher, or sell meat or products of nonambulatory animals for human consumption"; or "hold a nonambulatory animal without taking immediate action to humanely euthanize the animal." Cal. Penal Code Ann. §§ 599f(a)–(c). Petitioner National Meat Association (NMA), a trade association representing meatpackers and processors, sued to enjoin enforcement of § 599f against swine slaughterhouses, arguing that the FMIA preempts application of

the state law. The District Court agreed, and granted the NMA a preliminary injunction. The Ninth Circuit reversed, holding that § 599f is not preempted because it regulates only "the kind of animal that may be slaughtered," not the inspection or slaughtering process itself.

Held: The FMIA expressly preempts § 599f's application against federally inspected swine slaughterhouses. Pp. 459–468.

(a) The FMIA's preemption clause sweeps widely, and so blocks the applications of § 599f challenged here. The clause prevents a State from imposing any additional or different—even if nonconflicting—requirements that fall within the FMIA's scope and concern slaughterhouse facilities or operations. Section 599f imposes additional or different requirements on swine slaughterhouses: Where under federal law a slaughterhouse may take one course of action in handling a nonambulatory pig, under state law the slaughterhouse must take another. For example, when a pig becomes injured and thus nonambulatory sometime after delivery to a slaughterhouse, § 599f(c) prohibits the slaughterhouse from "hold[ing]" the pig without immediately euthanizing it; and § 599f(b) prohibits the slaughterhouse from "process[ing]" or "butcher[ing]" the animal to make food. By contrast, the FMIA and its regulations allow a slaughterhouse to hold (without euthanizing) any nonambulatory animal that has not been condemned, and to process and butcher such an animal's meat, subject to an FSIS official's approval at postmortem inspection. Similarly, when a pig is nonambulatory at the time of delivery, § 599f(a) prohibits a slaughterhouse from "receiv[ing]" or "buy[ing]" the pig. But the FMIA and its regulations expressly allow slaughterhouses to purchase nonambulatory pigs. See 21 U. S. C. § 644; 9 CFR § 325.20(c). And the FSIS inspection regime clearly contemplates that slaughterhouses will receive nonambulatory animals. So § 599f substitutes a new regulatory regime for the one the FMIA prescribes.

Respondent Humane Society argues that § 599f(a)'s ban on purchasing nonambulatory animals escapes preemption because it would not be preempted if applied to purchases occurring off slaughterhouse premises. But the record does not disclose whether § 599f(a) ever applies beyond the slaughterhouse gate, much less how an application of that kind would affect a slaughterhouse's operations. Moreover, even if the State could regulate offsite purchases, it does not follow that onsite purchases would escape preemption, because the FMIA's preemption clause expressly focuses on slaughterhouse "premises, facilities and operations." And while the Humane Society is correct that the FMIA does not normally regulate slaughterhouse sales activities, § 599f's sales ban serves to regulate how slaughterhouses must handle nonambulatory pigs on their premises. Its effect is to make sure that slaughterhouses remove

nonambulatory pigs from the production process. It is therefore preempted by the FMIA. Pp. 459–464.

(b) Also rejected is the broad argument that § 599f's challenged provisions fall outside the FMIA's scope because they exclude a class of animals from the slaughtering process, while the FMIA extends only to "animals that are going to be turned into meat." In fact, the FMIA regulates animals on slaughterhouse premises that will never be turned into meat. For example, the Act's implementing regulations exclude many classes of animals from the slaughtering process, *e. g.*, swine with hog cholera, 9 CFR § 309.5(a). The argument that § 599f's exclusion avoids the FMIA's scope because it is designed to ensure the humane treatment of pigs, rather than meat safety, misunderstands the FMIA's scope. The FMIA addresses not just food safety, but humane treatment, as well. See, *e. g.*, 21 U. S. C. §§ 603, 610(b). Pp. 464–468.

599 F. 3d 1093, reversed and remanded.

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

Steven J. Wells argued the cause for petitioner. With him on the briefs were *Heather M. McCann*, *Timothy J. Droske*, and *Philip C. Olsson*.

Benjamin J. Horwich argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Verrilli*, *Deputy Solicitor General Kneedler*, *Deputy Assistant Attorney General Hertz*, *Mark B. Stern*, and *Thomas M. Walsh*.

Susan K. Smith, Deputy Attorney General of California, argued the cause for respondents. With her on the brief for the state respondents were *Kamala D. Harris*, Attorney General, *pro se*, *Manuel M. Medeiros*, State Solicitor General, *David S. Chaney*, Chief Assistant Attorney General, and *Douglas J. Woods*, Senior Assistant Attorney General. *J. Scott Ballenger*, *Jonathan R. Lovvorn*, *Bruce A. Wagman*, and *Leslie Brueckner* filed a brief for respondent Humane Society of the United States et al.*

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*Briefs of *amici curiae* urging reversal were filed for the American Association of Swine Veterinarians et al. by *Lance W. Lange;* and for the Chamber of Commerce of the United States of America by *Kenneth S. Geller*, *Brian J. Wong*, *Robin S. Conrad*, and *Kate Comerford Todd*.

Briefs of *amici curiae* urging affirmance were filed for the State of Illinois et al. by *Lisa Madigan*, Attorney General of Illinois, *Michael*

JUSTICE KAGAN delivered the opinion of the Court.

The Federal Meat Inspection Act (FMIA or Act), 21 U. S. C. § 601 *et seq.*, regulates the inspection, handling, and slaughter of livestock for human consumption. We consider here whether the FMIA expressly preempts a California law dictating what slaughterhouses must do with pigs that cannot walk, known in the trade as nonambulatory pigs. We hold that the FMIA forecloses the challenged applications of the state statute.

I

A

The FMIA regulates a broad range of activities at slaughterhouses to ensure both the safety of meat and the humane handling of animals.[1] First enacted in 1906, after Upton Sinclair's muckraking novel *The Jungle* sparked an uproar over conditions in the meatpacking industry, the Act establishes "an elaborate system of inspecti[ng]" live animals and

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A. Scodro, Solicitor General, and *Jane Elinor Notz*, Deputy Solicitor General, and by the Attorneys General for their respective jurisdictions as follows: *John J. Burns* of Alaska, *Thomas C. Horne* of Arizona, *Irvin B. Nathan* of the District of Columbia, *David M. Louie* of Hawaii, *Gregory F. Zoeller* of Indiana, *Bill Schuette* of Michigan, *Catherine Cortez Masto* of Nevada, *Eric T. Schneiderman* of New York, *E. Scott Pruitt* of Oklahoma, *William H. Sorrell* of Vermont, *Robert M. McKenna* of Washington, *Darrell V. McGraw, Jr.*, of West Virginia, and *Gregory A. Phillips* of Wyoming; for the American Society for the Prevention of Cruelty to Animals by *Stacy Wolf;* for Professors of Preemption Law by *Douglas T. Kendall*, *Elizabeth B. Wydra*, and *James H. Carter;* for Public Citizen et al. by *Allison M. Zieve*, *Scott L. Nelson*, *Michael Schuster*, and *Barbara Jones;* and for Tim Blackwell et al. by *Sheldon Eisenberg.*

[1] The FMIA applies to all slaughterhouses producing meat for interstate and foreign commerce. See 21 U. S. C. §§ 601(h), 603(a). The FMIA also regulates slaughterhouses serving an exclusively intrastate market in any State that does not administer an inspection system with "requirements at least equal to those" of the Act. § 661(c)(1). Because California has chosen not to adopt such an inspection program, the FMIA governs all slaughterhouses in the State (except for any limited to "custom slaughtering for personal, household, guest, and employee uses," § 623(a)).

carcasses in order "to prevent the shipment of impure, unwholesome, and unfit meat and meat-food products." *Pittsburgh Melting Co.* v. *Totten*, 248 U. S. 1, 4–5 (1918). And since amended in 1978, see 92 Stat. 1069, the FMIA requires all slaughterhouses to comply with the standards for humane handling and slaughter of animals set out in the Humane Methods of Slaughter Act of 1958 (HMSA), 72 Stat. 862, 7 U. S. C. § 1901 *et seq.*, which originally applied only to slaughterhouses selling meat to the Federal Government.

The Department of Agriculture's Food Safety and Inspection Service (FSIS) has responsibility for administering the FMIA to promote its dual goals of safe meat and humane slaughter. Over the years, the FSIS has issued extensive regulations to govern the inspection of animals and meat, as well as other aspects of slaughterhouses' operations and facilities. See 9 CFR § 300.1 *et seq.* (2011). The FSIS employs about 9,000 inspectors, veterinarians, and investigators to implement its inspection regime and enforce its humane-handling requirements. See Hearings on 2012 Appropriations before the Subcommittee on Agriculture of the House Committee on Appropriations, 112th Cong., 1st Sess., pt. 1B, p. 921 (2011). In fiscal year 2010, those personnel examined about 147 million head of livestock and carried out more than 126,000 "humane handling verification procedures." *Id.*, at 942–943.

The FSIS's inspection procedure begins with an "antemortem" examination of each animal brought to a slaughterhouse. See 9 CFR § 309.1. If the inspector finds no evidence of disease or injury, he approves the animal for slaughter. If, at the other end of the spectrum, the inspector sees that an animal is dead or dying, comatose, suffering from a high fever, or afflicted with a serious disease or condition, he designates the animal as "U. S. Condemned." See § 309.3; § 311.1 *et seq.* (listing diseases requiring condemnation). A condemned animal (if not already dead) must be

killed apart from the slaughtering facilities where food is produced, and no part of its carcass may be sold for human consumption. See § 309.13(a); 21 U. S. C. § 610(c).

The inspector also has an intermediate option: If he determines that an animal has a less severe condition—or merely suspects the animal of having a disease meriting condemnation—he classifies the animal as "U. S. Suspect." See 9 CFR § 309.2. That category includes all nonambulatory animals not found to require condemnation.[2] See § 309.2(b). Suspect livestock must be "set apart," specially monitored, and (if not reclassified because of a change in condition) "slaughtered separately from other livestock." § 309.2(n). Following slaughter, an inspector decides at a "post-mortem" examination which parts, if any, of the suspect animal's carcass may be processed into food for humans. See 9 CFR pts. 310, 311.

The regulations implementing the FMIA additionally prescribe methods for handling animals humanely at all stages of the slaughtering process. Those rules apply from the moment a truck carrying livestock "enters, or is in line to enter," a slaughterhouse's premises. Humane Handling and Slaughter of Livestock, FSIS Directive 6900.2, ch. II(I) (rev. Aug. 15, 2011). And they include specific provisions for the humane treatment of animals that cannot walk. See 9 CFR § 313.2(d). Under the regulations, slaughterhouse employees may not drag conscious, nonambulatory animals, see § 313.2(d)(2), and may move them only with "equipment suitable for such purposes," § 313.2(d)(3). Similarly, employees must place nonambulatory animals, as well as other sick and disabled livestock, in covered pens sufficient to protect

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[2] The FSIS's regulations define "non-ambulatory disabled livestock" as "livestock that cannot rise from a recumbent position or that cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column, or metabolic conditions." § 309.2(b).

the animals from "adverse climatic conditions." See § 313.2(d)(1); § 313.1(c).

The FMIA contains an express preemption provision, at issue here, addressing state laws on these and similar matters. That provision's first sentence reads:

> "Requirements within the scope of this [Act] with respect to premises, facilities and operations of any establishment at which inspection is provided under . . . this [Act], which are in addition to, or different than those made under this [Act] may not be imposed by any State." 21 U. S. C. § 678.[3]

B

In 2008, the Humane Society of the United States released an undercover video showing workers at a slaughterhouse in California dragging, kicking, and electroshocking sick and disabled cows in an effort to move them. The video led the Federal Government to institute the largest beef recall in U. S. history in order to prevent consumption of meat from diseased animals. Of greater relevance here, the video also prompted the California legislature to strengthen a preexisting statute governing the treatment of nonambulatory animals and to apply that statute to slaughterhouses regulated under the FMIA. See *National Meat Assn.* v. *Brown*, 599 F. 3d 1093, 1096 (CA9 2010).

As amended, the California law—§ 599f of the state penal code—provides in relevant part:

> "(a) No slaughterhouse, stockyard, auction, market agency, or dealer shall buy, sell, or receive a nonambulatory animal.

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[3] The preemption provision also includes a saving clause, which states that the Act "shall not preclude any State . . . from making requirement[s] or taking other action, consistent with this [Act], with respect to any other matters regulated under this [Act]." 21 U. S. C. § 678; see n. 10, *infra*.

"(b) No slaughterhouse shall process, butcher, or sell meat or products of nonambulatory animals for human consumption.

"(c) No slaughterhouse shall hold a nonambulatory animal without taking immediate action to humanely euthanize the animal." Cal. Penal Code Ann. § 599f (West 2010).

The maximum penalty for violating any of these prohibitions is one year in jail and a $20,000 fine. See § 599f(h).

Petitioner National Meat Association (NMA) is a trade association representing meatpackers and processors, including operators of swine slaughterhouses. It sued to enjoin the enforcement of § 599f against those slaughterhouses, principally on the ground that the FMIA preempts application of the state law.[4] The District Court granted the NMA's motion for a preliminary injunction, reasoning that § 599f is expressly preempted because it requires swine "to be handled in a manner other than that prescribed by the FMIA" and its regulations. App. to Pet. for Cert. 36a. But the United States Court of Appeals for the Ninth Circuit vacated the injunction. According to that court, the FMIA does not expressly preempt § 599f because the state law regulates only "the kind of animal that may be slaughtered," and not the inspection or slaughtering process itself. 599 F. 3d, at 1098.

We granted certiorari, 564 U. S. 1036 (2011), and now reverse.

II

The FMIA's preemption clause sweeps widely—and in so doing, blocks the applications of § 599f challenged here. The clause prevents a State from imposing any additional or different—even if non-conflicting—requirements that fall

[4] The Humane Society intervened to defend § 599f in the District Court. See Motion To Intervene in No. 08–1963 (ED Cal.), Record, Doc. 46. The organization continues as a respondent in this Court.

within the scope of the Act and concern a slaughterhouse's facilities or operations. And at every turn § 599f imposes additional or different requirements on swine slaughterhouses: It compels them to deal with nonambulatory pigs on their premises in ways that the federal Act and regulations do not. In essence, California's statute substitutes a new regulatory scheme for the one the FSIS uses. Where under federal law a slaughterhouse may take one course of action in handling a nonambulatory pig, under state law the slaughterhouse must take another.

Consider first what the two statutes tell a slaughterhouse to do when (as not infrequently occurs) a pig becomes injured and thus nonambulatory sometime after delivery to the slaughterhouse.[5] Section 599f(c) prohibits the slaughterhouse from "hold[ing]" such an animal "without taking immediate action to humanely euthanize" it. And § 599f(b) provides that no part of the animal's carcass may be "process[ed]" or "butcher[ed]" to make food. By contrast, under the FMIA and its regulations, a slaughterhouse may hold (without euthanizing) any nonambulatory pig that has not been condemned. See *supra*, at 457. And the slaughterhouse may process or butcher such an animal's meat for human consumption, subject to an FSIS official's approval at a post-mortem inspection. See *ibid.* The State's proscriptions thus exceed the FMIA's. To be sure, nothing in the federal Act requires what the state law forbids (or forbids what the state law requires); California is right to note that "[t]he FMIA does not mandate that 'U. S. Suspect' [nonambulatory] animals . . . be placed into the human food production proc-

[5] The percentage of pigs becoming nonambulatory after delivery varies by slaughterhouse from 0.1 percent to over 1 percent. See McGlone, Fatigued Pigs: The Final Link, Pork Magazine 14 (Mar. 2006). About 100 million pigs are slaughtered each year in the United States, see Dept. of Agriculture, National Agricultural Statistics Service, Livestock Slaughter 13 (Jan. 2011), so those percentages work out to between 100,000 and 1,000,000 pigs.

ess." Brief for State Respondents 31. But that is irrelevant, because the FMIA's preemption clause covers not just conflicting but also different or additional state requirements. It therefore precludes California's effort in §§ 599f(b) and (c) to impose new rules, beyond any the FSIS has chosen to adopt, on what a slaughterhouse must do with a pig that becomes nonambulatory during the production process.

Similarly, consider how the state and federal laws address what a slaughterhouse should do when a pig is nonambulatory at the time of delivery, usually because of harsh transportation conditions.[6] Section 599f(a) of the California law bars a slaughterhouse from "receiv[ing]" or "buy[ing]" such a pig, thus obligating the slaughterhouse to refuse delivery of the animal.[7] But that directive, too, deviates from any imposed by federal law. A regulation issued under the FMIA specifically authorizes slaughterhouses to buy disabled or diseased animals (including nonambulatory swine), by exempting them from a general prohibition on such purchases. See 9 CFR § 325.20(c). And other regulations contemplate that slaughterhouses will in fact take, rather than refuse, receipt of nonambulatory swine. Recall that the FMIA's regulations provide for the inspection of all pigs at delivery, see *supra*, at 456—in the case of nonambulatory pigs, often right on the truck, see Humane Handling and Slaughter of Livestock, FSIS Directive 6900.2, ch. II(I). They further instruct slaughterhouses to kill and dispose of any

[6] According to one estimate, almost one-half of 1 percent of the pigs slaughtered annually in the United States become nonambulatory during the trip from farm to slaughterhouse. See National Pork Board, Transport Quality Assurance Handbook 25 (Version 4, 2008) (updated 2010). About half that many die during transport. See *ibid.*

[7] Section 599f(a) also bans "sell[ing]" nonambulatory animals. But because slaughterhouses (unlike other entities referenced in the provision) do not typically sell live animals, that prohibition is not at issue in this case. The statute's distinct ban on selling *meat* from nonambulatory animals that have been slaughtered is discussed *infra*, at 463–464.

nonambulatory pigs labeled "condemned," and to slaughter separately those marked "suspect." See *supra*, at 456–457. In short, federal law establishes rules for handling and slaughtering nonambulatory pigs brought to a slaughterhouse, rather than ordering them returned to sender. So § 599f(a) and the FMIA require different things of a slaughterhouse confronted with a delivery truck containing nonambulatory swine. The former says "do not receive or buy them"; the latter does not.

The Humane Society counters that at least § 599f(a)'s ban on buying nonambulatory animals escapes preemption because that provision applies no matter when or where a purchase takes place. The argument proceeds in three steps: (1) Section 599f(a)'s ban covers purchases of nonambulatory pigs made prior to delivery, away from the slaughterhouse itself (say, at a farm or auction); (2) the State may regulate such offsite purchases because they do not involve a slaughterhouse's "premises, facilities and operations," which is a condition of preemption under the FMIA; and (3) no different result should obtain just because a slaughterhouse structures its swine purchases to occur at delivery, on its own property. See Brief for Non-State Respondents 43–45.

But this argument fails on two grounds. First, its preliminary steps have no foundation in the record. Until a stray comment at oral argument, see Tr. of Oral Arg. 50, neither the State nor the Humane Society had disputed the NMA's assertion that slaughterhouses buy pigs at delivery (or still later, upon successful ante-mortem inspection). See Brief for Petitioner 46, n. 18; Brief for Non-State Respondents 44; Brief for State Respondents 16, n. 5. Nor had the parties presented evidence that a significant number of pigs become nonambulatory before shipment, when any offsite purchases would occur. The record therefore does not disclose whether § 599f(a)'s ban on purchase ever applies beyond the slaughterhouse gate, much less how an application of that kind would affect a slaughterhouse's operations. And be-

cause that is so, we have no basis for deciding whether the FMIA would preempt it. Second, even assuming that a State could regulate offsite purchases, the concluding step of the Humane Society's argument would not follow. The FMIA's preemption clause expressly focuses on "premises, facilities and operations"—at bottom, the slaughtering and processing of animals at a given location. So the distinction between a slaughterhouse's site-based activities and its more far-flung commercial dealings is not, as the Humane Society contends, an anomaly that courts should strain to avoid. It is instead a fundamental feature of the FMIA's preemption clause.

For that reason, the Humane Society's stronger argument concerns California's effort to regulate the *last* stage of a slaughterhouse's business—the ban in § 599f(b) on "sell[ing] meat or products of nonambulatory animals for human consumption." The Government acknowledges that the FMIA's preemption clause does not usually foreclose "state regulation of the commercial sales activities of slaughterhouses." Brief for United States as *Amicus Curiae* 17. And the Humane Society asserts, in line with that general rule, that § 599f(b)'s ban on sales does not regulate a slaughterhouse's "operations" because it kicks in only after they have ended: Once meat from a slaughtered pig has passed a post-mortem inspection, the Act "is not concerned with whether or how it is ever actually sold." Brief for Non-State Respondents 45. At most, the Humane Society claims, § 599f(b)'s ban on sales offers an "incentiv[e]" to a slaughterhouse to take nonambulatory pigs out of the meat production process. *Id.*, at 46. And California may so "motivate[ ]" an operational choice without running afoul of the FMIA's preemption provision. *Ibid.* (quoting *Bates* v. *Dow Agrosciences LLC*, 544 U. S. 431, 443 (2005)).

But this argument mistakes how the prohibition on sales operates within § 599f as a whole. The sales ban is a criminal proscription calculated to help implement and enforce

each of the section's other regulations—its prohibition of receipt and purchase, its bar on butchering and processing, and its mandate of immediate euthanasia. The idea—and the inevitable effect—of the provision is to make sure that slaughterhouses remove nonambulatory pigs from the production process (or keep them out of the process from the beginning) by criminalizing the sale of their meat. That, we think, is something more than an "incentiv[e]" or "motivat[or]"; the sales ban instead functions as a command to slaughterhouses to structure their operations in the exact way the remainder of § 599f mandates. And indeed, if the sales ban were to avoid the FMIA's preemption clause, then any State could impose any regulation on slaughterhouses just by framing it as a ban on the sale of meat produced in whatever way the State disapproved. That would make a mockery of the FMIA's preemption provision. Cf. *Engine Mfrs. Assn.* v. *South Coast Air Quality Management Dist.*, 541 U. S. 246, 255 (2004) (stating that it "would make no sense" to allow state regulations to escape preemption because they addressed the purchase, rather than manufacture, of a federally regulated product). Like the rest of § 599f, the sales ban regulates how slaughterhouses must deal with nonambulatory pigs on their premises. The FMIA therefore preempts it for all the same reasons.

III

California's and the Humane Society's broadest argument against preemption maintains that all of § 599f's challenged provisions fall outside the "scope" of the FMIA because they exclude a class of animals from the slaughtering process. See 21 U. S. C. § 678 (preempting certain requirements "within the scope of this [Act]"). According to this view, the Act (and the FSIS's authority under it) extends only to "animals that are going to be turned into meat," Tr. of Oral Arg. 28—or to use another phrase, animals that will "be slaughtered . . . for purposes of human food production,"

Brief for State Respondents 19 (emphasis deleted). Section 599f avoids the scope of the Act, respondents claim, by altogether removing nonambulatory pigs from the slaughtering process.[8] The Ninth Circuit accepted this argument, analogizing § 599f to state laws upheld in two other Circuits banning the slaughter of horses for human consumption. 599 F. 3d, at 1098 (discussing *Cavel Int'l, Inc.* v. *Madigan*, 500 F. 3d 551 (CA7 2007), and *Empacadora de Carnes de Fresnillo, S. A. de C. V.* v. *Curry*, 476 F. 3d 326 (CA5 2007)). According to the Court of Appeals, "states are free to decide which animals may be turned into meat." 599 F. 3d, at 1098, 1099.

We think not. The FMIA's scope includes not only "animals that are going to be turned into meat," but animals on a slaughterhouse's premises that will never suffer that fate. The Act's implementing regulations themselves exclude many classes of animals from the slaughtering process. Swine with hog cholera, for example, are disqualified, see 9 CFR § 309.5(a); so too are swine and other livestock "affected with anthrax," § 309.7(a). Indeed, the federal regulations prohibit the slaughter of any nonambulatory *cattle* for human consumption. See § 309.3(e). As these examples demonstrate, one vital function of the Act and its regulations is to ensure that some kinds of livestock delivered to a slaughterhouse's gates will *not* be turned into meat. Under federal law, nonambulatory pigs are not among those ex-

[8] California's brief sometimes casts its argument in terms of the "operations" language of the FMIA's preemption clause (although the State appeared to abandon this phrasing at oral argument). In this version of the claim, California contends that the "operations" of a slaughterhouse are only those "of federal concern," and that excluding a class of animals from the slaughtering process does not impinge on such operations. Brief for State Respondents 20, n. 9; see also *id.*, at 20–21. We see no real difference between saying that a categorical exclusion of animals does not implicate "'operations' of federal concern" and saying that it does not fall within the scope of the Act. Accordingly, our answer to both forms of the argument is the same.

cluded animals. But that is to say only that § 599f's requirements differ from those of the FMIA—not that § 599f's requirements fall outside the FMIA's scope.

Nor are respondents right to suggest that § 599f's exclusion avoids the FMIA's scope because it is designed to ensure the humane treatment of pigs, rather than the safety of meat. See, *e. g.*, Brief for State Respondents 29; Brief for Non-State Respondents 39–40. That view misunderstands the authority—and indeed responsibility—that the FMIA gives to federal officials. Since 1978, when Congress incorporated the HMSA's standards, the FMIA has required slaughterhouses to follow prescribed methods of humane handling, so as to minimize animals' pain and suffering. See 21 U. S. C. §§ 603(b), 610(b); *supra*, at 456–458. A violation of those standards is a crime, see § 676, and the Secretary of Agriculture can suspend inspections at—and thus effectively shut down—a slaughterhouse that disobeys them, see §§ 603(b), 610(c). To implement the Act's humane-handling provisions, the FSIS has issued detailed regulations, see 9 CFR pt. 313, including some specifically addressing animals that cannot walk, see §§ 313.2(d), 313.1(c). Those rules, as earlier noted, apply throughout the time an animal is on a slaughterhouse's premises, from the moment a delivery truck pulls up to the gate. See *supra*, at 456–458. So the FMIA addresses not just food safety, but humane treatment as well. Even California conceded at oral argument that the FSIS could issue regulations under the FMIA, similar to § 599f, mandating the euthanasia of nonambulatory swine.[9] See Tr. of Oral Arg. 46–47. If that is so—and it is, because of the FSIS's authority over humane-handling methods—then § 599f's requirements must fall within the FMIA's scope.

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[9] Indeed, the FSIS recently solicited comment on a rulemaking petition that would require all nonambulatory disabled livestock, including swine, to be humanely euthanized. See 76 Fed. Reg. 6572 (2011). The FSIS has taken no further action on that petition.

The Circuit decisions upholding state bans on slaughtering horses, on which the Ninth Circuit relied, do not demand any different conclusion. We express no view on those decisions, except to say that the laws sustained there differ from § 599f in a significant respect. A ban on butchering horses for human consumption works at a remove from the sites and activities that the FMIA most directly governs. When such a ban is in effect, no horses will be delivered to, inspected at, or handled by a slaughterhouse, because no horses will be ordered for purchase in the first instance. But § 599f does not and cannot work in that way. As earlier noted, many nonambulatory pigs become disabled either in transit to or after arrival at a slaughterhouse. See *supra*, at 460–463, and nn. 5–6. So even with § 599f in effect, a swine slaughterhouse will encounter nonambulatory pigs. In that circumstance, § 599f tells the slaughterhouse what to do with those animals. Unlike a horse slaughtering ban, the statute thus reaches into the slaughterhouse's facilities and affects its daily activities. And in so doing, the California law runs smack into the FMIA's regulations. So whatever might be said of other bans on slaughter, § 599f imposes requirements within—and indeed at the very heart of—the FMIA's scope.[10]

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[10] We finally reject California's argument, see Brief for State Respondents 20, that our reading of the FMIA's preemption provision renders its saving clause insignificant. That clause provides that States may regulate slaughterhouses as to "other matters," not addressed in the express preemption clause, as long as those laws are "consistent with" the FMIA. 21 U. S. C. § 678. So, for example, the Government acknowledges that state laws of general application (workplace safety regulations, building codes, etc.) will usually apply to slaughterhouses. See Tr. of Oral Arg. 22. Moreover, because the FMIA's express preemption provision prevents States from imposing only "addition[al]" or "different" requirements, § 678, States may exact civil or criminal penalties for animal cruelty or other conduct that also violates the FMIA. See § 678; cf. *Bates* v. *Dow Agrosciences LLC*, 544 U. S. 431, 447 (2005) (holding that a preemption clause barring state laws " 'in addition to or different' " from a federal Act does not interfere with an "equivalent" state provision (emphasis de-

IV

The FMIA regulates slaughterhouses' handling and treatment of nonambulatory pigs from the moment of their delivery through the end of the meat production process. California's § 599f endeavors to regulate the same thing, at the same time, in the same place—except by imposing different requirements. The FMIA expressly preempts such a state law. Accordingly, we reverse the judgment of the Ninth Circuit and remand this case for further proceedings consistent with this opinion.

It is so ordered.

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leted)). Although the FMIA preempts much state law involving slaughterhouses, it thus leaves some room for the States to regulate.

Syllabus

RYBURN ET AL. *v.* HUFF ET AL.

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

No. 11–208. Decided January 23, 2012

While investigating a letter threatening a school shooting, Police Sergeant Ryburn and Officer Zepeda, petitioners, sought to question Vincent Huff, the student rumored to have written the letter, who shared certain characteristics with school-shooting perpetrators. After getting no response to their knock at the Huff residence door or calls to the home phone, Sergeant Ryburn reached Mrs. Huff by cell phone and learned that she and Vincent were inside the house. She hung up when he informed her that they were waiting outside to speak with her, but she and Vincent emerged from the house shortly thereafter and stood on the front porch. Mrs. Huff refused Sergeant Ryburn's request to continue the conversation indoors, and when asked if any guns were in the house, she immediately turned and ran inside. Fearing that there might be guns inside, the officers followed her. Finding no imminent danger, they remained for 5 or 10 minutes, questioning Mr. Huff and Vincent. They concluded that the rumor about Vincent was false.

The Huffs, respondents, filed a 42 U. S. C. § 1983 action, alleging that the officers' warrantless entry violated the Fourth Amendment. The District Court held that the officers were entitled to qualified immunity because Mrs. Huff's odd behavior, combined with information the officers gathered at school, could have led reasonable officers to believe that guns might be inside the house and that they, or others, were in danger. The Ninth Circuit reversed.

Held: Petitioners are entitled to qualified immunity. A reasonable officer could have read this Court's cases to mean that the Fourth Amendment permits an officer to enter a residence if the officer has a reasonable basis for concluding that there is an imminent threat of violence. See, *e. g.*, *Brigham City* v. *Stuart*, 547 U. S. 398, 400; *Georgia* v. *Randolph*, 547 U. S. 103, 118. Here, the District Court found that the officers had a reasonable basis for such a conclusion, especially given the "rapidly evolving" situation. The Ninth Circuit's contrary determination had numerous flaws. First, it rested on a factual account that differed markedly from the District Court's findings. Second, it appears to be based on the view that lawful conduct cannot be regarded as a matter of concern even though Mrs. Huff's response to the question about guns in the house could be seen as portending imminent violence. Third, its

conclusion that each isolated event did not give cause for concern ignored the commonsense notion that a combination of mundane events may paint an alarming picture. Fourth, it ignored the admonition that judges should exercise caution when second-guessing an officer's on-the-scene assessment of the danger presented by a particular situation. See, *e. g.*, *Graham* v. *Connor*, 490 U. S. 386, 396–397.

Certiorari granted; 632 F. 3d 539, reversed.

PER CURIAM.

Petitioners Darin Ryburn and Edmundo Zepeda, along with two other officers from the Burbank Police Department, responded to a call from Bellarmine-Jefferson High School in Burbank, California. When the officers arrived at the school, the principal informed them that a student, Vincent Huff, was rumored to have written a letter threatening to "shoot up" the school. App. to Pet. for Cert. 2. The principal reported that many parents, after hearing the rumor, had decided to keep their children at home. *Ibid.* The principal expressed concern for the safety of her students and requested that the officers investigate the threat. *Id.*, at 42, 54–55.

In the course of conducting interviews with the principal and two of Vincent's classmates, the officers learned that Vincent had been absent from school for two days and that he was frequently subjected to bullying. *Id.*, at 2. The officers additionally learned that one of Vincent's classmates believed that Vincent was capable of carrying out the alleged threat. *Id.*, at 44. The officers found Vincent's absences from school and his history of being subjected to bullying as cause for concern. The officers had received training on targeted school violence and were aware that these characteristics are common among perpetrators of school shootings. *Id.*, at 56–58, 63.

The officers decided to continue the investigation by interviewing Vincent. When the officers arrived at Vincent's house, Officer Zepeda knocked on the door and announced several times that the officers were with the Burbank Police

Department. No one answered the door or otherwise responded to Officer Zepeda's knocks. Sergeant Ryburn then called the home telephone. The officers could hear the phone ringing inside the house, but no one answered. *Id.*, at 2.

Sergeant Ryburn next tried calling the cell phone of Vincent's mother, Mrs. Huff. When Mrs. Huff answered the phone, Sergeant Ryburn identified himself and inquired about her location. Mrs. Huff informed Sergeant Ryburn that she was inside the house. Sergeant Ryburn then inquired about Vincent's location, and Mrs. Huff informed him that Vincent was inside with her. Sergeant Ryburn told Mrs. Huff that he and the other officers were outside and requested to speak with her, but Mrs. Huff hung up the phone. *Id.*, at 2–3.

One or two minutes later, Mrs. Huff and Vincent walked out of the house and stood on the front steps. Officer Zepeda advised Vincent that he and the other officers were there to discuss the threats. Vincent, apparently aware of the rumor that was circulating at his school, responded, "I can't believe you're here for that." *Id.*, at 3. Sergeant Ryburn asked Mrs. Huff if they could continue the discussion inside the house, but she refused. *Ibid.* In Sergeant Ryburn's experience as a juvenile bureau sergeant, it was "extremely unusual" for a parent to decline an officer's request to interview a juvenile inside. *Id.*, at 3, 73–74. Sergeant Ryburn also found it odd that Mrs. Huff never asked the officers the reason for their visit. *Id.*, at 73–74.

After Mrs. Huff declined Sergeant Ryburn's request to continue the discussion inside, Sergeant Ryburn asked her if there were any guns in the house. Mrs. Huff responded by "immediately turn[ing] around and r[unning] into the house." *Id.*, at 3. Sergeant Ryburn, who was "scared because [he] didn't know what was in that house" and had "seen too many officers killed," entered the house behind her. *Id.*, at 75. Vincent entered the house behind Sergeant Ryburn, and Of-

ficer Zepeda entered after Vincent. Officer Zepeda was concerned about "officer safety" and did not want Sergeant Ryburn to enter the house alone. *Id.*, at 3. The two remaining officers, who had been standing out of earshot while Sergeant Ryburn and Officer Zepeda talked to Vincent and Mrs. Huff, entered the house last, on the assumption that Mrs. Huff had given Sergeant Ryburn and Officer Zepeda permission to enter. *Id.*, at 3–4.

Upon entering the house, the officers remained in the living room with Mrs. Huff and Vincent. Eventually, Vincent's father entered the room and challenged the officers' authority to be there. The officers remained inside the house for a total of 5 to 10 minutes. During that time, the officers talked to Mr. Huff and Vincent. They did not conduct any search of Mr. Huff, Mrs. Huff, or Vincent, or any of their property. The officers ultimately concluded that the rumor about Vincent was false, and they reported their conclusion to the school. *Id.*, at 4.

The Huffs brought this action against the officers under Rev. Stat. § 1979, 42 U. S. C. § 1983. The complaint alleges that the officers violated the Huffs' Fourth Amendment rights by entering their home without a warrant. Following a 2-day bench trial, the District Court entered judgment in favor of the officers. The District Court resolved conflicting testimony regarding Mrs. Huff's response to Sergeant Ryburn's inquiry about guns by finding that Mrs. Huff "immediately turned around and ran into the house." App. to Pet. for Cert. 3. The District Court concluded that the officers were entitled to qualified immunity because Mrs. Huff's odd behavior, combined with the information the officers gathered at the school, could have led reasonable officers to believe "that there could be weapons inside the house, and that family members or the officers themselves were in danger." *Id.*, at 6. The District Court noted that "[w]ithin a very short period of time, the officers were confronted with facts and circumstances giving rise to grave concern about the

nature of the danger they were confronting." *Id.*, at 6–7. With respect to this kind of "rapidly evolving incident," the District Court explained, courts should be especially reluctant "to fault the police for not obtaining a warrant." *Id.*, at 7.

A divided panel of the Ninth Circuit affirmed the District Court as to the two officers who entered the house on the assumption that Mrs. Huff had consented, but reversed as to petitioners. *Huff* v. *Burbank*, 632 F. 3d 539 (2011). The majority upheld the District Court's findings of fact, but disagreed with the District Court's conclusion that petitioners were entitled to qualified immunity. The majority acknowledged that police officers are allowed to enter a home without a warrant if they reasonably believe that immediate entry is necessary to protect themselves or others from serious harm, even if the officers lack probable cause to believe that a crime has been or is about to be committed. *Id.*, at 547. But the majority determined that, in this case, "any belief that the officers or other family members were in serious, imminent harm would have been objectively unreasonable" given that "[Mrs. Huff] merely asserted her right to end her conversation with the officers and returned to her home." *Ibid.*

Judge Rawlinson dissented. She explained that "the discrete incident that precipitated the entry in this case was Mrs. Huff's response to the question regarding whether there were guns in the house." *Id.*, at 550. She faulted the majority for "recit[ing] a sanitized account of this event" that differed markedly from the District Court's findings of fact, which the majority had conceded must be credited. *Ibid.* Judge Rawlinson looked to "cases that specifically address the scenario where officer safety concerns prompted the entry" and concluded that, under the rationale articulated in those cases, "a police officer could have reasonably believed that he was justified in making a warrantless entry to ensure that no one inside the house had a gun after Mrs. Huff ran

into the house without answering the question of whether anyone had a weapon." *Id.*, at 551, 552–553.

Judge Rawlinson's analysis of the qualified immunity issue was correct. No decision of this Court has found a Fourth Amendment violation on facts even roughly comparable to those present in this case. On the contrary, some of our opinions may be read as pointing in the opposite direction.

In *Brigham City* v. *Stuart*, 547 U. S. 398, 400 (2006), we held that officers may enter a residence without a warrant when they have "an objectively reasonable basis for believing that an occupant is . . . imminently threatened with [serious injury]." We explained that "'[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.'" *Id.*, at 403 (quoting *Mincey* v. *Arizona*, 437 U. S. 385, 392 (1978)). In addition, in *Georgia* v. *Randolph*, 547 U. S. 103, 118 (2006), the Court stated that "it would be silly to suggest that the police would commit a tort by entering [a residence] . . . to determine whether violence . . . is about to (or soon will) occur."

A reasonable police officer could read these decisions to mean that the Fourth Amendment permits an officer to enter a residence if the officer has a reasonable basis for concluding that there is an imminent threat of violence. In this case, the District Court concluded that petitioners had such an objectively reasonable basis for reaching such a conclusion. The District Court wrote:

> "[T]he officers testified that a number of factors led them to be concerned for their own safety and for the safety of other persons in the residence: the unusual behavior of the parents in not answering the door or the telephone; the fact that Mrs. Huff did not inquire about the reason for their visit or express concern that they were investigating her son; the fact that she hung up the telephone on the officer; the fact that she refused to tell them whether there were guns in the house; and

> finally, the fact that she ran back into the house while being questioned. That behavior, combined with the information obtained at the school—that Vincent was a student who was a victim of bullying, who had been absent from school for two days, and who had threatened to 'shoot up' the school—led the officers to believe that there could be weapons inside the house, and that family members or the officers themselves were in danger." App. to Pet. for Cert. 6.

This belief, the District Court held, was "objectively reasonable," particularly since the situation was "rapidly evolving" and the officers had to make quick decisions. *Id.*, at 6–7.

The panel majority—far removed from the scene and with the opportunity to dissect the elements of the situation—confidently concluded that the officers really had no reason to fear for their safety or that of anyone else. As the panel majority saw things, it was irrelevant that the Huffs did not respond when the officers knocked on the door and announced their presence and when they called the home phone because the Huffs had no legal obligation to respond to a knock on the door or to answer the phone. The majority attributed no significance to the fact that, when the officers finally reached Mrs. Huff on her cell phone, she abruptly hung up in the middle of their conversation. And, according to the majority, the officers should not have been concerned by Mrs. Huff's reaction when they asked her if there were any guns in the house because Mrs. Huff "merely asserted her right to end her conversation with the officers and returned to her home." 632 F. 3d, at 547.

Confronted with the facts found by the District Court, reasonable officers in the position of petitioners could have come to the conclusion that there was an imminent threat to their safety and to the safety of others. The Ninth Circuit's contrary conclusion was flawed for numerous reasons.

First, although the panel majority purported to accept the findings of the District Court, it changed those findings in

several key respects. As Judge Rawlinson correctly observed, "the discrete incident that precipitated the entry in this case was Mrs. Huff's response to the question regarding whether there were guns in the house." *Id.*, at 550. The District Court's finding that Mrs. Huff "immediately turned around and ran into the house" implicitly rejected Mrs. Huff's contrary testimony that she walked into the house after telling the officers that she was going to get her husband. App. to Pet. for Cert. 3. The panel majority upheld the District Court's findings of fact and acknowledged that it could not reverse the District Court simply because it "may have weighed the testimony of the witnesses and other evidence in another manner." 632 F. 3d, at 543. But the panel majority's determination that petitioners were not entitled to qualified immunity rested on an account of the facts that differed markedly from the District Court's finding. According to the panel majority, Mrs. Huff "merely asserted her right to end her conversation with the officers and returned to her home" after telling the officers "that she would go get her husband." *Id.*, at 547, 542.

Second, the panel majority appears to have taken the view that conduct cannot be regarded as a matter of concern so long as it is lawful. Accordingly, the panel majority concluded that Mrs. Huff's response to the question whether there were any guns in the house (immediately turning around and running inside) was not a reason for alarm because she was under no legal obligation to continue her conversation with the police. It should go without saying, however, that there are many circumstances in which lawful conduct may portend imminent violence.

Third, the panel majority's method of analyzing the string of events that unfolded at the Huff residence was entirely unrealistic. The majority looked at each separate event in isolation and concluded that each, in itself, did not give cause for concern. But it is a matter of common sense that a com-

bination of events each of which is mundane when viewed in isolation may paint an alarming picture.

Fourth, the panel majority did not heed the District Court's wise admonition that judges should be cautious about second-guessing a police officer's assessment, made on the scene, of the danger presented by a particular situation. With the benefit of hindsight and calm deliberation, the panel majority concluded that it was unreasonable for petitioners to fear that violence was imminent. But we have instructed that reasonableness "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" and that "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving." *Graham* v. *Connor*, 490 U. S. 386, 396–397 (1989). Judged from the proper perspective of a reasonable officer forced to make a split-second decision in response to a rapidly unfolding chain of events that culminated with Mrs. Huff turning and running into the house after refusing to answer a question about guns, petitioners' belief that entry was necessary to avoid injury to themselves or others was eminently reasonable.

In sum, reasonable police officers in petitioners' position could have come to the conclusion that the Fourth Amendment permitted them to enter the Huff residence if there was an objectively reasonable basis for fearing that violence was imminent. And a reasonable officer could have come to such a conclusion based on the facts as found by the District Court.

The petition for certiorari is granted, the judgment of the Ninth Circuit is reversed, and the case is remanded for the entry of judgment in favor of petitioners.

It is so ordered.

Syllabus

KAWASHIMA ET UX. *v.* HOLDER, ATTORNEY GENERAL

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

No. 10–577. Argued November 7, 2011—Decided February 21, 2012

An Immigration Judge ordered the removal of resident aliens Akio and Fusako Kawashima, determining that Mr. Kawashima's conviction for willfully making and subscribing a false tax return, 26 U. S. C. § 7206(1), and Mrs. Kawashima's conviction for aiding and assisting in the preparation of a false tax return, § 7206(2), qualified as crimes involving fraud or deceit under 8 U. S. C. § 1101(a)(43)(M)(i) (Clause (i)) and thus were aggravated felonies for which they could be deported under § 1227(a)(2)(A)(iii). The Board of Immigration Appeals affirmed. Holding that convictions under 26 U. S. C. §§ 7206(1) and (2) in which the Government's revenue loss exceeds $10,000 constitute aggravated felonies under Clause (i), the Ninth Circuit affirmed, but remanded for the Board to determine whether Mrs. Kawashima's conviction had caused a Government loss in excess of $10,000.

Held: Convictions under 26 U. S. C. §§ 7206(1) and (2) in which the Government's revenue loss exceeds $10,000 qualify as aggravated felonies pursuant to Clause (i). Pp. 482–490.

(a) The Kawashimas' argument that they cannot be deported for the commission of an "aggravated felony" because crimes under §§ 7206(1) and (2) do not involve the fraud or deceit required by Clause (i) is rejected. This Court looks to the statute defining the crime of conviction, rather than the specific facts underlying the crime, see *Gonzales* v. *Duenas-Alvarez*, 549 U. S. 183, 186, to determine whether the Kawashimas' offenses involve fraud or deceit within the meaning of Clause (i). Section 7206(1) provides that any person who "[w]illfully makes and subscribes any return . . . which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter," shall be guilty of a felony. Although the words "fraud" and "deceit" are absent from § 7206(1) and are not themselves formal elements of the crime, it does not follow that Mr. Kawashima's offense falls outside Clause (i). Clause (i) is not limited to offenses that include fraud or deceit as formal elements. Rather, it refers more broadly to offenses involving fraud or deceit—meaning offenses with elements that necessarily entail fraudulent or deceitful conduct. Mr. Kawashima's conviction under § 7206(1)

involved deceitful conduct in that he knowingly and willfully submitted a tax return that was false as to a material matter. Mrs. Kawashima was convicted of violating § 7206(2), which declares that any person who "[w]illfully aids or assists in . . . the preparation or presentation . . . of a return . . . which is fraudulent or is false as to any material matter" has committed a felony. She committed a felony involving deceit by knowingly and willfully assisting her husband's filing of a materially false tax return. Pp. 482–485.

(b) The Kawashimas' argument that Clause (i), when considered in light of 8 U. S. C. § 1101(a)(43)(M)(ii) (Clause (ii)), must be interpreted as being inapplicable to tax crimes is also rejected. Clause (i) defines "aggravated felony" to mean an offense that "involves fraud or deceit in which the loss to the victim or victims exceeds $10,000." Clause (ii) defines "aggravated felony" as an offense that is "described in section 7201 of title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds $10,000." Contrary to the Kawashimas' claim, the difference in the clauses' language—"revenue loss to the Government" in Clause (ii) compared to "loss to the victim" in Clause (i)—does not establish Congress' intent to remove tax crimes from the scope of Clause (i). By its plain language, Clause (i) covers a broad class of offenses that involve fraud or deceit, and Congress' decision to tailor Clause (ii)'s language to match the sole type of offense it covers does not demonstrate that Congress intended to implicitly circumscribe Clause (i)'s broad scope. Furthermore, interpreting Clause (i) to include tax crimes does not violate the presumption against superfluities. The specific inclusion of tax evasion in Clause (ii) does not make it redundant to Clause (i) because the inclusion was intended to ensure that tax evasion pursuant to 26 U. S. C. § 7201 was a deportable offense. Pp. 485–488.

(c) The United States Sentencing Guidelines' separate treatment of tax crimes and crimes involving fraud and deceit does not support the Kawashimas' contention that Congress did not intend to include tax crimes within Clause (i). No evidence suggests that Congress considered the Guidelines when drafting 8 U. S. C. § 1101(a)(43)(M). Moreover, the differences between § 1101(a)(43)(M) and the Guidelines undercut any inference that Congress was incorporating the distinction drawn by the Guidelines into § 1101(a)(43)(M). Pp. 488–489.

(d) Construing § 1101(a)(43)(M) in the Kawashimas' favor under the rule of lenity is not warranted in light of the statute's clear application. P. 489.

615 F. 3d 1043, affirmed.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, ALITO, and SOTOMAYOR, JJ., joined. GINSBURG,

J., filed a dissenting opinion, in which BREYER and KAGAN, JJ., joined, *post*, p. 490.

Thomas J. Whalen argued the cause for petitioners. With him on the briefs were *Mark A. Johnston*, *Nicholas T. Moraites*, *Edward O. C. Ord*, and *Jenny Lin-Alva*.

Curtis E. Gannon argued the cause for respondent. With him on the brief were *Solicitor General Verrilli*, *Assistant Attorney General West*, *Deputy Solicitor General Kneedler*, *Donald E. Keener*, and *Bryan S. Beier*.*

JUSTICE THOMAS delivered the opinion of the Court.

This case concerns whether aliens who commit certain federal tax crimes are subject to deportation as aliens who have been convicted of an aggravated felony. We hold that violations of 26 U. S. C. §§ 7206(1) and (2) are crimes "involv[ing] fraud or deceit" under 8 U. S. C. § 1101(a)(43)(M)(i) and are therefore aggravated felonies as that term is defined in the Immigration and Nationality Act, 8 U. S. C. § 1101 *et seq.*, when the loss to the Government exceeds $10,000.

I

Petitioners, Akio and Fusako Kawashima, are natives and citizens of Japan who have been lawful permanent residents of the United States since June 21, 1984. In 1997, Mr. Kawashima pleaded guilty to one count of willfully making and subscribing a false tax return in violation of 26 U. S. C. § 7206(1). Mrs. Kawashima pleaded guilty to one count of aiding and assisting in the preparation of a false tax return in violation of 26 U. S. C. § 7206(2).

Following their convictions, the Immigration and Naturalization Service charged the Kawashimas with being deport-

*Briefs of *amici curiae* urging reversal were filed for the Asian American Justice Center et al. by *Ira J. Kurzban;* for National Immigration and Criminal Defense Organizations by *Sri Srinivasan;* and for Johnnie M. Walters by *Richard W. O'Neill* and *Robert S. Fink*.

able from the United States as aliens who had been convicted of an aggravated felony.[1] See 8 U. S. C. § 1227(a)(2)(A)(iii) ("Any alien who is convicted of an aggravated felony at any time after admission is deportable").[2] In the Immigration and Nationality Act, Congress listed categories of offenses that qualify as "aggravated felonies" for the purpose of deportation. See § 1101(a)(43). Here, the Government charged the Kawashimas with being deportable for committing offenses under subparagraph (M) of § 1101(a)(43). That subparagraph classifies as an aggravated felony an offense that either: "(i) involves fraud or deceit in which the loss to the victim or victims exceeds $10,000; or (ii) is described in section 7201 of title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds $10,000." Hereinafter, we refer to § 1101(a)(43)(M)(i) as "Clause (i)" and to § 1101(a)(43)(M)(ii) as "Clause (ii)."

At their deportation hearing, the Kawashimas argued that their convictions under 26 U. S. C. § 7206 did not qualify as aggravated felonies under subparagraph (M). The Immigration Judge disagreed and ordered removal, concluding that the Kawashimas' convictions qualified as aggravated felonies under Clause (i). The Kawashimas appealed the removal order to the Board of Immigration Appeals (Board), which affirmed the Immigration Judge's decision. After unsuccessfully petitioning the Board to reopen its decision, the Kawashimas filed petitions for review of the Board's decision in the United States Court of Appeals for the Ninth Circuit.

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[1] On March 1, 2003, most of the functions of the Immigration and Naturalization Service were transferred to the Bureau of Immigration and Customs Enforcement, and the Immigration and Naturalization Service ceased to exist.

[2] Before 1996, there were two procedures for removing aliens from the country: "deportation" of aliens who were already present, and "exclusion" of aliens seeking entry or reentry into the country. Since 1996, the Government has used a unified procedure, known as "removal," for both exclusion and deportation. See 8 U. S. C. §§ 1229, 1229a. We use the terms "deportation" and "removal" interchangeably in this opinion.

The Ninth Circuit held that "convictions for violating §§ 7206(1) and (2) in which the tax loss to the government exceeds $10,000 constitute aggravated felonies under subsection (M)(i)." 615 F. 3d 1043, 1053 (2010). The court concluded that Mr. Kawashima's conviction under § 7206(1) qualified as an aggravated felony within Clause (i)'s definition "because it involved 'fraud or deceit' and because his offense resulted in a loss to the government in excess of $10,000." *Id.*, at 1055. The Ninth Circuit also determined that Mrs. Kawashima's conviction under § 7206(2) "necessarily 'involve[d] fraud or deceit.'" *Id.*, at 1055. But because Mrs. Kawashima's plea agreement was not in the administrative record, the Ninth Circuit remanded to the Board to determine whether Mrs. Kawashima's conviction had caused a loss to the Government in excess of $10,000. *Id.*, at 1056–1057.

We granted the Kawashimas' petition for a writ of certiorari to determine whether their convictions for violations of 26 U. S. C. §§ 7206(1) and (2) respectively qualify as aggravated felonies under Clause (i). 563 U. S. 1007 (2011). We now affirm.

II

The Kawashimas argue that they cannot be deported for commission of an "aggravated felony" because crimes under §§ 7206(1) and (2) do not "involv[e] fraud or deceit" as required by Clause (i). The Kawashimas also assert that their convictions under § 7206 are not "aggravated felonies" because tax crimes are not included within Clause (i) at all. We address each argument in turn.

A

The Kawashimas contend that their offenses of conviction do not fall within the scope of Clause (i) because neither "fraud" nor "deceit" is a formal element of a conviction under § 7206(1) or § 7206(2). The Government responds that the Kawashimas' convictions necessarily involved deceit because

they required a showing that the Kawashimas willfully made materially false statements. To determine whether the Kawashimas' offenses "involv[e] fraud or deceit" within the meaning of Clause (i), we employ a categorical approach by looking to the statute defining the crime of conviction, rather than to the specific facts underlying the crime. See *Gonzales* v. *Duenas-Alvarez*, 549 U. S. 183, 186 (2007) (applying the approach set forth in *Taylor* v. *United States*, 495 U. S. 575, 599–600 (1990)). If the elements of the offenses establish that the Kawashimas committed crimes involving fraud or deceit, then the first requirement of Clause (i) is satisfied.[3]

Mr. Kawashima was convicted of violating 26 U. S. C. § 7206(1), which provides that any person who "[w]illfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter," shall be guilty of a felony. Mr. Kawashima does not dispute that the elements of a violation of § 7206(1) include, *inter alia*, that the document in question was false as to a material matter, that the defendant did not believe the document to be true and correct as to every material matter, and that he acted willfully with the specific intent to violate the law. See, *e. g.*, *United States* v. *Aramony*, 88 F. 3d 1369, 1382 (CA4 1996); *United States* v. *Kaiser*, 893 F. 2d 1300, 1305 (CA11 1990); *United States* v. *Marabelles*, 724 F. 2d 1374, 1380 (CA9 1984); *United States* v. *Whyte*, 699 F. 2d 375, 381 (CA7 1983). Although the words "fraud" and "deceit" are absent from the text of § 7206(1) and are not themselves formal elements of the crime, it does not follow that his offense falls outside of Clause (i). The scope of that clause is

[3] We note that the issue whether the Kawashimas' offenses satisfy the second requirement of Clause (i)—that the loss to the victim exceeded $10,000—is not before us. We address only whether their offenses of conviction qualify as crimes "involv[ing] fraud or deceit."

not limited to offenses that include fraud or deceit as formal elements. Rather, Clause (i) refers more broadly to offenses that "involv[e]" fraud or deceit—meaning offenses with elements that necessarily entail fraudulent or deceitful conduct.

When subparagraph (M) was enacted, the term "deceit" meant "the act or practice of deceiving (as by falsification, concealment, or cheating)." Webster's Third New International Dictionary 584 (1993). Mr. Kawashima's conviction under § 7206(1) establishes that he knowingly and willfully submitted a tax return that was false as to a material matter. He therefore committed a felony that involved "deceit."

Turning to Mrs. Kawashima, our analysis follows a similar path. Mrs. Kawashima was convicted of violating 26 U. S. C. § 7206(2), which declares that any person who "[w]illfully aids or assists in . . . the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter," has committed a felony. Mrs. Kawashima does not dispute that the elements of a violation of § 7206(2) include, *inter alia*, that the document in question was false as to a material matter and that the defendant acted willfully. See *Aramony*, *supra*, at 1382; *United States* v. *Sassak*, 881 F. 2d 276, 278 (CA6 1989); *United States* v. *Hooks*, 848 F. 2d 785, 788–789 (CA7 1988); *United States* v. *Dahlstrom*, 713 F. 2d 1423, 1426–1427 (CA9 1983). We conclude that Mrs. Kawashima's conviction establishes that, by knowingly and willfully assisting her husband's filing of a materially false tax return, Mrs. Kawashima also committed a felony that involved "deceit."

The language of Clause (i) is clear. Anyone who is convicted of an offense that "involves fraud or deceit in which the loss to the victim or victims exceeds $10,000" has committed an aggravated felony and is subject to deportation pursuant to 8 U. S. C. § 1227(a)(2)(A)(iii). The elements of willfully making and subscribing a false corporate tax re-

turn, in violation of 26 U. S. C. § 7206(1), and of aiding and assisting in the preparation of a false tax return, in violation of 26 U. S. C. § 7206(2), establish that those crimes are deportable offenses because they necessarily entail deceit.

B

The Kawashimas' second argument is based on inferences drawn from the interaction of Clause (i) and Clause (ii). The full text of subparagraph (M) reads as follows:

> "(43) The term 'aggravated felony' means—
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> . . . . .
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> "(M) an offense that—
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> "(i) involves fraud or deceit in which the loss to the victim or victims exceeds $10,000; or
>
> "(ii) is described in section 7201 of title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds $10,000."

The Kawashimas argue that when Clause (i) is read together with Clause (ii), Clause (i) must be interpreted as being inapplicable to tax crimes. In their view, subparagraph (M), when considered in its entirety, demonstrates that Congress was addressing two mutually exclusive categories of crimes in subparagraph (M)'s two clauses: general, nontax crimes involving fraud or deceit that cause actual losses to real victims in Clause (i), and tax crimes involving revenue losses to the Government in Clause (ii). For the reasons discussed below, this argument cannot overcome the plain language of Clause (i), which encompasses the Kawashimas' offenses of conviction.

1

The Kawashimas contend that textual differences between Clauses (i) and (ii) indicate that Congress intended to exclude tax crimes from Clause (i). Specifically, they note that Clause (i) addresses "loss to the victim," whereas Clause (ii) addresses "revenue loss to the Government."

This difference in language does not establish Congress' intent to remove tax crimes from the scope of Clause (i). Clause (i) covers a broad class of offenses that involve fraud or deceit. Clause (i) thus uses correspondingly broad language to refer to the wide range of potential losses and victims. Clause (ii), on the other hand, is limited to the single type of offense "described in section 7201 of title 26 (relating to tax evasion)," which, by definition, can only cause one type of loss (revenue loss) to one type of victim (the Government). Congress' decision to tailor Clause (ii)'s language to match the sole type of offense covered by Clause (ii) does not demonstrate that Congress also intended to implicitly circumscribe the broad scope of Clause (i)'s plain language.

2

Next, the Kawashimas argue that interpreting Clause (i) to include tax crimes violates the presumption against superfluities by rendering Clause (ii) completely redundant to Clause (i). Clause (ii) explicitly states that convictions for tax evasion pursuant to 26 U. S. C. § 7201 that cause a revenue loss of at least $10,000 to the Government are aggravated felonies. The Kawashimas assert that, if Clause (i) applies to tax crimes, then qualifying convictions for tax evasion under Clause (ii) would also qualify as aggravated felonies under Clause (i), because tax evasion is a crime involving fraud or deceit. To buttress this argument, the Kawashimas point to a body of law providing that a conviction for tax evasion under § 7201 collaterally estops the convicted taxpayer from contesting a civil penalty under 26 U. S. C. § 6663(b) for "underpayment . . . attributable to fraud." See, *e. g.*, *Gray* v. *Commissioner*, 708 F. 2d 243, 246 (CA6 1983) ("Numerous federal courts have held that a conviction for federal income tax evasion, either upon a plea of guilty, or upon a jury verdict of guilt, conclusively establishes fraud in a subsequent civil tax fraud proceeding through application of the doctrine of collateral estoppel"). Therefore, according

to the Kawashimas, if Clause (i) covers tax offenses, then Clause (ii) is mere surplusage.

We disagree with the Kawashimas' contention that the specific mention of one type of tax crime in Clause (ii) impliedly limits the scope of Clause (i)'s plain language, which extends to any offense that "involves fraud or deceit." We think it more likely that Congress specifically included tax evasion offenses under 26 U. S. C. § 7201 in Clause (ii) to remove any doubt that tax evasion qualifies as an aggravated felony.

Several considerations support this conclusion. Like §§ 7206(1) and (2), § 7201 does not, on its face, mention fraud or deceit. Instead, § 7201 simply provides that "[a]ny person who willfully attempts in any manner to evade or defeat any tax imposed by [the Internal Revenue Code] or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony." Accordingly, neither fraud nor deceit is among the elements of a conviction under § 7201, which include: (1) willfulness; (2) the existence of a tax deficiency; and (3) an affirmative act constituting an evasion or an attempted evasion of the tax. *Boulware* v. *United States*, 552 U. S. 421, 424, n. 2 (2008). A conviction under § 7201, therefore, only qualifies as an aggravated felony under Clause (i) if a willful, affirmative attempt to evade a tax necessarily entails fraud or deceit.

This Court's decision in *United States* v. *Scharton*, 285 U. S. 518 (1932), gave Congress good reason to doubt that a conviction under § 7201 satisfies that condition. In *Scharton*, the defendant was indicted for attempting to evade income taxes by falsely understating his taxable income. The question before the Court was whether the crime was subject to the 3-year statute of limitations generally applicable to tax crimes, or whether it was instead subject to the 6-year statute of limitations applicable to "'offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not,

and in any manner.'" *Id.*, at 520, n. 2 (quoting 18 U. S. C. § 585 (1926 ed., Supp. V)). The Government argued that the 6-year statute of limitations applied because "fraud is implicit in the concept of evading or defeating" and because any effort to evade a tax is tantamount to an attempt to defraud the taxing body. 285 U. S., at 520–521. The Court rejected that argument, noting that, in an indictment for evasion, "an averment [of intent to defraud] would be surplusage, for it would be sufficient to plead and prove a willful attempt to evade or defeat." *Id.*, at 521.

Moreover, § 7201 includes two offenses: "the offense of willfully attempting to evade or defeat the *assessment* of a tax as well as the offense of willfully attempting to evade or defeat the *payment* of a tax." *Sansone* v. *United States*, 380 U. S. 343, 354 (1965) (emphasis in original). As the Government notes, it is possible to willfully evade or defeat payment of a tax under § 7201 without making any misrepresentation. For example, § 7201 can be violated by a taxpayer who files a truthful tax return, but who also takes affirmative steps to evade payment by moving his assets beyond the reach of the Internal Revenue Service. Although the Government concedes that evasion-of-payment cases will almost invariably involve some affirmative acts of fraud or deceit, it is still true that the elements of tax evasion pursuant to § 7201 do not *necessarily* involve fraud or deceit. Thus, we conclude that the specific inclusion of tax evasion in Clause (ii) was intended to ensure that tax evasion pursuant to § 7201 was a deportable offense. Clause (ii) does not implicitly remove all other tax offenses from the scope of Clause (i)'s plain language.

3

The Kawashimas also assert that the separate treatment of tax crimes and crimes involving fraud and deceit in the United States Sentencing Guidelines (USSG) supports their contention that Congress did not intend to include tax crimes within Clause (i). They point to the fact that, in 1987, the

United States Sentencing Commission included within the Guidelines a category of "offenses involving fraud or deceit." USSG §§ 2F1.1 to 2F1.2 (deleted effective Nov. 1, 2001). The Commission simultaneously included "offenses involving taxation" as a separate category. § 2T1.1 *et seq.* (Nov. 2011). Although the Kawashimas acknowledge that they have found no evidence that Congress actually considered the Guidelines, they contend that "it is likely that the language of [Clause (i)] and [Clause (ii)] was taken from the Sentencing Guidelines" by the sponsors of the bill that expanded the definition of aggravated felony to include subparagraph (M). Brief for Petitioners 29. Therefore, the theory goes, we can infer from the similar language in the Guidelines that Congress did not intend Clause (i) to include tax crimes.

We reject the Kawashimas' reliance on the Guidelines. The Kawashimas' argument is at odds with the fact that, unlike the Guideline that the Kawashimas cite, Clause (ii) does not refer to all offenses "involving taxation." Rather, Clause (ii) is expressly limited to tax evasion offenses under § 7201. That textual difference undercuts any inference that Congress was considering, much less incorporating, the distinction drawn by the Guidelines.

C

Finally, the Kawashimas argue that subparagraph (M)'s treatment of tax crimes other than tax evasion is ambiguous, and that we should therefore construe the statute in their favor. It is true that we have, in the past, construed ambiguities in deportation statutes in the alien's favor. See *INS* v. *St. Cyr*, 533 U. S. 289, 320 (2001). We think the application of the present statute clear enough that resort to the rule of lenity is not warranted.

* * *

For the foregoing reasons, we conclude that convictions under 26 U. S. C. §§ 7206(1) and (2) in which the revenue loss

to the Government exceeds $10,000 qualify as aggravated felonies pursuant to 8 U. S. C. § 1101(a)(43)(M)(i). Because the Kawashimas are subject to deportation as aliens who have been convicted of aggravated felonies pursuant to 8 U. S. C. § 1227(a)(2)(A)(iii), the judgment of the Court of Appeals is affirmed.

It is so ordered.

JUSTICE GINSBURG, with whom JUSTICE BREYER and JUSTICE KAGAN join, dissenting.

Petitioner Akio Kawashima was convicted of preparing a false corporate tax return in violation of 26 U. S. C. § 7206(1). His wife, petitioner Fusako Kawashima, was convicted under § 7206(2) of assisting her husband in preparing the false return. The question presented is whether a conviction under § 7206 is an "aggravated felony" that renders the Kawashimas deportable from the United States. See 8 U. S. C. § 1227(a)(2)(A)(iii).

Congress has defined "aggravated felony" to include, *inter alia*, offenses that "(i) involv[e] fraud or deceit in which the loss to the victim or victims exceeds $10,000" or "(ii) [are] described in section 7201 of title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds $10,000." § 1101(a)(43)(M). The Kawashimas argue that tax offenses triggering deportation are delineated exclusively in § 1101(a)(43)(M)(ii) (or Clause (ii)), and that § 1101(a)(43)(M)(i) (or Clause (i)) does not encompass tax crimes. The Court rejects this argument, and holds that any tax offense "involv[ing] fraud or deceit," if the loss to the fisc exceeds $10,000, ranks as an "aggravated felony." See *ante*, at 489 and this page. Because the Kawashimas' tax offense involved deceit and meets the monetary threshold, the Court concludes, they have committed an aggravated felony and are therefore deportable.

The Court's construction of the statute is dubious, as I see it. For one thing, it effectively renders Clause (ii) su-

perfluous. Further, the Court's reading sweeps a wide variety of federal, state, and local tax offenses—including misdemeanors—into the "aggravated felony" category. In addition, today's decision may discourage aliens from pleading guilty to tax offenses less grave than tax evasion, thereby complicating and delaying enforcement of the internal revenue laws. I conclude that Clause (i) does not address tax offenses, and would therefore hold that making a false statement on a tax return in violation of § 7206 is not an "aggravated felony."

I

Any alien convicted of an "aggravated felony" after admission to the United States is deportable. 8 U. S. C. § 1227(a)(2)(A)(iii). Subparagraph (M) of § 1101(a)(43) includes as an "aggravated felony":

> "an offense that—
>
> "(i) involves fraud or deceit in which the loss to the victim or victims exceeds $10,000; or
>
> "(ii) is described in section 7201 of title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds $10,000."

Notably, Clause (i) speaks of "loss to the victim," Clause (ii) of "revenue loss to the Government." The Kawashimas contend that Clause (i) covers crimes of fraud or deceit causing losses unrelated to tax revenue. Tax crimes, they argue, are addressed exclusively in Clause (ii), and that clause designates only tax evasion proscribed by 26 U. S. C. § 7201 as an "aggravated felony." Willfully submitting a false statement proscribed by § 7206, the Kawashimas maintain, is not an "aggravated felony" that would render them deportable under 8 U. S. C. § 1227(a)(2)(A)(iii).

The Government contends that Clause (i) covers all tax offenses involving fraud or deceit, and that Congress included Clause (ii) out of caution, to make certain that persons convicted of tax evasion would be subject to deportation.

Under the Government's construction, because the crime of making a false statement on a tax return involves "fraud" or "deceit," the Kawashimas committed an aggravated felony. See *ante*, at 483, 484 ("the words 'fraud' and 'deceit' are absent from the text of § 7206(1) and are not themselves formal elements of the crime," nonetheless, "[the] elements [of a § 7206 crime] necessarily entail fraudulent or deceitful conduct").

The Court's task is to determine which reading of the statute is correct. If the two proffered constructions of subparagraph (M) are plausible in roughly equal measure, then our precedent directs us to construe the statute in the Kawashimas' favor. See *Fong Haw Tan* v. *Phelan*, 333 U. S. 6, 10 (1948) ("We resolve the doubts in favor of [the alien] because deportation is a drastic measure . . . ."); *INS* v. *St. Cyr*, 533 U. S. 289, 320 (2001) (same).

II

A

In interpreting 8 U. S. C. § 1101(a)(43)(M), I would rely upon the familiar canon that statutes should be interpreted to avoid superfluity. See *Corley* v. *United States*, 556 U. S. 303, 314 (2009) ("[O]ne of the most basic interpretive canons" is that a "'statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . . .'" (quoting *Hibbs* v. *Winn*, 542 U. S. 88, 101 (2004))). If Clause (i) is construed to apply to tax crimes, then Clause (ii)'s discrete inclusion of tax evasion would add nothing, for tax evasion is itself an offense that, in all actual instances of which the Government is aware, "involves fraud or deceit." See § 1101(a)(43)(M)(i); Tr. of Oral Arg. 30–31.

The elements of tax evasion are the existence of a tax deficiency, willfulness, and "an affirmative act constituting an evasion or attempted evasion of the tax." *Sansone* v. *United States*, 380 U. S. 343, 351 (1965). As this Court's de-

cisions indicate, the evasion of taxes involves deceit or fraud upon the Government, achieved by concealing a tax liability or misleading the Government as to the extent of the liability. See, *e. g.*, *Spies* v. *United States*, 317 U. S. 492, 499 (1943) (an act of tax evasion may be "any conduct, the likely effect of which would be to mislead or to conceal"). Accordingly, courts have determined that tax evasion is a crime of moral turpitude, because it necessarily involves fraud. See, *e. g.*, *Carty* v. *Ashcroft*, 395 F. 3d 1081, 1085, n. 7 (CA9 2005) (fraud is "implicit in the nature of the crime" of tax evasion); *Considine* v. *United States*, 683 F. 2d 1285, 1287 (CA9 1982) ("The express language of section 7201 requires an intent to avoid tax (a legitimate synonym for fraud)."); *Costello* v. *INS*, 311 F. 2d 343, 348 (CA2 1962) ("There can be no 'wilful' [tax] evasion without a specific intent to defraud."), rev'd on other grounds, 376 U. S. 120 (1964).

Even more to the point, courts have held that a conviction for tax evasion under 26 U. S. C. § 7201 "conclusively establishes fraud in a subsequent civil tax fraud proceeding." *Gray* v. *Commissioner*, 708 F. 2d 243, 246 (CA6 1983); see *Klein* v. *Commissioner*, 880 F. 2d 260, 262 (CA10 1989) (conviction under § 7201 "collaterally estops a taxpayer from denying fraud [in a] civil tax case involving the same years").[1] This preclusive effect obtains, courts have explained, because "'willful' [tax evasion] includes all the elements of 'fraud.'" *Tomlinson* v. *Lefkowitz*, 334 F. 2d 262, 265 (CA5 1964); see *Gray*, 708 F. 2d, at 246 ("The elements of criminal tax evasion and civil tax fraud are identical."); *Moore* v. *United States*, 360 F. 2d 353, 356 (CA4 1965) ("[W]hile the criminal evasion statute does not explicitly require a finding of fraud, the case-by-case process of construction of the civil [fraud] and criminal tax provisions has demonstrated that their constituent elements are identical.").

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[1] See also, *e. g.*, *Blohm* v. *Commissioner*, 994 F. 2d 1542, 1554 (CA11 1993); *Fontneau* v. *United States*, 654 F. 2d 8, 10 (CA1 1981) *(per curiam)*; *Plunkett* v. *Commissioner*, 465 F. 2d 299, 307 (CA7 1972).

Tax offenses span a wide range, from failure to file a tax return, 26 U. S. C. § 7203, to the unauthorized use of tax stamps, § 7209. But "the gravest of offenses against the revenues," this Court has said, the "capstone" of tax law violations, is tax evasion. *Spies*, 317 U. S., at 497, 499; see *Boulware* v. *United States*, 552 U. S. 421, 424 (2008). Tellingly, the Kawashimas pleaded guilty to a crime carrying a maximum prison term of three years, § 7206; for tax evasion, the maximum term is five years, § 7201. It is thus understandable that Congress would single out tax evasion, as it did in Clause (ii), specifically designating it, and no other tax crime, an "aggravated felony" for deportation purposes.

The Court ascribes a different purpose to Clause (ii). Tax evasion, made criminal by § 7201, the Court states, "almost invariably," but "not *necessarily*[,] involve[s] fraud or deceit." *Ante*, at 488. But see *supra*, at 492–493. Congress likely included Clause (ii), the Court suggests, simply "to remove any doubt that tax evasion qualifies as an aggravated felony." *Ante*, at 487. In other words, in holding that Clause (i) includes tax offenses, the Court finds Clause (ii) largely, but not totally, redundant.

In support of the notion that tax evasion can occur without fraud or deceit, the Court cites *United States* v. *Scharton*, 285 U. S. 518 (1932); see *ante*, at 487–488. In that long-obsolete case, the Court rejected the Government's plea for the application of an extended limitation period to a prosecution for tax evasion. The generally applicable statute of limitations was three years; for tax offenses that involve defrauding the United States, however, the limitation period was six years. An averment of intent to defraud, the Court said in *Scharton*, would be "surplusage," for it would suffice "to plead and prove a wilful attempt to evade or defeat." 285 U. S., at 521.

Courts had limited *Scharton* to its statute of limitations context several decades before Congress enacted § 1101(a)(43)(M) in 1994. See *Tseung Chu* v. *Cornell*, 247 F. 2d 929, 936, n. 6 (CA9 1957) (distinguishing *Scharton* and holding

that tax evasion is a crime of moral turpitude because it entails fraud); *Lefkowitz*, 334 F. 2d, at 265 (distinguishing *Scharton* and holding that tax evasion necessarily involves fraud). Moreover, Congress, since 1954, has expressly prescribed a six-year limitation period for tax evasion. See 26 U. S. C. § 6531(2). In short, *Scharton* is a cryptic, thinly reasoned opinion, one that did not influence subsequent federal-court description of the crime of tax evasion. The suggestion that Congress may have worried about *Scharton* when framing legislation over 60 years later is hardly credible.

The Court presents another reason, drawn from the Government's brief, why Congress may have treated tax evasion discretely, while embracing tax crimes generally within the Clause (i) category. Section 7201 covers both evasion of assessment and evasion of payment. Imagine a taxpayer who files a truthful return, then moves her assets to a place "beyond the reach of the Internal Revenue Service." *Ante*, at 488; see Brief for Respondent 34. The Court acknowledges that evasion-of-payment cases almost always "involve some affirmative acts of fraud or deceit." *Ante*, at 488. Still, there may be a rare case in which that is not so. Rare, indeed; imaginary would be an apt characterization. The Government conceded that, to its knowledge, there have been no actual instances of indictments for tax evasion unaccompanied by any act of fraud or deceit. Tr. of Oral Arg. 30–31.

The canon that statutes should be interpreted to avoid superfluity cannot be skirted as easily as the Government here urges. We have declined to interpret legislation in a way that "would in practical effect render [a provision] entirely superfluous in all but the most unusual circumstances." *TRW Inc.* v. *Andrews*, 534 U. S. 19, 29 (2001). It is hardly sufficient for the Government to hypothesize a case in which the provision might have some independent role. See *id.*, at 30. Where, as here, "the Government concede[s] that the independent function one could attribute to the [provision]

would [rarely] arise," a construction moored to a case "most unlikely" to exist should be rejected. *Id.*, at 31. It is highly improbable that "a proviso accounting for more than half of [the] text" of § 1101(a)(43)(M), *i. e.*, Clause (ii), "would lie dormant in all but the most unlikely situations." See 534 U. S., at 31.

Congress' aim in drafting § 1101(a)(43) was to determine which crimes are sufficiently serious to warrant the "drastic measure" of deportation, and which are not. See *Fong Haw Tan*, 333 U. S., at 10. It is implausible that Congress, when drafting § 1101(a)(43)(M), intended to address, or was even aware of, the Government's scenario: a taxpayer who files a truthful return, then, to thwart collection of the tax due, moves all her assets offshore. Far more likely, Congress did not intend to include tax offenses in § 1101(a)(43)(M)(i), but instead drafted that provision to address fraudulent schemes against private victims, then added § 1101(a)(43)(M)(ii) so that the "capstone" tax offense against the Government also qualified as an aggravated felony. See *supra*, at 494.

B

The Court's construction of the statute is even less plausible given the numerous offenses it would rank as "aggravated felon[ies]." Many federal tax offenses, like 26 U. S. C. § 7206, involve false statements or misleading conduct. See, *e. g.*, § 7202 (failing to truthfully account for and pay taxes owed). Conviction of any of these offenses, if the Court's construction were correct, would render an alien deportable. So would conviction of state and local tax offenses involving false statements. *Ferreira* v. *Ashcroft*, 390 F. 3d 1091, 1096–1097 (CA9 2004) (state-law offenses qualify as offenses involving fraud or deceit under 8 U. S. C. § 1101(a)(43)(M)); see, *e. g.*, Del. Code Ann., Tit. 30, § 574 (2009) (submitting a tax return false as to any material matter is a criminal offense); D. C. Code § 47–4106 (2001–2005) (same); Ala. Code § 40–29–114 (2003) (same); Va. Code Ann. § 58.1–1815 (Lexis 2009)

(willfully failing to account truthfully for and pay certain taxes is a criminal offense).

Rendering all tax offenses involving false statements "aggravated felon[ies]" that subject an alien to deportation is all the more problematic, for many of these offenses are misdemeanors. Among federal misdemeanors, see, *e. g.*, 26 U. S. C. § 7204 ("furnish[ing] a false" W–2 form to an employee); § 7205 ("suppl[ying] false or fraudulent information" to an employer); § 7207 (filing a return "known . . . to be false as to any material matter"). On the state and local level, see, *e. g.*, Cal. Rev. & Tax. Code Ann. § 1610.4 (West 1998) ("Every person who wilfully states anything which he knows to be false in any oral or written statement, not under oath, required or authorized to be made as the basis of an application to reduce any tax or assessment, is guilty of a misdemeanor."); N. D. Cent. Code Ann. § 57–37.1–16 (Lexis 2011) ("Every person who willfully and knowingly subscribes or makes any false statement of facts [on an estate tax return] . . . is guilty of a class A misdemeanor."); Columbus, Ohio City Code §§ 361.31(a)(4), (b), (d) (2009) (any person who "[k]nowingly make[s] and file[s] an incomplete, false or fraudulent [municipal] return" is guilty of a fourth-degree misdemeanor). Nor would the $10,000 threshold set in 8 U. S. C. § 1101(a)(43)(M) prevent deportation for tax crimes far less serious than willful tax evasion, for as many as six years may be included in the amount-of-loss calculation. See 26 U. S. C. § 6531 (setting a six-year statute of limitations for, *inter alia*, tax crimes involving fraud or falsity); Brief for Johnnie M. Walters as *Amicus Curiae* 15–16 (hereinafter Walters Brief).[2]

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[2] One might also ask what reason Congress would have for making a tax misdemeanor a deportable offense, while more serious crimes do not jeopardize an alien's residency in the United States. See, *e. g.*, *Leocal* v. *Ashcroft*, 543 U. S. 1, 11–12 (2004) (driving while drunk, causing serious bodily injury to others is not an aggravated felony).

Finally, the Court's decision has adverse consequences for the efficient handling of tax prosecutions. It is often easier for the Government to obtain a conviction under § 7206 (false statements) than under § 7201 (tax evasion). See *United States* v. *Olgin*, 745 F. 2d 263, 272 (CA3 1984) (unlike a conviction under § 7201, a conviction under § 7206 does not require proof of a tax deficiency); *Considine*, 683 F. 2d, at 1287 (unlike a conviction under § 7201, a conviction under § 7206 does not require proof of an attempt to escape a tax). For this reason, the Government has allowed taxpayers to plead guilty to a § 7206 charge in lieu of going to trial under § 7201 on an evasion charge. See Walters Brief 19–20. Deportation consequences are important to aliens facing criminal charges. See *Padilla* v. *Kentucky*, 559 U. S. 356, 373 (2010) ("[P]reserving the client's right to remain in the United States may be more important to the client than any potential jail sentence." (quoting *St. Cyr*, 533 U. S., at 322)). If a § 7206 charge carries the same prospect of deportation as a § 7201 charge, then an alien's incentive to plead guilty to any tax offense is significantly reduced.

* * *

For the reasons stated, I would hold that making a material, false statement on a tax return does not qualify as an aggravated felony within the compass of 8 U. S. C. § 1101(a)(43)(M)(i). I would therefore reverse the judgment of the Court of Appeals for the Ninth Circuit.

Syllabus

HOWES, WARDEN *v.* FIELDS

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

No. 10–680. Argued October 4, 2011—Decided February 21, 2012

Respondent Fields, a Michigan state prisoner, was escorted from his prison cell by a corrections officer to a conference room where he was questioned by two sheriff's deputies about criminal activity he had allegedly engaged in before coming to prison. At no time was Fields given *Miranda* warnings or advised that he did not have to speak with the deputies. As relevant here: Fields was questioned for between five and seven hours; Fields was told more than once that he was free to leave and return to his cell; the deputies were armed, but Fields remained free of restraints; the conference room door was sometimes open and sometimes shut; several times during the interview Fields stated that he no longer wanted to talk to the deputies, but he did not ask to go back to his cell; after Fields confessed and the interview concluded, he had to wait an additional 20 minutes for an escort and returned to his cell well after the hour when he generally retired.

The trial court denied Fields' motion to suppress his confession under *Miranda* v. *Arizona*, 384 U. S. 436, and he was convicted. The Michigan Court of Appeals affirmed, rejecting Fields' contention that his statements should have been suppressed because he was subjected to custodial interrogation without a *Miranda* warning. The United States District Court for the Eastern District of Michigan subsequently granted Fields habeas relief under 28 U. S. C. § 2254(d)(1). Affirming, the Sixth Circuit held that the interview was a custodial interrogation within the meaning of *Miranda*, reasoning that *Mathis* v. *United States*, 391 U. S. 1, "clearly established," § 2254(d)(1), that isolation from the general prison population, combined with questioning about conduct occurring outside the prison, makes any such interrogation custodial *per se*.

Held:

1. This Court's precedents do not clearly establish the categorical rule on which the Sixth Circuit relied. The Court has repeatedly declined to adopt any such rule. See, *e. g.*, *Illinois* v. *Perkins*, 496 U. S. 292. The Sixth Circuit misread *Mathis*, which simply held, as relevant here, that a prisoner who otherwise meets the requirements for *Miranda* custody is not taken outside the scope of *Miranda* because he was incarcerated for an unconnected offense. It did not hold that imprisonment alone constitutes *Miranda* custody. Nor does the statement in *Mary-*

land v. *Shatzer*, 559 U. S. 98, 112, that "[n]o one questions that [inmate] Shatzer was in custody for *Miranda* purposes" support a *per se* rule. It means only that the issue of custody was not contested in that case. Finally, contrary to respondent's suggestion, *Miranda* itself did not hold that the inherently compelling pressures of custodial interrogation are always present when a prisoner is taken aside and questioned about events outside the prison walls. Pp. 505–508.

2. The Sixth Circuit's categorical rule—that imprisonment, questioning in private, and questioning about events in the outside world create a custodial situation for *Miranda* purposes—is simply wrong. Pp. 508–514.

(a) The initial step in determining whether a person is in *Miranda* custody is to ascertain, given "all of the circumstances surrounding the interrogation," how a suspect would have gauged his freedom of movement. *Stansbury* v. *California*, 511 U. S. 318, 322, 325. However, not all restraints on freedom of movement amount to *Miranda* custody. See, *e. g.*, *Berkemer* v. *McCarty*, 468 U. S. 420, 423. *Shatzer*, distinguishing between restraints on freedom of movement and *Miranda* custody, held that a break in *Miranda* custody between a suspect's invocation of the right to counsel and the initiation of subsequent questioning may occur while a suspect is serving an uninterrupted term of imprisonment. If a break in custody can occur, it must follow that imprisonment alone is not enough to create a custodial situation within the meaning of *Miranda*. At least three strong grounds support this conclusion: Questioning a person who is already in prison does not generally involve the shock that very often accompanies arrest; a prisoner is unlikely to be lured into speaking by a longing for prompt release; and a prisoner knows that his questioners probably lack authority to affect the duration of his sentence. Thus, service of a prison term, without more, is not enough to constitute *Miranda* custody. Pp. 508–512.

(b) The other two elements in the Sixth Circuit's rule are likewise insufficient. Taking a prisoner aside for questioning may necessitate some additional limitations on the prisoner's freedom of movement, but it does not necessarily convert a noncustodial situation into *Miranda* custody. Isolation may contribute to a coercive atmosphere when a nonprisoner is questioned, but questioning a prisoner in private does not generally remove him from a supportive atmosphere and may be in his best interest. Neither does questioning a prisoner about criminal activity outside the prison have a significantly greater potential for coercion than questioning under otherwise identical circumstances about criminal activity within the prison walls. The coercive pressure that *Miranda* guards against is neither mitigated nor magnified by the location of the conduct about which questions are asked. Pp. 512–514.

Syllabus

3. When a prisoner is questioned, the determination of custody should focus on all of the features of the interrogation. The record in this case reveals that respondent was not taken into custody for *Miranda* purposes. While some of the facts lend support to his argument that *Miranda*'s custody requirement was met, they are offset by others. Most important, he was told at the outset of the interrogation, and reminded thereafter, that he was free to leave and could go back to his cell whenever he wanted. Moreover, he was not physically restrained or threatened, was interviewed in a well-lit, average-sized conference room where the door was sometimes left open, and was offered food and water. These facts are consistent with an environment in which a reasonable person would have felt free to terminate the interview and leave, subject to the ordinary restraints of life behind bars. Pp. 514–517.

617 F. 3d 813, reversed.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, THOMAS, and KAGAN, JJ., joined. GINSBURG, J., filed an opinion concurring in part and dissenting in part, in which BREYER and SOTOMAYOR, JJ., joined, *post*, p. 517.

John J. Bursch, Solicitor General of Michigan, argued the cause for petitioner. With him on the briefs were *Bill Schuette*, Attorney General, *Richard A. Bandstra*, *B. Eric Restuccia*, Deputy Solicitor General, and *Brian O'Neill*, Assistant Attorney General.

Ginger D. Anders argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were former *Acting Solicitor General Katyal*, *Assistant Attorney General Breuer*, *Deputy Solicitor General Dreeben*, and *Daniel S. Goodman*.

Elizabeth L. Jacobs argued the cause and filed a brief for respondent.*

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*A brief of *amici curiae* urging reversal was filed for the State of Ohio by *Michael DeWine*, Attorney General of Ohio, *Alexandra T. Schimmer*, Solicitor General, and *David M. Lieberman*, Deputy Solicitor, by *William H. Ryan, Jr.*, Former Acting Attorney General of Pennsylvania, and by the Attorneys General for their respective jurisdictions as follows: *Luther Strange* of Alabama, *John J. Burns* of Alaska, *Tom Horne* of Arizona, *Dustin McDaniel* of Arkansas, *John W. Suthers* of Colorado, *Joseph R. Biden III* of Delaware, *Pamela Jo Bondi* of Florida, *Leonardo M. Rapadas*

JUSTICE ALITO delivered the opinion of the Court.

The United States Court of Appeals for the Sixth Circuit held that our precedents clearly establish that a prisoner is in custody within the meaning of *Miranda* v. *Arizona*, 384 U. S. 436 (1966), if the prisoner is taken aside and questioned about events that occurred outside the prison walls. Our decisions, however, do not clearly establish such a rule, and therefore the Court of Appeals erred in holding that this rule provides a permissible basis for federal habeas relief under the relevant provision of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U. S. C. § 2254(d)(1). Indeed, the rule applied by the court below does not represent a correct interpretation of our *Miranda* case law. We therefore reverse.

I

While serving a sentence in a Michigan jail, Randall Fields was escorted by a corrections officer to a conference room where two sheriff's deputies questioned him about allegations that, before he came to prison, he had engaged in sexual conduct with a 12-year-old boy. In order to get to the conference room, Fields had to go down one floor and pass through a locked door that separated two sections of the fa-

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of Guam, *David M. Louie* of Hawaii, *Lawrence G. Wasden* of Idaho, *Lisa Madigan* of Illinois, *Gregory F. Zoeller* of Indiana, *Tom Miller* of Iowa, *Derek Schmidt* of Kansas, *Jack Conway* of Kentucky, *James D. "Buddy" Caldwell* of Louisiana, *William J. Schneider* of Maine, *Douglas F. Gansler* of Maryland, *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, *Wayne Stenehjem* of North Dakota, *Alan Wilson* 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, *Kenneth T. Cuccinelli II* of Virginia, *Rob McKenna* of Washington, *J. B. Van Hollen* of Wisconsin, and *Gregory A. Phillips* of Wyoming.

Craig Goldblatt filed a brief for Donovan E. Simpson as *amicus curiae* urging affirmance.

cility. See App. to Pet. for Cert. 66a, 69a. Fields arrived at the conference room between 7 p.m. and 9 p.m.[1] and was questioned for between five and seven hours.[2]

At the beginning of the interview, Fields was told that he was free to leave and return to his cell. See *id.*, at 70a. Later, he was again told that he could leave whenever he wanted. See *id.*, at 90a. The two interviewing deputies were armed during the interview, but Fields remained free of handcuffs and other restraints. The door to the conference room was sometimes open and sometimes shut. See *id.*, at 70a–75a.

About halfway through the interview, after Fields had been confronted with the allegations of abuse, he became agitated and began to yell. See *id.*, at 80a, 125a. Fields testified that one of the deputies, using an expletive, told him to sit down and said that "if [he] didn't want to cooperate, [he] could leave." *Id.*, at 89a; see also *id.*, at 70a–71a. Fields eventually confessed to engaging in sex acts with the boy. According to Fields' testimony at a suppression hearing, he said several times during the interview that he no longer wanted to talk to the deputies, but he did not ask to go back to his cell prior to the end of the interview. See *id.*, at 92a–93a.

When he was eventually ready to leave, he had to wait an additional 20 minutes or so because a corrections officer had

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[1] Fields testified that he left his cell around 8 p.m. and that the interview began around 8:30 p.m. App. to Pet. for Cert. 77a. Both the Michigan Court of Appeals and the Sixth Circuit stated that the interview began between 7 p.m. and 9 p.m. See 617 F. 3d 813, 815 (2010); App. to Pet. for Cert. 54a.

[2] The Court of Appeals stated that the interview lasted for approximately seven hours, see 617 F. 3d, at 815, a figure that appears to be based on the testimony of one of the interviewing deputies, see App. to Pet. for Cert. 123a. Fields put the number of hours between five and five and a half, saying the interview began around 8:30 p.m. and continued until 1:30 a.m. or 2 a.m. See *id.*, at 77a. The Michigan Court of Appeals stated that the interview ended around midnight, which would put the length of the interview at between three and five hours.

to be summoned to escort him back to his cell, and he did not return to his cell until well after the hour when he generally retired.[3] At no time was Fields given *Miranda* warnings or advised that he did not have to speak with the deputies.

The State of Michigan charged Fields with criminal sexual conduct. Relying on *Miranda*, Fields moved to suppress his confession, but the trial court denied his motion. Over the renewed objection of defense counsel, one of the interviewing deputies testified at trial about Fields' admissions. The jury convicted Fields of two counts of third-degree criminal sexual conduct, and the judge sentenced him to a term of 10 to 15 years of imprisonment. On direct appeal, the Michigan Court of Appeals affirmed, rejecting Fields' contention that his statements should have been suppressed because he was subjected to custodial interrogation without a *Miranda* warning. The court ruled that Fields had not been in custody for purposes of *Miranda* during the interview, so no *Miranda* warnings were required. The court emphasized that Fields was told that he was free to leave and return to his cell but that he never asked to do so. The Michigan Supreme Court denied discretionary review.

Fields then filed a petition for a writ of habeas corpus in Federal District Court, and the court granted relief. The Sixth Circuit affirmed, holding that the interview in the conference room was a "custodial interrogation" within the meaning of *Miranda* because isolation from the general prison population combined with questioning about conduct occurring outside the prison makes any such interrogation custodial *per se*. The Court of Appeals reasoned that this Court clearly established in *Mathis* v. *United States*, 391 U. S. 1 (1968), that "*Miranda* warnings must be administered when law enforcement officers remove an inmate from the general prison population and interrogate him regarding criminal conduct that took place outside the jail or prison."

[3] Fields testified that his normal bedtime was 10:30 p.m. or 11 p.m. See *id.*, at 78a.

617 F. 3d 813, 820 (CA6 2010); see also *id.*, at 818 ("The central holding of *Mathis* is that a *Miranda* warning is required whenever an incarcerated individual is isolated from the general prison population and interrogated, i. e.[,] questioned in a manner likely to lead to self-incrimination, about conduct occurring outside of the prison"). Because Fields was isolated from the general prison population and interrogated about conduct occurring in the outside world, the Court of Appeals found that the state court's decision was contrary to clearly established federal law as determined by this Court in *Mathis*. 617 F. 3d, at 823.

We granted certiorari. 562 U. S. 1199 (2011).

II

Under AEDPA, a federal court may grant a state prisoner's application for a writ of habeas corpus if the state-court adjudication pursuant to which the prisoner is held "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). In this context, "clearly established law" signifies "the holdings, as opposed to the dicta, of this Court's decisions." *Williams* v. *Taylor*, 529 U. S. 362, 412 (2000).

In this case, it is abundantly clear that our precedents do not clearly establish the categorical rule on which the Court of Appeals relied, *i. e.*, that the questioning of a prisoner is always custodial when the prisoner is removed from the general prison population and questioned about events that occurred outside the prison. On the contrary, we have repeatedly declined to adopt any categorical rule with respect to whether the questioning of a prison inmate is custodial.

In *Illinois* v. *Perkins*, 496 U. S. 292 (1990), where we upheld the admission of un-Mirandized statements elicited from an inmate by an undercover officer masquerading as another inmate, we noted that "[t]he bare fact of custody may not in

every instance require a warning *even when the suspect is aware that he is speaking to an official, but we do not have occasion to explore that issue here.*" *Id.*, at 299 (emphasis added). Instead, we simply "reject[ed] the argument that *Miranda* warnings are required whenever a suspect is in custody in a technical sense and converses with someone who happens to be a government agent." *Id.*, at 297.

Most recently, in *Maryland* v. *Shatzer*, 559 U. S. 98 (2010), we expressly declined to adopt a bright-line rule for determining the applicability of *Miranda* in prisons. *Shatzer* considered whether a break in custody ends the presumption of involuntariness established in *Edwards* v. *Arizona*, 451 U. S. 477 (1981), and, if so, whether a prisoner's return to the general prison population after a custodial interrogation constitutes a break in *Miranda* custody. See 559 U. S., at 102–103. In considering the latter question, we noted first that "[w]e have *never* decided whether incarceration constitutes custody for *Miranda* purposes, and have indeed explicitly declined to address the issue." *Id.*, at 112 (citing *Perkins*, *supra*, at 299; emphasis added). The answer to this question, we noted, would "depen[d] upon whether [incarceration] exerts the coercive pressure that *Miranda* was designed to guard against—the 'danger of coercion [that] results from the *interaction* of custody and official interrogation.'" 559 U. S., at 112 (quoting *Perkins*, *supra*, at 297).

In concluding that our precedents establish a categorical rule, the Court of Appeals placed great weight on the decision in *Mathis*, but the Court of Appeals misread the holding in that case. In *Mathis*, an inmate in a state prison was questioned by an Internal Revenue agent and was subsequently convicted for federal offenses. The Court of Appeals held that *Miranda* did not apply to this interview for two reasons: A criminal investigation had not been commenced at the time of the interview, and the prisoner was incarcerated for an "unconnected offense." *Mathis* v.

United States, 376 F. 2d 595, 597 (CA5 1967). This Court rejected both of those grounds for distinguishing *Miranda*, see 391 U. S., at 4, and thus the holding in *Mathis* is simply that a prisoner who otherwise meets the requirements for *Miranda* custody is not taken outside the scope of *Miranda* by either of the two factors on which the Court of Appeals had relied. *Mathis* did not hold that imprisonment, in and of itself, is enough to constitute *Miranda* custody.[4] Nor, contrary to respondent's submission, see Brief for Respondent 14, did *Oregon* v. *Mathiason*, 429 U. S. 492, 494 (1977) *(per curiam)*, which simply restated in dictum the holding in *Mathis*.

The Court of Appeals purported to find support for its *per se* rule in *Shatzer*, relying on our statement that "[n]o one questions that Shatzer was in custody for *Miranda* purposes" when he was interviewed. 559 U. S., at 112. But this statement means only that the issue of custody was not contested before us. It strains credulity to read the statement as constituting an "unambiguous conclusion" or "finding" by this Court that Shatzer was in custody. 617 F. 3d, at 822.

Finally, contrary to respondent's suggestion, see Brief for Respondent 12–15, *Miranda* itself did not clearly establish the rule applied by the Court of Appeals. *Miranda* adopted a "set of prophylactic measures" designed to ward off the "'inherently compelling pressures' of custodial interrogation," *Shatzer*, *supra*, at 103 (quoting *Miranda*, 384 U. S., at 467), but *Miranda* did not hold that such pressures are always present when a prisoner is taken aside and questioned about events outside the prison walls. Indeed, *Miranda* did not even establish that police questioning of a suspect at the station house is always custodial. See *Mathiason*, *supra*, at

[4] Indeed, it is impossible to tell from either the opinion of this Court or that of the court below whether the prisoner's interview was routine or whether there were special features that may have created an especially coercive atmosphere.

495 (declining to find that *Miranda* warnings are required "simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect").

In sum, our decisions do not clearly establish that a prisoner is always in custody for purposes of *Miranda* whenever a prisoner is isolated from the general prison population and questioned about conduct outside the prison.[5]

III

Not only does the categorical rule applied below go well beyond anything that is clearly established in our prior decisions, it is simply wrong. The three elements of that rule—(1) imprisonment, (2) questioning in private, and (3) questioning about events in the outside world—are not necessarily enough to create a custodial situation for *Miranda* purposes.

A

As used in our *Miranda* case law, "custody" is a term of art that specifies circumstances that are thought generally

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[5] The state-court decision applied the traditional context-specific analysis to determine whether the circumstances of respondent's interrogation gave rise to "the coercive pressure that *Miranda* was designed to guard against." *Maryland* v. *Shatzer*, 559 U. S. 98, 112 (2010). The court first observed: "That a defendant is in prison for an unrelated offense when being questioned does not, *without more*, mean that he was in custody for the purpose of determining whether *Miranda* warnings were required." App. to Pet. for Cert. 56a (internal quotation marks omitted; emphasis added). In this case, the court noted, the "defendant was unquestionably in custody, but on a matter unrelated to the interrogation." *Ibid.* The Sixth Circuit concluded that the state court thereby limited *Miranda* in a way rejected by *Mathis* v. *United States*, 391 U. S. 1 (1968), and "curtail[ed] the warnings to be given persons under interrogation by officers based on the reason why the person is in custody." *Id.*, at 4–5. We think the better reading is that the state court merely meant to draw a distinction between incarceration and *Miranda* custody. This reading is supported by the state court's subsequent consideration of whether the facts of the case were likely to create an atmosphere of coercion. App. to Pet. for Cert. 56a.

to present a serious danger of coercion. In determining whether a person is in custody in this sense, the initial step is to ascertain whether, in light of "the objective circumstances of the interrogation," *Stansbury* v. *California*, 511 U. S. 318, 322–323, 325 (1994) *(per curiam)*, a "reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave." *Thompson* v. *Keohane*, 516 U. S. 99, 112 (1995). And in order to determine how a suspect would have "gauge[d]" his "freedom of movement," courts must examine "all of the circumstances surrounding the interrogation." *Stansbury*, *supra*, at 322, 325 (internal quotation marks omitted). Relevant factors include the location of the questioning, see *Shatzer*, *supra*, at 112–114, its duration, see *Berkemer* v. *McCarty*, 468 U. S. 420, 437–438 (1984), statements made during the interview, see *Mathiason*, *supra*, at 495; *Yarborough* v. *Alvarado*, 541 U. S. 652, 665 (2004); *Stansbury*, *supra*, at 325, the presence or absence of physical restraints during the questioning, see *New York* v. *Quarles*, 467 U. S. 649, 655 (1984), and the release of the interviewee at the end of the questioning, see *California* v. *Beheler*, 463 U. S. 1121, 1122–1123 (1983) *(per curiam)*.

Determining whether an individual's freedom of movement was curtailed, however, is simply the first step in the analysis, not the last. Not all restraints on freedom of movement amount to custody for purposes of *Miranda*. We have "decline[d] to accord talismanic power" to the freedom-of-movement inquiry, *Berkemer*, *supra*, at 437, and have instead asked the additional question whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*. "Our cases make clear . . . that the freedom-of-movement test identifies only a necessary and not a sufficient condition for *Miranda* custody." *Shatzer*, *supra*, at 112.

This important point is illustrated by our decision in *Berkemer* v. *McCarty*, *supra*. In that case, we held that the roadside questioning of a motorist who was pulled over in a

routine traffic stop did not constitute custodial interrogation. *Id.*, at 423, 441–442. We acknowledged that "a traffic stop significantly curtails the 'freedom of action' of the driver and the passengers," and that it is generally "a crime either to ignore a policeman's signal to stop one's car or, once having stopped, to drive away without permission." *Id.*, at 436. "[F]ew motorists," we noted, "would feel free either to disobey a directive to pull over or to leave the scene of a traffic stop without being told they might do so." *Ibid.* Nevertheless, we held that a person detained as a result of a traffic stop is not in *Miranda* custody because such detention does not "sufficiently impair [the detained person's] free exercise of his privilege against self-incrimination to require that he be warned of his constitutional rights." 468 U. S., at 437. As we later put it, the "temporary and relatively nonthreatening detention involved in a traffic stop or *Terry* stop does not constitute *Miranda* custody," *Shatzer*, 559 U. S., at 113 (citation omitted). See *Terry* v. *Ohio*, 392 U. S. 1 (1968).

It may be thought that the situation in *Berkemer*—the questioning of a motorist subjected to a brief traffic stop—is worlds away from those present when an inmate is questioned in a prison, but the same cannot be said of *Shatz*er, where we again distinguished between restraints on freedom of movement and *Miranda* custody. *Shatzer*, as noted, concerned the *Edwards* prophylactic rule, which limits the ability of the police to initiate further questioning of a suspect in *Miranda* custody once the suspect invokes the right to counsel. We held in *Shatzer* that this rule does not apply when there is a sufficient break in custody between the suspect's invocation of the right to counsel and the initiation of subsequent questioning. See 559 U. S., at 112–114. And, what is significant for present purposes, we further held that a break in custody may occur while a suspect is serving a term in prison. If a break in custody can occur while a prisoner is serving an uninterrupted term of imprisonment, it

must follow that imprisonment alone is not enough to create a custodial situation within the meaning of *Miranda*.

There are at least three strong grounds for this conclusion. First, questioning a person who is already serving a prison term does not generally involve the shock that very often accompanies arrest. In the paradigmatic *Miranda* situation—a person is arrested in his home or on the street and whisked to a police station for questioning—detention represents a sharp and ominous change, and the shock may give rise to coercive pressures. A person who is "cut off from his normal life and companions," *Shatzer*, *supra*, at 106, and abruptly transported from the street into a "police-dominated atmosphere," *Miranda*, 384 U. S., at 456, may feel coerced into answering questions.

By contrast, when a person who is already serving a term of imprisonment is questioned, there is usually no such change. "Interrogated suspects who have previously been convicted of crime live in prison." *Shatzer*, 559 U. S., at 113. For a person serving a term of incarceration, we reasoned in *Shatzer*, the ordinary restrictions of prison life, while no doubt unpleasant, are expected and familiar and thus do not involve the same "inherently compelling pressures" that are often present when a suspect is yanked from familiar surroundings in the outside world and subjected to interrogation in a police station. *Id.*, at 103 (internal quotation marks omitted).

Second, a prisoner, unlike a person who has not been sentenced to a term of incarceration, is unlikely to be lured into speaking by a longing for prompt release. When a person is arrested and taken to a station house for interrogation, the person who is questioned may be pressured to speak by the hope that, after doing so, he will be allowed to leave and go home. On the other hand, when a prisoner is questioned, he knows that when the questioning ceases, he will remain under confinement. *Id.*, at 124, n. 8.

Third, a prisoner, unlike a person who has not been convicted and sentenced, knows that the law enforcement officers who question him probably lack the authority to affect the duration of his sentence. *Id.*, at 113–114. And "where the possibility of parole exists," the interrogating officers probably also lack the power to bring about an early release. *Ibid.* "When the suspect has no reason to think that the listeners have official power over him, it should not be assumed that his words are motivated by the reaction he expects from his listeners." *Perkins*, 496 U. S., at 297. Under such circumstances, there is little "basis for the assumption that a suspect . . . will feel compelled to speak by the fear of reprisal for remaining silent or in the hope of [a] more lenient treatment should he confess." *Id.*, at 296–297.

In short, standard conditions of confinement and associated restrictions on freedom will not necessarily implicate the same interests that the Court sought to protect when it afforded special safeguards to persons subjected to custodial interrogation. Thus, service of a term of imprisonment, without more, is not enough to constitute *Miranda* custody.

B

The two other elements included in the Court of Appeals' rule—questioning in private and questioning about events that took place outside the prison—are likewise insufficient.

Taking a prisoner aside for questioning—as opposed to questioning the prisoner in the presence of fellow inmates—does not necessarily convert a "noncustodial situation . . . to one in which *Miranda* applies." *Mathiason*, 429 U. S., at 495. When a person who is not serving a prison term is questioned, isolation may contribute to a coercive atmosphere by preventing family members, friends, and others who may be sympathetic from providing either advice or emotional support. And without any such assistance, the person who

is questioned may feel overwhelming pressure to speak and to refrain from asking that the interview be terminated.

By contrast, questioning a prisoner in private does not generally remove the prisoner from a supportive atmosphere. Fellow inmates are by no means necessarily friends. On the contrary, they may be hostile and, for a variety of reasons, may react negatively to what the questioning reveals. In the present case, for example, would respondent have felt more at ease if he had been questioned in the presence of other inmates about the sexual abuse of an adolescent boy? Isolation from the general prison population is often in the best interest of the interviewee and, in any event, does not suggest on its own the atmosphere of coercion that concerned the Court in *Miranda*.

It is true that taking a prisoner aside for questioning may necessitate some additional limitations on his freedom of movement. A prisoner may, for example, be removed from an exercise yard and taken, under close guard, to the room where the interview is to be held. But such procedures are an ordinary and familiar attribute of life behind bars. Escorts and special security precautions may be standard procedures regardless of the purpose for which an inmate is removed from his regular routine and taken to a special location. For example, ordinary prison procedure may require such measures when a prisoner is led to a meeting with an attorney.

Finally, we fail to see why questioning about criminal activity outside the prison should be regarded as having a significantly greater potential for coercion than questioning under otherwise identical circumstances about criminal activity within the prison walls. In both instances, there is the potential for additional criminal liability and punishment. If anything, the distinction would seem to cut the other way, as an inmate who confesses to misconduct that occurred within the prison may also incur administrative penalties, but even this is not enough to tip the scale in the direction

of custody. "The threat to a citizen's Fifth Amendment rights that *Miranda* was designed to neutralize" is neither mitigated nor magnified by the location of the conduct about which questions are asked. *Berkemer*, 468 U. S., at 435, n. 22.

For these reasons, the Court of Appeals' categorical rule is unsound.

IV

A

When a prisoner is questioned, the determination of custody should focus on all of the features of the interrogation. These include the language that is used in summoning the prisoner to the interview and the manner in which the interrogation is conducted. See *Yarborough*, 541 U. S., at 665. An inmate who is removed from the general prison population for questioning and is "thereafter . . . subjected to treatment" in connection with the interrogation "that renders him 'in custody' for practical purposes . . . will be entitled to the full panoply of protections prescribed by *Miranda*." *Berkemer*, 468 U. S., at 440.

"Fidelity to the doctrine announced in *Miranda* requires that it be enforced strictly, but only in those types of situations in which the concerns that powered the decision are implicated." *Id.*, at 437; see *Shatzer*, 559 U. S., at 108; *Mathiason*, *supra*, at 495. Confessions voluntarily made by prisoners in other situations should not be suppressed. "Voluntary confessions are not merely a proper element in law enforcement, they are an unmitigated good, essential to society's compelling interest in finding, convicting, and punishing those who violate the law." *Shatzer*, *supra*, at 108 (internal quotation marks and citations omitted).

B

The record in this case reveals that respondent was not taken into custody for purposes of *Miranda*. To be sure,

respondent did not invite the interview or consent to it in advance, and he was not advised that he was free to decline to speak with the deputies. The following facts also lend some support to respondent's argument that *Miranda*'s custody requirement was met: The interview lasted for between five and seven hours in the evening and continued well past the hour when respondent generally went to bed; the deputies who questioned respondent were armed; and one of the deputies, according to respondent, "[u]sed a very sharp tone," App. to Pet. for Cert. 76a, and, on one occasion, profanity, see *id.*, at 77a.

These circumstances, however, were offset by others. Most important, respondent was told at the outset of the interrogation, and was reminded again thereafter, that he could leave and go back to his cell whenever he wanted. See *id.*, at 89a–90a ("I was told I could get up and leave whenever I wanted"); *id.*, at 70a–71a. Moreover, respondent was not physically restrained or threatened and was interviewed in a well-lit, average-sized conference room, where he was "not uncomfortable." *Id.*, at 90a; see *id.*, at 71a, 88a–89a. He was offered food and water, and the door to the conference room was sometimes left open. See *id.*, at 70a, 74a. "All of these objective facts are consistent with an interrogation environment in which a reasonable person would have felt free to terminate the interview and leave." *Yarborough*, *supra*, at 664–665.

Because he was in prison, respondent was not free to leave the conference room by himself and to make his own way through the facility to his cell. Instead, he was escorted to the conference room and, when he ultimately decided to end the interview, he had to wait about 20 minutes for a corrections officer to arrive and escort him to his cell. But he would have been subject to this same restraint even if he had been taken to the conference room for some reason other than police questioning; under no circumstances could he

have reasonably expected to be able to roam free.[6] And while respondent testified that he "was told . . . if I did not want to cooperate, I needed to go back to my cell," these words did not coerce cooperation by threatening harsher conditions. App. to Pet. for Cert. 71a; see *id.*, at 89a ("I was told, if I didn't want to cooperate, I could leave"). Returning to his cell would merely have returned him to his usual environment. See *Shatzer*, *supra*, at 113 ("Interrogated

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[6] Respondent did not testify to the contrary. The following colloquy occurred at his *Miranda* hearing:

"Q. You're not generally allowed to just roam around Lenawee County Jail on your own, are you?
"A. No, I never have.
"Q. So wouldn't it make sense to you, since you had that experience, that in fact you would have been escorted just like you were escorted . . . into this conference room?
"A. That makes common sense.
"Q. So when they said that you were free to leave and you get up—could get up and go and all you had to do was tell them you wanted to go, in your mind, did you understand that to mean that somebody would come get you and take you back to your cell?
"A. But that doesn't give me freedom to just get up and walk away.
"Q. I understand it doesn't—
"A. So, no.
"Q. The question is this, sir, not whether you had freedom to get up and walk away, but did you understand that what that meant was that a jailer would come get you and—
"A. No—
"Q. —take you back to your cell?
"A. I did not understand that.
"Q. You didn't?
"A. No.
"Q. Why not? That's how you got there.
"A. Because I did not know if a jailer would take me back or if one of those gentlemen would take me back.
"Q. But you understood that, if you asked, one of them or a jailer would take you back to your cell?
"A. I assumed that.
"Q. And you believed that to be true?
"A. I assumed that." App. to Pet. for Cert. 91a–92a.

suspects who have previously been convicted of crime live in prison. When they are released back into the general prison population, they return to their accustomed surroundings and daily routine—they regain the degree of control they had over their lives prior to the interrogation").

Taking into account all of the circumstances of the questioning—including especially the undisputed fact that respondent was told that he was free to end the questioning and to return to his cell—we hold that respondent was not in custody within the meaning of *Miranda*.

* * *

The judgment of the Court of Appeals is

Reversed.

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

Given this Court's controlling decisions on what counts as "custody" for *Miranda* purposes, I agree that the law is not "clearly established" in respondent Fields's favor. See, *e. g.*, *Maryland* v. *Shatzer*, 559 U. S. 98, 112–114 (2010); *Thompson* v. *Keohane*, 516 U. S. 99, 112 (1995). But I disagree with the Court's further determination that Fields was not in custody under *Miranda*. Were the case here on direct review, I would vote to hold that *Miranda* precludes the State's introduction of Fields's confession as evidence against him.

Miranda v. *Arizona*, 384 U. S. 436 (1966), reacted to police interrogation tactics that eroded the Fifth Amendment's ban on compulsory self-incrimination. The opinion did so by requiring interrogators to convey to suspects the now-familiar warnings: The suspect is to be informed, prior to interrogation, that he "has a right to remain silent, that any statement he does make may be used as evidence against him, and that

he has a right to the presence of an attorney, either retained or appointed." *Id.*, at 444.

Under what circumstances are *Miranda* warnings required? *Miranda* tells us "in all settings in which [a person's] freedom of action is curtailed in any significant way." *Id.*, at 467. Given the reality that police interrogators "trad[e] on the weakness of individuals," *i. e.*, their "insecurity about [themselves] or [their] surroundings," *id.*, at 455, the Court found the preinterrogation warnings set out in the opinion "indispensable," *id.*, at 469. Those warnings, the Court elaborated, are "an absolute prerequisite in overcoming the inherent pressures of the interrogation atmosphere," *id.*, at 468; they "insure" that the suspect is timely told of his Fifth Amendment privilege, and his freedom to exercise it, *id.*, at 469.

Fields, serving time for disorderly conduct, was, of course, "i[n] custody," but not "for purposes of *Miranda*," the Court concludes. *Ante*, at 514. I would not train, as the Court does, on the question whether there can be custody within custody. Instead, I would ask, as *Miranda* put it, whether Fields was subjected to "incommunicado interrogation . . . in a police-dominated atmosphere," 384 U. S., at 445, whether he was placed, against his will, in an inherently stressful situation, see *id.*, at 468, and whether his "freedom of action [was] curtailed in any significant way," *id.*, at 467. Those should be the key questions, and to each I would answer "Yes."

As the Court acknowledges, Fields did not invite or consent to the interview. *Ante*, at 514–515. He was removed from his cell in the evening, taken to a conference room in the sheriff's quarters, and questioned by two armed deputies long into the night and early morning. *Ibid.* He was not told at the outset that he had the right to decline to speak with the deputies. *Ibid.* Shut in with the armed officers, Fields felt "trapped." App. to Pet. for Cert. 71a. Although told he could return to his cell if he did not want to cooperate, *id.*, at 71a–72a, Fields believed the deputies "would not

have allowed [him] to leave the room," *id.*, at 72a. And with good reason. More than once, "he told the officers . . . he did not want to speak with them anymore." 617 F. 3d 813, 815 (CA6 2010). He was given water, App. to Pet. for Cert. 74a, but not his evening medications, *id.*, at 79a.* Yet the Court concludes that Fields was in "an interrogation environment in which a reasonable person would have felt free to terminate the interview and leave." *Ante*, at 515 (quoting *Yarborough* v. *Alvarado*, 541 U. S. 652, 665 (2004)).

Critical to the Court's judgment is "the undisputed fact that [Fields] was told that he was free to end the questioning and to return to his cell." *Ante*, at 517. Never mind the facts suggesting that Fields's submission to the overnight interview was anything but voluntary. Was Fields "held for interrogation"? See *Miranda*, 384 U. S., at 471. Brought to, and left alone with, the gun-bearing deputies, he surely was in my judgment.

Miranda instructed that such a person "must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation." *Ibid.* Those warnings, along with "warnings of the right to remain silent and that anything stated can be used in evidence against [the speaker]," *Miranda* explained, are necessary "prerequisite[s] to [an] interrogation" compatible with the Fifth Amendment. *Ibid.* Today, for people already in prison, the Court finds it adequate for the police to say: "You are free to terminate this interrogation and return to your cell." Such a statement is no substitute for one ensuring that an individual is aware of his rights.

For the reasons stated, I would hold that the "incommunicado interrogation [of Fields] in a police-dominated atmosphere," *id.*, at 445, without informing him of his rights, dishonored the Fifth Amendment privilege *Miranda* was designed to safeguard.

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*Each night, Fields took an antidepressant and, due to his kidney transplant surgery, two antirejection medications. App. to Pet. for Cert. 79a.

Syllabus

WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* LAMBERT

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

No. 11–38. Decided February 24, 2012

Respondent James Lambert was convicted and sentenced to death for the murder of two patrons during a robbery of Prince's Lounge in Philadelphia, Pennsylvania. One of the Commonwealth's primary witnesses at trial was Bernard Jackson, who admitted to being involved in the robbery and identified Lambert as an accomplice. Almost 20 years later, Lambert sought state postconviction relief, claiming that the Commonwealth violated *Brady* v. *Maryland*, 373 U. S. 83, by failing to disclose a "police activity sheet" containing allegedly exculpatory notations, including one indicating that Jackson had identified a "Lawrence Woodlock" as a "co-defendant" and that Woodlock's photo had been shown to Prince's Lounge robbery witnesses. Lambert claimed that he could have used the activity sheet to impeach Jackson's trial testimony, but the Commonwealth countered that the ambiguous notation did not specify whether Woodlock was a co-defendant in the Prince's Lounge robbery or in one of the dozen other robberies Jackson admitted to perpetrating.

Agreeing with the Commonwealth, the Pennsylvania Supreme Court rejected Lambert's claim. It also concluded that, as impeachment evidence, the document's value was needlessly cumulative. Lambert's subsequent federal habeas petition was denied by the District Court on the ground that the state court's determination was reasonable. The Third Circuit reversed, holding that the document would have opened a new line of impeachment and ordering the Commonwealth either to retry Lambert or to release him from custody.

Held: The Third Circuit failed to follow the requirements of the Antiterrorism and Effective Death Penalty Act of 1996, which precludes a federal court from granting habeas relief to a state prisoner unless the state court's adjudication of his claim involved an unreasonable application of federal law, 28 U. S. C. § 2254(d)(1). Here, the Third Circuit overlooked the Pennsylvania Supreme Court's determination that the notations were ambiguous, focusing solely on its holding regarding their use as impeachment evidence. But, if the state court's conclusion about the document's content was reasonable—and it may well be, given, *e. g.*,

that the activity sheet did not explicitly link Woodlock to the Prince's Lounge robbery—whatever it had to say about the document's value as impeachment evidence would be beside the point.

Certiorari granted; 633 F. 3d 126, vacated and remanded.

PER CURIAM.

James Lambert was convicted and sentenced to death in 1984 for the murder of two patrons during a robbery of Prince's Lounge in Philadelphia, Pennsylvania. One of the Commonwealth's primary witnesses at Lambert's trial was Bernard Jackson, who admitted to being involved in the robbery and identified Bruce Reese and Lambert as his accomplices. Almost 20 years later, Lambert brought a claim for postconviction relief in Pennsylvania state court, alleging that the Commonwealth had failed to disclose, *inter alia*, a "police activity sheet" in violation of *Brady* v. *Maryland*, 373 U. S. 83 (1963). This document, dated October 25, 1982, noted that a photo display containing a picture of an individual named Lawrence Woodlock was shown to two witnesses to the Prince's Lounge robbery, but that "[n]o identification was made." Exh. 1, App. to Brief in Opposition. The document further noted that "Mr. WOODLOCK is named as co-defendant" by Jackson, who was in custody at the time on several charges and had admitted to involvement in at least 13 armed robberies of bars. *Ibid.* The activity sheet did not indicate whether Jackson's reference was to the Prince's Lounge crime or one of the others. The sheet bore the names of the law enforcement officers involved in the investigation of the Prince's Lounge robbery. It also bore the names of the robbery's murder victims, as well as the police case numbers for those murders. The Commonwealth has identified no evidence that Woodlock was ever investigated for any other robbery, or that his photo was shown to a witness in any other robbery.

Lambert claimed that the activity sheet was exculpatory, because it suggested that someone other than or in addition to him, Jackson, and Reese was involved in the Prince's

Lounge crime. *Commonwealth* v. *Lambert*, 584 Pa. 461, 472, 884 A. 2d 848, 855 (2005). Lambert also argued that he could have used the activity sheet to impeach Jackson's testimony at trial, because the statement attributed to Jackson suggested that Jackson had identified Woodlock as a participant prior to identifying Lambert. *Ibid.*

The Commonwealth countered that the asserted "'statement'" by Jackson reflected in the activity sheet was in fact nothing more than an "'ambiguously worded notation.'" *Ibid.* The Commonwealth argued that this notation simply indicated that Jackson had named Woodlock as a "co-defendant" in some incident, without specifying whether Woodlock was said to be involved in the Prince's Lounge robbery or one of the dozen other robberies in which Jackson had admitted participating. In this regard, the Commonwealth noted that Woodlock's name was not mentioned anywhere else in the police records, trial proceedings, or Jackson's statements about the Prince's Lounge robbery. As the Commonwealth has put it, "it seems likely that Jackson identified [Woodlock] as a participant in one of his many *other* robberies, and police simply confirmed that Woodlock had nothing to do with *this* case." Reply to Brief in Opposition 2. The Commonwealth "further note[d]" that the document would not have advanced any impeachment of Jackson, because he had already been extensively impeached at trial. *Lambert*, 584 Pa., at 472, 884 A. 2d, at 855. Thus, according to the Commonwealth, the "ambiguous reference to Woodlock" would not have discredited Jackson any further. *Ibid.*

The Pennsylvania Supreme Court agreed with the Commonwealth and unanimously rejected Lambert's *Brady* claim, holding that the disputed document was not material. 584 Pa., at 472–473, 848 A. 2d, at 855–856. The court concluded that there was no reasonable probability that the result of Lambert's trial would have been different had the document been disclosed. *Ibid.* See *Strickler* v. *Greene*, 527 U. S. 263, 281 (1999). Calling Lambert's claim that the reference

to Woodlock "automatically" meant someone else was involved in the Prince's Lounge robbery "purely speculative at best," the court noted that "the police must not have had reason to consider Woodlock a potential codefendant in this case as his name is not mentioned anywhere else in the police investigation files." 584 Pa., at 473, 884 A. 2d, at 855. "Moreover," the court continued, the document "would not have materially furthered the impeachment of Jackson at trial as he was already extensively impeached by both [Lambert] and Reese." *Ibid.*

Lambert filed a petition for a writ of habeas corpus in the Eastern District of Pennsylvania under 28 U. S. C. § 2254, claiming, *inter alia*, that the Commonwealth's failure to disclose the document violated his rights under *Brady*. The District Court denied the writ, holding that the state courts' determination that the notations "were not exculpatory or impeaching" was "reasonable." *Lambert* v. *Beard*, Civ. Action No. 02–9034 (July 24, 2007), App. to Pet. for Cert. 34, 36. The court explained that "[t]he various notations and statements which [Lambert] claims the Commonwealth should have disclosed are entirely ambiguous, and would have required the state courts to speculate to conclude they were favorable for Lambert and material to his guilt or punishment." *Id.*, at 36.

On appeal, however, the Court of Appeals for the Third Circuit reversed and granted the writ. 633 F. 3d 126 (2011). The Third Circuit concluded that it was "patently unreasonable" for the Pennsylvania Supreme Court to presume that whenever a witness is impeached in one manner, any other impeachment evidence would be immaterial. *Id.*, at 134. According to the Third Circuit, the notation that Jackson had identified Woodlock as a "co-defendant" would have "opened an entirely new line of impeachment" because the prosecutor at trial had relied on the fact that Jackson had consistently named Lambert as the third participant in the robbery. *Id.*, at 135. The Commonwealth petitioned for certiorari.

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) precludes a federal court from granting a writ of habeas corpus to a state prisoner unless the state court's adjudication of his 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). "Under § 2254(d), a habeas court must determine what arguments or theories 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." *Harrington* v. *Richter*, 562 U. S. 86, 102 (2011).

In this case, however, the Third Circuit overlooked the determination of the state courts that the notations were, as the District Court put it, "not exculpatory or impeaching" but instead "entirely ambiguous." App. to Pet. for Cert. 34, 36. Instead, the Third Circuit focused solely on the alternative ground that any impeachment value that might have been obtained from the notations would have been cumulative. If the conclusion in the state courts about the content of the document was reasonable—not necessarily correct, but reasonable—whatever those courts had to say about cumulative impeachment evidence would be beside the point. The failure of the Third Circuit even to address the "ambiguous" nature of the notations, and the "speculat[ive]" nature of Lambert's reading of them, is especially surprising, given that this was the basis of the District Court ruling. *Id.*, at 36.*

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*The dissent emphasizes that the activity sheet was prepared for the investigation into the Prince's Lounge crime. *Post*, at 526 (opinion of BREYER, J.). No one disputes that. The ambiguity at issue concerns whether Jackson's *statement* referred to that crime, or one of his many others. The dissent also finds "no suggestion" that the state courts believed Jackson's reference to Woodlock "contained the argued ambigu-

The Court of Appeals ordered that Lambert, convicted of capital murder nearly 30 years ago, be set free unless the Commonwealth retried him within 120 days. It did so because of a police activity sheet noting that Jackson had identified Woodlock as a "co-defendant," and bearing other information associating the sheet with the Prince's Lounge robbery. The Court of Appeals, however, failed to address the state court ruling that the reference to Woodlock was ambiguous and any connection to the Prince's Lounge robbery speculative. That ruling—on which we do not now opine—may well be reasonable, given that (1) the activity sheet did not explicitly link Woodlock to the Prince's Lounge robbery, (2) Jackson had committed a dozen other such robberies, (3) Jackson was being held on several charges when the activity sheet was prepared, (4) Woodlock's name appeared nowhere else in the Prince's Lounge files, and (5) the two witnesses from the Prince's Lounge robbery who were shown Woodlock's photo did *not* identify him as involved in that crime.

Any retrial here would take place *three decades* after the crime, posing the most daunting difficulties for the prosecution. That burden should not be imposed unless *each* ground supporting the state court decision is examined and found to be unreasonable under AEDPA.

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ity." *Post*, at 527. The Pennsylvania Supreme Court, however, recognized the Commonwealth's argument that Jackson could have named Woodlock as a codefendant in some other robbery, and concluded that "[t]he Commonwealth accurately notes that the police must not have had reason to consider Woodlock a potential codefendant in this case as his name is not mentioned anywhere else in the police investigation files." *Commonwealth* v. *Lambert*, 584 Pa. 461, 473, 884 A. 2d 848, 855 (2005). The only state court ruling the Third Circuit addressed—the conclusion that any impeachment evidence would have been cumulative—was one the state court introduced with "[m]oreover," confirming that it was an alternative basis for its decision. *Ibid.* And the District Court certainly understood the state court decisions to have considered the reference ambiguous. See App. to Pet. for Cert. 36.

The petition for certiorari and respondent's motion to proceed *in forma pauperis* are granted. The judgment of the Court of Appeals for the Third Circuit is vacated, and the case is remanded for proceedings consistent with this opinion.

It is so ordered.

JUSTICE BREYER, with whom JUSTICE GINSBURG and JUSTICE KAGAN join, dissenting.

The Court grants the Commonwealth of Pennsylvania's petition for certiorari and sends this case back to the Court of Appeals for the Third Circuit, primarily because the Court believes that the "Circuit overlooked the determination of the state courts that the [police] notations were . . . 'entirely ambiguous.'" *Ante*, at 524 (quoting App. to Pet. for Cert. 34, 36). I cannot agree.

For one thing, I cannot accept that the "notations" at issue are "entirely ambiguous." I attach a copy of the relevant police notation. See Appendix, *infra*. The notation clearly refers to this case, not to some other case. It sets forth the file number of this investigation, the investigators of this crime, the victims of this murder, and the potential witnesses of these events. It does not refer specifically to any other robbery. The notation says that "[a] [p]hoto display was shown to . . . [witnesses in this case]," and it specifies that the "[p]hoto display contained a Lawrence WOODLOCK." In this context, the words must refer to a display that included persons potentially involved in this robbery. That being so, the most natural reading of the statement, "Mr. WOODLOCK is named as co-defendant by Bernard JACKSON," is that it too refers to this murder and not to some other crime. *Ibid.*

For another thing, the Circuit did not "*overloo[k]* the determination of the state courts that the notations were . . . 'ambiguous.'" *Ante*, at 524 (quoting the Federal District

Court, App. to Pet. for Cert. 34, 36; emphasis added). There were no such state-court "determination[s]." *Ante*, at 524. Rather, the state trial court wrote that the notation was not material for *Brady* purposes only because "Jackson was comprehensively impeached" at trial and "it is not reasonable to believe that *Jackson's further inconsistency found only in a police activity sheet* and not in any of his statements to police would have caused the jury to discredit him." Record 228 (emphasis added). As the italicized words make clear, if the trial court expressed any view about ambiguity, it thought that the police notation was *not* ambiguous.

The Pennsylvania Supreme Court did point out that the Commonwealth *argued* that the document was "'ambiguously worded.'" *Commonwealth* v. *Lambert*, 584 Pa. 461, 472, 884 A. 2d 848, 855 (2005). But the court did not adopt this rationale. Rather, it found the document not material with respect to impeachment because "[a]ny additional impeachment of Jackson arising from a police notation would have been cumulative." *Id.*, at 473, 884 A. 2d, at 856. The Third Circuit disagreed with the state courts in respect to this last-mentioned holding. But this Court does not take issue with the Third Circuit on this point. The Court points out, instead, that the Pennsylvania Supreme Court used the word "'speculative.'" *Ante*, at 523. But in context it is clear that the court used that word to refer to Lambert's claim that the notation showed that he was innocent. With respect to that claim (not at issue here), the court wrote: "[Lambert's] claim that Jackson's reference to Woodlock automatically means that someone other than himself committed the shootings and robbery is purely speculative at best." 584 Pa., at 473, 884 A. 2d, at 855. And it supported the "speculative" nature of the innocence claim by pointing out that Woodlock's name "is not mentioned anywhere else in the police investigation files." *Ibid.* There is no suggestion that the notation contained the argued ambiguity.

Finally, the Circuit questioned the strength of the case against Lambert. See *Lambert* v. *Beard*, 633 F. 3d 126, 135–136 (CA3 2011). It pointed out that the case against Lambert was largely based on Jackson's testimony, explaining that "without Jackson's statements to the police, the Commonwealth could not have indicted Lambert on these charges." *Id.*, at 131. Yet Jackson had made "four prior inconsistent statements to the police about who did what and who said what on the night in question," and he had admitted that his goal in testifying was "to save himself from a death sentence." *Ibid.* The Circuit could not "help but observe that the evidence is very strong that Reese, not Lambert, was the shooter, even assuming that Lambert (and not Jackson, as two of the barmaids testified) was in the Prince's Lounge that night." *Id.*, at 135. The Circuit stated: "One wonders how the Commonwealth could have based this case of first-degree murder on a Bernard Jackson." *Id.*, at 131. These statements suggest that the Commonwealth's case against Lambert was unusually weak. If the Commonwealth was wrong, an innocent man has spent almost 30 years in prison under sentence of death for a crime he did not commit.

We do not normally consider questions of the type presented here, namely, fact-specific questions about whether a lower court properly applied the well-established legal principles that it sets forth in its opinion. See *Kyles* v. *Whitley*, 514 U. S. 419, 460 (1995) (SCALIA, J., dissenting) (An "intensely fact-specific case in which the court below unquestionably applied the correct rule of law and did not unquestionably err" is "precisely the type of case in which we are *most* inclined to deny certiorari"). And, for the reasons I have stated, I believe the Court is ill advised to grant certiorari in this case.

I would deny the Commonwealth's petition for a writ of certiorari.

APPENDIX

ACTIVITY SHEET # 2 Platoon Monday, 10/25/82 8A 4P Tour Sgt. Strohm/Lt. Hensen
H-82-268
H-82-269 Deceased: James HUNTLEY Assigned/Kelhower
James GReves

A Photo display was shown to the below listed person, Photo display contained a Lawrence WOODLOCK 27 N/M res. 5333 Walnut St. PEN # 477095 Mr. WOODLOCK is named as co-defendant by Bernard JACKSON. No identifition was made.

Sarah CLARK 5511 Saybrook Ave. Marie GREEN 5227 Pine St.

A Survey was made of the area 55RD. & Walnut St. to found Lawrence WOODLOCK Neg. results.

Syllabus

MARMET HEALTH CARE CENTER, INC., ET AL. *v.* BROWN ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 11–391. Decided February 21, 2012*

Respondents Brown, Taylor, and Marchio each filed negligence suits against West Virginia nursing homes in state court. A trial court dismissed the suits by Brown and Taylor based on identical binding arbitration agreements. On appeal, the West Virginia Supreme Court of Appeals consolidated those cases with Marchio's case, which also involved a mandatory arbitration agreement. The court held that predispute arbitration agreements involving claims alleging personal injury or wrongful death against nursing homes were unenforceable as a matter of public policy under state law, and that such public policy was not pre-empted by the Federal Arbitration Act (FAA).

Held: The FAA pre-empts West Virginia's public policy categorically prohibiting the enforcement of all predispute arbitration agreements that apply to personal-injury or wrongful-death claims against nursing homes. The State Supreme Court of Appeals' interpretation was both incorrect and inconsistent with this Court's clear instruction that the FAA requires, without exception, that courts "enforce the bargain of the parties to arbitrate," *Dean Witter Reynolds Inc.* v. *Byrd*, 470 U. S. 213, 217. "When state law prohibits the arbitration of a particular type of claim, . . . [t]he conflicting rule is displaced by the FAA." *AT&T Mobility LLC* v. *Concepcion*, 563 U. S. 333, 341. That instruction resolves these cases: By categorically prohibiting arbitration of a particular type of claim, West Virginia's rule is contrary to the terms and coverage of the FAA. The State Supreme Court is to consider on remand whether the particular arbitration clauses in Brown's and Taylor's cases are unenforceable under state common-law principles that are not specific to arbitration and thus are not pre-empted by the FAA.

Certiorari granted; 228 W. Va. 646, 724 S. E. 2d 250, vacated and remanded.

PER CURIAM.

State and federal courts must enforce the Federal Arbitration Act (FAA), 9 U. S. C. §1 *et seq.*, with respect to all

*Together with No. 11–394, *Clarksburg Nursing Home & Rehabilitation Center, LLC, dba Clarksburg Continuous Care Center, et al.* v. *Marchio*, also on certiorari to the same court.

arbitration agreements covered by that statute. Here, the Supreme Court of Appeals of West Virginia, by misreading and disregarding the precedents of this Court interpreting the FAA, did not follow controlling federal law implementing that basic principle. The state court held unenforceable all predispute arbitration agreements that apply to claims alleging personal injury or wrongful death against nursing homes.

The decision of the state court found the FAA's coverage to be more limited than mandated by this Court's previous cases. The decision of the State Supreme Court of Appeals must be vacated. When this Court has fulfilled its duty to interpret federal law, a state court may not contradict or fail to implement the rule so established. See U. S. Const., Art. VI, cl. 2.

I

This litigation involves three negligence suits against nursing homes in West Virginia. The suits were brought by Clayton Brown, Jeffrey Taylor, and Sharon Marchio. In each case, a family member of a patient requiring extensive nursing care had signed an agreement with a nursing home on behalf of the patient. The relevant parts of the agreements in Brown's case and Taylor's case were identical. The contracts included a clause requiring the parties to arbitrate all disputes, other than claims to collect late payments owed by the patient. The contracts included a provision holding the party filing the arbitration responsible for paying a filing fee in accordance with the Rules of the American Arbitration Association fee schedules. The agreement in Marchio's case also included a clause requiring arbitration but made no exceptions to the arbitration requirement and did not mention filing fees.

In each of the three cases, a family member of a patient who had died sued the nursing home in state court, alleging that negligence caused injuries or harm resulting in death. A state trial court dismissed the suits by Brown and Taylor

based on the agreements to arbitrate. The Supreme Court of Appeals of West Virginia consolidated those cases with Marchio's, which was before the court on other issues.

In a decision concerning all three cases, the state court held that "as a matter of public policy under West Virginia law, an arbitration clause in a nursing home admission agreement adopted prior to an occurrence of negligence that results in a personal injury or wrongful death, shall not be enforced to compel arbitration of a dispute concerning the negligence." *Brown* v. *Genesis Healthcare Corp.*, 228 W. Va. 646, 688, 724 S. E. 2d 250, 292 (2011). The state court considered whether the state public policy was pre-empted by the FAA. The state court found unpersuasive this Court's interpretation of the FAA, calling it "tendentious," *id.*, at 674, 724 S. E. 2d, at 278, and "created from whole cloth," *id.*, at 675, 724 S. E. 2d, at 279. It later concluded that "Congress did not intend for the FAA to be, in any way, applicable to personal injury or wrongful death suits that only collaterally derive from a written agreement that evidences a transaction affecting interstate commerce, particularly where the agreement involves a service that is a practical necessity for members of the public," *id.*, at 687, 724 S. E. 2d, at 291. The court thus concluded that the FAA does not pre-empt the state public policy against predispute arbitration agreements that apply to claims of personal injury or wrongful death against nursing homes.

The West Virginia court's interpretation of the FAA was both incorrect and inconsistent with clear instruction in the precedents of this Court. The FAA provides that a "written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U. S. C. § 2. The statute's text includes no exception for personal-injury or wrongful-death claims. It "requires

courts to enforce the bargain of the parties to arbitrate." *Dean Witter Reynolds Inc.* v. *Byrd*, 470 U. S. 213, 217 (1985). It "reflects an emphatic federal policy in favor of arbitral dispute resolution." *KPMG LLP* v. *Cocchi*, *ante*, at 21 *(per curiam)* (quoting *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614, 631 (1985); internal quotation marks omitted).

As this Court reaffirmed last Term, "[w]hen state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA." *AT&T Mobility LLC* v. *Concepcion*, 563 U. S. 333, 341 (2011). That rule resolves these cases. West Virginia's prohibition against predispute agreements to arbitrate personal-injury or wrongful-death claims against nursing homes is a categorical rule prohibiting arbitration of a particular type of claim, and that rule is contrary to the terms and coverage of the FAA. See *ibid.* See also, *e. g.*, *Preston* v. *Ferrer*, 552 U. S. 346, 356 (2008) (FAA pre-empts state law granting state commissioner exclusive jurisdiction to decide issue the parties agreed to arbitrate); *Mastrobuono* v. *Shearson Lehman Hutton, Inc.*, 514 U. S. 52, 56 (1995) (FAA pre-empts state law requiring judicial resolution of claims involving punitive damages); *Perry* v. *Thomas*, 482 U. S. 483, 491 (1987) (FAA pre-empts state-law requirement that litigants be provided a judicial forum for wage disputes); *Southland Corp.* v. *Keating*, 465 U. S. 1, 10 (1984) (FAA pre-empts state financial investment statute's prohibition of arbitration of claims brought under that statute).

II

The West Virginia court proposed an "alternativ[e]" holding that the particular arbitration clauses in Brown's case and Taylor's case were unconscionable. 228 W. Va., at 689–690, 691, 724 S. E. 2d, at 293–294, 295. See also *id.*, at 693, 724 S. E. 2d, at 297 (not addressing the question whether the arbitration agreement in Marchio's case is unenforceable for

reasons other than public policy). It is unclear, however, to what degree the state court's alternative holding was influenced by the invalid, categorical rule discussed above, the rule against predispute arbitration agreements. For example, in its discussion of the alternative holding, the state court found the arbitration clauses unconscionable in part because a predispute arbitration agreement that applies to claims of personal injury or wrongful death against nursing homes "clearly violates public policy." *Id.*, at 690, 724 S. E. 2d, at 294.

On remand, the West Virginia court must consider whether, absent that general public policy, the arbitration clauses in Brown's case and Taylor's case are unenforceable under state common-law principles that are not specific to arbitration and pre-empted by the FAA.

* * *

The petitions for certiorari are granted. The judgment of the Supreme Court of Appeals of West Virginia is vacated, and the cases are remanded for proceedings not inconsistent with this opinion.

It is so ordered.

Syllabus

MESSERSCHMIDT ET AL. *v.* MILLENDER, EXECUTOR OF ESTATE OF MILLENDER, DECEASED, ET AL.

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

No. 10–704. Argued December 5, 2011—Decided February 22, 2012

Shelly Kelly was afraid that she would be attacked by her boyfriend, Jerry Ray Bowen, while she moved out of her apartment. She therefore requested police protection. Two officers arrived, but they were called away to an emergency. As soon as the officers left, Bowen showed up at the apartment, yelled "I told you to never call the cops on me bitch!" and attacked Kelly, attempting to throw her over a second-story landing. After Kelly escaped to her car, Bowen pointed a sawed-off shotgun at her and threatened to kill her if she tried to leave. Kelly nonetheless sped away as Bowen fired five shots at the car, blowing out one of its tires.

Kelly later met with Detective Curt Messerschmidt to discuss the incident. She described the attack in detail, mentioned that Bowen had previously assaulted her, that he had ties to the Mona Park Crips gang, and that he might be staying at the home of his former foster mother, Augusta Millender. Following this conversation, Messerschmidt conducted a detailed investigation, during which he confirmed Bowen's connection to the Millenders' home, verified his membership in two gangs, and learned that Bowen had been arrested and convicted for numerous violent and firearm-related offenses. Based on this investigation, Messerschmidt drafted an application for a warrant authorizing a search of the Millenders' home for all firearms and ammunition, as well as evidence indicating gang membership.

Messerschmidt included two affidavits in the warrant application. The first detailed his extensive law enforcement experience and his specialized training in gang-related crimes. The second, expressly incorporated into the search warrant, described the incident and explained why Messerschmidt believed there was probable cause for the search. It also requested that the warrant be endorsed for night service because of Bowen's gang ties. Before submitting the application to a magistrate for approval, Messerschmidt had it reviewed by his supervisor, Sergeant Robert Lawrence, as well as a police lieutenant and a deputy district attorney. Messerschmidt then submitted the application to a Magistrate, who issued the warrant. The ensuing search uncovered only Mil-

lender's shotgun, a California Social Services letter addressed to Bowen, and a box of .45-caliber ammunition.

The Millenders filed an action under 42 U. S. C. § 1983 against petitioners Messerschmidt and Lawrence, alleging that the officers had subjected them to an unreasonable search in violation of the Fourth Amendment. The District Court granted summary judgment to the Millenders, concluding that the firearm and gang material aspects of the search warrant were overbroad and that the officers were not entitled to qualified immunity from damages. The Ninth Circuit, sitting en banc, affirmed the denial of qualified immunity. The court held that the warrant's authorization was unconstitutionally overbroad because the affidavits and warrant failed to establish probable cause that the broad categories of firearms, firearm-related material, and gang-related material were contraband or evidence of a crime, and that a reasonable officer would have been aware of the warrant's deficiency.

Held: The officers are entitled to qualified immunity. Pp. 546–556.

(a) Qualified immunity "protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson* v. *Callahan*, 555 U. S. 223, 231. Where the alleged Fourth Amendment violation involves a search or seizure pursuant to a warrant, the fact that a neutral magistrate has issued a warrant is the clearest indication that the officers acted in an objectively reasonable manner, or in "objective good faith." *United States* v. *Leon*, 468 U. S. 897, 922–923. Nonetheless, that fact does not end the inquiry into objective reasonableness. The Court has recognized an exception allowing suit when "it is obvious that no reasonably competent officer would have concluded that a warrant should issue." *Malley* v. *Briggs*, 475 U. S. 335, 341. The "shield of immunity" otherwise conferred by the warrant, *id.*, at 345, will be lost, for example, where the warrant was "based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable," *Leon*, 468 U. S., at 923. The threshold for establishing this exception is high. "[I]n the ordinary case, an officer cannot be expected to question the magistrate's probable-cause determination" because "[i]t is the magistrate's responsibility to determine whether the officer's allegations establish probable cause and, if so, to issue a warrant comporting in form with the requirements of the Fourth Amendment." *Id.*, at 921. Pp. 546–548.

(b) This case does not fall within that narrow exception. It would not be entirely unreasonable for an officer to believe that there was probable cause to search for all firearms and firearm-related materials.

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Under the circumstances set forth in the warrant, an officer could reasonably conclude that there was a "fair probability" that the sawed-off shotgun was not the only firearm Bowen owned, *Illinois* v. *Gates*, 462 U. S. 213, 238, and that Bowen's sawed-off shotgun was illegal. Cf. 26 U. S. C. §§ 5845(a), 5861(d). Given Bowen's possession of one illegal gun, his gang membership, willingness to use the gun to kill someone, and concern about the police, it would not be unreasonable for an officer to conclude that Bowen owned other illegal guns. An officer also could reasonably believe that seizure of firearms was necessary to prevent further assaults on Kelly. California law allows a magistrate to issue a search warrant for items "in the possession of any person with the intent to use them as a means of committing a public offense," Cal. Penal Code Ann. § 1524(a)(3), and the warrant application submitted by the officers specifically referenced this provision as a basis for the search. Pp. 548–549.

(c) Regarding the warrant's authorization to search for gang-related materials, a reasonable officer could view Bowen's attack as motivated not by the souring of his romantic relationship with Kelly but by a desire to prevent her from disclosing details of his gang activity to the police. It would therefore not be unreasonable—based on the facts set out in the affidavit—for an officer to believe that evidence of Bowen's gang affiliation would prove helpful in prosecuting him for the attack on Kelly, in supporting additional, related charges against Bowen for the assault, or in impeaching Bowen or rebutting his defenses. Moreover, even if this were merely a domestic dispute, a reasonable officer could still conclude that gang paraphernalia found at the Millenders' residence could demonstrate Bowen's control over the premises or his connection to other evidence found there. Pp. 549–553.

(d) The fact that the officers sought and obtained approval of the warrant application from a superior and a deputy district attorney before submitting it to the Magistrate provides further support for the conclusion that an officer could reasonably have believed that the scope of the warrant was supported by probable cause. A contrary conclusion would mean not only that Messerschmidt and Lawrence were "plainly incompetent" in concluding that the warrant was supported by probable cause, *Malley, supra*, at 341, but that their supervisor, the deputy district attorney, and the Magistrate were as well. Pp. 553–555.

(e) In holding that the warrant in this case was so obviously defective that no reasonable officer could have believed it to be valid, the court below erred in relying on *Groh* v. *Ramirez*, 540 U. S. 551. There, officers who carried out a warrant-approved search were not entitled to qualified immunity because the warrant failed to describe any of the items to be seized and "even a cursory reading of the warrant" would

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have revealed this defect. *Id.*, at 564. Here, in contrast, any arguable defect would have become apparent only upon a close parsing of the warrant application, and a comparison of the supporting affidavit to the terms of the warrant to determine whether the affidavit established probable cause to search for all the items listed in the warrant. Unlike in *Groh*, any error here would not be one that "just a simple glance" would have revealed. *Ibid.* Pp. 555–556.

620 F. 3d 1016, reversed.

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, BREYER, and ALITO, JJ., joined. BREYER, J., filed a concurring opinion, *post*, p. 556. KAGAN, J., filed an opinion concurring in part and dissenting in part, *post*, p. 557. SOTOMAYOR, J., filed a dissenting opinion, in which GINSBURG, J., joined, *post*, p. 560.

Timothy T. Coates argued the cause for petitioners. With him on the briefs was *Lillie Hsu*.

Principal Deputy Solicitor General Srinivasan argued the cause for the United States as *amicus curiae* urging reversal. On the brief were *Solicitor General Verrilli*, *Assistant Attorneys General Breuer* and *West*, *Deputy Solicitor General Dreeben*, *Acting Deputy Solicitor General Kruger*, *Sarah E. Harrington*, *John M. Pellettieri*, *Barbara L. Herwig*, and *August Flentje*.

Paul R. Q. Wolfson argued the cause for respondents. With him on the brief were *Robert Mann*, *Olu K. Orange*, and *Shirley Cassin Woodward*.*

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*A brief of *amici curiae* urging reversal was filed for the State of Texas et al. by *Greg Abbott*, Attorney General of Texas, *Jonathan F. Mitchell*, Solicitor General, *Daniel T. Hodge*, First Assistant Attorney General, *David C. Mattax*, and *David A. Talbot, Jr.*, and by the Attorneys General for their respective States as follows: *Luther Strange* of Alabama, *John J. Burns* of Alaska, *Dustin McDaniel* of Arkansas, *John Suthers* of Colorado, *Joseph R. Biden III* of Delaware, *Pamela Jo Bondi* of Florida, *Samuel S. Olens* of Georgia, *David M. Louie* of Hawaii, *Lawrence G. Wasden* of Idaho, *Greg Zoeller* of Indiana, *Derek Schmidt* of Kansas, *James D. "Buddy" Caldwell* of Louisiana, *William J. Schneider* of Maine, *Bill Schuette* of Michigan, *Jim Hood* of Mississippi, *Steve Bullock* of Montana, *Jon Bruning* of Nebraska, *Gary King* of New Mexico, *Wayne Stenehjem* of North Dakota, *Linda L. Kelly* of Pennsylvania, *Peter F. Kilmartin* of

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Petitioner police officers conducted a search of respondents' home pursuant to a warrant issued by a neutral Magistrate. The warrant authorized a search for all guns and gang-related material, in connection with the investigation of a known gang member for shooting at his ex-girlfriend with a pistol-gripped sawed-off shotgun, because she had "call[ed] the cops" on him. App. 56. Respondents brought an action seeking to hold the officers personally liable under 42 U. S. C. § 1983, alleging that the search violated their Fourth Amendment rights because there was not sufficient probable cause to believe the items sought were evidence of a crime. In particular, respondents argued that there was no basis to search for all guns simply because the suspect owned and had used a sawed-off shotgun, and no reason to search for gang material because the shooting at the ex-girlfriend for "call[ing] the cops" was solely a domestic dispute. The Court of Appeals for the Ninth Circuit held that the warrant was invalid, and that the officers were not entitled to immunity from personal liability because this invalidity was so obvious that any reasonable officer would have recognized it, despite the Magistrate's approval. We disagree and reverse.

I

A

Shelly Kelly decided to break off her romantic relationship with Jerry Ray Bowen and move out of her apartment, to which Bowen had a key. Kelly feared an attack from

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Rhode Island, *Marty J. Jackley* of South Dakota, *Mark L. Shurtleff* of Utah, *J. B. Van Hollen* of Wisconsin, and *Gregory A. Phillips* of Wyoming.

Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union by *Steven R. Shapiro;* and for the National Rifle Association of America, Inc., et al. by *Stephen P. Halbrook* and *C. D. Michel.*

Bowen, who had previously assaulted her and had been convicted of multiple violent felonies. She therefore asked officers from the Los Angeles County Sheriff's Department to accompany her while she gathered her things. Deputies from the sheriff's department came to assist Kelly but were called away to respond to an emergency before the move was complete.

As soon as the officers left, an enraged Bowen appeared at the bottom of the stairs to the apartment, yelling "I told you to never call the cops on me bitch!" App. 39, 56. Bowen then ran up the stairs to Kelly, grabbed her by her shirt, and tried to throw her over the railing of the second-story landing. When Kelly successfully resisted, Bowen bit her on the shoulder and attempted to drag her inside the apartment by her hair. Kelly again managed to escape Bowen's grasp, and ran to her car. By that time, Bowen had retrieved a black sawed-off shotgun with a pistol grip. He ran in front of Kelly's car, pointed the shotgun at her, and told Kelly that if she tried to leave he would kill her. Kelly leaned over, fully depressed the gas pedal, and sped away. Bowen fired at the car a total of five times, blowing out the car's left front tire in the process, but Kelly managed to escape.

Kelly quickly located police officers and reported the assault. She told the police what had happened—that Bowen had attacked her after becoming "angry because she had called the Sheriff's Department"—and she mentioned that Bowen was "an active member of the 'Mona Park Crips,'" a local street gang. *Id.*, at 39. Kelly also provided the officers with photographs of Bowen.

Detective Curt Messerschmidt was assigned to investigate the incident. Messerschmidt met with Kelly to obtain details of the assault and information about Bowen. Kelly described the attack and informed Messerschmidt that she thought Bowen was staying at his foster mother's home at

2234 East 120th Street. Kelly also informed Messerschmidt of Bowen's previous assaults on her and of his gang ties.

Messerschmidt then conducted a background check on Bowen by consulting police records, California Department of Motor Vehicles records, and the "cal-gang" database. Based on this research, Messerschmidt confirmed Bowen's connection to the 2234 East 120th Street address. He also confirmed that Bowen was an "active" member of the Mona Park Crips and a "secondary" member of the Dodge City Crips. *Id.*, at 64. Finally, Messerschmidt learned that Bowen had been arrested and convicted for numerous violent and firearm-related offenses. Indeed, at the time of the investigation, Bowen's "rapsheet" spanned over 17 printed pages, and indicated that he had been arrested at least 31 times. Nine of these arrests were for firearms offenses and six were for violent crimes, including three arrests for assault with a deadly weapon (firearm). *Id.*, at 72–81.

Messerschmidt prepared two warrants: one to authorize Bowen's arrest and one to authorize the search of 2234 East 120th Street. An attachment to the search warrant described the property that would be the object of the search:

> "All handguns, rifles, or shotguns of any caliber, or any firearms capable of firing ammunition, or firearms or devices modified or designed to allow it [*sic*] to fire ammunition. All caliber of ammunition, miscellaneous gun parts, gun cleaning kits, holsters which could hold or have held any caliber handgun being sought. Any receipts or paperwork, showing the purchase, ownership, or possession of the handguns being sought. Any firearm for which there is no proof of ownership. Any firearm capable of firing or chambered to fire any caliber ammunition.
>
> "Articles of evidence showing street gang membership or affiliation with any Street Gang to include but not limited to any reference to 'Mona Park Crips', including

> writings or graffiti depicting gang membership, activity or identity. Articles of personal property tending to establish the identity of person [*sic*] in control of the premise or premises. Any photographs or photograph albums depicting persons, vehicles, weapons or locations, which may appear relevant to gang membership, or which may depict the item being sought and or believed to be evidence in the case being investigated on this warrant, or which may depict evidence of criminal activity. Additionally to include any gang indicia that would establish the persons being sought in this warrant, affiliation or membership with the 'Mona Park Crips' street gang." *Id.*, at 52.

Two affidavits accompanied Messerschmidt's warrant applications. The first affidavit described Messerschmidt's extensive law enforcement experience, including that he had served as a peace officer for 14 years, that he was then assigned to a "specialized unit" "investigating gang related crimes and arresting gang members for various violations of the law," that he had been involved in "hundreds of gang related incidents, contacts, and or arrests" during his time on the force, and that he had "received specialized training in the field of gang related crimes" and training in "gang related shootings." *Id.*, at 53–54.

The second affidavit—expressly incorporated into the search warrant—explained why Messerschmidt believed there was sufficient probable cause to support the warrant. That affidavit described the facts of the incident involving Kelly and Bowen in great detail, including the weapon used in the assault. The affidavit recounted that Kelly had identified Bowen as the assailant and that she thought Bowen might be found at 2234 East 120th Street. It also reported that Messerschmidt had "conducted an extensive background search on the suspect by utilizing departmental records, state computer records, and other police agency records,"

and that from that information he had concluded that Bowen resided at 2234 East 120th Street. *Id.*, at 58.

The affidavit requested that the search warrant be endorsed for night service because "information provided by the victim and the cal-gang data base" indicated that Bowen had "gang ties to the Mona Park Crip gang" and that "night service would provide an added element of safety to the community as well as for the deputy personnel serving the warrant." *Id.*, at 59. The affidavit concluded by noting that Messerschmidt "believe[d] that the items sought" would be in Bowen's possession and that "recovery of the weapon could be invaluable in the successful prosecution of the suspect involved in this case, and the curtailment of further crimes being committed." *Ibid.*

Messerschmidt submitted the warrants to his supervisors—Sergeant Lawrence and Lieutenant Ornales—for review. Deputy District Attorney Janet Wilson also reviewed the materials and initialed the search warrant, indicating that she agreed with Messerschmidt's assessment of probable cause. *Id.*, at 27, 47. Finally, Messerschmidt submitted the warrants to a Magistrate. The Magistrate approved the warrants and authorized night service.

The search warrant was served two days later by a team of officers that included Messerschmidt and Lawrence. Sheriff's deputies forced open the front door of 2234 East 120th Street and encountered Augusta Millender—a woman in her seventies—and Millender's daughter and grandson. As instructed by the police, the Millenders went outside while the residence was secured but remained in the living room while the search was conducted. Bowen was not found in the residence. The search did, however, result in the seizure of Augusta Millender's shotgun, a California Social Services letter addressed to Bowen, and a box of .45-caliber ammunition.

Bowen was arrested two weeks later after Messerschmidt found him hiding under a bed in a motel room.

B

The Millenders filed suit in Federal District Court against the County of Los Angeles, the sheriff's department, the sheriff, and a number of individual officers, including Messerschmidt and Lawrence. The complaint alleged, as relevant here, that the search warrant was invalid under the Fourth Amendment. It sought damages from Messerschmidt and Lawrence, among others.

The parties filed cross-motions for summary judgment on the validity of the search warrant. The District Court found the warrant defective in two respects. The District Court concluded that the warrant's authorization to search for firearms was unconstitutionally overbroad because the "crime specified here was a physical assault with a very specific weapon"—a black sawed-off shotgun with a pistol grip—negating any need to "search for all firearms." *Millender* v. *County of Los Angeles*, Civ. No. 05–2298 (CD Cal., Mar. 15, 2007), App. to Pet. for Cert. 106, 157, 2007 WL 7589200, *21. The court also found the warrant overbroad with respect to the search for gang-related materials, because there "was no evidence that the crime at issue was gang-related." App. to Pet. for Cert. 157. As a result, the District Court granted summary judgment to the Millenders on their constitutional challenges to the firearm and gang material aspects of the search warrant. *Id.*, at 160. The District Court also rejected the officers' claim that they were entitled to qualified immunity from damages. *Id.*, at 171.

Messerschmidt and Lawrence appealed, and a divided panel of the Court of Appeals for the Ninth Circuit reversed the District Court's denial of qualified immunity. *Millender* v. *County of Los Angeles*, 564 F. 3d 1143 (2009). The court held that the officers were entitled to qualified immunity because "they reasonably relied on the approval of the warrant by a deputy district attorney and a judge." *Id.*, at 1145.

The Court of Appeals granted rehearing en banc and affirmed the District Court's denial of qualified immunity. *Millender* v. *County of Los Angeles*, 620 F. 3d 1016 (2010). The en banc court concluded that the warrant's authorization was unconstitutionally overbroad because the affidavit and the warrant failed to "establish[ ] probable cause that the broad categories of firearms, firearm-related material, and gang-related material described in the warrant were contraband or evidence of a crime." *Id.*, at 1033. In the en banc court's view, "the deputies had probable cause to search for a single, identified weapon . . . . They had no probable cause to search for the broad class of firearms and firearm-related materials described in the warrant." *Id.*, at 1027. In addition, "[b]ecause the deputies failed to establish any link between gang-related materials and a crime, the warrant authorizing the search and seizure of all gang-related evidence [was] likewise invalid." *Id.*, at 1031. Concluding that "a reasonable officer in the deputies' position would have been well aware of this deficiency," the en banc court held that the officers were not entitled to qualified immunity. *Id.*, at 1033–1035.

There were two separate dissenting opinions. Judge Callahan determined that "the officers had probable cause to search for and seize any firearms in the home in which Bowen, a gang member and felon, was thought to reside." *Id.*, at 1036. She also concluded that "the officers reasonably relied on their superiors, the district attorney, and the magistrate to correct" any overbreadth in the warrant, and that the officers were entitled to qualified immunity because their actions were not objectively unreasonable. *Id.*, at 1044, 1049. Judge Silverman also dissented, concluding that the "deputies' belief in the validity of . . . the warrant was entirely reasonable" and that the "record [wa]s totally devoid of any evidence that the deputies acted other than in good faith." *Id.*, at 1050. Judge Tallman joined both dissents.

We granted certiorari. 564 U. S. 1035 (2011).

II

The Millenders allege that they were subjected to an unreasonable search in violation of the Fourth Amendment because the warrant authorizing the search of their home was not supported by probable cause. They seek damages from Messerschmidt and Lawrence for their roles in obtaining and executing this warrant. The validity of the warrant is not before us. The question instead is whether Messerschmidt and Lawrence are entitled to immunity from damages, even assuming that the warrant should not have been issued.

"The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson* v. *Callahan*, 555 U. S. 223, 231 (2009) (quoting *Harlow* v. *Fitzgerald*, 457 U. S. 800, 818 (1982)). Qualified immunity "gives government officials breathing room to make reasonable but mistaken judgments," and "protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Ashcroft* v. *al-Kidd*, 563 U. S. 731, 743 (2011) (quoting *Malley* v. *Briggs*, 475 U. S. 335, 341 (1986)). "[W]hether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the 'objective legal reasonableness' of the action, assessed in light of the legal rules that were 'clearly established' at the time it was taken." *Anderson* v. *Creighton*, 483 U. S. 635, 639 (1987) (citation omitted).

Where the alleged Fourth Amendment violation involves a search or seizure pursuant to a warrant, the fact that a neutral magistrate has issued a warrant is the clearest indication that the officers acted in an objectively reasonable manner or, as we have sometimes put it, in "objective good faith." *United States* v. *Leon*, 468 U. S. 897, 922–923 (1984).[1]

[1] Although *Leon* involved the proper application of the exclusionary rule to remedy a Fourth Amendment violation, we have held that "the same standard of objective reasonableness that we applied in the context of a

Nonetheless, under our precedents, the fact that a neutral magistrate has issued a warrant authorizing the allegedly unconstitutional search or seizure does not end the inquiry into objective reasonableness. Rather, we have recognized an exception allowing suit when "it is obvious that no reasonably competent officer would have concluded that a warrant should issue." *Malley*, 475 U. S., at 341. The "shield of immunity" otherwise conferred by the warrant, *id.*, at 345, will be lost, for example, where the warrant was "based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable," *Leon*, 468 U. S., at 923 (internal quotation marks omitted).[2]

Our precedents make clear, however, that the threshold for establishing this exception is a high one, and it should be. As we explained in *Leon*, "[i]n the ordinary case, an officer cannot be expected to question the magistrate's probable-cause determination" because "[i]t is the magistrate's responsibility to determine whether the officer's allegations establish probable cause and, if so, to issue a warrant comporting in form with the requirements of the Fourth Amendment." *Id.*, at 921; see also *Malley*, *supra*, at 346, n. 9 ("It is a sound presumption that the magistrate is more qualified than the police officer to make a probable cause determination, and it goes without saying that where a magis-

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suppression hearing in *Leon* defines the qualified immunity accorded an officer" who obtained or relied on an allegedly invalid warrant. *Malley* v. *Briggs*, 475 U. S. 335, 344 (1986) (citation omitted); *Groh* v. *Ramirez*, 540 U. S. 551, 565, n. 8 (2004).

[2] The dissent relies almost entirely on facts outside the affidavit, including Messerschmidt's deposition testimony, *post*, at 563, 569 (opinion of SOTOMAYOR, J.), crime analysis forms, *post*, at 563, Kelly's interview, *post*, at 564–565, and n. 5, Messerschmidt's notes regarding Kelly's interview, *post*, at 564–565, n. 5, and even several briefs filed in the District Court and the Court of Appeals, *post*, at 566, 570. In contrast, the dissent cites the probable-cause affidavit itself *only twice*. See *post*, at 570–571. There is no contention before us that the affidavit was misleading in omitting any of the facts on which the dissent relies. Cf. *Leon*, 468 U. S., at 923.

trate acts mistakenly in issuing a warrant but within the range of professional competence of a magistrate, the officer who requested the warrant cannot be held liable" (internal quotation marks and citation omitted)).

III

The Millenders contend, and the Court of Appeals held, that their case falls into this narrow exception. According to the Millenders, the officers "failed to provide *any* facts or circumstances from which a magistrate could properly conclude that there was probable cause to seize the broad classes of items being sought," and "[n]o reasonable officer could have presumed that such a warrant was valid." Brief for Respondents 27. We disagree.

A

With respect to the warrant's authorization to search for and seize all firearms, the Millenders argue that "a reasonably well-trained officer would have readily perceived that there was no probable cause to search the house for *all* firearms and firearm-related items." *Id.*, at 32. Noting that "the affidavit indicated exactly what item was evidence of a crime—the 'black sawed off shotgun with a pistol grip,'" they argue that "[n]o facts established that Bowen possessed any other firearms, let alone that such firearms (if they existed) were 'contraband or evidence of a crime.'" *Ibid.* (quoting App. 56).

Even if the scope of the warrant were overbroad in authorizing a search for all guns when there was information only about a specific one, that specific one was a sawed-off shotgun with a pistol grip, owned by a known gang member, who had just fired the weapon five times in public in an attempt to murder another person, on the asserted ground that she had "call[ed] the cops" on him. *Id.*, at 56. Under these circumstances—set forth in the warrant—it would not have been unreasonable for an officer to conclude that there was

a "fair probability" that the sawed-off shotgun was not the only firearm Bowen owned. *Illinois* v. *Gates*, 462 U. S. 213, 238 (1983). And it certainly would have been reasonable for an officer to assume that Bowen's sawed-off shotgun was illegal. Cf. 26 U. S. C. §§ 5845(a), 5861(d). Evidence of one crime is not always evidence of several, but given Bowen's possession of one illegal gun, his gang membership, his willingness to use the gun to kill someone, and his concern about the police, a reasonable officer could conclude that there would be additional illegal guns among others that Bowen owned.[3]

A reasonable officer also could believe that seizure of the firearms was necessary to prevent further assaults on Kelly. California law allows a magistrate to issue a search warrant for items "in the possession of any person with the intent to use them as a means of committing a public offense," Cal. Penal Code Ann. § 1524(a)(3) (West 2011), and the warrant application submitted by the officers specifically referenced this provision as a basis for the search, App. 48. Bowen had already attempted to murder Kelly once with a firearm, and had yelled "I'll kill you" as she tried to escape from him. *Id.*, at 56–57. A reasonable officer could conclude that Bowen would make another attempt on Kelly's life and that he possessed other firearms "with the intent to use them" to that end. § 1524(a)(3).

Given the foregoing, it would not have been "entirely unreasonable" for an officer to believe, in the particular circumstances of this case, that there was probable cause to search for all firearms and firearm-related materials. *Leon*, *supra*, at 923 (internal quotation marks omitted).

With respect to the warrant's authorization to search for evidence of gang membership, the Millenders contend that

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[3] The dissent caricatures our analysis as being that "because Bowen fired one firearm, it was reasonable for the police to conclude . . . that [he] must have possessed others," *post*, at 569 (opinion of SOTOMAYOR, J.). This simply avoids coming to grips with the facts of the crime at issue.

"no reasonable officer could have believed that the affidavit presented to the magistrate contained a sufficient basis to conclude that the gang paraphernalia sought was contraband or evidence of a crime." Brief for Respondents 28. They argue that "the magistrate [could not] have reasonably concluded, based on the affidavit, that Bowen's gang membership had anything to do with the crime under investigation" because "[t]he affidavit described a 'spousal assault' that ensued after Kelly decided to end her 'on going dating relationship' with Bowen" and "[n]othing in that description suggests that the crime was gang-related." *Ibid.* (quoting App. 55).

This effort to characterize the case solely as a domestic dispute, however, is misleading. Cf. *post*, at 564 (SOTOMAYOR, J., dissenting); *post*, at 558 (KAGAN, J., concurring in part and dissenting in part). Messerschmidt began his affidavit in support of the warrant by explaining that he "has been investigating an assault with a deadly weapon incident" and elaborated that the crime was a "spousal assault *and* an assault with a deadly weapon." App. 55 (emphasis added). The affidavit also stated that Bowen was "a known Mona Park Crip gang member" "based on information provided by the victim and the cal-gang database,"[4] and that he had attempted to murder Kelly after becoming enraged that she had "call[ed] the cops on [him]." *Id.*, at 56, 58–59. A reasonable officer could certainly view Bowen's attack as motivated not by the souring of his romantic relationship with Kelly but instead by a desire to prevent her from disclosing details of his gang activity to the police. She was, after all,

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[4] Although the cal-gang database states that information contained therein cannot be used to establish probable cause, see App. 64, the affidavit makes clear that Kelly also provided this information to Messerschmidt, *id.*, at 59, as she did to the deputies who initially responded to the attack, *id.*, at 39 (describing Kelly's statement that Bowen was "an active member of the 'Mona Park Crips' "). We therefore need not decide whether the cal-gang database's disclaimer is relevant to Fourth Amendment analysis.

no longer linked with him as a girlfriend; he had assaulted her in the past; and she had indeed called the cops on him. And, as the affidavit supporting the warrant made clear, Kelly had in fact given the police information about Bowen's gang ties. *Id.*, at 59.[5]

It would therefore not have been unreasonable—based on the facts set out in the affidavit—for an officer to believe that evidence regarding Bowen's gang affiliation would prove helpful in prosecuting him for the attack on Kelly. See *Warden, Md. Penitentiary* v. *Hayden*, 387 U. S. 294, 307 (1967) (holding that the Fourth Amendment allows a search for evidence when there is "probable cause . . . to believe that the evidence sought will aid in a particular apprehension or conviction"). Not only would such evidence help to establish motive, either apart from or in addition to any domestic dispute, it would also support the bringing of additional, related charges against Bowen for the assault. See, *e. g.*, Cal. Penal Code Ann. § 136.1(b)(1) (West 1999) (It is a crime to "attempt[ ] to prevent or dissuade another person who has been the victim of a crime or who is witness to a crime from . . . [m]aking any report of that victimization to any . . . law enforcement officer").[6]

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[5] Contrary to the dissent's suggestion, see *post*, at 564–565, n. 5 (opinion of SOTOMAYOR, J.), the affidavit's account of Bowen's statements is consistent with other accounts of the confrontation, in particular the report prepared by the officers who spoke with Kelly immediately after the attack. See App. 39 (stating that when Bowen "appeared at the base of the stairs and began yelling at [Kelly,] [h]e was angry because she had called the Sheriff's Department"). And at no point during this litigation has the accuracy of the affidavit's account of the attack been called into question.

[6] The dissent relies heavily on Messerschmidt's deposition, in which he stated that Bowen's crime was not a "gang crime." See *post*, at 562, 563, 565–566. Messerschmidt's belief about the nature of the crime, however, is not *information* he possessed but a *conclusion* he reached based on information known to him. See *Anderson* v. *Creighton*, 483 U. S. 635, 641 (1987). We have "eschew[ed] inquiries into the subjective beliefs of law enforcement officers who seize evidence pursuant to a subsequently invalidated warrant." *United States* v. *Leon*, 468 U. S. 897, 922, n. 23 (1984); see also *Harlow* v. *Fitzgerald*, 457 U. S. 800, 815–819 (1982). In any event, as

In addition, a reasonable officer could believe that evidence demonstrating Bowen's membership in a gang might prove helpful in impeaching Bowen or rebutting various defenses he could raise at trial. For example, evidence that Bowen had ties to a gang that uses guns such as the one he used to assault Kelly would certainly be relevant to establish that he had familiarity with or access to this type of weapon.

Moreover, even if this were merely a domestic dispute, a reasonable officer could still conclude that gang paraphernalia found at the Millenders' residence would aid in the prosecution of Bowen by, for example, demonstrating Bowen's connection to other evidence found there. The warrant authorized a search for "any gang indicia that would establish the persons being sought in this warrant," and "[a]rticles of personal property tending to establish the identity of [the] person in control of the premise or premises." App. 52. Before the District Court, the Millenders "acknowledge[d] that evidence of who controlled the premises would be relevant if incriminating evidence were found and it became necessary to tie that evidence to a person," and the District Court approved that aspect of the warrant on this basis. App. to Pet. for Cert. 158–159 (internal quotation marks omitted). Given Bowen's known gang affiliation, a reasonable officer could conclude that gang paraphernalia found at the residence would be an effective means of demonstrating Bowen's control over the premises or his connection to evidence found there.[7]

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the dissent recognizes, the inquiry under our precedents is whether "a reasonably well-trained officer in petitioner's position would have known that *his affidavit* failed to establish probable cause." *Malley*, 475 U. S., at 345 (emphasis added). Messerschmidt's own evaluation does not answer the question whether it would have been unreasonable for an officer to have reached a different conclusion from the facts in the affidavit. See n. 2, *supra*.

[7] The Fourth Amendment does not require probable cause to believe evidence will *conclusively* establish a fact before permitting a search, but only "probable cause . . . to believe that the evidence sought *will aid* in

Whatever the use to which evidence of Bowen's gang involvement might ultimately have been put, it would not have been "entirely unreasonable" for an officer to believe that the facts set out in the affidavit established a fair probability that such evidence would aid the prosecution of Bowen for the criminal acts at issue. *Leon*, 468 U. S., at 923 (internal quotation marks omitted).

B

Whether any of these facts, standing alone or taken together, actually establish probable cause is a question we need not decide. Qualified immunity "gives government officials breathing room to make reasonable but mistaken judgments." *al-Kidd*, 563 U. S., at 743. The officers' judgment that the scope of the warrant was supported by probable cause may have been mistaken, but it was not "plainly incompetent." *Malley*, 475 U. S., at 341.

On top of all this, the fact that the officers sought and obtained approval of the warrant application from a superior and a deputy district attorney before submitting it to the Magistrate provides further support for the conclusion that an officer could reasonably have believed that the scope of the warrant was supported by probable cause. *Ibid.* Before seeking to have the warrant issued by a magistrate, Messerschmidt conducted an extensive investigation into Bowen's background and the facts of the crime. Based on this investigation, Messerschmidt prepared a detailed warrant application that truthfully laid out the pertinent facts.

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a particular apprehension or conviction." *Warden, Md. Penitentiary* v. *Hayden*, 387 U. S. 294, 307 (1967) (emphasis added). Even if gang evidence might have turned out not to be conclusive because other members of the Millender household also had gang ties, see *post*, at 567 (opinion of SOTOMAYOR, J.); *post*, at 558 (opinion of KAGAN, J.), a reasonable officer could still conclude that evidence of gang membership would help show Bowen's connection to the residence. Such evidence could, for example, have displayed Bowen's gang moniker ("C Jay") or could have been identified by Kelly as belonging to Bowen. See App. 64.

The only facts omitted—the officers' knowledge of Bowen's arrest and conviction records, see *supra*, at 541—would only have strengthened the warrant. Messerschmidt then submitted the warrant application for review by Lawrence, another superior officer, and a deputy district attorney, all of whom approved the application without any apparent misgivings. Only after this did Messerschmidt seek the approval of a neutral Magistrate, who issued the requested warrant. The officers thus "took every step that could reasonably be expected of them." *Massachusetts* v. *Sheppard*, 468 U. S. 981, 989 (1984). In light of the foregoing, it cannot be said that "no officer of reasonable competence would have requested the warrant." *Malley*, 475 U. S., at 346, n. 9. Indeed, a contrary conclusion would mean not only that Messerschmidt and Lawrence were "plainly incompetent," *id.*, at 341, but that their supervisor, the deputy district attorney, and the Magistrate were as well.

The Court of Appeals, however, gave no weight to the fact that the warrant had been reviewed and approved by the officers' superiors, a deputy district attorney, and a neutral Magistrate. Relying on *Malley*, the court held that the officers had an "independent responsibility to ensure there [was] at least a colorable argument for probable cause." 620 F. 3d, at 1034. It explained that "[t]he deputies here had a responsibility to exercise their reasonable professional judgment," and that "in circumstances such as these a neutral magistrate's approval (and, a fortiori, a non-neutral prosecutor's) cannot absolve an officer of liability." *Ibid.* (citation omitted).

We rejected in *Malley* the contention that an officer is automatically entitled to qualified immunity for seeking a warrant unsupported by probable cause, simply because a magistrate had approved the application. 475 U. S., at 345. And because the officers' superior and the deputy district attorney are part of the prosecution team, their review also cannot be regarded as dispositive. But by holding in *Malley*

that a magistrate's approval does not automatically render an officer's conduct reasonable, we did not suggest that approval by a magistrate or review by others is irrelevant to the objective reasonableness of the officers' determination that the warrant was valid. Indeed, we expressly noted that we were not deciding "whether [the officer's] conduct in [that] case was in fact objectively reasonable." *Ibid.*, n. 8. The fact that the officers secured these approvals is certainly pertinent in assessing whether they could have held a reasonable belief that the warrant was supported by probable cause.

C

In holding that the warrant in this case was so obviously defective that no reasonable officer could have believed it was valid, the court below relied heavily on our decision in *Groh* v. *Ramirez*, 540 U. S. 551 (2004), but that precedent is far afield. There, we held that officers who carried out a warrant-approved search were not entitled to qualified immunity because the warrant in question failed to describe the items to be seized *at all*. *Id.*, at 557. We explained that "[i]n the portion of the form that called for a description of the 'person or property' to be seized, [the applicant] typed a description of [the target's] two-story blue house rather than the alleged stockpile of firearms." *Id.*, at 554. Thus, the warrant stated nonsensically that "'there is now concealed [on the specified premises] a certain person or property, namely [a] single dwelling residence two story in height which is blue in color and has two additions attached to the east.'" *Id.*, at 554–555, n. 2 (bracketed material in original). Because "even a cursory reading of the warrant in [that] case—perhaps just a simple glance—would have revealed a glaring deficiency that any reasonable police officer would have known was constitutionally fatal," *id.*, at 564, we held that the officer was not entitled to qualified immunity.

The instant case is not remotely similar. In contrast to *Groh*, any defect here would not have been obvious from the

face of the warrant. Rather, any arguable defect would have become apparent only upon a close parsing of the warrant application, and a comparison of the affidavit to the terms of the warrant to determine whether the affidavit established probable cause to search for all the items listed in the warrant. This is not an error that "just a simple glance" would have revealed. *Ibid.* Indeed, unlike in *Groh*, the officers here did not merely submit their application to a magistrate. They also presented it for review by a superior officer, and a deputy district attorney, before submitting it to the Magistrate. The fact that none of the officials who reviewed the application expressed concern about its validity demonstrates that any error was not obvious. *Groh* plainly does not control the result here.

* * *

The question in this case is not whether the Magistrate erred in believing there was sufficient probable cause to support the scope of the warrant he issued. It is instead whether the Magistrate so obviously erred that any reasonable officer would have recognized the error. The occasions on which this standard will be met may be rare, but so too are the circumstances in which it will be appropriate to impose personal liability on a lay officer in the face of judicial approval of his actions. Even if the warrant in this case were invalid, it was not so obviously lacking in probable cause that the officers can be considered "plainly incompetent" for concluding otherwise. *Malley*, *supra*, at 341. The judgment of the Court of Appeals denying the officers qualified immunity must therefore be reversed.

It is so ordered.

JUSTICE BREYER, concurring.

The Court concludes that the officers acted reasonably in searching the house for "'all firearms and firearm-related items.'" *Ante*, at 548 (emphasis deleted). In support of

this conclusion, it cites two sets of circumstances. First, the majority points to "Bowen's possession of one illegal gun, his gang membership, his willingness to use the gun to kill someone, and his concern about the police . . . ." *Ante*, at 549. Second, the majority notes that "[a] reasonable officer also could believe that seizure of the firearms was necessary to prevent further assaults on Kelly," because "Bowen had already attempted to murder Kelly once with a firearm, and had yelled 'I'll kill you' as she tried to escape from him." *Ibid.* In my view, given all these circumstances together, the officers could reasonably have believed that the scope of their search was supported by probable cause. On that basis, I concur.

JUSTICE KAGAN, concurring in part and dissenting in part.

Both the Court and the dissent view this case as an all-or-nothing affair: The Court awards immunity across the board to Messerschmidt and his colleagues, while the dissent would grant them none at all. I think the right answer lies in between, although the Court makes the more far-reaching error.

I agree with the Court that a reasonably competent police officer could have thought this warrant valid in authorizing a search for all firearms and related items. See *ante*, at 548–549. The warrant application recounted that a known gang member had used a sawed-off shotgun—an illegal weapon under California law, see Cal. Penal Code Ann. § 33215 (West 2012 Cum. Supp.)—to try to kill another person. See App. 56–57, 59. Perhaps gang ties plus possession of an unlawful gun plus use of that gun to commit a violent assault do not add up to what was needed for this search: probable cause to believe that Bowen had additional illegal firearms (or legal firearms that he intended to use to violate the law) at the place he was staying. But because our and the Ninth Circuit's decisions leave that conclusion debatable, a reasonable police officer could have found the warrant adequately sup-

ported by "indicia of probable cause." *Malley* v. *Briggs*, 475 U. S. 335, 345 (1986). So Messerschmidt and his fellow officers should receive qualified immunity for their search for firearms.

The Court, however, goes astray when it holds that a reasonable officer could have thought the warrant valid in approving a search for evidence of "street gang membership," App. 52. Membership in even the worst gang does not violate California law, so the officers could not search for gang paraphernalia just to establish Bowen's ties to the Crips. Instead, the police needed probable cause to believe that such items would provide evidence of an actual crime—and as the Court acknowledges, see *ante*, at 549–551, the only crime mentioned in the warrant application was the assault on Kelly. The problem for the Court is that nothing in the application supports a link between Bowen's gang membership and that shooting. Contra the Court's elaborate theory-spinning, see *ante*, at 548–553, Messerschmidt's affidavit in fact characterized the violent assault only as a domestic dispute, not as a gang-related one, see App. 55 (describing the crime as a "spousal assault and an assault with a deadly weapon"). And that description is consistent with the most natural understanding of the events. The warrant application thus had a hole at its very center: It lacked any explanation of how gang items would (or even might) provide evidence of the domestic assault the police were investigating.

To fill this vacuum, the Court proposes an alternative, but similarly inadequate justification—that gang paraphernalia could have demonstrated Bowen's connection to the Millender residence and to any evidence of the assault found there. The dissent rightly notes one difficulty with this argument: The discovery of gang items would not have established that Bowen was staying at the house, given that several other gang members regularly did so. See *post*, at 567 (opinion of SOTOMAYOR, J.). And even setting that issue aside, the Court's reasoning proves far too much: It would

sanction equally well a search for *any* of Bowen's possessions on the premises—a result impossible to square with the Fourth Amendment. See, *e. g.*, *Andresen* v. *Maryland*, 427 U. S. 463, 480 (1976) (disapproving " 'a general, exploratory rummaging in a person's belongings' " (quoting *Coolidge* v. *New Hampshire*, 403 U. S. 443, 467 (1971))). In authorizing a search for all gang-related items, the warrant far outstripped the officers' probable cause. Because a reasonable officer would have recognized that defect, I would not award qualified immunity to Messerschmidt and his colleagues for this aspect of their search.

Still more fundamentally, the Court errs in scolding the Court of Appeals for failing to give "weight to the fact that the warrant had been reviewed and approved by the officers' superiors, a deputy district attorney, and a neutral Magistrate." *Ante*, at 554. As the dissent points out, see *post*, at 572–574, this Court's holding in *Malley* is to the opposite effect: An officer is *not* "entitled to rely on the judgment of a judicial officer in finding that probable cause exists and hence issuing the warrant." 475 U. S., at 345. *Malley* made clear that qualified immunity turned on the officer's own "professional judgment," considered separately from the mistake of the magistrate. *Id.*, at 346; see *ibid.*, n. 9 ("The officer . . . cannot excuse his own default by pointing to the greater incompetence of the magistrate"); *id.*, at 350 (Powell, J., concurring in part and dissenting in part) (objecting to the Court's decision to "give little evidentiary weight to the finding of probable cause by a magistrate"). And what we said in *Malley* about a magistrate's authorization applies still more strongly to the approval of other police officers or state attorneys. All those individuals, as the Court puts it, are "part of the prosecution team." *Ante*, at 554. To make their views relevant is to enable those teammates (whether acting in good or bad faith) to confer immunity on each other for unreasonable conduct—like applying for a warrant without anything resembling probable cause.

For these reasons, I would reverse in part and affirm in part the judgment of the Court of Appeals, and I would remand this case for further proceedings.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, dissenting.

The fundamental purpose of the Fourth Amendment's warrant clause is "to protect against all general searches." *Go-Bart Importing Co.* v. *United States*, 282 U. S. 344, 357 (1931). The Fourth Amendment was adopted specifically in response to the Crown's practice of using general warrants and writs of assistance to search "suspected places" for evidence of smuggling, libel, or other crimes. *Boyd* v. *United States*, 116 U. S. 616, 625–626 (1886). Early patriots railed against these practices as "the worst instrument of arbitrary power" and John Adams later claimed that "the child Independence was born" from colonists' opposition to their use. *Id.*, at 625 (internal quotation marks omitted).

To prevent the issue of general warrants on "loose, vague or doubtful bases of fact," *Go-Bart Importing Co.*, 282 U. S., at 357, the Framers established the inviolable principle that should resolve this case: "[N]o Warrants shall issue, but upon probable cause . . . and particularly describing the . . . things to be seized." U. S. Const., Amdt. 4. That is, the police must articulate an adequate reason to search for specific items related to specific crimes.

In this case, police officers investigating a specific, non-gang-related assault committed with a specific firearm (a sawed-off shotgun) obtained a warrant to search for all evidence related to "any Street Gang," "[a]ny photographs . . . which may depict evidence of criminal activity," and "any firearms." App. 52. They did so for the asserted reason that the search might lead to evidence related to other gang members and other criminal activity, and that other "[v]alid warrants commonly allow police to search for 'firearms and

ammunition.'" See *infra*, at 567. That kind of general warrant is antithetical to the Fourth Amendment.

The Court nonetheless concludes that the officers are entitled to qualified immunity because their conduct was "objectively reasonable." *Ante*, at 546. I could not disagree more. All 13 federal judges who previously considered this case had little difficulty concluding that the police officers' search for any gang-related material violated the Fourth Amendment. See App. to Pet. for Cert. 157–158; *Millender* v. *County of Los Angeles*, 564 F. 3d 1143, 1150–1151 (CA9 2009); *id.*, at 1151 (Fernandez, J., concurring); *Millender* v. *County of Los Angeles*, 620 F. 3d 1016, 1030–1031 (CA9 2010); *id.*, at 1037, n. 7 (Callahan, J., dissenting); *id.*, at 1049 (Silverman, J., dissenting). And a substantial majority agreed that the police's search for both gang-related material and all firearms not only violated the Fourth Amendment, but was objectively unreasonable. Like them, I believe that any "reasonably well-trained officer in petitioner's position would have known that his affidavit failed to establish probable cause." *Malley* v. *Briggs*, 475 U. S. 335, 345 (1986).

The Court also hints that a police officer's otherwise unreasonable conduct may be excused by the approval of a magistrate, or more disturbingly, another police officer. *Ante*, at 553–555. That is inconsistent with our focus on the objective reasonableness of an officer's decision to submit a warrant application to a magistrate, and we long ago rejected it. See *Malley*, 475 U. S., at 345–346.

The Court's analysis bears little relationship to the record in this case, our precedents, or the purposes underlying qualified immunity analysis. For all these reasons, I respectfully dissent.

I

The Court holds that a well-trained officer could have reasonably concluded that there was probable cause to search the Millenders' residence for any evidence of affiliation with

"any Street Gang," and "[a]ll handguns, rifles, or shotguns of any caliber, or any firearms capable of firing ammunition." App. 52.[1] I cannot agree.

A

Most troubling is the Court's determination that petitioners reasonably could have concluded that they had probable cause to search for all evidence of any gang affiliation in the Millenders' home. The Court reaches this result only by way of an unprecedented, *post hoc* reconstruction of the crime that wholly ignores the police's own conclusions, as well as the undisputed facts presented to the District Court.

The Court primarily theorizes that "[a] reasonable officer could certainly view Bowen's attack as motivated not by the souring of his romantic relationship with Kelly but instead by a desire to prevent her from disclosing details of his gang activity to the police." *Ante,* at 550. The majority therefore dismisses as "misleading" the Millenders' characterization of the case as a "domestic dispute," insisting that Detective Messerschmidt could have reasonably thought that the crime was gang related. See *ibid.*[2]

The police flatly rejected that hypothesis, however, concluding that the crime was a domestic dispute that was not in any way gang related. Detective Messerschmidt's deposition is illustrative.

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[1] Not even the Court defends the warrant's authorization to search for "'[a]ny photographs . . . which may depict evidence of criminal activity.'" *Ante*, at 542.

[2] The Court implies Detective Messerschmidt did not consider the crime "solely . . . a domestic dispute" because he labeled it a "spousal assault *and* an assault with a deadly weapon." *Ante,* at 550 (internal quotation marks omitted). Solely domestic disputes often involve gun violence, however. See Sorenson & Weibe, Weapons in the Lives of Battered Women, 94 Am. J. Pub. Health 1412, 1413 (2004) (noting more than one-third of female domestic violence shelter residents in California reported having been threatened or harmed with a firearm). That was the case here. In any event, the Court's reading of Detective Messerschmidt's affidavit is incompatible with his testimony that the crime was "just sort of a spousal-abuse-type case," not a "gang crime." See *infra*, at 563.

> "Q: So as far as you knew, it was just sort of a spousal-abuse-type case where the perpetrator happened to be in a gang, right?
>
> "A: Correct.
>
> "Q: So you didn't have any reason to believe that the assault on Kelly was any sort of gang crime, did you?
>
> "A: No." Record in No. CV 05–2298 DDP (RZx) (CD Cal.) (hereinafter Record), Doc. 51 (Exh. X), p. 120 (hereinafter Deposition).[3]

The "Crime Analysis" forms prepared by the police likewise identified Bowen as a "Mona Park Crip" gang member, but did not check off "gang-related" as a motive for the attack. See App. 41, 44 (Crime Analysis Supplemental Form–M. O. Factors). And the District Court noted it was undisputed that Detective Messerschmidt "had no reason to believe Bowen's crime was a 'gang' crime." App. to Pet. for Cert. 115.[4]

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[3] By suggesting that courts assessing qualified immunity should ignore police officers' testimony about the information they possessed at the time of the search, *ante*, at 551–552, n. 6, the Court misreads *Harlow* v. *Fitzgerald*, 457 U. S. 800, 815–819 (1982), and *Anderson* v. *Creighton*, 483 U. S. 635, 645 (1987). In *Harlow*, we adopted a qualified immunity test focusing on an officer's objective good faith, rather than whether the officer searched "*with the malicious intention* to cause a deprivation of constitutional rights or other injury." 457 U. S., at 815 (internal quotation marks omitted). As we have explained, "examination of the information possessed by the searching officials . . . does not reintroduce into qualified immunity analysis the inquiry into officials' subjective intent that *Harlow* sought to minimize." *Anderson*, 483 U. S., at 641. It is therefore highly relevant that Detective Messerschmidt testified that he lacked "any reason" to consider the crime gang related, *supra* this page, and possessed no "information" that there were handguns in the Millenders' home, *infra*, at 569. Courts cannot ignore information in crime analysis forms, ballistic reports, or victim interviews by labeling such information "conclusions."

[4] The Court is wrong to imply that courts should not consider "facts outside the affidavit," but within the officers' possession, when assessing qualified immunity. *Ante*, at 547, n. 2. Our precedents make clear that the objective reasonableness of an officer's conduct is judged "in light of clearly established law and the information the officers possessed." *Wil-*

The police's conclusions matched the victim's own account of the attack. Kelly asked police officers to help her move out because Bowen "ha[d] a domestic violence on his record," had "hit [her] once or twice" already, had repeatedly threatened her, "You'll never leave me. I'll kill you if you leave me," and she was "planning on breaking up" with him. Record, Doc. 51 (Exh. C), pp. 5–6 (hereinafter Kelly Interview). As Kelly described the confrontation, it was only after she fled to her car in order to leave that Bowen reemerged from their shared apartment with the shotgun and told her, "I'm gonna kill your ass right here if you take off," consistent with his prior threats. *Id.*, at 7–8. Every piece of information, therefore, accorded with Detective Messerschmidt's conclusion: The crime was domestic violence that was not gang related.[5]

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son v. *Layne*, 526 U. S. 603, 615 (1999). If an officer possesses information indicating that he lacks probable cause to search, and that information was not presented to the neutral magistrate when he approved the search, it is particularly likely that "a reasonably well trained officer would have known that the search was illegal despite the magistrate's authorization." *United States* v. *Leon*, 468 U. S. 897, 922, n. 23 (1984).

[5] To support its theory that Bowen attacked Kelly to keep her silent about his gang activity, the majority relies principally on its claim that Bowen yelled, "'I told you to never call the cops on me bitch!'" *ante,* at 540, citing it no less than five times. See *ante,* at 548 (Bowen "attempt[ed] to murder" Kelly "on the asserted ground that she had 'call[ed] the cops' on him"); see also *ante,* at 539, 550. Bowen, however, never made that statement. Though it appears in the warrant application, the words are Messerschmidt's—taken from his own inaccurate notes of Kelly's account of the crime. What Kelly actually said during her interview was that as soon as the police deputies left, Bowen "came out of nowhere talking about, 'Did you call the police on me? You called the police on me,'" to which Kelly responded, "[N]o one called the police on you . . . . [I]nstead of arguing and fighting with you I just want to get my shit done." Kelly Interview 7; compare *ibid.* with Record, Doc. 51 (Exh. B), p. 3 (Messerschmidt's narrative of interview with Kelly). Only after Kelly started to leave did Bowen exclaim "oh it's like that. It's like that," retrieve a gun, and threaten to shoot her if she left. Kelly Interview 7–8. That Bowen was "'angry,'" *ante,* at 551, n. 5, because she had called the sheriff's de-

Unlike the Members of this Court, Detective Messerschmidt alone had 14 years of experience as a peace officer, "hundreds of hours of instruction on the dynamics of gangs and gang trends," received "specialized training in the field of gang related crimes," and had been "involved in hundreds of gang related incidents, contacts, and or arrests." App. 53–54. The Court provides no justification for sweeping aside the conclusions he reached on the basis of his far greater expertise, let alone the facts found by the District Court. We have repeatedly and recently warned appellate courts, "far removed from the scene," against second-guessing the judgments made by the police or reweighing the facts as they stood before the district court. *Ryburn* v. *Huff*, *ante*, at 475–477 *(per curiam)*. The majority's decision today is totally inconsistent with those principles.

Qualified immunity analysis does not direct courts to play the role of crime scene investigators, second-guessing police officers' determinations as to whether a crime was committed with a handgun or a shotgun, or whether violence was gang related or a domestic dispute. Indeed, we have warned courts against asking "whether another reasonable, or more reasonable, interpretation of the events can be constructed five years after the fact." *Hunter* v. *Bryant*, 502 U. S. 224, 228 (1991) *(per curiam)*. The inquiry our precedents demand is not whether different conclusions might conceivably be drawn from the crime scene. Rather, it is whether "a reasonably well-trained officer in petitioner's position would have known that his affidavit failed to establish probable cause." *Malley*, 475 U. S., at 345. The operative question in this case, therefore, is whether—given that, as petitioners comprehended, the crime itself was not gang related—a reasonable officer nonetheless could have believed he had probable cause to seek a warrant to search the

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partment for assistance reflected exactly what Kelly and the police expected at the outset—that Bowen "would give her a hard time about moving out," App. 38 (sheriff's department incident report).

suspect's residence for all evidence of affiliation not only with the suspect's street gang, but "any Street Gang." He could not.

The Court offers two secondary explanations for why a search for gang-related items might have been justified, but they are equally unpersuasive. First, the majority suggests that such evidence hypothetically "might prove helpful in impeaching Bowen or rebutting various defenses he could raise at trial." *Ante*, at 552. That is a nonstarter. The Fourth Amendment does not permit the police to search for evidence solely because it could be admissible for impeachment or rebuttal purposes. If it did, the police would be equally entitled to obtain warrants to rifle through the papers of anyone reasonably suspected of a crime for all evidence of his bad character, Fed. Rule Evid. 404(a)(2)(B)(i), or any evidence of any "crime, wrong, or other act" that might prove the defendant's "motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident," Rule 404(b)(2). Indeed, the majority's rationale presumably would authorize the police to search the residence of every member of Bowen's street gang for similar weapons—which likewise "might [have] prove[d] helpful in impeaching Bowen or rebutting various defenses he could raise at trial." *Ante*, at 552. It has long been the case, however, that such general searches, detached from probable cause, are impermissible. See, *e. g.*, *Go-Bart Importing Co.*, 282 U. S., at 357. By their own admission, however, the officers were not searching for gang-related indicia to bolster some hypothetical impeachment theory, but for other reasons: because "photos sought re gang membership could be linked with other gang members, evidencing criminal activity as gang affiliation is an enhancement to criminal charges." App. 181; see also *id.*, at 145. That kind of fishing expedition for evidence of unidentified criminal activity committed by unspecified persons was the very evil the Fourth Amendment was intended to prevent.

Finally, the Court concludes that "even if this were merely a domestic dispute, a reasonable officer could still conclude that gang paraphernalia found at the Millenders' residence would aid in the prosecution of Bowen by, for example, demonstrating Bowen's connection to other [unspecified] evidence found there." *Ante*, at 552. That is difficult to understand. The police were well aware before obtaining a warrant that "other persons associated with the home, the Millender family members, were active Mona Park Crip gang members." App. 28. Simply finding gang-related paraphernalia, therefore, would have done little to establish probable cause that particular evidence found in the home was connected to Bowen, rather than any of the several other active gang members who resided full time at the Millender home.[6] Moreover, it would have done nothing to establish that Bowen had committed the non-gang-related crime specified in the warrant.[7]

B

The Court also errs by concluding that petitioners could have reasonably concluded that they had probable cause to search for all firearms. Notably absent from the Court's discussion is any acknowledgment of the actual basis for petitioners' search. The police officers searched for all firearms not for the reasons hypothesized by the majority, but because they determined that "[v]alid warrants commonly allow police to search for 'firearms and ammunition,'" and

[6] The Court suggests that even if gang-related evidence would be inconclusive generally, evidence bearing Bowen's particular gang moniker could have demonstrated Bowen's connection to the residence. But the warrant did not authorize a search for items bearing Bowen's moniker, but rather for items related to "any Street Gang," including countless street gangs of which Bowen was not a member. App. 52. Even under the Court's interpretation, therefore, the warrant was hopelessly overbroad and invalid.

[7] The police also could not search for gang-related evidence for its own sake. Mere membership in a gang is not a crime under California law. See *People* v. *Gardeley*, 14 Cal. 4th 605, 623, 927 P. 2d 713, 725 (1996).

that "[h]ere, any caliber of shotgun or receipts would show possession of and/or purchase of guns." *Id.*, at 144, 180–181; see also Brief for Appellant in No. 07–55518 (CA9), p. 41 (hereinafter CA9 Brief). It is small wonder that the District Court found these arguments "nonsensical and unpersuasive." App. to Pet. for Cert. 157. It bears repeating that the Founders adopted the Fourth Amendment to protect against searches for evidence of unspecified crimes. And merely possessing other firearms is not a crime at all. See generally *District of Columbia* v. *Heller*, 554 U. S. 570 (2008).[8]

By justifying the officers' actions on reasons of its own invention, the Court ignores the reasons the officers actually gave, as well as the facts upon which this case was decided below. The majority's analysis—akin to a rational-basis test—is thus far removed from what qualified immunity analysis demands. Even if the police had searched for the reasons the Court proposes, however, I still would find it inappropriate to afford them qualified immunity.

The Court correctly recognizes that to satisfy the Fourth Amendment the police were required to demonstrate probable cause that (1) other firearms could be found at the Millenders' residence; and (2) such weapons were illegal or were

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[8] Although the Court recites additional facts about Bowen's background and arrest record, *ante*, at 539–541, none of these facts were disclosed to the Magistrate. The police cannot rationalize a search *post hoc* on the basis of information they failed to set forth in their warrant application to a neutral magistrate. Rather, "[i]t is elementary that in passing on the validity of a warrant, the reviewing court may consider *only* information brought to the magistrate's attention." *Aguilar* v. *Texas*, 378 U. S. 108, 109, n. 1 (1964); see also *United States* v. *Jacobsen*, 466 U. S. 109, 112 (1984). Likewise, a police officer cannot obtain qualified immunity for searching pursuant to a warrant by relying upon facts outside that warrant, as evinced by *Malley*'s focus on "whether a reasonably well-trained officer in petitioner's position would have known that his *affidavit* failed to establish probable cause." *Malley* v. *Briggs*, 475 U. S. 335, 345 (1986) (emphasis added).

"'possess[ed] . . . with the intent to use them as a means of committing a public offense.'" *Ante*, at 549 (quoting Cal. Penal Code Ann. § 1524(a)(3) (West 2011)). The warrant failed to establish either.

The majority has little difficulty concluding that because Bowen fired one firearm, it was reasonable for the police to conclude not only that Bowen must have possessed others, but that he must be storing these other weapons at his 73-year-old former foster mother's home.[9] Again, however, this is not what the police actually concluded, as Detective Messerschmidt's deposition makes clear.

> "Q: Did you have any reason to believe there would be any automatic weapons in the house?
>
> "A: No.
>
> "Q: Did you have any reason to believe there would be any hand guns in the house?
>
> "A: I wasn't given information that there were." Deposition 120.

Undaunted, the majority finds that a well-trained officer could have concluded on this information that he had probable cause to search for "[a]ll hand guns, . . . [a]ll caliber of ammunition, miscellaneous gun parts, gun cleaning kits, holsters which could hold or have held any caliber handgun being sought," and "[a]ny receipts or paperwork, showing the purchase, ownership, or possession of the handguns being sought." App. 52. That is puzzling. If any aspect of the Fourth Amendment is clearly established, it is that the police cannot reasonably search—even pursuant to a warrant—for items that they do not have "any reason to believe" will be present. The Court's conclusion to the contrary simply

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[9] The majority ignores that Bowen retrieved the shotgun that he fired from the apartment he shared with Kelly, not the Millenders' home. Kelly provided no indication that Bowen possessed other guns or that he stored them at his former foster mother's home.

reads the "probable cause" requirement out of the Fourth Amendment.

Even assuming that the police reasonably could have concluded that Bowen possessed other guns and was storing them at the Millenders' home, I cannot agree that the warrant provided probable cause to believe any weapon possessed in a home in which 10 persons regularly lived—none of them the suspect in this case—was either "contraband or evidence of a crime." *Ornelas* v. *United States*, 517 U. S. 690, 696 (1996). The warrant set forth no specific facts or particularized explanation establishing probable cause to believe that other guns found in the home were connected to the crime specified in the warrant or were otherwise illegal.[10] While the Court hypothesizes that the police could have searched for all firearms to uncover evidence of yet unnamed crimes, *ante*, at 548–549, the warrant specified that the police were investigating one particular crime—"an assault with a deadly weapon," App. 55. And the police officers confirmed that their search was targeted to find the gun related to "the crime at issue." CA9 Brief 42; see also App. 52 (obtaining authorization to search for "*the item* being sought and or believed to be evidence in the case being investigated on this warrant" (emphasis added)).

The police told the Ninth Circuit that they searched for all firearms not because, as the majority hypothesizes, "there would be additional illegal guns among others that Bowen owned," *ante*, at 549, but on the dubious theory that "Kelly could have been mistaken in her description of the gun." 620 F. 3d, at 1027. The Ninth Circuit properly dismissed that argument as carrying "little force." *Ibid.* Its finding is unimpeachable, given that Kelly presented the police with a photograph of Bowen holding the specific gun used in the

[10] Augusta Millender was a 73-year-old grandmother living in a dangerous part of Los Angeles. It would not have been unreasonable to imagine that she validly possessed a weapon for self-defense, as turned out to be the case.

crime, and the police, the victim, and a witness to the crime all identified the gun as a sawed-off shotgun. See *id.*, at 1027, 1029, 1030.

Finally, the majority suggests that the officers could have reasonably believed that seizure of all firearms at the Millenders' residence was justified because those weapons might be possessed by Bowen "'with the intent to use them as a means of committing a public offense.'" *Ante*, at 549. But the warrant specified that the police sought only the shotgun used in this crime for that purpose. See App. 59 (statement of probable cause) ("Your Affiant also believes that the items sought will be in the possession of Jerry Ray Bowen and the recovery of *the weapon* could be invaluable in the successful prosecution of the suspect involved in this case, and the curtailment of further crimes being committed" (emphasis added)).

II

The Court also finds error in the Court of Appeals' failure to find "pertinent" the fact that the officer sought approval of his warrant from a magistrate.[11] *Ante*, at 555. Whether Detective Messerschmidt presented his warrant application to a magistrate surely would be "pertinent" to demonstrating his subjective good faith.[12] But qualified immunity does not turn on whether an officer is motivated by good intentions or malice, but rather on the "objective reasonableness

[11] Under California law, magistrates are the officials responsible for issuing search warrants. Cal. Penal Code Ann. § 1523 (West 2011).

[12] To be clear, no one suggests petitioners acted with malice or intended to be "misleading in omitting . . . facts," *ante*, at 547, n. 2, that illustrate why it would have been objectively unreasonable to search for the reasons the Court proposes. It is hardly surprising, for instance, that Detective Messerschmidt did not include in his affidavit further facts affirming that the crime was not gang related, given that he did not believe the crime was gang related and did not search for gang-related material for that reason. See *supra*, at 566. The affidavit and warrant were perfectly consistent with the officers' stated reasons for their search—just not with the Court's own theories.

of an official's conduct." *Harlow* v. *Fitzgerald*, 457 U. S. 800, 818 (1982).

The majority asserts, without citation, that the Magistrate's approval is relevant to objective reasonableness. That view, however, is expressly contradicted by our holding in *Malley* v. *Briggs*, 475 U. S. 335. There, we found that a police officer is not "entitled to rely on the judgment of a judicial officer in finding that probable cause exists and hence issuing the warrant," and explained that "[that] view of objective reasonableness is at odds with our development of that concept in *Harlow* and [*United States* v. *Leon*, 468 U. S. 897 (1984)]." *Id.*, at 345. The appropriate qualified immunity analysis, we held, was not whether an officer reasonably relied on a magistrate's probable-cause determination, but rather "whether a reasonably well-trained officer in petitioner's position would have known that his affidavit failed to establish probable cause and that he should not have *applied* for the warrant." *Ibid.* (emphasis added).[13] In such a case, "the officer's application for a warrant [would] not [be] objectively reasonable, because it create[s] the unnecessary danger of an unlawful arrest." *Ibid.* When "no officer of reasonable competence would have requested the warrant," a "magistrate [who] issues the warrant [makes] not just a reasonable mistake, but an unacceptable error indicating gross incompetence or neglect of duty." *Id.*, at 346, n. 9. In such cases, "[t]he officer . . . cannot excuse his own default by pointing to the greater incompetence of the magistrate." *Ibid.*

In cases in which it would be not only wrong but unreasonable for any well-trained officer to seek a warrant, allowing a magistrate's approval to immunize the police officer's un-

[13] Two Justices wrote separately, disagreeing with the majority because they believed that "substantial weight should be accorded the judge's finding of probable cause." *Malley*, 475 U. S., at 346 (Powell, J., joined by Rehnquist, C. J., concurring in part and dissenting in part).

reasonable action retrospectively makes little sense. By motivating an officer "to reflect, before submitting a request for a warrant, upon whether he has a reasonable basis for believing that his affidavit establishes probable cause," we recognized that our qualified immunity precedents had the "desirable" effect of "reduc[ing] the likelihood that the officer's request for a warrant will be premature," leading to "a waste of judicial resources" or "premature arrests." *Id.*, at 343. To the extent it proposes to cut back upon *Malley*, the majority will promote the opposite result—encouraging sloppy police work and exacerbating the risk that searches will not comport with the requirements of the Fourth Amendment.

The Court also makes much of the fact that Detective Messerschmidt sent his proposed warrant application to two superior police officers and a district attorney for review. Giving weight to that fact would turn the Fourth Amendment on its head. This Court made clear in *Malley* that a police officer acting unreasonably cannot obtain qualified immunity on the basis of a neutral magistrate's approval. It would be passing strange, therefore, to immunize an officer's conduct instead based upon the approval of other police officers and prosecutors.[14] See *Johnson* v. *United States*, 333 U. S. 10, 14 (1948) (majority opinion of Jackson, J.) ("When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent"). The effect of the Court's rule, however, is to hold blameless the "plainly incompetent" action of the police officer seeking a warrant be-

[14] In the famous case of *Wilkes* v. *Wood*, Lofft 1, 98 Eng. Rep. 489 (C. P. 1763), one of the seminal events informing the Framers' development of the Fourth Amendment, the Undersecretary of State who searched the home of John Wilkes pursuant to a general warrant was subjected to monetary damages notwithstanding that his superior, Lord Halifax, issued the warrant. See *Boyd* v. *United States*, 116 U. S. 616, 626 (1886).

cause of the "plainly incompetent" approval of his superiors and the district attorney. See *ante*, at 553–555; see also *ante*, at 559 (KAGAN, J., concurring in part and dissenting in part). Under the majority's test, four wrongs apparently make a right. I cannot agree, however, that the "objective legal reasonableness of an official's acts," *Harlow*, 457 U. S., at 819, turns on the number of police officers or prosecutors who improperly sanction a search that violates the Fourth Amendment.

III

Police officers perform a difficult and essential service to society, frequently at substantial risk to their personal safety. And criminals like Bowen are not sympathetic figures. But the Fourth Amendment "protects all, those suspected or known to be offenders as well as the innocent." *Go-Bart Importing Co.*, 282 U. S., at 357. And this Court long ago recognized that efforts "to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land." *Weeks* v. *United States*, 232 U. S. 383, 393 (1914).

Qualified immunity properly affords police officers protection so long as their conduct is objectively reasonable. But it is not objectively reasonable for police investigating a specific, non-gang-related assault committed with a particular firearm to search for all evidence related to "any Street Gang," "photographs . . . which may depict evidence of criminal activity," and all firearms. The Court reaches a contrary result not because it thinks that these police officers' stated reasons for searching were objectively reasonable, but because it thinks different conclusions might be drawn from the crime scene that reasonably might have led different officers to search for different reasons. That analysis, however, is far removed from qualified immunity's proper focus

on whether *petitioners* acted in an objectively reasonable manner.

Because petitioners did not, I would affirm the judgment of the Court of Appeals.

Syllabus

PPL MONTANA, LLC *v.* MONTANA

CERTIORARI TO THE SUPREME COURT OF MONTANA

No. 10–218. Argued December 7, 2011—Decided February 22, 2012

Petitioner PPL Montana, LLC (PPL), owns and operates hydroelectric facilities in Montana. Ten of its facilities are located on riverbeds underlying segments of the Missouri, Madison, and Clark Fork Rivers. Five hydroelectric dams on the Upper Missouri River are along the Great Falls reach, including on the three tallest waterfalls; and PPL's two other dams on that river are in canyons on the Stubbs Ferry stretch. These, together with two dams located in steep canyons on the Madison River, are called the Missouri-Madison project. The Thompson Falls project is a facility on the Clark Fork River. Both projects are licensed by the Federal Energy Regulatory Commission. PPL's facilities have existed for many decades, some for over a century. Until recently, Montana, though aware of the projects' existence, sought no rent for use of the riverbeds. Instead, the understanding of PPL and the United States is that PPL has paid rents to the United States. In 2003, parents of Montana schoolchildren filed a federal suit, claiming that PPL's facilities were on riverbeds that were state owned and part of Montana's school trust lands. The State joined the suit and, for the first time, sought rents from PPL for its use of the riverbeds. That case was dismissed, and PPL and other power companies filed a state-court suit, claiming that Montana was barred from seeking compensation for PPL's riverbed use. Montana counterclaimed, contending that under the equal-footing doctrine it owns the riverbeds and can charge rent for their use. The trial court granted Montana summary judgment as to navigability for purposes of determining riverbed title and ordered PPL to pay Montana $41 million in rent for riverbed use between 2000 and 2007. The Montana Supreme Court affirmed. Adopting a liberal construction of the navigability test, it discounted this Court's approach of considering the navigability of particular river segments for purposes of determining whether a State acquired title to the riverbeds underlying those segments at the time of statehood. Instead, the Montana court declared the river stretches in question to be short interruptions of navigability that were insufficient as a matter of law to find nonnavigability, since traffic had circumvented those stretches by portage. Based on evidence of present-day, recreational use of the Madison River, the court found that river navigable as a matter of law at the time of statehood.

Syllabus

Held: The Montana Supreme Court's ruling that Montana owns and may charge for use of the riverbeds at issue was based on an infirm legal understanding of this Court's rules of navigability for title under the equal-footing doctrine. Pp. 589–605.

(a) The rule that the States, in their capacity as sovereigns, hold "title in the soil of rivers really navigable," *Shively* v. *Bowlby*, 152 U. S. 1, 31, has federal constitutional significance under the equal-footing doctrine. Pursuant to that doctrine, upon its date of statehood, a State gains title within its borders to the beds of waters then navigable. It may allocate and govern those lands according to state law subject only to the United States' power "to control such waters for purposes of navigation in interstate and foreign commerce." *United States* v. *Oregon*, 295 U. S. 1, 14. The United States retains title vested in it before statehood to land beneath waters not then navigable. To be navigable for purposes of title under the equal-footing doctrine, rivers must be "navigable in fact," meaning "they are used, or are susceptible of being used, . . . as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water." *The Daniel Ball*, 10 Wall. 557, 563. This formulation has been used to determine questions of waterbed title under the equal-footing doctrine. See *United States* v. *Utah*, 283 U. S. 64, 76. Pp. 589–593.

(b) The Montana Supreme Court erred in its treatment of the question of river segments and portage. To determine riverbed title under the equal-footing doctrine, this Court considers the river on a segment-by-segment basis to assess whether the segment of the river, under which the riverbed in dispute lies, is navigable or not. See, *e. g.*, *Utah*, *supra*, at 77. The State Supreme Court erred in discounting this well-settled approach. A key justification for sovereign ownership of navigable riverbeds is that a contrary rule would allow private riverbed owners to erect improvements on the riverbeds that could interfere with the public's right to use the waters as a highway for commerce. Because commerce could not have occurred on segments nonnavigable at the time of statehood, there is no reason to deem those segments owned by the State under the equal-footing doctrine. Practical considerations also support segmentation. Physical conditions affecting navigability vary over the length of a river and provide a means to determine appropriate start points and end points for disputed segments. A segment approach is also consistent with the manner in which private parties seek to establish riverbed title. Montana cannot suggest that segmentation is inadministrable when the state courts managed to apportion the underlying riverbeds for purposes of determining their value and PPL's corresponding rents. The State Supreme Court's view that the segment-by-segment approach does not apply to

short interruptions of navigability is not supported by this Court's *Utah* decision. Even if the law might find some nonnavigable segments so minimal that they merit treatment as part of a longer, navigable reach, it is doubtful that the segments in this case would meet that standard. Applying its "short interruptions" approach, the State Supreme Court found the Great Falls reach navigable because it could be managed by way of land route portage, as done by Lewis and Clark. But a portage of even one day would demonstrate the need to bypass a nonnavigable river segment. Thus, the State Supreme Court was wrong to conclude, with respect to the Great Falls reach and other disputed stretches, that portages were insufficient to defeat a navigability finding. In most cases, they are, because they require transportation over land rather than over the water. This is the case at least as to the Great Falls reach. In reaching a contrary conclusion, the State Supreme Court misapplied *The Montello*, 20 Wall. 430. There, portage was considered in determining whether a river was part of a channel of interstate commerce for federal regulatory purposes. *The Montello* does not control the outcome where the quite different concerns of the riverbed title context apply. Portages may defeat navigability for title purposes, and do so with respect to the Great Falls reach. Montana does not dispute that overland portage was necessary to traverse that reach, and the trial court noted the waterfalls had never been navigated. The Great Falls reach, at least from the head of the first waterfall to the foot of the last, is not navigable for purposes of riverbed title under the equal-footing doctrine. There is also a significant likelihood that some of the other river stretches in dispute fail this federal navigability test. The ultimate decision as to these other disputed river stretches is to be determined, in the first instance, by the Montana courts on remand, which should assess the relevant evidence in light of the principles discussed here. Pp. 593–600.

(c) The Montana Supreme Court further erred as a matter of law in relying on evidence of present-day, primarily recreational use of the Madison River. Navigability must be assessed as of the time of statehood, and it concerns a river's usefulness for "'trade and travel.'" *Utah*, 283 U. S., at 75–76. River segments are navigable if they "'[were] used'" and if they "'[were] susceptible of being used'" as highways of commerce at the time of statehood. *Id.*, at 76. Evidence of recreational use and poststatehood evidence may bear on susceptibility of commercial use at the time of statehood. See *id.*, at 82–83. In order for present-day use to have a bearing on navigability at statehood, (1) the watercraft must be meaningfully similar to those in customary use for trade and travel at the time of statehood, and (2) the river's poststatehood condition may not be materially different from its physi-

Syllabus

cal condition at statehood. The State Supreme Court offered no indication that it made these necessary findings. Pp. 600–603.

(d) Because this analysis is sufficient to require reversal here, the Court declines to decide whether the State Supreme Court also erred as to the burden of proof regarding navigability. P. 603.

(e) Montana's suggestion that denying the State title to the disputed riverbeds will undermine the public trust doctrine—which concerns public access to the waters above those beds for navigation, fishing, and other recreational uses—underscores its misapprehension of the equal-footing and public trust doctrines. Unlike the equal-footing doctrine, which is the constitutional foundation for the navigability rule of riverbed title, the scope of the public trust over waters within the State's borders is a matter of state law, subject to federal regulatory power. Pp. 603–604.

(f) This Court does not reach the question whether, by virtue of Montana's sovereignty, neither laches nor estoppel could apply to bar the State's claim. Still, the reliance by PPL and its predecessors in title on the State's long failure to assert title to the riverbeds is some evidence supporting the conclusion that the river segments over those beds were nonnavigable for purposes of the equal-footing doctrine. Pp. 604–605.

2010 MT 64, 355 Mont. 402, 229 P. 3d 421, reversed and remanded.

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

Paul D. Clement argued the cause for petitioner. With him on the briefs were *Erin E. Murphy*, *Elizabeth Thomas*, *Ashley C. Parrish*, and *Kyle A. Gray*.

Deputy Solicitor General Kneedler argued the cause for the United States as *amicus curiae* in support of petitioner. With him on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Moreno*, *Deputy Assistant Attorney General Shenkman*, *William M. Jay*, *Elizabeth Ann Peterson*, and *Katherine J. Barton*.

Gregory G. Garre argued the cause for respondent. With him on the brief were *Lori Alvino McGill*, *Steve Bullock*, *Anthony Johnstone*, and *Candance F. West*.*

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*Briefs of *amici curiae* urging reversal were filed for the American Petroleum Institute et al. by *Virginia S. Albrecht*, *Deidre G. Duncan*, *Duane J. Desiderio*, *Peter Tolsdorf*, *Nick Goldstein*, *Thomas J. Ward*, and

JUSTICE KENNEDY delivered the opinion of the Court.

This case concerns three rivers which flow through Montana and then beyond its borders. The question is whether discrete, identifiable segments of these rivers in Montana were nonnavigable, as federal law defines that concept for purposes of determining whether the State acquired title to the riverbeds underlying those segments, when the State entered the Union in 1889. Montana contends that the

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Jeffrey B. Augello; for the Creekside Coalition et al. by *David C. Frederick*, *Scott K. Attaway*, and *Charles B. White;* for the Edison Electric Institute et al. by *Michael A. Swiger*, *Edward H. Comer*, *Henri D. Bartholomot*, and *James H. Hancock, Jr.;* for Freeport-McMoRan Corp. et al. by *L. William Staudenmaier*, *John B. Weldon*, and *Mark A. McGinnis;* for the Montana Farm Bureau Federation et al. by *Mark F. "Thor" Hearne II*, *Robert C. O'Brien*, *Steven A. Haskins*, *Hertha L. Lund*, *Ilya Shapiro*, and *Elizabeth Milito;* for the Montana Water Resources Association et al. by *Jon Metropoulos;* for the Mountain States Legal Foundation et al. by *Steven J. Lechner* and *Joel M. Spector;* for John L. Allen et al. by *Robert R. Gasaway;* and for Wilbur Hardy et al. by *Jennie L. Bricker.*

Briefs of *amici curiae* urging affirmance were filed for the State of Oregon et al. by *John R. Kroger*, Attorney General of Oregon, *Mary H. Williams*, Deputy Attorney General, *Anna M. Joyce*, Solicitor General, and *Denise G. Fjordbeck*, by *Robert M. McKenna*, Attorney General of Washington, *Jay D. Geck*, Deputy Solicitor General, and *Joseph V. Panesko* and *Janis Snoey*, Assistant Attorneys General, and by the Attorneys General for their respective States as follows: *Luther Strange* of Alabama, *John J. Burns* of Alaska, *Dustin McDaniel* of Arkansas, *Kamala D. Harris* of California, *Pamela Jo Bondi* of Florida, *Samuel S. Olens* of Georgia, *David M. Louie* of Hawaii, *Lawrence G. Wasden* of Idaho, *Lisa Madigan* of Illinois, *James D. "Buddy" Caldwell* of Louisiana, *Douglas F. Gansler* of Maryland, *Lori Swanson* of Minnesota, *Jim Hood* of Mississippi, *Catherine Cortez Masto* of Nevada, *Michael A. Delaney* of New Hampshire, *Gary K. King* of New Mexico, *Wayne Stenehjem* of North Dakota, *Michael DeWine* of Ohio, *Linda L. Kelly* of Pennsylvania, *Marty J. Jackley* of South Dakota, *Robert E. Cooper, Jr.*, of Tennessee, *William H. Sorrell* of Vermont, *Darrell V. McGraw, Jr.*, of West Virginia, and *J. B. Van Hollen* of Wisconsin; for the California Sportfishing Protection Alliance et al. by *Stephan C. Volker;* for the National Wildlife Federation et al. by *Sean H. Donahue*, *Neil Kagan*, *David T. Goldberg*, and *W. Cullen Battle;* and for Stephenie Ambrose Tubbs by *Brenda Lindlief-Hall.*

rivers must be found navigable at the disputed locations. From this premise, the State asserts that in 1889 it gained title to the disputed riverbeds under the constitutional equal-footing doctrine. Based on its title claims, Montana sought compensation from PPL Montana, LLC, a power company, for its use of the riverbeds for hydroelectric projects. The Montana courts granted summary judgment on title to Montana, awarding it $41 million in rent for the riverbeds for the period from 2000 to 2007 alone. That judgment must be reversed.

I

The three rivers in question are the Missouri River, the Madison River, and the Clark Fork River. The Missouri and the Madison are on the eastern side of the Continental Divide. The Madison flows into the Missouri, which then continues at length to its junction with the Mississippi River. The Clark Fork River is on the western side of the Continental Divide. Its waters join the Columbia River system that flows into the Pacific Ocean. Each river shall be described in somewhat more detail.

A

The Missouri River originates in Montana and traverses seven States before a point just north of St. Louis where it joins the Mississippi. 19 Encyclopedia Americana 270 (int'l ed. 2006). If considered with the continuous path formed by certain streams that provide the Missouri River's headwaters, the Missouri is over 2,500 miles long, the longest river in the United States. *Ibid.* The Missouri River's basin (the land area drained by the river) is the second largest in the Nation, surpassed only by the Mississippi River basin of which it is a part. Rivers of North America 427 (A. Benke & C. Cushing eds. 2005) (hereinafter Rivers of North America). As a historical matter, the river shifted and flooded often, and contained many sandbars, islands, and unstable banks. *Id.*, at 432–433. The river was once described as one of the most "variable beings in creation," as

"inconstant [as] the action of the jury," Sioux City Register (Mar. 28, 1868); and its high quantity of downstream sediment flow spawned its nickname, the "Big Muddy," Rivers of North America 433.

The upstream part of the Missouri River in Montana, known as the Upper Missouri River, is better characterized as rocky rather than muddy. While one usually thinks of the Missouri River as flowing generally south, as indeed it does beginning in North Dakota, the Upper Missouri in Montana flows north from its principal headwaters at Three Forks, which is located about 4,000 feet above sea level in the Rocky Mountain area of southwestern Montana. It descends through scenic mountain terrain including the deep gorge at the Gates of the Mountains; turns eastward through the Great Falls reach, cascading over a roughly 10-mile stretch of cataracts and rapids over which the river drops more than 400 feet; and courses swiftly to Fort Benton, a 19th-century fur trading post, before progressing farther east into North Dakota and on to the Great Plains. 19 Encyclopedia Americana, *supra*, at 270; 8 New Encyclopaedia Britannica 190 (15th ed. 2007) (hereinafter Encyclopaedia Britannica); 2 Columbia Gazetteer of the World 2452 (2d ed. 2008) (hereinafter Columbia Gazetteer); F. Warner, Montana and the Northwest Territory 75 (1879). In 1891, just after Montana became a State, the Upper Missouri River above Fort Benton was "seriously obstructed by numerous rapids and rocks," and the 168-mile portion flowing eastward "[f]rom Fort Benton to Carroll, Mont., [was] called the rocky river." Annual Report of the Chief of Engineers, U. S. Army (1891), in H. R. Exec. Doc. No. 1, pt. 2, 52d Cong., 1st Sess., vol. II, pp. 275–276 (1891) (hereinafter H. R. Exec. Doc.).

The Great Falls exemplify the rocky, rapid character of the Upper Missouri. They consist of five cascade-like waterfalls located over a stretch of the Upper Missouri leading downstream from the city of Great Falls in midwestern Montana.

The waterfall farthest downstream, and the one first encountered by Meriwether Lewis and William Clark when they led their remarkable expedition through the American West in 1805, is the eponymous "Great Falls," the tallest of the five falls at 87 feet. W. Clark, Dear Brother: Letters of William Clark to Jonathan Clark 109, n. 5 (J. Holmberg ed. 2002) (hereinafter Dear Brother). Lewis recorded observations of this "sublimely grand specticle":

> "[T]he whole body of water passes with incredible swiftness . . . over a precipice of at least eighty feet . . . . [T]he irregular and somewhat projecting rocks below receives the water . . . and brakes it into a perfect white foam which assumes a thousand forms in a moment sometimes flying up in jets . . . [that] are scarcely formed before large roling bodies of the same beaten and foaming water is thrown over and conceals them. . . . [T]he [rainbow] reflection of the sun on the sprey or mist . . . adds not a little to the beauty of this majestically grand senery." The Lewis and Clark Journals: An American Epic of Discovery 129 (G. Moulton ed. 2003) (hereinafter Lewis and Clark Journals); The Journals of Lewis and Clark 136–138 (B. DeVoto ed. 1981).

If one proceeds alongside the river upstream from Great Falls, as Lewis did in scouting the river for the expedition, the other four falls in order are "Crooked Falls" (19 feet high); "Rainbow Falls" (48 feet), which Lewis called "one of the most bea[u]tifull objects in nature"; "Colter Falls" (7 feet); and "Black Eagle Falls" (26 feet). See Lewis and Clark Journals 131–132; Dear Brother 109, n. 5; P. Cutright, Lewis & Clark: Pioneering Naturalists 154–156 (2003). Despite the falls' beauty, Lewis could see that their steep cliffs and swift waters would impede progress on the river, which had been the expedition's upstream course for so many months. The party proceeded over a more circuitous land route by means of portage, circumventing the Great Falls

and their surrounding reach of river before returning to travel upon the river about a month later. See Lewis and Clark Journals 126–152.

The Upper Missouri River, both around and further upstream of the Great Falls, shares the precipitous and fast-moving character of the falls themselves. As it moves downstream over the Great Falls reach, a 17-mile stretch that begins somewhat above the head of Black Eagle Falls, the river quickly descends about 520 feet in elevation, see *Montana Power Co.* v. *FPC*, 185 F. 2d 491 (CADC 1950); 2010 MT 64, ¶¶29–30, 108–109, 355 Mont. 402, 416, 442, 229 P. 3d 421, 433, 449, dropping over 400 feet within 10 miles from the first rapid to the foot of Great Falls, Parker, Black Eagle Falls Dam, 27 Transactions Am. Soc. of Civ. Engineers 56 (1892). In 1879, that stretch was a "constant succession of rapids and falls." Warner, *supra*, at 75; see also 9 The Journals of the Lewis & Clark Expedition 171 (G. Moulton ed. 1995) (hereinafter Journals of the Lewis & Clark Expedition) ("a continued rapid the whole way for 17 miles"). Lewis noted the water was so swift over the area that buffalo were swept over the cataracts in "considerable quantities" and were "instantly crushed." Lewis and Clark Journals 136–137. Well above the Great Falls reach, the Stubbs Ferry stretch of the river from Helena to Cascade also had steep gradient and was "much obstructed by rocks and dangerous rapids." Report of the Secretary of War, 2 H. R. Doc. No. 2, 54th Cong., 1st Sess., pt. 1, p. 301 (1895).

B

The second river to be considered is the Madison, one of the Missouri River's headwater tributaries. Named by Lewis and Clark for then-Secretary of State James Madison, the Madison River courses west out of the Northern Rocky Mountains of Wyoming and Montana in what is now Yellowstone National Park, then runs north and merges with the Jefferson and Gallatin Rivers at Three Forks, Montana, to

form the Upper Missouri. Lewis and Clark Journals 158; Rivers of North America 459; 7 Encyclopaedia Britannica 658; 2 Columbia Gazetteer 2242. Along its path, the Madison River flows through two lakes artificially created by dams built in canyons: Hebgen Lake and Ennis Lake. Federal Writers' Project of the Work Projects Administration, Montana: A State Guide Book 356 (J. Stahlberg ed. 1949); R. Aarstad, E. Arguimbau, E. Baumler, C. Porsild, & B. Shovers, Montana Place Names From Alzada to Zortman: A Montana Historical Society Guide 166 (2009).

C

The third river at issue in this case is the Clark Fork. That river, which consists in large part of "long, narrow streams confined by mountainous terrain," rises at an elevation of about 5,000 feet in the Silver Bow Mountains of southwestern Montana. 3 Encyclopaedia Britannica 352; Dept. of Interior, U. S. Geological Survey, J. Stevens & F. Henshaw, Surface Water Supply of the United States, 1907–8, Water-Supply Paper 252, pp. 81–82 (1910). The river flows northward for about 40 miles; turns northwest for a stretch; then turns abruptly northeast for a short stint, by which time it has descended nearly 2,500 feet in altitude. It then resumes a northwestward course until it empties into Lake Pend Oreille in northern Idaho, out of which flows a tributary to the Columbia River of the Pacific Northwest. *Ibid.;* 1 Columbia Gazetteer 816. The Clark Fork is "one of the wildest and most picturesque streams in the West," marked by "many waterfalls and boxed gorges." Federal Writers' Projects of the Works Progress Administration, Idaho: A Guide in Word and Picture 230 (2d ed. 1950).

Lewis and Clark knew of the Clark Fork River but did not try to navigate it, in part because the absence of salmon in one of its tributaries made Lewis believe " 'there must be a considerable fall in [the river] below.' " H. Fritz, The Lewis and Clark Expedition 38–39 (2004). This was correct, for

shortly before the Clark Fork exits to Idaho from the northwest corner of Montana, "the waters of the river dash madly along their rocky bed," dropping over 30 feet in a half mile as they rush over falls and rapids including a "foaming waterfall" now known as Thompson Falls. O. Rand, A Vacation Excursion: From Massachusetts Bay to Puget Sound 176–177 (1884); C. Kirk, A History of the Montana Power Company 231 (2008).

II

Petitioner PPL Montana, LLC (PPL), owns and operates hydroelectric facilities that serve Montana residents and businesses. Ten of its facilities are built upon riverbeds underlying segments of the Upper Missouri, Madison, and Clark Fork Rivers. It is these beds to which title is disputed.

On the Upper Missouri River, PPL has seven hydroelectric dams. Five of them are along the Great Falls reach, including on the three tallest falls; and the other two are in canyons upstream on the Stubbs Ferry stretch. See K. Robison, Cascade County and Great Falls 56 (2011); Aarstad et al., *supra*, at 125, 119, 145–146. On the Madison River, two hydroelectric dams are located in steep canyons. On the Clark Fork River, a hydroelectric facility is constructed on the Thompson Falls.

The dams on the Upper Missouri and Madison are called the Missouri-Madison project. The Thompson Falls facility is called the Thompson Falls project. Both projects are licensed by the Federal Energy Regulatory Commission. PPL acquired them in 1999 from its predecessor, the Montana Power Company. 355 Mont., at 405–406, 229 P. 3d, at 426.

PPL's power facilities have existed at their locations for many decades, some for over a century. See Robison, *supra*, at 40 (Black Eagle Falls dam constructed by 1891). Until recently, these facilities were operated without title-based objection by the State of Montana. The State was well

aware of the facilities' existence on the riverbeds—indeed, various Montana state agencies had participated in federal licensing proceedings for these hydroelectric projects. See, *e. g.*, *Montana Power Co.*, 8 F. P. C. 751, 752 (1949) (Thompson Falls project); *Montana Power Co.*, 27 FERC ¶62,097, pp. 63,188–63,189 (1984) (Ryan Dam of Missouri-Madison project). Yet the State did not seek, and accordingly PPL and its predecessor did not pay, compensation for use of the riverbeds. 355 Mont., at 406, 229 P. 3d, at 427. Instead, the understanding of PPL and the United States is that PPL has been paying rents to the United States for use of those riverbeds, as well as for use of river uplands flooded by PPL's projects. Reply Brief for Petitioner 4; App. to Supp. Brief to Reply in Opposition 4–5; Brief for United States as *Amicus Curiae* 3, n. 3.

In 2003, parents of Montana schoolchildren sued PPL in the United States District Court for the District of Montana, arguing that PPL had built its facilities on riverbeds that were state owned and part of Montana's school trust lands. 355 Mont., at 406, 229 P. 3d, at 426. Prompted by the litigation, the State joined the lawsuit, for the first time seeking rents for PPL's riverbed use. The case was dismissed in September 2005 for lack of diversity jurisdiction. *Dolan* v. *PPL Montana, LLC*, No. 9:03–cv–167 (D Mont., Sept. 27, 2005).

PPL and two other power companies sued the State of Montana in the First Judicial District Court of Montana, arguing that the State was barred from seeking compensation for use of the riverbeds. 355 Mont., at 407–408, 229 P. 3d, at 427–428. By counterclaim, the State sought a declaration that under the equal-footing doctrine it owns the riverbeds used by PPL and can charge rent for their use. *Id.*, at 408, 229 P. 3d, at 428. The Montana trial court granted summary judgment to Montana as to navigability for purposes of determining riverbed title. *Id.*, at 408–409, 413–414, 229 P. 3d, at 428, 431–432; App. to Pet. for Cert. 143. The court de-

cided that the State owned the riverbeds. 355 Mont., at 428–429, 229 P. 3d, at 440. The court ordered PPL to pay $40,956,180 in rent for use of the riverbeds between 2000 and 2007. *Id.*, at 431–432, 229 P. 3d, at 442–443. Whether a lease for future periods would commence, and, if so, at what rental rate, seems to have been left to the discretion of the Montana Board of Land Commissioners. App. to Pet. for Cert. 128–129.

In a decision by a divided court, the Montana Supreme Court affirmed. 355 Mont., at 461–462, 229 P. 3d, at 460–461; *id.*, at 462, 229 P. 3d, at 461 (dissenting opinion). The court reasoned from the background principle that "navigability for title purposes is very liberally construed." *Id.*, at 438, 229 P. 3d, at 446. It dismissed as having "limited applicability" this Court's approach of assessing the navigability of the disputed segment of the river rather than the river as a whole. *Id.*, at 441–442, 229 P. 3d, at 448–449. The Montana court accepted that certain relevant stretches of the rivers were not navigable but declared them "merely short interruptions" insufficient as a matter of law to find nonnavigability, since traffic had circumvented those stretches by overland portage. *Id.*, at 438, 442, 229 P. 3d, at 446, 449. Placing extensive reliance upon evidence of present-day use of the Madison River, the court found that river navigable as a matter of law at the time of statehood. *Id.*, at 439, 229 P. 3d, at 447.

Justice Rice dissented. *Id.*, at 462, 229 P. 3d, at 461. He stated that "courts are not to assume an *entire river* is navigable merely because certain reaches of the river are navigable." *Id.*, at 464, 229 P. 3d, at 462. The majority erred, he wrote, in rejecting the "section-by-section approach" and "declaring, as a matter of law, that the reaches claimed by PPL to be non-navigable are simply too 'short' to matter," when in fact PPL's evidence showed the "disputed reaches of the rivers were, at the time of statehood, non-navigable." *Id.*, at 463–466, 476–477, 229 P. 3d, at 462–464, 470.

This Court granted certiorari, 564 U. S. 1018 (2011), and now reverses the judgment.

III

A

PPL contends the opinion of the Montana Supreme Court is flawed in three respects: first, the court's failure to consider with care the navigability of the particular river segments to which title is disputed, and its disregard of the necessary overland portage around some of those segments; second, its misplaced reliance upon evidence of present-day, recreational use; and third, what the state court itself called its liberal construction of the navigability test, which did not place the burden of proof upon the State to show navigability. Brief for Petitioner 26. The United States as *amicus* is in substantial agreement with PPL's arguments, although it offers a more extended discussion with respect to evidence of present-day, recreational use. Brief for United States 27–33.

It is appropriate to begin the analysis by discussing the legal principles that control the case.

B

The rule that the States, in their capacity as sovereigns, hold title to the beds under navigable waters has origins in English common law. See *Shively* v. *Bowlby,* 152 U. S. 1, 13 (1894). A distinction was made in England between waters subject to the ebb and flow of the tide (royal rivers) and nontidal waters (public highways). With respect to royal rivers, the Crown was presumed to hold title to the riverbed and soil, but the public retained the right of passage and the right to fish in the stream. With respect to public highways, as the name suggests, the public also retained the right of water passage; but title to the riverbed and soil, as a general matter, was held in private ownership. Riparian landowners shared title, with each owning from his side to the center

thread of the stream, as well as the exclusive right to fish there. See *Idaho* v. *Coeur d'Alene Tribe of Idaho*, 521 U. S. 261, 285 (1997) (summarizing J. Angell, A Treatise on the Common Law in Relation to Water-Courses 14–18 (1824)); 3 J. Kent, Commentaries on American Law 528–529 (9th ed. 1858).

While the tide-based distinction for bed title was the initial rule in the 13 Colonies, after the Revolution American law moved to a different standard. Some state courts came early to the conclusion that a State holds presumptive title to navigable waters whether or not the waters are subject to the ebb and flow of the tide. See, *e. g.*, *Carson* v. *Blazer*, 2 Binn. 475 (Pa. 1810); *Executors of Cates* v. *Wadlington*, 12 S. C. L. 580 (1822); *Wilson* v. *Forbes*, 13 N. C. 30 (1828); *Bullock* v. *Wilson*, 2 Port. 436 (Ala. 1835); *Elder* v. *Burrus*, 25 Tenn. 358 (1845). The tidal rule of "navigability" for sovereign ownership of riverbeds, while perhaps appropriate for England's dominant coastal geography, was ill suited to the United States with its vast number of major inland rivers upon which navigation could be sustained. See L. Houck, Law of Navigable Rivers 26–27, 31–35 (1868); *Packer* v. *Bird*, 137 U. S. 661, 667–669 (1891). By the late 19th century, the Court had recognized "the now prevailing doctrine" of state sovereign "title in the soil of rivers really navigable." *Shively*, *supra*, at 31; see *Barney* v. *Keokuk*, 94 U. S. 324, 336 (1877) ("In this country, as a general thing, all waters are deemed navigable which are really so"). This title rule became known as "navigability in fact."

The rule for state riverbed title assumed federal constitutional significance under the equal-footing doctrine. In 1842, the Court declared that for the 13 original States, the people of each State, based on principles of sovereignty, "hold the absolute right to all their navigable waters and the soils under them," subject only to rights surrendered and powers granted by the Constitution to the Federal Government. *Martin* v. *Lessee of Waddell*, 16 Pet. 367, 410. In a

series of 19th-century cases, the Court determined that the same principle applied to States later admitted to the Union, because the States in the Union are coequal sovereigns under the Constitution. See, *e. g.*, *Lessee of Pollard* v. *Hagan*, 3 How. 212, 228–229 (1845); *Knight* v. *United States Land Assn.*, 142 U. S. 161, 183 (1891); *Shively*, *supra*, at 26–31; see *United States* v. *Texas*, 339 U. S. 707, 716 (1950). These precedents are the basis for the equal-footing doctrine, under which a State's title to these lands was "conferred not by Congress but by the Constitution itself." *Oregon ex rel. State Land Bd.* v. *Corvallis Sand & Gravel Co.*, 429 U. S. 363, 374 (1977). It follows that any ensuing questions of navigability for determining state riverbed title are governed by federal law. See, *e. g.*, *United States* v. *Utah*, 283 U. S. 64, 75 (1931); *United States* v. *Oregon*, 295 U. S. 1, 14 (1935).

The title consequences of the equal-footing doctrine can be stated in summary form: Upon statehood, the State gains title within its borders to the beds of waters then navigable (or tidally influenced, see *Phillips Petroleum Co.* v. *Mississippi*, 484 U. S. 469 (1988), although that is not relevant in this case). It may allocate and govern those lands according to state law subject only to "the paramount power of the United States to control such waters for purposes of navigation in interstate and foreign commerce." *Oregon*, *supra*, at 14; see *Montana* v. *United States*, 450 U. S. 544, 551 (1981); *United States* v. *Holt State Bank*, 270 U. S. 49, 54 (1926). The United States retains any title vested in it before statehood to any land beneath waters not then navigable (and not tidally influenced), to be transferred or licensed if and as it chooses. See *Utah*, *supra*, at 75; *Oregon*, *supra*, at 14.

Returning to the "navigability in fact" rule, the Court has explained the elements of this test. A basic formulation of the rule was set forth in *The Daniel Ball*, 10 Wall. 557 (1871), a case concerning federal power to regulate navigation:

> "Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water." *Id.*, at 563.

The *Daniel Ball* formulation has been invoked in considering the navigability of waters for purposes of assessing federal regulatory authority under the Constitution, and the application of specific federal statutes, as to the waters and their beds. See, *e. g.*, *ibid.*; *The Montello*, 20 Wall. 430, 439 (1874); *United States* v. *Appalachian Elec. Power Co.*, 311 U. S. 377, 406, and n. 21 (1940) (Federal Power Act); *Rapanos* v. *United States*, 547 U. S. 715, 730–731 (2006) (plurality opinion) (Clean Water Act); *id.*, at 761 (KENNEDY, J., concurring in judgment) (same). It has been used as well to determine questions of title to water beds under the equal-footing doctrine. See *Utah*, *supra*, at 76; *Oklahoma* v. *Texas*, 258 U. S. 574, 586 (1922); *Holt State Bank*, *supra*, at 56. It should be noted, however, that the test for navigability is not applied in the same way in these distinct types of cases.

Among the differences in application are the following. For state title under the equal-footing doctrine, navigability is determined at the time of statehood, see *Utah*, *supra*, at 75, and based on the "natural and ordinary condition" of the water, see *Oklahoma*, *supra*, at 591. In contrast, admiralty jurisdiction extends to water routes made navigable even if not formerly so, see, *e. g.*, *Ex parte Boyer*, 109 U. S. 629, 631–632 (1884) (artificial canal); and federal regulatory authority encompasses waters that only recently have become navigable, see, *e. g.*, *Philadelphia Co.* v. *Stimson*, 223 U. S. 605, 634–635 (1912), were once navigable but are no longer, see *Economy Light & Power Co.* v. *United States*, 256 U. S. 113, 123–124 (1921), or are not navigable and never have been but may become so by reasonable improvements, see *Appa-*

lachian Elec. Power Co., *supra*, at 407–408. With respect to the federal commerce power, the inquiry regarding navigation historically focused on interstate commerce. See *The Daniel Ball*, *supra*, at 564. And, of course, the commerce power extends beyond navigation. See *Kaiser Aetna* v. *United States*, 444 U. S. 164, 173–174 (1979). In contrast, for title purposes, the inquiry depends only on navigation and not on interstate travel. See *Utah*, *supra*, at 76. This list of differences is not exhaustive. Indeed, "[e]ach application of [the *Daniel Ball*] test . . . is apt to uncover variations and refinements which require further elaboration." *Appalachian Elec. Power Co.*, *supra*, at 406.

IV

A

The primary flaw in the reasoning of the Montana Supreme Court lies in its treatment of the question of river segments and overland portage.

To determine title to a riverbed under the equal-footing doctrine, this Court considers the river on a segment-by-segment basis to assess whether the segment of the river, under which the riverbed in dispute lies, is navigable or not. In *United States* v. *Utah*, for example, the Court noted:

> "[T]he controversy relates only to the sections of the rivers which are described in the complaint, and the Master has limited his findings and conclusions as to navigability accordingly. The propriety of this course, in view of the physical characteristics of the streams, is apparent. Even where the navigability of a river, speaking generally, is a matter of common knowledge, and hence one of which judicial notice may be taken, it may yet be a question, to be determined upon evidence, how far navigability extends." 283 U. S., at 77.

The Court went on to conclude, after reciting and assessing the evidence, that the Colorado River was navigable for

its first roughly 4-mile stretch, nonnavigable for the next roughly 36-mile stretch, and navigable for its remaining 149 miles. *Id.*, at 73–74, 79–81, 89. The Court noted the importance of determining "the exact point at which navigability may be deemed to end." *Id.*, at 90.

Similarly, in *Brewer-Elliott Oil & Gas Co.* v. *United States*, 260 U. S. 77, 85 (1922), the Court examined the segment of the Arkansas River that ran along the Osage Indian Reservation, assessing whether the Arkansas River was "navigable in fact at the *locus in quo*." The Court concluded that the United States originally, and the Osages as its grantees, unequivocally held title to the riverbeds because the Arkansas River "is and was not navigable at the place where the river bed lots, here in controversy, are." *Id.*, at 86. The Court found the segment of river along the reservation to be nonnavigable even though a segment of the river that began further downstream was navigable. *Ibid.* See also *Oklahoma*, *supra,* at 583, 584, 587–588, 589–591 (noting that "how far up the streams navigability extended was not known"; assessing separately the segments of the Red River above and below its confluence with the Washita River within Oklahoma's borders; and concluding that neither segment, and hence "no part of the river within Oklahoma," was navigable).

The Montana Supreme Court discounted the segment-by-segment approach of this Court's cases, calling it "a piece meal classification of navigability—with some stretches declared navigable, and others declared non-navigable." 355 Mont., at 440–442, 229 P. 3d, at 448–449. This was error. The segment-by-segment approach to navigability for title is well settled, and it should not be disregarded. A key justification for sovereign ownership of navigable riverbeds is that a contrary rule would allow private riverbed owners to erect improvements on the riverbeds that could interfere with the public's right to use the waters as a highway for commerce. While the Federal Government and States re-

tain regulatory power to protect public navigation, allocation to the State of the beds underlying navigable rivers reduces the possibility of conflict between private and public interests. See *Utah*, *supra*, at 82–83; *Packer*, 137 U. S., at 667. By contrast, segments that are nonnavigable at the time of statehood are those over which commerce could not then occur. Thus, there is no reason that these segments also should be deemed owned by the State under the equal-footing doctrine.

Practical considerations also support segmentation. Physical conditions that affect navigability often vary significantly over the length of a river. This is particularly true with longer rivers, which can traverse vastly different terrain and the flow of which can be affected by varying local climates. The Missouri River provides an excellent example: Between its headwaters and mouth, it runs for over 2,000 miles out of steep mountains, through canyons and upon rocky beds, over waterfalls and rapids, and across sandy plains, capturing runoff from snow melt and farmland rains alike. These shifts in physical conditions provide a means to determine appropriate start points and end points for the segment in question. Topographical and geographical indicators may assist. See, *e. g.*, *Utah*, *supra*, at 77–80 (gradient changes); *Oklahoma*, 258 U. S., at 589 (location of tributary providing additional flow).

A segment approach to riverbed title allocation under the equal-footing doctrine is consistent with the manner in which private parties seek to establish riverbed title. For centuries, where title to the riverbed was not in the sovereign, the common-law rule for allocating riverbed title among riparian landowners involved apportionment defined both by segment (each landowner owns bed and soil along the length of his land adjacent) and thread (each landowner owns bed and soil to the center of the stream). See J. Angell, A Treatise on the Law of Watercourses 18 (6th ed. 1869); *Tyler* v. *Wilkinson*, 24 F. Cas. 472, 474 (No. 14,312) (CC RI 1827) (Story, J.).

Montana, moreover, cannot suggest that segmentation is inadministrable when the state courts managed to divide up and apportion the underlying riverbeds for purposes of determining their value and the corresponding rents owed by PPL.

The Montana Supreme Court, relying upon *Utah*, decided that the segment-by-segment approach is inapplicable here because it "does not apply to 'short interruption[s] of navigability in a stream otherwise navigable.' " 355 Mont., at 442, 229 P. 3d, at 449 (quoting *Utah*, 283 U. S., at 77). This was mistaken. In *Utah*, this Court noted in passing that the facts of the case concerned "long reaches with particular characteristics of navigability or non-navigability" rather than "short interruption[s]." *Id.*, at 77. The Court in *Utah* did not say the case would have a different outcome if a "short interruption" were concerned. *Ibid.*

Even if the law might find some nonnavigable segments so minimal that they merit treatment as part of a longer, navigable reach for purposes of title under the equal-footing doctrine, it is doubtful that any of the segments in this case would meet that standard, and one—the Great Falls reach—certainly would not. As an initial matter, the kinds of considerations that would define a *de minimis* exception to the segment-by-segment approach would be those related to principles of ownership and title, such as inadministrability of parcels of exceedingly small size, or worthlessness of the parcels due to overdivision. See Heller, The Tragedy of the Anticommons, 111 Harv. L. Rev. 621, 682–684 (1998) (explaining that dividing property into square-inch parcels could, absent countervailing legal mechanisms, "paralyze the alienability of scarce resources . . . or diminish their value too drastically"). An analysis of segmentation must be sensibly applied. A comparison of the nonnavigable segment's length to the overall length of the stream, for instance, would be simply irrelevant to the issue at hand.

A number of the segments at issue here are both discrete, as defined by physical features characteristic of navigability or nonnavigability, and substantial, as a matter of administrability for title purposes. This is best illustrated by the Great Falls reach, which is 17 miles long and has distinct drops including five waterfalls and continuous rapids in between. There is plenty of reason to doubt that reach's navigability based on the presence of the series of falls. There is also reason to think that title to that segment of bed would not be worthless or inadministrable. Indeed, the State sought and was awarded rent in the amount of $41 million for PPL's various hydroelectric facilities attached to the riverbeds, half of which are along the Great Falls reach.

Applying its "short interruptions" approach, the Montana Supreme Court decided that the Great Falls reach was navigable because it could be managed by way of land route portage. 355 Mont., at 440, 442, 229 P. 3d, at 447, 449. The court noted in particular the portage of Lewis and Clark's expedition. *Ibid.* Yet that very portage reveals the problem with the Montana Supreme Court's analysis. Leaving behind their larger boats, Lewis and Clark transported their supplies and some small canoes about 18 miles over land, which took at least 11 days and probably more. See Lewis and Clark Journals 126–152; 9 Journals of the Lewis & Clark Expedition 173; Dear Brother 109. Even if portage were to take travelers only one day, its significance is the same: It demonstrates the need to bypass the river segment, all because that part of the river is nonnavigable. Thus, the Montana Supreme Court was wrong to state, with respect to the Great Falls reach and other stretches of the rivers in question, that portages "are not sufficient to defeat a finding of navigability." 355 Mont., at 438, 229 P. 3d, at 446. In most cases, they are, because they require transportation over land rather than over the water. This is such a case, at least as to the Great Falls reach.

In reaching its conclusion that the necessity of portage does not undermine navigability, the Montana Supreme Court misapplied this Court's decision in *The Montello*, 20 Wall. 430. See 355 Mont., at 438, 229 P. 3d, at 446. The consideration of portage in *The Montello* was for a different purpose. The Court did not seek to determine whether the river in question was navigable for title purposes but instead whether it was navigable for purposes of determining whether boats upon it could be regulated by the Federal Government. 20 Wall., at 439, 445. The primary focus in *The Montello* was not upon navigability in fact but upon whether the river was a "navigable water of the United States." *Id.*, at 439, 443. The latter inquiry is doctrinally distinct. It turns upon whether the river "forms by itself, or by its connection with other waters, a continued highway over which commerce is, or may be, carried with other States or foreign countries in the customary modes in which such commerce is conducted by water." *Id.*, at 439 (citing *The Daniel Ball*, 10 Wall. 557). It is language similar to "continued highway" that Montana urges the Court to import into the title context in lieu of the Court's established segmentation approach. Brief for Respondent 42–43, n. 16.

The Montello reasonably concluded that the portages required in that case did not prevent the river from being part of a channel of interstate commerce. Portages continued that channel because goods could be successfully transported interstate, in part upon the waters in question. This provided sufficient basis to regulate steamboats at places where those boats could and did, in fact, navigate portions of the river. 20 Wall., at 445. Here, by contrast, the question regards ownership of the bed under river segments that the Montana Supreme Court, by calling them "interruptions in the navigation," 355 Mont., at 442, 229 P. 3d, at 449, acknowledges were nonnavigable. The reasoning and the inquiry of *The Montello* does not control the outcome where the quite different concerns of the riverbed title context apply.

Having clarified that portages may defeat navigability for title purposes, and do so with respect to the Great Falls reach, the Court sees no evidence in the record that could demonstrate that the Great Falls reach was navigable. Montana does not dispute that overland portage was necessary to traverse that reach. Indeed, the State admits "the falls themselves were not passable by boat at statehood." Brief for Respondent 10. And the trial court noted the falls had never been navigated. App. to Pet. for Cert. 137. Based on these statements, this Court now concludes, contrary to the Montana Supreme Court's decision, that the 17-mile Great Falls reach, at least from the head of the first waterfall to the foot of the last, is not navigable for purposes of riverbed title under the equal-footing doctrine.

This Court also determines, based on evidence in the record, that there is a significant likelihood that some of the other river stretches in dispute also fail the federal test of navigability for the purpose of determining title. For example, as to the disputed segment of the Clark Fork River, the Montana Supreme Court incorrectly stated the sole evidence for nonnavigability "consists of conclusory statements . . . without any specific factual support." 355 Mont., at 440, 229 P. 3d, at 448. In fact, PPL introduced a report of the U. S. Army Corps of Engineers from 1891, two years after Montana's date of statehood, documenting that the portion of the Clark Fork River between Missoula and Lake Pend Oreille (which includes the location of PPL's Thompson Falls facility) had a fall of about 1,100 feet in 250 miles and "is a mountain torrential stream, full of rocks, rapids, and falls, . . . utterly unnavigable, and incapable of being made navigable except at an enormous cost." 2 H. R. Exec. Doc., at 3250; see App. 379–380 (Docket No. 169). The report based its conclusions on various failed attempts to navigate the river. It found the Thompson Falls "a complete obstruction to navigation" and the river around that area "exceedingly rapid, rough, and full of rocks." 2 H. R. Exec. Doc., at 3251. This was con-

sistent with a 1910 Federal District Court decree. The decree adjudicated a title dispute between two private parties over the riverbed near and under Thompson Falls and declared the river at that place "was and is a non-navigable stream incapable of carrying the products of the country in the usual manner of water transportation." *Steele* v. *Donlan*, Equity No. 950 (CC D Mont., July 19, 1910), p. 1; see App. 380–381 (Docket No. 169). While the ultimate decision as to this and the other disputed river stretches is to be determined, in the first instance, by the Montana courts upon remand, the relevant evidence should be assessed in light of the principles discussed in this opinion.

B

The Montana Supreme Court further erred as a matter of law in its reliance upon the evidence of present-day, primarily recreational use of the Madison River. Error is not inherent in a court's consideration of such evidence, but the evidence must be confined to that which shows the river could sustain the kinds of commercial use that, as a realistic matter, might have occurred at the time of statehood. Navigability must be assessed as of the time of statehood, and it concerns the river's usefulness for "'trade and travel,'" rather than for other purposes. See *Utah*, 283 U. S., at 75–76. Mere use by initial explorers or trappers, who may have dragged their boats in or alongside the river despite its nonnavigability in order to avoid getting lost, or to provide water for their horses and themselves, is not itself enough. See *Oregon*, 295 U. S., at 20–21 (evidence that "trappers appear to have waded or walked" through the river, dragging their boats rather than floating them, had "no bearing on navigability").

True, river segments are navigable not only if they "[were] used," but also if they "[were] susceptible of being used," as highways of commerce at the time of statehood. *Utah*, *supra*, at 76 (internal quotation marks omitted). Evidence

of recreational use, depending on its nature, may bear upon susceptibility of commercial use at the time of statehood. See *Appalachian Elec. Power Co.*, 311 U. S., at 416 ("[P]ersonal or private use by boats demonstrates the availability of the stream for the simpler types of commercial navigation"); *Utah*, 283 U. S., at 82 (fact that actual use has "been more of a private nature than of a public, commercial sort . . . cannot be regarded as controlling"). Similarly, poststatehood evidence, depending on its nature, may show susceptibility of use at the time of statehood. See *id.*, at 82–83 ("[E]xtensive and continued [historical] use for commercial purposes" may be the "most persuasive" form of evidence, but the "crucial question" is the potential for such use at the time of statehood, rather than "the mere manner or extent of actual use").

Evidence of present-day use may be considered to the extent it informs the historical determination whether the river segment was susceptible of use for commercial navigation at the time of statehood. For the susceptibility analysis, it must be determined whether trade and travel could have been conducted "in the customary modes of trade and travel on water," over the relevant river segment "in its natural and ordinary condition." *Id.*, at 76 (internal quotation marks omitted). At a minimum, therefore, the party seeking to use present-day evidence for title purposes must show: (1) the watercraft are meaningfully similar to those in customary use for trade and travel at the time of statehood; and (2) the river's poststatehood condition is not materially different from its physical condition at statehood. See also *Oregon*, *supra*, at 18 (finding that scientific and historical evidence showed that the physical condition of particular water bodies had not varied substantially since statehood in a way that might affect navigation). If modern watercraft permit navigability where the historical watercraft would not, or if the river has changed in ways that substantially improve its navigability, then the evidence of present-day use has little or no bearing on navigability at statehood.

The Montana Supreme Court opinion offered no indication that it made these necessary findings. The court concluded the evidence of present-day use of the Madison was probative of its susceptibility of use at statehood, but there is no apparent basis for its conclusion. 355 Mont., at 442–443, 438–439, 229 P. 3d, at 449, 446–447. The court did not find the watercraft similar to those used at the time of statehood, and the State's evidence of present-day use for recreational fishing did not indicate what types of boats are now used. App. 46–48. Modern recreational fishing boats, including inflatable rafts and lightweight canoes or kayaks, may be able to navigate waters much more shallow or with rockier beds than the boats customarily used for trade and travel at statehood.

As to the river's physical condition, the Montana Supreme Court did not assess with care PPL's evidence about changes to the river's flow and the location and pattern of its channel since statehood. The affidavit of PPL's expert in fluvial geomorphology—the study of river-related landforms—at least suggests that as a result of PPL's dams, the river has become "less torrential" in high flow periods and less shallow in low flow periods. *Id.*, at 575–577 (Docket No. 170). Thus, the river may well be easier to navigate now than at statehood.

The Montana Supreme Court altogether ignored the expert's reasoning about the past condition of the river's channels and the significance of that information for navigability. Further, contrary to the Montana Supreme Court's suggestion, the expert's affidavit was not mere evidence of change in "seasonal variations" of water depth. 355 Mont., at 440, 229 P. 3d, at 448. It provided meaningful evidence that the river's conditions had changed since statehood in ways that made present-day navigation of the river easier in all seasons than it was at the relevant time. While the Montana court was correct that a river need not be susceptible of navigation at every point during the year, neither can that susceptibility

be so brief that it is not a commercial reality. Against this background, the present-day recreational use of the river did not bear on navigability for purposes of title under the equal-footing doctrine. The Montana Supreme Court's reliance upon the State's evidence of present-day recreational use, at least without further inquiry, was wrong as a matter of law.

C

The above analysis is sufficient to require reversal of the grant of summary judgment to Montana. Therefore, the Court declines to decide whether the Montana Supreme Court further erred as to the burden of proof regarding navigability.

D

As a final contention, the State of Montana suggests that denying the State title to the riverbeds here in dispute will undermine the public trust doctrine, which concerns public access to the waters above those beds for purposes of navigation, fishing, and other recreational uses. Brief for Respondent 20, 24–26. This suggestion underscores the State's misapprehension of the equal-footing and public trust doctrines.

The public trust doctrine is of ancient origin. Its roots trace to Roman civil law and its principles can be found in the English common law on public navigation and fishing rights over tidal lands and in the state laws of this country. See *Coeur d'Alene*, 521 U. S., at 284–286; *Illinois Central R. Co.* v. *Illinois*, 146 U. S. 387, 458 (1892); D. Slade, Putting the Public Trust Doctrine to Work 3–8, 15–24 (1990); see, *e. g.*, *National Audubon Soc.* v. *Superior Court of Alpine Cty.*, 33 Cal. 3d 419, 433–441, 658 P. 2d 709, 718–724 (1983); *Arnold* v. *Mundy*, 6 N. J. L. 1, 9–10 (1821). Unlike the equal-footing doctrine, however, which is the constitutional foundation for the navigability rule of riverbed title, the public trust doctrine remains a matter of state law, see *Coeur d'Alene*, *supra*, at 285 (*Illinois Central*, a Supreme Court

public trust case, was "'necessarily a statement of Illinois law'"); *Appleby* v. *City of New York*, 271 U. S. 364, 395 (1926) (same), subject as well to the federal power to regulate vessels and navigation under the Commerce Clause and admiralty power. While equal-footing cases have noted that the State takes title to the navigable waters and their beds in trust for the public, see *Shively*, 152 U. S., at 49, 15–17, 24, 46, the contours of that public trust do not depend upon the Constitution. Under accepted principles of federalism, the States retain residual power to determine the scope of the public trust over waters within their borders, while federal law determines riverbed title under the equal-footing doctrine.

V

As the litigation history of this case shows, Montana filed its claim for riverbed rent over a century after the first of the dams was built upon the riverbeds. Montana had not sought compensation before then, despite its full awareness of PPL's hydroelectric projects and despite the State's own participation in the projects' federal licensing process. While this Court does not reach the question, it may be that by virtue of the State's sovereignty, neither laches nor estoppel could apply in a strict sense to bar the State's much belated claim. Still, the reliance by PPL and its predecessors in title upon the State's long failure to assert title is some evidence to support the conclusion that the river segments were nonnavigable for purposes of the equal-footing doctrine.

The Montana Supreme Court's ruling that Montana owns and may charge for use of riverbeds across the State was based upon an infirm legal understanding of this Court's rules of navigability for title under the equal-footing doctrine. As the Court said in *Brewer-Elliott:* "It is not for a State by courts or legislature, in dealing with the general subject of beds of streams, to adopt a retroactive rule for determining navigability which . . . would enlarge what actu-

ally passed to the State, at the time of her admission, under the constitutional rule of equality here invoked." 260 U. S., at 88.

* * *

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

It is so ordered.

Syllabus

DOUGLAS, DIRECTOR, CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES *v.* INDEPENDENT LIVING CENTER OF SOUTHERN CALIFORNIA, INC., ET AL.

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

No. 09–958. Argued October 3, 2011—Decided February 22, 2012*

Medicaid is a cooperative federal-state program that provides medical care to needy individuals. To qualify for federal funds, a State must submit its Medicaid plan and any amendments to the federal agency that administers the program, the Centers for Medicare & Medicaid Services (CMS). Before approving a plan or amendments, CMS conducts a review to determine whether they comply with federal requirements. Federal law requires state plans or amendments to "assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers" to make Medicaid "care and services" available. 42 U. S. C. § 1396a(a)(30)(A).

After California enacted three statutes reducing the State's payments to various Medicaid providers, the State submitted plan amendments to CMS. Before the agency finished its review, Medicaid providers and beneficiaries sought, in a series of cases, to enjoin the rate reductions on the ground that they were pre-empted by federal Medicaid law. In seven decisions, the Ninth Circuit ultimately affirmed or ordered preliminary injunctions preventing the State from implementing its statutes. The court (1) held that the providers and beneficiaries could bring a Supremacy Clause action; (2) essentially accepted their claim that the State did not show that its amended plan would provide suf-

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*Together with No. 09–1158, *Douglas, Director, California Department of Health Care Services* v. *California Pharmacists Association et al.*, *Douglas, Director, California Department of Health Care Services* v. *California Hospital Association et al.* (see this Court's Rule 12.4), *Douglas, Director, California Department of Health Care Services* v. *Independent Living Center of Southern California, Inc., et al.* (see this Court's Rule 12.4), *Douglas, Director, California Department of Health Care Services* v. *Dominguez, By and Through Her Mother and Next Friend Brown, et al.* (see this Court's Rule 12.4); and No. 10–283, *Douglas, Director, California Department of Health Care Services* v. *Santa Rosa Memorial Hospital et al.*, also on certiorari to the same court.

ficient services; (3) held that the amendments thus conflicted with § 1396a(a)(30)(A); and (4) held that the federal statute pre-empted the new state laws. In the meantime, agency officials disapproved the amendments, and California sought further administrative review. The cases were in this posture when the Court granted certiorari to decide whether respondents could mount a Supremacy Clause challenge. After oral argument, CMS approved several of the State's amendments, and the State withdrew its requests for approval of the remainder.

Held: The judgments are vacated and the cases are remanded, thereby permitting the parties to argue before the Ninth Circuit in the first instance the question whether respondents may maintain Supremacy Clause actions now that CMS has approved the state statutes. Pp. 613–616.

(a) CMS' approval does not make these cases moot, but it does put them in a different posture, since the federal agency charged with administering Medicaid has now found that the rate reductions comply with federal law. That decision does not change the substantive question whether California's statutes are consistent with federal law, but it may change the answer. It may also require respondents to seek review of CMS' determination under the Administrative Procedure Act (APA) rather than in a Supremacy Clause action against California. The APA would likely permit respondents to obtain an authoritative judicial determination of the merits of their legal claim. And their basic challenge now presents the kind of legal question ordinarily calling for APA review. The Medicaid Act commits to a federal agency the power to administer a federal program, and the agency has exercised that authority. As CMS is comparatively expert in the statute's subject matter, its decision carries weight. And § 1396a(a)(30)(A)'s broad and general language suggests that CMS' expertise is relevant in determining the provision's application. Finally, to allow a Supremacy Clause action to proceed once CMS has reached a decision threatens potential inconsistency or confusion. The Ninth Circuit declined to give weight to the Federal Government's interpretation of the federal law, but courts are ordinarily required to apply deference standards to agency decisionmaking. The parties suggest no reasons why such standards should not be applied here or why, now that CMS has acted, a court should reach a different result in an APA action than in a Supremacy Clause action. That would make the Supremacy Clause challenge at best redundant. Permitting it to continue would seem inefficient, for the federal agency is not a participant in the action, which will decide whether agency-approved state rates violate federal law. Pp. 613–616.

(b) Given the present posture of the cases, the Court does not address whether the Ninth Circuit properly recognized a Supremacy Clause ac-

tion to enforce the federal law before the agency took final action. To decide whether these cases may proceed under the Supremacy Clause now that the agency has acted, it will be necessary on remand to consider at least the matters addressed by this Court. P. 616.

No. 09–958, 572 F. 3d 644 (first judgment), 342 Fed. Appx. 306 (second judgment), No. 09–1158, 596 F. 3d 1098, 563 F. 3d 847, 374 Fed. Appx. 690, 596 F. 3d 1087, and No. 10–283, 380 Fed. Appx. 656, vacated and remanded.

BREYER, J., delivered the opinion of the Court, in which KENNEDY, GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. ROBERTS, C. J., filed a dissenting opinion, in which SCALIA, THOMAS, and ALITO, JJ., joined, *post*, p. 616.

Karin S. Schwartz, Supervising Deputy Attorney General of California, argued the cause for petitioner in all cases. With her on the briefs were *Kamala D. Harris*, Attorney General, *Manuel M. Medeiros*, State Solicitor General, *David S. Chaney*, Chief Assistant Attorney General, *Douglas M. Press* and *Julie Weng-Gutierrez*, Senior Assistant Attorneys General, *Richard T. Waldow*, *Susan M. Carson*, and *Jennifer M. Kim*, Supervising Deputy Attorneys General, *Gregory D. Brown* and *Carmen Snuggs*, Deputy Attorneys General, and *Dan Schweitzer*.

Deputy Solicitor General Kneedler argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Acting Solicitor General Katyal*, *Acting Deputy Solicitor General Kruger*, *Deputy Assistant Attorney General Gershengorn*, *Melissa Arbus Sherry*, and *Mark B. Stern*.

Carter G. Phillips argued the cause for respondents in all cases. With him on the brief in No. 10–283 were *Eric A. Shumsky*, *Quin M. Sorenson*, *Lowell J. Schiller*, *Michael S. Sorgen*, and *Dean L. Johnson*. *Lynn S. Carman* and *Stanley L. Friedman* filed a brief for Independent Living Center of Southern California, Inc., et al., respondents in Nos. 09–958 and 09–1158. *Deanne E. Maynard*, *Seth M. Galanter*, *Craig J. Cannizzo*, and *Lloyd A. Bookman* filed a brief for

intervenor respondents in No. 09–958 and for California Pharmacists, respondents in No. 09–1158. *Stephen P. Berzon*, *Scott A. Kronland*, and *Stacey M. Leyton* filed a brief for the Dominguez respondents in No. 09–1158.†

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†Briefs of *amici curiae* urging reversal in all cases were filed for the State of Michigan et al. by *Bill Schuette*, Attorney General of Michigan, *John J. Bursch*, Solicitor General, *Raymond O. Howd*, and *William R. Morris* and *Joshua S. Smith*, Assistant Attorneys General, by *William H. Ryan, Jr.*, former Acting Attorney General of Pennsylvania, and by the Attorneys General for their respective States as follows: *Luther Strange* of Alabama, *John J. Burns* of Alaska, *Thomas C. Horne* of Arizona, *Dustin McDaniel* of Arkansas, *John W. Suthers* of Colorado, *George Jepsen* of Connecticut, *Joseph R. Biden III* of Delaware, *Pamela Jo Bondi* of Florida, *David M. Louie* of Hawaii, *Lawrence G. Wasden* of Idaho, *Gregory F. Zoeller* of Indiana, *James D. "Buddy" Caldwell* of Louisiana, *William J. Schneider* of Maine, *Douglas F. Gansler* of Maryland, *Jim Hood* of Mississippi, *Catherine Cortez Masto* of Nevada, *Roy Cooper* of North Carolina, *E. Scott Pruitt* of Oklahoma, *John R. Kroger* of Oregon, *Peter Kilmartin* of Rhode Island, *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 *Gregory A. Phillips* of Wyoming; and for the National Governors Association et al. by *Michael W. McConnell*.

Briefs of *amici curiae* urging affirmance in all cases were filed for AARP et al. by *Martha Jane Perkins*, *Stacy J. Canan*, *Michael R. Schuster*, *Barbara A. Jones*, and *Byron J. Gross;* for the American Civil Liberties Union et al. by *Paul R. Q. Wolfson*, *Shirley Cassin Woodward*, *John A. Payton*, *Joshua Civin*, and *Steven R. Shapiro;* for the American Health Care Association et al. by *Douglas Hallward-Driemeier*, *Charles A. Luband*, *Roger A. Schwartz*, *Tamara L. Seltzer*, and *Donna D. Fraiche;* for the Chamber of Commerce of the United States of America by *Alan Untereiner*, *Mark T. Stancil*, *Robin S. Conrad*, *Kate Comerford Todd*, and *Sheldon Gilbert;* for former HHS Officials by *Stephen I. Vladeck* and *Charles S. Sims;* for Members of Congress by *Paul M. Smith* and *Matthew S. Hellman;* and for the National Association of Chain Drug Stores et al. by *Frederick R. Ball*, *Nicholas Lynn*, *Erin M. Duffy*, *Donald L. Bell II*, and *Mary Ellen Kleiman*.

Briefs of *amici curiae* were filed in all cases for APA Watch by *Lawrence J. Joseph;* and for the American Medical Association et al. by *Louis W. Bullock*, *Robert M. Blakemore*, and *James Eiseman, Jr.*

JUSTICE BREYER delivered the opinion of the Court.

We granted certiorari in these cases to decide whether Medicaid providers and recipients may maintain a cause of action under the Supremacy Clause to enforce a federal Medicaid law—a federal law that, in their view, conflicts with (and pre-empts) state Medicaid statutes that reduce payments to providers. Since we granted certiorari, however, the relevant circumstances have changed. The federal agency in charge of administering Medicaid, the Centers for Medicare & Medicaid Services (CMS), has now approved the state statutes as consistent with the federal law. In light of the changed circumstances, we believe that the question before us now is whether, once the agency has approved the state statutes, groups of Medicaid providers and beneficiaries may still maintain a Supremacy Clause action asserting that the state statutes are inconsistent with the federal Medicaid law. For the reasons set forth below, we vacate the Ninth Circuit's judgments and remand these cases for proceedings consistent with this opinion.

I

A

Medicaid is a cooperative federal-state program that provides medical care to needy individuals. To qualify for federal funds, States must submit to a federal agency (CMS, a division of the Department of Health and Human Services) a state Medicaid plan that details the nature and scope of the State's Medicaid program. It must also submit any amendments to the plan that it may make from time to time. And it must receive the agency's approval of the plan and any amendments. Before granting approval, the agency reviews the State's plan and amendments to determine whether they comply with the statutory and regulatory requirements governing the Medicaid program. See 79 Stat. 419, 344, as amended, 42 U. S. C. §§ 1316(a)(1), (b), 1396a(a), (b); 42 CFR § 430.10 *et seq.* (2010); *Wilder* v. *Virginia Hospital Assn.*, 496

U. S. 498, 502 (1990). And the agency's director has specified that the agency will not provide federal funds for any state plan amendment until the agency approves the amendment. See Letter from Timothy M. Westmoreland, Director, Center for Medicaid & State Operations, Health Care Financing Admin., U. S. Dept. of Health and Human Servs., to State Medicaid Director (Jan. 2, 2001), online at http://www.cms.gov/SMDL/downloads/SMD010201.pdf (as visited Feb. 17, 2012, and available in Clerk of Court's case file).

The federal statutory provision relevant here says that a State's Medicaid plan and amendments must:

> "provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan . . . as may be necessary to safeguard against unnecessary utilization of such care and services and *to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area*." 42 U. S. C. § 1396a(a)(30)(A) (emphasis added).

B

In 2008 and 2009, the California Legislature passed three statutes changing that State's Medicaid plan. The first statute, enacted in February 2008, reduced by 10% payments that the State makes to various Medicaid providers, such as physicians, pharmacies, and clinics. See 2007–2008 Cal. Sess. Laws, 3d Extraordinary Sess., ch. 3, §§ 14, 15. The second statute, enacted in September 2008, replaced the 10% rate reductions with a more modest set of cuts. See 2008 Cal. Sess. Laws ch. 758, §§ 45, 57. And the last statute, enacted in February 2009, placed a cap on the State's maximum contribution to wages and benefits paid by counties to

providers of in-home supportive services. See 2009–2010 Cal. Sess. Laws, 3d Extraordinary Sess., ch. 13, § 9.

In September and December 2008, the State submitted to the federal agency a series of plan amendments designed to implement most of the reductions contained in these bills. Before the agency finished reviewing the amendments, however, groups of Medicaid providers and beneficiaries filed a series of lawsuits seeking to enjoin the rate reductions on the ground that they conflicted with, and therefore were pre-empted by, federal Medicaid law, in particular the statutory provision that we have just set forth. They argued that California's Medicaid plan amendments were inconsistent with the federal provision because the State had failed to study whether the rate reductions would be consistent with the statutory factors of efficiency, economy, quality, and access to care. In effect, they argued that California had not shown that its Medicaid plan, as amended, would "enlist enough providers" to make Medicaid "care and services" sufficiently available. 42 U. S. C. § 1396a(a)(30)(A).

The consolidated cases before us encompass five lawsuits brought by Medicaid providers and beneficiaries against state officials. Those cases produced seven decisions of the Court of Appeals for the Ninth Circuit. See 572 F. 3d 644 (2009); 342 Fed. Appx. 306 (2009); 596 F. 3d 1098 (2010); 563 F. 3d 847 (2009); 374 Fed. Appx. 690 (2010); 596 F. 3d 1087 (2010); and 380 Fed. Appx. 656 (2010). The decisions ultimately affirmed or ordered preliminary injunctions that prevented the State from implementing its statutes. They (1) held that the Medicaid providers and beneficiaries could directly bring an action based on the Supremacy Clause; (2) essentially accepted the claim that the State had not demonstrated that its Medicaid plan, as amended, would provide sufficient services; (3) held that the amendments consequently conflicted with the statutory provision we have quoted; and (4) held that, given the Constitution's Supremacy Clause, the federal statute must prevail. That is to say, the federal statute pre-empted the State's new laws.

In the meantime, the federal agency was also reviewing the same state statutes to determine whether they satisfied the same federal statutory conditions. In November 2010, agency officials concluded that they did not satisfy those conditions, and the officials disapproved the amendments. California then exercised its right to further administrative review within the agency. The cases were in this posture when we granted certiorari to decide whether respondents could mount a Supremacy Clause challenge to the state statutes and obtain a court injunction preventing California from implementing its statutes.

About a month after we heard oral argument, the federal agency reversed course and approved several of California's statutory amendments to its plan. See Letter from Donald M. Berwick, Administrator, CMS, to Toby Douglas, Director, Cal. Dept. of Health Care Servs. (Oct. 27, 2011); Letter from Larry Reed, Director, Division of Pharmacy, Disabled and Elderly Health Programs Group, CMS, to Toby Douglas, Director, Cal. Dept. of Health Care Servs. (Oct. 27, 2011). In doing so, the agency also approved a limited retroactive implementation of some of the amendments' rate reductions. The State, in turn, withdrew its requests for approval of the remaining amendments, in effect agreeing (with one exception) that it would not seek to implement any unapproved reduction. See Letter from Michael E. Kilpatrick, Assistant Chief Counsel, Cal. Dept. of Health Care Servs., to Benjamin R. Cohen, Director, Office of Hearings, CMS (Oct. 27, 2011). (The exception consists of one statute for which California has submitted no amendment and which, by its own terms, cannot take effect unless and until this litigation is complete, see 2010 Cal. Sess. Laws ch. 725, § 25.)

II

All parties agree that the agency's approval of the enjoined rate reductions does not make these cases moot. For one thing, the providers and beneficiaries continue to believe that the reductions violate the federal provision, the agency's

view to the contrary notwithstanding. For another, federal-court injunctions remain in place, forbidding California to implement the agency-approved rate reductions. And, in light of the agency's action, California may well ask the lower courts to set those injunctions aside.

While the cases are not moot, they are now in a different posture. The federal agency charged with administering the Medicaid program has determined that the challenged rate reductions comply with federal law. That agency decision does not change the underlying substantive question, namely, whether California's statutes are consistent with a specific federal statutory provision (requiring that reimbursement rates be "sufficient to enlist enough providers"). But it may change the answer. And it may require respondents now to proceed by seeking review of the agency determination under the Administrative Procedure Act (APA), 5 U. S. C. § 701 *et seq.*, rather than in an action against California under the Supremacy Clause.

For one thing, the APA would likely permit respondents to obtain an authoritative judicial determination of the merits of their legal claim. The Act provides for judicial review of final agency action. § 704. It permits any person adversely affected or aggrieved by agency action to obtain judicial review of the lawfulness of that action. § 702. And it requires a reviewing court to set aside agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." § 706(2)(A).

For another thing, respondents' basic challenge now presents the kind of legal question that ordinarily calls for APA review. The Medicaid Act commits to the federal agency the power to administer a federal program. And here the agency has acted under this grant of authority. That decision carries weight. After all, the agency is comparatively expert in the statute's subject matter. And the language of the particular provision at issue here is broad and general, suggesting that the agency's expertise is relevant in determining its application.

Finally, to allow a Supremacy Clause action to proceed once the agency has reached a decision threatens potential inconsistency or confusion. In these cases, for example, the Ninth Circuit, in sustaining respondents' challenges, declined to give weight to the Federal Government's interpretation of the federal statutory language. (That view was expressed in an *amicus curiae* brief that the United States submitted in prior litigation.) See *Independent Living Center of Southern Cal., Inc.* v. *Maxwell-Jolly*, 572 F. 3d 644, 654 (CA9 2009) (referring to the United States' certiorari-stage invitation brief in *Belshe* v. *Orthopaedic Hospital*, 522 U. S. 1044 (1998) (denying writ of certiorari)). And the District Court decisions that underlie injunctions that now forbid California to implement its laws may rest upon similar analysis.

But ordinarily review of agency action requires courts to apply certain standards of deference to agency decision-making. See *National Cable & Telecommunications Assn.* v. *Brand X Internet Services*, 545 U. S. 967 (2005) (describing deference reviewing courts must show); *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984) (same). And the parties have not suggested reasons why courts should not now (in the changed posture of these cases) apply those ordinary standards of deference.

Nor have the parties suggested reasons why, once the agency has taken final action, a court should reach a different result in a case like these, depending upon whether the case proceeds in a Supremacy Clause action rather than under the APA for review of an agency decision. Indeed, to permit a difference in result here would subject the States to conflicting interpretations of federal law by several different courts (and the agency), thereby threatening to defeat the uniformity that Congress intended by centralizing administration of the federal program in the agency and to make superfluous or to undermine traditional APA review. Cf. *Astra USA, Inc.* v. *Santa Clara County*, 563 U. S. 110, 114 (2011) (noting that the treatment of lawsuits that are "in substance one and

the same" "must be the same, '[n]o matter the clothing in which [plaintiffs] dress their claims' " (quoting *Tenet* v. *Doe*, 544 U. S. 1, 8 (2005))). If the two kinds of actions should reach the same result, the Supremacy Clause challenge is at best redundant. And to permit the continuation of the action in that form would seem to be inefficient, for the agency is not a participant in the pending litigation below, litigation that will decide whether the agency-approved state rates violate the federal statute.

III

In the present posture of these cases, we do not address whether the Ninth Circuit properly recognized a Supremacy Clause action to enforce this federal statute before the agency took final action. To decide whether these cases may proceed directly under the Supremacy Clause now that the agency has acted, it will be necessary to take account, in light of the proceedings that have already taken place, of at least the matters we have set forth above. It must be recognized, furthermore, that the parties have not fully argued this question. Thus, it may be that not all of the considerations that may bear upon the proper resolution of the issue have been presented in the briefs to this Court or in the arguments addressed to and considered by the Court of Appeals. Given the complexity of these cases, rather than ordering reargument, we vacate the Ninth Circuit's judgments and remand the cases, thereby permitting the parties to argue the matter before that Circuit in the first instance.

It is so ordered.

CHIEF JUSTICE ROBERTS, with whom JUSTICE SCALIA, JUSTICE THOMAS, and JUSTICE ALITO join, dissenting.

The Medicaid Act established a collaborative federal-state program to assist the poor, elderly, and disabled in obtaining medical care. The Act is Spending Clause legislation; in ex-

change for federal funds a State agrees to abide by specified rules in implementing the program. One of those rules is set forth in the Act, which requires States to meet particular criteria in establishing Medicaid reimbursement rates for those providing services under the Act. 42 U. S. C. § 1396a (a)(30)(A) (hereinafter § 30(A)). In 2008 and 2009, California enacted legislation reducing the rates at which it would compensate some providers. Certain providers and individuals receiving Medicaid benefits thought the new reimbursement rates did not comply with the criteria set forth in § 30(A). They sued the State to prevent the new rates from going into effect.

But those plaintiffs faced a significant problem: Nothing in the Medicaid Act allows providers or beneficiaries (or anyone else, for that matter) to sue to enforce § 30(A). The Act instead vests responsibility for enforcement with a federal agency, the Centers for Medicare & Medicaid Services (CMS). See, *e. g.*, 42 U. S. C. § 1316(a)(1). That is settled law in the Ninth Circuit. See *Sanchez* v. *Johnson*, 416 F. 3d 1051, 1058–1062 (2005) ("[T]he flexible, administrative standards embodied in [§ 30(A)] do not reflect a Congressional intent to provide a private remedy for their violation"). And it is the law in virtually every other circuit as well. See, *e. g.*, *Long Term Care Pharmacy Alliance* v. *Ferguson*, 362 F. 3d 50, 57–59 (CA1 2004) (holding that it would be inconsistent with this Court's precedent to find that § 30(A) creates rights enforceable by private parties). The respondents have never argued the contrary. Thus, as this litigation comes to us, the federal rule is that Medicaid reimbursement rates must meet certain criteria, but private parties have no statutory right to sue to enforce those requirements in court.

The providers and beneficiaries sought to overcome that difficulty by arguing that they could proceed against the State directly under the Supremacy Clause of the Constitution, even if they could not do so under the Act. They contended that the new state reimbursement rates were in-

consistent with the requirements of § 30(A). The Supremacy Clause provides that a federal statute such as § 30(A) preempts contrary state law. Therefore, the providers and beneficiaries claimed, they could sue to enforce the Supremacy Clause, which requires striking down the state law and giving effect to § 30(A). The Ninth Circuit agreed with this argument and blocked the new state reimbursement rates.

During briefing and argument in these cases, the parties have debated broad questions, such as whether and when constitutional provisions as a general matter are directly enforceable. It is not necessary to consider these larger issues. It is not even necessary to decide whether the Supremacy Clause can ever provide a private cause of action. The question presented in the certiorari petitions is narrow: "Whether Medicaid recipients and providers may maintain a cause of action under the Supremacy Clause to enforce [§ 30(A)] by asserting that the provision preempts a state law reducing reimbursement rates." To decide these cases, it is enough to conclude that the Supremacy Clause does not provide a cause of action to enforce the requirements of § 30(A) when Congress, in establishing those requirements, elected not to provide such a cause of action in the statute itself.

The Supremacy Clause operates differently from other constitutional provisions. For example, if Congress says in a law that certain provisions do not give rise to a taking without just compensation, that obviously does not resolve a claim under the Takings Clause that they do. The Supremacy Clause, on the other hand, is "not a source of any federal rights." *Chapman* v. *Houston Welfare Rights Organization*, 441 U. S. 600, 613 (1979); accord, *Dennis* v. *Higgins*, 498 U. S. 439, 450 (1991) (contrasting, in this regard, the Supremacy Clause and the Commerce Clause). The purpose of the Supremacy Clause is instead to ensure that, in a conflict with state law, whatever Congress says goes. See The Federalist No. 33, p. 205 (C. Rossiter ed. 1961) (A. Hamilton) (the

Supremacy Clause "only declares a truth which flows immediately and necessarily from the institution of a federal government").

Thus, if Congress does not intend for a statute to supply a cause of action for its enforcement, it makes no sense to claim that the Supremacy Clause itself must provide one. Saying that there is a private right of action under the Supremacy Clause would substantively change the federal rule established by Congress in the Medicaid Act. That is not a proper role for the Supremacy Clause, which simply ensures that the rule established by Congress controls.

Indeed, to say that there is a federal statutory right enforceable under the Supremacy Clause, when there is no such right under the pertinent statute itself, would effect a complete end run around this Court's implied right of action and 42 U. S. C. § 1983 jurisprudence. We have emphasized that "where the text and structure of a statute provide no indication that Congress intends to create new individual rights, there is no basis for a private suit, whether under § 1983 or under an implied right of action." *Gonzaga Univ.* v. *Doe*, 536 U. S. 273, 286 (2002). This body of law would serve no purpose if a plaintiff could overcome the absence of a statutory right of action simply by invoking a right of action under the Supremacy Clause to the exact same effect. Cf. *Astra USA, Inc.* v. *Santa Clara County*, 563 U. S. 110, 118 (2011) (rejecting contention that contract incorporating statutory terms could be enforced in private action when statute itself could not be; "[t]he absence of a private right to enforce the statutory ceiling price obligations would be rendered meaningless if [contracting] entities could overcome that obstacle by suing to enforce the contract's ceiling price obligations instead").

The providers and beneficiaries argue, however, that the traditional exercise of equity jurisdiction supports finding a direct cause of action in the Supremacy Clause. This contention fails for the same reason. It is a longstanding

maxim that "[e]quity follows the law." 1 J. Pomeroy, Treatise on Equity Jurisprudence § 425 (3d ed. 1905). A court of equity may not "create a remedy in violation of law, or even without the authority of law." *Rees* v. *Watertown*, 19 Wall. 107, 122 (1874). Here the law established by Congress is that there is no remedy available to private parties to enforce the federal rules against the State. For a court to reach a contrary conclusion under its general equitable powers would raise the most serious concerns regarding both the separation of powers (Congress, not the Judiciary, decides whether there is a private right of action to enforce a federal statute) and federalism (the States under the Spending Clause agree only to conditions clearly specified by Congress, not any implied on an ad hoc basis by the courts).

This is not to say that federal courts lack equitable powers to enforce the supremacy of federal law when such action gives effect to the federal rule, rather than contravening it. The providers and beneficiaries rely heavily on cases of this kind, most prominently *Ex parte Young*, 209 U. S. 123 (1908). Those cases, however, present quite different questions involving "the pre-emptive assertion in equity of a defense that would otherwise have been available in the State's enforcement proceedings at law." *Virginia Office for Protection and Advocacy* v. *Stewart*, 563 U. S. 247, 262 (2011) (KENNEDY, J., concurring). Nothing of that sort is at issue here; the respondents are not subject to or threatened with any enforcement proceeding like the one in *Ex parte Young*. They simply seek a private cause of action Congress chose not to provide.

* * *

The Court decides not to decide the question on which we granted certiorari but instead to send the cases back to the Court of Appeals, because of the recent action by CMS approving California's new reimbursement rates. But the CMS approvals have no impact on the question before this Court. If, as I believe, there is no private right of action

under the Supremacy Clause to enforce § 30(A), that is the end of the matter. If, on the other hand, the Court believes that there is such a cause of action, but that CMS's recent rate approvals may have an effect on that action going forward, then the Court should say just that and *then* remand to the Ninth Circuit for consideration of the effect of the agency approvals.

I am not sure what a remand without answering the preliminary question is meant to accomplish. The majority claims that the agency's recent action "may change the [lower courts'] answer" to the question whether the particular state rates violate § 30(A). *Ante*, at 614. But that fact-specific question is not the one before us; we chose not to grant certiorari on the question whether California's rates complied with § 30(A), limiting our grant to the cause of action question. 562 U. S. 1177 (2011).

The majority also asserts that the lower courts must "decide whether these cases may proceed directly under the Supremacy Clause now that the agency has acted." *Ante*, at 616. The majority contends that the parties have not "fully argued this question." *Ibid.* But the agency proceedings that ultimately led to the CMS approvals were well underway when this Court granted certiorari. The parties debated the import of the parallel administrative proceedings in their initial briefs and at oral argument. See, *e. g.*, Brief for Petitioner 28–29 ("Private lawsuits . . . interfere with . . . CMS's own enforcement procedures," as is "vividly demonstrated in the present cases"); Brief for Respondent Santa Rosa Memorial Hospital et al. in No. 10–283, p. 46 ("This case vividly illustrates why the [administrative] enforcement scheme . . . cannot substitute for a constitutional preemption claim"). No party—nor the United States as *amicus curiae*—argued that any action by CMS would affect the answer to the question we granted certiorari to review. See, *e. g.*, Tr. of Oral Arg. 53–54 (counsel for respondents) (arguing that, "to be sure," there would be a cause of action

under the Supremacy Clause even after the agency took action on the challenged rates).

Once the CMS approvals were issued, this Court directed the parties to file supplemental briefs to address "the effect, if any, of the [CMS approvals] on the proper disposition of this case." *Post*, p. 1011. Again, no one argued on supplemental briefing that the CMS approvals affected the answer to the question before this Court. See, *e. g.*, Supp. Letter Brief for Certain Respondents 6 ("the CMS findings do not directly resolve whether the Constitution supports a right of action"); Supp. Letter Brief for Petitioner 6 (agreeing that "*if* a preemption cause of action may be stated here against the State, [CMS] approval may affect its merits but not its existence"). It seems odd, then, to claim that the parties have not had the opportunity to fully address the impact of the agency action on the question that we granted certiorari to review: whether the Ninth Circuit correctly recognized a private cause of action under the Supremacy Clause to enforce § 30(A).

So what is the Court of Appeals to do on remand? It could change its view and decide that there is no cause of action directly under the Supremacy Clause to enforce § 30(A). The majority itself provides a compelling list of reasons for such a result: "The Medicaid Act commits to the federal agency the power to administer a federal program"; "the agency is comparatively expert in the statute's subject matter"; "the language of the particular provision at issue here is broad and general, suggesting that the agency's expertise is relevant"; and APA review would provide "an authoritative judicial determination." *Ante*, at 614. Allowing for both Supremacy Clause actions and agency enforcement "threatens potential inconsistency or confusion," and imperils "the uniformity that Congress intended by centralizing administration of the federal program in the agency." *Ante*, at 615; see *Gonzaga*, 536 U. S., at 291–292 (BREYER, J., concurring in judgment) (explaining that Con-

gress often means to preclude a private right of action in statutes where it employs an administrative enforcement scheme that achieves "expertise, uniformity, widespread consultation, and resulting administrative guidance," while "avoid[ing] the comparative risk of inconsistent interpretations and misincentives that can arise out of an occasional inappropriate application of the statute in a private action for damages").

The majority acknowledges, in light of all this, that the Supremacy Clause challenge appears "at best redundant," and that "continuation of the action in that form would seem to be inefficient." *Ante*, at 616. Still, according to the majority, the Court of Appeals on remand could determine that the Supremacy Clause action may be brought but then must abate "now that the agency has acted," *ibid.*—as everyone knew the agency would. A Court concerned with "inefficien[cy]" should not find that result very palatable, and the majority cites no precedent for a cause of action that fades away once a federal agency has acted. Such a scenario would also create a bizarre rush to the courthouse, as litigants seek to file and have their Supremacy Clause causes of action decided before the agency has time to arrive at final agency action reviewable in court.

Or perhaps the suits should continue in a different "form," by which I understand the Court to suggest that they should morph into APA actions. The APA judicial review provisions, however, seem to stand in the way of such a transformation. To convert the litigation into an APA suit, the current defendant (the State) would need to be dismissed and the agency (which is not currently a party at all) would have to be sued in its stead. 5 U. S. C. §§ 701–706. Given that APA actions also feature—among other things—different standards of review, different records, and different potential remedies, it is difficult to see what would be left of the original Supremacy Clause suit. Or, again, why one should have been permitted in the first place, when agency

review was provided by statute, and the parties were able to and did participate fully in that process.

I would dispel all these difficulties by simply holding what the logic of the majority's own opinion suggests: When Congress did not intend to provide a private right of action to enforce a statute enacted under the Spending Clause, the Supremacy Clause does not supply one of its own force. The Ninth Circuit's decisions to the contrary should be reversed.

Syllabus

KURNS, EXECUTRIX OF THE ESTATE OF CORSON, DECEASED, ET AL. *v.* RAILROAD FRICTION PRODUCTS CORP. ET AL.

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

No. 10–879. Argued November 9, 2011—Decided February 29, 2012

George Corson worked as a welder and machinist for a railroad carrier. After retirement, Corson was diagnosed with mesothelioma. He and his wife, a petitioner here, sued respondents Railroad Friction Products Corporation and Viad Corp in state court, claiming injury from Corson's exposure to asbestos in locomotives and locomotive parts distributed by respondents. The Corsons alleged state-law claims of defective design and failure to warn of the dangers posed by asbestos. After Corson died, petitioner Kurns, executrix of his estate, was substituted as a party. Respondents removed the case to the Federal District Court, which granted them summary judgment, ruling that the state-law claims were pre-empted by the Locomotive Inspection Act (LIA), 49 U. S. C. § 20701 *et seq.* The Third Circuit affirmed.

Held: Petitioners' state-law design-defect and failure-to-warn claims fall within the field of locomotive equipment regulation pre-empted by the LIA, as that field was defined in *Napier* v. *Atlantic Coast Line R. Co.*, 272 U. S. 605. Pp. 629–638.

(a) The LIA provides that a railroad carrier may use or allow to be used a locomotive or tender on its railroad line only when the locomotive or tender and its parts or appurtenances are in proper condition and safe to operate without unnecessary danger of personal injury, have been inspected as required by the LIA and regulations prescribed thereunder by the Secretary of Transportation, and can withstand every test prescribed under the LIA by the Secretary. See § 20701. Pp. 629–630.

(b) Congress may expressly pre-empt state law. But even without an express pre-emption provision, state law must yield to a congressional Act to the extent of any conflict with a federal statute, see *Crosby* v. *National Foreign Trade Council*, 530 U. S. 363, 372, or when the federal statute's scope indicates that Congress intended federal law to occupy a field exclusively, see *Freightliner Corp.* v. *Myrick*, 514 U. S. 280, 287. This case involves only the latter, so-called field pre-emption. Pp. 630–631.

(c) In *Napier*, this Court held two state laws prescribing the use of locomotive equipment pre-empted by the LIA, concluding that the broad

power conferred by the LIA on the Interstate Commerce Commission (the agency then vested with authority to carry out the LIA's requirements) was a "general one" that "extends to the design, the construction and the material of every part of the locomotive and tender and of all appurtenances." 272 U. S., at 611. The Court rejected the States' contention that the scope of the pre-empted field was to "be determined by the object sought through the legislation, rather than the physical elements affected by it," *id.*, at 612, and found it dispositive that "[t]he federal and the state statutes are directed to the same subject—the equipment of locomotives," *ibid.* Pp. 631–632.

(d) The Federal Railroad Safety Act of 1970 (FRSA) did not alter the LIA's pre-emptive scope. By its terms, the FRSA—which instructs that "[t]he Secretary of Transportation . . . shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970," 49 U. S. C. § 20103(a)—does not alter pre-existing federal railroad safety statutes. Rather, it leaves those statutes intact and authorizes the Secretary to fill interstitial areas of railroad safety with supplemental regulation. Because the LIA was already in effect when the FRSA was enacted, the FRSA left the LIA, and its pre-emptive scope as defined by *Napier*, intact. Pp. 632–633.

(e) Petitioners do not argue that *Napier* should be overruled. Instead, petitioners contend that their claims fall outside the LIA's pre-empted field, as it was defined in *Napier*. Petitioners' arguments are unpersuasive. First, the argument that the pre-empted field does not extend to state-law claims arising from the repair or maintenance of locomotives is inconsistent with *Napier*'s holding that Congress, in enacting the LIA, "manifest[ed] the intention to occupy the entire field of regulating locomotive equipment." 272 U. S., at 611. Second, the argument that petitioners' failure-to-warn claims are not pre-empted because they do not base liability on the design or manufacture of a product ignores that a failure-to-warn claim alleges that the product itself is defective unless accompanied by sufficient warnings or instructions. Because petitioners' failure-to-warn claims are therefore directed at the equipment of locomotives, they fall within the pre-empted field defined by *Napier*. Third, the argument that petitioners' claims are not pre-empted because manufacturers were not regulated under the LIA when Corson was exposed to asbestos is inconsistent with *Napier*, which defined the pre-empted field on the basis of the physical elements regulated, not on the basis of the entity directly subject to regulation. Finally, contrary to petitioners' argument, the LIA's pre-

emptive scope is not limited to state legislation or regulation but extends to state common-law duties and standards of care directed to the subject of locomotive equipment. Pp. 633–637.

620 F. 3d 392, affirmed.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, ALITO, and KAGAN, JJ., joined. KAGAN, J., filed a concurring opinion, *post*, p. 638. SOTOMAYOR, J., filed an opinion concurring in part and dissenting in part, in which GINSBURG and BREYER, JJ., joined, *post*, p. 640.

David C. Frederick argued the cause for petitioners. With him on the briefs were *Brendan J. Crimmins*, *Emily T. P. Rosen*, *Richard P. Myers*, *Robert E. Paul*, *Alan I. Reich*, and *Mary Gilbertson*.

Sarah E. Harrington argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Solicitor General Verrilli*, *Assistant Attorney General West*, *Deputy Solicitor General Kneedler*, *Douglas N. Letter*, *Robert S. Rivkin*, *Paul M. Geier*, and *Peter J. Plocki*.

Jonathan D. Hacker argued the cause for respondents. With him on the brief were *Walter Dellinger*, *Anton Metlitsky*, *Daniel Markewich*, *Ellen G. Margolis*, *Amy Kallal*, *James C. Martin*, *Courtney C. T. Horrigan*, and *David J. Bird*.*

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*Briefs of *amici curiae* urging reversal were filed for the Academy of Rail Labor Attorneys by *John D. Roven;* for the American Association for Justice by *Jeffrey R. White;* for the National Association of Retired and Veteran Railway Employees by *Marc C. Greco*, *Richard S. Glasser*, and *Willard J. Moody, Jr.;* for Public Justice, P. C., by *Brent M. Rosenthal* and *Leslie A. Brueckner;* and for Public Law Scholars by *Ernest A. Young* and *Art Sadin*.

Briefs of *amici curiae* urging affirmance were filed for the Association of American Railroads by *Daniel Saphire;* for the Chamber of Commerce of the United States of America by *Gene C. Schaerr*, *Steffen N. Johnson*, *Linda T. Coberly*, *Robin S. Conrad*, and *Kathryn Comerford Todd;* for DRI–The Voice of the Defense Bar by *R. Matthew Cairns*, *Diane B. Bratvold*, *Kevin M. Decker*, and *Jonathan P. Schmidt;* for General Electric

JUSTICE THOMAS delivered the opinion of the Court.

This case requires us to determine whether petitioners' state-law tort claims for defective design and failure to warn are pre-empted by the Locomotive Inspection Act (LIA), 49 U. S. C. § 20701 *et seq.* The United States Court of Appeals for the Third Circuit determined that petitioners' claims fall within the field pre-empted by that Act, as that field was defined by this Court's decision in *Napier* v. *Atlantic Coast Line R. Co.*, 272 U. S. 605 (1926). We agree.

I

George Corson was employed as a welder and machinist by the Chicago, Milwaukee, St. Paul & Pacific Railroad from 1947 until 1974. Corson worked in locomotive repair and maintenance facilities, where his duties included installing brakeshoes on locomotives and stripping insulation from locomotive boilers. In 2005, Corson was diagnosed with malignant mesothelioma.

In 2007, Corson and his wife filed suit in Pennsylvania state court against 59 defendants, including respondents Railroad Friction Products Corporation (RFPC) and Viad Corp (Viad). According to the complaint, RFPC distributed locomotive brakeshoes containing asbestos, and Viad was the successor-in-interest to a company that manufactured and sold locomotives and locomotive engine valves containing asbestos. Corson alleged that he handled this equipment and that he was injured by exposure to asbestos. The complaint

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Corp. by *Paul D. Clement;* for Griffin Wheel Co. by *Larry D. Ottaway, Monty B. Bottom,* and *Andrew M. Bowman;* for John Crane Inc. by *Michael A. Pollard, Kathleen T. Sanderson,* and *Lindsay A. Philiben;* for the National Association of Manufacturers by *Mark A. Behrens, Cary Silverman,* and *Quentin Riegel;* for the Product Liability Advisory Council, Inc., by *Jonathan M. Hoffman* and *Joan L. Volpert;* for ThyssenKrupp Budd Co. by *Joseph E. Richotte, Daniel R. W. Rustmann,* and *James E. Wynne;* and for the Washington Legal Foundation by *Daniel J. Popeo* and *Richard A. Samp.*

asserted state-law claims that the equipment was defectively designed because it contained asbestos, and that respondents failed to warn of the dangers of asbestos or to provide instructions regarding its safe use. After the complaint was filed, Corson passed away, and the executrix of his estate, Gloria Kurns, was substituted as a party. Corson's widow and the executrix are petitioners here.

Respondents removed the case to the United States District Court for the Eastern District of Pennsylvania and moved for summary judgment. Respondents argued that petitioners' state-law claims were pre-empted by the LIA. The District Court agreed and granted summary judgment for respondents. See *Kurns* v. *A. W. Chesterton*, Civ. Action No. 08–2216 (ED Pa., Feb. 3, 2009), App. to Pet. for Cert. 39a. The Third Circuit affirmed. See *Kurns* v. *A. W. Chesterton Inc.*, 620 F. 3d 392 (2010). We granted certiorari. 563 U. S. 1032 (2011).

II

Congress enacted the predecessor to the LIA, the Boiler Inspection Act (BIA), in 1911. The BIA made it unlawful to use a steam locomotive "unless the boiler of said locomotive and appurtenances thereof are in proper condition and safe to operate . . . without unnecessary peril to life or limb." Act of Feb. 17, 1911, ch. 103, §2, 36 Stat. 913–914. In 1915, Congress amended the BIA to apply to "the entire locomotive and tender and all parts and appurtenances thereof."[1] Act of Mar. 4, 1915, ch. 169, §1, 38 Stat. 1192. The BIA as amended became commonly known as the Locomotive Inspection Act. As relevant here, the LIA provides:

> "A railroad carrier may use or allow to be used a locomotive or tender on its railroad line only when the locomotive or tender and its parts and appurtenances—

[1] A "tender" is "[a] car attached to a locomotive, for carrying a supply of fuel and water." Webster's New International Dictionary of the English Language 2126 (1913).

"(1) are in proper condition and safe to operate without unnecessary danger of personal injury;

"(2) have been inspected as required under this chapter and regulations prescribed by the Secretary of Transportation under this chapter; and

"(3) can withstand every test prescribed by the Secretary under this chapter." 49 U. S. C. § 20701.[2]

The issue presented in this case is whether the LIA pre-empts petitioners' state-law claims that respondents defectively designed locomotive parts and failed to warn Corson of dangers associated with those parts. In light of this Court's prior decision in *Napier*, *supra*, we conclude that petitioners' claims are pre-empted.

III

A

The Supremacy Clause provides that federal law "shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." U. S. Const., Art. VI, cl. 2. Pre-emption of state law thus occurs through the "direct operation of the Supremacy Clause." *Brown* v. *Hotel Employees*, 468 U. S. 491, 501 (1984). Congress may, of course, expressly pre-empt state law, but "[e]ven without an express provision for preemption, we have found that state law must yield to a congressional Act in at least two circumstances." *Crosby* v. *National Foreign Trade Council*, 530 U. S. 363, 372 (2000). First, "state law is naturally preempted to the extent of any conflict with a federal statute." *Ibid.* Second, we have deemed state law pre-empted "when the scope of a [federal] statute indicates that Congress intended federal law to occupy a field exclusively." *Freightliner Corp.* v. *Myrick*, 514 U. S. 280,

[2] At the time of Corson's employment, this provision of the LIA was worded somewhat differently. See 45 U. S. C. § 23 (1946 ed.). Petitioners do not argue that the change in statutory language makes any difference in this case.

287 (1995). We deal here only with the latter, so-called field pre-emption.

B

We do not, however, address the LIA's pre-emptive effect on a clean slate, because this Court addressed that issue 85 years ago in *Napier*. In that case, railroads challenged two state laws that "prohibit[ed] use within the State of locomotives not equipped with" certain prescribed devices, on the ground that the Interstate Commerce Commission (ICC), the agency then vested with the authority to carry out the LIA's requirements, had not required the devices in question.[3] 272 U. S., at 607, 609. In response, the States argued that their requirements were not pre-empted because they were directed at a different objective than the LIA. *Id.*, at 612. According to the States, their regulations were intended to protect railroad workers from sickness and disease, whereas "the federal regulation endeavors solely to prevent accidental injury in the operation of trains." *Ibid.*

To determine whether the state requirements were pre-empted, this Court asked whether the LIA "manifest[s] the intention to occupy the entire field of regulating locomotive equipment." *Id.*, at 611. The Court answered that question in the affirmative, stating that "[t]he broad scope of the authority conferred upon the [ICC]" by Congress in the LIA led to that conclusion. *Id.*, at 613. The power delegated to the ICC, the Court explained, was a "general one" that "extends to the design, the construction and the material of every part of the locomotive and tender and of all appurtenances." *Id.*, at 611.

The Court rejected the States' contention that the scope of the pre-empted field was to "be determined by the object sought through the legislation, rather than the physical ele-

[3] Act of Feb. 17, 1911, §6, 36 Stat. 915. That authority has since been transferred to the Secretary of Transportation. Department of Transportation Act, §§6(e)(1)(E) and (F), 80 Stat. 939; see 49 U. S. C. §§20701–20702.

ments affected by it." *Id.*, at 612. The Court found it dispositive that "[t]he federal and the state statutes are directed to the same subject—the equipment of locomotives." *Ibid.* Because the States' requirements operated upon the same physical elements as the LIA, the Court held that the state laws, "however commendable or however different their purpose," *id.*, at 613, fell within the LIA's pre-empted field.

IV

Against the backdrop of *Napier*, petitioners advance two arguments in support of their position that their state-law claims related to the use of asbestos in locomotive equipment do not fall within the LIA's pre-empted field. Petitioners first contend that *Napier* no longer defines the scope of the LIA's pre-empted field because that field has been narrowed by a subsequently enacted federal statute. Alternatively, petitioners argue that their claims do not fall within the LIA's pre-empted field, even as that field was defined by *Napier*. We address each of petitioners' arguments in turn.

A

First, petitioners suggest that the Federal Railroad Safety Act of 1970 (FRSA), 84 Stat. 971 (codified at 49 U. S. C. § 20102 *et seq.*), altered the LIA's pre-emptive scope. The FRSA grants the Secretary of Transportation broad regulatory authority over railroad safety. See § 20103(a). Petitioners point to the FRSA's pre-emption provision, which provides in part that "[a] State may adopt or continue in force a law, regulation, or order related to railroad safety . . . until the Secretary of Transportation . . . prescribes a regulation or issues an order covering the subject matter of the State requirement." § 20106(a)(2) (2006 ed., Supp. IV). According to petitioners, the FRSA's pre-emption provision supplanted the LIA's pre-emption of the field, with the result that petitioners' claims are not pre-empted because the Secretary has not issued a regulation or order addressing the use of asbestos in locomotives or locomotive parts.

Petitioners' reliance on the FRSA is misplaced. The FRSA instructs that "[t]he Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety *supplementing laws and regulations in effect on October 16, 1970*." § 20103(a) (2006 ed.) (emphasis added). By its terms, the FRSA does not alter pre-existing federal statutes on railroad safety. "Rather, it leaves existing statutes intact, . . . and authorizes the Secretary to fill interstitial areas of railroad safety with supplemental regulation." *Marshall* v. *Burlington Northern, Inc.*, 720 F. 2d 1149, 1152–1153 (CA9 1983) (Kennedy, J.). Because the LIA was already in effect when the FRSA was enacted, we conclude that the FRSA left the LIA, and its pre-emptive scope as defined by *Napier*, intact.

B

Since the LIA's pre-emptive scope remains unaltered, petitioners must contend with *Napier*. Petitioners do not ask us to overrule *Napier* and thus do not seek to overcome the presumption of *stare decisis* that attaches to this 85-year-old precedent. See *Global-Tech Appliances, Inc.* v. *SEB S. A.*, 563 U. S. 754, 765 (2011) (noting the "special force of the doctrine of *stare decisis* with regard to questions of statutory interpretation" (internal quotation marks omitted)). Instead, petitioners advance several arguments aimed at demonstrating that their claims fall outside of the field pre-empted by the LIA, as it was defined in *Napier*. Each is unpersuasive.

1

Petitioners, along with the Solicitor General as *amicus curiae*, first argue that petitioners' claims do not fall within the LIA's pre-empted field because the claims arise out of the repair and maintenance of locomotives, rather than the use of locomotives on a railroad line. Specifically, they contend that the scope of the field pre-empted by the LIA is coextensive with the scope of the Federal Government's regulatory

authority under the LIA, which, they argue, does not extend to the regulation of hazards arising from the repair or maintenance of locomotives. Therefore, the argument goes, state-law claims arising from repair or maintenance—as opposed to claims arising from use on the line—do not fall within the pre-empted field.

We reject this attempt to redefine the pre-empted field. In *Napier*, the Court held that Congress, in enacting the LIA, "manifest[ed] the intention to occupy the entire field of regulating locomotive equipment," and the Court did not distinguish between hazards arising from repair and maintenance as opposed to those arising from use on the line. 272 U. S., at 611. The pre-empted field as defined by *Napier* plainly encompasses the claims at issue here. Petitioners' common-law claims for defective design and failure to warn are aimed at the equipment of locomotives. Because those claims "are directed to the same subject" as the LIA, *Napier* dictates that they fall within the pre-empted field. *Id.*, at 612.

2

Petitioners further argue that, even if their design-defect claims are pre-empted, their failure-to-warn claims do not suffer the same fate. In their complaint, petitioners alleged in closely related claims (1) that respondents negligently failed to warn of the risks associated with asbestos and to provide instructions concerning safeguards for working with asbestos; and (2) that the asbestos-containing products were defective because respondents failed to give sufficient warnings or instructions concerning the "risks, dangers, and harm inherent in said asbestos products." See App. 20–27 (¶¶7–10, 12), 42 (¶8); see also Brief for Petitioners 11. According to petitioners, these claims do not fall within the LIA's pre-empted field because "[t]he basis of liability for failure to warn . . . is not the 'design' or 'manufacture' of a product," but is instead "the failure to provide adequate warnings regarding the product's risks." Reply Brief for Petitioners 16.

We disagree. A failure-to-warn claim alleges that the product itself is unlawfully dangerous unless accompanied by sufficient warnings or instructions. Restatement (Third) of Torts: Products Liability § 2(c) (1997) (A failure-to-warn claim alleges that a product is defective "when the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings by the seller or other distributor, . . . and the omission of the instructions or warnings renders the product not reasonably safe"); see also *id.*, Comment *l*, at 33 ("Reasonable designs and instructions or warnings both play important roles in the production and distribution of reasonably safe products"). Thus, the "gravamen" of petitioners' failure-to-warn claims "is still that [Corson] suffered harmful consequences as a result of his exposure to asbestos contained in locomotive parts and appurtenances." 620 F. 3d, at 398, n. 8. Because petitioners' failure-to-warn claims are therefore directed at the equipment of locomotives, they fall within the pre-empted field defined by *Napier*. 272 U. S., at 612.[4]

3

Petitioners also contend that their state-law claims against manufacturers of locomotives and locomotive parts fall outside of the LIA's pre-empted field because manufacturers were not regulated under the LIA at the time that Corson

[4] JUSTICE SOTOMAYOR apparently agrees that petitioners' failure-to-warn claims are directed at the equipment of locomotives. *Post*, at 644 (opinion concurring in part and dissenting in part). Yet, she argues, those claims affect locomotive equipment only "'tangentially.'" *Ibid.* (quoting *English* v. *General Elec. Co.*, 496 U. S. 72, 85 (1990)). Not so. A failure-to-warn claim imposes liability on a particular design of locomotive equipment unless warnings deemed sufficient under state law are given. This duty to warn and the accompanying threat of liability will inevitably influence a manufacturer's choice whether to use that particular design. By influencing design decisions in that manner, failure-to-warn liability has a "'direct and substantial effect'" on the "physical equipment" of a locomotive. *Post*, at 644 (quoting *English*, *supra*, at 85).

was allegedly exposed to asbestos. Petitioners point out that the LIA, as originally enacted in the BIA, subjected only common carriers to civil penalties. Act of Feb. 17, 1911, § 9, 36 Stat. 916. It was not until 1988, well after the events of this case, that the LIA's penalty provision was revised to apply to "[a]ny person" violating the LIA. Rail Safety Improvement Act of 1988, § 14(7)(A), 102 Stat. 633; see also § 14(7)(B) (amending penalty provision to provide that "an act by an individual that causes a railroad to be in violation . . . shall be deemed a violation").

This argument fails for the same reason as the two preceding arguments: It is inconsistent with *Napier*. *Napier* defined the field pre-empted by the LIA on the basis of the physical elements regulated—"the equipment of locomotives"—not on the basis of the entity directly subject to regulation. 272 U. S., at 612. Because petitioners' claims are directed at the equipment of locomotives, they fall within the pre-empted field.

Petitioners' proposed rule is also contrary to common sense. Under petitioners' approach, a State could not require *railroads* to equip their locomotives with parts meeting state-imposed specifications, but could require *manufacturers* of locomotive parts to produce only parts meeting those state-imposed specifications. We rejected a similar approach in an express pre-emption context in *Engine Mfrs. Assn.* v. *South Coast Air Quality Management Dist.*, 541 U. S. 246 (2004). There, a state entity argued that its rules prohibiting the purchase or lease of vehicles that failed to meet stringent emissions requirements were not pre-empted by the Clean Air Act, 42 U. S. C. § 7543(a), because the rules in question were aimed at the purchase of vehicles, rather than their manufacture or sale. 541 U. S., at 248. We observed, however, that "treating sales restrictions and purchase restrictions differently for pre-emption purposes would make no sense," because the "manufacturer's right to sell federally approved vehicles is meaningless in the ab-

sence of a purchaser's right to buy them." *Id.*, at 255. Similarly, a railroad's ability to equip its fleet of locomotives in compliance with federal standards is meaningless if manufacturers are not allowed to produce locomotives and locomotive parts that meet those standards. Petitioners' claims thus do not avoid pre-emption simply because they are aimed at the manufacturers of locomotives and locomotive parts.

4

Finally, petitioners contend that the LIA's pre-emptive scope does not extend to state common-law claims, as opposed to state legislation or regulation. Petitioners note that "a preempted field does not necessarily include state common law." Brief for Petitioners 38–39 (citing *Silkwood* v. *Kerr-McGee Corp.*, 464 U. S. 238 (1984); *Sprietsma* v. *Mercury Marine*, 537 U. S. 51 (2002)). *Napier*, however, held that the LIA "occup[ied] the entire field of regulating locomotive equipment" to the exclusion of state regulation. 272 U. S., at 611–612. That categorical conclusion admits of no exception for state common-law duties and standards of care. As we have recognized, state "regulation can be . . . effectively exerted through an award of damages," and "[t]he obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy." *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236, 247 (1959). Cf. *Riegel* v. *Medtronic, Inc.*, 552 U. S. 312, 324 (2008) ("Absent other indication, reference to a State's 'requirements' [in a federal express pre-emption provision] includes its common-law duties"). We therefore conclude that state common-law duties and standards of care directed to the subject of locomotive equipment are pre-empted by the LIA.

* * *

For the foregoing reasons, we hold that petitioners' state-law design-defect and failure-to-warn claims fall within the field of locomotive equipment regulation pre-empted by the

LIA, as that field was defined in *Napier*. Accordingly, the judgment of the Court of Appeals is affirmed.

It is so ordered.

JUSTICE KAGAN, concurring.

Like JUSTICE SOTOMAYOR, *post*, at 640 (opinion concurring in part and dissenting in part), I doubt this Court would decide *Napier* v. *Atlantic Coast Line R. Co.*, 272 U. S. 605 (1926), in the same way today. The *Napier* Court concluded that Congress had "manifest[ed] the intention to occupy the entire field of regulating locomotive equipment," based on nothing more than a statute granting regulatory authority over that subject matter to a federal agency. *Id.*, at 611. Under our more recent cases, Congress must do much more to oust all of state law from a field. See, *e. g.*, *New York State Dept. of Social Servs.* v. *Dublino*, 413 U. S. 405, 415 (1973) (rejecting preemption even though Congress had enacted a "detailed" and "comprehensive" regulatory scheme). Viewed through the lens of modern preemption law, *Napier* is an anachronism.

But *Napier* governs so long as Congress lets it—and that decision provides a straightforward way to determine whether state laws relating to locomotive equipment are preempted. According to *Napier*, the scope of the agency's power under the Locomotive Inspection Act (LIA) determines the boundaries of the preempted field. See 272 U. S., at 611 (state regulations were preempted because they fell "within the scope of the authority delegated to the Commission"); see also *ante*, at 631 (the " 'broad scope of the authority' " given to the agency "led to [*Napier*'s] conclusion"); *post*, at 646 ("[T]he pre-empted field is congruent with the regulated field"). And under that test, none of the state-law claims at issue here can survive.

All of us agree that the petitioners' defective-design claims are preempted. *Napier* recognized the federal agency's delegated authority over "the design, the construction and the

material of every part of the locomotive." 272 U. S., at 611. In doing so, *Napier* did not distinguish between "hazards arising from repair and maintenance" of the parts and hazards stemming from their "use on the line." *Ante,* at 634. The agency thus has authority to regulate the design of locomotive equipment—like the asbetos-containing brakeshoes here—to prevent either danger. And that fact resolves the preemption question. Because the agency could have banned use of the brakeshoes as designed, the petitioners' defective-design claims—which would effectively accomplish the identical result—fall within the preempted field.

So too the petitioners' failure-to-warn claims, and for the same reason. *Napier* did not specifically address warnings, because the case in no way involved them. But if an agency has the power to prohibit the use of locomotive equipment, it also has the power to condition the use of that equipment on proper warnings. (And that is so, contrary to JUSTICE SOTOMAYOR's view, see *post*, at 646–647, n. 3, whether the warning is engraved into the part itself or posted on the workshop wall.) Here, for example, the agency need not have chosen between banning asbestos-containing brakeshoes and leaving them entirely unregulated. It could instead have required a warning about how to handle those brakeshoes safely. If, say, a mask would have protected a worker from risk, then the agency could have demanded a notice to that effect. See, *e. g.*, *Law* v. *General Motors Corp.*, 114 F. 3d 908, 911 (CA9 1997) ("As for warning requirements, these too are within the scope of the [agency's] authority"); *Scheiding* v. *General Motors Corp.*, 22 Cal. 4th 471, 484, 993 P. 2d 996, 1004 (2000) (same).* And because the agency could have re-

*JUSTICE SOTOMAYOR argues that "preserving petitioners' failure-to-warn claims coheres with the LIA's regulatory regime" because the agency disclaims authority over locomotive repair and maintenance. *Post,* at 646. But that claim conflates two separate distinctions. The agency draws a line not between mandating design changes and mandating warnings, but between regulating equipment that is hazardous to re-

quired warnings about the equipment's use, the petitioners' failure-to-warn claims, no less than their defective-design claims, are preempted under *Napier*.

I understand these views to comport with the Court's opinion in this case, and I accordingly join it in full.

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

I concur in the Court's holding that the Locomotive Inspection Act (LIA), 49 U. S. C. § 20701 *et seq.*, pre-empts petitioners' tort claims for defective design, but I respectfully dissent from the Court's holding that the same is true of petitioners' claims for failure to warn. In my view, the latter escape pre-emption because they impose no state-law requirements in the field reserved for federal regulation: "the equipment of locomotives." *Napier* v. *Atlantic Coast Line R. Co.*, 272 U. S. 605, 612 (1926).

I

Statutory *stare decisis* compels me to agree that the LIA occupies "the field of regulating locomotive equipment used on a highway of interstate commerce." *Id.*, at 607. Perhaps this Court might decide *Napier* differently today. The LIA lacks an express pre-emption clause, and "our recent

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pair and regulating equipment that is hazardous to use on the railroad line. In keeping with that analysis, the agency contends that the petitioners' design-defect claims also fall outside the preempted field because the alleged defect in the brakeshoes rendered dangerous only their repair, and not their on-line use. See Brief for United States as *Amicus Curiae* 12–13. The agency's understanding of its authority therefore does not support JUSTICE SOTOMAYOR's position. As the agency agrees, the petitioners' claims must stand or fall together if viewed through the lens of the agency's regulatory authority. In my view, they fall because the Court rightly rejects the agency's proffered distinction between regulating the dangers of repairing equipment and regulating the dangers of using that equipment on line. See *supra*, at 638–639.

cases have frequently rejected field pre-emption in the absence of statutory language expressly requiring it." *Camps Newfound/Owatonna, Inc.* v. *Town of Harrison*, 520 U. S. 564, 617 (1997) (THOMAS, J., dissenting). The LIA contains no substantive regulations, let alone a "scheme of federal regulation . . . so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it." *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947). Instead of relying on such indications of Congress' intent to oust state law, *Napier* implied field pre-emption from the LIA's mere delegation of regulatory authority to the Interstate Commerce Commission. Compare 272 U. S., at 612–613, with, *e. g.*, *Hillsborough County* v. *Automated Medical Laboratories, Inc.*, 471 U. S. 707, 717 (1985), and *New York State Dept. of Social Servs.* v. *Dublino*, 413 U. S. 405, 415 (1973). Nonetheless, *Napier*'s construction of the LIA has been settled law for 85 years, and "'[c]onsiderations of *stare decisis* have special force in the area of statutory interpretation.'" *Hilton* v. *South Carolina Public Railways Comm'n*, 502 U. S. 197, 202 (1991).

Consistent with the values served by statutory *stare decisis*, however, it is important to be precise about what *Napier* held: *Napier* defined the pre-empted field as the physical composition of locomotive equipment. See 272 U. S., at 611 ("[T]he power delegated . . . by the [LIA] . . . extends to the design, the construction and the material of every part of the locomotive and tender and of all appurtenances"); *id.*, at 612 ("The federal and the state statutes are directed to the same subject—the equipment of locomotives. They operate upon the same object"); see also Act of June 7, 1924, § 2, 43 Stat. 659 (making the LIA's standard of care applicable to the "locomotive, its boiler, tender, and all parts and appurtenances thereof"). Petitioners' defective-design claims fall within the pre-empted field because they would impose state-law requirements on a locomotive's physical makeup. See *ante*, at 634.

II

Petitioners' failure-to-warn claims, by contrast, proceed on a fundamentally different theory of tort liability that does not implicate a product's physical composition at all. A failure-to-warn claim asks nothing of a product's design, but requires instead that a manufacturer caution of nonobvious dangers and provide instructions for safe use. Indeed, a product may be flawlessly designed and still subject its manufacturer or seller to liability for lack of adequate instructions or warnings. See, *e. g.*, Madden, The Duty To Warn in Products Liability: Contours and Criticism, 89 W. Va. L. Rev. 221 (1987) ("Although a product is unerringly designed, manufactured and assembled, injury or damage occasioned by its intended or reasonably foreseeable use may subject the seller to liability. Such liability may be found if the product has a potential for injury that is not readily apparent to the user" (cited in Restatement (Third) of Torts: Products Liability § 2 Reporters' Note, Comment *i*, p. 95, n. 1 (1997) (hereinafter Restatement))); see also Madden, 89 W. Va. L. Rev., at 221, n. 1 (collecting cases). Petitioners' complaint embodies just this conceptual distinction. Compare App. 22–23, ¶¶10(c)–(e), (g), with *id.*, at 25, ¶10(p).[1]

In the jurisdictions relevant to this suit, failure to warn is "a distinct cause of action under the theory of strict products liability." *Riley* v. *American Honda Motor Co.*, 259 Mont. 128, 132, 856 P. 2d 196, 198 (1993). Thus, "'a failure to warn of an injury[-]causing risk associated with the use of a technically pure and fit product can render such product unreasonably dangerous.'" *Ibid.;* see also, *e. g.*, *Jahnig* v. *Coisman*, 283 N. W. 2d 557, 560 (S. D. 1979) ("In products liability suits based upon strict liability, . . . the product itself need not be defective. Where a manufacturer or seller has reason to

[1] Nor do petitioners' failure-to-warn claims allege that respondents' locomotive parts should have been altered, for example, by affixing warnings to the products themselves. See App. 22–23, ¶¶10(c)–(e), (g); *id.*, at 27, ¶12(d).

anticipate that danger may result from a particular use of his product, and he fails to give adequate warning of such a danger, the product sold without such warning is in a defective condition within the strict liability doctrine"); *Greiner* v. *Volkswagenwerk Aktiengesellschaft*, 540 F. 2d 85, 92–93 (CA3 1976) (finding that "failure to adequately warn of inherent or latent limitations in a product, which do not necessarily amount to a design defect," is "an independent basis of liability" under Pennsylvania law).[2]

Similarly, this Court has explained that a failure-to-warn claim is "narrower" than a claim that alleges a defect in the underlying product. *Wyeth* v. *Levine*, 555 U. S. 555, 565 (2009). Thus in *Wyeth*, this Court affirmed a state damages award based on a drug manufacturer's failure to provide sufficient warnings to clinicians against intravenous administration of the drug, but noted that it was unnecessary to decide "whether a state rule proscribing intravenous administration would be pre-empted." *Ibid.* Cf. *Bates* v. *Dow Agrosciences LLC*, 544 U. S. 431, 444 (2005) ("Rules that require manufacturers to design reasonably safe products . . . plainly do not qualify as requirements for 'labeling or packaging.' None of these common-law rules requires that manufacturers label or package their products in any particular way").

The majority treats defective-design and failure-to-warn claims as congruent, reasoning that each asserts a product defect. See *ante,* at 635–636 (citing Restatement § 2(c) and Comment *l*). That may be true at a high level of generality, but "[d]esign and failure-to-warn claims . . . rest on different factual allegations and distinct legal concepts." *Id.*, § 2, Comment *n*, at 35. For example, a manufacturer or seller

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[2] Petitioners brought suit in Pennsylvania, but alleged that their decedent, George Corson, was exposed to asbestos at railroad maintenance and repair shops in Montana and South Dakota. *Id.*, at 42, ¶¶6–7. Because the District Court granted summary judgment on the issue of preemption, it performed no choice-of-law analysis to identify the applicable substantive state law. See App. to Pet. for Cert. 22a–39a.

cannot escape liability for an unreasonably unsafe design merely by issuing a warning. See *id.*, Comment *l*, at 33 ("Warnings are not . . . a substitute for the provision of a reasonably safe design"). In a fundamental sense, therefore, a failure-to-warn claim proceeds by taking a product's physical design as a given. A failure-to-warn claim alleges a "defect" by asserting that a product, as designed, is safe for use only when accompanied by a warning—not that a product must be designed differently.

The majority further conflates defective-design and failure-to-warn claims by noting that each is "directed at" locomotive equipment. *Ante*, at 635, 636. That is insufficient. Not every state law that "could be said to affect tangentially" matters within the regulated field is pre-empted. *English* v. *General Elec. Co.*, 496 U. S. 72, 85 (1990). Rather, "for a state law to fall within the pre-empted zone, it must have some direct and substantial effect" on the primary conduct of entities subject to federal regulation. *Ibid.* As explained above, the LIA regulates the physical equipment of locomotives. But petitioners' failure-to-warn claims, if successful, would have no necessary effect on the physical equipment of locomotives at all, as respondents themselves acknowledge. See Brief for Respondents 55 (petitioners' failure-to-warn claims "may not themselves literally mandate physical alteration of the locomotive's design or construction").

In the majority's view, a "duty to warn and the accompanying threat of liability will inevitably influence" a manufacturer's design choices. *Ante*, at 635, n. 4. But an "influence" is not the same as an "effect," and not every state law with some imaginable impact on matters within a federally regulated field is, for that reason alone, pre-empted. See *English*, 496 U. S., at 85–86; *Silkwood* v. *Kerr-McGee Corp.*, 464 U. S. 238, 256 (1984). Indeed, the majority elides the distinction between indirect and direct regulation, even though this Court has explained that the two are not equivalent for pre-emption purposes. See *Goodyear Atomic Corp.* v.

Miller, 486 U. S. 174, 186 (1988) ("Congress may reasonably determine that incidental regulatory pressure is acceptable, whereas direct regulatory authority is not"). State wage-and-hour laws, workplace safety standards, or tax credits for green technology, for example, could all "influence" the means and materials of locomotive equipment manufacture without imposing direct obligations. Nor does the majority substantiate its assertion that the "influence" exerted by a duty to warn need be "inevitabl[e]" or "substantial." *Ante*, at 635, n. 4. To the contrary, the requirements imposed by such a duty could be light, and the corresponding liability negligible, in comparison to the commercial value of retaining an existing design.

Respondents could have complied with state-law duties to warn by providing instructions for the safe maintenance of asbestos-containing locomotive parts in equipment manuals. See, *e. g.*, Baldwin-Lima-Hamilton Corp., Engine Manual for 600 Series Diesel Engines (1951), online at http://www.rr-fallenflags.org/manual/blh-6em.html (as visited Feb. 27, 2012, and available in Clerk of Court's case file). Or respondents could have ensured that repair shops posted signs. See Restatement § 2, Comment *i*, at 29–30 (duty to warn "may require that instructions and warnings be given not only to purchasers, users, and consumers, but also to others who a reasonable seller should know will be in a position to reduce or avoid the risk of harm"); see also, *e. g.*, *Patch* v. *Hillerich & Bradsby Co.*, 2011 MT 175, ¶ 20, 361 Mont. 241, 246, 257 P. 3d 383, 388 ("While placing a warning directly on a product is one method of warning, other methods of warning exist, including, but not limited to, issuing oral warnings and placing warnings in advertisements, posters, and media releases"). Neither step would encroach on the pre-empted field of locomotives' "physical elements." *Napier*, 272 U. S., at 612. The majority is therefore wrong to say that "the 'gravamen' of petitioners' failure-to-warn claims 'is still that [Corson] suffered harmful consequences as a result of his exposure to asbestos contained in locomotive parts and appur-

tenances.'" *Ante,* at 635 (quoting *Kurns* v. *A. W. Chesterton Inc.*, 620 F. 3d 392, 398, n. 8 (CA3 2010)). Rather, the "gravamen" of these claims is that petitioners' decedent George Corson could have avoided the harmful consequences of exposure to asbestos while repairing precisely the same locomotive parts had respondents cautioned him, for example, to wear a mask.

Finally, preserving petitioners' failure-to-warn claims coheres with the LIA's regulatory regime. Neither the Interstate Commerce Commission, to which Congress first delegated authority under the LIA, nor the Federal Railroad Administration (FRA), to whom that authority now belongs, has ever regulated locomotive repair and maintenance. To the contrary, the FRA takes the position that it lacks power under the LIA to regulate within locomotive maintenance and repair facilities. Brief for United States as *Amicus Curiae* in *John Crane Inc.* v. *Atwell*, O. T. 2011, No. 10–272, p. 10 ("[T]he field covered by the LIA does not include requirements concerning the repair of locomotives that are not in use"); Brief for United States as *Amicus Curiae* 13 ("The preempted field . . . does not include tort claims based on injuries arising while locomotives are not in use"). The FRA has determined that the Occupational Safety and Health Administration, not itself, bears primary responsibility for workplace safety, including with respect to hazardous materials. 43 Fed. Reg. 10583–10590 (1978); cf., *e. g.*, *English*, 496 U. S., at 83, and n. 6. And the FRA has not promulgated regulations that address warnings specific to maintenance and repair. Because the pre-empted field is congruent with the regulated field, see, *e. g.*, *United States* v. *Locke*, 529 U. S. 89, 112 (2000), the majority's decision sweeps far too broadly.[3]

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[3] Disagreeing with the agency's interpretation, JUSTICE KAGAN concludes that the LIA empowers the FRA to require warnings as an incident of the authority to prescribe locomotive design. Compare *ante,* at 639–640 (concurring opinion), with, *e. g.,* Tr. of Oral Arg. 22–23. Such power,

* * *

In short, the majority affords the LIA field-pre-emptive effect well beyond what *Napier* requires, leaving petitioners without a remedy for what they allege was fatal exposure to asbestos in repair facilities. "It is difficult to believe that Congress would, without comment, remove all means of judicial recourse for those injured by illegal conduct." *Silkwood*, 464 U. S., at 251. That is doubly true in light of the LIA's "purpose . . . of facilitating employee recovery, not of restricting such recovery or making it impossible." *Urie* v. *Thompson*, 337 U. S. 163, 189 (1949).

I therefore concur in part and dissent in part.

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if it exists, must be limited to warnings that impose direct requirements on the physical composition of locomotive equipment. Cf. n. 1, *supra;* 49 CFR §§229.85, 229.113 (2010). That may be a formal line, but it is the line that this Court drew in describing the scope of the authority conferred by the LIA, and therefore the pre-empted field. See *Napier* v. *Atlantic Coast Line R. Co.*, 272 U. S. 605, 611–612 (1926). And it is the line that separates petitioners' design-defect claims from their claims for failure to warn.

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MARTEL, WARDEN *v.* CLAIR

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

No. 10–1265. Argued December 6, 2011—Decided March 5, 2012

Respondent Clair was charged with capital murder for the 1984 slaying of Linda Rodgers. The main evidence at his trial in California state court came from statements Clair made to his former girlfriend in a conversation that she secretly recorded for the police. He was convicted and sentenced to death, and his verdict was upheld on direct review.

In 1994, Clair commenced federal habeas proceedings by filing a request for appointment of counsel, which the District Court granted under 18 U. S. C. § 3599. That statute entitles indigent capital habeas petitioners like Clair to appointed counsel. It also contemplates that appointed counsel may be "replaced . . . upon motion of the defendant," § 3599(e), but it does not specify a standard for district courts to use in evaluating those motions. Clair's counsel filed his initial habeas petition in 1994, and in the late 1990's, when two associates from the firm representing Clair moved to the Office of the Federal Public Defender (FPD), the FPD was substituted as counsel of record. The District Court held an evidentiary hearing on Clair's habeas petition in August 2004, and the parties submitted their post-hearing briefs by February 2005. The court subsequently told the parties that it did not wish to receive further material about the petition. In March, Clair moved to substitute counsel, claiming that his attorneys were seeking only to overturn his death sentence, not to prove his innocence. After the court asked the parties to address the motion, Clair's counsel informed it that they had met with Clair and that he wanted the FPD to continue representing him. The court accordingly decided that it would take no action. Six weeks later, however, Clair filed another substitution motion, adding one more charge to his earlier claims: that his private investigator had discovered that certain physical evidence from the crime scene had never been fully tested, but that Clair's attorneys had done nothing to analyze this evidence or follow up on its discovery. The court denied the renewed motion without further inquiry. On the same day, it also denied Clair's habeas petition.

Clair sought review of his substitution motion *pro se*, and the FPD appealed the habeas ruling. The Ninth Circuit asked the FPD to address whether substitution was now warranted, and after the FPD informed the court that the attorney-client relationship had broken down, the court provided Clair with a new lawyer. Clair then asked

the District Court to vacate the denial of his habeas petition under Federal Rule of Civil Procedure 60(b), arguing that he should be allowed to explore the significance of the new physical evidence for his case. The District Court rejected his request, and Clair appealed. Consolidating his appeals, the Ninth Circuit vacated the District Court's denial of both his substitution request and his habeas petition. Holding that the "interests of justice" standard used in non-capital cases, see 18 U. S. C. § 3006A, should govern substitution motions like Clair's, it ruled that the District Court abused its discretion by failing to inquire into the complaints in Clair's second letter. Because Clair had already received new counsel on appeal, the court decided the best remedy was to treat Clair's new counsel as though he had been appointed in June 2005 and to allow him to make whatever submissions he would have made then, including a motion to amend Clair's habeas petition in light of new evidence.

Held:

1. When evaluating motions to substitute counsel in capital cases under 18 U. S. C. § 3599, courts should employ the same "interests of justice" standard that applies in non-capital cases under § 3006A. Pp. 657–662.

(a) Although § 3599 guarantees that indigent capital defendants and petitioners seeking federal habeas relief in capital cases will receive the assistance of counsel, see, *e. g.*, §§ 3599(a)(1), (a)(2), (e), and contemplates that an appointed attorney may be "replaced by similarly qualified counsel upon the attorney's own motion or upon motion of the defendant," § 3599(e), the statute fails to specify how a court should decide such a motion. Clair argues, and the Ninth Circuit agreed, that district courts should use the "in the interests of justice" standard of § 3006A, which governs the appointment and substitution of counsel in federal non-capital litigation. By contrast, the State contends that an appointed lawyer can only be replaced when the defendant has suffered an "actual or constructive denial" of counsel—that is, when the lawyer lacks the requisite statutory qualifications, has a conflict of interest, or has completely abandoned the client.

The Court adopts Clair's approach, based on the history of § 3599. Before 1988, § 3006A governed both capital and non-capital cases, authorizing courts to appoint counsel for federal habeas petitioners and providing that in all cases in which a court had appointed counsel, substitution motions should be decided "in the interests of justice." § 3006A(c). Thus, a court in those days would have used that standard to evaluate a request like Clair's. In 1988, Congress enacted what is now § 3599, thus displacing § 3006A for persons facing execution. The new statute grants federal capital defendants and capital habeas petitioners enhanced rights of representation. Habeas petitioners facing

execution now receive counsel as a matter of right, see § 3599(a)(2), and in multiple ways the statute aims to improve the quality of their representation: It provides them with more experienced counsel than § 3006A demands, authorizes higher rates of compensation, and provides more money for investigative and expert services. These measures "reflec[t] a determination that quality legal representation is necessary" in all capital proceedings to foster "fundamental fairness in the imposition of the death penalty." *McFarland* v. *Scott*, 512 U. S. 849, 855, 859. Given this context, the Court cannot conclude that Congress silently prescribed a substitution standard that would make it more difficult for those facing capital punishment to substitute counsel. Adopting a more stringent test than § 3006A's would deprive capital defendants of a tool they formerly had, and non-capital defendants still have, to handle serious representational problems. By contrast, utilizing § 3006A's standard comports with the myriad ways that § 3599 seeks to promote effective representation for persons facing capital punishment. Pp. 657–660.

(b) The dearth of support for the State's alternative standard reinforces this conclusion. The State concedes that Congress has not considered its standard in any context; neither has a federal court used it in any case. The Court prefers to use a familiar standard, already known to work, than to try out a new one. Moreover, the State's proposed test would gut § 3599's substitution provision, because even absent that provision courts would have an obligation to ensure that the defendant's statutory right to counsel was satisfied throughout the litigation. The State counters that only its approach comports with the rule that habeas petitioners generally have no Sixth Amendment right to counsel. But Congress declined to track that Amendment in providing statutory rights to counsel in both § 3006A and § 3599. Thus, the scope of the Amendment cannot answer the statutory question presented here. The State also contends that the "interests of justice" standard will permit substitution motions to become a mechanism to defer enforcement of a death sentence. But the "interests of justice" standard takes into account whether a substitution motion will cause undue delay. Pp. 660–662.

2. The District Court did not abuse its discretion in denying Clair's second request for new counsel under § 3599's "interests of justice" standard. In reviewing substitution motions, the courts of appeals have pointed to several relevant considerations, including: the timeliness of the motion; the adequacy of the district court's inquiry into the defendant's complaint; and the asserted cause for that complaint, including the extent of the conflict or breakdown in communication between lawyer and client. Because a trial court's decision on substitution is so

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fact-specific, it deserves deference and may be overturned only for an abuse of discretion.

Here, the District Court received Clair's second substitution motion on the eve of deciding his 10-year-old habeas petition. Just three months earlier, Clair had written the court to complain about his attorneys. After making proper inquiry, the court learned that Clair and his counsel had settled their dispute and turned once more to ruling on Clair's habeas petition, only to receive a second letter six weeks later. In it Clair maintained his general assertion that his lawyers were not trying to prove his innocence, but he also alleged a new and significant charge of attorney error: that counsel had refused to investigate particular, newly located physical evidence. Such a charge normally would require the court to make further inquiry; a district court cannot usually rule on a substitution motion without exploring why a defendant wants new counsel. But here, the motion's timing precludes a holding that the District Court abused its discretion. The court received the letter while putting the finishing touches on its denial of Clair's habeas petition. After years of litigation, an evidentiary hearing, and post-hearing briefing, the court had instructed the parties that it would accept no further submissions. All proceedings had therefore come to a close, and a new attorney could have done nothing further in the District Court. In those circumstances, the District Court acted within its discretion in denying Clair's substitution motion. Pp. 663–666.

403 Fed. Appx. 276, reversed and remanded.

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

Ward A. Campbell, Supervising Deputy Attorney General of California, argued the cause for petitioner. With him on the briefs were *Kamala D. Harris*, 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 *Barry J. T. Carlton*, Supervising Deputy Attorney General.

Seth P. Waxman argued the cause for respondent. With him on the brief were *Edward C. DuMont*, *Catherine M. A. Carroll*, *Alan E. Schoenfeld*, *John R. Grele*, and *David W. Fermino*.*

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*A brief of *amici curiae* urging reversal was filed for the State of Florida et al. by *Pamela Jo Bondi*, Attorney General of Florida, *Scott D. Makar*, Solicitor General, and *Ronald A. Lathan* and *Courtney Brewer*,

JUSTICE KAGAN delivered the opinion of the Court.

A federal statute, § 3599 of Title 18, entitles indigent defendants to the appointment of counsel in capital cases, including habeas corpus proceedings. The statute contemplates that appointed counsel may be "replaced . . . upon motion of the defendant," § 3599(e), but it does not specify the standard that district courts should use in evaluating those motions. We hold that courts should employ the same "interests of justice" standard that they apply in non-capital cases under a related statute, § 3006A of Title 18. We also hold that the District Court here did not abuse its discretion in denying respondent Kenneth Clair's motion to change counsel.

I

This case arises from the murder of Linda Rodgers in 1984. Rodgers resided at the home of Kai Henriksen and Margaret Hessling in Santa Ana, California. Clair was a squatter in a vacant house next door. About a week prior to the murder, police officers arrested Clair for burglarizing the Henriksen-Hessling home, relying on information Henriksen had provided. On the night the police released Clair from custody, Hessling returned from an evening out to find Rodgers' dead body in the master bedroom, naked from the waist down and beaten, stabbed, and strangled. Some jewelry

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Deputy Solicitors General, by *Kevin T. Kane*, Chief State's Attorney of Connecticut, and by the Attorneys General for their respective jurisdictions as follows: *Luther Strange* of Alabama, *Tom Horne* of Arizona, *John Suthers* of Colorado, *Joseph R. Biden III* of Delaware, *Samuel S. Olens* of Georgia, *Leonardo M. Rapadas* of Guam, *Lawrence G. Wasden* of Idaho, *Jack Conway* of Kentucky, *James D. "Buddy" Caldwell* of Louisiana, *Steve Bullock* of Montana, *Jon Bruning* of Nebraska, *Catherine Cortez Masto* of Nevada, *Gary K. King* of New Mexico, *Roy Cooper* of North Carolina, *Michael DeWine* of Ohio, *E. Scott Pruitt* of Oklahoma, *Linda L. Kelly* of Pennsylvania, *Alan Wilson* of South Carolina, *Marty J. Jackley* of South Dakota, *Robert E. Cooper, Jr.*, of Tennessee, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *Robert M. McKenna* of Washington, and *Gregory A. Phillips* of Wyoming.

and household items were missing from the house. See *People* v. *Clair*, 2 Cal. 4th 629, 644–647, 828 P. 2d 705, 713–714 (1992); App. to Pet. for Cert. 23–24.

The district attorney charged Clair with Rodgers' murder and sought the death penalty. No forensic evidence linked Clair to the crime; instead, the main evidence against Clair came from his former girlfriend, Pauline Flores. Although she later recanted her testimony, see App. 36–42, Flores stated at trial that she and Clair were walking in the neighborhood on the night of the murder and split up near the Henriksen-Hessling house. When they reunited about an hour later, Flores recounted, Clair was carrying jewelry and other items and had blood on his right hand. According to Flores, Clair explained to her that he had "just finished beating up a woman." *Clair*, 2 Cal. 4th, at 647, 828 P. 2d, at 714. The prosecution then introduced a tape recording of a talk between Flores and Clair several months after the murder, which Flores had made in cooperation with the police. On that tape, Clair at one point denied committing the murder, but also made several inculpatory statements. For example, when Flores told Clair that she had seen blood on him, he replied "Ain't on me no more" and "They can't prove nothing." App. to Pet. for Cert. 53 (internal quotation marks omitted). And in response to her continued probing, Clair explained "[W]hat you fail to realize, how . . . they gonna prove I was there? . . . There ain't no . . . fingerprints, ain't no . . . body seen me go in there and leave out there." *Id.*, at 53–54 (internal quotation marks omitted). The jury convicted Clair and sentenced him to death. The California Supreme Court upheld the verdict, and this Court denied review, *Clair* v. *California*, 506 U. S. 1063 (1993).

Clair commenced federal habeas proceedings by filing a request for appointment of counsel, which the District Court granted under § 3599. Clair and his counsel filed an initial petition for habeas relief in 1994 and, after exhausting state remedies, an amended petition the following year. The peti-

tion alleged more than 40 claims, involving such matters as jury selection and composition, sufficiency of the evidence, prosecutorial misconduct, nondisclosure of exculpatory materials relating to state witnesses, and ineffectiveness of trial counsel. In the late 1990's, two associates from the firm representing Clair took jobs at the Office of the Federal Public Defender (FPD), and the court substituted that office as counsel of record. The court held an evidentiary hearing on Clair's habeas petition in August 2004, and the parties submitted post-hearing briefs by February 2005. The court subsequently informed the parties that it viewed the briefing "to be complete and d[id] not wish to receive any additional material" about the petition. App. 3–4.

On March 16, 2005, Clair sent a letter to the court stating that the FPD attorneys "no longer . . . ha[d] [his] best interest at hand" and that he did not want them to continue to represent him. *Id.*, at 24; see *id.*, at 18–25. Clair alleged that the lawyers had repeatedly dismissed his efforts to participate in his own defense. Prior to the evidentiary hearing, Clair wrote, he had become so frustrated with the attorneys that he enlisted a private detective to look into his case. But the lawyers, Clair charged, refused to cooperate with the investigator; they were seeking only to overturn his death sentence, rather than to prove his innocence. As a result, Clair felt that he and his counsel were not "on the same team." *Id.*, at 23.

The District Court responded by asking both parties to address Clair's motion to substitute counsel. See *id.*, at 18. The State noted that "[w]hat the trial court does with respect to appointing counsel is within its discretion, providing the interests of justice are served." *Id.*, at 29. The State further advised the court that "nothing in [Clair's] letter require[d] a change" of counsel because the FPD lawyers had provided appropriate representation and substitution would delay the case. *Ibid.* Clair replied to the court's request through his FPD attorneys on April 26, 2005. Their letter

stated: "After meeting with Mr. Clair, counsel understands that Mr. Clair wants the [FPD] to continue to serve as his counsel in this case at this time." *Id.*, at 27. On the basis of that representation, the court determined that it would "take no further action on the matter at this time." *Id.*, at 33.

But the issue resurfaced just six weeks after the court's decision. On June 16, 2005, Clair wrote a second letter to the court asking for substitution of counsel. That letter again asserted a "total break down of communication" between Clair and the FPD; according to Clair, he was "no longer able to trust anybody within that office." *Id.*, at 62–63. In explaining the source of the problem, Clair reiterated each of the points made in his prior complaint. And then he added one more. Clair recounted that his private investigator had recently learned that the police and district attorney's office were in possession of fingerprints and other physical evidence from the crime scene that had never been fully tested. The FPD lawyers, Clair asserted, were doing nothing to analyze this evidence or otherwise follow up on its discovery. Clair attributed this failure, too, to the FPD's decision to focus on his sentence, rather than on questions of guilt.

Two weeks later, the District Court denied Clair's renewed request for substitution without further inquiry. The court stated: "It does not appear to the Court that a change of counsel is appropriate. It appears that [Clair's] counsel is doing a proper job. No conflict of interest or inadequacy of counsel is shown." *Id.*, at 61. On the same day, the court denied Clair's habeas petition in a detailed opinion. *Clair* v. *Brown*, Case No. CV 93–1133 GLT (CD Cal., June 30, 2005), App. to Pet. for Cert. 20–91.

Clair sought review of his substitution motion *pro se*, while the FPD filed a notice of appeal from the denial of his habeas petition. The Court of Appeals for the Ninth Circuit instructed the FPD to address whether substitution of counsel

was now warranted, and in October 2005, the FPD informed the court that "the attorney-client relationship ha[d] broken down to such an extent that substitution of counsel [would be] appropriate." Attorney for Appellant's Response to Court's Sept. 15, 2005 Order, in No. 05–99005 (CA9), Record, Doc. 9, p. 1. The State did not comment or object, and the Court of Appeals provided Clair with a new lawyer going forward. Clair then asked the District Court to vacate the denial of his habeas petition under Federal Rule of Civil Procedure 60(b), arguing that he should be allowed to explore the significance of the new physical evidence for his case. The District Court (with a new judge assigned, because the judge previously handling the case had retired) rejected that request on the ground that the new evidence did not pertain to any of the claims presented in Clair's habeas petition. See App. to Pet. for Cert. 9–10. Clair appealed that decision as well.[1]

After consolidating Clair's appeals, the Ninth Circuit vacated the trial court's denial of both Clair's request for new counsel and his habeas petition. See *Clair* v. *Ayers*, 403 Fed. Appx. 276 (2010). The Court of Appeals' opinion focused on Clair's substitution motion. Holding that the "interests of justice" standard should apply to that motion, the Ninth Circuit ruled that the District Court abused its discretion by failing to inquire into the complaints in Clair's second letter. See *id.*, at 278. The Court of Appeals then considered how to remedy that error, given that Clair had received new counsel while on appeal. It decided that "the most rea-

[1] While litigating his Rule 60(b) motion in the District Court, Clair also pursued discovery in the California state courts relating to the newly found physical evidence. On the basis of material he obtained, Clair filed another petition for state habeas relief, alleging (among other claims) actual innocence and improper suppression of exculpatory material under *Brady* v. *Maryland*, 373 U. S. 83 (1963). The California Supreme Court summarily denied that petition. See *In re Clair*, No. S169188 (Aug. 24, 2011).

sonable solution" was to "treat Clair's current counsel as if he were the counsel who might have been appointed" in June 2005, and to allow him to make whatever submissions he would have made then, including a motion to amend Clair's habeas petition in light of new evidence. *Id.*, at 279.

We granted certiorari to review this judgment, 564 U. S. 1036 (2011), and now reverse.

II

We first consider the standard that district courts should use to adjudicate federal habeas petitioners' motions to substitute counsel in capital cases. The question arises because the relevant statute, 18 U. S. C. § 3599, contains a notable gap. Section 3599 first guarantees that indigent defendants in federal capital cases will receive the assistance of counsel, from pretrial proceedings through stay applications. See §§ 3599(a)(1), (a)(2), (e). It next grants a corresponding right to people like Clair who seek federal habeas relief from a state death sentence, for all post-conviction proceedings and related activities. See §§ 3599(a)(2), (e); *McFarland* v. *Scott*, 512 U. S. 849, 854–855 (1994); *Harbison* v. *Bell*, 556 U. S. 180, 183–185 (2009). And the statute contemplates that both sets of litigants may sometimes substitute counsel; it notes that an attorney appointed under the section may be "replaced by similarly qualified counsel upon the attorney's own motion or upon motion of the defendant." § 3599(e).[2] But here lies

[2] Section 3599(e) provides in full:

"Unless replaced by similarly qualified counsel upon the attorney's own motion or upon motion of the defendant, each attorney so appointed shall represent the defendant throughout every subsequent stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures, and shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant."

the rub: The statute fails to specify how a court should decide such a motion. Section 3599 says not a word about the standard a court should apply when addressing a request for a new lawyer.

The parties offer us two alternative ways to fill this statutory hole. Clair argues, and the Ninth Circuit agreed, that district courts should decide substitution motions brought under § 3599 "in the interests of justice." That standard derives from 18 U. S. C. § 3006A, which governs the appointment and substitution of counsel in federal *non*-capital litigation. By contrast, the State contends that district courts may replace an appointed lawyer under § 3599 only when the defendant has suffered an "actual or constructive denial" of counsel. Brief for Petitioner 33. That denial occurs, the State asserts, in just three situations: when the lawyer lacks the qualifications necessary for appointment under the statute; when he has a "disabling conflict of interest"; or when he has "completely abandoned" the client. *Id.*, at 34. On this matter, we think Clair, not the State, gets it right.

A trip back in time begins to show why. Prior to 1988, § 3006A governed the appointment of counsel in *all* federal criminal cases and habeas litigation, regardless whether the matter involved a capital or a non-capital offense. That section provided counsel as a matter of right to most indigent criminal defendants, from pretrial proceedings through appeal. See §§ 3006A(a)(1), (c) (1982 ed.). In addition, the statute authorized courts to appoint counsel for federal habeas petitioners when "the interests of justice so require[d]," § 3006A(g); and under that provision, courts almost always appointed counsel to represent petitioners convicted of capital offenses, see Ruthenbeck, Dueling With Death in Federal Courts, 4 ABA Crim. Justice, No. 3, pp. 2, 42 (Fall 1989). In all cases in which a court had appointed counsel, § 3006A further provided (as it continues to do) that substitution motions should be decided "in the interests of justice." § 3006A(c). So in those days, a court would have used that standard to evaluate a request like Clair's.

In 1988, Congress enacted the legislation now known as § 3599 to govern appointment of counsel in capital cases, thus displacing § 3006A for persons facing execution (but retaining that section for all others). See Anti-Drug Abuse Act, 102 Stat. 4393–4394, 21 U. S. C. §§ 848(q)(4)–(10) (1988 ed.) (recodified at 18 U. S. C. § 3599 (2006 ed. and Supp. IV)). The new statute grants federal capital defendants and capital habeas petitioners enhanced rights of representation, in light of what it calls "the seriousness of the possible penalty and . . . the unique and complex nature of the litigation." § 3599(d) (2006 ed.). Habeas petitioners facing execution now receive counsel as a matter of right, not an exercise of the court's discretion. See § 3599(a)(2). And the statute aims in multiple ways to improve the quality of representation afforded to capital petitioners and defendants alike. Section 3599 requires lawyers in capital cases to have more legal experience than § 3006A demands. Compare §§ 3599(b)–(d) with § 3006A(b). Similarly, § 3599 authorizes higher rates of compensation, in part to attract better counsel. Compare § 3599(g)(1) with § 3006A(d) (2006 ed. and Supp. IV). And § 3599 provides more money for investigative and expert services. Compare §§ 3599(f) (2006 ed.), (g)(2) (2006 ed., Supp. IV), with § 3006A(e) (2006 ed. and Supp. IV). As we have previously noted, those measures "reflec[t] a determination that quality legal representation is necessary" in all capital proceedings to foster "fundamental fairness in the imposition of the death penalty." *McFarland*, 512 U. S., at 855, 859.

That understanding of § 3599's terms and origins goes far toward resolving the parties' dispute over what standard should apply. We know that before § 3599's passage, courts used an "interests of justice" standard to decide substitution motions in all cases—and that today, they continue to do so in all non-capital proceedings. We know, too, that in spinning off § 3599, Congress enacted a set of reforms to improve the quality of lawyering in capital litigation. With all those measures pointing in one direction, we cannot conclude that

Congress silently prescribed a substitution standard that would head the opposite way. Adopting a more stringent test than § 3006A's would deprive capital defendants of a tool they formerly had, and defendants facing lesser penalties still have, to handle serious representational problems. That result clashes with everything else § 3599 does. By contrast, utilizing § 3006A's standard comports with the myriad ways that § 3599 seeks to promote effective representation for persons threatened with capital punishment.

The dearth of support for the State's alternative standard reinforces the case for borrowing from § 3006A. Recall that the State thinks substitution proper "only when . . . counsel is completely denied"—which, the State says, occurs when counsel lacks the requisite experience; "actively represents conflicting interests"; or has "total[ly] desert[ed]" the client. Brief for Petitioner 15, 35, 38. As the State acknowledges, this test comes from . . . well, from nowhere. The State conceded during argument that Congress has not considered (much less adopted) the standard in any context; neither has a federal court used it in any case. See Tr. of Oral Arg. 16. Indeed, the standard is new to the State's own attorneys. As noted earlier, when Clair first requested a change of counsel, the State responded that substitution is a "matter . . . of trial court discretion," based on "the interests of justice." App. 29; see *supra,* at 654. Only later did the State devise its present proposal. Inventiveness is often an admirable quality, but here we think the State overdoes it. To be sure, we must infer a substitution standard for § 3599; in that sense, we are writing on a blank slate. But in undertaking that task, we prefer to copy something familiar than concoct something novel. That enables courts to rely on experience and precedent, with a standard already known to work effectively.

Still worse, the State's proposed test guts § 3599's provision for substitution motions. See § 3599(e) (2006 ed.) (appointed counsel may be "replaced . . . upon motion of the defendant"). According to the State, a court may not

change counsel under § 3599 even if the attorney-client relationship has broken down, so long as the lawyer has the required qualifications and is "act[ing] as an advocate." Brief for Petitioner 35. And that is so, continues the State, even when substitution will not cause delay or other prejudice—because again, the defendant retains a functioning lawyer. See *id.*, at 34. That approach, as already noted, undermines Congress's efforts in § 3599 to enhance representation in capital cases. See *supra*, at 659–660. And beyond that, it renders § 3599's substitution provision superfluous. Even in the absence of that provision, a court would have to ensure that the defendant's statutory right to counsel was satisfied throughout the litigation; for example, the court would have to appoint new counsel if the first lawyer developed a conflict with or abandoned the client. So by confining substitution to cases in which the defendant has no counsel at all, the State's proposal effectively deletes § 3599's substitution clause.

The State counters that only its approach comports with "this Court's long-established jurisprudence that habeas prisoners, including capital prisoners," have no right to counsel under the Sixth Amendment. Brief for Petitioner 18; see *Murray* v. *Giarratano*, 492 U. S. 1, 10, 12 (1989) (plurality opinion); *id.*, at 14–15 (KENNEDY, J., concurring in judgment); cf. *Coleman* v. *Thompson*, 501 U. S. 722, 755 (1991) (reserving question of whether the Sixth Amendment guarantees counsel when a habeas proceeding provides the first opportunity to raise a claim). But we do not understand the State's basis for linking use of the "interests of justice" standard to cases in which an individual has a Sixth Amendment right. A statute need not draw the same lines as the Constitution, and neither § 3006A nor § 3599 does so in addressing the substitution of counsel. Section 3006A applies the "interests of justice" standard to substitution motions even when the Sixth Amendment does not require representation; that is presumptively so, for example, when a court provides counsel to a non-capital habeas petitioner. See §§ 3006A(a)(2)(B), (c). And whatever standard we adopt for § 3599 will likewise

apply both to litigants who have and to litigants who lack a Sixth Amendment right, because the section offers counsel on the same terms to capital defendants and habeas petitioners. In providing statutory rights to counsel, Congress declined to track the Sixth Amendment; accordingly, the scope of that Amendment cannot answer the statutory question presented here.

The State's stronger argument relates to delay in capital proceedings. Under the "interests of justice" standard, the State contends, substitution motions will become a mechanism to defer enforcement of a death sentence, contrary to historic restrictions on "abuse of the writ" and to the goals of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). See Brief for Petitioner 19–22. But this argument, like the last, forgets that § 3599 reaches not just habeas petitioners but also criminal defendants, who have not been convicted or sentenced and therefore have no incentive to delay. Moreover, the State's claim misjudges the capacity of the "interests of justice" standard to deal with such issues. Protecting against abusive delay *is* an interest of justice. Because that is so, courts addressing substitution motions in both capital and non-capital cases routinely consider issues of timeliness. See, *e. g.*, *Hunter* v. *Delo*, 62 F. 3d 271, 274 (CA8 1995) (citing "the need to thwart abusive delay" in affirming the denial of a habeas petitioner's substitution motion); *United States* v. *White*, 451 F. 2d 1225, 1226 (CA6 1971) *(per curiam)* (approving a District Court's refusal to change counsel under § 3006A(c) "on the morning of the trial"). Indeed, we will do so, just paragraphs from here, in this very case. See *infra*, at 665. The standard we adopt thus takes account of, rather than ignores or opposes, the State's interest in avoiding undue delay.[3]

[3] The State also makes a more specific argument based on AEDPA, see Brief for Petitioner 26–29, but we think it is not well taken. The State notes that the "interests of justice" standard enables a court, when ruling on a substitution motion, to take account of a lawyer's effectiveness. That

III

The remaining question is whether the District Court abused its discretion in denying Clair's second request for new counsel under § 3599's "interests of justice" standard. We do not think the court did so, although the court's failure to make any inquiry into Clair's allegations makes this decision harder than necessary.

As its name betrays, the "interests of justice" standard contemplates a peculiarly context-specific inquiry. So we doubt that any attempt to provide a general definition of the standard would prove helpful. In reviewing substitution motions, the courts of appeals have pointed to several relevant considerations. Those factors may vary a bit from circuit to circuit, but generally include: the timeliness of the motion; the adequacy of the district court's inquiry into the defendant's complaint; and the asserted cause for that complaint, including the extent of the conflict or breakdown in communication between lawyer and client (and the client's own responsibility, if any, for that conflict). See, *e. g.*, *United States* v. *Prime*, 431 F. 3d 1147, 1154 (CA9 2005); *United States* v. *Doe*, 272 F. 3d 116, 122–123 (CA2 2001); *Hunter*, 62 F. 3d, at 274; *United States* v. *Welty*, 674 F. 2d 185, 188 (CA3 1982). Because a trial court's decision on sub-

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consideration, according to the State, conflicts with AEDPA's injunction that "[t]he ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a [habeas] proceeding arising under section 2254." 28 U. S. C. § 2254(i); see § 2261(e) (using similar language). But most naturally read, § 2254(i) prohibits a court from granting substantive habeas relief on the basis of a lawyer's ineffectiveness in post-conviction proceedings, not from substituting counsel on that ground. Cf. *Holland* v. *Florida*, 560 U. S. 631, 650–651 (2010) (holding that § 2254(i) does not preclude equitable tolling of a statute of limitations based on attorney misconduct in habeas proceedings). Indeed, if the State were right, we would also have to find that AEDPA silently repealed § 3006A's instruction to courts to apply the "interests of justice" standard in non-capital habeas cases. We see nothing to suggest that Congress had that result in mind.

stitution is so fact-specific, it deserves deference; a reviewing court may overturn it only for an abuse of discretion.

The District Court here received Clair's second substitution motion on the eve of deciding his 10-year-old habeas petition. Recall that three months earlier, following an evidentiary hearing and post-hearing briefing, Clair had written the court to complain about his attorneys. In that first letter, Clair accused his lawyers of refusing to cooperate with a private detective and, more generally, of forgoing efforts to prove his innocence. After making proper inquiry, the court learned that Clair and his attorneys had worked through their dispute and Clair no longer wanted to substitute counsel. The court thus turned its attention once again to ruling on Clair's habeas petition—only to receive another letter requesting a change in representation.

If that second letter had merely recapitulated the charges in the first, this case would be relatively simple. Even then, the court might have done well to make further inquiry of Clair and his counsel. As all Circuits agree, courts cannot properly resolve substitution motions without probing why a defendant wants a new lawyer. See, *e. g.*, *United States* v. *Iles*, 906 F. 2d 1122, 1130 (CA6 1990) ("It is hornbook law that '[w]hen an indigent defendant makes a timely and good faith motion requesting that appointed counsel be discharged and new counsel appointed, the trial court clearly has a responsibility to determine the reasons for defendant's dissatisfaction . . . '" (quoting 2 W. LaFave & J. Israel, Criminal Procedure § 11.4, p. 36 (1984))). Moreover, an on-the-record inquiry into the defendant's allegations "permit[s] meaningful appellate review" of a trial court's exercise of discretion. *United States* v. *Taylor*, 487 U. S. 326, 336–337 (1988). But here the court had inquired, just a short time earlier, into Clair's relationship with his lawyers. The court knew that Clair had responded to that inquiry by dropping his initial complaints. And the court had reason to think, based on 10 years of handling the case, that those charges lacked merit:

Perhaps most important, the court knew that the lawyers had raised many challenges not just to Clair's sentence, but to his conviction, including to the sufficiency of the State's evidence. See, *e. g.*, App. to Pet. for Cert. 27–69. Especially at this stage of the litigation, those factors would have provided ample basis to reject a simple reprise of Clair's allegations.

What complicates this case is that in his second letter, Clair added a new and significant charge of attorney error. Beyond asserting generally that his lawyers were not trying to prove his innocence, Clair now alleged that counsel had refused to investigate particular, newly located physical evidence. That evidence, according to Clair, might have shown that the police had suppressed *Brady* material, that his trial counsel had been ineffective in investigating the murder, or that he had not committed the offense. See Tr. of Oral Arg. 45–46. Especially in a case lacking physical evidence, built in part on since-recanted witness testimony, those possibilities cannot be blithely dismissed. In the mine run of circumstances, Clair's new charge would have required the court to make further inquiry before ruling on his motion for a new attorney.

But here, the timing of that motion precludes a holding that the District Court abused its discretion. The court received Clair's second letter while putting the finishing touches on its denial of his habeas petition. (That lengthy decision issued just two weeks later.) After many years of litigation, an evidentiary hearing, and substantial post-hearing briefing, the court had instructed the parties that it would accept no further submissions. See App. 3–4; Tr. of Oral Arg. 4–5. The case was all over but the deciding; counsel, whether old or new, could do nothing more in the trial court proceedings. At that point and in that forum, Clair's conflict with his lawyers no longer mattered.

Clair, to be sure, wanted to press his case further in the District Court. He desired a new lawyer, after examining

the physical evidence, to make whatever claims followed from it. But, notably, all of those claims would have been new; as the District Court later found in ruling on Clair's Rule 60(b) motion, the physical evidence did not relate to any of the claims Clair had previously made in his habeas petition. See App. to Pet. for Cert. 9–10. A substitute lawyer thus would have had to seek an amendment of that petition, as well as an evidentiary hearing or, more likely, a stay to allow exhaustion of remedies in state court. See 403 Fed. Appx., at 279. The District Court could properly have rejected that motion, consistent with its order precluding further submissions (effectively remitting Clair to state court to pursue the matter). See *Mayle* v. *Felix*, 545 U. S. 644, 663 (2005). And if that is so, the court also acted within its discretion in denying Clair's request to substitute counsel, even without the usually appropriate inquiry. The court was not required to appoint a new lawyer just so Clair could file a futile motion. We accordingly find that the Court of Appeals erred in overturning the District Court's decision.[4]

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

It is so ordered.

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[4] We note as well that the Court of Appeals ordered the wrong remedy even assuming the District Court had abused its discretion in denying Clair's substitution motion without inquiry. The way to cure that error would have been to remand to the District Court to decide whether substitution was appropriate at the time of Clair's letter. Unless that court determined that counsel should have been changed, the Court of Appeals had no basis for vacating the denial of Clair's habeas petition.

Reporter's Note

The next page is purposely numbered 801. The numbers between 666 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 3, 2011, THROUGH MARCH 19, 2012

OCTOBER 3, 2011

Affirmed for Absence of Quorum

No. 10–11054. MURPHY *v.* KOLLAR-KOTELLY, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, ET AL. C. A. 6th Cir. Because the Court lacks a quorum, 28 U. S. C. § 1, and since the qualified Justices are 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, and JUSTICE ALITO took no part in the consideration or decision of this petition.

Appeal Dismissed

No. 10–755. DALLAS COUNTY, TEXAS, ET AL. *v.* TEXAS DEMOCRATIC PARTY. Appeal from D. C. N. D. Tex. dismissed as moot.

Vacated and Remanded on Appeal

No. 10–1183. DALLAS COUNTY, TEXAS, ET AL. *v.* TEXAS DEMOCRATIC PARTY. Appeal from D. C. N. D. Tex. Judgment vacated, and case remanded with instructions to enter a fresh judgment from which an appeal may be taken to the United States Court of Appeals for the Fifth Circuit.

Certiorari Granted—Vacated and Remanded

No. 10–1202. CHINESE DAILY NEWS, INC. *v.* WANG ET AL. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U. S. 338 (2011). JUSTICE BREYER took no

part in the consideration or decision of this petition. Reported below: 623 F. 3d 743.

No. 10–1262. China Terminal & Electric Corp. et al. *v.* Willemsen, Personal Representative of the Estate of Willemsen, et al. Sup. Ct. Ore. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *J. McIntyre Machinery, Ltd.* v. *Nicastro*, 564 U. S. 873 (2011).

No. 10–1264. Allison, Warden *v.* Diaz. 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*, 562 U. S. 86 (2011). Reported below: 405 Fed. Appx. 123.

No. 10–1405. Tyrues *v.* Shinseki, Secretary of Veterans Affairs. C. A. Fed. Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Henderson* v. *Shinseki*, 562 U. S. 428 (2011). Reported below: 631 F. 3d 1380.

No. 10–9437. Butler *v.* United States. C. A. 9th Cir. Reported below: 405 Fed. Appx. 259; and

No. 10–10334. Williams *v.* United States. C. A. 6th 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 *Pepper* v. *United States*, 562 U. S. 476 (2011).

No. 10–10233. Leonardo *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 *Tapia* v. *United States*, 564 U. S. 319 (2011). Reported below: 408 Fed. Appx. 866.

Certiorari Dismissed

No. 10–10321. Simmons *v.* Lamarque, 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)*. Reported below: 412 Fed. Appx. 958.

No. 10–10325. ELLIS *v.* NEVADA. Sup. Ct. Nev. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 127 Nev. 1132, 373 P. 3d 912.

No. 10–10476. MUHAMMAD *v.* UNITED STATES. 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. 10–10493. MAISANO *v.* WOHLER 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. 10–10546. MOORE *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. 10–10591. CANNON *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. 10–10624. DAVIS *v.* ALLEGHENY COUNTY, PENNSYLVANIA, 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. Reported below: 411 Fed. Appx. 447.

No. 10–10650. RATCLIFF *v.* CITY OF LIVINGSTON, TEXAS, 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: 406 Fed. Appx. 843.

No. 10–10695. SEMLER *v.* LUDEMAN, COMMISSIONER, MINNESOTA DEPARTMENT OF HUMAN SERVICES, ET AL. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* de-

nied, 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. 10–10738. McGee *v.* California 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. 10–10917. Browder *v.* Parker, 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.

No. 10–10921. McKinnedy *v.* Reynolds, 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. 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: 408 Fed. Appx. 707.

No. 10–10941. Williams *v.* Moore. 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. 10–10964. Rochester *v.* South Carolina et al. Sup. Ct. S. 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)*.

No. 10–10979. Smith *v.* McCall, 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: 442 Fed. Appx. 20.

No. 10–11047. McLean *v.* United States. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 425 Fed. Appx. 222.

No. 10–11056. Taylor *v.* Texas. Ct. Crim. App. Tex. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–11159. Johnson *v.* Charles et al. C. A. 6th Cir.; and No. 11–5146. Johnson *v.* Wellman. C. A. 6th Cir. Motions 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. 10–11170. Smith *v.* Bridgestone North America Tire Operations LLC 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: 420 Fed. Appx. 300.

No. 10–11235. Hodge *v.* Board of County Commissioners 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: 414 Fed. Appx. 567.

No. 10–11244. Cooper *v.* Georgia. Ct. App. Ga. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 10–11275. Hazel *v.* Wilson, 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. 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. 10–11279. GORE *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA. 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. 11–5001. LEAL GARCIA, AKA LEAL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari dismissed as moot.

No. 11–5064. JONES *v.* LEGAL AID OF NEBRASKA 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. 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: 417 Fed. Appx. 605.

No. 11–5081. LEAL GARCIA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari dismissed as moot. Reported below: 440 Fed. Appx. 232.

No. 11–5188. HAIRSTON *v.* SCISM, WARDEN. 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. Reported below: 423 Fed. Appx. 130.

No. 11–5194. YODER *v.* ARIZONA. Sup. Ct. Ariz. 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. 11–5251. GREEN *v.* TEXAS. Ct. Crim. App. Tex. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 11–5293. HINES *v.* HOLLINGWORTH, WARDEN (ten judgments). 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. 11–5312. CLARKE *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. Reported below: 415 Fed. Appx. 529.

No. 11–5563. SHAHIN *v.* DELAWARE 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. 11–5564. SHAHIN *v.* DELAWARE 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. 11–5565. SHAHIN *v.* DELAWARE 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. 11–5627. BROWN *v.* WERLINGER, WARDEN. 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. Reported below: 437 Fed. Appx. 164.

No. 11–5688. DOWDY *v.* CROSS, WARDEN. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 11–5984. BUNDRANT *v.* UNITED STATES. 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)*.

Miscellaneous Orders

No. 10M112. GOMEZ *v.* CALIFORNIA. Renewed motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 11M1. BROWN *v.* UNITED STATES;

No. 11M2. BOBO *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY ADMINISTRATION;

No. 11M3. PALACIOS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION;

No. 11M6. ROBLES *v.* DRIVER, WARDEN;

No. 11M7. ROQUE *v.* ELIAS;

No. 11M8. RICHARDS *v.* CENTRE AREA TRANSPORTATION AUTHORITY;

No. 11M9. BLACK *v.* MCDANIEL, WARDEN, ET AL. (two judgments);

No. 11M10. JOHNSON *v.* MCCALL, WARDEN, ET AL.;

No. 11M11. VALLEJO *v.* ADAMS, WARDEN;

No. 11M12. BALTHROPE *v.* SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL.;

No. 11M15. THORNTON *v.* UNITED STATES;

No. 11M16. ADAMS *v.* GOLDSMITH;

No. 11M17. LYND *v.* MCDONALD'S CORP.;

No. 11M18. ROBERTS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.;

No. 11M19. RUSSELL *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION;

No. 11M21. UTHMAN *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL.;

No. 11M24. MALONE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION; and

No. 11M25. CHARLESTON *v.* PARKER, WARDEN. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 11M4. BEY *v.* NORTH CAROLINA ET AL. Motion for leave to proceed *in forma pauperis* with the declaration of indigency under seal denied.

No. 11M5. CITY OF MOUNDRIDGE, KANSAS, ET AL. *v.* EXXON MOBIL CORP. ET AL. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted. JUSTICE ALITO took no part in the consideration or decision of this motion.

No. 11M13. WIGREN *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted.

No. 11M14. PASCUAL *v.* UNITED STATES; and
No. 11M23. IN RE GRAND JURY PROCEEDINGS. Motions for leave to file petitions for writs of certiorari under seal with redacted copies for the public record granted.

No. 11M20. IVERSON *v.* VERIZON COMMUNICATIONS; and
No. 11M22. ONG *v.* PASDAR. Motions to direct the Clerk to file petitions for writs of certiorari out of time under this Court's Rule 14.5 denied.

No. 65, Orig. TEXAS *v.* NEW MEXICO. Motion of the River Master for fees and reimbursement of expenses granted, and the River Master is awarded a total of $6,885.82 for the period July 1, 2010, through June 30, 2011, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 562 U. S. 820.]

No. 08–1448. BROWN, GOVERNOR OF CALIFORNIA, ET AL. *v.* ENTERTAINMENT MERCHANTS ASSN. ET AL., 564 U. S. 786. Motion of respondents for attorney's fees and expenses is referred to the United States Court of Appeals for the Ninth Circuit for adjudication.

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., 563 U. S. 692. Motion of respondent to retax costs granted.

No. 09–10755. SMITH *v.* FLORIDA, 564 U. S. 1052. Respondent is requested to file a response to the petition for rehearing within 30 days.

No. 10–1322. DIRECTV, INC. *v.* LEVIN, TAX COMMISSIONER OF OHIO. Sup. Ct. Ohio;

No. 10–1333. SANDY CREEK ENERGY ASSOCIATES, L. P. *v.* SIERRA CLUB, INC., ET AL. C. A. 5th Cir.;

No. 10–1377. COOK ET AL. *v.* ROCKWELL INTERNATIONAL CORP. ET AL. C. A. 10th Cir.;

No. 10–1417. FEIN, SUCH, KAHN & SHEPARD, P. C. *v.* ALLEN. C. A. 3d Cir.; and

No. 10–1555. PACIFIC MERCHANT SHIPPING ASSN. *v.* GOLDSTENE, EXECUTIVE OFFICER, CALIFORNIA AIR RESOURCES BOARD. C. A. 9th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 10–7387. SETSER *v.* UNITED STATES. C. A. 5th Cir. [Certiorari granted, 564 U. S. 1004.] Motion of petitioner for leave to file volume II of the joint appendix under seal granted.

No. 10–8527. ADDISON *v.* NEW HAMPSHIRE, 563 U. S. 991. Respondent is requested to file a response to the petition for rehearing within 30 days.

No. 10–9603. MONACELLI *v.* FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES ET AL. Dist. Ct. App. Fla., 2d Dist.; and

No. 10–9604. MONACELLI *v.* FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES. Sup. Ct. Fla. Motions of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [563 U. S. 1005] denied.

No. 10–9712. FREDERICK *v.* GRAHAM. Sup. Ct. Wis. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [563 U. S. 984] denied.

No. 10–9915. VAN STUYVESANT *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [563 U. S. 1030] denied.

No. 10–9937. GILLARD *v.* SOUTHERN NEW ENGLAND SCHOOL OF LAW. C. A. 1st Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [563 U. S. 1030] denied.

No. 10–9970. LAFOUNTAIN *v.* BALCARCEL. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [564 U. S. 1001] denied.

No. 10–10158. WILLIAMS *v.* WRIGHT, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS, ET AL. C. A. 8th Cir.;

No. 10–10159. WILLIAMS *v.* JOHNSON ET AL. C. A. 8th Cir.; and

No. 10–10160. WILLIAMS *v.* CROUCH ET AL. C. A. 8th Cir. Motions of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [564 U. S. 1033] denied.

No. 10–10217. CUNNINGHAM *v.* KELLEY ET UX. Dist. Ct. App. Fla., 2d Dist.;

No. 10–10310. PHILLIPS *v.* CITY OF RENTON, WASHINGTON. Sup. Ct. Wash.;

No. 10–10511. WASHINGTON *v.* FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES. C. A. 11th Cir.;

No. 10–10536. WALKER *v.* HONYAOUMA. C. A. 9th Cir.;

No. 10–10607. VILLEGAS ET AL. *v.* BERRIOS CASTRODAD ET AL. Sup. Ct. P. R.;

No. 10–10629. VAUGHAN *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir.;

No. 10–10651. KHAN *v.* BLAND ET AL. C. A. 7th Cir.;

No. 10–10726. GREEN *v.* MABUS, SECRETARY OF THE NAVY. C. A. 3d Cir.;

No. 10–10866. VOINCHE *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir.;

No. 10–11038. BURNS *v.* COMMISSIONER OF REVENUE OF MINNESOTA. Sup. Ct. Minn.;

No. 10–11039. IN RE BURNS ET AL.;

No. 10–11180. NEAL *v.* FORD MOTOR CO. C. A. 6th Cir.;

No. 10–11262. FOWLER *v.* GEITHNER, SECRETARY OF THE TREASURY. C. A. 4th Cir.;

No. 10–11281. WHITBY *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir.;

No. 11–5041. WHITE *v.* UNITED STATES. C. A. Armed Forces;

No. 11–5058. MITCHELL *v.* DALLAS HOUSING AUTHORITY. C. A. 5th Cir.;

No. 11–5073. KINANE ET AL. *v.* UNITED STATES. Ct. App. D. C.;

No. 11–5149. WELENC *v.* FLORIDA (two judgments). Dist. Ct. App. Fla., 2d Dist.;

No. 11–5218. IN RE GRAYTON;

No. 11–5381. WHEELER-CHRIST *v.* MONTGOMERY COUNTY, MARYLAND. C. A. 4th Cir.;

No. 11–5384. JACOBSON ET AL. *v.* SCHWARZENEGGER ET AL. C. A. 9th Cir.;

No. 11–5417. BAFFORD *v.* MIDFIRST BANK ET AL. C. A. 11th Cir.;

No. 11–5433. TRAN *v.* NEWPORT NEWS HOLDING CORP. C. A. 4th Cir.;

No. 11–5549. PHILLIPS *v.* JAMES ET AL. C. A. 3d Cir.;

No. 11–5554. CESLIK *v.* MILLER FORD, INC. C. A. 2d Cir.;

No. 11–5664. OCHOA *v.* RUBIN. Super. Ct. Pa.;

No. 11–5682. REYES *v.* UNITED STATES. C. A. 11th Cir.;

No. 11–5687. EWING *v.* UNITED STATES. C. A. 4th Cir.;

No. 11–5886. BROWN *v.* UNITED STATES. C. A. 4th Cir.; and

No. 11–5954. LATOS *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 1st Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 24, 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. 10–10699. RAY *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [564 U. S. 1033] denied.

No. 10–11168. IN RE RUDAJ; and

No. 11–5102. KLEIN *v.* TALKIN, MUCCIGROSSO & ROBERTS, L. L. P. C. A. 2d Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 24, 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 KAGAN took no part in the consideration or decision of these motions.

No. 10–7304. IN RE ROANE;

No. 10–10930. IN RE WILLIAMS;

No. 10–11163. IN RE JOHNSON;

No. 11–5019. IN RE JACKSON;

No. 11–5061. IN RE ALLAH;

No. 11–5107. IN RE MYERS;

No. 11–5130. IN RE ZIERKE;

No. 11–5200. IN RE NAIDU;

No. 11–5227. IN RE SWEENEY;

No. 11–5354. IN RE SIMMS;
No. 11–5555. IN RE DUNBAR;
No. 11–5624. IN RE BLOOD;
No. 11–5657. IN RE HUMPHREY;
No. 11–5756. IN RE JOELSON;
No. 11–5781. IN RE SAYADI-TAKHTEHKAR;
No. 11–5838. IN RE TURNER;
No. 11–5894. IN RE WASHINGTON;
No. 11–5917. IN RE PEREZ;
No. 11–5951. IN RE ABPIKAR;
No. 11–5978. IN RE PARKER;
No. 11–6007. IN RE MONTGOMERY; and
No. 11–6138. IN RE POULLARD. Petitions for writs of habeas corpus denied.

No. 10–11104. IN RE TRENKLER. Petition for writ of habeas corpus denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–5078. IN RE MOORE. 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. 10–1350. IN RE ZENTMYER;
No. 10–10279. IN RE MAY;
No. 10–10902. IN RE CHARLEY;
No. 10–10963. IN RE STIMAC;
No. 10–11218. IN RE HALL;
No. 11–3. IN RE COWAN ET UX.;
No. 11–77. IN RE ROTH;
No. 11–5014. IN RE PAPA ET UX.;
No. 11–5015. IN RE MARKOVICH;
No. 11–5095. IN RE BROWN;
No. 11–5191. IN RE ROBERTSON;
No. 11–5398. IN RE LOGGINS; and
No. 11–5488. IN RE MERCALDO. Petitions for writs of mandamus denied.

No. 11–5313. IN RE HETTLER; and
No. 11–5349. IN RE WILLIAMS. Motions of petitioners for leave to proceed *in forma pauperis* denied, and petitions for writs of mandamus dismissed. See this Court's Rule 39.8.

No. 11–5674. In re Short. Petition for writ of mandamus denied. The Chief Justice took no part in the consideration or decision of this petition.

No. 10–1460. In re Dubin;
No. 10–10383. In re Seymour;
No. 11–5368. In re Thomas; and
No. 11–5369. In re Thomas. Petitions for writs of mandamus and/or prohibition denied.

No. 10–11271. In re Clark. 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 Denied

No. 10–981. Navajo Nation *v.* Equal Employment Opportunity Commission et al.;
No. 10–986. Peabody Western Coal Co. *v.* Equal Employment Opportunity Commission et al.; and
No. 10–1080. Equal Employment Opportunity Commission *v.* Peabody Western Coal Co. et al. C. A. 9th Cir. Certiorari denied. Reported below: 610 F. 3d 1070.

No. 10–1026. Motley, Warden *v.* Yenawine. C. A. 6th Cir. Certiorari denied. Reported below: 402 Fed. Appx. 997.

No. 10–1047. Sala et ux. *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 613 F. 3d 1249.

No. 10–1106. Owner-Operator Independent Drivers Assn., Inc., et al. *v.* Landstar System, Inc., et al. C. A. 11th Cir. Certiorari denied. Reported below: 622 F. 3d 1307.

No. 10–1113. Ospina Hernandez et al. *v.* Holder, Attorney General. C. A. 11th Cir. Certiorari denied. Reported below: 404 Fed. Appx. 387.

No. 10–1132. Staples *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 10–1137. Rock for Life-UMBC et al. *v.* Hrabowski et al. C. A. 4th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 541.

No. 10–1163. Opp et al. *v.* Office of the State's Attorney of Cook County, Illinois, et al. C. A. 7th Cir. Certiorari denied. Reported below: 630 F. 3d 616.

No. 10–1178. Myers *v.* Holder, Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 69.

No. 10–1191. Sherman, a Minor, Through Sherman, Her Father and Next Friend, on Behalf of Herself and All Others Similarly Situated *v.* Koch, Illinois State Superintendent of Education. C. A. 7th Cir. Certiorari denied. Reported below: 623 F. 3d 501.

No. 10–1204. AT&T, Inc. *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 629 F. 3d 505.

No. 10–1207. Williams *v.* Maryland. Ct. App. Md. Certiorari denied. Reported below: 417 Md. 479, 10 A. 3d 1167.

No. 10–1209. Rogan et al. *v.* Dexia Credit Local. C. A. 7th Cir. Certiorari denied. Reported below: 629 F. 3d 612.

No. 10–1210. Teclezghi *v.* Holder, Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 378 Fed. Appx. 615.

No. 10–1217. Van Auken, Trustee *v.* Wirth et al.; and
No. 10–1325. Van Auken, Beneficiary *v.* Wirth et al. Ct. App. N. M. Certiorari denied.

No. 10–1220. Roth *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 628 F. 3d 827.

No. 10–1224. Pest Committee et al. *v.* Miller, Secretary of State of Nevada. C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 3d 1097.

No. 10–1230. Douglas, Director, California Department of Health Care Services, et al. *v.* California Hospital Assn. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 188 Cal. App. 4th 559, 115 Cal. Rptr. 3d 572.

No. 10–1231. Diaz *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 51 Cal. 4th 84, 244 P. 3d 501.

No. 10–1233. Smoot *v.* West Virginia Lawyer Disciplinary Board. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 228 W. Va. 1, 716 S. E. 2d 491.

No. 10–1238. JUNK, AS PARENT AND NEXT FRIEND OF T. J., A MINOR *v.* TERMINIX INTERNATIONAL CO.; and

No. 10–1403. BRENEMAN *v.* JUNK, AS PARENT AND NEXT FRIEND OF T. J., A MINOR. C. A. 8th Cir. Certiorari denied. Reported below: 628 F. 3d 439.

No. 10–1248. TELESAURUS VPC, LLC *v.* POWER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 623 F. 3d 998.

No. 10–1273. ARKANSAS *v.* FOWLER. Sup. Ct. Ark. Certiorari denied. Reported below: 2010 Ark. 431, 371 S. W. 3d 677.

No. 10–1283. GARMAN, GUARDIAN AND NEXT FRIEND OF GARMAN *v.* CAMPBELL COUNTY SCHOOL DISTRICT NO. 1 ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 630 F. 3d 977.

No. 10–1289. LAMTEC CORP. *v.* DEPARTMENT OF REVENUE OF THE STATE OF WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 170 Wash. 2d 838, 246 P. 3d 788.

No. 10–1295. RAGBIR *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 389 Fed. Appx. 80.

No. 10–1298. PEIRCE ET AL. *v.* CSX TRANSPORTATION, INC. C. A. 4th Cir. Certiorari denied. Reported below: 406 Fed. Appx. 723.

No. 10–1314. FREUND ET AL. *v.* SOCIETE NATIONALE DES CHEMINS DE FER FRANCAIS. C. A. 2d Cir. Certiorari denied. Reported below: 391 Fed. Appx. 939.

No. 10–1316. SPENCER ET AL. *v.* WORLD VISION, INC. C. A. 9th Cir. Certiorari denied. Reported below: 633 F. 3d 723.

No. 10–1318. LINGIS ET AL. *v.* DORAZIL ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 633 F. 3d 552.

No. 10–1329. DELUCCIO ET AL. *v.* HAVILL ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 43 So. 3d 925.

No. 10–1331. BDO SEIDMAN, LLP, ET AL. *v.* KHAN ET AL. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 404 Ill. App. 3d 892, 935 N. E. 2d 1174.

No. 10–1332. RSL COMMUNICATIONS PLC, BY JERVIS ET AL. AS JOINT ADMINISTRATORS *v.* BILDIRICI ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 412 Fed. Appx. 337.

No. 10–1334. Salado-Alva *v.* Holder, Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 405 Fed. Appx. 229.

No. 10–1335. Ahan *v.* Modanlo. Ct. Sp. App. Md. Certiorari denied. Reported below: 194 Md. App. 723 and 732.

No. 10–1336. Carroll *v.* Astrue, Commissioner of Social Security. C. A. 3d Cir. Certiorari denied. Reported below: 402 Fed. Appx. 709.

No. 10–1339. Lockwood et al. *v.* Sheppard, Mullin, Richter & Hampton, LLP, et al. C. A. Fed. Cir. Certiorari denied. Reported below: 403 Fed. Appx. 508.

No. 10–1340. KFC Corp. *v.* Iowa Department of Revenue. Sup. Ct. Iowa. Certiorari denied. Reported below: 792 N. W. 2d 308.

No. 10–1341. UPMC *v.* West Penn Allegheny Health System, Inc.; and

No. 10–1346. Highmark, Inc. *v.* West Penn Allegheny Health System, Inc. C. A. 3d Cir. Certiorari denied. Reported below: 627 F. 3d 85.

No. 10–1343. Szajer et ux. *v.* City of Los Angeles, California, et al. C. A. 9th Cir. Certiorari denied. Reported below: 632 F. 3d 607.

No. 10–1344. Schmier *v.* Justices of the Supreme Court of California et al. C. A. 9th Cir. Certiorari denied. Reported below: 408 Fed. Appx. 17.

No. 10–1348. Parnell *v.* Bank of New York, Acting Solely in Its Capacity as Trustee for EQCC Trust 2001–2. Sup. Ct. La. Certiorari denied. Reported below: 2010–0435 (La. 11/30/10), 56 So. 3d 160.

No. 10–1349. Mitchell *v.* KDJM–FM, Jammin 92.5, et al. C. A. 10th Cir. Certiorari denied. Reported below: 405 Fed. Appx. 267.

No. 10–1351. Keyes et al. *v.* Bowen, Secretary of State of California, et al. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 189 Cal. App. 4th 647, 117 Cal. Rptr. 3d 207.

No. 10–1353. MOSLER *v.* CITY OF LOS ANGELES, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 10.

No. 10–1354. COLLINS *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 2009–2012 (La. App. 1 Cir. 6/28/10), 43 So. 3d 244.

No. 10–1356. TU MY TONG *v.* RUCKER. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–1358. JOHNSON *v.* CITY OF KANKAKEE, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 238.

No. 10–1359. MOYLAN *v.* TERRITORY OF GUAM ET AL. Sup. Ct. Guam. Certiorari denied. Reported below: 2011 Guam 2.

No. 10–1360. MEHOVIC, AKA MEJOVIC, ET AL. *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 404 Fed. Appx. 546.

No. 10–1361. RAY *v.* CITY OF CHICAGO, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 629 F. 3d 660.

No. 10–1363. HILL *v.* FULTON COUNTY, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 643.

No. 10–1365. IOANNIDES *v.* UNIVERSITY OF TEXAS M. D. ANDERSON CANCER CENTER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 269.

No. 10–1366. GUERRERO *v.* HOLDER, ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 407 Fed. Appx. 964.

No. 10–1367. ZAHL *v.* NEW JERSEY BOARD OF MEDICAL EXAMINERS ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 10–1368. NEJAD *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 305 Ga. App. 883, 700 S. E. 2d 886.

No. 10–1369. SMIGELSKI *v.* OFFICE OF DISCIPLINARY COUNSEL. App. Ct. Conn. Certiorari denied. Reported below: 124 Conn. App. 81, 4 A. 3d 336.

No. 10–1370. WEGA *v.* CENTER FOR DISABILITY RIGHTS, INC. C. A. 2d Cir. Certiorari denied. Reported below: 395 Fed. Appx. 782.

No. 10–1373. YECHESKEL ET UX. *v.* BANK OF AMERICA CORP. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 405 Fed. Appx. 738.

No. 10–1374. DAVIS *v.* KIA MOTORS AMERICA, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 408 Fed. Appx. 731.

No. 10–1375. LEE *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied.

No. 10–1378. ELLIS ET AL. *v.* DHL EXPRESS INC. (USA) ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 633 F. 3d 522.

No. 10–1380. RODRIGUEZ ET AL. *v.* BA EOLA, LLC. C. A. 11th Cir. Certiorari denied. Reported below: 404 Fed. Appx. 418.

No. 10–1382. REARDON *v.* LEASON ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 408 Fed. Appx. 551.

No. 10–1385. GROSZ ET AL. *v.* MUSEUM OF MODERN ART. C. A. 2d Cir. Certiorari denied. Reported below: 403 Fed. Appx. 575.

No. 10–1388. MARTIN *v.* FENNER ET UX. Sup. Ct. Va. Certiorari denied.

No. 10–1390. REED ET VIR *v.* GUTIERREZ ET AL. Ct. App. N. M. Certiorari denied.

No. 10–1391. ST. ELIZABETH'S CHILD CARE CENTER *v.* PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE. Commw. Ct. Pa. Certiorari denied. Reported below: 989 A. 2d 52.

No. 10–1394. GODLEY *v.* NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 857.

No. 10–1395. UNITED AIRLINES, INC. *v.* HUGHES. C. A. 7th Cir. Certiorari denied. Reported below: 634 F. 3d 391.

No. 10–1396. DARVISHIAN *v.* MCHUGH, SECRETARY OF THE ARMY. C. A. 4th Cir. Certiorari denied. Reported below: 404 Fed. Appx. 822.

No. 10–1401. TAPERE VIRTUCIO *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 242.

No. 10–1402. JEFFERSON COUNTY SCHOOL BOARD OF COMMISSIONERS ET AL. *v.* SMITH ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 641 F. 3d 197.

No. 10–1408. MORK *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 84 So. 3d 1023.

No. 10–1409. SOUSA *v.* ROQUE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 410 Fed. Appx. 411.

No. 10–1412. C. W. MINING CO. *v.* AQUILA, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 636 F. 3d 1257.

No. 10–1414. SIMMONS *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 10–1415. HARTMAN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 10–1416. HARTMAN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 10–1418. HALEY *v.* LEARY. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 2009–1626 (La. App. 4 Cir. 8/4/10), 69 So. 3d 430.

No. 10–1421. VERNOR *v.* AUTODESK, INC. C. A. 9th Cir. Certiorari denied. Reported below: 621 F. 3d 1102.

No. 10–1422. TROYER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 51 Cal. 4th 599, 246 P. 3d 901.

No. 10–1423. NOTO *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 42 So. 3d 814.

No. 10–1424. DELGADO *v.* CITY OF RIVERSIDE, CALIFORNIA, ET AL. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 10–1425. EIST *v.* MARYLAND STATE BOARD OF PHYSICIANS. Ct. App. Md. Certiorari denied. Reported below: 417 Md. 545, 11 A. 3d 786.

No. 10–1427. SCHUMACHER *v.* CLEMENTS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 405 Fed. Appx. 290.

No. 10–1428. VALADEZ-MUNOZ *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 623 F. 3d 1304.

No. 10–1430. TRULL *v.* SMOLKA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 651.

No. 10–1431. TIEN *v.* WACHOVIA BANK ET AL. (two judgments). C. A. 11th Cir. Certiorari denied. Reported below: 406 Fed. Appx. 378 (first judgment) and 411 (second judgment).

No. 10–1432. OKORO *v.* OLIVAS ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 10–1433. UNITED STATES STEEL CORP. *v.* UNITED STATES ET AL.; and
No. 10–1439. NUCOR CORP. *v.* UNITED STATES ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 621 F. 3d 1351.

No. 10–1434. RUNDUS *v.* CITY OF DALLAS, TEXAS, ET AL.; and
No. 10–1435. RUNDUS *v.* CITY OF DALLAS, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 634 F. 3d 309.

No. 10–1436. WALTZ *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 782.

No. 10–1437. LYON ET UX. *v.* AGUILAR ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 412 Fed. Appx. 160.

No. 10–1438. YU NING *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 10–1440. HOUSE OF RAEFORD FARMS, INC. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 10–1441. FANOR *v.* ALVARADO ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 393 Fed. Appx. 921.

No. 10–1442. ABLARD *v.* CITY OF ALEXANDRIA, VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 10–1443. AMERICREDIT FINANCIAL SERVICES, INC. *v.* PENROD. C. A. 9th Cir. Certiorari denied. Reported below: 611 F. 3d 1158.

No. 10–1446. JASPER *v.* FEDERAL EMERGENCY MANAGEMENT AGENCY. C. A. 5th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 649.

No. 10–1449. SIMPSON *v.* ESTATE OF NORTON ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 55 So. 3d 1286.

No. 10–1451. BROEMER *v.* CENTRAL INTELLIGENCE AGENCY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 647.

No. 10–1452. RYSKAMP *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied.

No. 10–1453. PLANEY *v.* PLANEY. Ct. App. Ohio, Mahoning County. Certiorari denied. Reported below: 2010-Ohio-1295.

No. 10–1454. WICKY *v.* OXONIAN, PERSONAL REPRESENTATIVE OF THE ESTATE OF OXONIAN, ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 54 So. 3d 983.

No. 10–1455. TAYLOR *v.* TAYLOR ET AL. Ct. Civ. App. Ala. Certiorari denied. Reported below: 84 So. 3d 171.

No. 10–1457. BARNETT *v.* VICENTE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 767.

No. 10–1458. QUINONES *v.* NEIGHBORHOOD YOUTH & FAMILY SERVICES, INC., ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 71 App. Div. 3d 1106, 896 N. Y. S. 2d 908.

No. 10–1459. DUDGEON *v.* RICHARDS. C. A. 9th Cir. Certiorari denied.

No. 10–1461. MULLER *v.* NEW MEXICO LIVESTOCK BOARD ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 408 Fed. Appx. 194.

No. 10–1462. KONOP *v.* HAWAIIAN AIRLINES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 248.

No. 10–1463. VILLANUEVA-DIAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 634 F. 3d 844.

No. 10–1465. FLETCHER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–1466. MINISTERIAL DAY CARE ASSN. *v.* OHIO DEPARTMENT OF EDUCATION. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 2010-Ohio-5009.

No. 10–1467. PERSONAL CARE PRODUCTS, INC., ET AL. *v.* HAWKINS, COMMISSIONER, TEXAS HEALTH AND HUMAN SERVICES COMMISSION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 635 F. 3d 155.

No. 10–1468. DALLAS COUNTY, TEXAS *v.* DUVALL. C. A. 5th Cir. Certiorari denied. Reported below: 631 F. 3d 203.

No. 10–1469. ABELL *v.* WILSON. Ct. App. D. C. Certiorari denied. Reported below: 997 A. 2d 37.

No. 10–1470. MCMENAMIN *v.* MCMENAMIN. Ct. App. Ore. Certiorari denied. Reported below: 239 Ore. App. 362, 246 P. 3d 520.

No. 10–1471. WHITE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–1473. BLAUVELT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 638 F. 3d 281.

No. 10–1475. SCHLABACH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 306.

No. 10–1476. CITY OF SANTA CRUZ, CALIFORNIA, ET AL. *v.* NORSE. C. A. 9th Cir. Certiorari denied. Reported below: 629 F. 3d 966.

No. 10–1479. CROSBY ET AL. *v.* CITY OF GASTONIA, NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 635 F. 3d 634.

No. 10–1480. BURLEIGH *v.* MONTEREY COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 743.

No. 10–1481. JOHNSON *v.* MANITOWOC COUNTY, WISCONSIN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 635 F. 3d 331.

No. 10–1482. OWNER-OPERATOR INDEPENDENT DRIVERS ASSN., INC., ET AL. *v.* SWIFT TRANSPORTATION CO., INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 632 F. 3d 1111.

No. 10–1483. PETROLEO BRASILEIRO S. A.-PETROBRAS *v.* TRANSCOR ASTRA GROUP, S. A. C. A. 5th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 787.

No. 10–1484. PRUITT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 638 F. 3d 763.

No. 10–1485. SMITH *v.* ARGUELLO ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 57.

No. 10–1486. ISSA *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 500.

No. 10–1487. DONLEY *v.* REID. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 2010–1217 (La. App. 1 Cir. 12/22/10).

No. 10–1490. HOLBROOK *v.* CASTLE KEY INSURANCE CO., FKA ALLSTATE FLORIDIAN INSURANCE CO., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 405 Fed. Appx. 459.

No. 10–1492. MARTINEZ *v.* CELADON TRUCKING SERVICES, INC. Ct. App. Tex., 8th Dist. Certiorari denied. Reported below: 320 S. W. 3d 377.

No. 10–1493. BROWN *v.* CITY OF UPPER ARLINGTON, OHIO. C. A. 6th Cir. Certiorari denied. Reported below: 637 F. 3d 668.

No. 10–1494. CESAR *v.* CITY OF SHEBOYGAN, WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 2010 WI App 170, 330 Wis. 2d 760, 796 N. W. 2d 429.

No. 10–1495. SAMMARCO *v.* LUDEMAN ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 260.

No. 10–1496. KARLS *v.* BANK OF NEW YORK ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 10–1497. BLEDSOE ET AL. *v.* EMERY WORLDWIDE AIRLINES, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 635 F. 3d 836.

No. 10–1498. MORRIS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 281 Va. 70, 705 S. E. 2d 503.

No. 10–1501. KATYLE ET AL. *v.* PENN NATIONAL GAMING, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 637 F. 3d 462.

No. 10–1502. APP PHARMACEUTICALS, LLC *v.* NAVINTA LLC. C. A. Fed. Cir. Certiorari denied. Reported below: 625 F. 3d 1359.

No. 10–1503. REZNER *v.* BAYERISCHE HYPO-UND VEREINSBANK AG ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 630 F. 3d 866.

No. 10–1504. WHITE *v.* HITACHI, LTD., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 404 Fed. Appx. 502.

No. 10–1505. ORANGE COUNTY, CALIFORNIA, ET AL. *v.* KHATIB. C. A. 9th Cir. Certiorari denied. Reported below: 639 F. 3d 898.

No. 10–1506. RECTOR *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–1507. REA *v.* FEDERATED INVESTORS. C. A. 3d Cir. Certiorari denied. Reported below: 627 F. 3d 937.

No. 10–1508. ANSARI *v.* NCS PEARSON, INC., DBA PEARSON VUE, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 407 Fed. Appx. 984.

No. 10–1509. JENNINGS *v.* SOCIAL SECURITY ADMINISTRATION. C. A. Fed. Cir. Certiorari denied. Reported below: 388 Fed. Appx. 988.

No. 10–1511. CLEARY *v.* MACOMB COUNTY, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 890.

No. 10–1514. CAMPBELL *v.* SUPREME COURT OF NEW JERSEY ADVISORY COMMITTEE ON JUDICIAL CONDUCT. Sup. Ct. N. J. Certiorari denied. Reported below: 205 N. J. 2, 10 A. 3d 1201.

No. 10–1515. YI DONG CHEN *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 413 Fed. Appx. 675.

No. 10–1516. HADDAD *v.* DECRISTOFARO ET AL. C. A. 1st Cir. Certiorari denied.

No. 10–1517. FLINT *v.* COACH HOUSE, INC., ET AL. Ct. App. Ky. Certiorari denied.

No. 10–1520. JABLONSKI ET AL. *v.* CITY OF BLOOMINGTON, INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 932 N. E. 2d 739.

No. 10–1522. SHIPLET *v.* VILSACK, SECRETARY OF AGRICULTURE. C. A. 9th Cir. Certiorari denied. Reported below: 383 Fed. Appx. 667.

No. 10–1523. SGE MANAGEMENT, LLC, ET AL. *v.* TORRES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 63.

No. 10–1524. GYAMFI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 294.

No. 10–1525. HOOVER *v.* WALLEY ET AL. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 10–1526. FERNANDES ET UX. *v.* SPARTA TOWNSHIP COUNCIL ET AL. Sup. Ct. N. J. Certiorari denied.

No. 10–1527. HALVORSON ET UX. *v.* NORTH LATAH COUNTY HIGHWAY DISTRICT ET AL. Sup. Ct. Idaho. Certiorari denied. Reported below: 151 Idaho 196, 254 P. 3d 497.

No. 10–1529. KELLY *v.* WEST VIRGINIA BOARD OF LAW EXAMINERS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 203.

No. 10–1530. HARDING *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 196 Md. App. 384, 9 A. 3d 547.

No. 10–1531. PUERTO RICO TELEPHONE CO., INC. *v.* CENTENNIAL PUERTO RICO LICENSE CORP. ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 634 F. 3d 17.

No. 10–1532. HOGE *v.* COLORADO. Dist. Ct. Colo., Adams County. Certiorari denied.

No. 10–1533. WESTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 507.

No. 10–1534. MCREYNOLDS ET AL. *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH INC. C. A. 7th Cir. Certiorari denied.

No. 10–1537. GEO. V. HAMILTON, INC. *v.* NATIONWIDE MUTUAL FIRE INSURANCE CO. C. A. 3d Cir. Certiorari denied. Reported below: 410 Fed. Appx. 537.

No. 10–1538. KALOS ET AL. *v.* GREENWICH INSURANCE CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 404 Fed. Appx. 792.

No. 10–1539. JALLALI *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 404 Fed. Appx. 455.

No. 10–1541. DENNIS R. ET UX. *v.* CLARK. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 10–1547. DUFF ET UX. *v.* LEWIS. C. A. 9th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 640.

No. 10–1549. SALEM *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 631 F. 3d 809.

No. 10–1550. JOHNSON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 10–1552. AVILA ET AL. *v.* WILLITS ENVIRONMENTAL REMEDIATION TRUST ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 633 F. 3d 828.

No. 10–1554. SHANG *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 734.

No. 10–1556. ALVARADO-SANTOS *v.* PUERTO RICO DEPARTMENT OF HEALTH. C. A. 1st Cir. Certiorari denied. Reported below: 619 F. 3d 126.

No. 10–8146. ROBINSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–8196. TOMEY ET UX. *v.* LAMBDIN. Ct. Sp. App. Md. Certiorari denied. Reported below: 193 Md. App. 761 and 764.

No. 10–8794. ANTONELLIS *v.* CUMBERLAND COUNTY SCHOOLS BOARD OF EDUCATION ET AL. Ct. App. N. C. Certiorari denied. Reported below: 206 N. C. App. 329, 698 S. E. 2d 556.

No. 10–8854. NELSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 781.

No. 10–9019. MENKE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–9027. WOIDA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 128.

No. 10–9035. MITTS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 296.

No. 10–9070. PROCTOR *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 2 A. 3d 1093.

No. 10–9078. DAVIS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 313 S. W. 3d 317.

No. 10–9152. MORENO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 436.

No. 10–9204. CHAVEZ ET AL. *v.* MEDICAL ASSURANCE CO., INC., ET AL. Sup. Ct. Ark. Certiorari denied.

No. 10–9345. TROTMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 406 Fed. Appx. 799.

No. 10–9358. CARRILLO *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 404 Fed. Appx. 218.

No. 10–9431. HUNT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 403 Fed. Appx. 837.

No. 10–9465. BATTLES *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 16 N. Y. 3d 54, 942 N. E. 2d 1026.

No. 10–9489. WELLS *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 15 N. Y. 3d 927, 941 N. E. 2d 739.

No. 10–9509. LANG *v.* GUNDY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 969.

No. 10–9511. MALDONADO *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 3d 229.

No. 10–9512. LEE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 625 F. 3d 1030.

No. 10–9515. NICKLAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 623 F. 3d 1175.

No. 10–9531. GRAYSON *v.* THOMAS, INTERIM COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 10–9541. STEPHENSON *v.* WILSON, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied. Reported below: 619 F. 3d 664.

No. 10–9543. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 404 Fed. Appx. 878.

No. 10–9582. HAAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 623 F. 3d 1214.

No. 10–9600. PILLETTE *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 408 Fed. Appx. 873.

No. 10–9601. PARKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 620 F. 3d 911.

No. 10–9621. HAYES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 277.

No. 10–9637. STANTON *v.* STANTON ET AL. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied. Reported below: 190 Cal. App. 4th 547, 118 Cal. Rptr. 3d 249.

No. 10–9650. BREWER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 628 F. 3d 975.

No. 10–9680. MARQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 626 F. 3d 214.

No. 10–9681. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–9682. MARTIN *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 62 So. 3d 1050.

No. 10–9760. RODRIGUEZ-CASTORENA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 409.

No. 10–9889. FLOYD *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 50 So. 3d 1137.

No. 10–9911. LANDRUM *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 625 F. 3d 905.

No. 10–9946. MOFFETT *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 49 So. 3d 1073.

No. 10–9973. WASHINGTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 629 F. 3d 403.

No. 10–9996. WRIGHT *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 619 F. 3d 586.

No. 10–10003. RAY *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 10–10051. ALBAHRI *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 51 So. 3d 467.

No. 10–10060. CARDENAS-COVARRUBIAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 407 Fed. Appx. 769.

No. 10–10062. DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 630 F. 3d 1314.

No. 10–10063. DAVIS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 329 S. W. 3d 798.

No. 10–10090. SANCHEZ-ZARATE, AKA SANCHEZ-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 269.

No. 10–10114. SARANCHAK *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 616 F. 3d 292.

No. 10–10115. SIMMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 626 F. 3d 966.

No. 10–10132. MARBAN-CALDERON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 631 F. 3d 210.

No. 10–10141. ELLIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 407 Fed. Appx. 333.

No. 10–10150. MBAKPUO *v.* COMMITTEE ON ADMISSIONS, DISTRICT OF COLUMBIA COURT OF APPEALS. Ct. App. D. C. Certiorari denied.

No. 10–10210. WILLIAMS *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 328 S. W. 3d 366.

No. 10–10215. CROOM *v.* FULLEN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 711.

No. 10–10216. CEPARANO *v.* SOUTHAMPTON JUSTICE COURT, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 404 Fed. Appx. 537.

No. 10–10220. WINTERS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 3d 619.

No. 10–10223. MOORE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 413 Fed. Appx. 710.

No. 10–10230. BORDELON *v.* TERRELL, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 10–10231. BERTOLA *v.* HARTLEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–10232. WILLIAMS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–10236. MCDERMOTT *v.* MACFADYEN ET AL. C. A. 4th Cir. Certiorari denied.

No. 10–10244. BARRAGAN-DIAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 408 Fed. Appx. 862.

No. 10–10246. BROWN *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 713.

No. 10–10249. BEDFORD *v.* VIRGINIA ET AL. Sup. Ct. Va. Certiorari denied.

No. 10–10254. SIMMS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 402 Ill. App. 3d 1191, 1 N. E. 3d 121.

No. 10–10256. SIMS *v.* OWENS, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 10–10258. RIVERA-ARVELO *v.* SUPREME COURT OF PUERTO RICO ET AL. C. A. 1st Cir. Certiorari denied.

No. 10–10259. JACKSON *v.* FISCHER, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES. Sup. Ct. N. Y., Albany County. Certiorari denied.

No. 10–10260. WARING *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 364 N. C. 443, 701 S. E. 2d 615.

No. 10–10261. WHEATON *v.* MCDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 412 Fed. Appx. 965.

No. 10–10266. GUYTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 636 F. 3d 316.

No. 10–10267. JONES *v.* CANIZARO ET AL. C. A. 5th Cir. Certiorari denied.

No. 10–10269. KARPIN *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 10–10270. KARN *v.* MORROW ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 415 Fed. Appx. 428.

No. 10–10272. PICOTTE *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–10281. NAJI *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–10285. BLACK *v.* GARVIN. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–10286. BROWN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–10287. HOOD *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 304 S. W. 3d 397.

No. 10–10294. PEREZ *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 50 So. 3d 33.

No. 10–10295. SIMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 410 Fed. Appx. 666.

No. 10–10297. TORRES ROMAN *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 40 So. 3d 876.

No. 10–10304. PHILLIPS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 65 So. 3d 971.

No. 10–10307. JACKSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–10309. MCCREARY *v.* MALONE ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–10315. THORNE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 996 A. 2d 558.

No. 10–10316. MELENDEZ *v.* MITCHELL ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 394 Fed. Appx. 739.

No. 10–10322. RICHARDSON *v.* ARAPAHOE COUNTY JUSTICE COORDINATING COMMITTEE ET AL. C. A. 10th Cir. Certiorari denied.

No. 10–10326. MILLER *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 10–10330. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 632 F. 3d 912.

No. 10–10331. NAVA *v.* HAWS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 23.

No. 10–10333. THOMAS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 51 Cal. 4th 449, 247 P. 3d 886.

No. 10–10337. ARY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 51 Cal. 4th 510, 246 P. 3d 322.

No. 10–10339. TOELLNER *v.* MARTUSCELLO, SUPERINTENDENT, COXSACKIE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–10341. READO *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–10342. SCOTT *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 408 Fed. Appx. 341.

No. 10–10344. MERCER *v.* BRYAN, COMMISSIONER OF THE VIRGIN ISLANDS DEPARTMENT OF LABOR, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–10345. SEAY *v.* FOY ET AL. C. A. 7th Cir. Certiorari denied.

No. 10–10350. DRESSLER *v.* WALKER, GOVERNOR OF WISCONSIN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 947.

No. 10–10354. SMITH *v.* APPELLATE COURT OF ILLINOIS, THIRD DISTRICT. Sup. Ct. Ill. Certiorari denied.

No. 10–10355. GAHANO *v.* INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS & HELPERS, LOCAL 104, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–10356. HAMPTON *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 993.

No. 10–10357. GREVIOUS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 10–10362. HOUFF *v.* COURSEY, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 402 Fed. Appx. 167.

No. 10–10368. BATSHEVER *v.* JAFAR ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 73 App. Div. 3d 1108, 900 N. Y. S. 2d 887.

No. 10–10370. BERTANELLI *v.* UNKNOWN PARTIES. C. A. 9th Cir. Certiorari denied.

No. 10–10371. BURKS *v.* MASTERS ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–10374. BUSH *v.* PHILADELPHIA POLICE DEPARTMENT ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–10379. RIVERA *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 402 Ill. App. 3d 1191, 1 N. E. 3d 121.

No. 10–10380. ROUSE *v.* THOMPSON, COMMISSIONER, KENTUCKY DEPARTMENT OF CORRECTIONS. C. A. 6th Cir. Certiorari denied.

No. 10–10382. RODRIGUEZ RENEGIFO ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 632 F. 3d 1203.

No. 10–10387. BELL *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, ET AL. C. A. 5th Cir. Certiorari denied.

No. 10–10392. KRIEGER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 628 F. 3d 857.

No. 10–10394. WILLIAMS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–10397. EFFRON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 378.

No. 10–10404. JENKINS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 10–10405. LIBBY *v.* CORTEZ MASTO, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–10406. POWELL *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 10–10407. MCCASLAND *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–10410. JOHNSON *v.* DONAHUE, WARDEN. Ct. App. Ky. Certiorari denied.

No. 10–10412. SHEPARD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 10–10414. SMITH *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 488 Mich. 1040, 794 N. W. 2d 34.

No. 10–10416. PARTOVI *v.* GALOSKI ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–10417. OKOH *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 10–10419. BURGESS *v.* MARTIN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 403 Fed. Appx. 853.

No. 10–10421. BARNES *v.* BOARD OF PRISON TERMS/HEARINGS. C. A. 9th Cir. Certiorari denied.

No. 10–10422. AYEWOH *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 627 F. 3d 914.

No. 10–10427. DANIELS *v.* HILDRETH. C. A. 9th Cir. Certiorari denied. Reported below: 405 Fed. Appx. 222.

No. 10–10428. VINH HUNG LAM *v.* CITIGROUP, INC., ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–10431. MURPHY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 395 Ill. App. 3d 1116, 986 N. E. 2d 806.

No. 10–10432. PRYCE *v.* ARTUS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–10433. RUCKER *v.* SAN BERNARDINO COUNTY, CALIFORNIA, ET AL. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 10–10436. SHAW *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 405 Fed. Appx. 771.

No. 10–10437. SAYED *v.* PROFITT. C. A. 10th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 946.

No. 10–10448. JOHNSON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 6 A. 3d 571.

No. 10–10451. WILSON *v.* JARRIEL, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 10–10452. WALLACE *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 10–10453. DELAHANTY *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 226 Ariz. 502, 250 P. 3d 1131.

No. 10–10455. MAJOR *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 10–10456. MASON *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 53 So. 3d 1036.

No. 10–10457. FORD *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2010–1151 (La. 2/4/11), 57 So. 3d 297.

No. 10–10458. BINNS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–10464. CEDENO *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–10465. CHATELOIN *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 56 So. 3d 11.

No. 10–10467. DELK *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–10469. DAVIS *v.* DONAT, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–10470. CONLEY *v.* CIRCUIT COURT OF WISCONSIN, MILWAUKEE COUNTY. Ct. App. Wis. Certiorari denied.

No. 10–10471. CASSIDY *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 53 So. 3d 236.

No. 10–10472. DOTTIN *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–10473. YI CHING CHOU *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 10–10474. DONAHOE *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–10475. DVORAK *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–10478. MILLER *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 10–10480. DUNN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 631 F. 3d 1291.

No. 10–10482. DAVIS *v.* CORTEZ MASTO, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 619.

No. 10–10486. PEARSON *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 10–10488. PHILLIPS *v.* BECK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 410 Fed. Appx. 52.

No. 10–10491. LIEBMAN *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 261.

No. 10–10492. LEMONS *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–10494. JONES *v.* TRAVELERS ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–10495. BROWN *v.* COLUMBUS BOARD OF EDUCATION ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–10501. JOLICOEUR-VASSEUR *v.* ASSOCIATION OF PROFESSIONAL FLIGHT ATTENDANTS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 405 Fed. Appx. 66.

No. 10–10504. COLE *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 623 F. 3d 1183.

No. 10–10506. VINNING *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 404 Ill. App. 3d 1171, 996 N. E. 2d 774.

No. 10–10507. WILSON *v.* SCHWARZENEGGER ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–10508. WILSON *v.* SCHWARZENEGGER ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–10509. WILSON *v.* SCHWARZENEGGER ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–10510. WILSON *v.* SCHWARZENEGGER ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–10516. MORGAN *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–10517. NORWOOD *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–10518. DUROUSSEAU *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 55 So. 3d 543.

No. 10–10519. ESTEBAN *v.* PALMER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–10521. WYATT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 254.

No. 10–10528. DAY *v.* MINNESOTA ET AL. Ct. App. Minn. Certiorari denied.

No. 10–10529. KIMBREL *v.* CARUSO ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–10531. ABDOOL *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 53 So. 3d 208.

No. 10–10532. BUMSTEAD *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 76 Mass. App. 1103, 918 N. E. 2d 480.

No. 10–10534. ANDERSON *v.* WENEROWICZ, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 406 Fed. Appx. 574.

No. 10–10537. TREVINO *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 10–10539. WILLIAMS *v.* HOOD, SHERIFF, MONROE COUNTY, MISSISSIPPI. C. A. 5th Cir. Certiorari denied.

No. 10–10541. MCDONALD, AKA TRIMBLE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–10545. DERICHSWEILER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 348 S. W. 3d 906.

No. 10–10548. BLAIR *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 55 So. 3d 1286.

No. 10–10549. WHITEHEAD *v.* ROZUM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET. Super. Ct. Pa. Certiorari denied. Reported below: 998 A. 2d 994.

No. 10–10553. GETER *v.* MCCALL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 412 Fed. Appx. 564.

No. 10–10563. FERGUSON *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 10–10565. PEREZ SALDANA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–10566. SHEEHAN *v.* RICCI, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–10569. ROWZIE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 10–10573. Dearing *v.* Chavez, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 408 Fed. Appx. 23.

No. 10–10575. Cardona *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 10–10580. Sacora et al. *v.* Thomas, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 628 F. 3d 1059.

No. 10–10581. Yancey *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied. Reported below: 65 So. 3d 452.

No. 10–10583. Thompson *v.* Missouri Department of Corrections et al. C. A. 8th Cir. Certiorari denied.

No. 10–10586. Butler *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 10–10604. Jin Rie *v.* Superior Court of California, San Bernardino County, et al. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 10–10605. Williams *v.* Romana et al. C. A. 7th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 900.

No. 10–10606. Zolkoske *v.* Franke, Superintendent, Two Rivers Correctional Institution. C. A. 9th Cir. Certiorari denied.

No. 10–10611. Mohrmann *v.* California. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 10–10616. Ruell *v.* Massachusetts. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 459 Mass. 126, 943 N. E. 2d 447.

No. 10–10620. Castro *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 411 Fed. Appx. 415.

No. 10–10623. Daniels *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 59 So. 3d 107.

No. 10–10625. Ellis *v.* Jacobs, Warden. C. A. 11th Cir. Certiorari denied.

No. 10–10626. CRAWFORD *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 402 Ill. App. 3d 1184, 1 N. E. 3d 118.

No. 10–10627. EASON *v.* KING, SUPERINTENDENT, SOUTH MISSISSIPPI CORRECTIONAL FACILITY. C. A. 5th Cir. Certiorari denied.

No. 10–10631. WILLIAMS *v.* TEODOSIO ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–10632. MCLACHLAN *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 7th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 493.

No. 10–10633. RUDOLPH *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 10–10636. CEARLOCK *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 402 Ill. App. 3d 1211, 1 N. E. 3d 130.

No. 10–10638. CUMMINGS *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–10640. LEROY M. *v.* CITY OF NEW YORK, NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 16 N. Y. 3d 243, 944 N. E. 2d 1123.

No. 10–10641. ZABRISKIE *v.* HESS, INC., ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–10644. MCLAURINE *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA. C. A. 11th Cir. Certiorari denied.

No. 10–10646. RICHARDSON *v.* PALM CLUB ASSN. ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–10647. REED *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 10–10648. SALERNO *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 10–10649. QUINATA *v.* TERRITORY OF GUAM. Sup. Ct. Guam. Certiorari denied. Reported below: 2010 Guam 17.

No. 10–10655. JACKSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 10–10656. LAGAS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 76 App. Div. 3d 384, 906 N. Y. S. 2d 151.

No. 10–10659. DRAGANOV *v.* WASHINGTON. C. A. 9th Cir. Certiorari denied.

No. 10–10662. PLATTS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 10–10666. BROWN *v.* MASSENGILL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 254.

No. 10–10668. BECKER *v.* MARTEL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 413 Fed. Appx. 993.

No. 10–10670. RUDIN *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 126 Nev. 760, 367 P. 3d 824.

No. 10–10672. NIX *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 78 App. Div. 3d 1698, 912 N. Y. S. 2d 832.

No. 10–10673. WOMACK-GREY *v.* ROGERS, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 10–10674. WOOD *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–10677. DOWTIN *v.* PALMER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–10678. SAN MARTIN *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 633 F. 3d 1257.

No. 10–10679. MEJIA *v.* CURRY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–10681. SAUCHELLI *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 407 Fed. Appx. 610.

No. 10–10682. NEWSOME *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–10683. PERKINS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–10684. TORRES *v.* HARTLEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–10686. TOWERY *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 641 F. 3d 300.

No. 10–10688. LAMKIN *v.* TEXAS. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 10–10689. SESCIL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 410 Fed. Appx. 758.

No. 10–10690. MENCHACA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–10691. PONCE *v.* RIOS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–10692. BROWN *v.* LOPEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–10693. ARMSTRONG *v.* BENITO. C. A. 9th Cir. Certiorari denied.

No. 10–10694. BUZZARD *v.* WENGLER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 373.

No. 10–10696. SPAN *v.* BARDERS ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–10697. SMITHERMAN *v.* BOYD, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–10700. SHAW *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 407 Fed. Appx. 711.

No. 10–10701. CARTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 242.

No. 10–10702. DODDS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–10703. ESPINOZA, AKA MANZO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 392 Fed. Appx. 666 and 421 Fed. Appx. 817.

No. 10–10704. DAVIS *v.* STEELE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 10–10705. DAYE *v.* RUBENSTEIN, COMMISSIONER, WEST VIRGINIA DIVISION OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 317.

No. 10–10706. KISH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 398.

No. 10–10707. JEFFERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 191.

No. 10–10709. WASHINGTON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 10–10710. WALLACE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 15 A. 3d 536.

No. 10–10711. STEVENSON *v.* PALMER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 410 Fed. Appx. 74.

No. 10–10712. MCPHERRON *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS. C. A. 7th Cir. Certiorari denied.

No. 10–10713. SANCHEZ *v.* ALDRICH ET AL. Ct. App. Colo. Certiorari denied.

No. 10–10714. REYNOLDS *v.* COLORADO. Ct. App. Colo. Certiorari denied. Reported below: 252 P. 3d 1128.

No. 10–10715. SHIELDS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 404 Ill. App. 3d 1171, 996 N. E. 2d 773.

No. 10–10716. McBride *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 402 Fed. Appx. 909.

No. 10–10717. LaVirgne *v.* Hartley, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 774.

No. 10–10718. Carter *v.* Sherry, Warden. C. A. 6th Cir. Certiorari denied.

No. 10–10719. Downs *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 10–10720. Dixon *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 403 Ill. App. 3d 1101, 993 N. E. 2d 147.

No. 10–10722. Hodges *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 55 So. 3d 515.

No. 10–10723. Hood *v.* Jackson, Superintendent, Brown Creek Correctional Institution. C. A. 4th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 520.

No. 10–10724. Hernandez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 412 Fed. Appx. 706.

No. 10–10725. Hunt *v.* United States. C. A. 4th Cir. Certiorari denied.

No. 10–10728. Hardy *v.* Jones, Warden. C. A. 6th Cir. Certiorari denied.

No. 10–10729. Irons *v.* Dormire, Superintendent, Jefferson City Correctional Center. Sup. Ct. Mo. Certiorari denied.

No. 10–10730. Franklin *v.* Georgia. Ct. App. Ga. Certiorari denied. Reported below: 305 Ga. App. 354, 699 S. E. 2d 575.

No. 10–10732. Ennis *v.* Neven, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 794.

No. 10–10733. Dopp *v.* Oklahoma. Sup. Ct. Okla. Certiorari denied.

No. 10–10734. Cobb *v.* Mendoza-Powers, Warden. C. A. 9th Cir. Certiorari denied.

No. 10–10735. CARDONA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 10–10736. MIKNEVICH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 638 F. 3d 178.

No. 10–10737. MORAGA *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 784.

No. 10–10740. PETERKA *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 56 So. 3d 767.

No. 10–10741. EATON *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 793 N. W. 2d 790.

No. 10–10742. DAUGHERTY *v.* MANONE ET AL. C. A. 7th Cir. Certiorari denied.

No. 10–10743. CARR *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–10744. CERON-GARCIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 668.

No. 10–10745. GRIFFITH *v.* BIRD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 410 Fed. Appx. 713.

No. 10–10748. CRUZ BARRAZA, AKA BARRAZA, AKA CRUZ-BARRAZA, AKA GARCIA, AKA GEOVAVAY BARRAZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 663.

No. 10–10749. GREENE *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 157 Wash. App. 1053.

No. 10–10750. HOWELL *v.* BROWN, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 10–10751. GIVENS *v.* RANDOLPH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 565.

No. 10–10752. HAWKINS *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–10753. HURST *v.* HANTKE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 634 F. 3d 409.

No. 10–10754. HOWARD *v.* BYARS, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 942.

No. 10–10755. FORNEY *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 46 So. 3d 60.

No. 10–10756. FIELDS *v.* GUNDY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–10757. HEFLEY *v.* DELAWARE. C. A. 3d Cir. Certiorari denied. Reported below: 403 Fed. Appx. 677.

No. 10–10758. HAMILTON *v.* WILKINSON, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 10–10760. GALLAHER *v.* SOUTHERN TUBE FORM, LLC, ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–10761. FISHER *v.* HOLINKA, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 10–10762. GIBBONS *v.* LEE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–10763. HARPER *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–10765. ORIAKHI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 394 Fed. Appx. 976.

No. 10–10767. JEFFERS *v.* MINNESOTA. C. A. 8th Cir. Certiorari denied.

No. 10–10768. STEGEMAN *v.* SUPERIOR COURT OF GEORGIA, STONE MOUNTAIN JUDICIAL CIRCUIT, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–10770. CARROLL *v.* DODGE. Sup. Ct. Va. Certiorari denied.

No. 10–10774. WATSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 633 F. 3d 929.

No. 10–10775. BOWENS *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 415 Fed. Appx. 340.

No. 10–10776. DOWNING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 220.

No. 10–10778. ELLERBY ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 408 Fed. Appx. 696.

No. 10–10779. TILCOCK *v.* SMITH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–10780. WALLIN *v.* DYCUS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 381 Fed. Appx. 819.

No. 10–10781. WINFIELD *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. Sup. Ct. Mo. Certiorari denied.

No. 10–10783. WRIGHT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 634 F. 3d 770.

No. 10–10785. STEVENS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–10786. SHERE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 57 So. 3d 847.

No. 10–10787. GARCIA ORELLANA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 209.

No. 10–10788. POWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 926.

No. 10–10789. POTTER *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 128 Ohio St. 3d 234, 2010-Ohio-228, 943 N. E. 2d 534.

No. 10–10790. DRAPEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 630.

No. 10–10791. JACKSON *v.* GONZALEZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 404 Fed. Appx. 244.

No. 10–10792. LASSALLE-VELAZQUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 10–10793. OLIVER ET UX. *v.* BANKFIRST FINANCIAL SERVICES. C. A. 6th Cir. Certiorari denied.

No. 10–10794. TAYLOR *v.* HOKE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 704.

No. 10–10795. TRUJILLO *v.* MEDINA, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 406 Fed. Appx. 280.

No. 10–10796. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 413 Fed. Appx. 938.

No. 10–10797. THOMAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 404 Fed. Appx. 186.

No. 10–10798. OROPEZA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–10799. MORA *v.* LATTIMORE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 413 Fed. Appx. 975.

No. 10–10801. BIVONA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 807.

No. 10–10802. BRAVATTI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 182.

No. 10–10803. BATTLE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 637 F. 3d 44.

No. 10–10804. CRITCHLEY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–10805. ASCENCIO-TORIBIO *v.* HOLDER, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 396 Fed. Appx. 875.

No. 10–10807. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 405.

No. 10–10808. VETETO *v.* ALLEN ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 106 So. 3d 925.

No. 10–10809. Pagan *v.* Roden, Superintendent, Massachusetts Correctional Institution at Norfolk. C. A. 1st Cir. Certiorari denied.

No. 10–10810. Morales-Rodriguez *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 10–10811. Meza *v.* Yates, Warden. C. A. 9th Cir. Certiorari denied.

No. 10–10812. Pridgen *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 11 A. 3d 1026.

No. 10–10815. Logan *v.* Florida. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 64 So. 3d 1271.

No. 10–10816. Johnson *v.* Vail, Secretary, Washington Department of Corrections, et al. C. A. 9th Cir. Certiorari denied.

No. 10–10817. Mahoney *v.* Hammond et al. C. A. 9th Cir. Certiorari denied.

No. 10–10818. Kostraba *v.* Holder, Attorney General. C. A. 8th Cir. Certiorari denied. Reported below: 402 Fed. Appx. 151.

No. 10–10819. Hutson *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 662.

No. 10–10820. Garner *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 584.

No. 10–10821. Flores *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 406 Fed. Appx. 463.

No. 10–10823. Hirpassa, Individually and as Personal Representative of the Estate of Genet and for the Use of R. B. et al., Minors *v.* Prince George's County, Maryland, et al. C. A. 4th Cir. Certiorari denied. Reported below: 406 Fed. Appx. 739.

No. 10–10826. Gutierrez *v.* California. C. A. 9th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 952.

No. 10–10827. Garza *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 412 Fed. Appx. 26.

No. 10–10828. HEXON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 775.

No. 10–10829. FROST *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 10–10830. PINO GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 636 F. 3d 157.

No. 10–10831. HERMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 822.

No. 10–10832. GIBBS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 238.

No. 10–10834. BROWN *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 10–10835. ALVAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–10836. BELL *v.* GAINER ET AL. C. A. 7th Cir. Certiorari denied.

No. 10–10837. BROOKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 476.

No. 10–10840. REED *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 712.

No. 10–10841. WALKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 947.

No. 10–10844. GRIBOVSZKI *v.* STANFORD UNIVERSITY. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 10–10845. HENSLEE *v.* SIMMONS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 275.

No. 10–10846. HIGHTOWER *v.* COLEMAN ET AL. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 401 Ill. App. 3d 1158, 989 N. E. 2d 1224.

No. 10–10847. GRAY *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 408 Fed. Appx. 667.

No. 10–10848. HALSTIED *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 10–10849. GOLD *v.* SCHUETTE. C. A. 9th Cir. Certiorari denied.

No. 10–10850. FIERRO *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–10851. GUY *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied.

No. 10–10852. HYMES *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 10–10853. SOLLIDAY *v.* SPENCE. C. A. 11th Cir. Certiorari denied. Reported below: 413 Fed. Appx. 206.

No. 10–10854. SIMS *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 281 Neb. xix.

No. 10–10855. SANCHEZ *v.* HERNDON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–10856. REDDIX *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–10857. UCAK *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 10–10858. BRANDOW *v.* BALDWIN, DIRECTOR, IOWA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 8th Cir. Certiorari denied.

No. 10–10859. ALLRED *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 55 So. 3d 1267.

No. 10–10860. BARBA DE GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 560.

No. 10–10861. DAVIS *v.* KELLY, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 10–10862. DEBERRY *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 804.

No. 10–10863. BURNS *v.* BROWN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 10–10864. SEALED DEFENDANT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 372.

No. 10–10865. WOODMANSEE *v.* STEELE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 10–10867. YATES *v.* BALDWIN ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 633 F. 3d 669.

No. 10–10868. RICHARDS *v.* HINKLE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 413 Fed. Appx. 671.

No. 10–10869. RIVERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–10870. PORTILLO-QUEZADA, AKA QUEZADA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 86.

No. 10–10871. NELSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 51 Cal. 4th 198, 248 P. 3d 301.

No. 10–10872. MURPHY *v.* MAINE (two judgments). Sup. Jud. Ct. Me. Certiorari denied. Reported below: 2010 ME 140, 10 A. 3d 697 (second judgment).

No. 10–10873. SIMPSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–10874. THOMPSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 429.

No. 10–10876. THOMPSON *v.* DITTMAN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 10–10877. ZAHIR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 404 Fed. Appx. 585.

No. 10–10878. CORTES *v.* UNITED STATES; and
No. 10–10939. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 189.

No. 10–10879. MCCARTHY *v.* ETTE ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–10880. Bayard *v.* Hufford, Warden. C. A. 1st Cir. Certiorari denied.

No. 10–10882. Bernall *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 865.

No. 10–10883. Barnett *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 17.

No. 10–10884. Johnson *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 176.

No. 10–10885. Luong et al. *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 627 F. 3d 1306.

No. 10–10886. Koehler *v.* State Bar of California. Sup. Ct. Cal. Certiorari denied.

No. 10–10887. Larkin *v.* Yates, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 708.

No. 10–10888. Johnson *v.* Mississippi. Sup. Ct. Miss. Certiorari denied.

No. 10–10889. Kim *v.* Donahoe, Postmaster General, et al. C. A. 4th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 297.

No. 10–10890. Cook *v.* West Virginia. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 228 W. Va. 563, 723 S. E. 2d 388.

No. 10–10891. Rollins *v.* Tucker, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 10–10893. Spangle *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 3d 488.

No. 10–10894. Jeffery *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 631 F. 3d 669.

No. 10–10895. Collado *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 10–10896. Maxwell *v.* White, Warden. C. A. 8th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 939.

No. 10–10897. KEY *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 792.

No. 10–10898. MATKIN *v.* HENRY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–10901. CUONG PHAN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–10903. ZIED *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 418 Fed. Appx. 109.

No. 10–10904. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 636 F. 3d 1229.

No. 10–10905. WESTBERRY *v.* MCCALL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 306.

No. 10–10906. WARREN *v.* FINNAN. C. A. 7th Cir. Certiorari denied.

No. 10–10908. ORNELAS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 10–10909. VALDEZ *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied.

No. 10–10910. WILLIAMS *v.* ROMANOWSKI, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–10911. TILLAGE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 404 Fed. Appx. 722.

No. 10–10912. BLAKE *v.* MALEY. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 46,036 (La. App. 2 Cir. 1/26/11), 57 So. 3d 1122.

No. 10–10913. BELL *v.* MYERS, WIDDERS, GIBSON, JONES & SCHNEIDER, LLP. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–10914. BERTANELLI *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–10915. Bauberger *v.* Haynes, Superintendent, Warren Correctional Institution. C. A. 4th Cir. Certiorari denied. Reported below: 632 F. 3d 100.

No. 10–10916. Avery *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 413 Fed. Appx. 937.

No. 10–10918. Butler *v.* Clarke, Director, Virginia Department of Corrections, et al. Sup. Ct. Va. Certiorari denied.

No. 10–10919. Rose *v.* Tucker, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 634 F. 3d 1224.

No. 10–10920. Wallace *v.* United States District Court for the Middle District of Pennsylvania. C. A. 3d Cir. Certiorari denied. Reported below: 405 Fed. Appx. 615.

No. 10–10924. Jenkins *v.* LaValley, Superintendent, Great Meadow Correctional Facility. C. A. 2d Cir. Certiorari denied. Reported below: 630 F. 3d 298.

No. 10–10925. Langhorne *v.* Diggs, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 513.

No. 10–10926. Estrada-Landero *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 413 Fed. Appx. 121.

No. 10–10927. Jenkins *v.* South Carolina Department of Corrections et al. C. A. 4th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 473.

No. 10–10928. Tolbert *v.* Gaetz, Warden. C. A. 7th Cir. Certiorari denied.

No. 10–10929. Vuong *v.* Dexter, Warden. C. A. 9th Cir. Certiorari denied.

No. 10–10931. Curtis *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 635 F. 3d 704.

No. 10–10932. Johnson *v.* Ryan, Director, Arizona Department of Corrections, et al. C. A. 9th Cir. Certiorari denied.

No. 10–10933. MARSTON *v.* LIVINGSTON, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 376.

No. 10–10935. LAY *v.* CLINTON ET AL. C. A. 4th Cir. Certiorari denied.

No. 10–10937. BLANCO MARTE *v.* HOLDER, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 417 Fed. Appx. 216.

No. 10–10938. SANTOS ARROYO *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–10940. THURSTON *v.* MERCK & CO., INC. C. A. 5th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 585.

No. 10–10942. TORRES-ALICEA *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 56 So. 3d 24.

No. 10–10943. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–10945. HANSON *v.* THOMAS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CHESTER, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 426 Fed. Appx. 50.

No. 10–10946. HERRERA-GENAO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 419 Fed. Appx. 288.

No. 10–10947. FUENTES-MAJANO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 407 Fed. Appx. 900.

No. 10–10948. FRAZIER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 782.

No. 10–10949. C. F. *v.* SUPERIOR COURT OF CALIFORNIA, RIVERSIDE COUNTY, ET AL. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 10–10950. HENRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–10951. GOOCH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 700.

No. 10–10952. Howard *v.* Primrose Transportation Management et al. Ct. App. Ind. Certiorari denied.

No. 10–10953. Heishman *v.* Martel, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 621 F. 3d 1030.

No. 10–10955. Stewart *v.* Trease. Ct. App. Utah. Certiorari denied.

No. 10–10957. Sherrod *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 452.

No. 10–10958. Summers *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 838.

No. 10–10959. Sparks *v.* Hobbs, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied.

No. 10–10960. Rosebrough *v.* Butler. C. A. 6th Cir. Certiorari denied.

No. 10–10961. Shabazz *v.* Williams, Warden. C. A. 11th Cir. Certiorari denied.

No. 10–10962. Sutherland *v.* Astrue, Commissioner of Social Security. C. A. 4th Cir. Certiorari denied. Reported below: 407 Fed. Appx. 699.

No. 10–10965. Monroe *v.* Ryan, Director, Arizona Department of Corrections. C. A. 9th Cir. Certiorari denied.

No. 10–10966. Cardenas *v.* San Antonio Police Department et al. C. A. 5th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 401.

No. 10–10967. Thomas *v.* Louisiana. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 2010–269 (La. App. 3 Cir. 10/6/10), 48 So. 3d 1210.

No. 10–10968. Gollehon *v.* Mahoney, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 3d 1019.

No. 10–10969. Huber *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 826.

No. 10–10970. Sanders *v.* Vare, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 10–10971. SUMMERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 398.

No. 10–10972. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 619.

No. 10–10973. AYALA-ESQUER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 723.

No. 10–10974. BROWN *v.* CORTEZ MASTO, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–10975. BROWN *v.* CITY OF DETROIT, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–10976. HOLMES *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 10–10977. RANSOM *v.* HOLMAN ET AL. Sup. Ct. Ga. Certiorari denied.

No. 10–10978. MEDRANO *v.* HARDY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 10–10980. MILLER *v.* RICCI, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–10981. WILSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 938.

No. 10–10983. BURT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 10–10985. WILLIAMS *v.* KNOWLIN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 284.

No. 10–10986. DUCKETT *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–10988. SCHMITZ *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 10–10989. CARMICHAEL *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 73 App. Div. 3d 622, 901 N. Y. S. 2d 48.

No. 10–10990. Rogers *v.* Lawler, Superintendent, State Correctional Institution at Huntingdon, et al. C. A. 3d Cir. Certiorari denied.

No. 10–10991. Reece *v.* Walden Affordable, LLC, et al. C. A. 5th Cir. Certiorari denied. Reported below: 388 Fed. Appx. 464.

No. 10–10992. Ruff *v.* Florida. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 10–10993. Salahuddin, aka Saladin *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 10–10995. Tekle *v.* United States (two judgments). C. A. 9th Cir. Certiorari denied.

No. 10–10996. Zackary *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 850.

No. 10–10997. Upia-Frias *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 422 Fed. Appx. 78.

No. 10–10998. Yanez-Hernandez *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 322.

No. 10–10999. Brayboy *v.* Robeson County Board of Education. C. A. 4th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 802.

No. 10–11000. Battle *v.* Ohio. Ct. App. Ohio, Morgan County. Certiorari denied. Reported below: 2010-Ohio-4327.

No. 10–11001. Aglipay *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 412 Fed. Appx. 689.

No. 10–11002. Adams *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 628 F. 3d 407.

No. 10–11003. Brown *v.* Clarke, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 489.

No. 10–11005. Brown *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 395 Ill. App. 3d 1112, 986 N. E. 2d 804.

No. 10–11006. BLOW *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 406 Fed. Appx. 555.

No. 10–11007. O'GARRO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 10–11008. NAKAGAWA *v.* NORTH RANGE BEHAVIORAL HEALTH. Ct. App. Colo. Certiorari denied.

No. 10–11009. MURPHY *v.* GRENIER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 406 Fed. Appx. 972.

No. 10–11010. MARTINEZ-RUIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 412.

No. 10–11011. LAWRENCE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 627 F. 3d 1281.

No. 10–11012. MARMOLEJOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 10–11013. MAKDESSI *v.* WATSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 483.

No. 10–11015. MARTINEZ *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 10–11016. CUMMINGS *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 16 N. Y. 3d 784, 944 N. E. 2d 1139.

No. 10–11017. DILLBECK *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–11018. ENYART *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied. Reported below: 2010-Ohio-5623.

No. 10–11019. JONES *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 10–11020. UPSON *v.* WALLACE. Ct. App. D. C. Certiorari denied. Reported below: 3 A. 3d 1148.

No. 10–11021. MURILLO-BETANCOURT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 685.

No. 10–11022. ORTEGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–11023. SALINAS-SOTO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 464.

No. 10–11024. ROSE *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 1.

No. 10–11025. THOMPSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 334.

No. 10–11026. YOUNG *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 634 F. 3d 233.

No. 10–11027. TANNER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 628 F. 3d 890.

No. 10–11028. WEATHERALL *v.* SLOAN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 846.

No. 10–11029. SERAFIN-RODRIGUEZ, AKA SERAFIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 410.

No. 10–11030. THOMAS *v.* ZAKHORIA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 538.

No. 10–11032. MCDOWELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–11033. MITCHELL *v.* LEMPKE, SUPERINTENDENT, FIVE POINTS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–11034. NELSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 380 Fed. Appx. 899.

No. 10–11037. CERVANTES-GUERRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 789.

No. 10–11040. ONEAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 443.

No. 10–11041. PAIGE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 634 F. 3d 871.

No. 10–11042. McNeal *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 405 Ill. App. 3d 647, 955 N. E. 2d 32.

No. 10–11044. Lathrop *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 634 F. 3d 931.

No. 10–11045. Koepnick *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 138.

No. 10–11046. McSwain *v.* Indiana. Sup. Ct. Ind. Certiorari denied. Reported below: 950 N. E. 2d 1203.

No. 10–11048. Walker *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 359.

No. 10–11049. Weeden *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 412 Fed. Appx. 889.

No. 10–11050. Tellez-Araujo *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 407 Fed. Appx. 32.

No. 10–11051. Wilkins *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 490.

No. 10–11052. Tyner *v.* Maryland. Cir. Ct. Baltimore County, Md. Certiorari denied.

No. 10–11053. Pena-Manzanarez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 687.

No. 10–11057. Jarvis *v.* Maryland. Ct. Sp. App. Md. Certiorari denied. Reported below: 197 Md. App. 756.

No. 10–11058. Toure *v.* Holder, Attorney General. C. A. 4th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 345.

No. 10–11059. Woltz *v.* United States District Court for the Western District of North Carolina. C. A. 4th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 271.

No. 10–11060. Jones *v.* Harrison, Warden. C. A. 9th Cir. Certiorari denied.

No. 10–11061. Sulecki *v.* Florida. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 57 So. 3d 864.

No. 10–11062. RICHARDSON *v.* PADULA, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 632.

No. 10–11063. PINSON *v.* CHIPI ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–11065. WILLIAMS *v.* CLAY ELECTRIC COOPERATIVE, INC. Sup. Ct. Fla. Certiorari denied. Reported below: 61 So. 3d 1114.

No. 10–11066. DUNSON *v.* LOPEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 692.

No. 10–11067. AVILA-AGUILAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 742.

No. 10–11068. BURCH *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 10–11069. BURNETTE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 795.

No. 10–11070. BUISSERETH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 638 F. 3d 114.

No. 10–11071. O'NEAL *v.* PROVINCE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 921.

No. 10–11072. BASTEDO *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 49 So. 3d 752.

No. 10–11074. SHORT *v.* MAZURKIEWICZ, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENSBURG, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–11075. STEVENSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 412 Fed. Appx. 684.

No. 10–11076. OLIVER C. *v.* PRINCE GEORGE'S COUNTY DEPARTMENT OF SOCIAL SERVICES. Ct. Sp. App. Md. Certiorari denied.

No. 10–11077. AVILA-TORRES, AKA AVILA *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 10–11079. SHAW *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 77 So. 3d 624.

No. 10–11080. GARAY *v.* DEPARTMENT OF MANAGEMENT SERVICES, DIVISION OF RETIREMENT. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 46 So. 3d 1227.

No. 10–11081. HOAGLAND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–11082. NEWSOME *v.* UY ET AL. C. A. 5th Cir. Certiorari denied.

No. 10–11083. JOHNSTON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 336 S. W. 3d 649.

No. 10–11084. LEONARD *v.* FEDERAL BUREAU OF INVESTIGATION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 405 Fed. Appx. 386.

No. 10–11085. LUA-BERMEJO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 669.

No. 10–11086. HENRY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 430 Fed. Appx. 151.

No. 10–11087. CAMARILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 566.

No. 10–11088. CIRIZA-SAENZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 459.

No. 10–11090. NARDELLI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 570.

No. 10–11091. VINTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 631 F. 3d 476.

No. 10–11092. HOWARD *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 51 Cal. 4th 15, 243 P. 3d 972.

No. 10–11093. SHERMAN *v.* WASHINGTON DEPARTMENT OF CORRECTIONS ET AL. Super. Ct. Wash., Clallum County. Certiorari denied.

No. 10–11095. MARTINEZ-GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 777.

No. 10–11096. JULIAN *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2010–0178 (La. 1/7/11), 52 So. 3d 882.

No. 10–11098. McCreary *v.* Skolnik et al. Sup. Ct. Nev. Certiorari denied. Reported below: 127 Nev. 1158, 373 P. 3d 941.

No. 10–11099. Sayasane *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 482.

No. 10–11100. Rivera-Jurado *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 323.

No. 10–11103. Thornburgh *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 645 F. 3d 1197.

No. 10–11105. Vasquez Ruiz *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 588.

No. 10–11106. Wiggins *v.* Jackson, Administrator, Nash Correctional Institution. C. A. 4th Cir. Certiorari denied. Reported below: 635 F. 3d 116.

No. 10–11107. Moore *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 51 Cal. 4th 386, 247 P. 3d 515.

No. 10–11108. Sanders *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 189 Cal. App. 4th 543, 117 Cal. Rptr. 3d 140.

No. 10–11109. Smith *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 911.

No. 10–11110. Soto-Guevara *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 592.

No. 10–11111. Herrera *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 58.

No. 10–11112. Quinones-Figueroa *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 893.

No. 10–11114. Goodwin *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 10–11115. Gutierrez-Jacquez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 407.

No. 10–11116. Hope *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 408 Fed. Appx. 695.

No. 10–11117. INDA-LARES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 691.

No. 10–11118. HAGEON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 295.

No. 10–11119. ISOM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 635 F. 3d 904.

No. 10–11120. GRAHAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 158.

No. 10–11121. DODSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 357.

No. 10–11122. DIAZ-DELGADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 639.

No. 10–11123. CARTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 288.

No. 10–11124. PIEPER *v.* HOUSTON, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 8th Cir. Certiorari denied.

No. 10–11125. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 10–11126. SMITH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 419 Fed. Appx. 241.

No. 10–11127. GUNTER *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 459 Mass. 480, 945 N. E. 2d 386.

No. 10–11128. HALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 10–11129. GRUBER *v.* PALMER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 591.

No. 10–11130. FOX *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 631 F. 3d 1128.

No. 10–11131. FOSTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 304.

No. 10–11132. JAMES *v.* MCCALL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 523.

No. 10–11133. CROCKETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 239.

No. 10–11134. MILLEN *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 10–11135. MIRANDA-GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 895.

No. 10–11136. PERALES-CARRIZALES, AKA MATA-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 355.

No. 10–11138. LOPEZ *v.* SMALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 717.

No. 10–11139. LYNN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 636 F. 3d 1127.

No. 10–11140. JOHNSON *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–11141. JAMES *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 191 Cal. App. 4th 478, 119 Cal. Rptr. 3d 362.

No. 10–11142. KAVEL *v.* MARSHALL, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 687.

No. 10–11144. CARPENTER *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 10–11146. CANTLY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 369.

No. 10–11147. CAMPBELL *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–11148. MCMAHAN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 10–11149. WALLACE *v.* LAWLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–11150. TUVALU *v.* HUERTA-GARCIA, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 768.

No. 10–11151. WINKLER *v.* CLEMENTS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 889.

No. 10–11152. TIMMONS *v.* LEE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 10–11154. BUSH *v.* PLILER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 413 Fed. Appx. 996.

No. 10–11156. NELSON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 10–11157. MCDOWELL *v.* WALSH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 419 Fed. Appx. 149.

No. 10–11158. JORDAN *v.* BRUNSMAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–11160. MIXON *v.* CORRIGAN ET AL. C. A. 6th Cir. Certiorari denied.

No. 10–11161. WHITFIELD *v.* FRESNO COUNTY, CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 10–11162. MARRON *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–11164. SIRECI *v.* BONDI, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 406 Fed. Appx. 348.

No. 10–11165. BEVERLY *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 51 So. 3d 472.

No. 10–11166. ACHHA *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 331 Wis. 2d 729, 795 N. W. 2d 492.

No. 10–11167. NACACIO AMU, AKA AMU *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 406 Fed. Appx. 770.

No. 10–11169. ROLLE *v.* SCISM, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 405 Fed. Appx. 567.

No. 10–11171. ZAMUDIO-OROSCO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 405 Fed. Appx. 83.

No. 10–11173. AULT *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 53 So. 3d 175.

No. 10–11174. ASBURY *v.* STEVENSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 412 Fed. Appx. 651.

No. 10–11175. ALTIDOR *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 10–11176. AGUILAR *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–11177. ALLEN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 399 Ill. App. 3d 1218, 990 N. E. 2d 929.

No. 10–11178. BAKER *v.* LAVALLEY, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–11181. HUBBARD *v.* STEELE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 10–11182. GREEN *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2011 Ark. 92, 380 S. W. 3d 368.

No. 10–11183. CARLSON *v.* AMERICAN EXPRESS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 976.

No. 10–11184. SARABIA *v.* SMALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 10–11185. RAIHALA *v.* MICHIGAN. Cir. Ct. Cass County, Mich. Certiorari denied.

No. 10–11186. MICKENS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 408 Fed. Appx. 253.

No. 10–11187. PIPHUS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 10–11188. MOSLEY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 10–11189. MOSS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–11190. FRAZIER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 419 Fed. Appx. 266.

No. 10–11191. HAMILTON *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 410 Fed. Appx. 216.

No. 10–11192. DUGMORE *v.* LATTIMORE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 413 Fed. Appx. 989.

No. 10–11197. SIMMONS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 414.

No. 10–11198. FELDER *v.* SEVIER, SUPERINTENDENT, MIAMI CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 10–11199. HENRY *v.* JACOBS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 10–11200. HARVIN *v.* HEALTHCARE FUNDING SOLUTIONS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 413 Fed. Appx. 180.

No. 10–11201. GRICCO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 10–11203. GRAHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–11204. GATES *v.* WALSH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–11205. FLORES, AKA LOPEZ *v.* LEE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–11206. HOLLEY *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 10–11208. MUHLENBRUCH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 634 F. 3d 987.

No. 10–11213. MARTINEZ-MENDOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 394.

No. 10–11214. GRIFFIN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 6 A. 3d 568.

No. 10–11215. GRIMES *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 92 So. 3d 817.

No. 10–11216. GREEN *v.* RUDEK. C. A. 10th Cir. Certiorari denied. Reported below: 398 Fed. Appx. 328.

No. 10–11219. SNAPP *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 706.

No. 10–11220. ROJAS-VIVAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 665.

No. 10–11221. WYATT *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 405 Fed. Appx. 846.

No. 10–11222. BAZE *v.* PARKER. C. A. 6th Cir. Certiorari denied. Reported below: 632 F. 3d 338.

No. 10–11223. WINDSOR *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 413 S. W. 3d 568.

No. 10–11226. WINN *v.* PHELPS, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–11227. CUMMINS *v.* CITY OF YUMA, ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 410 Fed. Appx. 72.

No. 10–11228. ROSARIO SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 504.

No. 10–11229. PERKINS *v.* MCKEE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 822.

No. 10–11230. HERNANDEZ *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 56 So. 3d 11.

No. 10–11231. Lorinda J. H. *v.* Winnebago County Department of Health and Human Services. Ct. App. Wis. Certiorari denied.

No. 10–11232. Glaviano *v.* Denney, Warden. C. A. 8th Cir. Certiorari denied.

No. 10–11233. Holmes *v.* Tucker, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 10–11234. Gentis *v.* Miller-Stout, Superintendent, Airway Heights Corrections Center. C. A. 9th Cir. Certiorari denied.

No. 10–11236. Fogle *v.* Slack et al. C. A. 10th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 860.

No. 10–11237. Gipson *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 10–11238. Hearn *v.* Florida et al. C. A. 11th Cir. Certiorari denied. Reported below: 410 Fed. Appx. 268.

No. 10–11239. Forde *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 407 Fed. Appx. 740.

No. 10–11240. Arias-Ceja *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 569.

No. 10–11241. Chestnut *v.* South Carolina Department of Corrections et al. C. A. 4th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 304.

No. 10–11242. Daniel *v.* Long Island Housing Partnership, Inc., et al. C. A. 2d Cir. Certiorari denied.

No. 10–11243. Clark *v.* Richmond Department of Social Services. Sup. Ct. Va. Certiorari denied.

No. 10–11245. Cotton *v.* Bryans Land Co., LLC. C. A. 11th Cir. Certiorari denied.

No. 10–11246. Clemons *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 412 Fed. Appx. 646.

No. 10–11247. DOUGLAS *v.* MILLS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–11248. CROZIER *v.* ENDEL ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–11249. DAVIS *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2011 Ark. 6.

No. 10–11250. ELKADY *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–11251. CURTISS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 407 Fed. Appx. 663.

No. 10–11252. ESPINO-RANGEL *v.* HOLLINGSWORTH, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 10–11253. COOPER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 409.

No. 10–11254. COLWELL *v.* STEVENSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 403 Fed. Appx. 787.

No. 10–11255. EASLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–11256. COOPER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 10–11257. DETRES *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 4 A. 3d 188.

No. 10–11258. CLARK *v.* BONDI, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–11259. DAVIS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 10–11260. CALHOUN *v.* PENNSYLVANIA BOARD OF PROBATION AND PAROLE ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–11261. HELM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 410 Fed. Appx. 767.

No. 10–11263. HAZELWOOD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 412 Fed. Appx. 617.

No. 10–11264. HUFFMAN *v.* FLORIDA ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 43 So. 3d 890.

No. 10–11265. FOURSTAR *v.* MURLAK ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–11266. HOWARD *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 488 Mich. 853, 787 N. W. 2d 502.

No. 10–11267. GARY *v.* JONES, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 10–11268. GONZALEZ *v.* WALSH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–11269. HICKMAN-BEY *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE ET AL. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 10–11270. HAYWOOD *v.* BOOKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 10–11272. PAUL C. *v.* NEBRASKA. Ct. App. Neb. Certiorari denied. Reported below: 18 Neb. App. xxxvii.

No. 10–11273. BOYD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 233.

No. 10–11274. VERDUGO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 10–11276. HUNT *v.* SANDHIR ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 811.

No. 10–11277. HOLSTON *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 10–11278. GARCIA *v.* FIGUEROA, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 369.

No. 10–11282. APARICIO-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 655.

No. 10–11283. TIBBETTS *v.* BOBBY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 3d 436.

No. 10–11284. AGUILAR *v.* NEVEN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 620.

No. 10–11285. VANZANT *v.* WENEROWICZ, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 10–11286. THOMAS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 469.

No. 10–11289. SAEKU *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 154.

No. 10–11290. MENDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 404 Fed. Appx. 209.

No. 10–11291. MCNEILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 427.

No. 10–11292. PARRISH *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 127 Nev. 1165, 373 P. 3d 949.

No. 10–11293. SANCHEZ-GODOY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 402.

No. 10–11294. RAMOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 623 F. 3d 672 and 397 Fed. Appx. 314.

No. 10–11295. SANDOVAL-SIANUQUI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 632 F. 3d 438.

No. 10–11296. RILEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 308.

No. 10–11297. CHANG *v.* ROCKRIDGE MANOR CONDOMINIUM ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–11298. ROSENFELD *v.* HACKETT ET AL. C. A. 9th Cir. Certiorari denied.

No. 10–11299. BROWN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 11–1. JANTO ET VIR *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 396.

No. 11–4. CZARNIECKI *v.* CITY OF CHICAGO, ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 633 F. 3d 545.

No. 11–5. LYNN *v.* TARNEY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 405 Fed. Appx. 753.

No. 11–6. WEASE *v.* WYOMING. Dist. Ct. Wyo., Uinta County. Certiorari denied.

No. 11–7. LEYSE *v.* BANK OF AMERICA, N. A. C. A. 2d Cir. Certiorari denied.

No. 11–8. MIG, INC., FKA METROMEDIA INTERNATIONAL GROUP, INC. *v.* PAUL, WEISS, RIFKIND, WHARTON & GARRISON, L. L. P. C. A. 2d Cir. Certiorari denied. Reported below: 410 Fed. Appx. 408.

No. 11–9. RAMIREZ-HERRERA *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 235 Ore. App. 380, 231 P. 3d 1191.

No. 11–10. A. B., BY AND THROUGH HER PARENTS, SUSAN B. ET VIR *v.* MONTGOMERY COUNTY INTERMEDIATE UNIT. C. A. 3d Cir. Certiorari denied. Reported below: 409 Fed. Appx. 602.

No. 11–12. LOKUTA, JUDGE, COURT OF COMMON PLEAS, ELEVENTH JUDICIAL DISTRICT, LUZERNE COUNTY, PENNSYLVANIA *v.* JUDICIAL CONDUCT BOARD OF PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 608 Pa. 223, 11 A. 3d 427.

No. 11–13. KARTMAN ET AL. *v.* STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 634 F. 3d 883.

No. 11–14. DIBIASI *v.* STARBUCKS CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 948.

No. 11–15. BLACKSTONE GROUP, L. P., ET AL. *v.* LITWIN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 634 F. 3d 706.

No. 11–17. PARK *v.* METROPOLITAN LIFE INSURANCE CO. C. A. 3d Cir. Certiorari denied. Reported below: 421 Fed. Appx. 197.

No. 11–18. ZooCats, Inc., et al. *v.* Department of Agriculture. C. A. 5th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 378.

No. 11–19. Crager *v.* Runyan et al. Sup. Ct. Ark. Certiorari denied. Reported below: 2011 Ark. 43, 382 S. W. 3d 643.

No. 11–20. Bruen *v.* LeGrand, Warden. C. A. 9th Cir. Certiorari denied.

No. 11–21. Bowden et al. *v.* Kirkland & Ellis, LLP. C. A. 7th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 596.

No. 11–23. Middlebrooks *v.* St. Coletta of Greater Washington, Inc., et al. C. A. D. C. Cir. Certiorari denied.

No. 11–24. Mitchell *v.* Tennessee. Sup. Ct. Tenn. Certiorari denied. Reported below: 343 S. W. 3d 381.

No. 11–25. Lillo, Personal Representative of the Estate of Lillo *v.* Bruhn et al. C. A. 11th Cir. Certiorari denied. Reported below: 413 Fed. Appx. 161.

No. 11–28. Malcolm *v.* Honeoye Falls Lima Central School District. C. A. 2d Cir. Certiorari denied. Reported below: 399 Fed. Appx. 680.

No. 11–29. Malone *v.* Sherman, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 412 Fed. Appx. 803.

No. 11–30. Morrison Enterprises, LLC *v.* Dravo Corp. C. A. 8th Cir. Certiorari denied. Reported below: 638 F. 3d 594.

No. 11–31. Talbert *v.* Judiciary of the State of New Jersey et al. C. A. 3d Cir. Certiorari denied. Reported below: 420 Fed. Appx. 140.

No. 11–32. Wells Fargo Bank, N. A. *v.* Issacs et al. Ct. App. Ohio, Hamilton County. Certiorari denied. Reported below: 2010-Ohio-5811.

No. 11–33. Hassan *v.* Morawcznski. C. A. 9th Cir. Certiorari denied. Reported below: 405 Fed. Appx. 129.

No. 11–34. Flint *v.* Coach House, Inc., et al. Ct. App. Ky. Certiorari denied.

No. 11–39. Reimer *v.* Holder, Attorney General. C. A. 5th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 286.

No. 11–41. Vierich *v.* MGM Grand Hotel, LLC, et al. Sup. Ct. Nev. Certiorari denied. Reported below: 127 Nev. 1183, 373 P. 3d 970.

No. 11–43. Wooten et al. *v.* Quicken Loans Inc. C. A. 11th Cir. Certiorari denied. Reported below: 626 F. 3d 1187.

No. 11–47. Mini Melts, Inc. *v.* Reckitt Benckiser, Inc. C. A. 5th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 271.

No. 11–50. Alto Eldorado Partnership et al. *v.* Santa Fe County, New Mexico, et al. C. A. 10th Cir. Certiorari denied. Reported below: 634 F. 3d 1170.

No. 11–51. Richards *v.* JRK Property Holdings. C. A. 5th Cir. Certiorari denied. Reported below: 405 Fed. Appx. 829.

No. 11–52. Archila *v.* KFC U. S. Properties, Inc. C. A. 9th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 667.

No. 11–53. Chadda *v.* Block. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–54. Schneller *v.* WCAU Channel 10. C. A. 3d Cir. Certiorari denied. Reported below: 413 Fed. Appx. 424.

No. 11–55. Liban *v.* Middlebrook at Monmouth. C. A. 3d Cir. Certiorari denied. Reported below: 419 Fed. Appx. 284.

No. 11–56. International Painters and Allied Trades Industry Pension Plan *v.* Shore. C. A. 9th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 597.

No. 11–59. Isaiah *v.* Western Maryland Hospital System et al. C. A. 4th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 301.

No. 11–60. Gunder's Auto Center *v.* State Farm Mutual Automobile Insurance Co. C. A. 11th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 819.

No. 11–61. Pham *v.* Texas. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 324 S. W. 3d 869.

No. 11–62. CAZARES ET AL. *v.* COSBY. Ct. App. Utah. Certiorari denied. Reported below: 2010 UT App 269.

No. 11–63. SHELL PETROLEUM N. V. ET AL. *v.* KIOBEL, INDIVIDUALLY AND ON BEHALF OF HER LATE HUSBAND, KIOBEL, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 621 F. 3d 111.

No. 11–65. FENNER *v.* COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. Certiorari denied.

No. 11–66. IZEN *v.* COMMISSION ON LAWYER DISCIPLINE. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 322 S. W. 3d 308.

No. 11–68. GARGANO ET UX. *v.* THOMAS GRAVES LANDING CONDOMINIUM TRUST ET AL. App. Ct. Mass. Certiorari denied. Reported below: 78 Mass. App. 1112, 938 N. E. 2d 906.

No. 11–70. BARNETT *v.* CARBERRY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 420 Fed. Appx. 67.

No. 11–72. FIRSTBANK PUERTO RICO, INC., ET AL. *v.* LA VIDA MERGER SUB, INC., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 638 F. 3d 37.

No. 11–73. SILER *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 416 Fed. Appx. 907.

No. 11–75. C & J COUPE FAMILY LIMITED PARTNERSHIP *v.* COUNTY OF HAWAII ET AL. Sup. Ct. Haw. Certiorari denied. Reported below: 124 Haw. 281, 242 P. 3d 1136.

No. 11–76. PIRES *v.* FROTA OCEANICA BRASILEIRA, S. A. (two judgments). App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 11–78. REAL ESTATE INNOVATIONS, INC. *v.* HOUSTON ASSOCIATION OF REALTORS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 344.

No. 11–81. GERHART *v.* LAKE COUNTY, MONTANA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 637 F. 3d 1013.

No. 11–87. CARTER *v.* UNIVERSITY OF HAWAII. Int. Ct. App. Haw. Certiorari denied. Reported below: 130 Haw. 349, 310 P. 3d 1050.

No. 11–89. VIEIRA *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied.

No. 11–90. WINTERS *v.* BROWN. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 51 So. 3d 656.

No. 11–91. NORRIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 419 Fed. Appx. 190.

No. 11–92. ORIENT MINERAL CO. ET AL. *v.* BANK OF CHINA. C. A. 10th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 721.

No. 11–95. DOS PICOS, L. L. C., FKA DOS PICOS LAND LIMITED PARTNERSHIP, ET AL. *v.* PIMA COUNTY, ARIZONA. Ct. App. Ariz. Certiorari denied. Reported below: 225 Ariz. 458, 240 P. 3d 853.

No. 11–96. RUSSELL *v.* SOUTH DAKOTA STATE BAR DISCIPLINARY BOARD. Sup. Ct. S. D. Certiorari denied. Reported below: 2011 S. D. 17, 797 N. W. 2d 77.

No. 11–97. CASTLE *v.* THOMPSON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 631 F. 3d 1194.

No. 11–98. TOOMER ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 615 F. 3d 1233.

No. 11–100. OSTERBUR *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari denied.

No. 11–105. MOATS *v.* REPUBLICAN PARTY OF NEBRASKA, AKA NEBRASKA REPUBLICAN PARTY. Sup. Ct. Neb. Certiorari denied. Reported below: 281 Neb. 411, 796 N. W. 2d 584.

No. 11–106. CITY OF SAN LEANDRO, CALIFORNIA *v.* INTERNATIONAL CHURCH OF THE FOURSQUARE GOSPEL. C. A. 9th Cir. Certiorari denied. Reported below: 673 F. 3d 1059.

No. 11–108. KORDA *v.* BOUCHARD, SHERIFF, OAKLAND COUNTY, MICHIGAN, ET AL. Ct. App. Mich. Certiorari denied.

No. 11–110. UDOFOT *v.* SEVEN EIGHTS LIQUOR. Ct. App. Minn. Certiorari denied.

No. 11–111. KOBOBEL ET AL. *v.* COLORADO ET AL. Sup. Ct. Colo. Certiorari denied. Reported below: 249 P. 3d 1127.

No. 11–114. JARVIS *v.* BOLDEN, ADMINISTRATOR, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION. C. A. 11th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 925.

No. 11–116. AERA ENERGY LLC ET AL. *v.* SALAZAR, SECRETARY OF THE INTERIOR, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 642 F. 3d 212.

No. 11–118. MARTINEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 11–121. ZENG *v.* HOLDER, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 258.

No. 11–124. HEARTWOOD 88, LLC, ET AL. *v.* BCS SERVICES, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 637 F. 3d 750.

No. 11–130. HAWLEY *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 11–136. BAGLEY ET AL. *v.* BLAGOJEVICH ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 646 F. 3d 378.

No. 11–137. BAPTISTA *v.* JPMORGAN CHASE BANK, N. A., AKA WASHINGTON MUTUAL BANK. C. A. 11th Cir. Certiorari denied. Reported below: 640 F. 3d 1194.

No. 11–138. BAUER, TRUSTEE OF THE CRAIG E. BAUER INSURANCE TRUST *v.* RELIANCE STANDARD LIFE INSURANCE CO. C. A. 3d Cir. Certiorari denied. Reported below: 421 Fed. Appx. 226.

No. 11–140. STRATEGIC IMPACT CORP. ET AL. *v.* BIG DOG LOGISTICS, INC., ET AL. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 312 S. W. 3d 122.

No. 11–141. PEANUT FARMERS *v.* MURPHY, ADMINISTRATOR, RISK MANAGEMENT AGENCY. C. A. 4th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 246.

No. 11–145. NYOUNAI, AKA NGONYOUNAI *v.* HOLDER, ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied.

No. 11–146. MOSS *v.* FAIRBORN CITY SCHOOLS. C. A. 6th Cir. Certiorari denied.

No. 11–150. MOORE *v.* USC UNIVERSITY HOSPITAL, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 640.

No. 11–151. PADILLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 639 F. 3d 892.

No. 11–152. DAVIS *v.* MCKINNEY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 442.

No. 11–153. KELES *v.* TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 74 App. Div. 3d 435, 903 N. Y. S. 2d 18.

No. 11–154. MARTINEZ *v.* KURT. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 56 So. 3d 780.

No. 11–155. ALVAREZ *v.* WONG, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 652.

No. 11–176. POOLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 640 F. 3d 114.

No. 11–200. PUCHE ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–205. BRADSHAW *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 618.

No. 11–214. MELENDEZ CAMILO *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 642 F. 3d 1040.

No. 11–220. LIGGINS *v.* BOUFFAULT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 237.

No. 11–229. BROWN *v.* HAWAII ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 642.

No. 11–236. FONDREN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 327.

No. 11–237. LUJAN *v.* TEXAS. Ct. App. Tex., 8th Dist. Certiorari denied. Reported below: 419 S. W. 3d 407.

No. 11–239. SAMUELS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 419 Fed. Appx. 27.

No. 11–250. MITCHELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 635 F. 3d 990.

No. 11–5003. WADE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 538.

No. 11–5004. TAYLOR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 637 F. 3d 812.

No. 11–5007. JENKINS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 633 F. 3d 788.

No. 11–5008. LOCKLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 632 F. 3d 1238.

No. 11–5009. LATHAM *v.* PALIN ET AL. Sup. Ct. Alaska. Certiorari denied. Reported below: 251 P. 3d 341.

No. 11–5010. PENA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 407 Fed. Appx. 589.

No. 11–5011. NIX *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 628 F. 3d 1341.

No. 11–5012. MCDOWELL *v.* CLEMENTS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 755.

No. 11–5013. PULLEN-WALKER *v.* ROOSEVELT UNIVERSITY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 405 Fed. Appx. 46.

No. 11–5016. DAVILA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–5017. LOSEE *v.* GARDEN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 821.

No. 11–5018. JENNER *v.* MARTUSCELLO, SUPERINTENDENT, COXSACKIE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 11–5020. CRUZ MARTINEZ *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 263.

No. 11–5021. CUESTA-RODRIGUEZ *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 2010 OK CR APP 23, 241 P. 3d 214.

No. 11–5022. ALEXANDER *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 412 Fed. Appx. 719.

No. 11–5023. BIGGS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 333 S. W. 3d 472.

No. 11–5025. ARNOLD *v.* MALLON ET AL. C. A. 8th Cir. Certiorari denied.

No. 11–5026. BOWLING *v.* PARKER, WARDEN. Sup. Ct. Ky. Certiorari denied.

No. 11–5027. ANDREWS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 329 S. W. 3d 369.

No. 11–5028. BELCHER *v.* SEXTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–5029. BUFFINGTON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–5030. BOWERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 638 F. 3d 616.

No. 11–5031. ANDRES *v.* MCKEE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–5032. POPE *v.* BERNARD ET AL. C. A. 1st Cir. Certiorari denied.

No. 11–5033. TJANDRA *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 11–5034. NICKOLS, AKA TERRITO *v.* MORRIS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 534.

No. 11–5035. POOLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–5036. SANCHEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 419 Fed. Appx. 27.

No. 11–5037. ROMERO-CAMACHO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 471.

No. 11–5039. WATKINS *v.* HAYNES, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 11–5040. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–5043. PADGETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 287.

No. 11–5044. PHELPS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–5046. KAMERUD *v.* UNITED STATES; and
No. 11–5083. KAMERUD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 629 F. 3d 790.

No. 11–5048. CARROLL *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 65.

No. 11–5050. CORBIN *v.* TENNIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–5051. RICKER *v.* FINANDER ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–5052. SCHOPPE-RICO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 11–5053. REED *v.* DONAHOE, POSTMASTER GENERAL. C. A. 11th Cir. Certiorari denied.

No. 11–5054. ROLLINS *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 11–5055. WOZNIAK *v.* GRAHAM ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 127 Ohio St. 3d 1503, 2011-Ohio-19, 939 N. E. 2d 1266.

No. 11–5057. PRESTON *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied.

No. 11–5059. BRYANT *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–5060. AVILA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 634 F. 3d 958.

No. 11–5062. BORTZ *v.* CAMERON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CRESSON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–5063. BENOIT *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 11–5065. LOMAX *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–5066. OLVERA-RIVERA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 413 Fed. Appx. 71.

No. 11–5068. QUY NGUYEN *v.* HO. Super. Ct. Pa. Certiorari denied. Reported below: 6 A. 3d 556.

No. 11–5069. CARVAJAL *v.* ARTUS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 3d 95.

No. 11–5071. SPENCER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 231.

No. 11–5072. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 632 F. 3d 1043.

No. 11–5074. KEMPPAINEN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–5075. VADEN *v.* MCDONALD, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 662.

No. 11–5076. MCBURNEY *v.* DISCIPLINARY BOARD OF THE RHODE ISLAND SUPREME COURT. Sup. Ct. R. I. Certiorari denied. Reported below: 13 A. 3d 654.

No. 11–5077. O'GRADY *v.* COURT OF APPEALS OF WISCONSIN, DISTRICT III. Sup. Ct. Wis. Certiorari denied.

No. 11–5079. MCGREW *v.* GILCREASE ET AL. C. A. 5th Cir. Certiorari denied.

No. 11–5080. PASCHALL *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 11–5082. JARVIS *v.* GRADY MANAGEMENT, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 183.

No. 11–5084. RIOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 636 F. 3d 168.

No. 11–5085. SMITH *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 64 So. 3d 118.

No. 11–5088. BRIGGS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 608 Pa. 430, 12 A. 3d 291.

No. 11–5089. BEY, AKA LEWIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 570.

No. 11–5091. BERRY *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 227 W. Va. 221, 707 S. E. 2d 831.

No. 11–5092. PECCI *v.* SLOAN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 180.

No. 11–5093. REDMOND *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 403.

No. 11–5096. WATFORD *v.* STEVENSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 413 Fed. Appx. 622.

No. 11–5097. WELLINGTON *v.* SEXTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–5098. TAYLOR, ON BEHALF OF GORDON *v.* LIVINGSTON, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 473.

No. 11–5100. WEST *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 631 F. 3d 563.

No. 11–5103. MANNING *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 78 App. Div. 3d 585, 912 N. Y. S. 2d 183.

No. 11–5104. KNOX *v.* WORKMAN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 781.

No. 11–5105. LAIRD *v.* MACKAY ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–5106. JONES *v.* CAMDEN POLICE DEPARTMENT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 351.

No. 11–5108. MCCREE *v.* SHERROD, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 408 Fed. Appx. 990.

No. 11–5109. MOORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 454.

No. 11–5110. CANTY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 541.

No. 11–5111. DIAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 637 F. 3d 592.

No. 11–5112. EMANUEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 760.

No. 11–5114. MCKINNEY *v.* FLORIDA DEPARTMENT OF CORRECTIONS ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–5115. MOORE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 405 Ill. App. 3d 1201, 997 N. E. 2d 1010.

No. 11–5116. STROUD *v.* ADAMS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 632.

No. 11–5117. MOHHOMMED *v.* AMISON ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–5118. OLIVIER *v.* COUNTY OF LOS ANGELES, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 578.

No. 11–5119. NELSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 419 Fed. Appx. 65.

No. 11–5121. ANDERSON *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 175.

No. 11–5122. Ali *v.* Florida. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 59 So. 3d 1151.

No. 11–5123. Black *v.* Tendras. Ct. Sp. App. Md. Certiorari denied. Reported below: 197 Md. App. 752 and 762.

No. 11–5124. Boyd *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 640 F. 3d 657.

No. 11–5125. Butry *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 15 A. 3d 540.

No. 11–5126. Tyler *v.* District of Columbia. Ct. App. D. C. Certiorari denied.

No. 11–5127. Tyler *v.* District of Columbia. Ct. App. D. C. Certiorari denied.

No. 11–5131. Washington *v.* United States. C. A. 4th Cir. Certiorari denied.

No. 11–5132. Simms *v.* Freeman et al. C. A. 3d Cir. Certiorari denied. Reported below: 428 Fed. Appx. 119.

No. 11–5133. Santivanez *v.* Drew, Warden. C. A. 11th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 833.

No. 11–5134. Smith *v.* Hutchins, Sheriff, Jefferson County, Georgia, et al. C. A. 11th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 785.

No. 11–5135. Slater *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 11–5136. Rodriguez-Camacho *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 11–5137. Robbins *v.* Smith, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 37.

No. 11–5138. Partin *v.* Simpson, Warden. C. A. 6th Cir. Certiorari denied.

No. 11–5139. Nelson *v.* United States. Ct. App. D. C. Certiorari denied.

No. 11–5140. Suggs *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 501.

No. 11–5142. CHANEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 394.

No. 11–5143. WRAY *v.* REYNOLDS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 983.

No. 11–5145. MOSS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–5147. MORAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 300.

No. 11–5148. CAMPBELL *v.* SOCIAL SECURITY ADMINISTRATION. C. A. 3d Cir. Certiorari denied. Reported below: 446 Fed. Appx. 477.

No. 11–5151. RODRIGUEZ-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 477.

No. 11–5153. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 627 F. 3d 1068.

No. 11–5154. OLIVARES-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–5155. PEARSON *v.* NAPOLITANO, SECRETARY OF HOMELAND SECURITY. C. A. 5th Cir. Certiorari denied.

No. 11–5156. MCMILLAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 361.

No. 11–5157. NELSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 239.

No. 11–5158. BOULDING *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 412 Fed. Appx. 798.

No. 11–5159. BATTLE *v.* BODISON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 413 Fed. Appx. 584.

No. 11–5160. BUCHANAN *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 11–5161. BLOODWORTH, AKA GREEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 412 Fed. Appx. 639.

No. 11–5162. NED *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 637 F. 3d 562.

No. 11–5163. SHAVERS *v.* BAUMAN ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–5164. SHEROD *v.* GEORGIA DEPARTMENT OF CORRECTIONS ET AL. Ct. App. Ga. Certiorari denied.

No. 11–5165. DANIEL *v.* DAVIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–5166. CHINSAMMY *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 417 Fed. Appx. 950.

No. 11–5167. GREENSPAN *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 11–5168. FERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 657 F. 3d 811.

No. 11–5169. GERMAIN *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 402 Fed. Appx. 744.

No. 11–5170. HALL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–5172. ILGEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 728.

No. 11–5173. FASTHORSE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 639 F. 3d 1182.

No. 11–5176. FRASHER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 632 F. 3d 450.

No. 11–5177. HENDRICKS ET UX. *v.* STEPP ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 406 Fed. Appx. 738.

No. 11–5178. FLUKER *v.* UNITED KINGDOM ET AL. C. A. 2d Cir. Certiorari denied.

No. 11–5179. PERDUE *v.* LUDWICK, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–5180. MCHUGH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 639 F. 3d 1250.

No. 11–5181. JOHNSON *v.* RYAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 408 Fed. Appx. 71.

No. 11–5182. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–5183. MCCONNEL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 691.

No. 11–5185. DORSEY *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 11–5186. VIRGEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 386 Fed. Appx. 500.

No. 11–5187. CARDONA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 11–5189. HERTEL *v.* SEVIER, SUPERINTENDENT, MIAMI CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 11–5190. SMITH *v.* DEFENSE LOGISTICS AGENCY ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–5193. TALBERT *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 11–5195. VOLZ *v.* ROZUM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–5196. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–5197. TORRES-PALOS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 407 Fed. Appx. 934.

No. 11–5198. T. A. P. *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 72 So. 3d 707.

No. 11–5199. MCQUIRTER *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. Ct. App. Mich. Certiorari denied.

No. 11–5201. PITTS *v.* DAVIS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 11–5202. Lopez *v.* Martuscello, Superintendent, Coxsackie Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 11–5203. Jackson *v.* Hobbs, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied.

No. 11–5205. Loustau *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 11–5206. Guzman *v.* Lappin, Director, Federal Bureau of Prisons, et al. C. A. 11th Cir. Certiorari denied.

No. 11–5207. McClellan *v.* Marshall et al. C. A. 9th Cir. Certiorari denied.

No. 11–5208. Hidalgo *v.* Sobina, Superintendent, State Correctional Institution at Albion, et al. C. A. 3d Cir. Certiorari denied.

No. 11–5209. Harris *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 402 Fed. Appx. 767.

No. 11–5213. Stinson *v.* Nebraska Furniture Mart. Ct. App. Neb. Certiorari denied. Reported below: 18 Neb. App. xcviii.

No. 11–5214. Frederick *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 382 Fed. Appx. 58.

No. 11–5215. Granados-Arvizu *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 294.

No. 11–5216. Felder *v.* Indiana. Ct. App. Ind. Certiorari denied. Reported below: 930 N. E. 2d 83.

No. 11–5217. Gilliland *v.* Turner, Warden. C. A. 6th Cir. Certiorari denied.

No. 11–5219. Horne *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 11–5220. Frazier *v.* Clements, Executive Director, Colorado Department of Corrections, et al. C. A. 10th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 768.

No. 11–5221. Freitag *v.* Nooth, Superintendent, Snake River Correctional Institution. C. A. 9th Cir. Certiorari denied.

No. 11–5222. PITCHON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, ET AL. C. A. 5th Cir. Certiorari denied.

No. 11–5223. MINER *v.* TEXAS. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 11–5224. RICKS *v.* NEWPORT NEWS SHIPBUILDING & DRY DOCK CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 410 Fed. Appx. 665.

No. 11–5225. SOLESBEE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–5228. GAJADHAR *v.* LEE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 11–5230. GARRETT *v.* SANDOR, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–5231. FLEMINGS *v.* ILLINOIS DEPARTMENT OF CORRECTIONS ET AL. C. A. 7th Cir. Certiorari denied.

No. 11–5233. GREENE *v.* POLLARD, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 11–5234. GAY *v.* EVANS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 723.

No. 11–5235. HEBERT *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 11–5236. PACHECO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–5237. POULSON *v.* PENNSYLVANIA DEPARTMENT OF PROBATION AND PAROLE. Sup. Ct. Pa. Certiorari denied. Reported below: 610 Pa. 394, 20 A. 3d 1178.

No. 11–5238. MORA *v.* BROWN, SUPERINTENDENT, EASTERN NEW YORK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 11–5239. WILLIAMS *v.* KOON, WARDEN. Super. Ct. Baldwin County, Ga. Certiorari denied.

No. 11–5240. Watkins *v.* Haynes, Warden. C. A. 11th Cir. Certiorari denied.

No. 11–5243. Roberts *v.* Marshall, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 627 F. 3d 768.

No. 11–5244. Shubaralyan et vir *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 685.

No. 11–5245. Gonzalez *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 11–5247. Hooper *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 11–5248. Flenoid *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 11–5249. De Jesus Garcia *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 334.

No. 11–5250. Fillman *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 410 Fed. Appx. 173.

No. 11–5252. Green *v.* Tucker, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 11–5254. Eras-Machado *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 514.

No. 11–5255. Cox *v.* Ayers, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 80.

No. 11–5256. Cousins *v.* Green, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 278.

No. 11–5257. Halstied *v.* Oklahoma et al. Ct. Crim. App. Okla. Certiorari denied.

No. 11–5258. Gee *v.* Kerestes, Superintendent, State Correctional Institution at Mahanoy, et al. C. A. 3d Cir. Certiorari denied.

No. 11–5259. Hawkins *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 11–5260. GONZALEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 615 F. 3d 7.

No. 11–5261. WALLACE, aka GREEN *v.* KLOPOTOSKI, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–5262. GRANDBERRY *v.* HARRY. C. A. 6th Cir. Certiorari denied.

No. 11–5263. FINLEY *v.* NIXON, GOVERNOR OF MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 11–5264. HAHN *v.* BAUER ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 393 Fed. Appx. 413.

No. 11–5265. GERKEN *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 11–5266. GEER *v.* NISH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT WAYMART, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–5267. MARTINEZ *v.* VILLALOBOS ET AL. C. A. 5th Cir. Certiorari denied.

No. 11–5268. LISTMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 636 F. 3d 425.

No. 11–5269. HURDLE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–5270. HATCH *v.* PARKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–5271. GLEASON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 11–5272. INGRIM *v.* DENNEY, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 11–5273. FOURNERAT *v.* WISCONSIN LAW REVIEW ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 816.

No. 11–5274. JOREN *v.* NAPOLITANO, SECRETARY OF HOMELAND SECURITY. C. A. 7th Cir. Certiorari denied. Reported below: 633 F. 3d 1144.

No. 11–5275. MURRAY *v.* INGRAM. C. A. 11th Cir. Certiorari denied.

No. 11–5276. SPENCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 447 Fed. Appx. 435.

No. 11–5277. SAVOY *v.* WASHINGTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–5278. SACOR-QUIJIUX *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 264.

No. 11–5279. WATLEY *v.* MEE, ADMINISTRATOR, EAST JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–5280. WORTHAM *v.* CHRIS HANSEN LAB INC. C. A. 5th Cir. Certiorari denied.

No. 11–5281. WHITE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 11–5282. WOODS ET UX. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 594.

No. 11–5283. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 242.

No. 11–5284. WELCH *v.* WORKMAN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 639 F. 3d 980.

No. 11–5285. YOUNG SON IM *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 399 Fed. Appx. 669.

No. 11–5286. GAINES *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–5287. HARGROVE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 625 F. 3d 170.

No. 11–5288. GREENAWALT *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–5289. FULLER *v.* MOHR, DIRECTOR, OHIO DEPARTMENT OF REHABILITATION AND CORRECTION. Ct. App. Ohio, Franklin County. Certiorari denied. Reported below: 2010-Ohio-5444.

No. 11–5290. FOSTER *v.* KELLY, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 11–5291. GAYNOR *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 11 A. 3d 1030.

No. 11–5292. HARPER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 11 A. 3d 1011.

No. 11–5295. BOOK *v.* TOBIN ET AL. C. A. 2d Cir. Certiorari denied.

No. 11–5296. ALI *v.* FISCHER, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 2d Cir. Certiorari denied.

No. 11–5297. BURNSIDE *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–5298. CALLIES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 266.

No. 11–5299. O'CONNOR *v.* BORGNER ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–5300. DOBRIC *v.* BARON. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 70 App. Div. 3d 830, 892 N. Y. S. 2d 900.

No. 11–5301. HUEBER *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 81 App. Div. 3d 1466, 916 N. Y. S. 2d 727.

No. 11–5303. TORRES-JUAREZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 11–5304. STURDZA *v.* UNITED ARAB EMIRATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 405 Fed. Appx. 512.

No. 11–5306. PENG THAO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–5307. STURDZA *v.* UNITED ARAB EMIRATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 406 Fed. Appx. 494.

No. 11–5308. KNIGHTS *v.* STIHL INC. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 356.

No. 11–5309. LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 390.

No. 11–5310. HINOJOS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 11–5314. APODACA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 641 F. 3d 1077.

No. 11–5316. ABARI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 638 F. 3d 847.

No. 11–5317. NUNEZ-POLANCO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 428 Fed. Appx. 13.

No. 11–5318. CAZARES *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–5319. COURTRIGHT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 632 F. 3d 363.

No. 11–5321. DAVIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–5322. ELSTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 423 Fed. Appx. 190.

No. 11–5324. HUSBAND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 389 Fed. Appx. 238.

No. 11–5326. HOUSTON *v.* NEVEN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 637 F. 3d 976.

No. 11–5327. SMITH *v.* MCWHIRTER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 510.

No. 11–5329. LOPES *v.* CAMPBELL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 408 Fed. Appx. 13.

No. 11–5330. MACK *v.* SCRIBNER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–5331. BROWN *v.* CLEVELAND MUNICIPAL SCHOOL DISTRICT, AKA CLEVELAND METROPOLITAN SCHOOL DISTRICT, ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–5332. NORVELL *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 11–5333. MORRIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 713.

No. 11–5334. RODRIGUEZ *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 11–5335. SHAH, AKA LINDSEY *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 16 A. 3d 938.

No. 11–5336. SEARCY *v.* CULHANE ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–5337. FINZE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 672.

No. 11–5338. WASHINGTON *v.* NEVEN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–5340. SAHIBI *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–5341. ELIZONDO-RAMOS, AKA ELIZONDO, AKA FRANCISCO ELIZONDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 379.

No. 11–5344. CARR *v.* H. O. P. E. COMMUNITY SERVICE, INC. C. A. 4th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 228.

No. 11–5345. CEPHAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 410 Fed. Appx. 528.

No. 11–5346. SHIPLEY *v.* WOOLRICH, INC., ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 428 Fed. Appx. 4.

No. 11–5347. WASHINGTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 634 F. 3d 1180.

No. 11–5348. WATKINS *v.* HAYNES, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 11–5351. MARTINEZ-REYES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 692.

No. 11–5352. JOHNSON *v.* KANSAS PAROLE BOARD. C. A. 10th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 867.

No. 11–5353. LUNA-GINOVEVA *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 11–5355. RICHARDSON *v.* SOUTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 201.

No. 11–5356. ADKINS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 11–5358. AMAVIZCA *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 11–5359. ANDREWS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–5360. ASH *v.* PHILADELPHIA PRISON SYSTEM ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 406 Fed. Appx. 581.

No. 11–5362. SHELTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 514.

No. 11–5363. WINES *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 11–5364. WINFIELD *v.* KILPATRICK ET AL. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 11–5365. OMMUNDSON *v.* MAHONEY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–5366. GUNN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 419 Fed. Appx. 106.

No. 11–5367. GRINDLING *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–5370. LANDOR *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 2009–1740 (La. App. 1 Cir. 4/1/10), 34 So. 3d 1166.

No. 11–5371. COLON *v.* LEE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 11–5372. CATHCART *v.* CORRECTIONS CORPORATION OF AMERICA ET AL. Ct. App. Okla. Certiorari denied.

No. 11–5374. EDWARDS *v.* OREGON BOARD OF PAROLE AND POST-PRISON SUPERVISION. Ct. App. Ore. Certiorari denied. Reported below: 239 Ore. App. 629, 246 P. 3d 755.

No. 11–5375. NEWSOME *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–5376. JONES *v.* HOWES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–5377. WATKINS *v.* HAYNES, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 11–5378. WILLIAMS *v.* SALAZAR, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–5379. WEEKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–5380. GODDARD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 638 F. 3d 490.

No. 11–5383. THOMAS *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 11–5386. JOST *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 412 Fed. Appx. 957.

No. 11–5387. LARSON *v.* ALASKA. Sup. Ct. Alaska. Certiorari denied. Reported below: 254 P. 3d 1073.

No. 11–5388. LOVE *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 11–5389. PRAILEAU *v.* HOYE, ACTING JUDGE, SCHENECTADY COUNTY COURT, ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 16 N. Y. 3d 755, 944 N. E. 2d 644.

No. 11–5391. PHAM *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–5392. ORTEGA-URQUIDI, AKA URQUIDI-ORTEGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 305.

No. 11–5394. PORTER *v.* LOMBARDI ET AL. C. A. 8th Cir. Certiorari denied.

No. 11–5397. HARRIS *v.* UPTON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 11–5399. LUDWIG *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 641 F. 3d 1243.

No. 11–5400. WHITE *v.* MULLIN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 774.

No. 11–5401. VEGA *v.* HARDY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 11–5402. PREVET *v.* BARONE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 428 Fed. Appx. 218.

No. 11–5403. MYLES *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 197 Md. App. 759.

No. 11–5404. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–5405. LANE *v.* DOE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 964.

No. 11–5407. LOPEZ *v.* TRANI, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 628 F. 3d 1228.

No. 11–5409. PREYEAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–5410. PEREZ *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 60 So. 3d 391.

No. 11–5412. BLACKWELL *v.* COLORADO. Ct. App. Colo. Certiorari denied. Reported below: 251 P. 3d 468.

No. 11–5413. BOWMAN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 77 App. Div. 3d 559, 909 N. Y. S. 2d 720.

No. 11–5414. BELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 420.

No. 11–5415. VALDOVINOS-MENDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 641 F. 3d 1031.

No. 11–5416. BURL *v.* DOTSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–5418. GALVAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 408 Fed. Appx. 224.

No. 11–5419. STENHOUSE *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 631 F. 3d 888.

No. 11–5420. STANLEY *v.* COX, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–5421. HAMILTON *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 501.

No. 11–5422. OLAYA *v.* UNITED STATES; and
No. 11–5426. CAMPAZ-GUERRERO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 898.

No. 11–5423. COOPER *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 53 So. 3d 1024.

No. 11–5424. COX *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 638 F. 3d 1356.

No. 11–5425. DURAN-MONTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 412.

No. 11–5427. JEANETTA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–5428. RYAN *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–5429. SEAVER, AKA SKANDHA *v.* CONRAD ET AL. C. A. 1st Cir. Certiorari denied.

No. 11–5430. SUTHERLAND *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 11–5431. GREEN *v.* RHEE ET AL. Ct. App. D. C. Certiorari denied.

No. 11–5432. HOLLINQUEST *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 190 Cal. App. 4th 1534, 119 Cal. Rptr. 3d 551.

No. 11–5434. WATKINS *v.* HAYNES, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 11–5435. TISDALE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 204.

No. 11–5436. UCKELE *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 11–5437. HOWE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 579.

No. 11–5438. FINCHER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–5439. GAHANO *v.* UNITED STEELWORKERS INTERNATIONAL UNION LOCAL 8–0369 (USW) ET AL. (two judgments). C. A. 9th Cir. Certiorari denied.

No. 11–5440. PARTIDA-MARTINEZ *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 11–5441. SUBER *v.* KERESTES, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–5442. ROBEY *v.* BUTTS, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 11–5443. PORTER *v.* GOORD ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 415 Fed. Appx. 315.

No. 11–5444. ELLIS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 403 Ill. App. 3d 1101, 993 N. E. 2d 148.

No. 11–5445. COBBLE *v.* OWENS, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–5446. LARKIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 629 F. 3d 177.

No. 11–5447. JAIME *v.* ALMAGER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–5448. NELSON *v.* LEEK, CIRCUIT CLERK, DESHA COUNTY CIRCUIT COURT. C. A. 8th Cir. Certiorari denied.

No. 11–5449. OLIVER *v.* KANAN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 481.

No. 11–5450. MITCHELL *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–5451. JARVIS *v.* STAPLES, INC. C. A. 4th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 193.

No. 11–5452. ELTAYIB *v.* DEWALT, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–5453. COLLINS *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 299 Conn. 567, 10 A. 3d 1005.

No. 11–5454. VILLAR *v.* PATTERSON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 11–5455. WHITE *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 11–5458. ROGERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 315.

No. 11–5459. SCOTT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 548.

No. 11–5460. SAUCEDO-ROMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 404.

No. 11–5461. SURLES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 834.

No. 11–5462. TINAJERO-ORTIZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 635 F. 3d 1100.

No. 11–5463. VAQUERA-JUANES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 638 F. 3d 734.

No. 11–5464. COMBS *v.* SWARTHOUT, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–5465. DIAZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 644 F. 3d 79 and 437 Fed. Appx. 8.

No. 11–5466. O'CONNELL *v.* HARRINGTON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 746.

No. 11–5467. VAN SON THAI, AKA SON TAU, AKA THAI SON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 283.

No. 11–5468. ALMANZAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 634 F. 3d 1214.

No. 11–5469. ABOUTALEB *v.* YASSIN. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–5470. ABOUTALEB *v.* ELGAMMAL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–5471. APARICIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–5473. KAMPFER *v.* REU ET AL. C. A. 2d Cir. Certiorari denied.

No. 11–5475. JOHNSTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 226.

No. 11–5476. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 195.

No. 11–5477. JOHNSON *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 642.

No. 11–5478. LEULUAIALII *v.* SINCLAIR, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 11–5479. JILES *v.* DAVIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–5480. TAYLOR *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–5481. CHA, AKA SAC *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 790.

No. 11–5483. EVANS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 576.

No. 11–5484. OWEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 285.

No. 11–5486. MCKINLEY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–5487. OCASIO *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 81 App. Div. 3d 1469, 917 N. Y. S. 2d 803.

No. 11–5489. JEAN-MARIE *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 11–5490. LINDEN *v.* DISTRICT COUNCIL 1707–AFSCME ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 415 Fed. Appx. 337.

No. 11–5491. MANZO-APARICIO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 225.

No. 11–5492. CHRISTMAN ET UX. *v.* WALSH, JUDGE, CIRCUIT COURT OF FLORIDA, ST. LUCIE COUNTY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 841.

No. 11–5493. MCCLUER *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 11–5494. POTTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 630 F. 3d 1260.

No. 11–5495. RAMIREZ-PEREZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 643 F. 3d 173.

No. 11–5496. SHEALEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 641 F. 3d 627.

No. 11–5497. SWAFFORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 639 F. 3d 265.

No. 11–5498. RICHARDS *v.* CURRY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–5499. SCHOPPE-RICO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 11–5500. STEBBINS *v.* WAL-MART STORES, INC. C. A. 8th Cir. Certiorari denied.

No. 11–5501. REDD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 255.

No. 11–5502. EL GHANNAM *v.* SUBURBAN HOSPITAL INC. ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 196 Md. App. 714 and 732.

No. 11–5503. SHIVERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 697.

No. 11–5504. SAEED *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 598.

No. 11–5505. SMITH *v.* JACKSON ET AL. Sup. Ct. Ill. Certiorari denied.

No. 11–5507. SINGLETON *v.* SIX FLAGS OVER GEORGIA ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–5509. PEREZ *v.* SALAZAR, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–5510. CASTILLO-CORPUS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 361.

No. 11–5511. ORNELAS DIAZ *v.* CAMPBELL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 975.

No. 11–5512. ROBERTS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 893.

No. 11–5513. RAMESES *v.* KERNAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–5514. NANCE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 801.

No. 11–5515. PALMER *v.* BUGE ET AL. C. A. 10th Cir. Certiorari denied.

No. 11–5516. BOWENS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 205.

No. 11–5517. ANDERSON *v.* AMAWI ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–5518. BLOCK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 635 F. 3d 721.

No. 11–5519. BURNETTE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 271.

No. 11–5520. RAMIREZ *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–5521. SHAW *v.* WATSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 407 Fed. Appx. 710.

No. 11–5522. STOKES *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 77 So. 3d 1262.

No. 11–5523. ZAMBRANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–5524. WILLIAMS *v.* LOUISIANA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 312.

No. 11–5526. STRATTON *v.* TEXAS (five judgments). Ct. Crim. App. Tex. Certiorari denied.

No. 11–5527. CRAWFORD *v.* HARTLEY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–5528. DARVIE *v.* COUNTRYMAN ET AL. C. A. 2d Cir. Certiorari denied.

No. 11–5530. EVANS *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 16 N. Y. 3d 571, 949 N. E. 2d 457.

No. 11–5531. CEDENO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 644 F. 3d 79 and 437 Fed. Appx. 8.

No. 11–5532. ROMAN *v.* GRIFFIN, SUPERINTENDENT, SOUTHPORT CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 11–5533. MILLEN *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 11–5534. RIOS *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 63 So. 3d 781.

No. 11–5535. ERBY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 419 Fed. Appx. 176.

No. 11–5536. CARDENAS-PORRAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 11–5537. DURAN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–5538. JONES *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 11–5539. LAYNE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–5540. JONES *v.* UNGER, SUPERINTENDENT, WYOMING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 11–5541. HANKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 306.

No. 11–5542. MARQUEZ GALICE, AKA GARCIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–5543. HERAS-RUBIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 11–5544. GREGG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 209.

No. 11–5546. GREENWOOD *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 78 Mass. App. 611, 941 N. E. 2d 667.

No. 11–5547. ODEN *v.* KNOWLES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 594.

No. 11–5548. PAVLOV, AKA YORDANVO *v.* SMELSER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 636.

No. 11–5553. ASBERRY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–5556. STAFFORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 639 F. 3d 270.

No. 11–5557. MEDULAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–5558. DAVIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 445.

No. 11–5559. CROCKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 431.

No. 11–5560. CATALANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 943.

No. 11–5562. HERRING *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 298.

No. 11–5567. MASON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 628 F. 3d 123.

No. 11–5569. JONES *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 11–5570. JACK *v.* WEST VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 277.

No. 11–5571. POLITE *v.* ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 11–5572. PALMER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 642 F. 3d 1062.

No. 11–5573. GALLOWAY *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 11–5574. GARCIA-MORALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 577.

No. 11–5577. THOMPSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 695.

No. 11–5578. Bradica *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 417 Fed. Appx. 139.

No. 11–5579. Babakaeva *v.* Wilson & Wilson, P. C. Sup. Ct. Va. Certiorari denied.

No. 11–5581. Brizuela-Ramos *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 528.

No. 11–5582. Rosa *v.* Martinez, Secretary, New Mexico Department of Corrections, et al. C. A. 10th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 730.

No. 11–5583. Smith *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 11–5584. Cardon-Cortez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 659.

No. 11–5586. Champion *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 16 A. 3d 975.

No. 11–5587. Drewry *v.* Maine. Sup. Jud. Ct. Me. Certiorari denied.

No. 11–5588. Diaz-Orozco, aka Ortega *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 11–5589. Quigley *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 5 A. 3d 22.

No. 11–5590. Moeller *v.* Harris, Attorney General of California, et al. C. A. 9th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 771.

No. 11–5595. Rossi *v.* New York. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 82 App. Div. 3d 911, 918 N. Y. S. 2d 359.

No. 11–5596. Snow *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 11–5598. Blount *v.* United States. C. A. 4th Cir. Certiorari denied.

No. 11–5599. Berry *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 247.

No. 11–5600. ATKINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 420.

No. 11–5601. ALCANTAR-CHAGOLLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 11–5602. MCKNIGHT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–5603. NEAL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 408 Fed. Appx. 600.

No. 11–5608. LANZON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 639 F. 3d 1293.

No. 11–5610. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 403 Fed. Appx. 856.

No. 11–5612. MCCALL *v.* PALMER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–5614. ZAVALA-LOPEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 151.

No. 11–5617. TONEY *v.* BLEDSOE, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 427 Fed. Appx. 74.

No. 11–5619. WIIG *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA. C. A. 8th Cir. Certiorari denied.

No. 11–5622. LEWIS *v.* MEKO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–5623. JEAN-PIERRE *v.* GUBBIOTTI. C. A. 3d Cir. Certiorari denied. Reported below: 417 Fed. Appx. 120.

No. 11–5625. BOWDEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 907.

No. 11–5626. BROWN *v.* PIERCE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 11–5629. POWELL *v.* HOLLAND, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–5630. WHERRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–5632. WATSON *v.* LAVALLEY, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 640 F. 3d 501.

No. 11–5634. WOOD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–5637. DOCKERY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 487.

No. 11–5638. CLARKE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 421 Fed. Appx. 68.

No. 11–5639. EDGAR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 431 Fed. Appx. 93.

No. 11–5640. GIEBEL *v.* BONILLA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 404 Fed. Appx. 184.

No. 11–5642. SHOVE ET AL. *v.* UNITED STATES DISTRICT COURT JUDGES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 407 Fed. Appx. 494.

No. 11–5643. FLOWERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 302.

No. 11–5644. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 640 F. 3d 638.

No. 11–5646. REED *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 421 Fed. Appx. 113.

No. 11–5647. WEAVER *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied.

No. 11–5649. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 922.

No. 11–5651. MARROQUIN *v.* CURRY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–5652. IVERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 573.

No. 11–5653. HERNANDEZ-ROJAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 426 Fed. Appx. 67.

No. 11–5654. GOMEZ-ALMANZA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–5655. HARMON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 2011 OK CR 6, 248 P. 3d 918.

No. 11–5656. HOFFMAN-PORTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 486.

No. 11–5658. CREECH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–5661. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 984.

No. 11–5662. SCHWAB *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 421 Fed. Appx. 57.

No. 11–5665. PULIDO *v.* HEDGPETH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 629 F. 3d 1007.

No. 11–5670. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 264.

No. 11–5671. VARHOLICK *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 2010-Ohio-5132.

No. 11–5672. URIAS-SALAZAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 952.

No. 11–5673. OVERBY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 404 Fed. Appx. 760.

No. 11–5675. HAWKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 413 Fed. Appx. 844.

No. 11–5676. HOLMES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 421 Fed. Appx. 76.

No. 11–5677. ROGERS *v.* INGOLIA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 283.

No. 11–5679. SIMMONS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 207.

No. 11–5680. QUEZADA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–5685. CHAVEZ *v.* GROUNDS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–5689. DAVENPORT *v.* CHANDLER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 11–5690. LEE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 51 Cal. 4th 620, 248 P. 3d 651.

No. 11–5691. MONTOYA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 221.

No. 11–5692. JIMENEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 463.

No. 11–5694. A. M. *v.* MENTAL HEALTH BOARD OF THE 11TH JUDICIAL DISTRICT. Sup. Ct. Neb. Certiorari denied. Reported below: 281 Neb. 482, 797 N. W. 2d 233.

No. 11–5695. MOORE *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 419 Fed. Appx. 1001.

No. 11–5698. ARNOLD *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied. Reported below: 2010-Ohio-5622.

No. 11–5699. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–5701. CROZIER *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–5702. MENDEZ CONTRERAS *v.* HARRINGTON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–5709. MILLER *v.* FAYRAM, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 577.

No. 11–5710. CORTEZ ESTRADA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 390.

No. 11–5711. BUENROSTRO, AKA ROSTRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 638 F. 3d 720.

No. 11–5712. ANGELOS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 786.

No. 11–5713. BOLDEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 344.

No. 11–5716. TAYLOR *v.* SHELTERED WORKSHOP FOR THE DISABLED, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 413 Fed. Appx. 367.

No. 11–5720. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 686.

No. 11–5722. STOKES *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 350 Ore. 44, 248 P. 3d 953.

No. 11–5723. STILLIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 437 Fed. Appx. 78.

No. 11–5724. GARCIA RICO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 407 Fed. Appx. 255.

No. 11–5725. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 255.

No. 11–5727. LESTER *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–5729. MARINO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–5730. ARGELIO ANGEL *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 281 Va. 248, 704 S. E. 2d 386.

No. 11–5732. CHAPLIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 473.

No. 11–5734. BRADLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 453 Fed. Appx. 142.

No. 11–5736. WATERS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 12 A. 3d 1173.

No. 11–5742. CAMPBELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–5743. XAYAVONGSANE *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 63 So. 3d 770.

No. 11–5745. MULTANI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 621.

No. 11–5750. CORLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 408 Fed. Appx. 245.

No. 11–5754. MOORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 347.

No. 11–5755. MOORMANN *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 628 F. 3d 1102.

No. 11–5761. RODRIGUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 644 F. 3d 79 and 437 Fed. Appx. 8.

No. 11–5763. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 405.

No. 11–5766. DUTCHER *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 11–5768. LANE *v.* FLORIDA PAROLE COMMISSION. C. A. 11th Cir. Certiorari denied.

No. 11–5776. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 238.

No. 11–5777. COLIMON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 821.

No. 11–5782. SLADE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 377.

No. 11–5784. STAMPS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–5787. ARIAS-HERNANDEZ, AKA SANCHEZ-CAMACHO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 525.

No. 11–5788. AMIRNAZMI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 645 F. 3d 564.

No. 11–5791. KAMERLING *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 665.

No. 11–5795. SALAZAR-MOJICA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 634 F. 3d 1070.

No. 11–5797. WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 427 Fed. Appx. 106.

No. 11–5800. SLOVINEC *v.* MEISBURG. C. A. D. C. Cir. Certiorari denied. Reported below: 412 Fed. Appx. 314.

No. 11–5801. ANDERSON *v.* FIZER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 799.

No. 11–5802. SOLIS-CACERES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–5805. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 641 F. 3d 758.

No. 11–5807. DRZYMALA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–5808. LOPEZ-MONDRAGON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–5809. EVANS *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 645 F. 3d 650.

No. 11–5812. ROMERO-ACOSTA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 310.

No. 11–5813. SAIGNAPHONE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 821.

No. 11–5821. PAYTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 636 F. 3d 1027.

No. 11–5822. PETTIWAY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 429 Fed. Appx. 132.

No. 11–5824. POWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 650 F. 3d 388.

No. 11–5825. MEEKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 639 F. 3d 522.

No. 11–5827. STITTIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 530.

No. 11–5830. STEVENS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–5833. COPELAND *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 16 A. 3d 974.

No. 11–5836. SIMON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 489.

No. 11–5839. THRASHER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 412 Fed. Appx. 582.

No. 11–5840. TILLMAN ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 289.

No. 11–5841. VALENTINE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 677.

No. 11–5844. PRYCE *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 11–5848. GREEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 520.

No. 11–5849. HINES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 407 Fed. Appx. 975.

No. 11–5851. HILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 217.

No. 11–5852. HAMILTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 687.

No. 11–5853. FREEMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 405 Fed. Appx. 584.

No. 11–5854. GERMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 248.

No. 11–5855. HOFFLER-RIDDICK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 407 Fed. Appx. 651.

No. 11–5857. BETHEA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 296.

No. 11–5864. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 336.

No. 11–5866. SAYRE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 622.

No. 11–5870. Garcia Casares *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 11–5871. Gonzalez-Mendez *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 652 F. 3d 56.

No. 11–5872. Hornbuckle *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 427 Fed. Appx. 172.

No. 11–5874. Hadnot *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 654.

No. 11–5875. Helmick *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 373.

No. 11–5876. Fulgencio, aka Guzman Ortiz *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 365.

No. 11–5877. Hawk *v.* Astrue, Commissioner of Social Security. C. A. 6th Cir. Certiorari denied.

No. 11–5880. Washington *v.* Hobbs, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied.

No. 11–5882. Wells *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 11–5884. Ares-Garcia *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 707.

No. 11–5888. Lujan-Alcala *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 602.

No. 11–5889. Kent *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 649 F. 3d 906.

No. 11–5890. Kudalis *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 429 Fed. Appx. 165.

No. 11–5893. Walker *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 277.

No. 11–5899. Guitterez-Gonzalez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 853.

No. 11–5901. THOMAS *v.* WIELAND, UNITED STATES TRUSTEE, ET AL. C. A. 10th Cir. Certiorari denied.

No. 11–5910. ALVERIO-MELENDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 640 F. 3d 412.

No. 11–5912. BULLARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 645 F. 3d 237.

No. 11–5914. RIDDICK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–5916. JORDAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 635 F. 3d 1181.

No. 11–5921. SEXTON *v.* UNITED STATES (two judgments). C. A. 7th Cir. Certiorari denied.

No. 11–5923. RODRIGUEZ-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 324.

No. 11–5924. AGUIAR *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 642 F. 3d 1062.

No. 11–5929. LEONARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–5930. DE LOURDES CANTU *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 253.

No. 11–5931. MOORE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 435 Fed. Appx. 125.

No. 11–5935. ZAVALA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–5938. REDDING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 192.

No. 11–5949. ALLEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 231.

No. 11–5955. KEARNS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 350.

No. 11–5959. MOORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–5964. LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 260.

No. 11–5966. JONES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 670.

No. 11–5968. DICKENS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 364.

No. 11–5970. VIDEAU *v.* HARRINGTON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–5973. THOMAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 435 Fed. Appx. 117.

No. 11–5976. DANTZLER *v.* HOLLINGSWORTH, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 11–5985. BROWN *v.* STEWARD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–5986. HILLMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 642 F. 3d 929.

No. 11–5988. FIELDS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 343.

No. 11–5990. WETHERALD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 636 F. 3d 1315.

No. 11–5992. UPTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 680.

No. 11–5998. NICHOLSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 228.

No. 11–6000. GRAURE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 18 A. 3d 743.

No. 11–6001. HALLORAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 429.

No. 11–6003. HITE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 546.

No. 11–6004. HALCOMB *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 447.

No. 11–6006. Flores-Vasquez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 641 F. 3d 667.

No. 11–6008. Campbell *v.* Maye, Warden. C. A. 5th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 382.

No. 11–6009. Erby *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 11–6012. Callaway *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 11–6014. Hanrahan *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 62.

No. 11–6016. Koons *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 639 F. 3d 348.

No. 11–6017. Austin *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 11–6019. Asieru *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 605.

No. 11–6020. Mangual *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 238.

No. 11–6030. Handy *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 380.

No. 11–6031. Henderson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 405 Fed. Appx. 775.

No. 11–6032. Hernandez-Hernandez *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 719.

No. 11–6033. Hargrove *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 11–6034. Flowers *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 11–6037. Graham *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 12 A. 3d 1159.

No. 11–6048. Smith *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 850.

No. 11–6049. RUSH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–6056. WHEELER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–6061. CORTES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 803.

No. 11–6065. CLINTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–6080. SCOTT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 662 F. 3d 492.

No. 11–6087. UNDERWOOD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 728.

No. 11–6092. MCCLAIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 440 Fed. Appx. 63.

No. 11–6093. OCAMPO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–6097. BYRD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 262.

No. 11–6103. LOPEZ-ATANACIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 792.

No. 10–1064. FARINA *v.* NOKIA, INC., ET AL. C. A. 3d Cir. Certiorari denied. THE CHIEF JUSTICE and JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 625 F. 3d 97.

No. 10–1221. HOLLAND ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 621 F. 3d 1366.

No. 10–1244. CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY *v.* LANGSTON. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 630 F. 3d 310.

No. 10–1290. PUBLIC LANDS COUNCIL *v.* WESTERN WATERSHEDS PROJECT ET AL. C. A. 9th Cir. Certiorari denied. JUS-

TICE KAGAN took no part in the consideration or decision of this petition. Reported below: 632 F. 3d 472.

No. 10–1304. NATIONAL CONFERENCE OF BAR EXAMINERS *v.* ENYART. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 630 F. 3d 1153.

No. 10–1337. AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 627 F. 3d 64.

No. 10–1371. SPECTRUM STORES, INC., ET AL. *v.* CITGO PETROLEUM CORP.; and

No. 10–1393. FAST BREAK FOODS LLC ET AL. *v.* SAUDI ARABIAN OIL CO., DBA SAUDI ARAMCO, ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of these petitions. Reported below: 632 F. 3d 938.

No. 10–1410. CANAL BARGE CO., INC., ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 631 F. 3d 347.

No. 10–1411. DOE, A MINOR, BY AND THROUGH HIS GUARDIAN AND NEXT FRIEND, DOE *v.* TODD COUNTY SCHOOL DISTRICT ET AL. C. A. 8th Cir. Motion of South Dakota Advocacy Services et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 625 F. 3d 459.

No. 10–1413. SRIVASTAVA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 411 Fed. Appx. 671.

No. 10–1444. SHUM *v.* INTEL CORP. ET AL. C. A. Fed. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 633 F. 3d 1067.

No. 10–1456. BARR ET AL. *v.* GALVIN, SECRETARY OF COMMONWEALTH OF MASSACHUSETTS. C. A. 1st Cir. Motion of petitioners to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 626 F. 3d 99.

No. 10–1464. HERTZ CORP. *v.* MYERS. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 624 F. 3d 537.

No. 10–1489. MAI-TRANG THI NGUYEN *v.* STARBUCKS COFFEE CORP. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 418 Fed. Appx. 606.

No. 10–1500. MYLAN LABORATORIES, INC., ET AL. *v.* BLUE CROSS BLUE SHIELD OF MASSACHUSETTS ET AL. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 631 F. 3d 537.

No. 10–1512. DEWEESE, JUDGE, COURT OF COMMON PLEAS, RICHLAND COUNTY, OHIO *v.* AMERICAN CIVIL LIBERTIES UNION OF OHIO FOUNDATION, INC. C. A. 6th Cir. Motion of Foundation for Moral Law for leave to file a brief as *amicus curiae* out of time granted. Certiorari denied. Reported below: 633 F. 3d 424.

No. 10–1528. NATIONAL ASSOCIATION OF HOME BUILDERS *v.* SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 627 F. 3d 730.

No. 10–1546. CARDER ET AL., ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED *v.* CONTINENTAL AIRLINES, INC. C. A. 5th Cir. Motion of John Marshall Law School Veterans Legal Support Center & Clinic et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 636 F. 3d 172.

No. 10–8150. COHEN *v.* FEDERAL EXPRESS CORP. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 383 Fed. Appx. 88.

No. 10–9436. WORMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 622 F. 3d 969.

No. 10–9544. ALI *v.* UNITED STATES;
No. 10–9545. ALI *v.* UNITED STATES; and

No. 10–9583. GRIFFEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of these petitions. Reported below: 620 F. 3d 1062.

No. 10–9837. WILSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 421 Fed. Appx. 822.

No. 10–9855. BUFORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 632 F. 3d 264.

No. 10–9941. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 624 F. 3d 889.

No. 10–10011. GRANT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 636 F. 3d 803.

No. 10–10426. WEST *v.* BRESLIN, SUPERINTENDENT, ARTHUR KILL CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 410 Fed. Appx. 393.

No. 10–10533. BANEY *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied and leave to proceed as a veteran granted. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition. Reported below: 415 Fed. Appx. 244.

No. 10–10558. HARRIMON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 410 Fed. Appx. 836.

No. 10–10676. PITTS *v.* GLEBE, WARDEN. C. A. 9th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied.

No. 10–10698. SIME *v.* UNITED STATES (two judgments). C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 10–10806. 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: 423 Fed. Appx. 325.

No. 10–10875. WILLIAMS *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 416 Fed. Appx. 120.

No. 10–10892. ROJAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 412 Fed. Appx. 363.

No. 10–10907. WELSH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 424 Fed. Appx. 214.

No. 10–10922. CLARKE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 10–10934. MATHERLY *v.* JOHNS, WARDEN. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 427 Fed. Appx. 257.

No. 10–10956. CARDONA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 420 Fed. Appx. 448.

No. 10–10984. BEST *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 10–11014. KYLER *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: 402 Fed. Appx. 597.

No. 10–11043. NESTOR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 10–11073. BOHOL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 419 Fed. Appx. 730.

No. 10–11145. DAVIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 10–11155. BANEY *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied and leave to proceed as a veteran granted. Certiorari denied. Reported below: 407 Fed. Appx. 455.

No. 10–11196. HOLLAND *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 10–11202. HAIRSTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 408 Fed. Appx. 659.

No. 10–11207. MILLER, AKA FAVREAU, AKA BRODEAU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 626 F. 3d 682.

No. 10–11288. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 419 Fed. Appx. 365.

No. 11–44. SOUTH CAROLINA *v.* PARKER. Sup. Ct. S. C. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 391 S. C. 606, 707 S. E. 2d 799.

No. 11–64. FRANCARL REALTY CORP. ET AL. *v.* TOWN OF EAST HAMPTON, NEW YORK. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 400 Fed. Appx. 605.

No. 11–86. CIOCCHETTI *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 422 Fed. Appx. 695.

No. 11–101. KELLEY *v.* CHICAGO PARK DISTRICT. C. A. 7th Cir. Motions of Intellectual Property Law Association of Chicago and Blane De St. Croix et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 635 F. 3d 290.

No. 11–112. MCNEIL *v.* COMMISSIONER OF INTERNAL REVENUE ET AL. C. A. 8th Cir. Certiorari before judgment denied.

No. 11–142. KANAI *v.* MCHUGH, SECRETARY OF THE ARMY. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 638 F. 3d 251.

No. 11–5042. MODENA *v.* FEDERAL HOME LOAN MORTGAGE CORPORATION ET AL. C. A. 6th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 11–5045. MILLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 420 Fed. Appx. 912.

No. 11–5049. SMITH *v.* VETERANS ADMINISTRATION ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 636 F. 3d 1306.

No. 11–5056. SMITH *v.* IDAHO ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 364 Fed. Appx. 444.

No. 11–5087. ADAMS *v.* CORCORAN, SUPERINTENDENT, WOODBOURNE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 416 Fed. Appx. 84.

No. 11–5099. WALKER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 11–5101. KEISLING *v.* RENN ET AL. C. A. 3d Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 425 Fed. Appx. 106.

No. 11–5150. KIDERLEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–5152. BENJAMIN *v.* NEW YORK. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 11–5204. LANG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 11–5226. SNYDER *v.* SMITH, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 11–5229. HALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 395 Fed. Appx. 939.

No. 11–5232. GAREY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–5373. CRIM *v.* ADLER, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 430 Fed. Appx. 580.

No. 11–5390. NELSON *v.* JPMORGAN CHASE BANK ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–5396. MEADOWS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–5474. MAGASSOUBA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 433 Fed. Appx. 10.

No. 11–5550. MORRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–5585. EDWARDS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–5633. TAFT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 426 Fed. Appx. 208.

No. 11–5641. GONZALEZ *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Motion of Florida Association of Criminal Defense Lawyers for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 50 So. 3d 633.

No. 11–5739. PERRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 429 Fed. Appx. 287.

No. 11–5778. RICHARDSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–5826. MARCUSSE *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–5831. MAXWELL *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.

No. 11–5834. CARVER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 422 Fed. Appx. 796.

No. 11–5846. NESTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–5856. HOLMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–5859. ASHIEGBU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 419 Fed. Appx. 770.

No. 11–5865. JAMES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–5919. ALEXANDER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–6036. GRAVELY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–6094. HUNTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 646 F. 3d 372.

No. 11–6099. ASANTE *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: 407 Fed. Appx. 484.

Rehearing Denied

No. 10–1243. CUNNINGHAM *v.* UNITED STATES, 563 U. S. 990; and

No. 10–10187. WILLIAMS *v.* HOOKS, WARDEN, 564 U. S. 1042. Petitions for rehearing denied.

OCTOBER 11, 2011

Affirmed for Absence of Quorum

No. 10–10652. JOHNSON *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL.; and JOHNSON *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY (Reported below: 414 Fed. Appx. 887). C. A. 8th 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.

Certiorari Granted—Vacated and Remanded

No. 11–5094. REPLOGLE *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 *Tapia* v. *United States*, 564 U. S. 319 (2011). Reported below: 628 F. 3d 1026.

Certiorari Dismissed

No. 11–5609. MARSHALL *v.* STENGEL 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. 11–5707. SANDERS *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN. 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. 11–5719. GRANDOIT *v.* BANK OF AMERICA. 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. 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. 11–5892. YODER *v.* ST. MARY'S HOSPITAL (TUCSON). Ct. App. Ariz. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 11–6147. DADE *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO. 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 *Mar-*

tin 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. 11–6303. MILLHOUSE *v.* ZICKEFOOSE, WARDEN. 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)*. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition. Reported below: 440 Fed. Appx. 94.

Miscellaneous Orders

No. 11A215. ZENTMYER *v.* UNITED STATES. Application for certificate of appealability, addressed to JUSTICE THOMAS and referred to the Court, denied.

No. 11M26. MOORE *v.* CALIFORNIA. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 11M27. TATES *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION;

No. 11M30. EVANS *v.* UNITED STATES;

No. 11M32. STEINMETZ *v.* UNITED STATES POSTAL SERVICE ET AL.;

No. 11M33. PENELOPE W. *v.* DOROTHEA DIX PSYCHIATRIC CENTER; and

No. 11M34. ENDENCIA *v.* VILLAGE OF STREAMWOOD, ILLINOIS, ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 11M28. ATKINS, ADMINISTRATOR OF THE ESTATE OF ATKINS, DECEASED *v.* CITY OF CHICAGO, ILLINOIS, ET AL. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

No. 11M29. CARTER *v.* UNITED STATES; and

No. 11M31. DAVIS *v.* UNITED STATES. Motions for leave to file petitions for writs of certiorari under seal with redacted copies for the public record granted.

No. 11M35. VEGA-COSME *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari out of time denied. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 10–788. REHBERG *v.* PAULK. C. A. 11th Cir. [Certiorari granted, 562 U. S. 1286.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 10–1104. MINNECI ET AL. *v.* POLLARD ET AL. C. A. 9th Cir. [Certiorari granted, 563 U. S. 987.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 11–5580. ANTONSSON *v.* KAST. Ct. App. Cal., 1st App. Div.;

No. 11–5718. HIRSCH *v.* ENOCH PRATT FREE LIBRARY ET AL. C. A. 1st Cir.; and

No. 11–5792. MORGAN *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 1, 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. 11–6290. IN RE PATTERSON;
No. 11–6299. IN RE LINDSAY;
No. 11–6313. IN RE SHOVE ET AL.;
No. 11–6321. IN RE SIMMS;
No. 11–6339. IN RE ROCHA;
No. 11–6355. IN RE MARTIN;
No. 11–6375. IN RE GILYARD; and
No. 11–6493. IN RE MCDOWELL. Petitions for writs of habeas corpus denied.

No. 11–302. IN RE SIMON;
No. 11–5741. IN RE PARNIANI-HAYMAN;
No. 11–6128. IN RE COUCH; and

No. 11–6285. IN RE MOGHADDAM. Petitions for writs of mandamus denied.

No. 11–232. IN RE TAYLOR. Petition for writ of mandamus denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–5810. IN RE JACKSON. 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. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition.

No. 11–173. IN RE PHILLIPS. Petition for writ of prohibition denied.

Certiorari Granted

No. 10–1042. FREEMAN ET AL. *v.* QUICKEN LOANS, INC. C. A. 5th Cir. Certiorari granted. Reported below: 626 F. 3d 799.

No. 10–1320. BLUEFORD *v.* ARKANSAS. Sup. Ct. Ark. Certiorari granted. Reported below: 2011 Ark. 8, 370 S. W. 3d 496.

Certiorari Denied

No. 10–1447. BONDS *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 629 F. 3d 369.

No. 10–1478. HENRY ET UX. *v.* JEFFERSON COUNTY COMMISSION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 637 F. 3d 269.

No. 10–1513. DEFOE, A MINOR, BY AND THROUGH HIS PARENT AND GUARDIAN DEFOE, ET AL. *v.* SPIVA ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 625 F. 3d 324.

No. 10–9659. ROCHA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 619 F. 3d 387 and 626 F. 3d 815.

No. 10–10351. ROBINSON *v.* SHERROD, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 631 F. 3d 839.

No. 10–10398. ODOM *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 336 S. W. 3d 541.

No. 10–10409. ARMSTRONG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 10–10562. FLETCHER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 634 F. 3d 395.

No. 10–10592. HOLMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 407 Fed. Appx. 755.

No. 10–10599. MCKAY, AKA MCKAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 10–10825. STABILE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 633 F. 3d 219.

No. 10–10881. ADAMS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 322.

No. 10–10899. PANKEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 529.

No. 10–11089. MOORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 635 F. 3d 774.

No. 10–11179. NOBLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 408 Fed. Appx. 645.

No. 10–11280. GORE *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–11. SPICOLA *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 16 N. Y. 3d 441, 947 N. E. 2d 620.

No. 11–16. REALCOMP II, LTD. *v.* FEDERAL TRADE COMMISSION. C. A. 6th Cir. Certiorari denied. Reported below: 635 F. 3d 815.

No. 11–46. ADAR, INDIVIDUALLY AND AS PARENT AND NEXT FRIEND OF J. C. A–S, A MINOR, ET AL. *v.* SMITH, STATE REGISTRAR AND DIRECTOR, OFFICE OF VITAL RECORDS AND STATIS-

TICS, LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS. C. A. 5th Cir. Certiorari denied. Reported below: 639 F. 3d 146.

No. 11–49. WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* ABU-JAMAL. C. A. 3d Cir. Certiorari denied. Reported below: 643 F. 3d 370.

No. 11–115. KENDALL *v.* BALCERZAK ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 650 F. 3d 515.

No. 11–119. LIBERTARIAN PARTY OF NEW HAMPSHIRE ET AL. *v.* GARDNER, SECRETARY OF STATE OF NEW HAMPSHIRE. C. A. 1st Cir. Certiorari denied. Reported below: 638 F. 3d 6.

No. 11–123. ACCUMARINE TRANSPORTATION, LP *v.* REGIONS EQUIPMENT FINANCE CORP. C. A. 5th Cir. Certiorari denied. Reported below: 640 F. 3d 124.

No. 11–125. HOLMES *v.* EAST COOPER COMMUNITY HOSPITAL, INC., ET AL. Sup. Ct. S. C. Certiorari denied.

No. 11–126. MYERS *v.* ARKANSAS DEPARTMENT OF HUMAN SERVICES (Reported below: 2011 Ark. 182, 380 S. W. 3d 906); KRAVITZ ET VIR *v.* ARKANSAS DEPARTMENT OF HUMAN SERVICES (2011 Ark. 185, 380 S. W. 3d 927); PARRISH ET UX. *v.* ARKANSAS DEPARTMENT OF HUMAN SERVICES (2011 Ark. 179); REID *v.* ARKANSAS DEPARTMENT OF HUMAN SERVICES (2011 Ark. 187, 380 S. W. 3d 918); and SEAGO *v.* ARKANSAS DEPARTMENT OF HUMAN SERVICES (2011 Ark. 184, 380 S. W. 3d 894). Sup. Ct. Ark. Certiorari denied.

No. 11–132. SOHAL *v.* DARRELL AND JANE SMITH FAMILY PARTNERSHIP ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 11–147. NORDGULEN *v.* AMERICAN FAMILY MUTUAL INSURANCE ET AL. Ct. App. Wis. Certiorari denied. Reported below: 2011 WI App 1, 330 Wis. 2d 835, 794 N. W. 2d 928.

No. 11–149. DONLEY *v.* ORDENEAUX ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 519.

No. 11–158. DIBLASIO ET AL. *v.* NOVELLO ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 413 Fed. Appx. 352.

No. 11–160. MARRO *v.* FAUQUIER HOSPITAL, INC. Sup. Ct. Va. Certiorari denied.

No. 11–165. RIFFIN *v.* MARYLAND DEPARTMENT OF THE ENVIRONMENT. Ct. Sp. App. Md. Certiorari denied. Reported below: 189 Md. App. 720 and 726.

No. 11–167. SARKIS *v.* LAJCAK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 557.

No. 11–170. FLORIDA *v.* MANUEL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 48 So. 3d 94.

No. 11–171. OSMOLSKI ET AL. *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 11–172. JEAN-GILLES *v.* GILLES. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 330 S. W. 3d 538.

No. 11–177. ALT ET AL. *v.* ROBERTSON STEPHENS GROUP, INC. C. A. 1st Cir. Certiorari denied. Reported below: 638 F. 3d 70.

No. 11–180. KORNIAWAN *v.* HOLDER, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 232.

No. 11–194. SASSER ET AL. *v.* SECURITIES AND EXCHANGE COMMISSION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 338.

No. 11–196. GODFREY *v.* DEPARTMENT OF TRANSPORTATION. C. A. Fed. Cir. Certiorari denied. Reported below: 412 Fed. Appx. 306.

No. 11–197. FRENCH ET AL. *v.* ALLSTATE INDEMNITY CO. C. A. 5th Cir. Certiorari denied. Reported below: 637 F. 3d 571.

No. 11–198. ROJAS NIETO *v.* HOLDER, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 385.

No. 11–209. BHAMA *v.* MERCY MEMORIAL HOSPITAL CORP. C. A. 6th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 542.

No. 11–213. EKOKOTU *v.* FEDERAL EXPRESS CORP. C. A. 11th Cir. Certiorari denied. Reported below: 408 Fed. Appx. 331.

No. 11–222. Panchenko *v.* Holder, Attorney General. C. A. 1st Cir. Certiorari denied.

No. 11–225. R. O., a Minor, by His Parent and Guardian Ochshorn, et al. *v.* Ithaca City School District et al. C. A. 2d Cir. Certiorari denied. Reported below: 645 F. 3d 533.

No. 11–227. Syrian Arab Republic *v.* Gates, Individually and as Administrator of the Estate of Armstrong, et al. C. A. D. C. Cir. Certiorari denied. Reported below: 646 F. 3d 1.

No. 11–230. Kien-Peng Ciu et al. *v.* Holder, Attorney General. C. A. 2d Cir. Certiorari denied. Reported below: 418 Fed. Appx. 36.

No. 11–240. West *v.* Reed, Secretary of State of Washington, et al. Sup. Ct. Wash. Certiorari denied. Reported below: 170 Wash. 2d 680, 246 P. 3d 548.

No. 11–241. West *v.* Doe et al. C. A. 9th Cir. Certiorari denied.

No. 11–251. Wallace *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 11–254. Wei *v.* Missouri Director of Revenue. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 335 S. W. 3d 558.

No. 11–258. Lawyer et al. *v.* Verizon Communications, Inc., et al. C. A. 4th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 240.

No. 11–263. Montgomery *v.* Caprock Investment Corp. Ct. App. Tex., 11th Dist. Certiorari denied. Reported below: 321 S. W. 3d 91.

No. 11–272. Marchiondo *v.* Arizona. Ct. App. Ariz. Certiorari denied.

No. 11–283. Fox *v.* Wardy et al. Ct. App. Tex., 8th Dist. Certiorari denied. Reported below: 318 S. W. 3d 449.

No. 11–306. Zakharia *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 414.

No. 11–5171. HAPP *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–5184. SANCHEZ *v.* LEDEZMA, WARDEN (Reported below: 422 Fed. Appx. 735); and TORRES *v.* LEDEZMA, WARDEN (428 Fed. Appx. 789). C. A. 10th Cir. Certiorari denied.

No. 11–5211. RHOADES *v.* HENRY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 638 F. 3d 1027.

No. 11–5212. RHOADES *v.* HENRY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 598 F. 3d 495.

No. 11–5242. RUIZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–5246. GAYLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 11–5545. GRAY *v.* KELLY, WARDEN. Sup. Ct. Va. Certiorari denied. Reported below: 281 Va. 303, 707 S. E. 2d 275.

No. 11–5561. SEATON *v.* CAPERTON. Sup. Ct. App. W. Va. Certiorari denied.

No. 11–5568. LEHR *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 227 Ariz. 140, 254 P. 3d 379.

No. 11–5575. VALENCIA *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 11–5576. TRICOME *v.* MCLAUGHLIN ET AL. Sup. Ct. Pa. Certiorari denied.

No. 11–5591. COLLURA *v.* CITY OF PHILADELPHIA, PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 421 Fed. Appx. 256.

No. 11–5592. MCGRANN *v.* FEDERAL INSURANCE CO. C. A. 9th Cir. Certiorari denied. Reported below: 412 Fed. Appx. 22.

No. 11–5593. STANFIELD *v.* GONZALES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–5594. SMITH *v.* BALLARD, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 255.

No. 11–5597. MURTISHAW *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 51 Cal. 4th 574, 247 P. 3d 941.

No. 11–5604. JOINES *v.* DAVIS, WARDEN. Super. Ct. Dooly County, Ga. Certiorari denied.

No. 11–5605. JACK *v.* NAVY FEDERAL CREDIT UNION. Sup. Ct. Va. Certiorari denied.

No. 11–5607. MARTIN *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 590.

No. 11–5611. MCCARTHY *v.* BROWN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 248.

No. 11–5613. MILLER *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–5615. WILLIAMS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–5616. WILLIAMS *v.* THOMPSON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 156.

No. 11–5618. WELDON *v.* PATE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 261.

No. 11–5620. TAYLOR *v.* VISINSKY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 422 Fed. Appx. 76.

No. 11–5621. KENDRICK *v.* HARDY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 11–5631. JONES *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 51 Cal. 4th 346, 247 P. 3d 82.

No. 11–5635. URBAUER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 11–5636. WARE *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 67 So. 3d 201.

No. 11–5645. STURDZA *v.* UNITED ARAB EMIRATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 412 Fed. Appx. 317.

No. 11–5648. MAXWELL *v.* WHITE, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 939.

No. 11–5650. REA *v.* WAL-MART STORE 1105. C. A. 8th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 700.

No. 11–5659. RIETHMILLER *v.* FABISIAK ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–5660. SANCHEZ *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 79 Mass. App. 189, 944 N. E. 2d 625.

No. 11–5666. ACKER *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 11–5667. ABRON *v.* SWARTHOUT, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–5668. ALEXANDER *v.* TENNIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–5669. BROWN *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 11–5678. MCGEE *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 409 Ill. App. 3d 1178, 2 N. E. 3d 674.

No. 11–5681. SHANKLIN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 319.

No. 11–5684. CARTER *v.* CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF INDIANA ET AL. C. A. 7th Cir. Certiorari denied.

No. 11–5686. CARMELL *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 331 S. W. 3d 450.

No. 11–5693. MACK *v.* SMALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–5696. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 292.

No. 11–5697. BLACKBURN *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 84 So. 3d 1025.

No. 11–5700. COOPER *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 78 Mass. App. 1118, 939 N. E. 2d 136.

No. 11–5703. DALLUGE *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 11–5704. SWAIN *v.* FULLENKAMP ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–5706. STEWART *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–5708. MESSINA *v.* MARSHALL ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–5714. KOEHLER *v.* DISCIPLINARY COUNSEL OF OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 128 Ohio St. 3d 1222, 2011-Ohio-2385, 947 N. E. 2d 172.

No. 11–5715. WILSON *v.* WHITMORE. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 2010-Ohio-5489.

No. 11–5717. TEFERA *v.* MINNESOTA COMMISSIONER OF HUMAN SERVICES ET AL. Ct. App. Minn. Certiorari denied.

No. 11–5726. LEE *v.* SPOONER PETROLEUM CO. ET AL. C. A. 5th Cir. Certiorari denied.

No. 11–5728. KENNEDY *v.* FORNISS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 11–5733. COATES *v.* POWELL ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 639 F. 3d 471.

No. 11–5737. ZAPATA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–5740. MELTON *v.* GER TAYLOR GARDENS, LLC. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 11–5744. WALKER *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 61 So. 3d 1128.

No. 11–5746. PAIGE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–5747. BUTTS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 11–5748. KNIGHT *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 4 A. 3d 686.

No. 11–5749. DAVIS *v.* POLLOCK ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 517.

No. 11–5751. EDWARDS *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 241 Ore. App. 351, 250 P. 3d 38.

No. 11–5752. BETANCORT-SALAZAR *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied.

No. 11–5753. MOSES *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Forsyth County, N. C. Certiorari denied.

No. 11–5757. ZIED-CAMPBELL ET VIR *v.* PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE. Commw. Ct. Pa. Certiorari denied.

No. 11–5758. LAFAELE *v.* CALIFORNIA (two judgments). Sup. Ct. Cal. Certiorari denied.

No. 11–5760. OGUNSALU *v.* COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION ONE, ET AL. Sup. Ct. Cal. Certiorari denied.

No. 11–5764. TORRENCE *v.* THOMPSON ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 435 Fed. Appx. 56.

No. 11–5765. UMONDAK *v.* GINSEL. C. A. 5th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 267.

No. 11–5769. MATOS *v.* KERESTES, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–5770. RUSHELL *v.* PRELESNIK, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–5771. MCCOY *v.* THOMAS, INTERIM COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 739.

No. 11–5772. MONTAGUE *v.* SEXTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–5773. SHAHIN *v.* DELAWARE FEDERAL CREDIT UNION. C. A. 3d Cir. Certiorari denied.

No. 11–5774. THOMPSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 404 Ill. App. 3d 1171, 996 N. E. 2d 773.

No. 11–5775. THOMPSON *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 412 Fed. Appx. 483.

No. 11–5779. STEBBINS *v.* RELIABLE HEAT & AIR, LLC, ET AL. C. A. 8th Cir. Certiorari denied.

No. 11–5780. STEBBINS *v.* WAL-MART STORES ARKANSAS, LLC, AKA WAL-MART STORES, INC. C. A. 8th Cir. Certiorari denied.

No. 11–5783. CALDWELL *v.* IDAHO ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–5785. VALDEZ RUIZ *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 11–5786. SMITH *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 403 Ill. App. 3d 1104, 993 N. E. 2d 149.

No. 11–5789. ATKINS *v.* SPENCER, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION. C. A. 1st Cir. Certiorari denied. Reported below: 642 F. 3d 47.

No. 11–5793. O'CONNOR *v.* BROWN ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–5806. WHITE *v.* DICKHAUT, SUPERINTENDENT, SOUZA-BARANOWSKI CORRECTIONAL CENTER. C. A. 1st Cir. Certiorari denied.

No. 11–5814. PURCHASE *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 60 So. 3d 1071.

No. 11–5815. MORENO *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 406 Ill. App. 3d 1209, 998 N. E. 2d 715.

No. 11–5818. PRESSLEY *v.* CAROMONT HEALTH INC. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 566.

No. 11–5823. MICKEY *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 606 F. 3d 1223.

No. 11–5835. MCKINNEY *v.* JARRIEL, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 11–5837. NASH *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 339 S. W. 3d 500.

No. 11–5867. PITCHFORD *v.* DELAWARE NORTH COS., INC., ET AL. C. A. 8th Cir. Certiorari denied.

No. 11–5897. VON SEVRENCE *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 127 Nev. 1174, 373 P. 3d 960.

No. 11–5903. MAYES *v.* MARYLAND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 240.

No. 11–5907. STRAUSBAUGH *v.* OCHOA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–5911. BLEDSOE *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied.

No. 11–5928. BAKER *v.* GERDENICH REALTY CO. C. A. 6th Cir. Certiorari denied.

No. 11–5934. TAYLOR *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–5944. DIAZ *v.* ARNONE, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTION. App. Ct. Conn. Certiorari denied. Reported below: 128 Conn. App. 901, 16 A. 3d 818.

No. 11–5947. Figura Torrefranca *v.* Suter, Clerk, Supreme Court of the United States, et al. C. A. 9th Cir. Certiorari denied.

No. 11–5948. Anderson-Bey *v.* Clements, Executive Director, Colorado Department of Corrections. C. A. 10th Cir. Certiorari denied. Reported below: 641 F. 3d 445.

No. 11–5956. Lopez *v.* Tucker, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 11–5957. Jackson *v.* Lafler, Warden. C. A. 6th Cir. Certiorari denied.

No. 11–5996. Gardner *v.* Westberg et al. C. A. 4th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 168.

No. 11–6010. Encinas *v.* Arizona. Ct. App. Ariz. Certiorari denied.

No. 11–6024. Yeadon *v.* Lappin, Director, Federal Bureau of Prisons, et al. C. A. 7th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 627.

No. 11–6026. Johnson *v.* Department of the Treasury. C. A. Fed. Cir. Certiorari denied. Reported below: 429 Fed. Appx. 964.

No. 11–6028. Robinson *v.* Cain, Warden. C. A. 5th Cir. Certiorari denied.

No. 11–6035. Glenmore *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 12 A. 3d 1172.

No. 11–6041. Coleman *v.* Clarke, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 248.

No. 11–6050. Noack *v.* YMCA of the Greater Houston Area. C. A. 5th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 347.

No. 11–6060. Clark *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 419 Fed. Appx. 248.

No. 11–6066. CONINGFORD *v.* RHODE ISLAND. C. A. 1st Cir. Certiorari denied. Reported below: 640 F. 3d 478.

No. 11–6067. CALDERON LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 11–6068. JORDAN *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–6076. THOMAS *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–6082. COOKE *v.* SWARTHOUT, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 645 F. 3d 1096.

No. 11–6089. MOORE *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 127 Nev. 1161, 373 P. 3d 944.

No. 11–6100. KOTZEV *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–6105. SINKO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 442.

No. 11–6106. KING *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 146.

No. 11–6112. CUELLAR-MONTEJO ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 11–6113. DONELSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 577.

No. 11–6120. BARTHOLOMEW *v.* VAN BOENING, SUPERINTENDENT, MCNEIL ISLAND CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 782.

No. 11–6122. WILLIAM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–6125. DOBSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 433 Fed. Appx. 99.

No. 11–6126. COLLINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 760.

No. 11–6132. RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 294.

No. 11–6133. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 640 F. 3d 580.

No. 11–6134. PRUITT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 429 Fed. Appx. 155.

No. 11–6144. CUSTER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–6145. DALTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 164.

No. 11–6146. DAVIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 407 Fed. Appx. 32.

No. 11–6148. BURKE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–6149. WARDELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 591 F. 3d 1279.

No. 11–6152. NEWELL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 658 F. 3d 1.

No. 11–6154. SMOAK *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–6157. MANGUAL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 271.

No. 11–6158. HOLMES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 429 Fed. Appx. 7.

No. 11–6159. BERRY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 3d 1031.

No. 11–6163. CHOUP *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–6167. KYZAR *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 630.

No. 11–6169. GARCIA-ALVAREZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–6174. GARCIA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–6179. MCDONALD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 282.

No. 11–6180. UDEOZOR, AKA OBIOHA, AKA OBIAHA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 258.

No. 11–6182. SAWYER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–6184. LEDESMA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 643 F. 3d 384.

No. 11–6186. KILLING *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 615.

No. 11–6192. GOMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 861.

No. 11–6198. TIBBS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–6199. LEWIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–6202. PORTILLO-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 239.

No. 11–6207. MICHEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 838.

No. 11–6210. FLORES LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 739.

No. 11–6211. MARTIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 174.

No. 11–6212. JOHNS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 628.

No. 11–6213. MARTINEZ-SOSA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 284.

No. 11–6215. SIERRA-LEDESMA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 645 F. 3d 1213.

No. 11–6216. SHIGEMURA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 653 F. 3d 1206.

No. 11–6219. NAPPER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 22 A. 3d 758.

No. 11–6221. LOISEAU *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 210.

No. 11–6222. SILVA-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 668.

No. 11–6226. BUCKLES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 647 F. 3d 883.

No. 11–6237. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 182.

No. 11–6242. COPELAND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 383.

No. 11–6244. MOORE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 641 F. 3d 812.

No. 11–6248. SPRINGER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 11–6250. MITCHELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–6254. WEATHERALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–6258. CIONI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 649 F. 3d 276.

No. 11–6263. FERNANDEZ CUESTA, AKA FERNANDEZ CUERTO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 880.

No. 11–6264. SINDRAM *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 16 A. 3d 974.

No. 11–6271. MASSEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–6273. BAPTISTE, AKA BAPTISE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–6276. JAMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 642 F. 3d 1333.

No. 11–6282. ROCHELLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 275.

No. 11–6286. RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 450.

No. 11–6287. SANDERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–6289. MUGAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–6294. OLGUIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 643 F. 3d 384.

No. 11–6295. NAVARRETE-JIMENEZ, AKA NAVARETE-JIMINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 595.

No. 11–6298. MARQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 317.

No. 11–6300. SCOTT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 642 F. 3d 791.

No. 11–6302. LLAGUNO RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 793.

No. 11–6304. MORALES-RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 796.

No. 11–6305. BRANCH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 659.

No. 11–6307. BENAVENTE-FRANCO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 357.

No. 11–6308. BROCK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 632 F. 3d 999.

No. 11–6309. BROOKS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 788.

No. 11–6310. ACUNA-ZARATE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 421.

No. 11–6318. SALINAS-MELENDEZ, AKA SALINAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 433.

No. 11–6325. MCBARRON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–6329. CONTRERAS-VILLEGAS, AKA CONTRERAS VILLEGAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 362.

No. 11–6330. CALDERA-RAYOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 355.

No. 11–6333. UBELE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–6334. THELEN *v.* SHERROD, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 11–6337. PANTOJA CARRETERO, AKA CARRETERO, AKA GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 300.

No. 11–175. RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* DOODY. C. A. 9th Cir. Certiorari denied. JUSTICE ALITO would grant the petition for writ of certiorari. Reported below: 649 F. 3d 986.

No. 11–195. GOMES *v.* COUNTRYWIDE HOME LOANS, INC., ET AL. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 192 Cal. App. 4th 1149, 121 Cal. Rptr. 3d 819.

No. 11–284. LAUERSEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 648 F. 3d 115.

No. 11–5086. REYNOLDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–5090. BENALLY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 415 Fed. Appx. 86.

No. 11–5663. SAMUEL *v.* BLOOMBERG, MAYOR, 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.

No. 11–5790. LAFRENIERE *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 11–6195. EVANS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 428 Fed. Appx. 358.

No. 11–6204. PIERCE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 637 F. 3d 59.

No. 11–6225. BATTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 425 Fed. Appx. 210.

No. 11–6280. SOREIDE *v.* ZICKEFOOSE, WARDEN. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 418 Fed. Appx. 59.

No. 11–6338. PERTIL *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. 10–8709. BEAN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 563 U. S. 919. Motion for leave to file petition for rehearing denied.

OCTOBER 17, 2011

Certiorari Granted—Vacated and Remanded

No. 10–10612. OLDS *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 *Tapia* v. *United States*, 564 U. S. 319 (2011). Reported below: 420 Fed. Appx. 260.

Certiorari Dismissed

No. 11–5829. JACOB *v.* HOUSTON, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES. 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. 11–6085. ZIED-CAMPBELL *v.* RICHMAN, SECRETARY, PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE, 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. Reported below: 428 Fed. Appx. 224.

Miscellaneous Orders

No. 11M36. MCFADDEN *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 10–895. GONZALEZ *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. [Certiorari granted, 564 U. S. 1003.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 10–8974. PERRY *v.* NEW HAMPSHIRE. Sup. Ct. N. H. [Certiorari granted, 563 U. S. 1020.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 11–5868. IN RE PETERS. Petition for writ of mandamus denied.

No. 11–6392. IN RE DAVIES. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 10–1491. KIOBEL, INDIVIDUALLY AND ON BEHALF OF HER LATE HUSBAND KIOBEL, ET AL. *v.* ROYAL DUTCH PETROLEUM

Co. et al. C. A. 2d Cir. Motion of International Law Scholars for leave to file a brief as *amici curiae* granted. Certiorari granted, and case to be argued in tandem with No. 11–88, *Mohamad, Individually and for the Estate of Rahim, Deceased, et al.* v. *Palestinian Authority et al., infra.* Reported below: 621 F. 3d 111.

No. 11–45. Elgin et al. *v.* Department of the Treasury et al. C. A. 1st Cir. Certiorari granted. Reported below: 641 F. 3d 6.

No. 11–88. Mohamad, Individually and for the Estate of Rahim, Deceased, et al. *v.* Palestinian Authority et al. C. A. D. C. Cir. Certiorari granted, and case to be argued in tandem with No. 10–1491, *Kiobel, Individually and on Behalf of Her Late Husband Kiobel, et al.* v. *Royal Dutch Petroleum Co. et al., supra.* Reported below: 634 F. 3d 604.

No. 11–210. United States *v.* Alvarez. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 617 F. 3d 1198.

Certiorari Denied

No. 10–1010. Lighty *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 616 F. 3d 321.

No. 10–1426. Busch *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 872.

No. 10–8807. Wilson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 624 F. 3d 640.

No. 10–9333. Wei Qin Sun *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 319.

No. 10–9445. Pacheco-Garcia *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 403 Fed. Appx. 941.

No. 10–9746. Guerrero-Campos *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 405 Fed. Appx. 919.

No. 10–10340. Wesevich *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 620.

No. 10–10487. McClendon *v.* Rednour, Warden. C. A. 7th Cir. Certiorari denied.

No. 10–10544. Mason *v.* New York; and
No. 10–10944. Rabb *v.* New York. Ct. App. N. Y. Certiorari denied. Reported below: 16 N. Y. 3d 145, 945 N. E. 2d 447.

No. 10–10814. Gentry *v.* Sinclair, Superintendent, Washington State Penitentiary. Sup. Ct. Wash. Certiorari denied. Reported below: 170 Wash. 2d 711, 245 P. 3d 766.

No. 10–11097. Mays *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 11–58. Gentry *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 633 F. 3d 788.

No. 11–69. Arthur *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied. Reported below: 71 So. 3d 733.

No. 11–181. McWilliams *v.* Destin Holiday Beach Resort et al. Sup. Ct. Fla. Certiorari denied. Reported below: 58 So. 3d 261.

No. 11–183. Seneca Telephone Co. *v.* Miami Tribe of Oklahoma, dba White Loon Construction Co. Sup. Ct. Okla. Certiorari denied. Reported below: 2011 OK 15, 253 P. 3d 53.

No. 11–185. Koziol *v.* Grievance Committee of the Fifth Judicial District of New York. Ct. App. N. Y. Certiorari denied. Reported below: 16 N. Y. 3d 853, 947 N. E. 2d 159.

No. 11–186. Kimm *v.* Shin Auk Kang. Super. Ct. N. J., App. Div. Certiorari denied.

No. 11–187. ZL Technologies Inc. *v.* Gartner Group, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 547.

No. 11–188. Quinn *v.* Nafta Traders, Inc. Sup. Ct. Tex. Certiorari denied. Reported below: 339 S. W. 3d 84.

No. 11–193. USI MidAtlantic, Inc., et al. *v.* William A. Graham Co., dba Graham Co. C. A. 3d Cir. Certiorari denied. Reported below: 646 F. 3d 138.

No. 11–201. Kliesh *v.* Select Portfolio Servicing, Inc., et al. C. A. 3d Cir. Certiorari denied. Reported below: 419 Fed. Appx. 268.

No. 11–203. POLES *v.* SIKOWITZ. C. A. 2d Cir. Certiorari denied.

No. 11–219. JACKSON, AS NEXT FRIEND AND PARENT OF JACKSON, A MINOR *v.* NIXON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 411.

No. 11–271. SPEED *v.* HALL, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 11–289. CHEEK *v.* JENNINGS ET AL. Sup. Ct. Va. Certiorari denied.

No. 11–303. ABBOTT ET AL. *v.* GUENTHER. C. A. 4th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 312.

No. 11–317. EL BEY *v.* KRAVITZ, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT, ET AL.; and DERISME *v.* BANK OF AMERICA, NA. C. A. 2d Cir. Certiorari denied.

No. 11–323. GOMEZ-GOMEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 643 F. 3d 463.

No. 11–5302. FARMER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 419 Fed. Appx. 163.

No. 11–5343. GONSALES CAMPOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 906.

No. 11–5393. SAVILLON-MATUTE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 636 F. 3d 119.

No. 11–5803. BOGER *v.* YOUNG, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 279.

No. 11–5804. BOOKER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 51 Cal. 4th 141, 245 P. 3d 366.

No. 11–5811. ROBINSON *v.* EASTERLING, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 439.

No. 11–5816. DIXON *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 226 Ariz. 545, 250 P. 3d 1174.

No. 11–5817. WILSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–5820. VAZQUEZ RIQUELME *v.* DE JESUS ET AL. Sup. Ct. P. R. Certiorari denied.

No. 11–5828. LOFTON *v.* STEWARD, WARDEN. Ct. Crim. App. Tenn. Certiorari denied.

No. 11–5843. WRIGHT *v.* OLD CASTLE GLASS INC. ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–5845. MILLER *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–5850. HUNT *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 268.

No. 11–5860. MEDERS *v.* HALL, WARDEN. Super. Ct. Butts County, Ga. Certiorari denied.

No. 11–5861. MENDEZ *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–5869. CAVE *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 638 F. 3d 739.

No. 11–5873. GASKINS *v.* DUVAL. C. A. 1st Cir. Certiorari denied. Reported below: 640 F. 3d 443.

No. 11–5878. MOLIERE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 11–5879. WILSON *v.* TREVINO, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–5881. TIDWELL *v.* BUTLER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 979.

No. 11–5883. BELL *v.* HCR MANOR CARE FACILITY OF WINTER PARK ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 908.

No. 11–5887. J'Eronn *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 11–5891. Miller *v.* In re Application of County Treasurer for Judgment and Order of Sale Against Lands and Lots Returned Delinquent for Non-Payment of General Taxes and/or Special Assessment. C. A. 7th Cir. Certiorari denied.

No. 11–5895. Cook *v.* Texas. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 11–5898. White *v.* Smereka et al. C. A. 4th Cir. Certiorari denied. Reported below: 410 Fed. Appx. 714.

No. 11–5900. Strujan *v.* Teachers College of Columbia University et al. C. A. 2d Cir. Certiorari denied.

No. 11–5902. Mingo *v.* Lee, Superintendent, Green Haven Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 11–5904. Steffler *v.* Coursey, Superintendent, Eastern Oregon Correctional Institution. Sup. Ct. Ore. Certiorari denied.

No. 11–5905. Rodriguez-Barrera *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 11–5906. Reed *v.* Illinois. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 405 Ill. App. 3d 279, 938 N. E. 2d 199.

No. 11–5908. Song *v.* Gipson et al. C. A. 6th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 506.

No. 11–5909. Anthony *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 64 So. 3d 1260.

No. 11–5913. Stewart *v.* Yates, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 11–5915. Rabb *v.* Georgia Pacific, LLC, et al. C. A. 11th Cir. Certiorari denied.

No. 11–5918. Blocker *v.* Martell, Warden. C. A. 9th Cir. Certiorari denied.

No. 11–5920. PEARSON *v.* TRINITY YACHTS ET AL. Sup. Ct. Miss. Certiorari denied.

No. 11–5922. ARIAS *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 11–5933. WELLS *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 64 So. 3d 1279.

No. 11–5961. MAJOR *v.* MCDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 805.

No. 11–5977. MENNICK *v.* ZMUDA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 564.

No. 11–5979. SANCHEZ *v.* SUFFOLK COUNTY PROBATION DEPARTMENT. C. A. 2d Cir. Certiorari denied.

No. 11–5994. ZEININGER *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 459 Mass. 775, 947 N. E. 2d 1060.

No. 11–6005. GREENLEAF *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 63 So. 3d 763.

No. 11–6040. DEBERRY *v.* DAVIS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 253.

No. 11–6043. CONNELLY *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–6064. CARSON *v.* HUDSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 560.

No. 11–6073. BHATTI *v.* COLLECTOR OF REVENUE OF THE CITY OF ST. LOUIS, MISSOURI, ET AL. Sup. Ct. Mo. Certiorari denied. Reported below: 334 S. W. 3d 444.

No. 11–6083. ELLIS *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 281 Neb. 571, 799 N. W. 2d 267.

No. 11–6088. DRAWBAUGH *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 23 A. 2d 563.

No. 11–6119. WASHINGTON *v.* SCHOOL BOARD OF HILLSBOROUGH COUNTY. C. A. 11th Cir. Certiorari denied.

No. 11–6121. ASH *v.* NISH ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–6124. CHAVEZ *v.* GROUNDS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–6151. MCINERNEY *v.* LAKES CROSSING CENTER. Sup. Ct. Nev. Certiorari denied. Reported below: 127 Nev. 1159, 373 P. 3d 941.

No. 11–6162. CLARK *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–6166. GRAHAM *v.* FUERTES ROSARIO ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 226.

No. 11–6173. HEFFERNAN *v.* HARRIS, DEPUTY DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 706.

No. 11–6251. WALKER *v.* MITCHELL COUNTY BOARD OF COMMISSIONERS. Sup. Ct. Ga. Certiorari denied.

No. 11–6252. MUSLIM *v.* RICCI, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–6268. TSOSIE *v.* GARRETT, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 262.

No. 11–6292. RODRIGUEZ *v.* LEWIS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 352.

No. 11–6320. THOMPSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 805.

No. 11–6343. MALDONADO-GONZALES, AKA RIVERA-VEGA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 632.

No. 11–6346. WILLIAMS *v.* DREW, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 480.

No. 11–6347. VONEIDA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–6350. TAKACS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 424 Fed. Appx. 73.

No. 11–6352. COX *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 391 Fed. Appx. 756.

No. 11–6358. ADIONSER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 305.

No. 11–6362. FOY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 641 F. 3d 455.

No. 11–6368. FOUNTAIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 304.

No. 11–6369. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 909.

No. 11–6370. GRIFFIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 574.

No. 11–6371. GOODMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 649 F. 3d 197.

No. 11–6374. GUILLEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 816.

No. 11–6376. HOPSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 412 Fed. Appx. 532.

No. 11–6379. VELASQUEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 600.

No. 11–6389. HERNANDEZ-HERRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 382.

No. 11–6401. GALINDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–6404. HICKMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 626 F. 3d 756.

No. 11–6412. COVER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–6421. VELA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 288.

No. 11–6423. ADKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 471.

No. 11–6431. CARDENAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–6434. CHON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 730.

No. 11–6435. CHUNG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 906.

No. 11–6437. DICKERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–6452. ELAM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 593.

No. 11–6453. ERICKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 640 F. 3d 1288.

No. 11–6457. MILLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 287.

No. 11–6466. BLANCARTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 455.

No. 11–6468. FLEMING *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–6469. THOMPSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 148.

No. 11–6473. MEEKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 639 F. 3d 522.

No. 11–6486. JACKSON-PLASCENCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 954.

No. 11–6495. RIDLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 238.

No. 10–1404. UNITED STATES *v.* NEW YORK ET AL.; and
No. 10–1420. ONEIDA INDIAN NATION OF NEW YORK ET AL. *v.* COUNTY OF ONEIDA, NEW YORK, ET AL. C. A. 2d Cir. Certio-

rari denied. JUSTICE GINSBURG and JUSTICE SOTOMAYOR would grant the petitions for writs of certiorari. Reported below: 617 F. 3d 114.

No. 10–1510. PRISON LEGAL NEWS *v.* EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 628 F. 3d 1243.

No. 11–189. COLONY COVE PROPERTIES, LLC *v.* CITY OF CARSON, CALIFORNIA, ET AL. C. A. 9th Cir. Motions of Cato Institute et al. and Western Manufactured Housing Communities Association for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 640 F. 3d 948.

No. 11–6359. ALLEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 421 Fed. Appx. 285.

OCTOBER 19, 2011

Dismissal Under Rule 46

No. 11–133. RAUSCH *v.* UNITED STATES. C. A. 10th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 638 F. 3d 1296.

OCTOBER 20, 2011

Dismissal Under Rule 46

No. 11–6057. LOYD *v.* GEORGIA. Sup. Ct. Ga. Certiorari dismissed under this Court's Rule 46.1. Reported below: 288 Ga. 481, 705 S. E. 2d 616.

OCTOBER 25, 2011

Miscellaneous Order

No. 11A412. M. H. *v.* UNITED STATES. C. A. 9th Cir. Application for stay, presented to JUSTICE KENNEDY, and by him referred to the Court, denied.

October 27, 2011

Certiorari Denied

No. 11–7054 (11A432). Garcia *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.

October 28, 2011

Miscellaneous Orders

No. 10–224. National Meat Assn. *v.* Harris, Attorney General of California, et al. C. A. 9th Cir. [Certiorari granted, 564 U. S. 1036.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of respondents Humane Society of the United States et al. for divided argument denied.

No. 10–879. Kurns, Executrix of the Estate of Corson, Deceased, et al. *v.* Railroad Friction Products Corp. et al. C. A. 3d Cir. [Certiorari granted, 563 U. S. 1032.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 10–1211. Vartelas *v.* Holder, Attorney General. C. A. 2d Cir. [Certiorari granted, 564 U. S. 1066.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 10–1261. Credit Suisse Securities (USA) LLC et al. *v.* Simmonds. C. A. 9th Cir. [Certiorari granted, 564 U. S. 1036.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. The Chief Justice took no part in the consideration or decision of this motion.

No. 10–7387. Setser *v.* United States. C. A. 5th Cir. [Certiorari granted, 564 U. S. 1004.] Motion of the Solicitor General for divided argument granted.

October 31, 2011

Affirmed on Appeal

No. 11–82. Mississippi State Conference of the National Association for the Advancement of Colored Peo-

PLE ET AL. *v.* BARBOUR, GOVERNOR OF MISSISSIPPI, ET AL. Affirmed on appeal from D. C. S. D. Miss.

Certiorari Granted—Reversed and Remanded. (See No. 10–1115, *ante*, p. 1.)

Certiorari Granted—Vacated and Remanded

No. 10–1450. SONIC-CALABASAS A, INC. *v.* MORENO. Sup. Ct. Cal. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *AT&T Mobility LLC* v. *Concepcion*, 563 U. S. 333 (2011). Reported below: 51 Cal. 4th 659, 247 P. 3d 130.

No. 10–1499. L. PERRIGO CO. *v.* GAETA ET UX., INDIVIDUALLY AND AS GUARDIAN AD LITEM FOR A. G., A MINOR. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *PLIVA, Inc.* v. *Mensing*, 564 U. S. 604 (2011). Reported below: 630 F. 3d 1225.

Certiorari Dismissed

No. 11–5942. MUHAMMAD *v.* SAPP 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. 11–5972. THOMAS *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE BOARD ET AL. Ct. App. Tex., 11th 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. 11–6143. CRUTCHER *v.* NEVADA. Sup. Ct. Nev. 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: 127 Nev. 1128, 373 P. 3d 907.

No. 11–6265. Townsend *v.* Jacks. 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: 417 Fed. Appx. 577.

No. 11–6657. Akbar *v.* Jett, Warden. 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: 429 Fed. Appx. 627.

Miscellaneous Orders

No. D–2555. In re Disbarment of Shepherd. Disbarment entered. [For earlier order herein, see 562 U. S. 816.]

No. D–2588. In re Disbarment of Osborne. Disbarment entered. [For earlier order herein, see 564 U. S. 1015.]

No. D–2589. In re Disbarment of Alderman. Disbarment entered. [For earlier order herein, see 564 U. S. 1016.]

No. D–2591. In re Disbarment of Jones. Disbarment entered. [For earlier order herein, see 564 U. S. 1016.]

No. D–2592. In re Disbarment of Kordell. Disbarment entered. [For earlier order herein, see 564 U. S. 1016.]

No. D–2593. In re Disbarment of Losey. Disbarment entered. [For earlier order herein, see 564 U. S. 1016.]

No. D–2594. In re Disbarment of Tabachnick. Disbarment entered. [For earlier order herein, see 564 U. S. 1016.]

No. D–2595. In re Disbarment of Whitebook. Disbarment entered. [For earlier order herein, see 564 U. S. 1016.]

No. D–2596. In re Disbarment of Pleshaw. Disbarment entered. [For earlier order herein, see 564 U. S. 1017.]

No. D–2597. In re Disbarment of Silva. Disbarment entered. [For earlier order herein, see 564 U. S. 1017.]

No. D–2598. In re Disbarment of Bryant. Disbarment entered. [For earlier order herein, see 564 U. S. 1033.]

No. D–2599. In re Disbarment of King. Disbarment entered. [For earlier order herein, see 564 U. S. 1034.]

No. D–2600. In re Disbarment of King. Disbarment entered. [For earlier order herein, see 564 U. S. 1034.]

No. D–2601. In re Disbarment of Cramer. Disbarment entered. [For earlier order herein, see 564 U. S. 1034.]

No. D–2602. In re Disbarment of Droz. Disbarment entered. [For earlier order herein, see 564 U. S. 1034.]

No. D–2603. In re Disbarment of Luongo. Disbarment entered. [For earlier order herein, see 564 U. S. 1034.]

No. 11M37. Lee et al. *v.* Central Presbytery of the Korean Presbyterian Church of America;

No. 11M38. Lee *v.* Central Presbytery of the Korean Presbyterian Church of America; and

No. 11M39. Smith *v.* Kirkland, Warden, et al. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 11–5980. Starbala et ux. *v.* Homecomings Financial Networks, Inc. App. Ct. Conn. Motion of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 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. 11–6661. In re Swain. Petition for writ of habeas corpus denied.

No. 11–6623. In re Cox. 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. 11–5945. In re Schied;

No. 11–6025. In re Webb;

No. 11–6046. In re Robertson;

No. 11–6052. IN RE PLEASANT;
No. 11–6075. IN RE BOWENS; and
No. 11–6377. IN RE SEARS. Petitions for writs of mandamus denied.

No. 11–256. IN RE VEY. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 10–1445. TEMPERLY *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 933 N. E. 2d 558.

No. 10–1448. VARUGHESE *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 629 F. 3d 272.

No. 10–1535. VILLANUEVA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 410 Fed. Appx. 638.

No. 10–10352. CRAWFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 407 Fed. Appx. 738.

No. 10–10784. MILLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 634 F. 3d 841.

No. 10–10954. MCCLURE *v.* OREGON DEPARTMENT OF CORRECTIONS ET AL. Ct. App. Ore. Certiorari denied.

No. 10–11137. PARKES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 10–11143. MARS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 913.

No. 10–11193. CHAMBERLIN *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 55 So. 3d 1046.

No. 10–11211. KYEI *v.* OREGON DEPARTMENT OF TRANSPORTATION ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–2. STRYKER CORP. ET AL. *v.* BAUSCH. C. A. 7th Cir. Certiorari denied. Reported below: 630 F. 3d 546.

No. 11–80. GILA RIVER INDIAN COMMUNITY *v.* LYON. C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 3d 1059.

No. 11–113. DONINGER *v.* NIEHOFF ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 642 F. 3d 334.

No. 11–131. Barr Laboratories, Inc., et al. *v.* Cancer Research Technology Ltd. et al. C. A. Fed. Cir. Certiorari denied. Reported below: 625 F. 3d 724.

No. 11–156. Rhodes et al. *v.* E. I. du Pont de Nemours & Co. C. A. 4th Cir. Certiorari denied. Reported below: 636 F. 3d 88.

No. 11–174. Garden Grove Unified School District *v.* C. B., a Minor, By and Through His Guardian ad Litem Baquerizo. C. A. 9th Cir. Certiorari denied. Reported below: 635 F. 3d 1155.

No. 11–211. Live Gold Operations, Inc. *v.* Dow, Attorney General of New Jersey. C. A. 3d Cir. Certiorari denied. Reported below: 650 F. 3d 223.

No. 11–216. Carrera et al. *v.* Commercial Coating Services International, Ltd., et al. C. A. 5th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 334.

No. 11–223. Tinsley *v.* Barksdale. Ct. App. D. C. Certiorari denied.

No. 11–231. Downing/Salt Pond Partners, L. P. *v.* Rhode Island et al. C. A. 1st Cir. Certiorari denied. Reported below: 643 F. 3d 16.

No. 11–242. Woodruff *v.* Texas. Ct. App. Tex., 6th Dist. Certiorari denied. Reported below: 330 S. W. 3d 709.

No. 11–243. Salazar et al. *v.* City of Maywood, California, et al. C. A. 9th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 73.

No. 11–244. Paramount Contractors & Developers, Inc. *v.* City of Los Angeles, California. C. A. 9th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 662.

No. 11–248. Meza-Corano et al. *v.* Holder, Attorney General. C. A. 9th Cir. Certiorari denied.

No. 11–253. King *v.* Pfeiffer. Ct. Sp. App. Md. Certiorari denied. Reported below: 194 Md. App. 730 and 733.

No. 11–255. Tinsley *v.* Barksdale. Ct. App. D. C. Certiorari denied. Reported below: 17 A. 3d 1197.

No. 11–259. FLINT *v.* CHURCHILL DOWNS INC. ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–261. PODARAS *v.* CITY OF MENLO PARK, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 614.

No. 11–264. BORST *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 337 S. W. 3d 95.

No. 11–267. KRASNER *v.* BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–268. HAYDEN *v.* GREEN. C. A. 6th Cir. Certiorari denied. Reported below: 640 F. 3d 150.

No. 11–270. POLES *v.* BROOKLYN COMMUNITY HOUSING AND SERVICES ET AL. C. A. 2d Cir. Certiorari denied.

No. 11–273. TORGERSON ET AL. *v.* CITY OF ROCHESTER, MINNESOTA. C. A. 8th Cir. Certiorari denied. Reported below: 643 F. 3d 1031.

No. 11–276. LEON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 357.

No. 11–285. NOEL ET AL. *v.* ARTSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 641 F. 3d 580.

No. 11–286. PRIMM *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 2011-Ohio-328.

No. 11–291. GABAY *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 649.

No. 11–294. KENTUCKY *v.* COBB. Ct. App. Ky. Certiorari denied.

No. 11–308. THOMAS ET AL. *v.* ALCOSER ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 11–309. TIDES ET AL. *v.* BOEING CO. C. A. 9th Cir. Certiorari denied. Reported below: 644 F. 3d 809.

No. 11–310. SANDOR MONTERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 738.

No. 11–319. FOX *v.* BAKERY, CONFECTIONERY, TOBACCO WORKERS AND GRAIN MILLERS INTERNATIONAL UNION, LOCAL NO. 24, AFL–CIO, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 767.

No. 11–320. HIGERD *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 54 So. 3d 513.

No. 11–321. GILES *v.* WAL-MART STORES EAST, LP. C. A. 11th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 816.

No. 11–325. ALLISON *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 403 Fed. Appx. 866.

No. 11–328. STINE *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 417 Fed. Appx. 979.

No. 11–330. BROWN *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Wake County, N. C. Certiorari denied.

No. 11–331. MARCELLO *v.* INTERNAL REVENUE SERVICE. C. A. 4th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 560.

No. 11–346. AMERICAN CENTRAL CITY, INC. *v.* JOINT ANTELOPE VALLEY AUTHORITY ET AL. Sup. Ct. Neb. Certiorari denied. Reported below: 281 Neb. 742, 807 N. W. 2d 170.

No. 11–351. NOORZAI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 422 Fed. Appx. 54.

No. 11–352. OPPLIGER ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 637 F. 3d 889.

No. 11–353. UNITED STATES EX REL. UBL *v.* IIF DATA SOLUTIONS, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 650 F. 3d 445.

No. 11–361. ALEXANDER *v.* OHIO STATE UNIVERSITY COLLEGE OF SOCIAL WORK ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 481.

No. 11–366. RINGGOLD-LOCKHART ET AL. *v.* SANKARY ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–370. O'CONNELL *v.* MILLER-STOUT, SUPERINTENDENT, AIRWAY HEIGHTS CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 11–371. TRAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 227.

No. 11–387. LEIGHTEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 836.

No. 11–392. LOMBARD *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 424 Fed. Appx. 5.

No. 11–5253. FLETCHER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–5328. SANBORN *v.* PARKER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 629 F. 3d 554.

No. 11–5551. VASQUEZ-DIAZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 576.

No. 11–5552. WALDREN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 374.

No. 11–5606. KALFOUNTZOS *v.* UNITED STATES RAILROAD RETIREMENT BOARD. C. A. 9th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 612.

No. 11–5925. AGUILAR *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–5926. BLAKE *v.* SAN FRANCISCO POLICE DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–5927. BADEN *v.* CITY OF WHEATON, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 628.

No. 11–5932. MITCHELL *v.* HOWES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–5936. DERRINGER *v.* ARIZONA ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–5937. SCHIED *v.* WARD ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–5943. NORINGTON *v.* BUTTS, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 11–5953. MURRAY *v.* DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES ET AL. Ct. App. D. C. Certiorari denied. Reported below: 12 A. 3d 1173.

No. 11–5958. CLARK *v.* COFFEE. C. A. 11th Cir. Certiorari denied.

No. 11–5960. MEYERS *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 11–5962. JELANI *v.* PROVINCE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 774.

No. 11–5963. JONES *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 63 So. 3d 772.

No. 11–5965. JOHNSON *v.* BROWN, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 11–5967. DOLLERY *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 11–5969. WALLACE *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 11–5971. WILLIAMS *v.* VIRGINIA ET AL. Sup. Ct. Va. Certiorari denied.

No. 11–5974. LAW *v.* OCHOA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–5983. BELCHER *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 692.

No. 11–5989. VAN DE VIVER *v.* ARTUS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 11–5993. MARLAR *v.* RILEY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 182.

No. 11–5995. GRANGE *v.* SOUTHEASTERN MECHANICAL SERVICES, INC. C. A. 4th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 269.

No. 11–5997. MORENO *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–5999. GONZALEZ *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 629 F. 3d 1219.

No. 11–6011. CLANTON *v.* SCHLEGEL SYSTEMS, INC., ET AL. C. A. 2d Cir. Certiorari denied.

No. 11–6013. GROSS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 259.

No. 11–6015. SCHIED *v.* SNYDER ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–6021. SAPANARA *v.* THOMAS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–6023. SMITH *v.* BOWERSOX, SUPERINTENDENT, SOUTH CENTRAL CORRECTIONAL FACILITY. C. A. 8th Cir. Certiorari denied.

No. 11–6027. MANZELLA *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 11–6038. CARTER *v.* CAMPBELL. Sup. Ct. Va. Certiorari denied.

No. 11–6042. COLLINS *v.* CITY OF JACKSONVILLE, FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 54 So. 3d 973.

No. 11–6044. COLON *v.* BURNETT, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–6045. RODRIGUEZ *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 405 Ill. App. 3d 1202, 997 N. E. 2d 1010.

No. 11–6047. Soja *v.* California. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 11–6051. Parker *v.* Jones, Director, Oklahoma Department of Corrections. C. A. 10th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 824.

No. 11–6054. Springs *v.* New York City Board of Education et al. C. A. 2d Cir. Certiorari denied.

No. 11–6055. Roberson *v.* Mississippi. Ct. App. Miss. Certiorari denied. Reported below: 61 So. 3d 204.

No. 11–6058. Ortiz *v.* Pennsylvania et al. C. A. 3d Cir. Certiorari denied.

No. 11–6059. Espie *v.* Rivard, Warden. C. A. 6th Cir. Certiorari denied.

No. 11–6062. Carey *v.* Roy, Commissioner, Minnesota Department of Corrections, et al. C. A. 8th Cir. Certiorari denied.

No. 11–6063. Davis *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 11–6069. Mansor-Hopkinson *v.* La Maison Management, LLC, et al. Super. Ct. Pa. Certiorari denied.

No. 11–6070. Pritchard et ux. *v.* Dow Agro Sciences et al. C. A. 3d Cir. Certiorari denied. Reported below: 430 Fed. Appx. 102.

No. 11–6071. Brandon *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 11–6072. Brown *v.* McDonalds USA, LLC, et al. C. A. 10th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 700.

No. 11–6074. Byrd *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 11–6077. Morris *v.* Curtin, Warden. C. A. 6th Cir. Certiorari denied.

No. 11–6078. MINIARD *v.* SUPREME COURT OF OHIO ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–6081. CHAPA *v.* COOPER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 11–6084. SINGLETON *v.* BYARS, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 447 Fed. Appx. 431.

No. 11–6086. WEBB *v.* ONEY, JUDGE, COURT OF COMMON PLEAS OF OHIO, BUTLER COUNTY, ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–6090. EVANS *v.* HERNANDEZ ET AL. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 11–6091. PEREZ *v.* LEE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 11–6098. BIVERT *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 52 Cal. 4th 96, 254 P. 3d 300.

No. 11–6101. JONES *v.* MARYLAND STATE'S ATTORNEY OFFICE. C. A. 4th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 262.

No. 11–6102. LEWIS *v.* FLORIDA ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 58 So. 3d 264.

No. 11–6104. KALFOUNTZOS *v.* CITY OF SACRAMENTO, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–6107. TOMPSON *v.* MASSACHUSETTS DEPARTMENT OF MENTAL HEALTH. App. Ct. Mass. Certiorari denied. Reported below: 76 Mass. App. 586, 924 N. E. 2d 747.

No. 11–6108. JUARBE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 11–6109. JUNIER *v.* CONRAD ET AL. App. Ct. Mass. Certiorari denied. Reported below: 79 Mass. App. 1113, 945 N. E. 2d 438.

No. 11–6110. ALEXANDER *v.* CLEMENTS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A.

10th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 738.

No. 11–6111. ARTIS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 77 App. Div. 3d 848, 909 N. Y. S. 2d 381.

No. 11–6114. ROCHA *v.* FEINERMAN. C. A. 7th Cir. Certiorari denied.

No. 11–6115. SONG *v.* WELCH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 213.

No. 11–6116. SINGLETON *v.* TEN UNIDENTIFIED UNITED STATES MARSHALS. Sup. Ct. S. C. Certiorari denied.

No. 11–6118. LITTLEJOHN *v.* REYNOLDS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 215.

No. 11–6127. EASLEY *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 583.

No. 11–6130. KIM *v.* HENSE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–6131. JACKSON *v.* HARDY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 11–6135. MITCHELL *v.* GERSHEN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 466 Fed. Appx. 84.

No. 11–6136. NOROUZIAN *v.* TRUMAN MEDICAL CENTER, INC. C. A. 8th Cir. Certiorari denied.

No. 11–6137. SZMANIA *v.* COUNTRYWIDE HOME LOANS, INC. Ct. App. Wash. Certiorari denied. Reported below: 160 Wash. App. 1002.

No. 11–6139. EVANS *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 236.

No. 11–6140. CARNLEY *v.* MORGAN, SHERIFF, ESCAMBIA COUNTY, FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 60 So. 3d 1054.

No. 11–6141. FELDMAN *v.* TWENTIETH CENTURY FOX ET AL. C. A. 1st Cir. Certiorari denied.

No. 11–6142. HAMMONTREE *v.* HOREL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–6150. REEVES *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 57 So. 3d 874.

No. 11–6155. SANJARI *v.* GRATZOL. Ct. App. Ind. Certiorari denied.

No. 11–6156. RICHARDSON *v.* WALKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–6161. BLACK *v.* HOLDER, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied.

No. 11–6170. HALLFORD *v.* MENDEZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 621.

No. 11–6171. MITCHELL *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 337 S. W. 3d 68.

No. 11–6172. NORTHUP *v.* GINSEL, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 11–6175. HILL *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–6177. GLEASON *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. (two judgments). C. A. 9th Cir. Certiorari denied.

No. 11–6185. MANIGAULTE *v.* C. W. POST OF LONG ISLAND UNIVERSITY. C. A. 2d Cir. Certiorari denied.

No. 11–6188. JOE *v.* WALGREENS CO./ILL ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 413 Fed. Appx. 928.

No. 11–6189. HARRISON *v.* LAWLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–6191. IBARRA-PEREZ *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–6203. McKinstry *v.* California. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 11–6214. Maxson *v.* Woods, Warden. C. A. 6th Cir. Certiorari denied.

No. 11–6235. Bermudez *v.* Conway, Superintendent, Attica Correctional Facility, et al. C. A. 2d Cir. Certiorari denied.

No. 11–6236. Blanchard *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 405 Ill. App. 3d 1195, 997 N. E. 2d 1007.

No. 11–6238. Barker *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 11–6243. Dumont *v.* Morgan Stanley & Co. et al. C. A. 2d Cir. Certiorari denied.

No. 11–6249. Romero *v.* Ryan, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 425.

No. 11–6259. Christmas *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 406 Ill. App. 3d 1206, 998 N. E. 2d 714.

No. 11–6260. Stevenson *v.* Shoup et al. C. A. 4th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 312.

No. 11–6267. Wade *v.* Peterson. C. A. 5th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 354.

No. 11–6269. Wilkins *v.* Hobbs, Director, Arkansas Department of Correction. Sup. Ct. Ark. Certiorari denied. Reported below: 2011 Ark. 169.

No. 11–6274. Bigham *v.* Tucker, Secretary, Florida Department of Corrections. Sup. Ct. Fla. Certiorari denied. Reported below: 63 So. 3d 748.

No. 11–6275. Allen *v.* Tucker, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 11–6279. Randolph *v.* Bodison, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 227.

No. 11–6284. PORTO *v.* CITY OF LAGUNA BEACH, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 594.

No. 11–6296. OCCHIONE *v.* BABBITT, ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION. C. A. 4th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 255.

No. 11–6312. AMERSON *v.* CITY OF DES MOINES, IOWA. Ct. App. Iowa. Certiorari denied. Reported below: 801 N. W. 2d 32.

No. 11–6326. DAVIS *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–6327. DUBOIS *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied.

No. 11–6328. CUNNINGHAM *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–6331. THORNTON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 11–6340. SKAMFER *v.* POLLARD, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 11–6342. PUTNEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 377 Fed. Appx. 302.

No. 11–6348. WILLIAMS *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 2011 WI App 58, 332 Wis. 2d 805, 798 N. W. 2d 320.

No. 11–6361. HATFIELD *v.* UNITED STATES; and
No. 11–6607. HATFIELD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 648.

No. 11–6363. GREER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 608.

No. 11–6373. HUDSON *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 619.

No. 11–6381. WEBSTER *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 428 Fed. Appx. 976.

No. 11–6382. Brown *v.* Georgia. Sup. Ct. Ga. Certiorari denied. Reported below: 289 Ga. 259, 710 S. E. 2d 751.

No. 11–6388. Mazyck *v.* Stevenson, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 225.

No. 11–6396. Goodman *v.* Kerestes, Superintendent, State Correctional Institution at Mahanoy. C. A. 3d Cir. Certiorari denied.

No. 11–6398. Harper *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 11–6407. Horton *v.* Thomas, Superintendent, State Correctional Institution at Chester, et al. C. A. 3d Cir. Certiorari denied.

No. 11–6416. El-Amin *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 11–6418. Yaacov *v.* Tibbals, Warden. C. A. 6th Cir. Certiorari denied.

No. 11–6419. Vargas *v.* Gonzalez, Acting Warden. C. A. 9th Cir. Certiorari denied.

No. 11–6429. Collier *v.* Tucker, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 11–6458. Robertson *v.* Cartinhour. C. A. D. C. Cir. Certiorari denied. Reported below: 429 Fed. Appx. 1.

No. 11–6465. Amr *v.* Moore et al. C. A. 4th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 584.

No. 11–6474. Phiffer *v.* Wisconsin. Ct. App. Wis. Certiorari denied. Reported below: 2010 WI App 33, 323 Wis. 2d 822, 781 N. W. 2d 550.

No. 11–6475. McKinney *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 66 So. 3d 852.

No. 11–6484. Tierney *v.* Hawaii. Int. Ct. App. Haw. Certiorari denied. Reported below: 125 Haw. 246, 257 P. 3d 1223.

No. 11–6485. DEL VALLE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–6492. GUADALUPE MENDOZA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–6496. SMITH *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 11–6502. MICKENS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 82 App. Div. 3d 430, 917 N. Y. S. 2d 630.

No. 11–6503. NELSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 800.

No. 11–6504. MERCER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–6505. VAN *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. Sup. Ct. Ark. Certiorari denied. Reported below: 2011 Ark. 287.

No. 11–6508. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 410.

No. 11–6509. LEWIS *v.* BERGH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–6513. WALCOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 860.

No. 11–6515. ZAVALA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 11–6516. VALDES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 873.

No. 11–6522. SEAY *v.* O'BRIEN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 410 Fed. Appx. 610.

No. 11–6525. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 276.

No. 11–6526. KATOPODIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 902.

No. 11–6530. CONWAY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–6536. DICKERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 252.

No. 11–6539. DILLARD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 432 Fed. Appx. 158.

No. 11–6540. ROCHIN-JEREZ, AKA CAMARGO-PERALTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 619.

No. 11–6541. RODRIGUEZ-SAUCEDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 11–6542. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 321.

No. 11–6544. AVILA *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 11–6545. RODRIGUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 423 Fed. Appx. 28.

No. 11–6546. SHIELDS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 415 Fed. Appx. 437.

No. 11–6547. SNELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 432 Fed. Appx. 80.

No. 11–6552. CARRILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 325.

No. 11–6553. CANTY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 826.

No. 11–6555. ALAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 164.

No. 11–6556. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 339.

No. 11–6557. LECHUGA-GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 295.

No. 11–6558. PLEASANT-BEY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 988 A. 2d 496.

No. 11–6561. ABEBE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 221.

No. 11–6562. WISECARVER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 644 F. 3d 764.

No. 11–6564. BENNETT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 427 Fed. Appx. 228.

No. 11–6567. ROUNTREE, AKA HAWKINS *v.* BALICKI, ADMINISTRATOR, SOUTH WOODS STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 640 F. 3d 530.

No. 11–6569. RODRIGUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 655 F. 3d 126.

No. 11–6570. BROWN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 433 Fed. Appx. 61.

No. 11–6574. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 616.

No. 11–6575. LADSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 643 F. 3d 1335.

No. 11–6576. LIGONS *v.* KING, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 11–6583. DURAN-GARCIA, AKA JIMENEZ, AKA GARSON-DURAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 850.

No. 11–6584. DELORME *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 886.

No. 11–6585. CHRISTENSEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 643.

No. 11–6588. SCOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 869.

No. 11–6595. ZAIDI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–6596. TALIK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 235.

No. 11–6600. GRAURE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 11–6603. GATHRITE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 316.

No. 11–6604. GONZALEZ-HUERTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 679.

No. 11–6610. OLIVAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–6622. CUBIE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 628 F. 3d 368.

No. 11–6625. PERKINS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 642 F. 3d 1062.

No. 11–6630. WESLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 838.

No. 11–6632. BUILES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–6635. TOLLIVER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 448.

No. 11–6642. CARTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 483.

No. 11–6643. LAMAR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 704.

No. 11–6650. VALADEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 11–6651. PAUL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 634 F. 3d 668.

No. 11–6652. MCCAW *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–6653. CURRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 253.

No. 11–6659. SANABRIA SANCHEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 664.

No. 11–6662. RICE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 289.

No. 11–6672. LERMA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 673.

No. 11–6674. STYERS *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 227 Ariz. 186, 254 P. 3d 1132.

No. 11–6676. ARIAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 923.

No. 11–6681. CLARK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 228.

No. 11–6685. DICKS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–6693. ACOSTA-GALLARDO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 656 F. 3d 1109.

No. 11–6695. PASCUAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 11–6699. MEDINA-FLORES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–6700. SCOTT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 434 Fed. Appx. 103.

No. 11–6709. LOUIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 227.

No. 11–6721. WILSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 376 Fed. Appx. 972.

No. 11–6726. SIMPSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 645 F. 3d 300.

No. 10–1276. UTAH HIGHWAY PATROL ASSN. *v.* AMERICAN ATHEISTS, INC., ET AL.; and

No. 10–1297. DAVENPORT ET AL. *v.* AMERICAN ATHEISTS, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: No. 10–1276, 616 F. 3d 1145; No. 10–1297, 637 F. 3d 1095.

JUSTICE THOMAS, dissenting.

Today the Court rejects an opportunity to provide clarity to an Establishment Clause jurisprudence in shambles. A sharply

divided Court of Appeals for the Tenth Circuit has declared unconstitutional a private association's efforts to memorialize slain police officers with white roadside crosses, holding that the crosses convey to a reasonable observer that the State of Utah is endorsing Christianity. The Tenth Circuit's opinion is one of the latest in a long line of "'religious display'" decisions that, because of this Court's nebulous Establishment Clause analyses, turn on little more than "judicial predilections." See *Van Orden* v. *Perry*, 545 U. S. 677, 696, 697 (2005) (THOMAS, J., concurring). Because our jurisprudence has confounded the lower courts and rendered the constitutionality of displays of religious imagery on government property anyone's guess, I would grant certiorari.

I

The Utah Highway Patrol Association (Association) is a private organization dedicated to supporting Utah Highway Patrol officers and their families.[1] In 1998, the Association began commemorating officers who died in the line of duty by placing memorials, in the form of 12- by 6-foot white crosses, at or near locations where the officers were killed. The fallen officer's name, rank, and badge number are emblazoned across the full length of the horizontal beam of each memorial. The vertical beam bears the symbol of the Utah Highway Patrol, the year of the officer's death, and a plaque displaying the officer's picture, his biographical information, and details of his death. To date, the Association has erected 13 cross memorials.

The Association chose the cross because it believed that crosses are used both generally in cemeteries to commemorate the dead and specifically by uniformed services to memorialize those who died in the line of duty. The Association also believed that only the cross effectively and simultaneously conveyed the messages of death, honor, remembrance, gratitude, sacrifice, and safety that the Association wished to communicate to the public. Surviving family members of the fallen officers approved each memorial, and no family ever requested that the Association use a symbol other than the cross.

The private Association designed, funded, owns, and maintains the memorials. To ensure that the memorials would be visible

[1] These cases were decided on a motion for summary judgment. These facts are undisputed.

to the public, safe to view, and near the spot of the officers' deaths, the Association requested and received permission from the State of Utah to erect some of the memorials on roadside public rights-of-way, at rest areas, and on the lawn of the Utah Highway Patrol office. In the permit, the State expressed that it "neither approves or disapproves the memorial marker." Brief in Opposition 3, n. 3 (internal quotation marks omitted).

Respondents, American Atheists, Inc., and some of its members, sued several state officials, alleging that the State violated the Establishment Clause of the First Amendment, as incorporated by the Fourteenth Amendment, because most of the crosses were on state property and all of the crosses bore the Utah Highway Patrol's symbol. The Association, a petitioner along with the state officials in this Court, intervened to defend the memorials. The District Court granted summary judgment in favor of petitioners.

A panel of the Tenth Circuit reversed. As an initial matter, the panel noted that this Court remains "sharply divided on the standard governing Establishment Clause cases." *American Atheists, Inc.* v. *Duncan*, 616 F. 3d 1145, 1156 (2010). The panel therefore looked to Circuit precedent to determine the applicable standard and then applied the so-called "*Lemon*/endorsement test," which asks whether the challenged governmental practice has the actual purpose of endorsing religion or whether it has that effect from the perspective of a "reasonable observer." *Id.*, at 1156, 1157; see *County of Allegheny* v. *American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U. S. 573, 592–594 (1989) (modifying the three-pronged test of *Lemon* v. *Kurtzman*, 403 U. S. 602 (1971), which considered whether a government action has a secular purpose, has the primary effect of advancing or inhibiting religion, or fosters an excessive entanglement between government and religion). The court concluded that, even though the cross memorials had a secular purpose, they would nonetheless "convey to a reasonable observer that the state of Utah is endorsing Christianity." 616 F. 3d, at 1160. This was so, the court concluded, because a cross is "the preeminent symbol of Christianity," and the crosses stood alone, on public land, bearing the Utah Highway Patrol's emblem. *Ibid.* According to the panel, none of the other "contextualizing facts" sufficiently reduced the memorials' message of religious endorsement. *Id.*, at 1161.

The Tenth Circuit denied rehearing en banc, with four judges dissenting. The dissenters criticized the panel for presuming that the crosses were unconstitutional and then asking whether contextual factors were sufficient to rebut that presumption. Instead, the dissenters argued, the panel should have considered whether the crosses amounted to an endorsement of religion in the first place in light of their physical characteristics, location near the site of the officer's death, commemorative purpose, selection by surviving family members, and disavowal by the State. 637 F. 3d 1095, 1103–1105 (2010) (opinion of Kelly, J.). The dissenters also criticized the panel's "unreasonable 'reasonable observer,'" *id.*, at 1104, describing him as "biased, replete with foibles, and prone to mistake," *id.*, at 1108 (opinion of Gorsuch, J.). Noting that the court "continue[d] to apply (or misapply) a reasonable observer/endorsement test that has come under much recent scrutiny," the dissenters emphasized that the panel's decision was "worthy of review." *Id.*, at 1109–1110 (same).

II

Unsurprisingly, the Tenth Circuit relied on its own precedent, rather than on any of this Court's cases, when it selected the *Lemon*/endorsement test as its governing analysis. Our jurisprudence provides no principled basis by which a lower court could discern whether *Lemon*/endorsement, or some other test, should apply in Establishment Clause cases. Some of our cases have simply ignored the *Lemon* or *Lemon*/endorsement formulations. See, *e. g.*, *Zelman* v. *Simmons-Harris*, 536 U. S. 639 (2002); *Good News Club* v. *Milford Central School*, 533 U. S. 98 (2001); *Marsh* v. *Chambers*, 463 U. S. 783 (1983). Other decisions have indicated that the *Lemon*/endorsement test is useful, but not binding. *Lynch* v. *Donnelly*, 465 U. S. 668, 679 (1984) (despite *Lemon*'s usefulness, we are "unwillin[g] to be confined to any single test or criterion in this sensitive area"); *Hunt* v. *McNair*, 413 U. S. 734, 741 (1973) (*Lemon* provides "no more than helpful signposts"). Most recently, in *Van Orden*, 545 U. S. 677, a majority of the Court declined to apply the *Lemon*/endorsement test in upholding a Ten Commandments monument located on the grounds of a state capitol.[2] Yet in another case decided the same

[2] In *Van Orden*, a plurality determined that the nature of a government display and our Nation's historical traditions should control. 545 U. S., at 686; see also *ibid.* ("Whatever may be the fate of the *Lemon* test in the

day, *McCreary County* v. *American Civil Liberties Union of Ky.*, 545 U. S. 844, 859–866 (2005), the Court selected the *Lemon*/endorsement test with nary a word of explanation and then declared a display of the Ten Commandments in a courthouse to be unconstitutional. See also *Van Orden*, *supra*, at 692 (SCALIA, J., concurring) ("I join the opinion of THE CHIEF JUSTICE because I think it accurately reflects our current Establishment Clause jurisprudence—or at least the Establishment Clause jurisprudence we currently apply some of the time"). Thus, the *Lemon*/endorsement test continues to "stal[k] our Establishment Clause jurisprudence" like "some ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad, after being repeatedly killed and buried." *Lamb's Chapel* v. *Center Moriches Union Free School Dist.*, 508 U. S. 384, 398 (1993) (SCALIA, J., concurring in judgment).

Since *Van Orden* and *McCreary*, lower courts have understandably expressed confusion. See *American Civil Liberties Union of Ky.* v. *Mercer Cty.*, 432 F. 3d 624, 636 (CA6 2005) (after *McCreary* and *Van Orden*, "we remain in Establishment Clause purgatory").[3] This confusion has caused the Circuits to apply differ-

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larger scheme of Establishment Clause jurisprudence, we think it not useful in dealing with the sort of passive monument that Texas has erected"). In a concurring opinion, JUSTICE BREYER considered the "basic purposes of the First Amendment's Religion Clauses themselves" rather than "a literal application of any particular test." *Id.*, at 703–704 (opinion concurring in judgment); see also *id.*, at 700 ("[I]n [difficult borderline] cases, I see no test-related substitute for the exercise of legal judgment").

[3] See also *Green* v. *Haskell Cty. Bd. of Comm'rs*, 574 F. 3d 1235, n. 1 (CA10 2009) (Kelly, J., dissenting from denial of rehearing en banc) (noting that "[w]hether *Lemon* . . . and its progeny actually create discernable 'tests,' rather than a mere ad hoc patchwork, is debatable" and describing the "judicial morass resulting from the Supreme Court's opinions"); *Card* v. *Everett*, 520 F. 3d 1009, 1016 (CA9 2008) ("Confounded by the ten individual opinions in *[McCreary* and *Van Orden]* . . . courts have described the current state of the law as both 'Establishment Clause purgatory' and 'Limbo'" (citation omitted)); *id.*, at 1023–1024 (Fernandez, J., concurring) (applauding the majority's "heroic attempt to create a new world of useful principle out of the Supreme Court's dark materials" and lamenting the "still stalking *Lemon* test and the other tests and factors, which have floated to the top of this chaotic ocean from time to time," as "so indefinite and unhelpful that Establishment Clause jurisprudence has not become more fathomable" (footnote omitted)); *Skoros* v. *New York*, 437 F. 3d 1, 13 (CA2 2006) ("[W]e confront the challenge of frequently splintered Supreme Court decisions" and

ent tests to displays of religious imagery challenged under the Establishment Clause. Some lower courts have continued to apply the *Lemon*/endorsement test.[4] Others have followed *Van Orden*.[5] One Circuit, in a case later dismissed as moot, applied both tests.[6]

Respondents assure us that any perceived conflict is "artificial," Brief in Opposition 8, because the lower courts have quite properly applied *Van Orden* to "the distinct class of Ten Commandments cases" indistinguishable from *Van Orden* and have applied the *Lemon*/endorsement test to other religious displays, Brief in Opposition 12, 16. But respondents' "Ten Commandments" rule

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Justices who "have rarely agreed—in either analysis or outcome—in distinguishing the permissible from the impermissible public display of symbols having some religious significance"); *Staley* v. *Harris Cty.*, 461 F. 3d 504, 515 (2006) (Smith, J., dissenting) (admonishing the majority for failing to "integrate *McCreary* and *Van Orden* into as coherent a framework as possible"), dism'd as moot on rehearing en banc, 485 F. 3d 305 (CA5 2007).

[4] See *American Civil Liberties Union of Ohio Foundation, Inc.* v. *DeWeese*, 633 F. 3d 424, 431 (CA6 2011) (applying *Lemon*); *Green* v. *Haskell Cty. Bd. of Comm'rs*, 568 F. 3d 784, 797–798, and n. 8 (CA10 2009) ("While the Supreme Court may be free to ignore *Lemon*, this court is not. Therefore, we cannot . . . be guided in our analysis by the *Van Orden* plurality's disregard of the *Lemon* test" (citations and internal quotation marks omitted)); *Skoros*, *supra*, at 17, and n. 13 ("The *Lemon* test has been much criticized over its twenty-five year history. Nevertheless, the Supreme Court has never specifically disavowed *Lemon*'s analytic framework. . . . Accordingly, we apply *Lemon*" (citations omitted)); *American Civil Liberties Union of Ky.* v. *Mercer Cty.*, 432 F. 3d 624, 636 (CA6 2005) ("Because *McCreary County* and *Van Orden* do not instruct otherwise, we must continue to" apply "*Lemon*, including the endorsement test").

[5] See *Card*, *supra*, at 1018 (applying JUSTICE BREYER's concurring opinion in *Van Orden*, which "carv[ed] out an exception" from *Lemon* for certain displays); *ACLU Neb. Foundation* v. *Plattsmouth*, 419 F. 3d 772, 778, n. 8 (CA8 2005) (en banc) ("Taking our cue from Chief Justice Rehnquist's opinion for the Court and Justice Breyer's concurring opinion in *Van Orden*, we do not apply the *Lemon* test"); see also *Trunk* v. *San Diego*, 629 F. 3d 1099, 1107 (CA9 2011) (JUSTICE BREYER's controlling opinion in *Van Orden* "establishes an 'exception' to the *Lemon* test in certain borderline cases," but "we need not resolve the issue of whether *Lemon* or *Van Orden* contro[l]" because "both cases guide us to the same result").

[6] See *Staley*, *supra*, at 508–509, and n. 6 (applying *Lemon*/endorsement *and* JUSTICE BREYER's concurrence in *Van Orden* after concluding that the objective observer standard of the endorsement test was "implicit" in JUSTICE BREYER's opinion).

is nothing more than a thinly veiled attempt to attribute reason and order where none exists. Respondents offer no principled basis for applying one test to the Ten Commandments and another test to other religious displays that may have similar relevance to our legal and historical traditions. Indeed, that respondents defend the purportedly uniform application of one Establishment Clause standard to the "Ten Commandments' realm" and another standard to displays of other religious imagery, *id.*, at 16, speaks volumes about the superficiality and irrationality of a jurisprudence meant to assess whether government has made a law "respecting an establishment of religion." See *Card* v. *Everett*, 520 F. 3d 1009, 1016 (CA9 2008) (describing "Recent Developments in Ten Commandments Law"). But even assuming that the lower courts uniformly understand *Van Orden* to apply only to those religious displays "factually indistinguishable" from the display in *Van Orden*, Brief in Opposition 16, that understanding conflicts with JUSTICE BREYER's controlling opinion. JUSTICE BREYER's concurrence concluded that there is "no test-related substitute for the exercise of legal judgment" or "exact formula" in "fact-intensive," "difficult borderline cases." 545 U. S., at 700 (opinion concurring in judgment). Nothing in his opinion indicated that only Ten Commandments displays identical to the one in *Van Orden* call for a departure from the *Lemon*/endorsement test.

Moreover, the lower courts have *not* neatly confined *Van Orden* to similar Ten Commandments displays. In *Myers* v. *Loudoun Cty. Public Schools*, 418 F. 3d 395, 402, and n. 8 (2005), the Fourth Circuit applied the *Van Orden* plurality opinion and JUSTICE BREYER's concurring analysis to resolve an Establishment Clause challenge to a statute mandating recitation of the Pledge of Allegiance. In *Staley* v. *Harris Cty.*, 461 F. 3d 504, 511–512 (2006), dism'd as moot on rehearing en banc, 485 F. 3d 305 (2007), the Fifth Circuit applied *Van Orden* to a monument displaying an open Bible. And, in *Green* v. *Haskell Cty. Bd. of Comm'rs*, 568 F. 3d 784, 796–797 (2009), the Tenth Circuit applied the *Lemon*/endorsement test to hold unconstitutional a Ten Commandments monument located on the grounds of a public building and surrounded by other secular monuments, facts materially indistinguishable from those in *Van Orden*.

Respondents further suggest that any variation among the Circuits concerning the Establishment Clause standard for displays of religious imagery is merely academic, for much like the tradi-

tional *Lemon*/endorsement inquiry, JUSTICE BREYER's opinion in *Van Orden* considered the "context of the display" and the "message" it communicated. Brief in Opposition 8–12, and n. 5 (internal quotation marks omitted); see *Van Orden*, 545 U. S., at 701–702 (BREYER, J., concurring in judgment); *id.*, at 703 ("For these reasons, I believe that the Texas display . . . might satisfy this Court's more formal Establishment Clause tests"). I do not doubt that a given court could reach the same result under either test. See *ACLU Neb. Foundation* v. *Plattsmouth*, 419 F. 3d 772, 778, n. 8 (CA8 2005) (en banc) (upholding the constitutionality of a display of the Ten Commandments under either standard); *Trunk* v. *San Diego*, 629 F. 3d 1099, 1107, 1125 (CA9 2011) (concluding that the display of a cross was unconstitutional under either standard). The problem is that both tests are so utterly indeterminate that they permit different courts to reach inconsistent results. Compare *Harris* v. *Zion*, 927 F. 2d 1401 (CA7 1991) (applying *Lemon*/endorsement to strike down a city seal bearing a depiction of a cross), with *Murray* v. *Austin*, 947 F. 2d 147 (CA5 1991) (applying *Lemon*/endorsement to uphold a city seal bearing a depiction of a cross); compare also *Plattsmouth*, *supra* (applying *Van Orden* to uphold a display of the Ten Commandments), with *Staley*, *supra* (applying *Van Orden* to strike down a display of a Bible). As explained below, it is "the very 'flexibility' of this Court's Establishment Clause precedent" that "leaves it incapable of consistent application." *Van Orden*, *supra*, at 697 (THOMAS, J., concurring).

III

In *Allegheny*, a majority of the Court took the view that the endorsement test provides a "sound analytical framework for evaluating governmental use of religious symbols." 492 U. S., at 595 (opinion of Blackmun, J.); *id.*, at 629 (O'Connor, J., concurring in part and concurring in judgment) ("I . . . remain convinced that the endorsement test is capable of consistent application"). That confidence was misplaced. Indeed, JUSTICE KENNEDY proved prescient when he observed that the endorsement test amounted to "unguided examination of marginalia," "using little more than intuition and a tape measure." *Id.*, at 675–676 (opinion concurring in judgment in part and dissenting in part).

Since the inception of the endorsement test, we have learned that a creche displayed on government property violates the Establishment Clause, except when it does not. Compare *id.*, at 579–

581 (opinion of Blackmun, J.) (holding unconstitutional a solitary creche, surrounded by a "fence-and-floral frame," bearing a plaque stating "This Display Donated by the Holy Name Society," and located in the "main," "most beautiful," and "most public" part of a county courthouse (internal quotation marks omitted)), and *Smith* v. *County of Albemarle*, 895 F. 2d 953, 955, and n. 2 (CA4 1990) (holding unconstitutional a creche consisting of "large figures, easily visible, and illuminated at night," bearing a disclaimer reading "'Sponsored and maintained by Charlottesville-Albemarle Jaycees not by Albemarle County,'" and located on the lawn of a county office building), with *Lynch*, 465 U. S., at 671 (upholding a creche displaying 5-inch to 5-foot tall figures of Jesus, Mary, Joseph, angels, shepherds, kings, and animals, surrounded by "a Santa Claus house, reindeer pulling Santa's sleigh, candy-striped poles, a Christmas tree, carolers, cutout figures representing such characters as a clown, an elephant, and a teddy bear, hundreds of colored lights, [and] a large banner that rea[d] 'SEASONS GREETINGS,'" situated in a park in the "heart of the shopping district"), *American Civil Liberties Union of Ky.* v. *Wilkinson*, 895 F. 2d 1098, 1099, 1104 (CA6 1990) (upholding a 15-foot stable "furnished with a manger, two large pottery jugs, a ladder, railings, and some straw, but not with the figurines or statues commonly found in a crèche," bearing a disclaimer stating that "'This display . . . does not constitute an endorsement by the Commonwealth of any religion,'" and located on the grounds of the state capitol, 100 yards from a Christmas tree), and *Elewski* v. *Syracuse*, 123 F. 3d 51, 52 (CA2 1997) (upholding a solitary creche, raised on a platform "two feet above sidewalk level," containing "statues representing Jesus, Mary, and Joseph, a shepherd, a donkey, a lamb, and an angel" holding a banner reading "'Gloria in Excelsis Deo,'" "illuminated at night by two forty-watt spotlights" located in a park on a "major downtown thoroughfare," 300 feet from a menorah and down the street from secular holiday symbols).

Likewise, a menorah displayed on government property violates the Establishment Clause, except when it does not. Compare *Kaplan* v. *Burlington*, 891 F. 2d 1024, 1026, 1030 (CA2 1989) (holding unconstitutional a solitary 16- by 12-foot menorah, bearing a sign stating "'Happy Chanukah'" and "'Sponsored by: Lubavitch of Vermont,'" located 60 feet away from City Hall, and "appear[ing] superimposed upon City Hall" when viewed from

"the general direction of the westerly public street"), with *Allegheny*, *supra*, at 587, 582 (opinion of Blackmun, J.) (upholding an "18-foot Chanukah menorah of an abstract tree-and-branch design," placed next to a 45-foot Christmas tree, bearing a sign entitled "'Salute to Liberty,'" and located outside of a city-county building), and *Skoros* v. *New York*, 437 F. 3d 1 (CA2 2006) (upholding school policy permitting display of menorah along with the Islamic star and crescent, the Kwanzaa kinara, the Hebrew dreidel, and a Christmas tree, but prohibiting a creche).

A display of the Ten Commandments on government property also violates the Establishment Clause, except when it does not. Compare *Green*, 568 F. 3d, at 790 (holding unconstitutional a monument depicting the Ten Commandments and the Mayflower Compact on the lawn of a county courthouse, among various secular monuments and personal message bricks, with a sign stating "'Erected by Citizens of Haskell County'"), and *American Civil Liberties Union of Ohio Foundation, Inc.* v. *DeWeese*, 633 F. 3d 424, 435 (CA6 2011) (holding unconstitutional a poster of the Ten Commandments and "seven secular 'Humanist Precepts'" in a courtroom, with "editorial comments" that link religion and secular government), with *Van Orden*, *supra*, at 681–682 (plurality opinion) (upholding a monument depicting the Ten Commandments, the Eye of Providence, an eagle, and the American flag and bearing a sign stating that it was "'Presented . . . by the Fraternal Order of Eagles,'" among various secular monuments, on the grounds of a state capitol (some capitalization omitted)), *Card*, 520 F. 3d 1009 (same, on the grounds of old city hall), *Plattsmouth*, *supra*, at 778, n. 8 (same, in a city park), and *Mercer Cty.*, 432 F. 3d, at 633 (upholding a poster of the Ten Commandments, along with eight other equally sized "American legal documents" and an explanation of the Commandments' historical significance, in a courthouse).

Finally, a cross displayed on government property violates the Establishment Clause, as the Tenth Circuit held here, except when it does not. Compare *Friedman* v. *Board of Cty. Comm'rs of Bernalillo Cty.*, 781 F. 2d 777, 779 (CA10 1985) (holding unconstitutional a county seal displaying a Latin cross, "highlighted by white edging and a blaze of golden light," under the motto "'With This We Conquer'" written in Spanish), *Harris*, 927 F. 2d, at 1404 (holding unconstitutional one city seal displaying a cross on a shield, surrounded by a dove, crown, scepter, and a banner pro-

claiming "'God Reigns,'" and another city seal displaying a cross surrounded by a one-story building, a water tower, two industrial buildings, and a leaf), and *Trunk*, 629 F. 3d 1099 (holding unconstitutional a 29- by 12-foot cross atop a 14-foot high base on the top of a hill, surrounded by thousands of stone plaques honoring military personnel and the American flag), with *Murray*, 947 F. 2d 147 (upholding a Latin cross, surrounded by a pair of wings, in a city insignia), and *Weinbaum* v. *Las Cruces*, 541 F. 3d 1017, 1025 (CA10 2008) (upholding "three interlocking crosses," with a white, slightly taller center cross, surrounded by a sun symbol, in a city insignia, as well as a cross sculpture outside of a city sports complex and a mural of crosses on an elementary school wall). See also *Salazar* v. *Buono*, 559 U. S. 700, 718–719 (2010) (plurality opinion) ("A cross by the side of a public highway marking, for instance, the place where a state trooper perished need not be taken as a statement of governmental support for sectarian beliefs").

One might be forgiven for failing to discern a workable principle that explains these wildly divergent outcomes. Such arbitrariness is the product of an Establishment Clause jurisprudence that does nothing to constrain judicial discretion, but instead asks, based on terms like "context" and "message," whether a hypothetical reasonable observer of a religious display could think that the government has made a law "respecting an establishment of religion."[7] Whether a given court's hypothetical observer will be "*any* beholder (no matter how unknowledgeable), or the *average* beholder, or . . . the 'ultrareasonable' beholder," *Capitol Square Review and Advisory Bd.* v. *Pinette*, 515 U. S. 753, 769, n. 3 (1995) (plurality opinion), is entirely unpredictable. Indeed, the Tenth Circuit stated below that its observer, although not "omniscient," would "know far more than most actual members of a given community," and then unhelpfully concluded that "[h]ow much information we will impute to a reasonable observer is unclear."

[7] That a violation of the Establishment Clause turns on an observer's potentially mistaken belief that the government has violated the Constitution, rather than on whether the government has *in fact* done so, is perhaps the best evidence that our Establishment Clause jurisprudence has gone hopelessly awry. See *McCreary County* v. *American Civil Liberties Union of Ky.*, 545 U. S. 844, 901 (2005) (SCALIA, J., dissenting) (describing the "oddity" that "the legitimacy of a government action with a wholly secular effect would turn on the *misperception* of an imaginary observer").

616 F. 3d, at 1159 (internal quotation marks omitted). But even assuming that courts could employ observers of similar insight and eyesight, it is "unrealistic to expect different judges . . . to reach consistent answers as to what any beholder, the average beholder, or the ultrareasonable beholder (as the case may be) would think." *Pinette*, *supra*, at 769, n. 3.

IV

It comes as no surprise, then, that despite other cases holding that the combination of a Latin cross and a public insignia on public property does not convey a message of religious endorsement, see *Murray*, *supra; Weinbaum*, *supra*, the Tenth Circuit held otherwise. And, of course, the Tenth Circuit divided over what, exactly, a reasonable observer would think about the Association's memorial cross program.

First, the members of the court disagreed as to what a reasonable observer would *see*. According to the panel, because the observer would be "driving by one of the memorial crosses at 55-plus miles per hour," he would not see the fallen officer's biographical information, but he would see that the "cross conspicuously bears the imprimatur of a state entity . . . and is found primarily on public land." 616 F. 3d, at 1160. According to the dissenters, on the other hand, if the traveling observer could see the police insignia on the cross, he should also see the much larger name, rank, and badge number of the fallen officer emblazoned above it. 637 F. 3d, at 1108–1109 (opinion of Gorsuch, J.); *id.*, at 1104 (opinion of Kelly, J.). The dissenters would also have employed an observer who was able to pull over and view the crosses more thoroughly and would have allowed their observer to view four of the memorials located on side streets with lower speed limits. *Id.*, at 1109 (opinion of Gorsuch, J.).

Next, the members of the court disagreed about what a reasonable observer would *feel*. The panel worried that the use of a Christian symbol to memorialize fallen officers would cause the observer to think the Utah Highway Patrol and Christianity had "some connection," leading him to "fear that Christians are likely to receive preferential treatment from the [patrol]—both in their hiring practices and, more generally, in the treatment that people may expect to receive on Utah's highways." 616 F. 3d, at 1160. The dissenters' reasonable observer, however, would not take such a "paranoid," "conspiratorial view of life," "conjur[ing] up fears

of religious discrimination" by a "'Christian police,'" especially in light of the more plausible explanation that the crosses were simply memorials. 637 F. 3d, at 1105 (opinion of Kelly, J.). The panel also emphasized that the "massive size" of these crosses would heighten the reasonable observer's fear of discrimination and proselytization, unlike the "more humble spirit of small roadside crosses." 616 F. 3d, at 1161–1162. The dissenters, by contrast, insisted that the size of the crosses was necessary to ensure that the reasonable observer would "take notice of the display and absorb its message" of remembrance and to ensure that the crosses could contain all of the secular facts necessary to assuage the reasonable observer's fears. 637 F. 3d, at 1105–1106 (opinion of Kelly, J.).

Finally, the members of the court disputed what the reasonable observer would *know*. The panel acknowledged that the reasonable observer would recognize that the crosses commemorated death, but he would see only that the symbol "memorializes the death of a *Christian*." 616 F. 3d, at 1161. That the designers of the cross memorials were Mormons, or that Christians who revere the cross are a minority in Utah, would have no effect on him. *Id.*, at 1163–1164. Conversely, the dissenters' reasonable observer would have known that the crosses were chosen by the fallen officer's family and erected by a private group without design approval from the State, and that most Utahns do not revere the cross.[8] 637 F. 3d, at 1110 (opinion of Gorsuch, J.); *id.*, at 1105 (opinion of Kelly, J.).

To any truly "reasonable observer," these lines of disagreement may seem arbitrary at best. But to be fair to the Tenth Circuit, it is our Establishment Clause jurisprudence that invites this type of erratic, selective analysis of the constitutionality of religious imagery on government property. These cases thus illustrate why "[t]he outcome of constitutional cases ought to rest on firmer grounds than the personal preferences of judges." *Van Orden*, 545 U. S., at 697 (THOMAS, J., concurring).

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[8] According to the statement of undisputed facts before the District Court, approximately 57 percent of Utahns are members of the Church of Jesus Christ of Latter-day Saints. Neither the church nor its members use the cross as a symbol of their religion or in their religious practices. *American Atheists, Inc.* v. *Duncan*, 528 F. Supp. 2d 1245, 1249 (Utah 2007).

V

Even if the Court does not share my view that the Establishment Clause restrains only the Federal Government, and that, even if incorporated, the Clause only prohibits "'actual legal coercion,'" see *id.*, at 693, the Court should be deeply troubled by what its Establishment Clause jurisprudence has wrought. Indeed, five sitting Justices have questioned or decried the *Lemon*/endorsement test's continued use. *Salazar*, 559 U. S., at 708, 720–721 (plurality opinion of KENNEDY, J., joined in full by ROBERTS, C. J., and in part by ALITO, J.) (emphasizing criticism of the endorsement test and its workability); *id.*, at 728 (ALITO, J., concurring in part and concurring in judgment) ("Assuming that it is appropriate to apply the so-called 'endorsement test,' this test would not be violated [here]"); *Pinette*, 515 U. S., at 768, n. 3 (plurality opinion of SCALIA, J.) (The endorsement test "supplies no standard whatsoever"); *Van Orden*, *supra*, at 692–693 (THOMAS, J., concurring) ("This case would be easy if the Court were willing to abandon the inconsistent guideposts it has adopted for addressing Establishment Clause challenges," citing, *inter alia*, the *Lemon* and endorsement tests); *Allegheny*, 492 U. S., at 669 (KENNEDY, J., concurring in judgment in part and dissenting in part) ("[T]he endorsement test is flawed in its fundamentals and unworkable in practice"); see also *McCreary County*, 545 U. S., at 890 (SCALIA, J., joined in full by Rehnquist, C. J., and THOMAS, J., and in part by KENNEDY, J., dissenting) ("[A] majority of the Justices on the current Court . . . have, in separate opinions, repudiated the brain-spun '*Lemon* test'").

And yet, six years after *Van Orden*, our Establishment Clause precedents remain impenetrable, and the lower courts' decisions—including the Tenth Circuit's decision below—remain incapable of coherent explanation. It is difficult to imagine an area of the law more in need of clarity, as the 46 *amici curiae* who filed briefs in support of certiorari confirm. Respondents tell us there is no reason to think that a case with facts similar to these will recur, Brief in Opposition 17, but if that counsels against certiorari here, this Court will never again hear another case involving an Establishment Clause challenge to a religious display. It is *this* Court's precedent that has rendered even the most minute aesthetic details of a religious display relevant to the constitutional question.

We should not now abdicate our responsibility to clean up our mess because these disputes, by our own making, are "fact-bound."[9] This suit, which squarely implicates the viability and application of the *Lemon*/endorsement test,[10] is as ripe a suit for certiorari as any.[11]

* * *

Concurring in *Allegheny*, Justice O'Connor wrote that "the courts have made case-specific examinations" of government ac-

[9] In any event, respondents' incredible assertion is belied by the fact that, two days after respondents filed their brief in opposition to certiorari in our Court, respondents sued the Port Authority of New York City and demanded removal of a cross located at Ground Zero. See Complaint in *American Atheists, Inc.* v. *Port Auth. of New York*, No. 108670–2011 (N. Y. Sup. Ct.); Notice of Removal in *American Atheists, Inc.* v. *Port Auth. of New York*, No. 1:11–cv–06026 (SDNY).

[10] That the petition of the Association presents the question whether the cross memorials in this suit are government speech is no obstacle to certiorari. The Court need not grant certiorari on that question, and the state petitioners only ask this Court to resolve the viability and application of the endorsement test.

[11] Respondents argue that this suit would be a poor vehicle to explore the contours of a coercion-based Establishment Clause test because the State has raised the specter of a preference for one religion over others. In this regard, respondents point out that the State took the position before the lower courts that it would not be able to approve the Association's memorials "'in the same manner'" if the Association, as it indicated it would, allowed an officer's family to request a symbol other than a cross. Brief in Opposition 3–4, 31.

Because no such situation has ever arisen, and because the State has only indicated it could not approve a different marker *in the same manner* as the roadside crosses, respondents distort the record by claiming that the State has put families to the choice of "a Latin cross or no roadside memorial at all." *Id.*, at 4. Moreover, it is undisputed that the State's position stemmed from its belief that "if [the Association] were to change the shape of the memorial to reflect the religious symbol of the fallen trooper, rather than the shape of the cross, the memorial would no longer be a *secular* shape recognized as a symbol of death." App. to Brief in Opposition 9a–15a (emphasis added). That position is entirely consistent with the Tenth Circuit's conclusion that the purposes of the State and Association in permitting and implementing the memorial program were secular. In any event, that the State and Association, both defending the memorial program's constitutionality, took conflicting positions about whether it was impermissibly religious to use only crosses, or impermissibly religious to use other symbols reflective of the deceased's religious preference, only highlights the confusion surrounding the Establishment Clause's requirements.

tions in order to *avoid* "sweep[ing] away all government recognition and acknowledgment of the role of religion in the lives of our citizens." 492 U. S., at 623 (opinion concurring in part and concurring in judgment). But that is precisely the effect of this Court's repeated failure to apply the correct standard—or at least a clear, workable standard—for adjudicating challenges to government action under the Establishment Clause. Government officials, not to mention everyday people who wish to celebrate or commemorate an occasion with a public display that contains religious elements, cannot afford to guess whether a federal court, applying our "jurisprudence of minutiae," *id.*, at 674 (KENNEDY, J., concurring in judgment in part and dissenting in part), will conclude that a given display is sufficiently secular. The safer course will be to "purge from the public sphere all that in any way partakes of the religious." *Van Orden*, 545 U. S., at 699 (BREYER, J., concurring in judgment). Because "the Establishment Clause does not compel" that result, *ibid.*, I would grant certiorari.

No. 10–1551. STEWART & JASPER ORCHARDS ET AL. *v.* SALAZAR, SECRETARY OF THE INTERIOR, ET AL. C. A. 9th Cir. Motions of National Water Resources Association et al., Center for Constitutional Jurisprudence et al., Mountain States Legal Foundation, and National Federation of Independent Business Small Business Legal Center for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 638 F. 3d 1163.

No. 10–10900. PANTOJA *v.* FLORIDA. Sup. Ct. Fla. Motion of Florida Association of Criminal Defense Lawyers for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 59 So. 3d 1092.

No. 11–6601. GARRAUD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 434 Fed. Appx. 132.

No. 11–6614. ALEXANDER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 429 Fed. Appx. 404.

No. 11–6631. BECK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–6644. LUCAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 428 Fed. Appx. 57.

No. 11–6668. ESCOBAR DE JESUS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

Rehearing Denied

No. 10–7461. BRIGHT *v.* PENNSYLVANIA ET AL., 562 U. S. 1184. Petition for rehearing denied.

No. 10–1327. KIVISTO *v.* FLORIDA BAR, 563 U. S. 1034. Motion to defer consideration and motion for leave to file petition for rehearing denied.

NOVEMBER 4, 2011

Miscellaneous Order

No. 09–958. DOUGLAS, DIRECTOR, CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES *v.* INDEPENDENT LIVING CENTER OF SOUTHERN CALIFORNIA, INC., ET AL. (two judgments);

No. 09–1158. DOUGLAS, DIRECTOR, CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES *v.* CALIFORNIA PHARMACISTS ASSN. ET AL.; DOUGLAS, DIRECTOR, CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES *v.* CALIFORNIA HOSPITAL ASSN. ET AL.; DOUGLAS, DIRECTOR, CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES *v.* INDEPENDENT LIVING CENTER OF SOUTHERN CALIFORNIA, INC., ET AL.; DOUGLAS, DIRECTOR, CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES *v.* DOMINGUEZ, BY AND THROUGH HER MOTHER AND NEXT FRIEND BROWN, ET AL.; and

No. 10–283. DOUGLAS, DIRECTOR, CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES *v.* SANTA ROSA MEMORIAL HOSPITAL ET AL. C. A. 9th Cir. [Certiorari granted *sub nom.* in No. 09–958, *Maxwell-Jolly* v. *Independent Living Center of Southern Cal., Inc.;* in No. 09–1158, *Maxwell-Jolly* v. *California Pharmacists Assn.; Maxwell-Jolly* v. *California Hospital Assn.; Maxwell-Jolly* v. *Independent Living Center of Southern Cal.*,

Inc.; Maxwell-Jolly v. *Dominguez;* in No. 10–283, *Maxwell-Jolly* v. *Santa Rosa Memorial Hospital*, 562 U. S. 1177.] The parties and the Solicitor General are directed to file supplemental briefs addressing the following question: "What should be the effect, if any, of the developments discussed in the letter submitted by the Solicitor General on October 28, 2011, on the proper disposition of this case?" Briefs, in letter format, limited to 10 pages, are to be filed simultaneously with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, November 18, 2011.

NOVEMBER 7, 2011

Certiorari Granted—Reversed and Remanded. (See No. 10–1540, *ante*, p. 23.)

Certiorari Granted—Vacated and Remanded. (See No. 10–1521, *ante*, p. 18.)

Certiorari Dismissed

No. 11–5731. ABULKHAIR *v.* BOEHM ET AL. Sup. Ct. N. J. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 11–6197. BRANHAM *v.* MICHIGAN DEPARTMENT OF CORRECTIONS 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)*.

Miscellaneous Orders

No. 11M40. CHEETAM *v.* STATE FARM FIRE & CASUALTY CO.; and

No. 11M41. PERRY-BEY *v.* CITY OF NORFOLK, VIRGINIA. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 11M42. IN RE BAKHOUCHE, AKA ALI. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 10–704. MESSERSCHMIDT ET AL. *v.* MILLENDER ET AL. C. A. 9th Cir. [Certiorari granted, 564 U. S. 1035.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 10–708. FIRST AMERICAN FINANCIAL CORP., SUCCESSOR IN INTEREST TO FIRST AMERICAN CORP., ET AL. *v.* EDWARDS. C. A. 9th Cir. [Certiorari granted, 564 U. S. 1018.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 10–844. CARACO PHARMACEUTICAL LABORATORIES, LTD., ET AL. *v.* NOVO NORDISK A/S ET AL. C. A. Fed. Cir. [Certiorari granted, 564 U. S. 1035.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 10–1121. KNOX ET AL. *v.* SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000. C. A. 9th Cir. [Certiorari granted, 564 U. S. 1035.] Further consideration of respondent's motion to dismiss as moot deferred to hearing of the case on the merits.

No. 11–301. SAINT-GOBAIN CERAMICS & PLASTICS, INC. *v.* SIEMENS MEDICAL SOLUTIONS USA, INC. C. A. Fed. Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 11–5149. WELENC *v.* FLORIDA (two judgments). Dist. Ct. App. Fla., 2d Dist. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 811] denied.

No. 11–5682. REYES *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 812] denied.

No. 11–6227. HAMPTON *v.* J. W. SQUIRE CO., INC. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 28, 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. 11–443. IN RE JOHNSON;
No. 11–6758. IN RE PORRAS;

No. 11–6807. IN RE SCOTT;
No. 11–6889. IN RE SINGH; and
No. 11–6917. IN RE WALKER. Petitions for writs of habeas corpus denied.

No. 11–6183. IN RE RIVERA. Petition for writ of mandamus denied.

Certiorari Granted

No. 10–1032. MAGNER ET AL. *v.* GALLAGHER ET AL. C. A. 8th Cir. Motion of International Municipal Lawyers Association for leave to file a brief as *amicus curiae* granted. Certiorari granted. Reported below: 619 F. 3d 823.

No. 10–9646. MILLER *v.* ALABAMA. Ct. Crim. App. Ala. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, and case to be argued in tandem with No. 10–9647, *Jackson* v. *Hobbs, Director, Arkansas Department of Correction*, immediately *infra*. Reported below: 63 So. 3d 676.

No. 10–9647. JACKSON *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. Sup. Ct. Ark. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, and case to be argued in tandem with No. 10–9646, *Miller* v. *Alabama*, immediately *supra*. Reported below: 2011 Ark. 49, 378 S. W. 3d 103.

Certiorari Denied

No. 10–10293. MCGOWAN *v.* LAVALLEY, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 10–10377. MIRANDA *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 458 Mass. 100, 934 N. E. 2d 222.

No. 10–11035. PARKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 10–11064. WILSON *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–26. WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC., ET AL. *v.* SEGARDIA DE JESUS, SECRETARY OF JUSTICE OF PUERTO RICO, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 634 F. 3d 3.

No. 11–37. SILAS MONTEIRO *v.* HOLDER, ATTORNEY GENERAL. C. A. 1st Cir. Certiorari denied.

No. 11–102. NATIONAL PETROCHEMICAL & REFINERS ASSN. ET AL. *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 630 F. 3d 145.

No. 11–162. CNOCKAERT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 676.

No. 11–274. AUTEN *v.* STEIGMANN ET AL. C. A. 7th Cir. Certiorari denied.

No. 11–280. GLOBAL INDUSTRIAL TECHNOLOGIES, INC. *v.* HARTFORD ACCIDENT & INDEMNITY CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 645 F. 3d 201.

No. 11–281. AGUILAR-RAYGOZA *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 127 Nev. 349, 255 P. 3d 262.

No. 11–292. ALEA LONDON LTD. *v.* AMERICAN HOME SERVICES, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 638 F. 3d 768.

No. 11–307. ZANGARA *v.* SOMERSET MEDICAL CENTER. Sup. Ct. N. J. Certiorari denied.

No. 11–332. BAO QUAN PAN *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied.

No. 11–337. WESTERN RADIO SERVICES, CO., ET AL. *v.* UNITED STATES FOREST SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 558.

No. 11–340. SPRINT SPECTRUM, L. P. *v.* AYYAD ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 193 Cal. App. 4th 298, 122 Cal. Rptr. 3d 726.

No. 11–369. DIGUGLIELMO *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 17 N. Y. 3d 771, 952 N. E. 2d 1068.

No. 11–382. PALMER, WARDEN *v.* COOPER. C. A. 9th Cir. Certiorari denied. Reported below: 641 F. 3d 322.

No. 11–390. MARRO *v.* FAUQUIER COUNTY BOARD OF SUPERVISORS. Sup. Ct. Va. Certiorari denied.

No. 11–404. BURNS ET AL. *v.* PLUMBERS & PIPEFITTERS NATIONAL PENSION FUND ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 646 F. 3d 954.

No. 11–406. DIMECO *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 128 Conn. App. 198, 15 A. 3d 1204.

No. 11–411. DEL-RAY BATTERY CO. ET AL. *v.* DOUGLAS BATTERY CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 635 F. 3d 725.

No. 11–422. STIERHOFF *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND. C. A. 1st Cir. Certiorari denied.

No. 11–435. DAVIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 891.

No. 11–5005. WILLIAMS *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 11–5294. BARTELT *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 241 Ill. 2d 217, 948 N. E. 2d 52.

No. 11–6123. WATKINS *v.* JOHNSON, SUPERINTENDENT, FRANKLIN PARISH SCHOOL BOARD, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 331.

No. 11–6160. WESTON *v.* PRELESNIK, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–6164. HOBSON *v.* CAMPBELL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–6176. HINES *v.* HARRINGTON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–6181. MCGREW *v.* DUFRESNE ET AL. C. A. 5th Cir. Certiorari denied.

No. 11–6187. AGUIRREZ MATOS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 11–6190. HAMMONTREE *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 54 So. 3d 492.

No. 11–6193. HARRIS *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 11–6196. COLLINS *v.* HEDGPETH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–6200. F. J. *v.* FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES. Sup. Ct. Fla. Certiorari denied. Reported below: 60 So. 3d 386.

No. 11–6208. MCPHERRON *v.* FLORIDA UNEMPLOYMENT APPEALS COMMISSION. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 77 So. 3d 1260.

No. 11–6209. KEMP *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 638 F. 3d 1245.

No. 11–6218. LAWSON *v.* SWORD ET AL. Ct. App. Ky. Certiorari denied.

No. 11–6220. VELASQUEZ *v.* KIRKLAND, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 639 F. 3d 964.

No. 11–6233. THROOP *v.* GONZALEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–6277. MANSPEAKER *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 60 So. 3d 391.

No. 11–6281. SKANDHA *v.* RODEN, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT NORFOLK. App. Ct. Mass. Certiorari denied. Reported below: 79 Mass. App. 1110, 944 N. E. 2d 1095.

No. 11–6283. RICE *v.* HUDSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–6301. WELLMAN *v.* DUPONT DOW ELASTOMERS L. L. C. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 414 Fed. Appx. 386.

No. 11–6332. ZIVKOVIC *v.* IDAHO. Ct. App. Idaho. Certiorari denied. Reported below: 150 Idaho 783, 251 P. 3d 611.

No. 11–6344. LEDFORD *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 289 Ga. 70, 709 S. E. 2d 239.

No. 11–6357. BENDSHADLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 569.

No. 11–6367. FLOWERS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 83 App. Div. 3d 524, 922 N. Y. S. 2d 297.

No. 11–6394. FAIRCLOUGH *v.* WAWA INC. C. A. 3d Cir. Certiorari denied. Reported below: 412 Fed. Appx. 465.

No. 11–6399. GLICK *v.* EDWARDS ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–6402. FORNESS *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 2d Cir. Certiorari denied. Reported below: 422 Fed. Appx. 66.

No. 11–6424. AJLANE *v.* HOLDER, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied.

No. 11–6430. DUMBRIQUE *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 11–6432. CAMPBELL *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 65 So. 3d 1056.

No. 11–6433. DONNER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 408 Ill. App. 3d 1124, 1 N. E. 3d 664.

No. 11–6446. DONIS *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 11–6462. KLYM *v.* WARNER, SECRETARY, WASHINGTON DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 585.

No. 11–6490. DEMOE *v.* FRANKE, SUPERINTENDENT, TWO RIVERS CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 11–6510. BROGLI *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 240 Ore. App. 464, 248 P. 3d 451.

No. 11–6511. BASSETT *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 11–6560. WEATHERSPOON *v.* MCDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 660.

No. 11–6578. PRINCE *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 11–6612. SIFRIT *v.* ROWLEY, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 173.

No. 11–6613. RIVERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 386.

No. 11–6615. BYERS, ON BEHALF OF BYERS *v.* MARLBORO COUNTY SCHOOL DISTRICT. C. A. 4th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 859.

No. 11–6618. AVILA *v.* MCDONALD, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 598.

No. 11–6655. ARELLANO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 152.

No. 11–6660. RUBIO-AYALA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 755.

No. 11–6665. CUDJOE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 634 F. 3d 1163.

No. 11–6671. LARA-VENTURA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 11–6687. SIMMONS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 12 So. 3d 753.

No. 11–6691. BITON *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. D. C. Cir. Certiorari denied.

No. 11–6694. WIGREN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 641 F. 3d 944.

No. 11–6702. RUSSELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 832.

No. 11–6722. WOLFE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 16.

No. 11–6730. BORGERSEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–6735. WOLTZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 249.

No. 11–6736. WOOLSEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–6738. WALTOWER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 643 F. 3d 572.

No. 11–6740. QUOC BOA TRINH *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–6742. LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 561.

No. 11–6743. LANDWER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 640 F. 3d 769.

No. 11–6744. ROSSI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 425.

No. 11–6748. GARDNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 174.

No. 11–6749. PEEPLES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 786.

No. 11–6750. STOKES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 225.

No. 11–6751. MESCHINO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 643 F. 3d 1025.

No. 11–6753. MINGO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 395 Fed. Appx. 723.

No. 11–6755. DANCY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 640 F. 3d 455.

No. 11–6756. HERNANDEZ *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 11–6757. PENNIEGRAFT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 641 F. 3d 566.

No. 11–6759. HAYES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 434 Fed. Appx. 94.

No. 11–6760. FLORES-OLMOS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 713.

No. 11–6761. GOODWIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 636.

No. 11–6764. RIVAS-MOREIERA *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 17 A. 3d 1196.

No. 11–6767. PSICK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 646.

No. 11–6772. CARAWAY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 828.

No. 11–6777. CARTER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 11–6780. BURNETT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 641 F. 3d 894.

No. 11–6784. MURILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 277.

No. 11–6789. RAMON-MORENO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 11–6790. SANCHEZ-JAIMES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 348.

No. 11–6791. MOSCOL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 11–6792. CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 354.

No. 11–6793. MARION *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 847.

No. 11–6797. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–6802. MANCARI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 11–6810. LOVE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–6816. PEREZ-SANCHEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 247.

No. 11–6817. MEDINA-ORTIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 11–6818. BONE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 831.

No. 11–6821. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 254.

No. 11–6822. VILLEGAS-VALDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 427.

No. 11–6824. MCANDREW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–6877. HUDSON *v.* LORENCE. Ct. App. Mich. Certiorari denied.

No. 10–1477. HARGROVE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 412 Fed. Appx. 869.

No. 11–143. PILGRIM FILMS & TELEVISION, INC., ET AL. *v.* MONTZ ET AL. C. A. 9th Cir. Motions of Reveille LLC et al. and California Broadcasters Association et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 649 F. 3d 975.

No. 11–287. SKECHERS U. S. A., INC. *v.* TOMLINSON. C. A. 8th Cir. Motion of Center for Class Action Fairness for leave to file a brief as *amicus curiae* granted. Certiorari denied.

No. 11–5113. JONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–6165. HANEY *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 641 F. 3d 1168.

No. 11–6206. OSBORNE *v.* O'BRIEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 11–6261. FLORES *v.* HOLDER, ATTORNEY GENERAL, ET AL. C. A. 10th Cir. Certiorari before judgment denied.

No. 11–6391. BUCK *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 423.

Statement of JUSTICE ALITO, with whom JUSTICE SCALIA and JUSTICE BREYER join, respecting the denial of certiorari.

One morning in July 1995, petitioner Duane E. Buck went to his ex-girlfriend's house with a rifle and a shotgun. After killing one person and wounding another, Buck chased his ex-girlfriend outside. Her children followed and witnessed Buck shoot and kill their mother as she attempted to flee. An arresting officer testified that Buck was laughing when he was arrested and said "[t]he bitch deserved what she got." 28 Tr. 51 (May 6, 1997).

Buck was tried for capital murder, and a jury convicted. He was sentenced to death based on the jury's finding that the State had proved Buck's future dangerousness to society.

The petition in this case concerns bizarre and objectionable testimony given by a "defense expert" at the penalty phase of Buck's capital trial. The witness, Dr. Walter Quijano, testified that petitioner, if given a noncapital sentence, would not present a danger to society. But Dr. Quijano added that members of petitioner's race (he is African-American) are statistically more likely than the average person to engage in crime.

Dr. Quijano's testimony would provide a basis for reversal of petitioner's sentence if the prosecution were responsible for presenting that testimony to the jury. But Dr. Quijano was a defense witness, and it was petitioner's attorney, not the prosecutor,

who first elicited Dr. Quijano's view regarding the correlation between race and future dangerousness. Retained by the defense, Dr. Quijano prepared a report in which he opined on this subject. His report stated:

> "Future Dangerousness, Whether there is probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society? The following factors were considered in answer to the question of future dangerousness: statistical, environmental, and clinical judgment.
>
> "**I. STATISTICAL FACTORS**
>
> "1. **Past crimes**. . . .
>
> "2. **Age**. . . .
>
> "3. **Sex**. . . .
>
> "4. **Race**. Black: Increased probability. There is an overrepresentation of Blacks among the violent offenders.
>
> "5. **Socioeconomics**. . . .
>
> "6. **Employment stability**. . . .
>
> "7. **Substance abuse**. . . ." Defense Exh. 1 in No. 699684 (208th Jud. Dist., Harris Cty., Tex.), p. 7.

The defense then called Dr. Quijano to the stand, and elicited his testimony on this point. Defense counsel asked Dr. Quijano, "[i]f we have an inmate such as Mr. Buck who is sentenced to life in prison, what are some of the factors, statistical factors or environmental factors that you've looked at in regard to this case?" 28 Tr. 110 (May 6, 1997). As he had done in his report, Dr. Quijano identified past crimes, age, sex, race, socioeconomic status, and substance abuse as statistical factors predictive of "whether a person will or will not constitute a continuing danger." *Id.*, at 111; see also *id.*, at 110 (identifying the "statistical factors we know to predict future dangerousness"). With respect to race, he elaborated further that "[i]t's a sad commentary that minorities, Hispanics and black people, are over represented in the Criminal Justice System." *Id.*, at 111. Not only did the defense present this testimony to the jury but Dr. Quijano's report was also admitted into evidence—over the prosecution's objection—and was thus available for the jury to consider. See *id.*, at 233–234.

It is true that the prosecutor briefly went over this same ground on cross-examination. The prosecutor asked a single

question regarding whether race increased the probability that Buck would pose a future danger to society:

> "Q. You have determined that the sex factor, that a male is more violent than a female because that's just the way it is, and that the race factor, black, increases the future dangerousness for various complicated reasons; is that correct?
>
> "A. Yes." *Id.*, at 160.

But this colloquy did not go beyond what defense counsel had already elicited on direct examination, and by this point, Dr. Quijano's views on the correlation between race and future dangerousness had already been brought to the jury's attention. Moreover, the prosecutor did not revisit the race-related testimony in closing or ask the jury to find future dangerousness based on Buck's race.

The dissent makes much of the fact that the State at various points in federal habeas proceedings was inaccurate in its attempts to explain why the present case is different from the others in which, as a result of similar testimony by Dr. Quijano, the State did not assert procedural default and new sentencing proceedings were held. But the fact remains that the present case *is* different from all the rest. In four of the six other cases, see, *e. g.*, *Saldano* v. *Texas*, 530 U. S. 1212 (2000), the prosecution called Dr. Quijano and elicited the objectionable testimony on direct examination. In the remaining two cases, see *Alba* v. *Johnson*, 232 F. 3d 208 (CA5 2000) (Table); *Blue* v. *Johnson*, Civ. Action No. 99–0350 (SD Tex., Sept. 29, 2000), while the defense called Dr. Quijano, the objectionable testimony was not elicited until the prosecution questioned Dr. Quijano on cross-examination. See Record, Doc. 511601677, pp. 44–49; *id.*, Doc. 511601676, at 39–44. And, on redirect, defense counsel mentioned race only to mitigate the effect on the jury of Dr. Quijano's prior identification of race as an immutable factor increasing a defendant's likelihood of future dangerousness.* Only in Buck's case did defense coun-

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*On redirect in *Alba*, defense counsel tried to downplay the significance of Dr. Quijano's testimony with respect to the statistical factors:

"Q. [The prosecutor] asked you about statistical factors in predicting future dangerousness. When we're talking about statistics, are we talking about correlation or causation?

"A. Oh. These statistics are strictly correlation. There's a big distinction, and we must keep that in mind. Correlation simply says that two

sel elicit the race-related testimony on direct examination. Thus, this is the only case in which it can be said that the responsibility for eliciting the offensive testimony lay squarely with the defense.

Although the dissent suggests that the District Court may have been misled by the State's inaccurate statements, the District Court, in denying petitioner's motion under Rule 60 of the Federal Rules of Civil Procedure, was fully aware of what had occurred in all of these cases. It is for these reasons that I conclude that certiorari should be denied.

JUSTICE SOTOMAYOR, with whom JUSTICE KAGAN joins, dissenting.

Today the Court denies review of a death sentence marred by racial overtones and a record compromised by misleading remarks and omissions made by the State of Texas in the federal habeas proceedings below. Because our criminal justice system should not tolerate either circumstance—especially in a capital case—I dissent and vote to grant the petition.

Duane E. Buck was convicted of capital murder in a Texas state court. During the penalty phase of Buck's trial, the defense called psychologist Walter Quijano as a witness. The defense

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events happened—coincidentally happened at the same time. It does not mean that one causes the other.

"Q. So when we're talking about these statistical factors—that more men re-offend than women, Hispanics offend more than blacks or whites, people from the low socioeconomic groups offend more than people from the higher socioeconomic groups, people who have opiate addiction or alcohol abuse offend more often than those who don't, people who have less education offend more often than those who have—do all those things cause people to offend?

"A. No. They are simply contributing factors. They are not causal factors. One cannot control one's gender or one's color. And obviously there are many, many Hispanics, many whites, many Orientals who don't commit crimes. But the frequence *[sic]* among those who commit crimes, these are the characteristics. They don't cause each other; they just happen to be coincidental to each other." Record, Doc. 511601677, at 104–105 (one paragraph break omitted).

See also *id.*, Doc. 511601676, at 82–84 (seeking to show that incarceration could decrease a defendant's likelihood of future dangerousness, notwithstanding the immutable factors, such as race); *id.*, at 82–83 ("If the person is put in a prison many of these factors will not be operative anymore because the prison restriction will not allow those factors to be present, and so the more of those factors are controlled by the prison structure, the less the danger—the less dangerous the person is in the prison").

sought Quijano's opinion as to whether Buck would pose a continuing threat to society—a fact that the jury was required to find in order to sentence Buck to death. Quijano testified that there were several "statistical factors we know to predict future dangerousness," and listed a defendant's past crimes, age, sex, race, socioeconomic status, employment stability, and substance abuse history. 28 Tr. 110–111 (May 6, 1997). As to race, Quijano said: "Race. It's a sad commentary that minorities, Hispanics and black people, are over represented in the Criminal Justice System." *Id.*, at 111. The defense then asked Quijano to "talk about environmental factors if [Buck were] incarcerated in prison." *Id.*, at 111–112. Quijano explained that, for example, Buck "has no assaultive incidents either at TDC or in jail," and that "that's a good sign that this person is controllable within a jail or prison setting." *Id.*, at 115. He also explained that Buck's "victim [was] not random" because "there [was] a pre-existing relationship," and that this reduced the probability that Buck would pose a future danger. *Id.*, at 112. Ultimately, when the defense asked Quijano whether Buck was likely to commit violent criminal acts if he were sentenced to life imprisonment, Quijano replied, "The probability of that happening in prison would be low." *Id.*, at 115. The defense also offered into evidence, over the prosecutor's objection, a report containing Quijano's psychological evaluation of Buck, which substantially mirrored Quijano's trial testimony.[1]

On cross-examination, the prosecutor began by asking Quijano about the financial compensation he received in return for his time and the methods he used to examine Buck. The prosecutor then said that she would "like to ask [Quijano] some questions from [his] report." *Id.*, at 155. After inquiring about the statistical factors of past crimes and age and how they might indicate future dangerousness in Buck's case, the prosecutor said: "You have determined that the sex factor, that a male is more violent than a female because that's just the way it is, and that the race factor, black, increases the future dangerousness for various

[1] The report listed the following statistical factors relevant to the question whether Buck would pose a continuing threat to society: past crimes, age, sex, race, socioeconomics, employment stability, and substance abuse. As to race, the report stated: "4. **Race.** Black: Increased probability. There is an over-representation of Blacks among the violent offenders." Defense Exh. 1 in No. 699684 (208th Jud. Dist., Harris Cty., Tex.), p. 7.

complicated reasons; is that correct?" *Id.*, at 160. Quijano answered, "Yes." *Ibid.* After additional cross-examination and testimony from a subsequent witness, the prosecutor argued to the jury in summation that Quijano "told you that there was a probability that [Buck] would commit future acts of violence." *Id.*, at 260. The jury returned a verdict of death.

This was not the first time that Quijano had testified in a Texas capital case, or in which the prosecution asked him questions regarding the relationship between race and future dangerousness. State prosecutors had elicited comparable testimony from Quijano in several other cases. In four of them, the prosecution called Quijano as a witness. See *Gonzales* v. *Cockrell*, Civ. Action No. 99–72 (WD Tex., Dec. 19, 2002); *Broxton* v. *Johnson*, Civ. Action No. 00–1034 (SD Tex., Mar. 28, 2001); *Garcia* v. *Johnson*, Civ. Action No. 99–134 (ED Tex., Sept. 7, 2000); *Saldano* v. *Texas*, 530 U. S. 1212 (2000). In two, the defense called Quijano, but the prosecution was the first to elicit race-related testimony from him. See *Alba* v. *Johnson*, 232 F. 3d 208 (CA5 2000) (Table); *Blue* v. *Johnson*, Civ. Action No. 99–0350 (SD Tex., Sept. 29, 2000). In each case, as in Buck's, however, the salient fact was that the prosecution invited the jury to consider race as a factor in sentencing. And in each case, the defendant was sentenced to death.

When one of those defendants, Victor Hugo Saldano, petitioned for this Court's review, the State of Texas confessed error. It acknowledged that "the use of race in Saldano's sentencing seriously undermined the fairness, integrity, or public reputation of the judicial process." Response to Pet. for Cert. in *Saldano* v. *Texas*, O. T. 1999, No. 99–8119, p. 7. The State continued, "[T]he infusion of race as a factor for the jury to weigh in making its determination violated [Saldano's] constitutional right to be sentenced without regard to the color of his skin." *Id.*, at 8. We granted Saldano's petition, vacated the judgment, and remanded. *Saldano* v. *Texas*, 530 U. S. 1212.

Shortly afterwards, the then-attorney general of Texas announced publicly that he had identified six cases that were "similar to that of Victor Hugo Saldano" in that "testimony was offered by Dr. Quijano that race should be a factor for the jury to consider" in making its sentencing determination. Record in No. 4:04–cv–03965 (SD Tex.), Doc. 27–5, p. 30 (hereinafter Record) (internal quotation marks omitted). These were the five cases

listed above (besides *Saldano*), as well as Buck's. The attorney general declared that "it is inappropriate to allow race to be considered as a factor in our criminal justice system." Record, Doc. 27–5, at 30 (internal quotation marks omitted). Accordingly, in five of the six cases the attorney general identified, the State confessed error and did not raise procedural defenses to the defendants' federal habeas petitions. Five of the six defendants were thus resentenced, each to death.

Only in Buck's case, the last of the six cases to reach federal habeas review, did the State assert a procedural bar. Why the State chose to treat Buck differently from each of the other defendants has not always been clear. As the Court of Appeals for the Fifth Circuit recognized in the decision that is the subject of this petition, "We are provided with no explanation for why the State declined to act consistently with its Attorney General's public announcement with respect to petitioner Buck." No. 11–70025, 2011 WL 4067164, *8, n. 41 (Sept. 14, 2011).

What we do know is that the State justified its assertion of a procedural defense in the District Court based on statements and omissions that were misleading. The State found itself "compelled" to treat Buck's case differently from Saldano's because of a "critical distinction": "Buck himself, not the State[,] offered Dr. Quijano's testimony into evidence." Record, Doc. 6, at 17. The State created the unmistakable impression that Buck's case differed from the others in that only Buck called Quijano as a witness. The State asserted, "[T]he Director is obviously aware of the prior confessions of error in other federal habeas corpus cases involving similar testimony by Dr. Quijano. However, this case is *not Saldano.* In Saldano's case Dr. Quijano *testified for the State.*" *Id.*, at 20 (citation omitted; emphasis in original); see also *ibid.* ("Therefore, because it was Buck who called Dr. Quijano to testify and derived the benefit of Dr. Quijano's overall opinion that Buck was unlikely to be a future danger despite the existence of some negative factors, this case does not represent the odious error contained in the *Saldano* cases"). This was obviously not accurate. Like Buck, the defendants in both *Blue* and *Alba* called Quijano to the stand. But on the ground that only Buck had called Quijano as a witness, the State urged the District Court that "the former actions of the Director [in the other five cases] are not applicable and should not be considered in deciding this

case." Record, Doc. 6, at 20.[2] The District Court applied the procedural bar raised by the State and dismissed Buck's petition.

Buck later brought the State's misstatements to light in a motion to reopen the judgment under Rule 60 of the Federal Rules of Civil Procedure. In response, the State erroneously identified *Alba* as a case in which the *prosecution* had called Quijano to the stand, and omitted any mention of *Blue*. After the District Court denied Buck's Rule 60 motion, Buck highlighted these errors in a motion under Rule 59(e) to alter or amend the judgment, which the District Court also denied. The Fifth Circuit denied Buck's application for a certificate of appealability (COA) to review these two judgments.

I believe the Fifth Circuit erred in doing so. To obtain a COA, a petitioner need not "prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus." *Miller-El* v. *Cockrell*, 537 U. S. 322, 338 (2003). Instead, a petitioner must show that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Id.*, at 327. See also 28 U. S. C. § 2253(c)(2).

Buck has met this standard. The Rule 60 relief that he sought in the District Court was highly discretionary. *Liljeberg* v. *Health Services Acquisition Corp.*, 486 U. S. 847 (1988). Yet the District Court denied relief based on a record compromised by the State's misleading remarks and omissions. I realize that, in denying Buck's Rule 59(e) motion, the District Court was aware of Buck's arguments that the State had mischaracterized *Alba* and *Blue*. But the District Court lacked other information that might have influenced its decision. Significantly, the District Court could not know that the State would later concede in the Fifth Circuit that it had mischaracterized *Alba*.

Nor, for similar reasons, did the District Court have the opportunity to evaluate the State's subsequent efforts in the Fifth Circuit and this Court to try to distinguish Buck's case from *Alba*

[2] Perhaps, under a generous reading of the State's briefing, the State meant to convey to the District Court that Buck's case was distinguishable from the others not only because he called Quijano as a witness, but also because he elicited race-related testimony. But that is not what the briefing says. The distinction that the State offered—that Buck alone proffered Quijano as a witness—is incorrect.

and *Blue*. The State argues that although the defendants in those cases each proffered Quijano as a witness, they did not, like Buck, elicit race-related testimony on direct examination; instead, the prosecution first did so on cross-examination.

This distinction is accurate but not necessarily substantial. The context in which Buck's counsel addressed race differed markedly from how the prosecutor used it. On direct examination, Quijano referred to race as part of his overall opinion that Buck would pose a low threat to society were he imprisoned. This is exactly how the State has characterized Quijano's testimony. *E. g.*, Thaler's Reply to Buck's Motion for Relief From Judgment and Motion for Stay of Execution in No. 4:04–cv–03965 (SD Tex.), Doc. 30, pp. 15–16 ("In this case, first on direct examination by the defense, Dr. Quijano merely identified race as one statistical factor and pointed out that African-Americans were overrepresented in the criminal justice system; he did not state a causal relationship, nor did he link this statistic to Buck as an individual"). Buck did not argue that his race made him *less* dangerous, and the prosecutor had no need to revisit the issue. But she did, in a question specifically designed to persuade the jury that Buck's race made him *more* dangerous and that, in part on this basis, he should be sentenced to death.

The then-attorney general of Texas recognized that "it is inappropriate to allow race to be considered as a factor in our criminal justice system." Record, Doc. 27–5, at 30 (internal quotation marks omitted). Whether the District Court would accord any weight to the State's purported distinctions between Buck's case and the others is a question which that court should decide in the first instance, based on an unobscured record. Especially in light of the capital nature of this case and the express recognition by a Texas attorney general that the relevant testimony was inappropriately race charged, Buck has presented issues that "deserve encouragement to proceed further." *Miller-El*, 537 U. S., at 327.

No. 11–6692. BEVERLY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 430 Fed. Appx. 218.

No. 11–6725. SERRANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consid-

eration or decision of this petition. Reported below: 411 Fed. Appx. 253.

No. 11–6727. 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: 635 F. 3d 39.

Rehearing Denied

No. 10–1508. ANSARI *v.* NCS PEARSON, INC., DBA PEARSON VUE, ET AL., *ante*, p. 825; and

No. 11–5473. KAMPFER *v.* REU ET AL., *ante*, p. 909. Petitions for rehearing denied.

NOVEMBER 9, 2011

Dismissal Under Rule 46

No. 11–547. HCP, INC., FKA HEALTH CARE PROPERTY INVESTORS, INC. *v.* VENTAS, INC. C. A. 6th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 647 F. 3d 291.

Miscellaneous Order

No. 11A446 (11–6718). JUNIPER *v.* KELLY, WARDEN. Sup. Ct. Va. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

NOVEMBER 14, 2011

Certiorari Granted—Vacated and Remanded

No. 10–851. STOVALL, WARDEN *v.* MILLER. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Greene* v. *Fisher*, *ante*, p. 34. Reported below: 608 F. 3d 913.

No. 11–282. BRANCH BANKING & TRUST *v.* GORDON. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *AT&T Mobility LLC* v. *Concepcion*, 563 U. S. 333 (2011). Reported below: 419 Fed. Appx. 920.

No. 11–305. McEwen, Warden *v.* Thompson. 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 *Greene* v. *Fisher*, *ante*, p. 34. Reported below: 657 F. 3d 784.

Miscellaneous Orders

No. 11A374. Habermann *v.* United States. Application for bail, addressed to Justice Ginsburg and referred to the Court, denied.

No. D–2590. In re Disbarment of Pollack. Disbarment entered. [For earlier order herein, see 564 U. S. 1016.]

No. 11M43. Slough et al. *v.* United States. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted. Justice Kagan took no part in the consideration or decision of this motion.

No. 11M44. Dally *v.* United States. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 10–704. Messerschmidt et al. *v.* Millender et al. C. A. 9th Cir. [Certiorari granted, 564 U. S. 1035.] Motion of respondents and Brenda Millender, as executor of the estate of Augusta Millender, for substitution as respondent in place of Augusta Millender, deceased, is granted.

No. 11–6335. Daniel B. *v.* Sunapee School District. Sup. Ct. N. H.; and

No. 11–6728. McLain *v.* United States. C. A. 8th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 5, 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. 11–7012. In re Benham. Petition for writ of habeas corpus denied. Justice Kagan took no part in the consideration or decision of this petition.

No. 11–6406. In re Harris-Scott; and

No. 11–6593. In re Mach. Petitions for writs of mandamus denied.

No. 11–6417. 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. 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. 11–6532. IN RE RUIZ RIVERA. Petition for writ of mandamus denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–6961. 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. 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 petition.

Certiorari Granted

No. 11–159. ASTRUE, COMMISSIONER OF SOCIAL SECURITY *v.* CAPATO, ON BEHALF OF B. N. C. ET AL. C. A. 3d Cir. Certiorari granted. Reported below: 631 F. 3d 626.

No. 11–161. ARMOUR ET AL. *v.* CITY OF INDIANAPOLIS, INDIANA, ET AL. Sup. Ct. Ind. Certiorari granted. Reported below: 946 N. E. 2d 553.

No. 11–393. NATIONAL FEDERATION OF INDEPENDENT BUSINESS ET AL. *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.; and

No. 11–400. FLORIDA ET AL. *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 11th Cir. Certiorari in No. 11–393 granted. Certiorari in No. 11–400 granted limited to the issue of severability presented by Question 3 of the petition. Cases consolidated, and a total of 90 minutes is allotted for oral argument. Reported below: 648 F. 3d 1235.

No. 11–398. DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari granted. In addition to Question 1 presented by the petition, the parties are directed to brief and argue the following question: "Whether the suit brought by respondents to challenge the minimum coverage provision of the Patient Protection and Affordable Care Act, 26 U. S. C. § 5000A, is barred by the Anti-Injunction Act, 26 U. S. C. § 7421(a)." A total of two hours is allotted for oral argument on Question 1 and one hour on the additional question. Reported below: 648 F. 3d 1235.

No. 11–400. FLORIDA ET AL. *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 11th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 648 F. 3d 1235.

Certiorari Denied

No. 10–1285. COUNTRYWIDE HOME LOANS, INC. *v.* RODRIGUEZ ET UX. C. A. 3d Cir. Certiorari denied. Reported below: 629 F. 3d 136.

No. 10–10217. CUNNINGHAM *v.* KELLEY ET UX. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 53 So. 3d 1034.

No. 10–10731. CARDALES-LUNA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 632 F. 3d 731.

No. 10–10777. ALVAREZ-CORDOVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 994.

No. 10–10838. MEDINA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 10–10842. WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 416 Fed. Appx. 130.

No. 10–11210. NATHANSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 406 Fed. Appx. 162.

No. 10–11225. TINSLEY *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 407 Fed. Appx. 711.

No. 11–57. HARPER EXCAVATING, INC. *v.* HANSEN. C. A. 10th Cir. Certiorari denied. Reported below: 641 F. 3d 1216.

No. 11–169. TENNESSEE EX REL. WATSON ET AL. *v.* WATERS ET AL. Ct. App. Tenn. Certiorari denied.

No. 11–252. LEE INVESTMENTS LLC, DBA ISLAND *v.* UNITED STATES FIDELITY & GUARANTY CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 641 F. 3d 1126.

No. 11–295. HARVEY *v.* REDDISH, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 629 F. 3d 1228.

No. 11–298. CLAMPITT *v.* GEURIN ET UX. Ct. App. Ark. Certiorari denied. Reported below: 2010 Ark. App. 558.

No. 11–300. SEBBA *v.* LITTLETON. Ct. App. Ariz. Certiorari denied.

No. 11–304. CRAWFORD *v.* WOLVERINE, PROCTOR & SCHWARTZ, INC., ET AL. C. A. 1st Cir. Certiorari denied.

No. 11–312. JOY ET AL. *v.* THREE ANGELS BROADCASTING NETWORK, INC., ET AL. C. A. 1st Cir. Certiorari denied.

No. 11–313. TUAN ANH DO *v.* PHUONG DUC DANG ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 11–314. BODNAR *v.* LESTITIAN. Super. Ct. Pa. Certiorari denied. Reported below: 998 A. 2d 1020.

No. 11–315. YOONESSI *v.* RATAJCZAK ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 15 N. Y. 3d 913, 939 N. E. 2d 144.

No. 11–322. GRAY ET AL. *v.* CORONA CONSTRUCTION ET AL. Ct. App. Mich. Certiorari denied.

No. 11–324. ONG *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 11–327. BABB *v.* ANGELL. C. A. 4th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 349.

No. 11–344. CALIX *v.* HOLDER, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 423 Fed. Appx. 240.

No. 11–356. LUFKIN INDUSTRIES, INC. *v.* MCCLAIN, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 649 F. 3d 374.

No. 11–365. KARPEEVA ET AL. *v.* DEPARTMENT OF HOMELAND SECURITY CITIZENSHIP AND IMMIGRATION SERVICES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 919.

No. 11–367. DAVIDSON *v.* VASQUEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 607.

No. 11–368. COLLIS *v.* BANK OF AMERICA, N. A. C. A. 4th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 195.

No. 11–380. WORKMAN *v.* MINGO COUNTY BOARD OF EDUCATION. C. A. 4th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 348.

No. 11–384. SILGAN CONTAINERS CORP. *v.* NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PENNSYLVANIA. C. A. 9th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 709.

No. 11–402. VICTORY THROUGH JESUS SPORTS MINISTRY FOUNDATION *v.* LEE'S SUMMIT R–7 SCHOOL DISTRICT ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 640 F. 3d 329.

No. 11–447. HOLLAND *v.* CITY OF CHICAGO, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 643 F. 3d 248.

No. 11–486. DAIDONE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 422 Fed. Appx. 26.

No. 11–5073. KINANE ET AL. *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 12 A. 3d 23.

No. 11–5174. IRICK *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 636 F. 3d 289.

No. 11–5325. HUDSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 343.

No. 11–5385. MALY *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 11–5417. BAFFORD *v.* MIDFIRST BANK ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–5433. TRAN *v.* NEWPORT NEWS HOLDINGS CORP. C. A. 4th Cir. Certiorari denied. Reported below: 650 F. 3d 423.

No. 11–5664. OCHOA *v.* RUBIN. Super. Ct. Pa. Certiorari denied. Reported below: 15 A. 3d 540.

No. 11–5687. EWING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 410 Fed. Appx. 611.

No. 11–5762. WINFIELD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 243.

No. 11–5798. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–5799. DARCUS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 11–5886. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 351.

No. 11–6117. VILLEGAS LOPEZ *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 630 F. 3d 1198.

No. 11–6201. JILES *v.* ORLEANS PARISH PRISON MEDICAL CLINIC ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 367.

No. 11–6230. WIGGINS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 468.

No. 11–6231. WILLIAMS *v.* CITY OF NATCHITOCHES, LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied.

No. 11–6232. WILLIAMS *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 447 Fed. Appx. 829.

No. 11–6234. VENTA *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 11–6245. POYDRAS *v.* MARTIN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 337.

No. 11–6246. PETTERWAY *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 11–6247. LEVI *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 404 Ill. App. 3d 1191, 996 N. E. 2d 781.

No. 11–6253. MCBRIDE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–6255. MURPHY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 405 Ill. App. 3d 1201, 997 N. E. 2d 1010.

No. 11–6256. MCCLENDON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–6262. NASH *v.* PTASHNINK ET AL. C. A. 2d Cir. Certiorari denied.

No. 11–6266. THEER *v.* HARVEY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 231.

No. 11–6270. WITHROW *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–6272. ABRAMS *v.* RUDEK, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 685.

No. 11–6278. SIMS *v.* HANLON, SUPERINTENDENT, INDIANA CORRECTIONAL INDUSTRIAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 11–6288. SULLIVAN *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 2011 WY 46, 247 P. 3d 879.

No. 11–6293. PRINCE *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 226 Ariz. 516, 250 P. 3d 1145.

No. 11–6297. JONES *v.* WINTER ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–6311. Assa'ad-Faltas *v.* City of Columbia, South Carolina. Sup. Ct. S. C. Certiorari denied.

No. 11–6316. Maldonado *v.* Runnels, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 11–6317. Thornton *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 11–6319. Salazar, aka Solazar *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 11–6322. Ramer *v.* Long et al. C. A. 3d Cir. Certiorari denied. Reported below: 431 Fed. Appx. 73.

No. 11–6323. Victor O. *v.* Connecticut. Sup. Ct. Conn. Certiorari denied. Reported below: 301 Conn. 163, 20 A. 3d 669.

No. 11–6324. Mouton *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 11–6336. Bradley *v.* Connecticut. Sup. Ct. Conn. Certiorari denied.

No. 11–6345. Ponce *v.* California. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 11–6349. Wright *v.* Symmes, Warden. C. A. 8th Cir. Certiorari denied.

No. 11–6353. Dydzak *v.* George, Chief Justice, Supreme Court of California, et al. C. A. 9th Cir. Certiorari denied.

No. 11–6354. Dorf, fka Dragomir *v.* Griggs et al. C. A. 4th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 406.

No. 11–6356. Lee *v.* Upton, Warden. C. A. 11th Cir. Certiorari denied.

No. 11–6360. Bowen *v.* Georgia. Ct. App. Ga. Certiorari denied. Reported below: 307 Ga. App. 204, 704 S. E. 2d 436.

No. 11–6366. Hinton *v.* California. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 11–6383. BRADLEY *v.* BARROW, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 11–6384. BROWN *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 11–6386. MCDOWELL *v.* MISSISSIPPI ET AL. C. A. 5th Cir. Certiorari denied.

No. 11–6387. ORTEGA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–6390. HURTADO *v.* RUNNELS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 704.

No. 11–6393. FOWLER *v.* HOWELL. C. A. 8th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 571.

No. 11–6395. HOLLINS *v.* FULTON COUNTY, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 828.

No. 11–6397. GARRISON *v.* ROCK, SUPERINTENDENT, UPSTATE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 11–6400. FUQUA *v.* FINN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–6403. JACOBS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 11–6405. GARY *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 605.

No. 11–6408. MARTIN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–6409. CABALLERO *v.* HARTLEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–6410. CAMPBELL *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 11–6411. CODDINGTON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 2011 OK CR 17, 254 P. 3d 684.

No. 11–6413. Darby *v.* Ricci, Administrator, New Jersey State Prison, et al. C. A. 3d Cir. Certiorari denied.

No. 11–6415. Petros *v.* Boos et al. C. A. 4th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 569.

No. 11–6426. Edwards *v.* Rubin et al. C. A. D. C. Cir. Certiorari denied.

No. 11–6442. Coleman *v.* Alabama et al. C. A. 11th Cir. Certiorari denied.

No. 11–6478. Cedrins *v.* Executive Committee of the United States District Court for the Northern District of Illinois. C. A. 7th Cir. Certiorari denied.

No. 11–6480. Morris *v.* Carey, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 634.

No. 11–6531. Cedrins *v.* United States Citizenship and Immigration Services. C. A. 7th Cir. Certiorari denied.

No. 11–6538. Cruz *v.* McGrady, Superintendent, State Correctional Institution at Retreat, et al. C. A. 3d Cir. Certiorari denied.

No. 11–6548. Jones *v.* Tucker, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 644 F. 3d 1206.

No. 11–6554. Derringer *v.* Baxter et al. Ct. App. N. M. Certiorari denied.

No. 11–6571. Borbon *v.* Davison, Warden. C. A. 9th Cir. Certiorari denied.

No. 11–6577. Lancaster *v.* Bigelow, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 435 F. 3d 773.

No. 11–6581. Mendiola-Ponce *v.* California. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 11–6590. Smith *v.* California. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 11–6597. Zacke *v.* Tucker, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 11–6663. SAVIOR *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 26 A. 3d 1211.

No. 11–6697. TRAVILLION *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 610 Pa. 13, 17 A. 3d 1247.

No. 11–6703. CASTON-GOODJOHN *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 409 Fed. Appx. 326.

No. 11–6770. BERNARD *v.* DAVIS. C. A. 4th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 231.

No. 11–6782. ADKINS *v.* CROW, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS, ET AL. (Reported below: 432 Fed. Appx. 748); ADKINS *v.* SANDERS, JUDGE, DISTRICT COURT OF KANSAS, BUTLER COUNTY, ET AL. (432 Fed. Appx. 748); ADKINS *v.* MARTIN, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS, ET AL. (450 Fed. Appx. 699); and ADKINS *v.* SAPIEN ET AL. (432 Fed. Appx. 751). C. A. 10th Cir. Certiorari denied.

No. 11–6815. BROWN *v.* HORELL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 644 F. 3d 969.

No. 11–6819. RAMOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 893.

No. 11–6827. STAPLES, AKA ROSS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 706.

No. 11–6831. BAKER *v.* WALKER ET AL. App. Ct. Ill., 3d Dist. Certiorari denied.

No. 11–6834. DEROSS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 645 F. 3d 85.

No. 11–6837. CAMACHO TORRES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 738.

No. 11–6843. RICE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–6844. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 645 F. 3d 998.

No. 11–6846. MODENA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 444.

No. 11–6853. TOOLASPRASHAD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 240.

No. 11–6855. WALKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–6856. WATLINGTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 279.

No. 11–6859. VELASCO-CASTANEDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 316.

No. 11–6860. RAMIREZ-GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 646 F. 3d 778.

No. 11–6861. RUSAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–6864. RUIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 374.

No. 11–6866. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 174.

No. 11–6868. DELGADILLO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–6871. WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 428 Fed. Appx. 134.

No. 11–6874. GONCALVES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 642 F. 3d 245.

No. 11–6875. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 365.

No. 11–6878. HARRIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 543.

No. 11–6879. AGUILAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–6880. BOOKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 639 F. 3d 1115.

No. 11–6883. BOOKER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–6892. JEFFERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 382.

No. 11–6894. MUNOZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 495.

No. 11–6900. MIRANDA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 866.

No. 11–6902. OWENS *v.* HARRINGTON. C. A. 9th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 980.

No. 11–6906. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 413.

No. 11–6907. CARBAJAL SANCHEZ, AKA TAPIA, AKA MARTINEZ-RUIZ, AKA SANCHEZ-CARBAJAL, AKA CARBAJAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 253.

No. 11–6909. BENNETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–6910. BENTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 639 F. 3d 723.

No. 11–6911. BUCK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 437 Fed. Appx. 202.

No. 11–6915. TORRES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 241.

No. 11–6916. WHEELER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 831.

No. 11–6920. ASIFO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 625.

No. 11–6921. BICUNA-RIOS, AKA RIOS BICUNA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 11–6924. MITCHELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 174.

No. 11–6926. McDonald *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 75.

No. 11–6929. Macias-Ovalle *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 710.

No. 11–6930. Jackson *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 757.

No. 11–6940. Rodriguez-Quiros *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 347.

No. 11–6951. Minor *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 233.

No. 11–6953. Waldron *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 680.

No. 11–6956. Maier *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 646 F. 3d 1148.

No. 11–6966. Borja-Vega, aka Vega, aka Ortega, aka Gomez-Borja, aka Orrostieta, aka Aveja Granados, aka Berduzco-Pena, aka Reynosa Vega *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 373.

No. 11–6968. Gevers *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 11–6970. Sheffield *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 364.

No. 11–6972. Blanks *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 228.

No. 10–1519. Florida *v.* Garland. Dist. Ct. App. Fla., 1st Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 70 So. 3d 609.

No. 11–293. Kivisto *v.* Miller, Canfield, Paddock & Stone, PLC, et al. C. A. 11th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 413 Fed. Appx. 136.

No. 11–299. West Linn Corporate Park, L. L. C. *v.* City of West Linn, Oregon, et al. C. A. 9th Cir. Motions of National

Association of Home Builders et al., Pacific Legal Foundation, and New England Legal Foundation for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 428 Fed. Appx. 700.

No. 11–359. Miracle Star Women's Recovering Community, Inc. *v.* Jett et al. Ct. App. Cal., 2d App. Dist. Motion of National Association for the Advancement of Colored People, Antelope Valley Branch Unit #1023, for leave to file a brief as *amicus curiae* granted. Certiorari denied.

No. 11–475. Tyrrell *v.* United States. C. A. 11th Cir. Certiorari denied. Justice Kagan took no part in the consideration or decision of this petition.

No. 11–6836. Dawson *v.* United States. C. A. 4th Cir. Certiorari denied. Justice Kagan took no part in the consideration or decision of this petition. Reported below: 433 Fed. Appx. 151.

No. 11–6938. Smith *v.* United States. C. A. 11th Cir. Certiorari denied. Justice Kagan took no part in the consideration or decision of this petition. Reported below: 433 Fed. Appx. 891.

Rehearing Denied

No. 10–8903. Guilas *v.* Brauer et al., 563 U. S. 922;
No. 10–10659. Draganov *v.* Washington, *ante*, p. 843;
No. 10–10688. Lamkin *v.* Texas, *ante*, p. 844;
No. 10–10757. Hefley *v.* Delaware, *ante*, p. 848;
No. 10–10791. Jackson *v.* Gonzalez et al., *ante*, p. 849;
No. 10–11157. McDowell *v.* Walsh, Superintendent, State Correctional Institution at Dallas, et al., *ante*, p. 870;
No. 11–5074. Kemppainen *v.* Texas, *ante*, p. 888;
No. 11–5177. Hendricks et ux. *v.* Stepp et al., *ante*, p. 893;
No. 11–5201. Pitts *v.* Davis, Warden, *ante*, p. 894;
No. 11–5344. Carr *v.* H. O. P. E. Community Service, Inc., *ante*, p. 902;
No. 11–5451. Jarvis *v.* Staples, Inc., *ante*, p. 908;
No. 11–5452. Eltayib *v.* DeWalt, Warden, et al., *ante*, p. 908;
No. 11–5555. In re Dunbar, *ante*, p. 813; and

No. 11–5740. MELTON *v.* GER TAYLOR GARDENS, LLC, *ante*, p. 950. Petitions for rehearing denied.

No. 10–9837. WILSON *v.* UNITED STATES, *ante*, p. 931. Petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

NOVEMBER 15, 2011

Miscellaneous Orders

No. 11A480. BROOKS *v.* OHIO. Application for stay of execution of sentence of death, presented to JUSTICE KAGAN, and by her referred to the Court, denied.

No. 11A485. BROOKS *v.* BOBBY, WARDEN. Application for stay of execution of sentence of death, presented to JUSTICE KAGAN, and by her referred to the Court, denied.

Certiorari Denied

No. 11–7307 (11A471). CHANDLER *v.* FLORIDA. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. Reported below: 75 So. 3d 267.

No. 11–7324 (11A479). BROOKS *v.* BOBBY, 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. Reported below: 660 F. 3d 959.

No. 11–7342 (11A484). BROOKS *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Application for stay of execution of sentence of death, presented to JUSTICE KAGAN, and by her referred to the Court, denied. Certiorari denied. Reported below: 2011-Ohio-5877.

NOVEMBER 17, 2011

Certiorari Denied

No. 11–7463 (11A496). RHOADES *v.* REINKE, DIRECTOR, IDAHO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. Reported below: 671 F. 3d 856.

No. 11–7466 (11A497). RHOADES *v.* BLADES, WARDEN. C. A. 9th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. Reported below: 661 F. 3d 1202.

NOVEMBER 18, 2011

Miscellaneous Orders

No. 11–393. NATIONAL FEDERATION OF INDEPENDENT BUSINESS ET AL. *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.; and

No. 11–400. FLORIDA ET AL. *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 11th Cir. [Certiorari granted, *ante*, p. 1033.] H. Bartow Farr III, Esq., of Washington, D. C., is invited to brief and argue these cases as *amicus curiae* in support of the judgment of the Court of Appeals that the minimum coverage provision of the Patient Protection and Affordable Care Act, 26 U. S. C. § 5000A, is severable from the entirety of the remainder of the Act.

No. 11–398. DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. *v.* FLORIDA ET AL. C. A. 11th Cir. [Certiorari granted, *ante*, p. 1034.] Robert A. Long, Esq., of Washington, D. C., is invited to brief and argue this case as *amicus curiae* in support of the position that the Anti-Injunction Act, 26 U. S. C. § 7421(a), bars the suit brought by respondents to challenge the minimum coverage provision of the Patient Protection and Affordable Care Act, 26 U. S. C. § 5000A.

NOVEMBER 21, 2011

Miscellaneous Order

No. 11A501. DOE ET AL. *v.* REED, SECRETARY OF STATE OF WASHINGTON, ET AL. D. C. W. D. Wash. Application for injunction, 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.

JUSTICE ALITO, dissenting.

In *Doe* v. *Reed*, 561 U. S. 186 (2010), the Court rejected applicants' facial challenge to the Washington law authorizing the dis-

closure of referendum petitions but assured applicants that the disclosure could be blocked if a proper party could show that compelled disclosure would result in "'threats, harassment, or reprisals.'" *Id.*, at 201. Today's order reveals that this assurance was empty.

On remand, the District Court rejected applicants' as-applied challenge, relying primarily on a highly questionable interpretation of our precedents. The District Court reasoned that only a select few organizations—what the court termed "minor" political parties and "fringe" groups—may challenge the disclosure of the names of persons who sign a referendum petition. Case No. C09–5456 (WD Wash., Oct. 17, 2011), pp. 13–15. If a referendum succeeds or nearly succeeds (or if the referendum supports a position that has not been historically vilified), then, according to the District Court, disclosure of the names of the citizens who signed the petition cannot be shielded no matter how strong the evidence of threatened retaliation or how severe the nature of the threats. *Id.*, at 15. Whether this is a correct interpretation of our cases presents an important question that merits serious appellate review.

The alternative basis for the District Court's holding—that applicants did not present sufficient evidence of threatened harm—also presents an important legal issue, namely, the type and quantity of proof that persons objecting to disclosure must adduce. As Judge N. R. Smith observed below, applicants adduced evidence that some supporters of the referendum "received death threats," "had their children threatened," and suffered various indignities, Case No. 11–35854 (CA9, Nov. 16, 2011), p. 8 (dissenting opinion), but according to the District Court, this was not enough. Whether the standard of proof applied by the District Court provides any real protection for persons who are threatened with retaliation for asserting their First Amendment rights is an important issue that merits considered appellate review.

There has been no such review in this case. When applicants took an appeal to the Ninth Circuit, the panel denied the stay application over Judge Smith's protest that the majority had "race[d] to decide the case at [a] preliminary stage based on incomplete information and without even reviewing the record." *Id.*, at 3.

This Court now takes a similar approach. Particularly since the referendum at issue went down to defeat more than two years

ago, the Court's haste is hard to understand. I would grant a stay at least until the Court has had an opportunity to review the record and to consider the parties' arguments.

November 22, 2011

Miscellaneous Orders

No. 10–218. PPL Montana, LLC *v.* Montana. Sup. Ct. Mont. [Certiorari granted, 564 U. S. 1018.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 10–1150. Mayo Collaborative Services, dba Mayo Medical Laboratories, et al. *v.* Prometheus Laboratories, Inc. C. A. Fed. Cir. [Certiorari granted, 564 U. S. 1018.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 10–1293. Federal Communications Commission et al. *v.* Fox Television Stations, Inc., et al.; and Federal Communications Commission et al. *v.* ABC, Inc., et al. C. A. 2d Cir. [Certiorari granted, 564 U. S. 1036.] Motion of respondents for divided argument granted. Justice Sotomayor took no part in the consideration or decision of this motion.

No. 10–1399. Roberts *v.* Sea-Land Services, Inc., et al. C. A. 9th Cir. [Certiorari granted, 564 U. S. 1066.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 10–8505. Williams *v.* Illinois. Sup. Ct. Ill. [Certiorari granted, 564 U. S. 1052.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

November 28, 2011

Certiorari Granted—Vacated and Remanded

No. 10–11113. Fuller *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 *Sykes* v. *United States*, 564 U. S. 1 (2011). Reported below: 419 Fed. Appx. 655.

Certiorari Dismissed

No. 11–6476. CURTO *v.* SMITH 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. 11–6498. MAISANO *v.* ARIZONA. 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. 11–6521. ABULKHAIR *v.* TOSKOS 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. Reported below: 430 Fed. Appx. 98.

No. 11–6534. ENGLE *v.* WISEMAN, JUDGE, COURT OF COMMON PLEAS OF OHIO, MONTGOMERY COUNTY, 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. 11–6573. JONES *v.* WHITNEY HOLDING CORP. ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 11–6616. BLACKMER *v.* SOCIAL SECURITY ADMINISTRATION. 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. 11–6617. BUTLER *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVI-

SION. 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. 11–6645. JOELSON *v.* DEPARTMENT OF JUSTICE 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. 11–6806. SPUCK *v.* FREDRIC. 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: 415 Fed. Appx. 358.

Miscellaneous Orders

No. 11A363. GARGANO *v.* SUPREME JUDICIAL COURT OF MASSACHUSSETTS. Sup. Jud. Ct. Mass. Application for stay, addressed to JUSTICE SCALIA and referred to the Court, denied.

No. D–2604. IN RE DISCIPLINE OF CHARLES. James George Charles, 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–2605. IN RE DISCIPLINE OF MABRY. Ralph Thomas Mabry, Jr., of Silver Spring, 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–2606. IN RE DISCIPLINE OF LUCAS. Timothy John Lucas, of Erie, 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–2607. IN RE DISCIPLINE OF THOMPSON. Theodore Q. Thompson, of Blue Bell, 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–2608. IN RE DISCIPLINE OF MORGAN. Frank H. Morgan, Jr., of West Chester, 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–2609. IN RE DISCIPLINE OF PEARSON. Jeffry S. Pearson, 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–2610. IN RE DISCIPLINE OF WOOLVERTON. Daniel A. Woolverton, of Lakeland, 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–2611. IN RE DISCIPLINE OF SHEA. Wevley William Shea, of Anchorage, Alaska, 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–2612. IN RE DISCIPLINE OF ROSEN. Sol Zalel Rosen, 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–2613. IN RE DISCIPLINE OF HARMAN. Sara Davis Harman, of Glen Allen, Va., 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–2614. IN RE DISCIPLINE OF CREEL. Richard Mark Creel, of Naples, 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–2615. IN RE DISCIPLINE OF COTTER. Richard T. Cotter, of Fort Myers 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–2616. IN RE DISCIPLINE OF BLAU. J. Gordon Blau, of Longwood, 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–2717. IN RE DISCIPLINE OF ADORNO. Henry Nissim Adorno, 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–2718. IN RE DISCIPLINE OF CRUSE. Samuel Warren Cruse, of Augusta, Ga., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2719. IN RE DISCIPLINE OF BARTKO. Gregory Bartko, of Atlanta, Ga., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2720. IN RE DISCIPLINE OF REGAN. Cabell Jones Regan, of Pittsboro, 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–2721. IN RE DISCIPLINE OF FORD. Tonya L. Ford, of Raleigh, 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. 11M45. WAUGH *v.* ANHEUSER-BUSCH INBEV ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 10–10325. ELLIS *v.* NEVADA. Sup. Ct. Nev. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 803] denied.

No. 10–10726. GREEN *v.* MABUS, SECRETARY OF THE NAVY. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 811] denied.

No. 10–10921. MCKINNEDY *v.* REYNOLDS, WARDEN. C. A. 4th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 804] denied.

No. 10–10941. WILLIAMS *v.* MOORE. C. A. 8th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 804] denied.

No. 10–11038. BURNS *v.* COMMISSIONER OF REVENUE OF MINNESOTA. Sup. Ct. Minn. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 811] denied.

No. 10–11039. IN RE BURNS ET AL. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 811] denied.

No. 10–11235. HODGE *v.* BOARD OF COUNTY COMMISSIONERS ET AL. C. A. 4th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 805] denied.

No. 11–5218. IN RE GRAYTON. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 811] denied.

No. 11–5707. SANDERS *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 938] denied.

No. 11–5792. MORGAN *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 940] denied.

No. 11–5954. LATOS *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 1st Cir. Motion of petitioner for reconsideration of

order denying leave to proceed *in forma pauperis* [*ante*, p. 812] denied.

No. 11–6147. DADE *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 938] denied. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 11–6439. EBY *v.* ARIZONA. Ct. App. Ariz.;
No. 11–6460. WASHINGTON ET VIR *v.* LOUISIANA ET AL. C. A. 5th Cir.;*
No. 11–6587. DAY *v.* MINNESOTA ET AL. Ct. App. Minn.;
No. 11–6711. PAPADIMITRIOU *v.* PAPADIMITRIOU. Ct. Sp. App. Md.;
No. 11–6898. LEVENTHAL *v.* SCHAFFER ET AL. C. A. 8th Cir.; and
No. 11–7000. WINDSOR *v.* UNITED STATES ET AL. C. A. 11th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 19, 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. 11–7130. IN RE KISSANE; and
No. 11–7134. IN RE PERRY. Petitions for writs of habeas corpus denied.

No. 11–6461. IN RE DIGIANNI. 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. 11–6629. IN RE WEBB; and
No. 11–7086. IN RE EVANS. Petitions for writs of mandamus denied.

No. 11–383. IN RE SIGG;
No. 11–6957. IN RE KING; and
No. 11–7108. IN RE STEELE. Petitions for writs of mandamus and/or prohibition denied.

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*[REPORTER'S NOTE: This order was vacated on February 21, 2012, *post*, p. 1194.]

Certiorari Granted

No. 11–94. SOUTHERN UNION CO. *v.* UNITED STATES. C. A. 1st Cir. Certiorari granted. Reported below: 630 F. 3d 17.

No. 11–199. VASQUEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari granted. Reported below: 635 F. 3d 889.

No. 11–204. CHRISTOPHER ET AL. *v.* SMITHKLINE BEECHAM CORP., DBA GLAXOSMITHKLINE. C. A. 9th Cir. Certiorari granted. Reported below: 635 F. 3d 383.

No. 11–5683. DORSEY *v.* UNITED STATES; and
No. 11–5721. HILL *v.* UNITED STATES. C. A. 7th Cir. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, cases consolidated, and a total of one hour is allotted for oral argument. Reported below: No. 11–5683, 635 F. 3d 336; No. 11–5721, 417 Fed. Appx. 560.

Certiorari Denied

No. 10–1474. CHEIN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 10–1518. FISHER ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS ET AL. C. A. 5th Cir. Certiorari denied.

No. 10–10273. MCAFEE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 630 F. 3d 383.

No. 10–10310. PHILLIPS *v.* CITY OF RENTON, WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 10–10358. V. G. *v.* SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 188 Cal. App. 4th 392, 114 Cal. Rptr. 3d 638.

No. 10–10536. WALKER *v.* HONYAOUMA. C. A. 9th Cir. Certiorari denied.

No. 10–10607. ALAMO VILLEGAS ET AL. *v.* BERRIOS CASTRODAD ET AL. Sup. Ct. P. R. Certiorari denied.

No. 10–10651. KHAN *v.* BLAND ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 630 F. 3d 519.

No. 10–10824. SAVAGE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 406 Fed. Appx. 220.

No. 10–10833. ESSETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 10–10982. BOWNES *v.* REDNOUR, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 10–10987. DEAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 635 F. 3d 1200.

No. 10–11004. BARANDA-CUEVAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 177.

No. 10–11212. MASCIANDARO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 638 F. 3d 458.

No. 10–11224. BYRD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 485.

No. 10–11262. FOWLER *v.* GEITHNER, SECRETARY OF THE TREASURY. C. A. 4th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 279.

No. 11–36. MORTIMER HOWARD TRUST ET AL. *v.* PARK VILLAGE APARTMENT TENANTS ASSN. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 636 F. 3d 1150.

No. 11–107. WHEELER *v.* NEWPORT NEWS SHIPBUILDING & DRY DOCK CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 637 F. 3d 280.

No. 11–109. DALLAS, INTERIM SECRETARY, MARYLAND DEPARTMENT OF HUMAN RESOURCES, ET AL. *v.* L. J. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 633 F. 3d 297.

No. 11–127. SPANSION, INC., ET AL. *v.* INTERNATIONAL TRADE COMMISSION ET AL.; and

No. 11–128. QUALCOMM INC. *v.* INTERNATIONAL TRADE COMMISSION ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 629 F. 3d 1331.

No. 11–129. RODRIGUEZ, ADMINISTRATOR OF THE ESTATE OF RODRIGUEZ FOR THE BENEFIT OF RODRIGUEZ ET AL. *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. Fed. Cir. Certiorari denied. Reported below: 632 F. 3d 1381.

No. 11–134. VIBO CORP., DBA GENERAL TOBACCO *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2011 Ark. 124, 380 S. W. 3d 411.

No. 11–191. MICHIGAN *v.* FACKELMAN. Sup. Ct. Mich. Certiorari denied. Reported below: 489 Mich. 515, 802 N. W. 2d 552.

No. 11–202. SIGG ET AL. *v.* SIGG ET AL. Ct. App. Kan. Certiorari denied. Reported below: 44 Kan. App. 2d xiii, 238 P. 3d 331.

No. 11–212. REEVES *v.* ROE ET AL. Sup. Ct. S. C. Certiorari denied. Reported below: 392 S. C. 143, 708 S. E. 2d 778.

No. 11–215. EVANS ET AL. *v.* WAPATO HERITAGE, LLC, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 557.

No. 11–221. DIFIORE ET AL. *v.* AMERICAN AIRLINES, INC. C. A. 1st Cir. Certiorari denied. Reported below: 646 F. 3d 81.

No. 11–224. CVS PHARMACY, INC., ET AL. *v.* WEST VIRGINIA EX REL. MCGRAW, ATTORNEY GENERAL OF WEST VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 646 F. 3d 169.

No. 11–228. ARGENTINE REPUBLIC *v.* NATIONAL GRID PLC. C. A. D. C. Cir. Certiorari denied. Reported below: 637 F. 3d 365.

No. 11–235. FAULKNER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 636 F. 3d 1009.

No. 11–245. CITY OF LOS ANGELES, CALIFORNIA *v.* ALAMEDA BOOKS, INC.; and

No. 11–379. ALAMEDA BOOKS, INC., ET AL. *v.* CITY OF LOS ANGELES, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 631 F. 3d 1031.

No. 11–279. HART *v.* FAMILY DENTAL GROUP, P. C., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 645 F. 3d 561.

No. 11–333. MERRITT ET AL. *v.* R&R CAPITAL LLC. C. A. 3d Cir. Certiorari denied. Reported below: 426 Fed. Appx. 85.

No. 11–334. ADVENTURE OUTDOORS, INC., ET AL. *v.* BLOOMBERG, MAYOR OF THE CITY OF NEW YORK, ET AL. Ct. App. Ga. Certiorari denied. Reported below: 307 Ga. App. 356, 705 S. E. 2d 241.

No. 11–335. HUBERT, WARDEN *v.* SCOTT. C. A. 5th Cir. Certiorari denied. Reported below: 635 F. 3d 659.

No. 11–349. KOSSIE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 434.

No. 11–354. BURKHOLDER ET AL. *v.* INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL NO. 12, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 646 F. 3d 360.

No. 11–355. MANCHAS *v.* BICKELL, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 428 Fed. Appx. 184.

No. 11–358. SAWYER *v.* WORCESTER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 404 Fed. Appx. 748.

No. 11–362. LEWICKI ET AL. *v.* WASHINGTON COUNTY, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 431 Fed. Appx. 205.

No. 11–364. VARGAS *v.* ENTERPRISE LEASING CO. ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 60 So. 3d 1037.

No. 11–372. WODKA *v.* CAUSEWAY CAPITAL MANAGEMENT LLC ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 563.

No. 11–373. SMITH ET UX. *v.* REGIONS BANK ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–374. SMITH ET UX. *v.* ATLANTIC SOUTHERN BANK ET AL. (three judgments). C. A. 11th Cir. Certiorari denied.

No. 11–375. ZAHL *v.* NEW JERSEY DEPARTMENT OF LAW & PUBLIC SAFETY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 428 Fed. Appx. 205.

No. 11–376. FOTHERINGHAM *v.* AVERY DENNISON CORP. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–377. GALIANA *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 849.

No. 11–388. GALINDO-ROMERO *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 640 F. 3d 873.

No. 11–389. HARPER, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HER HUSBAND, HARPER, DECEASED *v.* UNITED SERVICES AUTOMOBILE ASSN., AKA USAA; and HARPER *v.* UNITED SERVICES AUTOMOBILE ASSN., AKA USAA. Sup. Ct. Va. Certiorari denied.

No. 11–395. WHITTAKER *v.* WHITTAKER. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 228 W. Va. 84, 717 S. E. 2d 868.

No. 11–396. LUBY *v.* BEDELL, CHIEF JUDGE, CIRCUIT COURT OF WEST VIRGINIA, HARRISON COUNTY, ET AL. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 228 W. Va. 252, 719 S. E. 2d 722.

No. 11–399. SORCIA, AKA SORCIA-RICO *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 633 F. 3d 117.

No. 11–401. SINANI *v.* HOLDER, ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 475.

No. 11–417. STATON HOLDINGS, INC., DBA STATON WHOLESALE *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 433 Fed. Appx. 1.

No. 11–419. YILING ZHANG *v.* LAKE ELSINORE UNIFIED SCHOOL DISTRICT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 410 Fed. Appx. 53.

No. 11–424. LOMAS *v.* HEDGPETH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–432. RALEY, INDIVIDUALLY AND AS PARENT AND NEXT FRIEND OF C. G. ET AL., MINOR CHILDREN *v.* HYUNDAI MOTOR CO., LTD., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 642 F. 3d 1271.

No. 11–450. SNIDER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 11–453. PLETCHER *v.* ALASKA. Sup. Ct. Alaska. Certiorari denied.

No. 11–458. PURNELL *v.* HENRY. C. A. 4th Cir. Certiorari denied. Reported below: 652 F. 3d 524.

No. 11–467. NANCY SUE DAVIS TRUST *v.* EVERCORE CAPITAL PARTNERS II, L. L. C., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 644 F. 3d 259.

No. 11–468. BENAS *v.* BACA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 524.

No. 11–478. RISK ET UX. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–485. PRICE *v.* THURMER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 637 F. 3d 831.

No. 11–488. HENLEY *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 2010 WI 97, 328 Wis. 2d 544, 787 N. W. 2d 350.

No. 11–500. FITZGERALD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 238.

No. 11–514. QUINTO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–538. WHITLEY *v.* LEE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 642 F. 3d 278.

No. 11–5058. MITCHELL *v.* DALLAS HOUSING AUTHORITY. C. A. 5th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 744.

No. 11–5129. TACKETT *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–5408. Overton *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 419 Fed. Appx. 173.

No. 11–5457. Minicone *v.* Werlinger, Warden. C. A. 3d Cir. Certiorari denied. Reported below: 430 Fed. Appx. 84.

No. 11–5485. Orr *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 636 F. 3d 944.

No. 11–5508. Oliver *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 630 F. 3d 397.

No. 11–5580. Antonsson *v.* Kast. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 11–5718. Hirsch *v.* Enoch Pratt Free Library et al. C. A. 4th Cir. Certiorari denied.

No. 11–5885. Billups *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied. Reported below: 72 So. 3d 122.

No. 11–5896. Doster *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied. Reported below: 72 So. 3d 50.

No. 11–5940. Doorly *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 11–5952. Butler *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 239.

No. 11–5991. Zagorski *v.* Tennessee. Ct. Crim. App. Tenn. Certiorari denied.

No. 11–6002. Hardy *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 643 F. 3d 143.

No. 11–6079. Parker *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 220.

No. 11–6096. Fisher *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 635 F. 3d 336.

No. 11–6224. Worthington *v.* Roper, Warden. C. A. 8th Cir. Certiorari denied. Reported below: 631 F. 3d 487.

No. 11–6425. Byrd *v.* Workman, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 645 F. 3d 1159.

No. 11–6436. EASTERLING *v.* POLLARD, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 11–6438. CARDONA SANDOVAL *v.* RUSHING, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–6440. COX *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied. Reported below: 61 So. 3d 1113.

No. 11–6441. CLEMONS *v.* MONROE, ASSISTANT WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 362.

No. 11–6443. CORKERN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 11–6444. DEAN *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 370.

No. 11–6445. DENDY *v.* STREETER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 11–6447. ELLISON *v.* PADULA, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 182.

No. 11–6448. CASSELL *v.* DAWKINS ET AL. C. A. 4th Cir. Certiorari denied.

No. 11–6449. DUBOIS *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–6450. LAMAR *v.* CLEMENTS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 718.

No. 11–6451. VEGA NORIEGA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–6454. PROCTOR *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 11–6459. TUCKER *v.* MCCAULEY ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–6471. JACKSON *v.* HELTON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 228.

No. 11–6481. Orsello *v.* Rivard, Sheriff, Chisago County, Minnesota, et al. Ct. App. Minn. Certiorari denied.

No. 11–6483. Windsor *v.* Prince, Warden. C. A. 5th Cir. Certiorari denied.

No. 11–6487. Maxwell *v.* Scarpino et al. C. A. 2d Cir. Certiorari denied.

No. 11–6488. Jones *v.* Bennett et al. C. A. 4th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 236.

No. 11–6489. Gore *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 66 So. 3d 302.

No. 11–6491. Mohiuddin *v.* Raytheon Co. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–6497. Rincker *v.* Nooth, Superintendent, Snake River Correctional Institution. C. A. 9th Cir. Certiorari denied.

No. 11–6499. Jackson *v.* Varano, Superintendent, State Correctional Institution at Coal Township, et al. C. A. 3d Cir. Certiorari denied.

No. 11–6507. Reyna *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 11–6512. Breakman *v.* Nevada. Sup. Ct. Nev. Certiorari denied.

No. 11–6517. Yepes *v.* Allison, Acting Warden. C. A. 9th Cir. Certiorari denied.

No. 11–6518. Richard *v.* Pritchard et al. C. A. 4th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 271.

No. 11–6519. Searcy *v.* Correctional Medical Services, Inc., et al. C. A. 6th Cir. Certiorari denied.

No. 11–6520. Reece *v.* Haviland, Warden. C. A. 9th Cir. Certiorari denied.

No. 11–6523. James *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 11–6524. ELLARD *v.* GEORGIA. Super. Ct. Ga., Douglas County. Certiorari denied.

No. 11–6535. CHINEA *v.* SMITH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–6537. EASTERLING *v.* SIARNICKI ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 524.

No. 11–6543. UNDERWOOD *v.* PROSPER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–6549. CHUNG KAO *v.* KNOWLES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–6551. OWENS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–6559. AMOS *v.* JONES, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 646 F. 3d 199.

No. 11–6563. BROWN *v.* ARKANSAS DEPARTMENT OF HUMAN SERVICES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 690.

No. 11–6565. PARKER *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 292.

No. 11–6572. LAND *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 11–6582. MILLER *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 393 S. C. 248, 713 S. E. 2d 253.

No. 11–6586. DAVIS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–6591. ROLON *v.* BEACON COS. ET AL. App. Ct. Mass. Certiorari denied. Reported below: 78 Mass. App. 1112, 938 N. E. 2d 905.

No. 11–6592. KING *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–6598. MEDINA *v.* ARTUS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 11–6599. GIVENS *v.* CRISWELL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 236.

No. 11–6605. HILL *v.* ALLISON, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–6608. MARTINEZ *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 11–6609. LAWHORN *v.* RAY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 291.

No. 11–6611. MCCORMICK *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS. C. A. 10th Cir. Certiorari denied.

No. 11–6619. CANHA *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 159 Wash. App. 1044.

No. 11–6620. DOSSETT *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–6621. COOPER *v.* WISE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 689.

No. 11–6627. SONNER *v.* MCDANIEL, WARDEN. Sup. Ct. Nev. Certiorari denied. Reported below: 127 Nev. 1176, 373 P. 3d 962.

No. 11–6654. IVANTCHOUK *v.* HOLDER, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 918.

No. 11–6670. CREEK *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied.

No. 11–6675. MIKELL *v.* THOMAS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 11–6678. CONCEPCION *v.* FEDERAL BUREAU OF INVESTIGATION ET AL. C. A. D. C. Cir. Certiorari denied.

No. 11–6690. ARMSTRONG *v.* BRUNSMAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–6698. VASQUEZ *v.* YATES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 755.

No. 11–6704. COLE *v.* DAVIS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 280.

No. 11–6707. PICKETT *v.* ROLLINS ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–6714. ESCARENO *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–6747. GATES *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 2010-Ohio-5348.

No. 11–6771. MOYA-FELICIANO *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–6776. MOORE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 51 Cal. 4th 1104, 253 P. 3d 1153.

No. 11–6778. KLAUDT *v.* DOOLEY, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 11–6787. CASTLE *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 924.

No. 11–6796. SHEEHAN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–6801. MASON *v.* GODINEZ, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 405 Ill. App. 3d 1218, 997 N. E. 2d 1018.

No. 11–6804. SPIVEY *v.* PIERCE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 11–6813. ABULKHAIR *v.* NEW CENTURY FINANCIAL SERVICES, INC. Super. Ct. N. J., App. Div. Certiorari denied.

No. 11–6826. Pratt *v.* Board of Pharmacy et al. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 11–6838. Pinder *v.* Hobbs, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied.

No. 11–6842. Kazas *v.* Cate, Secretary, California Department of Corrections and Rehabilitation. C. A. 9th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 813.

No. 11–6857. Valadez *v.* Britten, Warden. C. A. 8th Cir. Certiorari denied.

No. 11–6865. Roizman *v.* Barkan Management Co., Inc. App. Ct. Mass. Certiorari denied. Reported below: 79 Mass. App. 1123, 947 N. E. 2d 1154.

No. 11–6869. Carlson *v.* Dooley, Warden. C. A. 8th Cir. Certiorari denied.

No. 11–6890. Robinson *v.* Epps, Commissioner, Mississippi Department of Corrections, et al. C. A. 5th Cir. Certiorari denied.

No. 11–6913. Bator *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 710.

No. 11–6928. Lewis *v.* United States;
No. 11–6939. Solomon *v.* United States; and
No. 11–6965. Chance *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 844.

No. 11–6931. Kampfer *v.* Buchanan et al. C. A. 2d Cir. Certiorari denied.

No. 11–6952. Dattilio *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 187.

No. 11–6959. Munoz *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 261.

No. 11–6963. Spears *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 242.

No. 11–6978. Henderson *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 437 Fed. Appx. 96.

No. 11–6980. HERNANDEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 159.

No. 11–6981. HAYES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 256.

No. 11–6983. HACK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 304.

No. 11–6985. FALLS *v.* FONDREN, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 936.

No. 11–6987. GJURAJ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 419 Fed. Appx. 4.

No. 11–6988. FILTER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–6989. ISRAEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–6990. GRAVELY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–6991. GARNETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 402 Fed. Appx. 896.

No. 11–6992. GRAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 464.

No. 11–6993. HAYNES *v.* FEDERAL BUREAU OF PRISONS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 413 Fed. Appx. 779.

No. 11–6996. KRYLOV *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 566.

No. 11–6997. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–6998. MCLEAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 261.

No. 11–7001. AYALA-CRUZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 117.

No. 11–7002. WATSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 284.

No. 11–7003. COFFEE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–7014. MOORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 308.

No. 11–7015. OLSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 646 F. 3d 569.

No. 11–7017. SMETS *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 426 Fed. Appx. 890.

No. 11–7025. LUCAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 188.

No. 11–7026. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–7028. LEPP *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 446 Fed. Appx. 44.

No. 11–7030. JAIMES-CAMPOS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 876.

No. 11–7031. JAMES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 219.

No. 11–7032. BELTRAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 440 Fed. Appx. 133.

No. 11–7036. JOHNSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 11–7038. RIVERA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 441 Fed. Appx. 87.

No. 11–7039. ROBINSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 436 Fed. Appx. 82.

No. 11–7044. CIRANDA-SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 696.

No. 11–7045. DRUMWRIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 822.

No. 11–7053. PITTMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 476.

No. 11–7060. SOLOMON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 424 Fed. Appx. 81.

No. 11–7062. SANCHEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–7065. CAMPBELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 657.

No. 11–7078. TARRATS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 185.

No. 11–7082. CRUZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 11–7089. SOUTH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–7090. BOATSWAIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 11–7100. OROPEZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–7101. MORRISON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 11–7102. MOSES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 441 Fed. Appx. 795.

No. 11–7105. DEMMLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 655 F. 3d 451.

No. 11–7132. BAKER *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 10–10800. BEGAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 673 F. 3d 1038.

No. 11–85. AMY *v.* MONZEL ET AL. C. A. D. C. Cir. Motion of respondent Michael M. Monzel for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 641 F. 3d 528.

No. 11–238. STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. *v.* BEDELL, CHIEF JUDGE, CIRCUIT COURT OF WEST VIR-

GINIA, HARRISON COUNTY, ET AL. Sup. Ct. App. W. Va. Motions for leave to file briefs as *amici curiae* filed by the following were granted: National Insurance Crime Bureau et al.; Michael D. Riley, West Virginia Insurance Commissioner; West Virginia Mutual Insurance Co.; DRI-The Voice of the Defense Bar; National Association of Mutual Insurance Cos. et al.; American Tort Reform Assn.; and Washington Legal Foundation et al. Certiorari denied. Reported below: 228 W. Va. 252, 719 S. E. 2d 722.

No. 11–412. CITY OF MOUNDRIDGE, KANSAS, ET AL. *v.* EXXON MOBIL CORP. ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 409 Fed. Appx. 362.

No. 11–487. GOTTLIEB *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR and JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 420 Fed. Appx. 59.

No. 11–493. MCNEIL *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 10th Cir. Certiorari before judgment denied.

No. 11–6579. PANELLA *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 434 Fed. Appx. 603.

No. 11–6974. CORTIJO *v.* RACETTE, SUPERINTENDENT, ELMIRA 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: 422 Fed. Appx. 12.

No. 11–7034. NIBLOCK *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 453 Fed. Appx. 393.

No. 11–7049. BOBB *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 433 Fed. Appx. 68.

No. 11–7057. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consid-

eration or decision of this petition. Reported below: 434 Fed. Appx. 800.

Rehearing Denied

No. 10–1217. Van Auken, Trustee *v.* Wirth et al., *ante*, p. 815;

No. 10–1325. Van Auken, Beneficiary *v.* Wirth et al., *ante*, p. 815;

No. 10–1336. Carroll *v.* Astrue, Commissioner of Social Security, *ante*, p. 817;

No. 10–1453. Planey *v.* Planey, *ante*, p. 822;

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No. 10–10912. BLAKE *v.* MALEY, *ante*, p. 856;

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No. 10–11142. KAVEL *v.* MARSHALL, WARDEN, *ante*, p. 869;

No. 10–11148. MCMAHAN *v.* TEXAS, *ante*, p. 869;

No. 10–11151. WINKLER *v.* CLEMENTS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 870;

No. 10–11242. DANIEL *v.* LONG ISLAND HOUSING PARTNERSHIP, INC., ET AL., *ante*, p. 874;

No. 11–55. LIBAN *v.* MIDDLEBROOK AT MONMOUTH, *ante*, p. 880;

No. 11–108. KORDA *v.* BOUCHARD, SHERIFF, OAKLAND COUNTY, MICHIGAN, ET AL., *ante*, p. 882;

No. 11–200. PUCHE ET AL. *v.* UNITED STATES, *ante*, p. 884;

No. 11–201. KLIESH *v.* SELECT PORTFOLIO SERVICING, INC., ET AL., *ante*, p. 963;

No. 11–5082. JARVIS *v.* GRADY MANAGEMENT, INC., ET AL., *ante*, p. 889;

No. 11–5115. MOORE *v.* ILLINOIS, *ante*, p. 890;

No. 11–5224. RICKS *v.* NEWPORT NEWS SHIPBUILDING & DRY DOCK CO. ET AL., *ante*, p. 896;

No. 11–5271. GLEASON *v.* CALIFORNIA, *ante*, p. 898;

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No. 11–5304. STURDZA *v.* UNITED ARAB EMIRATES ET AL., *ante*, p. 900;

No. 11–5307. STURDZA *v.* UNITED ARAB EMIRATES ET AL., *ante*, p. 900;

No. 11–5360. ASH *v.* PHILADELPHIA PRISON SYSTEM ET AL., *ante*, p. 903;

No. 11–5502. EL GHANNAM *v.* SUBURBAN HOSPITAL INC. ET AL., *ante*, p. 911;

No. 11–5507. SINGLETON *v.* SIX FLAGS OVER GEORGIA ET AL., *ante*, p. 911;

No. 11–5526. STRATTON *v.* TEXAS (five judgments), *ante*, p. 912;

No. 11–5571. POLITE *v.* ARKANSAS DEPARTMENT OF CORRECTION, *ante*, p. 914;

No. 11–5650. REA *v.* WAL-MART STORE 1105, *ante*, p. 948;

No. 11–5711. BUENROSTRO, AKA ROSTRO *v.* UNITED STATES, *ante*, p. 919;

No. 11–5760. OGUNSALU *v.* COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION ONE, ET AL., *ante*, p. 950;

No. 11–5800. SLOVINEC *v.* MEISBURG, *ante*, p. 922;

No. 11–5934. TAYLOR *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 952;

No. 11–6020. MANGUAL *v.* UNITED STATES, *ante*, p. 927; and

No. 11–6128. IN RE COUCH, *ante*, p. 940. Petitions for rehearing denied.

No. 10–1489. MAI-TRANG THI NGUYEN *v.* STARBUCKS COFFEE CORP., *ante*, p. 930. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 10–10011. GRANT *v.* UNITED STATES, *ante*, p. 931; and

No. 11–5232. GAREY *v.* UNITED STATES, *ante*, p. 935. Petitions for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of these petitions.

NOVEMBER 29, 2011

Miscellaneous Order

No. 11–5683. DORSEY *v.* UNITED STATES; and

No. 11–5721. HILL *v.* UNITED STATES. C. A. 7th Cir. [Certiorari granted, *ante*, p. 1057.] Miguel A. Estrada, Esq., of Washington, D. C., is invited to brief and argue these cases as *amicus curiae* in support of the judgments below.

DECEMBER 5, 2011

Certiorari Dismissed

No. 11–6648. ZABRISKIE *v.* 7–11, INC., 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. 11–6705. DOWNS *v.* URIBE, 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.

No. 11–6706. DOWNS *v.* URIBE, 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. 11M46. ALMERFEDI *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. Motion for leave to file petition for writ of certiorari under seal granted.

No. 10–11159. JOHNSON *v.* CHARLES ET AL. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 805] denied.

No. 11–5102. KLEIN *v.* TALKIN, MUCCIGROSSO & ROBERTS, L. L. P. C. A. 2d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 812] denied. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 11–5146. JOHNSON *v.* WELLMAN. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 805] denied.

No. 11–5719. GRANDOIT *v.* BANK OF AMERICA. C. A. 1st Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 938] denied.

No. 11–5810. IN RE JACKSON. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 941] denied.

No. 11–6774. CADENHEAD *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 7th Cir.; and

No. 11–7175. GARNETT *v.* UNITED STATES. C. A. 6th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 27, 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. 11–7250. IN RE LEWIS;

No. 11–7262. IN RE BLACKBURN; and

No. 11–7306. IN RE DELONEY. Petitions for writs of habeas corpus denied.

No. 11–7285. IN RE CRUZ. 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. 11–6636. IN RE DEL RIO. 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. 11–6712. IN RE ELLIS. Petition for writ of mandamus denied.

Certiorari Granted

No. 11–262. REICHLE ET AL. *v.* HOWARDS. C. A. 10th Cir. Certiorari granted. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 634 F. 3d 1131.

Certiorari Denied

No. 11–148. BEAUCHAMP *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 2011 WI 27, 333 Wis. 2d 1, 796 N. W. 2d 780.

No. 11–207. Bailey, Individually and as the Personal Administrator for the Estate of Bailey, Deceased, and as Guardian ad Litem for Bailey et al. *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 623 F. 3d 855.

No. 11–260. Hall *v.* Sebelius, Secretary of Health and Human Services. C. A. Fed. Cir. Certiorari denied. Reported below: 640 F. 3d 1351.

No. 11–266. Masias *v.* Sebelius, Secretary of Health and Human Services. C. A. Fed. Cir. Certiorari denied. Reported below: 634 F. 3d 1283.

No. 11–269. Blackstone Medical, Inc. *v.* United States ex rel. Hutcheson. C. A. 1st Cir. Certiorari denied. Reported below: 647 F. 3d 377.

No. 11–288. Boos, Individually and on Behalf of All Others Similarly Situated, et al. *v.* AT&T, Inc., et al. C. A. 5th Cir. Certiorari denied. Reported below: 643 F. 3d 127.

No. 11–326. Serrano *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 64 So. 3d 93.

No. 11–403. Green *v.* United States et al. C. A. 11th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 862.

No. 11–405. Waldroup, Administratrix for the Estate of Gilliam *v.* Emmanuel. C. A. 11th Cir. Certiorari denied. Reported below: 639 F. 3d 1041.

No. 11–409. Wang et al. *v.* City of Pleasanton, California, et al. C. A. 9th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 666.

No. 11–410. Ritenour et al. *v.* Osborne. C. A. 11th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 851.

No. 11–416. Withers et al. *v.* Dick's Sporting Goods, Inc. C. A. 8th Cir. Certiorari denied. Reported below: 636 F. 3d 958.

No. 11–433. Jewish Home of Eastern Pennsylvania *v.* Department of Health and Human Services. C. A. 3d Cir. Certiorari denied. Reported below: 413 Fed. Appx. 532.

No. 11–439. McKinley et al. *v.* Abbott, Attorney General of Texas. C. A. 5th Cir. Certiorari denied. Reported below: 643 F. 3d 403.

No. 11–495. NELSON *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 11–519. CONWILL *v.* MISSISSIPPI. Cir. Ct. Miss., Madison County. Certiorari denied.

No. 11–531. GAMORY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 635 F. 3d 480.

No. 11–563. QUINONES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 635 F. 3d 590.

No. 11–572. COUNTRYWIDE FINANCIAL CORP. ET AL. *v.* LUTHER ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 195 Cal. App. 4th 789, 125 Cal. Rptr. 3d 716.

No. 11–5047. CASTILLO *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2009–1358 (La. 1/28/11), 57 So. 3d 1012.

No. 11–5210. ROGERS *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 459 Mass. 249, 945 N. E. 2d 295.

No. 11–5315. HINES *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 11–5384. JACOBSON ET AL. *v.* SCHWARZENEGGER ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–5482. CROPPER *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 251 P. 3d 434.

No. 11–5628. RODRIGUEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–5862. KEMP *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 11–5946. BLACKMON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 63 So. 3d 748.

No. 11–5982. SEEHAFER *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 2011 WI App 244, 332 Wis. 2d 317, 797 N. W. 2d 935.

No. 11–6129. Lane *v.* North Carolina. Sup. Ct. N. C. Certiorari denied. Reported below: 365 N. C. 7, 707 S. E. 2d 210.

No. 11–6633. Bradley *v.* Barrow, Warden. C. A. 11th Cir. Certiorari denied.

No. 11–6637. Campbell *v.* City of Detroit, Michigan, et al. C. A. 6th Cir. Certiorari denied.

No. 11–6638. DeGrate *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 11–6640. DeCastro *v.* Branker, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 642 F. 3d 442.

No. 11–6646. Oubichon *v.* Cate, Secretary, California Department of Corrections and Rehabilitation, et al. C. A. 9th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 235.

No. 11–6649. Tung *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 11–6656. Brown *v.* Hill et al. C. A. 5th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 336.

No. 11–6658. Bigioni *v.* Pennsylvania Office of Open Records. Commw. Ct. Pa. Certiorari denied.

No. 11–6664. Cook *v.* Chase Bank et al. C. A. 6th Cir. Certiorari denied.

No. 11–6666. Ezell *v.* Chrones, Warden. C. A. 9th Cir. Certiorari denied.

No. 11–6667. Cortez Clark *v.* Colorado. Ct. App. Colo. Certiorari denied.

No. 11–6669. Crawford *v.* Woods, Warden. C. A. 6th Cir. Certiorari denied.

No. 11–6673. Pooler *v.* Cain, Warden, et al. C. A. 5th Cir. Certiorari denied.

No. 11–6677. O'Connor *v.* Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 11–6679. CASH *v.* LOUISIANA. C. A. 5th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 390.

No. 11–6680. DIAZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–6682. COLEMAN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–6683. DIAZ *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 11–6684. CHAVEZ *v.* GROUNDS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 704.

No. 11–6686. MCDONALD *v.* JONES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 427 Fed. Appx. 84.

No. 11–6688. VELASQUEZ GOMEZ *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 11–6689. PALMER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 11–6708. NAJAFIAN *v.* CAPITAL ONE N. A. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 191.

No. 11–6710. MEDIOUS *v.* TANNER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 11–6713. COBB *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 63 So. 3d 771.

No. 11–6715. DAVIS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 11–6717. MARVIN *v.* ORANGE COUNTY DEPARTMENT OF SOCIAL SERVICES. Ct. App. N. Y. Certiorari denied. Reported below: 16 N. Y. 3d 849, 947 N. E. 2d 156.

No. 11–6718. JUNIPER *v.* KELLY, WARDEN. Sup. Ct. Va. Certiorari denied. Reported below: 281 Va. 277, 707 S. E. 2d 290.

No. 11–6719. KLEIN *v.* FRANKLIN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 681.

No. 11–6720. Rowe *v.* Bauman, Warden. C. A. 6th Cir. Certiorari denied.

No. 11–6723. Sorrells *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 11–6724. Rosen *v.* North Shore Towers Apartments, Inc. C. A. 2d Cir. Certiorari denied.

No. 11–6729. Patterson *v.* Towne Bank et al. C. A. 4th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 258.

No. 11–6731. Anderson *v.* Eagleton, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 259.

No. 11–6734. Logan *v.* Georgia. Ct. App. Ga. Certiorari denied. Reported below: 309 Ga. App. 95, 709 S. E. 2d 302.

No. 11–6737. Turner *v.* Khatchikian. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 60 So. 3d 403.

No. 11–6739. Williams *v.* Massachusetts. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 460 Mass. 1007, 950 N. E. 2d 865.

No. 11–6745. Mikell *v.* Varano, Superintendent, State Correctional Institution at Coal Township. C. A. 3d Cir. Certiorari denied.

No. 11–6746. Miller *v.* North Carolina. C. A. 4th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 235.

No. 11–6752. Salas Morales *v.* Correct Care Solutions, LLC. C. A. 4th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 825.

No. 11–6766. Meraz-Camacho *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 558.

No. 11–6794. Kuehner *v.* Wetzel, Secretary, Pennsylvania Department of Corrections, et al. C. A. 3d Cir. Certiorari denied. Reported below: 433 Fed. Appx. 96.

No. 11–6803. Holbrook *v.* Maryland. Ct. Sp. App. Md. Certiorari denied. Reported below: 196 Md. App. 717.

No. 11–6872. GRISSOM *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 2011 OK CR 3, 253 P. 3d 969.

No. 11–6873. FORD *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 436 Fed. Appx. 63.

No. 11–6947. BALLIETTE *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 2011 WI 79, 336 Wis. 2d 358, 805 N. W. 2d 334.

No. 11–6962. SINISCALCHI *v.* MACEACHERN, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT SHIRLEY. C. A. 1st Cir. Certiorari denied.

No. 11–6984. GILL *v.* VAUGHAN, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 633 F. 3d 1272.

No. 11–7056. BECKFORD *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 79 Mass. App. 1124, 948 N. E. 2d 917.

No. 11–7069. TREJO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–7093. LONG *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 301 Conn. 216, 19 A. 3d 1242.

No. 11–7094. MARTIN *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 2011 WI App 1, 330 Wis. 2d 832, 794 N. W. 2d 926.

No. 11–7096. SUTTON *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 414 Fed. Appx. 272.

No. 11–7099. THOMAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–7104. CARR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 652 F. 3d 811.

No. 11–7112. BECKSTROM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 647 F. 3d 1012.

No. 11–7113. CREWS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 834.

No. 11–7115. Reyes-Alfonso *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 653 F. 3d 1137.

No. 11–7117. Dixon *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 401 Fed. Appx. 491.

No. 11–7118. Dizzley *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 227.

No. 11–7124. Yelverton *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 70 M. J. 268.

No. 11–7125. Zamarripa *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 446 Fed. Appx. 848.

No. 11–7131. Jacques *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 641.

No. 11–7133. Molina *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 744.

No. 11–7135. Warren *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 11–7136. White *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 190.

No. 11–7137. Ward *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 258.

No. 11–7138. Bargeron *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 892.

No. 11–7142. Lugo *v.* Zickefoose, Warden. C. A. 3d Cir. Certiorari denied. Reported below: 427 Fed. Appx. 89.

No. 11–7145. O'Neil *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 960.

No. 11–7146. McDowell *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 263.

No. 11–7147. Mitchell *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 975.

No. 11–7149. Bobmanuel *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 11–7152. ROBERTSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–7153. STARKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 264.

No. 11–7154. QUACO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 821.

No. 11–7157. HOWLIET *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 11–7163. HARRIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 11–7168. VELEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 427 Fed. Appx. 121.

No. 11–7169. WALLACE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 600.

No. 11–7170. TIRADO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–7178. CAMPANA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 586.

No. 11–7180. LAMBERTI *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 733.

No. 11–7193. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 956.

No. 11–7195. MCDANIEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 218.

No. 11–7198. SCOTT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 280.

No. 11–7201. JACKSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–7218. GARDNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 361.

No. 11–7219. GREER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 640 F. 3d 1011.

No. 11–7220. HOYT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 441 Fed. Appx. 111.

No. 11–7221. GARCIA-AGUILERA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 161.

No. 11–7223. HARPER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 421 Fed. Appx. 108.

No. 11–7226. FLORES-SANTOS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 746.

No. 11–7236. MORENO-GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–7238. SANCHEZ-VALENZUELA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 446 Fed. Appx. 841.

No. 11–386. BRONX HOUSEHOLD OF FAITH ET AL. *v.* NEW YORK CITY BOARD 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: 650 F. 3d 30.

No. 11–407. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, FREIGHT, CONSTRUCTION, GENERAL DRIVERS, WAREHOUSEMEN & HELPERS, LOCAL 287 (AFL–CIO) *v.* GRANITE ROCK CO. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 649 F. 3d 1067.

No. 11–5342. ROBINSON *v.* UNITED STATES;
No. 11–5975. JONES *v.* UNITED STATES; and
No. 11–6514. THOMAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of these petitions. Reported below: 637 F. 3d 59.

No. 11–7150. IGLESIAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–7162. FORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–7184. SABIR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 634 F. 3d 127.

No. 11–7186. HICKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 421 Fed. Appx. 276.

Rehearing Denied

No. 11–153. KELES *v.* TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK ET AL., *ante*, p. 884;

No. 11–5014. IN RE PAPA ET UX., *ante*, p. 813;

No. 11–5035. POOLE *v.* UNITED STATES, *ante*, p. 886;

No. 11–5062. BORTZ *v.* CAMERON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CRESSON, ET AL., *ante*, p. 888;

No. 11–5195. VOLZ *v.* ROZUM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL., *ante*, p. 894;

No. 11–5387. LARSON *v.* ALASKA, *ante*, p. 904;

No. 11–5533. MILLEN *v.* TENNESSEE, *ante*, p. 913;

No. 11–5775. THOMPSON *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 951;

No. 11–5783. CALDWELL *v.* IDAHO ET AL., *ante*, p. 951; and

No. 11–5947. FIGURA TORREFRANCA *v.* SUTER, CLERK, SUPREME COURT OF THE UNITED STATES, ET AL., *ante*, p. 953. Petitions for rehearing denied.

No. 11–5790. LAFRENIERE *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA, *ante*, p. 960. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

DECEMBER 8, 2011

Miscellaneous Order

No. 11–393. NATIONAL FEDERATION OF INDEPENDENT BUSINESS ET AL. *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.;

No. 11–398. DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. *v.* FLORIDA ET AL.; and

No. 11–400. FLORIDA ET AL. *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 11th Cir. [Certiorari granted,

ante, pp. 1033 and 1034.] Upon consideration of the letter of December 5, 2011, from the Solicitor General on behalf of the parties and the *amici curiae* invited to brief and argue these cases, the following briefing schedule is adopted.

On the minimum coverage provision issue (No. 11–398), brief of the Solicitor General, not to exceed 16,500 words, is to be filed on or before Friday, January 6, 2012. Briefs of respondents, not to exceed 16,500 words, are to be filed on or before Monday, February 6, 2012. Reply brief, not to exceed 6,600 words, is to be filed on or before Wednesday, March 7, 2012.

On the Anti-Injunction Act issue (No. 11–398), brief of the Court-appointed *amicus curiae* is to be filed on or before Friday, January 6, 2012. Briefs of the Solicitor General and respondents are to be filed on or before Monday, February, 6, 2012. Reply briefs of the Solicitor General and respondents are to be filed on or before Monday, February 27, 2012. Reply brief of the Court-appinted *amicus curiae* is to be filed on or before Monday, March 12, 2012.

On the severability issue (Nos. 11–393 and 11–400), briefs of petitioners are to be filed on or before Friday, January 6, 2012. Brief of the Solicitor General is to be filed Friday, January 27, 2012. Brief of the Court-appointed *amicus curiae* is to be filed on or before Friday, February 17, 2012. Reply briefs of the Solicitor General and petitioners are to be filed on or before Tuesday, March 13, 2012.

On the Medicaid issue (No. 11–400), brief of petitioners is to be filed on or before Tuesday, January 10, 2012. Brief of the Solicitor General is to be filed on or before Friday, February 10, 2012. Reply brief is to be filed on or before Monday, March 12, 2012.

Other *amici curiae* shall file separate briefs on each issue they intend to address. Briefs shall be filed within the time allowed under this Court's Rule 37.3(a), except that *amici curiae* briefs addressing the severability issue shall be filed on or before the due date for the brief of the party or Court-appointed *amicus curiae* whose position the brief is supporting. Parties and *amici curiae* shall identify on the cover of each brief the issue that is addressed in the brief. *Amici curiae* shall also identify on the cover of the brief the party or parties supported or whether the brief suggests affirmance or reversal, as required by this Court's Rule 37.3(a).

DECEMBER 9, 2011

Probable Jurisdiction Noted

No. 11–713 (11A520). PERRY, GOVERNOR OF TEXAS, ET AL. *v.* PEREZ ET AL.;

No. 11–714 (11A521). PERRY, GOVERNOR OF TEXAS, ET AL. *v.* DAVIS ET AL.; and

No. 11–715 (11A536). PERRY, GOVERNOR OF TEXAS, ET AL. *v.* PEREZ ET AL. Appeals from D. C. W. D. Tex. Applications for stay, presented to JUSTICE SCALIA, and by him referred to the Court, granted, and it is ordered that the orders issued by the United States District Court for the Western District of Texas on November 23, 2011, in case No. SA–11–CV–360; November 25, 2011, in case No. SA–11–CV–788; and November 26, 2011, in case No. SA–11–CV–360, are hereby stayed pending further order of the Court. In addition, the applications for stay are treated as jurisdictional statements, and in each case probable jurisdiction is noted. The cases are consolidated, and a total of one hour is allotted for oral argument. Briefs for appellants and appellees, not to exceed 15,000 words, are to be filed simultaneously with the Clerk and served upon opposing counsel on or before 2 p.m., Wednesday, December 21, 2011. Reply briefs, not to exceed 15,000 words, are to be filed simultaneously with the Clerk and served upon opposing counsel on or before 2 p.m., Tuesday, January 3, 2012. Cases are set for oral argument on Monday, January 9, 2012, at 1 p.m. Reported below: No. 11–713, 835 F. Supp. 2d 209.

DECEMBER 12, 2011

Certiorari Granted—Reversed. (See No. 11–74, *ante*, p. 65.)

Certiorari Dismissed

No. 11–6783. ASSA'AD-FALTAS *v.* GIESE ET AL. Sup. Ct. S. C. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 11–6814. ABULKHAIR *v.* BANKS. Super. Ct. N. J., App. Div. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 11M47. KAETZ *v.* MARK;

No. 11M48. LEWIS *v.* COUNTRYWIDE HOME LOANS, INC., FKA COUNTRYWIDE FUNDING CORP.;

No. 11M49. LEYJA *v.* PARKER, WARDEN; and

No. 11M51. SAN CARLOS APACHE TRIBE *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 11M50. C. D. *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record denied.

No. 10–1016. COLEMAN *v.* COURT OF APPEALS OF MARYLAND ET AL. C. A. 4th Cir. [Certiorari granted, 564 U. S. 1035.] Motion of Senator Tom Harkin et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 10–10591. CANNON *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 803] denied.

No. 11–336. CORBOY ET AL. *v.* LOUIE, ATTORNEY GENERAL OF HAWAII, ET AL. Sup. Ct. Haw. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 11–338. DECKER, OREGON STATE FORESTER, ET AL. *v.* NORTHWEST ENVIRONMENTAL DEFENSE CENTER; and

No. 11–347. GEORGIA PACIFIC WEST, INC., ET AL. *v.* NORTHWEST ENVIRONMENTAL DEFENSE CENTER. C. A. 9th Cir. The Solicitor General is invited to file a brief in these cases expressing the views of the United States. JUSTICE BREYER took no part in the consideration or decision of these petitions.

No. 11–393. NATIONAL FEDERATION OF INDEPENDENT BUSINESS ET AL. *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.; and

No. 11–400. FLORIDA ET AL. *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 11th Cir. [Certiorari granted, *ante*, p. 1033.] Motion of Freedom Watch for leave to intervene denied.

No. 11–7515. IN RE BLUNT. Petition for writ of habeas corpus denied.

No. 11–6788. IN RE DECKER-WEGENER. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 11–166. RADLAX GATEWAY HOTEL, LLC, ET AL. *v.* AMALGAMATED BANK. C. A. 7th Cir. Certiorari granted. Reported below: 651 F. 3d 642.

No. 11–182. ARIZONA ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari granted. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 641 F. 3d 339.

No. 11–246. MATCH-E-BE-NASH-SHE-WISH BAND OF POTTAWATOMI INDIANS *v.* PATCHAK ET AL.; and

No. 11–247. SALAZAR, SECRETARY OF THE INTERIOR, ET AL. *v.* PATCHAK ET AL. C. A. D. C. Cir. Certiorari granted, cases consolidated, and a total of one hour is allotted for oral argument. Reported below: 632 F. 3d 702.

Certiorari Denied

No. 10–1267. MCFADDEN *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 67 So. 3d 169.

No. 10–10525. CASTILLO-PERALES *v.* HOLDER, ATTORNEY GENERAL, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 695.

No. 10–10813. HOTALING *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 634 F. 3d 725.

No. 10–11172. BUTLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 637 F. 3d 519.

No. 11–164. HARLEY *v.* DONAHOE, POSTMASTER GENERAL. C. A. 10th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 748.

No. 11–339. SEIDL, INDIVIDUALLY, DERIVATIVELY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED *v.* AMERICAN CEN-

TURY COS., INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 427 Fed. Appx. 35.

No. 11–423. MIDDLEBROOKS *v.* GODWIN CORP. ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 424 Fed. Appx. 10.

No. 11–426. PIETRANGELO *v.* SANDUSKY LIBRARY ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–428. CAMPBELL *v.* KOCHER. Sup. Ct. Va. Certiorari denied. Reported below: 282 Va. 113, 712 S. E. 2d 477.

No. 11–429. CROMWELL *v.* UNITED STEELWORKERS OF AMERICA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 423 Fed. Appx. 213.

No. 11–440. SCHUPAK GROUP, INC. *v.* TRAVELERS CASUALTY & SURETY COMPANY OF AMERICA. C. A. 2d Cir. Certiorari denied. Reported below: 425 Fed. Appx. 23.

No. 11–444. BLANKENSHIP *v.* METROPOLITAN LIFE INSURANCE CO. C. A. 11th Cir. Certiorari denied. Reported below: 644 F. 3d 1350.

No. 11–448. FAYER, AKA MCLYNN *v.* VAUGHN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 649 F. 3d 1061.

No. 11–455. VANDEVERE ET AL. *v.* LLOYD, COMMISSIONER, ALASKA DEPARTMENT OF FISH AND GAME. C. A. 9th Cir. Certiorari denied. Reported below: 644 F. 3d 957.

No. 11–463. ANDERSON ET AL. *v.* NATIONAL HERITAGE FOUNDATION, INC. C. A. 4th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 238.

No. 11–464. STOCK *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 2011 MT 131, 361 Mont. 1, 256 P. 3d 899.

No. 11–471. GOLDEN GATE PHARMACY SERVICES, INC., ET AL. *v.* PFIZER, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 598.

No. 11–472. LIN *v.* ROHM & HAAS CO. Super. Ct. Pa. Certiorari denied. Reported below: 992 A. 2d 132.

No. 11–477. ZELLS *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 9th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 917.

No. 11–479. SHAGHIL *v.* HOLDER, ATTORNEY GENERAL. C. A. 8th Cir. Certiorari denied. Reported below: 638 F. 3d 828.

No. 11–489. ZE FEI FANG *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied.

No. 11–490. DIXON *v.* HENNEPIN COUNTY HUMAN SERVICES DEPARTMENT ET AL. Ct. App. Minn. Certiorari denied.

No. 11–494. KINSEL *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 647 F. 3d 265.

No. 11–504. JOSEPH *v.* CUNEO LAW GROUP, P. C., ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 428 Fed. Appx. 6.

No. 11–520. KOELLER ET AL. *v.* KANSAS CITY SOUTHERN RAILWAY CO. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 653 F. 3d 496.

No. 11–521. MALANEY ET AL. *v.* UAL CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 620.

No. 11–524. WACHTEL *v.* SECURITIES AND EXCHANGE COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied.

No. 11–528. DEI *v.* TUMARA FOOD MART, INC. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 406 Ill. App. 3d 856, 941 N. E. 2d 920.

No. 11–537. VIEWCREST INVESTMENTS, LLC, ET AL. *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 239 Ore. App. 362, 246 P. 3d 520.

No. 11–545. THOMAS *v.* iSTAR FINANCIAL, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 652 F. 3d 141.

No. 11–574. SCZYGELSKI *v.* UNITED STATES CUSTOMS AND BORDER PROTECTION AGENCY. C. A. 8th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 680.

No. 11–583. OLVERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 305.

No. 11–5144. ROBERTSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–5175. GILLETT *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 56 So. 3d 469.

No. 11–5566. HAYES *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 17 N. Y. 3d 46, 950 N. E. 2d 118.

No. 11–5735. RAMIREZ-ARREOLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 602.

No. 11–5863. WEST *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 646 F. 3d 745.

No. 11–6178. SALTOU *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 351.

No. 11–6229. VARELA-CIAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 756.

No. 11–6470. TIERNEY *v.* ESPINADA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–6732. ALAM *v.* HSBC BANK USA, N. A. C. A. 2d Cir. Certiorari denied.

No. 11–6733. ALSTON *v.* ALLEN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 11–6754. HAYGOOD *v.* PAULDING COUNTY, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–6762. BURNS *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 2011 MT 167, 361 Mont. 191, 256 P. 3d 944.

No. 11–6763. ANDIKA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–6768. MITCHELL, AKA HAYES *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 11–6773. COLEMAN *v.* CURTIN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 483.

No. 11–6775. DYDZAK *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Certiorari denied.

No. 11–6781. ANDERSON *v.* LUND, SUPERINTENDENT, CLARINDA CORRECTIONAL FACILITY. C. A. 8th Cir. Certiorari denied.

No. 11–6785. WATSON *v.* TEXAS. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 11–6786. MIN WU *v.* YUNLING HU. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–6800. DRIVER *v.* LANDERS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 934.

No. 11–6812. RIVAS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 395.

No. 11–6823. ARCEO ET AL. *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 195 Cal. App. 4th 556, 125 Cal. Rptr. 3d 436.

No. 11–6835. CUNNINGHAM *v.* OREGON. C. A. 9th Cir. Certiorari denied.

No. 11–6848. BRADDOCK *v.* RAPELJE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–6849. AVILEZ *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 50 So. 3d 1189.

No. 11–6850. BUTLER *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 11–6852. BASSETT *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–6908. WILLIAMS *v.* MARTEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–6922. BROWN *v.* NARVAIZ. C. A. 10th Cir. Certiorari denied.

No. 11–6925. PHILLIPS *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 7th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 528.

No. 11–6933. PLUMMER *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 177.

No. 11–6941. SHUE *v.* SISTO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 172.

No. 11–6943. ROBIDOUX *v.* MURPHY, ACTING SUPERINTENDENT, OLD COLONY CORRECTIONAL CENTER. C. A. 1st Cir. Certiorari denied. Reported below: 643 F. 3d 334.

No. 11–6945. MILLER *v.* PERRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–6946. BROWN *v.* FEDERAL BUREAU OF PRISONS ET AL. C. A. D. C. Cir. Certiorari denied.

No. 11–6949. BUCHANAN *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 11–6950. BERRY *v.* RIVARD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–6975. WESTBROOK *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 11–6995. JOHN-CHARLES *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 646 F. 3d 1243.

No. 11–7006. ALVINO CANO *v.* CASKEY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 381.

No. 11–7019. RYBURN *v.* RAMOS, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 11–7058. ROGERS *v.* KELLER, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION. C. A. 4th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 237.

No. 11–7073. THOMAS *v.* LUDWICK, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7122. WAYMER *v.* BODISON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 703.

No. 11–7126. TRAVIS *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 11–7156. GARZA *v.* HUDSON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 924.

No. 11–7167. WANKE *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 404 Ill. App. 3d 1178, 996 N. E. 2d 776.

No. 11–7181. SIMMONS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 649 F. 3d 301.

No. 11–7202. PAULSON *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 11–7215. CLEVELAND *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 413 Fed. Appx. 445.

No. 11–7224. GROSS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 490.

No. 11–7228. GONZALEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 433 Fed. Appx. 24.

No. 11–7239. CANDRICK, AKA LOFTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 404.

No. 11–7240. CAVAZOS-REYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 402.

No. 11–7253. LEYVA-OROZCO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 327.

No. 11–7254. JOHNSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 434 Fed. Appx. 159.

No. 11–7256. WATERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 648 F. 3d 1114.

No. 11–7258. BARRETT *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 15 A. 3d 520.

No. 11–7259. BOLEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–7260. BRANON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 11–7261. ADAMS, aka CLARK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 446 Fed. Appx. 579.

No. 11–7266. PARKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 23.

No. 11–7267. DENHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 772.

No. 11–7268. CUATANTE-CUATANTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 11–7269. COBOS-CHACHAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 53.

No. 11–7272. DIAZ, aka MARTINE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 444 Fed. Appx. 551.

No. 11–7278. LUNA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 649 F. 3d 91.

No. 11–7279. TOLER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 444 Fed. Appx. 561.

No. 11–7281. ROMINES, aka ROMINEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–7283. SCROGGINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 648 F. 3d 873.

No. 11–7288. D'AGOSTINO *v.* COMMUNICATIONS-ELECTRONICS COMMAND, RESEARCH, DEVELOPMENT, AND ENGINEERING CENTER, DEPARTMENT OF THE ARMY, FORT MONMOUTH. C. A. 3d Cir. Certiorari denied. Reported below: 436 Fed. Appx. 70.

No. 11–7289. EZE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–7290. EASON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 446 Fed. Appx. 948.

No. 11–7291. CEGLEDI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 441 Fed. Appx. 870.

No. 11–7292. BAPTISTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 964.

No. 11–7296. STURDIVANT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 651.

No. 11–7300. KELLUM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 452.

No. 11–7302. JACKSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 524.

No. 11–7304. REID *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 413.

No. 11–7308. TURNER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 651 F. 3d 743.

No. 11–7315. DANDOR *v.* WARREN, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–7318. LECCO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 187.

No. 11–7321. EATON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 553.

No. 11–7322. DRAUGHN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 11–7323. MORGAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 354.

No. 11–7329. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 11–277. OHIO *v.* D. B. Sup. Ct. Ohio. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 129 Ohio St. 3d 104, 2011-Ohio-2671, 950 N. E. 2d 528.

No. 11–434. MORTENSEN *v.* BROWN ET AL. Sup. Ct. Cal. Motion of ACA International for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 51 Cal. 4th 1052, 253 P. 3d 522.

No. 11–436. KENNIASTY *v.* BIONETICS CORP. Sup. Ct. Fla. Motion of respondent for attorney's fees pursuant to this Court's Rule 42.2 denied. Certiorari denied. Reported below: 69 So. 3d 943.

No. 11–575. CARSON *v.* UNITED STATES OFFICE OF SPECIAL COUNSEL. C. A. 6th Cir. Motion of Lori A. Saxon et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 633 F. 3d 487.

No. 11–7249. JACKSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 658 F. 3d 145.

No. 11–7265. PRINCE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 647 F. 3d 1257.

Rehearing Denied

No. 10–1495. SAMMARCO *v.* LUDEMAN ET AL., *ante*, p. 824;

No. 10–10236. MCDERMOTT *v.* MACFADYEN ET AL., *ante*, p. 831;

No. 10–10309. MCCREARY *v.* MALONE ET AL., *ante*, p. 833;

No. 10–10406. POWELL *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, *ante*, p. 836;

No. 10–10648. SALERNO *v.* MICHIGAN, *ante*, p. 842;

No. 10–10662. PLATTS *v.* UNITED STATES, *ante*, p. 843;

No. 10–10696. SPAN *v.* BARDERS ET AL., *ante*, p. 844;

No. 10–10740. PETERKA *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 847;

No. 10–10817. MAHONEY *v.* HAMMOND ET AL., *ante*, p. 851;

No. 10–10876. THOMPSON *v.* DITTMAN, WARDEN, *ante*, p. 854;

No. 10–10889. KIM *v.* DONAHOE, POSTMASTER GENERAL, ET AL., *ante*, p. 855;

No. 10–10957. SHERROD *v.* UNITED STATES, *ante*, p. 859;

No. 10–11080. GARAY *v.* DEPARTMENT OF MANAGEMENT SERVICES, DIVISION OF RETIREMENT, *ante*, p. 866;

No. 10–11098. MCCREARY *v.* SKOLNIK ET AL., *ante*, p. 867;

No. 10–11188. MOSLEY *v.* ILLINOIS, *ante*, p. 872;

No. 11–28. MALCOLM *v.* HONEOYE FALLS LIMA CENTRAL SCHOOL DISTRICT, *ante*, p. 879;

No. 11–203. POLES *v.* SIKOWITZ, *ante*, p. 964;

No. 11–5017. LOSEE *v.* GARDEN ET AL., *ante*, p. 885;

No. 11–5029. BUFFINGTON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 886;

No. 11–5063. BENOIT *v.* WASHINGTON, *ante*, p. 888;

No. 11–5300. DOBRIC *v.* BARON, *ante*, p. 900;

No. 11–5331. BROWN *v.* CLEVELAND MUNICIPAL SCHOOL DISTRICT, AKA CLEVELAND METROPOLITAN SCHOOL DISTRICT, ET AL., *ante*, p. 902;

No. 11–5397. HARRIS *v.* UPTON, WARDEN, *ante*, p. 905;

No. 11–5398. IN RE LOGGINS, *ante*, p. 813;

No. 11–5528. DARVIE *v.* COUNTRYMAN ET AL., *ante*, p. 912;

No. 11–5575. VALENCIA *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, *ante*, p. 946;

No. 11–5645. STURDZA *v.* UNITED ARAB EMIRATES ET AL., *ante*, p. 948;

No. 11–5659. RIETHMILLER *v.* FABISIAK ET AL., *ante*, p. 948;

No. 11–5708. MESSINA *v.* MARSHALL ET AL., *ante*, p. 949;

No. 11–5771. MCCOY *v.* THOMAS, INTERIM COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 951;

No. 11–5818. PRESSLEY *v.* CAROMONT HEALTH INC. ET AL., *ante*, p. 952;

No. 11–5852. HAMILTON *v.* UNITED STATES, *ante*, p. 923;

No. 11–6038. CARTER *v.* CAMPBELL, *ante*, p. 982;

No. 11–6048. SMITH *v.* UNITED STATES, *ante*, p. 927;

No. 11–6116. SINGLETON *v.* TEN UNIDENTIFIED UNITED STATES MARSHALS, *ante*, p. 985; and

No. 11–6121. ASH *v.* NISH ET AL., *ante*, p. 968. Petitions for rehearing denied.

No. 11–5101. KEISLING *v.* RENN ET AL., *ante*, p. 934. Petition for rehearing denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 11–5663. SAMUEL *v.* BLOOMBERG, MAYOR, CITY OF NEW YORK, NEW YORK, ET AL., *ante*, p. 960. Petition for rehearing denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

DECEMBER 16, 2011

Dismissal Under Rule 46

No. 10–1333. SANDY CREEK ENERGY ASSOCIATES, L. P. *v.* SIERRA CLUB, INC., ET AL. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 627 F. 3d 134.

December 27, 2011

Dismissal Under Rule 46

No. 11–363. Amgen Inc. *v.* New York et al. C. A. 1st Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 652 F. 3d 103.

December 30, 2011

Miscellaneous Orders

No. 10–1399. Roberts *v.* Sea-Land Services, Inc., et al. C. A. 9th Cir. [Certiorari granted, 564 U. S. 1066.] Motion of the Solicitor General for divided argument granted.

No. 11–713. Perry, Governor of Texas, et al. *v.* Perez et al.;

No. 11–714. Perry, Governor of Texas, et al. *v.* Davis et al.; and

No. 11–715. Perry, Governor of Texas, et al. *v.* Perez et al. D. C. W. D. Tex. [Probable jurisdiction noted, *ante*, p. 1090.] Motion of the Solicitor General for enlargment of time for oral argument, for leave to participate in oral argument as *amicus curiae*, and for divided argument granted. Time is to be divided as follows: 30 minutes for the appellants, 30 minutes for the appellees, and 10 minutes for the Solicitor General as *amicus curiae*. Motion of appellees Wendy Davis et al. for divided argument denied.

January 6, 2012

Miscellaneous Orders

No. 10–1018. Filarsky *v.* Delia. C. A. 9th Cir. [Certiorari granted, 564 U. S. 1066.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 10–1032. Magner et al. *v.* Gallagher et al. C. A. 8th Cir. [Certiorari granted, *ante*, p. 1013.] Motion of petitioners to dispense with printing the joint appendix granted.

No. 10–1062. Sackett et vir *v.* Environmental Protection Agency et al. C. A. 9th Cir. [Certiorari granted, 564

U. S. 1052.] Motion of Natural Resources Defense Council et al. for leave to file a brief as *amici curiae* granted.

No. 10–1542. HOLDER, ATTORNEY GENERAL *v.* MARTINEZ GUTIERREZ; and

No. 10–1543. HOLDER, ATTORNEY GENERAL *v.* SAWYERS. C. A. 9th Cir. [Certiorari granted, 564 U. S. 1066.] Motion of respondents for divided argument granted.

No. 11–88. MOHAMAD, INDIVIDUALLY AND FOR THE ESTATE OF RAHIM, DECEASED, ET AL. *v.* PALESTINIAN AUTHORITY ET AL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 962.] Motion of petitioners to dispense with printing the joint appendix granted.

No. 11–159. ASTRUE, COMMISSIONER OF SOCIAL SECURITY *v.* CAPATO, ON BEHALF OF B. N. C., ET AL. C. A. 3d Cir. [Certiorari granted, *ante*, p. 1033.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

Certiorari Granted

No. 11–551. SALAZAR, SECRETARY OF THE INTERIOR, ET AL. *v.* RAMAH NAVAJO CHAPTER ET AL. C. A. 10th Cir. Certiorari granted. Reported below: 644 F. 3d 1054.

No. 11–564. FLORIDA *v.* JARDINES. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 73 So. 3d 34.

JANUARY 9, 2012

Affirmed on Appeal

No. 11–275. BLUMAN ET AL. *v.* FEDERAL ELECTION COMMISSION. Affirmed on appeal from D. C. D. C. Reported below: 800 F. Supp. 2d 281.

Certiorari Granted—Vacated and Remanded

No. 10–11217. IKHARO *v.* HOLDER, ATTORNEY GENERAL. 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 *Judulang* v. *Holder*, *ante*, p. 42. Reported below: 614 F. 3d 622.

No. 11–135. Frederick *v.* Holder, Attorney General. C. A. 7th Cir. Reported below: 644 F. 3d 357; and

No. 11–144. Umer *v.* Holder, Attorney General. C. A. 5th Cir. Reported below: 417 Fed. Appx. 403. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Judulang* v. *Holder*, *ante*, p. 42.

No. 11–5411. Bohannan *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* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Wall* v. *Kholi*, 562 U. S. 545 (2011).

Certiorari Dismissed

No. 11–6927. Perry *v.* Jordan 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: 435 Fed. Appx. 831.

No. 11–7005. Cook *v.* Galaza, 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. 11–7009. Jarvis *v.* FedEx Office & Print Services, Inc. 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: 442 Fed. Appx. 71.

No. 11–7035. Aysisayh *v.* Florida. Dist. Ct. App. Fla., 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. 11–7127. Maisano *v.* Canteen Correctional Food Services, Inc., 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 repeat-

edly 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. 11–7141. POWELL *v.* KELLER ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition.

No. 11–7192. COX *v.* DAVIS, WARDEN. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 11–7346. HAIRSTON *v.* SCISM, WARDEN (two judgments). 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. 11–7374. STRONG *v.* SUTER, CLERK, SUPREME COURT OF THE UNITED STATES. 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)*. Reported below: 412 Fed. Appx. 905.

No. 11–7405. HENDRICKS *v.* GALLOWAY 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: 431 Fed. Appx. 219.

Miscellaneous Orders

No. D–2617. IN RE DISCIPLINE OF HANNA. Joseph John Hanna, Jr., of Portland, Ore., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2618. IN RE DISCIPLINE OF ZODROW. John Joseph Zodrow of Denver, Colo., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2619. IN RE DISCIPLINE OF FOX. David E. Fox of Washington, D. C., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2620. IN RE DISCIPLINE OF ELLIOTT. Walter C. Elliott, Jr., of Owings Mills, 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–2621. IN RE DISCIPLINE OF CULPEPPER. Glenn E. Culpepper of Silver Spring, 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–2622. IN RE DISCIPLINE OF MOYNIHAN. David S. Moynihan 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–2623. IN RE DISCIPLINE OF MELTON. Michael Joseph Melton of Rolling Hills, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 11M52. TAYLOR *v.* AYERS, WARDEN;
No. 11M54. WILSON *v.* FLORIDA; and
No. 11M57. ARAGON-HERNANDEZ *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 11M53. ROBINSON *v.* UNITED STATES; and
No. 11M56. SEALED PETITIONER *v.* SEALED RESPONDENT ET AL. Motions for leave to file petitions for writs of certiorari under seal with redacted copies for the public record granted.

No. 11M55. JARRETT *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA 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. 11M58. GOLDBLATT *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI. Motion for leave to proceed *in forma pauperis* with declaration of indigency under seal denied.

No. 108, Orig. NEBRASKA *v.* WYOMING ET AL. Joint motion to amend modified decree granted. [For earlier order herein, see, *e. g.*, 535 U. S. 984.]

No. 11–398. DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. *v.* FLORIDA ET AL. C. A. 11th Cir. [Certiorari granted, *ante*, p. 1034.] Motion of Association of American Physicians & Surgeons, Inc., et al. for leave to intervene denied.

No. 11–5942. MUHAMMAD *v.* SAPP ET AL. C. A. 11th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 973] denied.

No. 11–5972. THOMAS *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE BOARD ET AL. Ct. App. Tex., 11th Dist. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 973] denied.

No. 11–6227. HAMPTON *v.* J. W. SQUIRE CO., INC. C. A. 4th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1012] denied.

No. 11–6863. REID *v.* WYATT ET AL. Sup. Ct. Va.;
No. 11–6897. ZORTMAN *v.* PENNSYLVANIA. Sup. Ct. Pa.;

No. 11–7081. Cook *v.* Hubin et al. Ct. App. D. C.;

No. 11–7148. Otto et ux. *v.* Hillsborough County, Florida. Dist. Ct. App. Fla., 2d Dist.;

No. 11–7159. Graves *v.* Industrial Power Generating Corp., dba Ingenco. C. A. 4th Cir.; and

No. 11–7305. Richardson *v.* Gray et al. C. A. 4th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until January 30, 2012, 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. 11–7171. Hewlett *v.* Elder. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until January 30, 2012, 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. 11–7590. In re Totaro. 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. 11–446. In re Gerstner et al.;

No. 11–578. In re Kelly;

No. 11–7022. In re Eastland;

No. 11–7229. In re Bakhouche, aka Ali; and

No. 11–7483. In re Square. Petitions for writs of mandamus denied.

No. 11–7091. In re Mierzwa. 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. 11–6882. In re Brown;

No. 11–6994. In re Barajas; and

No. 11–7076. In re Vance. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Denied

No. 10–730. Johnson *v.* Holder, Attorney General. C. A. 7th Cir. Certiorari denied. Reported below: 385 Fed. Appx. 597.

No. 10–886. Compton Unified School District *v.* Addison et al. C. A. 9th Cir. Certiorari denied. Reported below: 598 F. 3d 1181.

No. 10–8356. Caro *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 597 F. 3d 608.

No. 10–10629. Vaughan *v.* Astrue, Commissioner of Social Security. C. A. 4th Cir. Certiorari denied. Reported below: 412 Fed. Appx. 559.

No. 10–10839. McDougald *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 238.

No. 10–11078. Reyes *v.* Ryan, Director, Arizona Department of Corrections, et al. C. A. 9th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 659.

No. 10–11094. Kennedy *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 638 F. 3d 159.

No. 10–11287. Stanford *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 276.

No. 11–27. Baud et ux. *v.* Carroll. C. A. 6th Cir. Certiorari denied. Reported below: 634 F. 3d 327.

No. 11–35. U. S. Vision, Inc., et al. *v.* Johnson. C. A. 9th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 841.

No. 11–67. Inzunza *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 638 F. 3d 1006.

No. 11–120. Winters, Sheriff, Jackson County, Oregon *v.* Willis; and

No. 11–234. Gordon, Sheriff, Washington County, Oregon *v.* Sansone et al. Sup. Ct. Ore. Certiorari denied. Reported below: 350 Ore. 299, 253 P. 3d 1058.

No. 11–157. Beason et al. *v.* Bentley, Governor of Alabama, et al. Sup. Ct. Ala. Certiorari denied. Reported below: 106 So. 3d 926.

No. 11–206. Salem *v.* Holder, Attorney General. C. A. 4th Cir. Certiorari denied. Reported below: 647 F. 3d 111.

No. 11–249. PROST *v.* ANDERSON, WARDEN (Reported below: 636 F. 3d 578); BRACE *v.* UNITED STATES ET AL. (634 F. 3d 1167); and MATHISON *v.* WILEY, WARDEN (318 Fed. Appx. 650). C. A. 10th Cir. Certiorari denied.

No. 11–265. HART *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 635 F. 3d 850.

No. 11–316. UNITED STATES STEEL CORP. ET AL. *v.* MILWARD ET UX. C. A. 1st Cir. Certiorari denied. Reported below: 639 F. 3d 11.

No. 11–329. DEAN *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 416 Fed. Appx. 908.

No. 11–348. LOCKE ET AL. *v.* SHORE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 634 F. 3d 1185.

No. 11–357. EQUITY IN ATHLETICS, INC. *v.* DEPARTMENT OF EDUCATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 639 F. 3d 91.

No. 11–378. JOHNSON *v.* WHITEHEAD, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 647 F. 3d 120.

No. 11–414. BROWN *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 74 So. 3d 1039.

No. 11–418. KHABURZANIA *v.* NEW YORK. Crim. Ct., City of N. Y., Queens County, N. Y. Certiorari denied.

No. 11–442. KHAZAELI *v.* CITY OF CONCORD, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–449. KHAZAELI *v.* JOHNSON ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–452. NEWMAN ET UX. *v.* GUARDIANSHIP OF KATZ. Sup. Ct. Fla. Certiorari denied. Reported below: 64 So. 3d 1261.

No. 11–454. POLSKY, RECEIVER FOR COMMUNICATIONS PRODUCTS CORP. *v.* VIRNICH ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 2011 WI 13, 332 Wis. 2d 1, 800 N. W. 2d 742.

No. 11–456. VILLAFANA *v.* SMITH. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–466. GARMON ET AL. *v.* REYNOLDS. Ct. App. Ind. Certiorari denied. Reported below: 924 N. E. 2d 682.

No. 11–470. HARDEN *v.* WICOMICO COUNTY, MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 143.

No. 11–473. DUPREE *v.* GENERAL MILLS OPERATIONS, INC., ET AL. C. A. 8th Cir. Certiorari denied.

No. 11–474. FADELEY *v.* CITIBANK OF SOUTH DAKOTA, NA. Sup. Ct. Ore. Certiorari denied.

No. 11–476. WILLIAMS *v.* DISTRICT OF COLUMBIA COURT OF APPEALS. Ct. App. D. C. Certiorari denied. Reported below: 3 A. 3d 1179.

No. 11–480. DRONEY *v.* FITCH ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 669.

No. 11–498. MURPHY *v.* SANDERS, JUDGE, HUMPHREYS COUNTY JUVENILE COURT, TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–501. FARMERS INSURANCE EXCHANGE *v.* AGUILAR ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–505. HAMED *v.* WAYNE COUNTY, MICHIGAN, ET AL. Sup. Ct. Mich. Certiorari denied. Reported below: 490 Mich. 1, 803 N. W. 2d 237.

No. 11–506. DOCK, INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF DOCK, DECEASED, ET AL. *v.* RUSH ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 432 Fed. Appx. 130.

No. 11–507. HASSAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 441 Fed. Appx. 10.

No. 11–508. OMAHA TRIBE OF NEBRASKA, AKA OMAHA NATION *v.* STOREVISIONS, INC. Sup. Ct. Neb. Certiorari denied. Reported below: 281 Neb. 238, 795 N. W. 2d 271.

No. 11–509. BUSHNELL *v.* BEDFORD COUNTY, TENNESSEE. C. A. 6th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 472.

No. 11–510. Deloitte & Touche LLP et al. *v.* RGH Liquidating Trust et al. Ct. App. N. Y. Certiorari denied. Reported below: 17 N. Y. 3d 397, 955 N. E. 2d 329.

No. 11–512. Teaver *v.* Seatrax of Louisiana, Inc., et al. C. A. 5th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 307.

No. 11–513. Tsuji *v.* Ishimoto. C. A. 9th Cir. Certiorari denied.

No. 11–515. Al-Jurf *v.* Scott-Conner et al. Ct. App. Iowa. Certiorari denied. Reported below: 801 N. W. 2d 33.

No. 11–516. Mbakpuo *v.* Holder, Attorney General. C. A. 4th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 235.

No. 11–518. Worrell *v.* Houston Can! Academy. C. A. 5th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 330.

No. 11–522. Gouda et vir *v.* HSBC Bank USA, NA. Super. Ct. N. J., App. Div. Certiorari denied.

No. 11–523. Kornfeld *v.* Flood et al. C. A. 11th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 778.

No. 11–530. Hatchigian *v.* Citizens Public Adjusters, Inc., et al. Super. Ct. Pa. Certiorari denied. Reported below: 23 A. 2d 562.

No. 11–533. Carrick *v.* Santa Cruz County, California. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 11–534. Burke *v.* Metropolitan Transportation Authority et al. C. A. 2d Cir. Certiorari denied.

No. 11–542. Parker *v.* Motors Liquidation Co., fka General Motors Co., et al. C. A. 2d Cir. Certiorari denied.

No. 11–544. McKinley *v.* Board of Governors of the Federal Reserve System. C. A. D. C. Cir. Certiorari denied. Reported below: 647 F. 3d 331.

No. 11–550. Gilley *v.* Monsanto Co., Inc., et al. C. A. 11th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 883.

No. 11–552. Kansas City Premier Apartments, Inc. *v.* Missouri Real Estate Commission. Sup. Ct. Mo. Certiorari denied. Reported below: 344 S. W. 3d 160.

No. 11–553. Ysleta del Sur Pueblo *v.* Texas. C. A. 5th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 326.

No. 11–554. Stewart *v.* Oregon. Ct. App. Ore. Certiorari denied. Reported below: 237 Ore. App. 86, 239 P. 3d 263.

No. 11–559. Kauffman *v.* UPMC Presbyterian Shadyside Hospital et al. Super. Ct. Pa. Certiorari denied. Reported below: 15 A. 3d 529.

No. 11–565. Holloway *v.* Red Lion Borough. Commw. Ct. Pa. Certiorari denied. Reported below: 11 A. 3d 62.

No. 11–567. Noriega *v.* Torres et al. C. A. 9th Cir. Certiorari denied. Reported below: 648 F. 3d 1119.

No. 11–571. Solis *v.* Holder, Attorney General. C. A. 8th Cir. Certiorari denied. Reported below: 647 F. 3d 831.

No. 11–580. Spellissy *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 780.

No. 11–586. Anderson *v.* Vanguard Car Rental USA Inc. C. A. 11th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 861.

No. 11–589. Fisher et al. *v.* United States District Court for the Northern District of Texas. C. A. 5th Cir. Certiorari denied. Reported below: 640 F. 3d 645.

No. 11–594. Rooters *v.* State Farm Lloyds. C. A. 5th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 441.

No. 11–601. Woods et al. *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 413 Fed. Appx. 664.

No. 11–602. Sanchez Osorio *v.* Dow Chemical Co. et al. C. A. 11th Cir. Certiorari denied. Reported below: 635 F. 3d 1277.

No. 11–612. Jackson *v.* United Parcel Service, Inc. C. A. 8th Cir. Certiorari denied. Reported below: 643 F. 3d 1081.

No. 11–623. FISHMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 645 F. 3d 1175.

No. 11–629. RANSOM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 642 F. 3d 1285.

No. 11–632. DICKOW, EXECUTOR OF THE ESTATE OF DICKOW *v.* UNITED STATES ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 654 F. 3d 144.

No. 11–641. ROSALES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 647 F. 3d 634.

No. 11–644. LITMAN ET AL. *v.* CELLCO PARTNERSHIP, DBA VERIZON WIRELESS. C. A. 3d Cir. Certiorari denied. Reported below: 655 F. 3d 225.

No. 11–645. KASHAMU *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 656 F. 3d 679.

No. 11–660. UTTERBACK ET AL. *v.* GEITHNER, SECRETARY OF THE TREASURY, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 11–673. ABBE ET AL. *v.* CITY OF SAN DIEGO, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 189.

No. 11–686. DELGADO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 653 F. 3d 729.

No. 11–5006. MANNING *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 241 Ill. 2d 319, 948 N. E. 2d 542.

No. 11–5038. TURNER *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 412 Fed. Appx. 696.

No. 11–5128. WORMINGTON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–5305. THOMAS *v.* UNITED STATES (Reported below: 422 Fed. Appx. 361); and HAY *v.* UNITED STATES (422 Fed. Appx. 362). C. A. 5th Cir. Certiorari denied.

No. 11–5406. KAY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–5472. ALMOND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 413 Fed. Appx. 670.

No. 11–5767. WOODARD *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 414 Fed. Appx. 675.

No. 11–5792. MORGAN *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 428 Fed. Appx. 974.

No. 11–5819. TAYLOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 705.

No. 11–5847. FLORER *v.* CONGREGATION PIDYON SHEVUYIM ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 639 F. 3d 916.

No. 11–5939. RHINE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 637 F. 3d 525.

No. 11–6039. CARVAHLO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–6053. GILBERT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 640 F. 3d 1293.

No. 11–6153. SWICHKOW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 636 F. 3d 1315.

No. 11–6257. DOUGLAS *v.* JACQUEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 3d 501.

No. 11–6291. BOYCE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 633 F. 3d 708.

No. 11–6335. DANIEL B. *v.* SUNAPEE SCHOOL DISTRICT. Sup. Ct. N. H. Certiorari denied. Reported below: 162 N. H. 38, 27 A. 3d 689.

No. 11–6365. GREENE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 431 Fed. Appx. 191.

No. 11–6378. VERA-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 435.

No. 11–6380. VAN PELT *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 74 So. 3d 32.

No. 11–6420. TORRES-TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 411.

No. 11–6428. ST. MARTIN *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 2011 WI 44, 334 Wis. 2d 290, 800 N. W. 2d 858.

No. 11–6455. MCCLARIN *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 289 Ga. 180, 710 S. E. 2d 120.

No. 11–6456. NASLUND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–6467. GUY *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 127 Nev. 1138, 373 P. 3d 919.

No. 11–6795. RAMOS *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 11–6798. SCHLEE *v.* WILLIAMS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–6799. COWIE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–6805. SUAREZ *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 11–6808. GRIFFIN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–6825. NORWOOD *v.* LITTLE ROCK POLICE DEPARTMENT. C. A. 8th Cir. Certiorari denied.

No. 11–6828. SCOTT *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 11–6829. ALLEN *v.* BIGELOW, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 692.

No. 11–6830. BURE *v.* BONDI, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–6832. STEVENS *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 127 Nev. 1178, 373 P. 3d 964.

No. 11–6833. DIAZ-BEY *v.* HILL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 228.

No. 11–6839. PETERSON *v.* MCKENNA, ATTORNEY GENERAL OF WASHINGTON. C. A. 9th Cir. Certiorari denied.

No. 11–6840. NGUYEN *v.* FELKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–6841. MCGREW *v.* VANNOY ET AL. C. A. 5th Cir. Certiorari denied.

No. 11–6845. PARKER *v.* PERRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–6851. ANDERSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–6854. VANN *v.* WIENEKE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 679.

No. 11–6858. THORNE-EL *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 446 Fed. Appx. 578.

No. 11–6862. SELDEN *v.* FLORIDA ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 77 So. 3d 1261.

No. 11–6867. CRAWFORD *v.* DAVIS ET AL. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 11–6884. DAVIS *v.* GRAY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 412 Fed. Appx. 626.

No. 11–6885. ELLIS *v.* PARKER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 683.

No. 11–6886. DESHAY *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 11–6887. CHARLEY *v.* ORANGEBURG COUNTY SHERIFF'S DEPARTMENT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 631.

No. 11–6895. Valenzuela *v.* Maricopa County Sheriff's Department et al. C. A. 9th Cir. Certiorari denied.

No. 11–6896. Wilson *v.* Epps, Commissioner, Mississippi Department of Corrections, et al. C. A. 5th Cir. Certiorari denied.

No. 11–6899. Esmael *v.* United Kingdom Secret Intelligence Service et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–6901. Hubbard *v.* Rivard, Warden. C. A. 6th Cir. Certiorari denied.

No. 11–6903. Dohnal *v.* Texas. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 11–6904. Cabrera *v.* McCall, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 234.

No. 11–6905. Evans *v.* Kirkpatrick, Superintendent, Wende Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 11–6918. Valdez *v.* Milyard, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 744.

No. 11–6919. Walker *v.* Clark, Warden. C. A. 9th Cir. Certiorari denied.

No. 11–6923. Bartee *v.* Tucker, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 11–6934. Phillips *v.* Dormire, Superintendent, Jefferson City Correctional Center. C. A. 8th Cir. Certiorari denied.

No. 11–6935. Matthews *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 11–6937. Martinez *v.* DeCesaro et al. C. A. 10th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 660.

No. 11–6944. Morris *v.* Mississippi. Sup. Ct. Miss. Certiorari denied.

No. 11–6948. ALLEN *v.* ZAVARAS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 709.

No. 11–6954. THOMPSON *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied.

No. 11–6955. YAN JU WANG *v.* APPELLATE DIVISION, SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–6960. SALAHUDDIN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–6964. SCHUMANN *v.* PATRICK, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–6967. ABSTON *v.* EICHENBERGER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–6973. CONNER *v.* GRAHAM, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 440 Fed. Appx. 29.

No. 11–6976. BARBOUR *v.* BROCK & SCOTT, PLLC, ET AL. Sup. Ct. N. C. Certiorari denied. Reported below: 365 N. C. 332, 717 S. E. 2d 386.

No. 11–6977. BARBOUR *v.* WELLS FARGO BANK, N. A., ET AL. Ct. App. N. C. Certiorari denied.

No. 11–6982. GOTTSCHALK *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 11–6986. HENDRICKS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 11–6999. PICKARD *v.* GEORGIA. Ct. App. Ga. Certiorari denied.

No. 11–7004. DELGADO *v.* MCEWEN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–7007. CHAVEZ *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 647 F. 3d 1057.

No. 11–7008. MAGEE *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 194 Cal. App. 4th 178, 123 Cal. Rptr. 3d 689.

No. 11–7010. UNDERWOOD *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 252 P. 3d 221.

No. 11–7011. RODRIGUEZ *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–7016. THORNTON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 11–7018. SMITH *v.* NEVEN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–7021. CROMER *v.* BODISON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 172.

No. 11–7023. CANTY *v.* ESGROW ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 83 App. Div. 3d 1322, 921 N. Y. S. 2d 410.

No. 11–7024. MARTINEZ *v.* HEDGPETH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–7027. MARTINEZ *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO (two judgments). C. A. 10th Cir. Certiorari denied.

No. 11–7033. MUNTASER *v.* BRADSHAW, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 515.

No. 11–7037. MARSHALL *v.* MORTON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 832.

No. 11–7041. KELLEY *v.* RITTER ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–7042. KERCHEE *v.* JONES, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 851.

No. 11–7046. CAVANESS *v.* HEIMGARTNER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 447 Fed. Appx. 6.

No. 11–7047. LEE *v.* TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 11–7048. KEITH *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–7050. AVERY *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 67 So. 3d 202.

No. 11–7051. PATEL *v.* MARTUSCELLO, SUPERINTENDENT, COXSACKIE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 11–7055. FLORES *v.* EL PASO POLICE DEPARTMENT ET AL. C. A. 5th Cir. Certiorari denied.

No. 11–7059. STEVENSON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–7061. SMITH *v.* RICCI, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–7063. RUTH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 413 Fed. Appx. 439.

No. 11–7064. DARBY *v.* GEIGER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 441 Fed. Appx. 840.

No. 11–7066. CUNNINGHAM *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–7067. REAVES *v.* EXECUTIVE NEW YORK STATE OFFICE OF FAMILY AND CHILDREN SERVICES ET AL. C. A. 2d Cir. Certiorari denied.

No. 11–7070. WILLIAMS *v.* PADULA, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 269.

No. 11–7071. VAUGHN *v.* JAMES ET AL. C. A. 7th Cir. Certiorari denied.

No. 11–7072. PUGH *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 11–7074. TRAVALINE *v.* SUPREME COURT OF THE UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 424 Fed. Appx. 78.

No. 11–7075. WILLIAMS *v.* MULLEN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 172.

No. 11–7077. WILLIAMS *v.* HARLOW ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 985 A. 2d 309.

No. 11–7079. WINTERS *v.* HUBBARD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 626.

No. 11–7080. WASHINGTON *v.* LOCKETT, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–7083. O'CONNOR *v.* GRACE ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–7085. BUSH *v.* DIVISION OF HUMAN RIGHTS ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 17 N. Y. 3d 786, 952 N. E. 2d 1080.

No. 11–7087. CASTANEDA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 51 Cal. 4th 1292, 254 P. 3d 249.

No. 11–7088. RHODES *v.* MEDINA, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 727.

No. 11–7092. O'GEARY *v.* FAYRAM, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 11–7095. ROBERTS *v.* SOBINA, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–7097. ST. CYR *v.* HOLDER, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 905.

No. 11–7106. CURTIS-JOSEPH *v.* RICHARDSON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 417 Fed. Appx. 570.

No. 11–7107. CONNOLLY *v.* ILLINOIS PRISONER REVIEW BOARD ET AL. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 404 Ill. App. 3d 1185, 996 N. E. 2d 779.

No. 11–7109. JONES *v.* MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 149.

No. 11–7110. JIMENEZ *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 11–7111. CARTER *v.* COOPER. C. A. 4th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 256.

No. 11–7114. VAN BRUMWELL *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 350 Ore. 93, 249 P. 3d 965.

No. 11–7116. BROOME *v.* HUNTER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 409 Fed. Appx. 666.

No. 11–7119. EDWARDS *v.* YU. C. A. 11th Cir. Certiorari denied.

No. 11–7121. DUKES *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7123. VARNUM *v.* LEWIS, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 589.

No. 11–7128. JONES *v.* STEWARD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7143. STEMPLE *v.* WORKMAN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 732.

No. 11–7144. LESLIE *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 438 Fed. Appx. 103.

No. 11–7151. BEALE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–7155. POMPOSELLO *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–7158. GRAY *v.* VALDEZ, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–7160. GUTIERREZ *v.* KING, ATTORNEY GENERAL OF NEW MEXICO. C. A. 10th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 671.

No. 11–7161. Frame *v.* Menallen Township, Pennsylvania. Sup. Ct. Pa. Certiorari denied. Reported below: 610 Pa. 602, 20 A. 3d 490.

No. 11–7164. Heffernan *v.* Arkansas. Sup. Ct. Ark. Certiorari denied. Reported below: 2011 Ark. 326.

No. 11–7165. Woods *v.* Marshall, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 11–7166. Warren *v.* Milyard, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 670.

No. 11–7172. Gomez *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–7173. Hofman *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 11–7174. Iverson *v.* VenuWorks/Compass Facilities Management, Inc. C. A. 8th Cir. Certiorari denied.

No. 11–7176. Gather *v.* Oklahoma Army National Guard et al. C. A. 10th Cir. Certiorari denied.

No. 11–7177. Nash *v.* New York. Ct. App. N. Y. Certiorari denied. Reported below: 17 N. Y. 3d 860, 956 N. E. 2d 807.

No. 11–7179. Mancuso *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 428 Fed. Appx. 73.

No. 11–7182. Popp *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 11–7183. Flores *v.* Public Health Service et al. C. A. 9th Cir. Certiorari denied.

No. 11–7187. Graham *v.* American Golf Corp. et al. C. A. 9th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 634.

No. 11–7188. Gumbs *v.* Government of the Virgin Islands. C. A. 3d Cir. Certiorari denied. Reported below: 426 Fed. Appx. 90.

No. 11–7189. WALKER *v.* WALSH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–7190. ONTIVEROS-PEREZ *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 11–7191. MCNEIL *v.* HOME BUDGET LOANS ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–7194. CONTANT *v.* HOLDER, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 441 Fed. Appx. 105.

No. 11–7196. SEAWRIGHT *v.* MCCALL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 970.

No. 11–7197. SULLIVAN *v.* STOVALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7199. OWEN *v.* WEBER, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 646 F. 3d 1105.

No. 11–7203. WALKER *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–7204. WITHERSPOON *v.* DELAWARE COUNTY COURT OF COMMON PLEAS. Sup. Ct. Pa. Certiorari denied.

No. 11–7207. ESCOBEDO *v.* SMALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–7208. NOBLE *v.* ADAMS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 646 F. 3d 1138.

No. 11–7209. NELSON *v.* WILLIAMS ET AL. C. A. D. C. Cir. Certiorari denied.

No. 11–7210. CROOK *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 11–7211. STEVENS *v.* MEDINA, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 700.

No. 11–7216. DICKSON *v.* KERESTES, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–7225. GARDNER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 429 Fed. Appx. 188.

No. 11–7231. GOODELL *v.* WILLIAMS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 643 F. 3d 490.

No. 11–7232. BELL *v.* SMALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 129.

No. 11–7233. HAGLER *v.* BUDSBERG ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 541.

No. 11–7237. STANLEY *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 57 So. 3d 944.

No. 11–7243. MURPHY *v.* SHERRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7245. WILLIAMS *v.* BAENEN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 11–7271. CRUMBLIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 180.

No. 11–7275. PURPURA ET AL. *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 446 Fed. Appx. 496.

No. 11–7280. TODD *v.* HILL, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–7286. MYERS *v.* KNOWLIN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 836.

No. 11–7299. RAMSEY *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7312. DURDLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 966.

No. 11–7313. PARKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 446 Fed. Appx. 898.

No. 11–7314. PEARSON *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7320. JENKINS *v.* SCUTT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7327. DALLY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 11–7330. WASHINGTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 653 F. 3d 1251.

No. 11–7331. SILVER *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 420 Md. 415, 23 A. 3d 867.

No. 11–7332. PENA *v.* MARTEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 670.

No. 11–7334. MORRISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 873.

No. 11–7335. STEPHENS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 308.

No. 11–7336. SIMMONS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–7339. PAGE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 657 F. 3d 126.

No. 11–7340. PAPENFUS *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 11–7341. MCREYNOLDS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 772.

No. 11–7349. HARRIS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 402 Ill. App. 3d 1186, 1 N. E. 3d 119.

No. 11–7352. GOMEZ-ORTIZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 640 F. 3d 412.

No. 11–7354. MARRERO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 651 F. 3d 453.

No. 11–7355. KITCHEN *v.* FELKER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 318.

No. 11–7356. KIZZEE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 355.

No. 11–7359. GHENT *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 27 So. 3d 121.

No. 11–7360. HOLLY *v.* GOTCHER, DBA GOTCHER LAW FIRM, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 634.

No. 11–7361. GARDNER *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 439 Fed. Appx. 879.

No. 11–7362. FULLMAN *v.* DONAHOE, POSTMASTER GENERAL, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 418 Fed. Appx. 75.

No. 11–7364. MORTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 775.

No. 11–7367. SLAUGHTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–7368. ROWE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 800.

No. 11–7369. SANCHEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–7371. MATNEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 596.

No. 11–7372. LUA-GUIZAR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 656 F. 3d 563.

No. 11–7375. PINDER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 816.

No. 11–7380. X. D. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 832.

No. 11–7381. COLEMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 655 F. 3d 480.

No. 11–7382. De Jesus-Viera *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 655 F. 3d 52.

No. 11–7383. Doyle *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 288.

No. 11–7385. Walker *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 823.

No. 11–7386. Garcia-Tobias, aka Garcia-Torres *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 278.

No. 11–7387. Oswaldo Sarabia *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 446 Fed. Appx. 48.

No. 11–7389. Figueroa *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 11–7396. Green *v.* Fischer, Commissioner, New York Department of Correctional Services. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 77 App. Div. 3d 1011, 908 N. Y. S. 2d 757.

No. 11–7399. Alonso-Prieto, aka Powell, aka Murphy-Peterson *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 446 Fed. Appx. 937.

No. 11–7401. Anderson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 259.

No. 11–7411. Sperling *v.* Ebbert, Warden. C. A. 3d Cir. Certiorari denied. Reported below: 438 Fed. Appx. 68.

No. 11–7412. States *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 652 F. 3d 734.

No. 11–7413. Mitchell *v.* University Medical Center, Inc. C. A. 6th Cir. Certiorari denied.

No. 11–7414. Francis *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 11–7415. Gisi *v.* Florida. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 64 So. 3d 682.

No. 11–7418. TAYLOR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 644 F. 3d 573.

No. 11–7420. TCHIBASSA *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 11–7422. MCCRAY *v.* REDNOUR, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 376.

No. 11–7423. MORADEL-RUIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 256.

No. 11–7425. OWENS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 745.

No. 11–7426. PETTY *v.* PENNSYLVANIA BOARD OF PROBATION AND PAROLE ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–7427. MOORE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 70 So. 3d 587.

No. 11–7428. NGUYEN *v.* FOLINO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–7430. JIMENEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 378.

No. 11–7432. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 263.

No. 11–7433. MATHIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–7437. CRUZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 657 F. 3d 811.

No. 11–7441. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 648 F. 3d 940.

No. 11–7443. PALMER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–7454. CALAIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 661.

No. 11–7458. SALAZAR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 654 F. 3d 753 and 436 Fed. Appx. 639.

No. 11–7461. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–7462. CARRERO-HERNANDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 643 F. 3d 344.

No. 11–7465. MILLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 353.

No. 11–7471. KNIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 537.

No. 11–7472. EDWARDS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 11–7473. EASON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 643 F. 3d 622.

No. 11–7474. MUENTES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–7476. LAUREYS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 653 F. 3d 27.

No. 11–7477. BAPTIST *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 646 F. 3d 1225.

No. 11–7478. SHUB *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–7479. REAVES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 440 Fed. Appx. 140.

No. 11–7482. SCHIPKE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 446 Fed. Appx. 51.

No. 11–7485. CABACCANG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 11–7487. MIMMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 192.

No. 11–7491. KHARABADZE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 655 F. 3d 114.

No. 11–7492. KOKOSKI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 472.

No. 11–7493. JUAREZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 654 F. 3d 753 and 436 Fed. Appx. 639.

No. 11–7494. FINK *v.* PHELPS, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 448 Fed. Appx. 258.

No. 11–7496. DICKEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 290.

No. 11–7498. POTTS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–7502. BLINKINSOP *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 606 F. 3d 1110.

No. 11–7507. GRAVES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–7511. GREEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 654 F. 3d 637.

No. 11–7516. ALLEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 644 F. 3d 748.

No. 11–7518. GONZALEZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 410 Fed. Appx. 827.

No. 11–7519. GARCIA, AKA GARCIA-TOSCANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 357.

No. 11–7520. GRAY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 648 F. 3d 562.

No. 11–7522. TOUSSAINT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 819.

No. 11–7524. LOPEZ-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 309.

No. 11–7526. SAVAGE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–7527. OLMOS-OLVERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 163.

No. 11–7528. ALCANTARA-RAMIREZ, AKA CONFESOR ALCANTARA, AKA RAMIREZ-ALACANTARA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–7533. MURRAY *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied.

No. 11–7537. PEREZ-MONTERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 549.

No. 11–7538. MILLS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 489.

No. 11–7539. ROBINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–7544. PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 952.

No. 11–7545. BURROWS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 180.

No. 11–7546. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 812.

No. 11–7548. HUNG NAM TRAN *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 2011 WI App 58, 332 Wis. 2d 803, 798 N. W. 2d 319.

No. 11–7550. CABACCANG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 11–7551. D'ANDREA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 273.

No. 11–7552. EARLY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 695.

No. 11–7554. CHAVEZ-PULIDO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 11–7557. WILLIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 269.

No. 11–7559. Morrow *v.* Donahoe, Postmaster General. C. A. 7th Cir. Certiorari denied.

No. 11–7561. Martinez-Vasquez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 795.

No. 11–7563. Pierre *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 905.

No. 11–7569. Knope *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 655 F. 3d 647.

No. 11–7570. Johnson *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 11–7571. McKinney *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 517.

No. 11–7572. Rodriguez-Castro *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 641 F. 3d 1189.

No. 11–7573. Crawford *v.* United States et al. C. A. 5th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 433.

No. 11–7575. Tibbs *v.* Adams, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 443.

No. 11–7576. Carr *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 11–7577. Wilson *v.* Roy, Warden. C. A. 5th Cir. Certiorari denied. Reported below: 643 F. 3d 433.

No. 11–7582. Santiago *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 643 F. 3d 1007.

No. 11–7592. Ambo, aka Ambos *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 272.

No. 11–7593. Morales *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 883.

No. 11–7594. Price *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 11–7595. Henry *v.* New Jersey. Super. Ct. N. J., App. Div. Certiorari denied.

No. 11–7598. VAZQUEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 449 Fed. Appx. 96.

No. 11–7600. WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–7601. SANCHEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 830.

No. 11–7604. MCCLELLAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 479.

No. 11–7606. JENKINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–7611. BURKE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–7613. ARMSTRONG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 501.

No. 11–7615. ROBINSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 733.

No. 11–7617. RIESSELMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 646 F. 3d 1072.

No. 11–7623. MURRAY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 648 F. 3d 251.

No. 11–7624. ORTIZ-MIRANDA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–7631. SODERMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 663.

No. 11–7634. PRANDY-BINETT *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 11–7635. BARRINGTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 648 F. 3d 1178.

No. 11–7639. AUTREY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 11–7640. BARRIOS, AKA RINCON-HERNANDEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 441 Fed. Appx. 874.

No. 11–7642. Sheppard *v.* Rivera, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 980.

No. 11–7644. Russell *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 276.

No. 11–7649. Castro-Cabrera *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 789.

No. 11–7652. Reese *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 8.

No. 11–7653. Suschanke *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 641 F. 3d 968.

No. 11–7655. Diaz-Maldonado *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 854.

No. 11–7656. Collado *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 845.

No. 11–7663. Blood *v.* Bledsoe, Warden. C. A. 3d Cir. Certiorari denied. Reported below: 648 F. 3d 203.

No. 11–7670. Vaughn *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 507.

No. 11–7671. Valdez *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 11–7673. Thomas *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 11–7676. Jefferson *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 652 F. 3d 927.

No. 11–7680. Mason *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 370.

No. 11–7681. Cooper, aka Jones *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 710.

No. 11–7684. Parisi *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 658 F. 3d 1.

No. 11–7686. Torres *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 292.

No. 11–7693. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 648 F. 3d 654.

No. 11–7697. DANIELS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 653 F. 3d 399.

No. 11–7699. AL JABER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 436 Fed. Appx. 9.

No. 11–7705. WATSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 571.

No. 11–7707. ROGERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 644.

No. 11–7708. CEJA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–7709. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 9.

No. 11–7712. ARSEO-FRANCO, AKA CORRALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 333.

No. 11–7716. DEAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 452 Fed. Appx. 12.

No. 11–7720. SOWDEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–7727. MUJICA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 856.

No. 10–1548. CASH, ACTING WARDEN *v.* MAXWELL. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 628 F. 3d 486.

Statement of JUSTICE SOTOMAYOR respecting the denial of certiorari.

The Antiterrorism and Effective Death Penalty Act of 1996 requires that federal habeas courts extend deference to the factual findings of state courts. But "deference does not imply abandonment or abdication of judicial review." *Miller-El* v. *Cockrell*, 537 U. S. 322, 340 (2003). Congress stated in no uncertain terms that federal habeas relief remains available when a state court's

holding is "based on an unreasonable determination of the facts." 28 U. S. C. § 2254(d)(2). In this case, the state court's denial of relief to respondent Bobby Joe Maxwell was premised on its factual finding that there was "no credible or persuasive evidence Sidney Storch lied at [Maxwell's] trial in 1984." App. to Pet. for Cert. 137. Because the Ninth Circuit meticulously set forth an avalanche of evidence demonstrating that the state court's factual finding was unreasonable, see *Maxwell* v. *Roe*, 628 F. 3d 486, 498–506 (2010), I agree with the Court's decision to deny certiorari.

Sidney Storch was one of the most notorious jailhouse informants in the history of Los Angeles County. During a 4-year period in the mid-1980's, he testified in at least a half-dozen trials, each time claiming that the defendant had confessed to him in prison. See Rohrlich & Stewart, Jailhouse Snitches: Trading Lies for Freedom, L. A. Times, Apr. 16, 1989, p. 30 ("Said inmate Daniel Roach: 'It seems that half the world just confesses to Sidney Storch'").

Throughout this period, however, evidence mounted that Storch repeatedly was fabricating inmates' confessions for personal gain. As even the State acknowledges, Storch's signature method was to fashion inmates' supposed confessions from publicly available information in newspaper articles. 2 Record 262. At Maxwell's postconviction hearing, one former county prosecutor explained that he declined to use Storch in a high-profile 1986 murder case after determining "Storch was not telling the truth about [the defendant's] alleged statements," and had lied about having heard a confession at a time when he was not in the defendant's cell. 9 *id.*, at 1824. Another prosecutor later refused to use Storch in a different case after discovering that his "testimony was similar to the newspaper accounts of the case." *Id.*, at 1825. In 1987, sheriff's deputies even confiscated a *manual* written by Storch instructing other jailhouse snitches how to fabricate confessions. None of this was out of character for Storch, who was discharged from the Army in 1964 because he was a "'habitual liar,'" and was arrested repeatedly for crimes of dishonesty, including forgery, fraud, and false impersonation—including falsely impersonating a Central Intelligence Agency officer. 628 F. 3d, at 498.

As the Ninth Circuit explained at length, both before and after Maxwell's trial, various police officers and prosecutors believed Storch to be unreliable, dishonest, and willing to set up defendants for his own ends. At Maxwell's postconviction hearing, one

police officer described how Storch sought to "set . . . up" someone during a forgery investigation, 6 Record 1118; another detective testified that he would have put Storch on a Los Angeles Police Department list of unreliable informants prior to Maxwell's trial. Not long after Maxwell's trial, prosecutors refused to put Storch on the stand, believing him to have fabricated defendants' confessions. And even the State conceded that Storch lied about a variety of material facts at Maxwell's own trial, including his own criminal record and his motivation for testifying. This powerful evidence supported Maxwell's claim that Storch falsely testified about Maxwell's supposed confession—using precisely the same *modus operandi* that Storch used time and again to falsely implicate other defendants. See 628 F. 3d, at 504–505.

The dissent labels all of this evidence "circumstantial." *Post*, at 1143 (opinion of SCALIA, J.). It insists that it is possible that Storch repeatedly falsely implicated other defendants, and fabricated other material facts at Maxwell's trial, but uncharacteristically told the truth about Maxwell's supposed confession. Of course, that is possible. But it is not reasonable, given the voluminous evidence that Storch was a habitual liar who even the State concedes told other material lies at Maxwell's trial.[1]

Here, the Ninth Circuit recognized that 28 U. S. C. § 2254(d)(2) imposes a "daunting standard—one that will be satisfied in relatively few cases." 628 F. 3d, at 500 (internal quotation marks omitted). The court below found that standard met only after describing, in scrupulous detail, the overwhelming evidence supporting the conclusion that Storch falsely testified at Maxwell's trial[2]—attempting to manipulate the integrity of the judicial sys-

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[1] The dissent suggests two police officers testified that Storch provided them "accurate and reliable information" when working with Storch several years before Maxwell's trial. See *post*, at 1143. In fact, when asked if Storch provided "accurate information," one officer stated: "As far as I know, yes. I don't remember any of this being either good or bad . . . ." 6 Record 1091. The second officer, when asked if Storch was a "reliable individual," responded that "it would depend on what time," *id.*, at 1117–1118, and noted that he had ceased all contact with Storch well before Maxwell's trial, after Storch's attempt to "set . . . up" a prospective defendant, *id.*, at 1118.

[2] The dissent implies that there was strong evidence suggesting that Storch was truthful. But the testimony by two other jailhouse informants who contended that Maxwell confessed to them, see *post*, at 1144, was properly deemed "ludicrous" by the state appellate court. App. to Pet. for Cert. 174. One informant was committed to a mental hospital, and informed the district attor-

tem as he did in numerous other cases. I agree with the Ninth Circuit's determination. But even to the extent that the dissent sees error in that determination, the Ninth Circuit conducted precisely the inquiry required by § 2254(d)(2) and our precedents. "The principal purpose of this Court's exercise of its certiorari jurisdiction is to clarify the law." *Caperton* v. *A. T. Massey Coal Co.*, 556 U. S. 868, 902 (2009) (SCALIA, J., dissenting). Mere disagreement with the Ninth Circuit's highly factbound conclusion is, in my opinion, an insufficient basis for granting certiorari. See this Court's Rule 10.

JUSTICE SCALIA, with whom JUSTICE ALITO joins, dissenting.

The Antiterrorism and Effective Death Penalty Act of 1996 put an end to federal-district-court readjudication of issues already decided, with full due process of law, in state criminal cases. It provides that a writ of habeas corpus challenging a state criminal conviction shall not be granted with respect to any claim "adjudicated on the merits in State court proceedings," unless that state adjudication

> "(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." 28 U. S. C. § 2254(d).

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ney before trial that his story implicating Maxwell had been "nothing more than a story of untruths founded by an 'imaginary delusion.'" Tr. 6532. The other informant claimed that Maxwell confessed to 10 murders while raping him during the middle of the day in his cell. That story was refuted by another inmate, and when the informant attempted to obtain bail on the basis of his testimony regarding Maxwell, another court denied relief. See, *e. g.*, *id.*, at 6744–6754.

The dissent also ignores that the physical evidence against Maxwell was largely circumstantial, and that the State's prosecutor acknowledged that he had regarded the case against Maxwell as "weak from an evidential standpoint." 9 Record 1844. Three men who briefly saw the killer provided a description of a man taller and heavier than Maxwell. And when Maxwell was placed in a lineup, and made to say a remark all three men had heard the killer say, none of the three identified Maxwell. One of the eyewitnesses even stated "you got everybody up there that doesn't look anything like him." Tr. 8641A.

We have called this a "difficult to meet . . . and highly deferential standard" which "demands that state-court decisions be given the benefit of the doubt," *Cullen* v. *Pinholster*, 563 U. S. 170, 181 (2011) (internal quotation marks omitted). It forbids federal courts "to second-guess the reasonable decisions of state courts," *Renico* v. *Lett*, 559 U. S. 766, 773 (2010).

I believe that in this case the United States Court of Appeals for the Ninth Circuit unquestionably ignored these commands—thereby invalidating two 26-year-old murder convictions which the intervening loss of witnesses and evidence will likely make it impossible to retry. I dissent from the Court's decision not to grant certiorari and summarily reverse the Ninth Circuit's judgment.

I

In the late 1970's, 10 homeless men were murdered in downtown Los Angeles—a series of murders that came to be known as the "Skid Row Stabber" killings. Respondent Bobby Joe Maxwell was charged with all 10 murders, and in 1984 a California jury convicted him of two counts of first-degree murder and one related count of robbery. Maxwell was sentenced to life imprisonment without the possibility of parole, and his convictions were affirmed on direct appeal.

In 1995, Maxwell filed a habeas corpus petition in the California Supreme Court, alleging that a prosecution witness, Sidney Storch, had given false testimony at trial. Storch, a former cellmate of Maxwell's, had testified that, after reading the newspaper account of a palm print's being found at the scene of one of the murders, Maxwell stated he was not prone to that type of mistake because he "wore gloves with the fingers cut off so as to keep his hands warm and leave his fingers free." 3 Record 537. The California Supreme Court issued an order to show cause whether Maxwell was entitled to relief based on his allegation of false testimony, returnable to the Superior Court. After conducting an evidentiary hearing that extended over the course of two years and included the testimony of more than 30 witnesses and the introduction of over 50 exhibits, the Superior Court issued a 34-page opinion concluding that Storch had not lied and denying the habeas petition. App. to Pet. for Cert. 137. In 2001, Maxwell again filed a habeas petition in the California Supreme Court, alleging, *inter alia*, that the State had violated his right to due process by failing to disclose certain evidence relating to Storch. See *Brady* v.

Maryland, 373 U. S. 83, 87 (1963). The court summarily denied the petition. App. to Pet. for Cert. 105.

Maxwell then filed a petition for writ of habeas corpus under § 2254 in the United States District Court for the Central District of California, renewing his claims that his conviction violated his right to due process because (1) it was based on the false testimony of Storch; and (2) the State failed to disclose favorable and material evidence regarding Storch. The District Court dismissed the petition, *id.*, at 47, but the Ninth Circuit reversed. *Maxwell* v. *Roe*, 628 F. 3d 486 (2010).

II

A

First, the Ninth Circuit set aside the state habeas court's determination that Storch had not fabricated his testimony. It based that action on nothing more than circumstantial evidence indicating that Storch was generally an untruthful person. For example, the court pointed to various mistruths Storch purportedly told at trial (regarding, for example, his criminal history and his motivation for coming forward). But as the Ninth Circuit itself recognized, those lies "d[o] not alone establish that Storch lied about the confession." *Id.*, at 501. The Ninth Circuit also concluded that Storch "misrepresented his sophistication and experience as a jailhouse informant." *Ibid.* This finds no support in the record. App. to Pet. for Cert. 119–120. Storch's only testimony as to his informant history was that he had never before testified for the district attorney, 3 Record 551; no evidence in the habeas record contradicts that. The Ninth Circuit went on to conclude that Storch had a history of falsely implicating individuals. But any evidence of this, as the state court noted, was highly speculative, see, *e. g.*, App. to Pet. for Cert. 136—and two officers testified at the state evidentiary hearing that in various cases Storch had provided them with accurate and reliable information. *Id.*, at 125–126. Finally, the Ninth Circuit accorded significance to trials subsequent to Maxwell's in which Storch allegedly testified falsely. The state court had concluded that these post-trial events did not establish the falsity of Storch's testimony, *id.*, at 136–137, and the Ninth Circuit apparently agreed, see 628 F. 3d, at 503 ("The evidence of Storch's later

lies under oath does not establish the nature of his testimony at Maxwell's trial").*

In sum, the evidence relied on by the Ninth Circuit might permit, but by no means compels, the conclusion that Storch fabricated Maxwell's admission. And that leaves out of account (just as the Ninth Circuit inexplicably did) the other evidence suggesting that Storch was not lying—including testimony that Maxwell confessed the crime, indeed confessed the crime much more explicitly, to two cellmates other than Storch. The statement of JUSTICE SOTOMAYOR makes its task far too easy by setting out to show the unreasonableness of the California court's statement that there was "no credible or persuasive evidence Sidney Storch lied," *ante*, at 1139 (internal quotation marks omitted). It is not the court's statements that are at issue here. To establish even a wild exaggeration is not to establish what § 2254(d)(2) requires: that the state court's "*decision* . . . was based on an unreasonable *determination* of the facts." (Emphasis added.) The only factual determination necessary to support the California court's decision was that Maxwell *had not established* that Storch lied. And it is of course *that* point to which the California court directed its attention. ("[Certain evidence] does little to establish whether [Storch] lied about [Maxwell's] admissions in 1984." App. to Pet. for Cert. 136.) What JUSTICE SOTOMAYOR calls "the overwhelming evidence supporting the conclusion that Storch falsely testified at Maxwell's trial," *ante*, at 1140, consists of nothing more than evidence which establishes, at most, that Storch was a habitual liar. That may well provide reason to suspect that Storch testified falsely at Maxwell's trial; or even to think it likely that Storch testified falsely; but it does not remotely support the conclusion that it was *unreasonable* to determine that Maxwell *had not established* that Storch testified

*The evidence identified by JUSTICE SOTOMAYOR is similarly inconclusive, and the state habeas court reasonably discounted it. For instance, the so-called "manual," *ante*, at 1139 (emphasis deleted), is all but illegible, 2 Record 461; as the state court recognized, the portions that can be read do not reveal whether Storch was instructing another inmate to "provid[e] substance or style." App. to Pet. for Cert. 133. And the opinion of the prosecutor who declined to use Storch in a trial that postdated Maxwell's by nearly three years, *ante*, at 1139, was deemed "[u]nconvincing" by the state court, since it was based on jail records of questionable accuracy, App. to Pet. for Cert. 134.

falsely. In finding the state court's determination not merely wrong but unreasonable, the Ninth Circuit plainly did what we have said § 2254(d) forbids: It "use[d] a set of debatable inferences to set aside the conclusion reached by the state court." *Rice* v. *Collins*, 546 U. S. 333, 342 (2006).

To make matters worse, having stretched the facts, the Ninth Circuit also stretched the Constitution, holding that the use of Storch's false testimony violated the Fourteenth Amendment's Due Process Clause, whether or not the prosecution knew of its falsity. See 628 F. 3d, at 506–507. We have never held that, and are unlikely ever to do so. All we have held is that "a conviction obtained through use of false evidence, *known to be such by representatives of the State*, must fall under the Fourteenth Amendment." *Napue* v. *Illinois*, 360 U. S. 264, 269 (1959) (emphasis added). This extension of due process by the Ninth Circuit should not be left standing.

B

The Ninth Circuit also concluded that the California Supreme Court unreasonably applied *Brady*. In its view, the prosecution committed a *Brady* violation by failing to disclose two pieces of impeachment evidence: (1) the difference between Storch's original plea deal and the plea deal Storch negotiated independently from his public defender after he offered to testify; and (2) Storch's cooperation with law enforcement officials in the years preceding Maxwell's trial. The Ninth Circuit said that this evidence was material to Maxwell's guilt (which is what a violation of *Brady* requires, see *Strickler* v. *Greene*, 527 U. S. 263, 280 (1999)), because "Storch's testimony was crucial to the prosecution's case" and the evidence "could have been used to undermine" Storch's credibility. 628 F. 3d, at 512.

Neither of these contentions is remotely true. As for the "crucial" nature of Storch's testimony: Storch was just one of four cellmates who recounted Maxwell's incriminating statements, and there was ample other evidence of Maxwell's guilt, including an eyewitness identification and evidence of Maxwell's palm print near one of the murder scenes. And as for the potential utility of the undisclosed evidence in *refuting* Storch's less-than-crucial testimony: According to the Ninth Circuit, evidence that Storch originally had a plea deal of 36 months, which improved to 16 months after he offered to testify, would have "provided Maxwell with impeaching evidence relevant to Storch's motivation for testi-

fying." *Id.*, at 510. But the jury already *knew* that Storch would not have testified without a deal. Storch said on the stand that he faced the possibility of six years' imprisonment on pending charges and received a 16-month deal in exchange for his testimony; and responded in the negative when asked whether he "would be willing to bring forth this story and tell the D. A. to forget the kindness that he is showing towards" him. 3 Record 562–563. The additional knowledge that he secured a deal that improved his sentence from 36 months to 16 months (rather than from 6 years to 16 months) would have done nothing to reduce the jurors' belief in his testimony.

The Ninth Circuit also erred in concluding that evidence of Storch's prior activity *as a police informant* would have helped to contradict his testimony that he had never before *testified for the district attorney.* See 628 F. 3d, at 511. The recitation of this non sequitur is its own refutation.

Finally, the Ninth Circuit's conclusion that both pieces of evidence could have been used to establish Storch's sophistication as an informant does not hold water. To begin with, the court erred in its belief that Storch "independently negotiated" the new deal, *id.*, at 498. While it was true enough that Storch "worked a deal . . . without his public defender," *id.*, at 510, that does not establish that he negotiated a deal *on his own.* As Maxwell acknowledges, Storch "obtained a private lawyer to work out" the deal. Brief in Opposition 14. Moreover, the jury was aware of this fact because Storch himself testified to it. 3 Record 596. And it is incomprehensible how the substitution of a 16-month-instead-of-36-month deal for a previous 16-month-instead-of-6-year deal demonstrates Storch's sophistication. Of similarly questionable value is evidence of Storch's prior activity as a police informant. Contrary to the Ninth Circuit's intimations, this would not have portrayed Storch as a wheeler-dealer who trumped up stories to receive decreased sentences. Indeed, there was no evidence that Storch received anything in exchange from the police, App. to Pet. for Cert. 125–126, and as I have described, *supra*, at 1143, two officers testified at the evidentiary hearing that information he provided them was reliable.

In view of the evidence, it is not possible to say that the California Supreme Court's denial of the claim "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagree-

ment." *Harrington* v. *Richter*, 562 U. S. 86, 101 (2011). In fact, it seems clear that Maxwell was not entitled to relief.

* * *

It is a regrettable reality that some federal judges *like* to second-guess state courts. The only way this Court can ensure observance of Congress's abridgment of their habeas power is to perform the unaccustomed task of reviewing utterly fact-bound decisions that present no disputed issues of law. We have often not shrunk from that task, which we have found particularly needful with regard to decisions of the Ninth Circuit. See, *e. g.*, *Cavazos* v. *Smith*, *ante*, p. 1 *(per curiam)* (reinstating California conviction for assault on a child resulting in death); *Felkner* v. *Jackson*, 562 U. S. 594 (2011) *(per curiam)* (reinstating California conviction for sexual attack on a 72-year-old woman); *Premo* v. *Moore*, 562 U. S. 115 (2011) (reinstating Oregon conviction for murder of a kidnaped victim); *Knowles* v. *Mirzayance*, 556 U. S. 111 (2009) (reinstating California first-degree murder conviction); *Rice* v. *Collins*, 546 U. S. 333 (2006) (reinstating California conviction for cocaine possession); *Kane* v. *Garcia Espitia*, 546 U. S. 9 (2005) *(per curiam)* (reinstating California conviction for carjacking and other offenses); *Yarborough* v. *Gentry*, 540 U. S. 1 (2003) *(per curiam)* (reinstating California conviction for assault with a deadly weapon); *Woodford* v. *Visciotti*, 537 U. S. 19 (2002) *(per curiam)* (reinstating capital sentence for California prisoner convicted of first-degree murder, attempted murder, and armed robbery). Today we have shrunk, letting stand a judgment that once again deprives California courts of that control over the State's administration of criminal justice which federal law assures. We should grant the petition for certiorari and summarily reverse the Ninth Circuit's latest unsupportable § 2254 judgment.

No. 11–122. INNOVAIR AVIATION LTD. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. THE CHIEF JUSTICE and JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 632 F. 3d 1336.

No. 11–350. NATSO, INC., ET AL. *v.* 3 GIRLS ENTERPRISES, INC., ET AL. C. A. 10th Cir. Motion of The Rutherford Institute for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 641 F. 3d 470.

No. 11–408. TULLIS ET AL. *v.* UMB BANK, N. A., ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 423 Fed. Appx. 567.

No. 11–526. DRAKE *v.* LABORATORY CORPORATION OF AMERICA HOLDINGS ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 417 Fed. Appx. 84.

No. 11–568. PIERCE *v.* WOLDENBERG. C. A. 2d Cir. Certiorari before judgment denied.

No. 11–6385. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 653 F. 3d 337.

No. 11–7270. CASTEL *v.* HOLDER, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 427 Fed. Appx. 103.

No. 11–7294. DIAZ ARTEAGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 436 Fed. Appx. 343.

No. 11–7337. SACCO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 650 F. 3d 839.

No. 11–7338. DALLUM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–7345. HAIRSTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 421 Fed. Appx. 310.

No. 11–7457. SMITH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–7459. SANTOS *v.* SHARTLE, WARDEN. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–7508. HERNANDEZ-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: 437 Fed. Appx. 320.

No. 11–7530. MEZA *v.* ZICKEFOOSE, WARDEN. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 443 Fed. Appx. 687.

No. 11–7534. NOLAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 443 Fed. Appx. 259.

No. 11–7535. PENNANT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–7581. ROBINSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–7588. VAZQUEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 430 Fed. Appx. 741.

No. 11–7596. MCCREARY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 425 Fed. Appx. 77.

No. 11–7614. FLORES *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari before judgment denied.

No. 11–7721. REED *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. 10–1115. CAVAZOS, ACTING WARDEN *v.* SMITH, *ante*, p. 1;
No. 10–1441. FANOR *v.* ALVARADO ET AL., *ante*, p. 821;
No. 10–10267. JONES *v.* CANIZARO ET AL., *ante*, p. 832;
No. 10–10494. JONES *v.* TRAVELERS ET AL., *ante*, p. 838;

No. 10–10704. Davis *v.* Steele, Warden, *ante*, p. 845;
No. 10–10709. Washington *v.* Cain, Warden, *ante*, p. 845;
No. 10–10713. Sanchez *v.* Aldrich et al., *ante*, p. 845;
No. 10–10949. C. F. *v.* Superior Court of California, Riverside County, et al., *ante*, p. 858;
No. 10–11019. Jones *v.* Tucker, Secretary, Florida Department of Corrections, *ante*, p. 862;
No. 10–11189. Moss *v.* United States, *ante*, p. 872;
No. 10–11191. Hamilton *v.* Tucker, Secretary, Florida Department of Corrections, et al., *ante*, p. 872;
No. 10–11214. Griffin *v.* Pennsylvania, *ante*, p. 873;
No. 10–11265. Fourstar *v.* Murlak et al., *ante*, p. 876;
No. 11–62. Cazares et al. *v.* Cosby, *ante*, p. 881;
No. 11–125. Holmes *v.* East Cooper Community Hospital, Inc., et al., *ante*, p. 943;
No. 11–150. Moore *v.* USC University Hospital, Inc., et al., *ante*, p. 884;
No. 11–165. Riffin *v.* Maryland Department of the Environment, *ante*, p. 944;
No. 11–171. Osmolski et al. *v.* New Jersey, *ante*, p. 944;
No. 11–255. Tinsley *v.* Barksdale, *ante*, p. 977;
No. 11–298. Clampitt *v.* Geurin et ux., *ante*, p. 1035;
No. 11–304. Crawford *v.* Wolverine, Proctor & Schwartz, Inc., et al., *ante*, p. 1035;
No. 11–308. Thomas et al. *v.* Alcoser et al., *ante*, p. 978;
No. 11–331. Marcello *v.* Internal Revenue Service, *ante*, p. 979;
No. 11–359. Miracle Star Women's Recovering Community, Inc. *v.* Jett et al., *ante*, p. 1046;
No. 11–5020. Cruz Martinez *v.* Scribner, Warden, *ante*, p. 885;
No. 11–5032. Pope *v.* Bernard et al., *ante*, p. 886;
No. 11–5079. McGrew *v.* Gilcrease et al., *ante*, p. 888;
No. 11–5098. Taylor, on Behalf of Gordon *v.* Livingston, Executive Director, Texas Department of Criminal Justice, et al., *ante*, p. 889;
No. 11–5118. Olivier *v.* County of Los Angeles, California, *ante*, p. 890;
No. 11–5135. Slater *v.* United States, *ante*, p. 891;
No. 11–5139. Nelson *v.* United States, *ante*, p. 891;
No. 11–5143. Wray *v.* Reynolds, Warden, *ante*, p. 892;

No. 11–5258. GEE *v.* KERESTES, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL., *ante*, p. 897;

No. 11–5417. BAFFORD *v.* MIDFIRST BANK ET AL., *ante*, p. 1037;

No. 11–5427. JEANETTA *v.* UNITED STATES, *ante*, p. 906;

No. 11–5438. FINCHER *v.* UNITED STATES, *ante*, p. 907;

No. 11–5478. LEULUAIALII *v.* SINCLAIR, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY, *ante*, p. 909;

No. 11–5493. MCCLUER *v.* TEXAS, *ante*, p. 910;

No. 11–5515. PALMER *v.* BUGE ET AL., *ante*, p. 912;

No. 11–5616. WILLIAMS *v.* THOMPSON, WARDEN, ET AL., *ante*, p. 947;

No. 11–5620. TAYLOR *v.* VISINSKY ET AL., *ante*, p. 947;

No. 11–5642. SHOVE ET AL. *v.* UNITED STATES DISTRICT COURT JUDGES ET AL., *ante*, p. 917;

No. 11–5664. OCHOA *v.* RUBIN, *ante*, p. 1037;

No. 11–5699. JOHNSON *v.* UNITED STATES, *ante*, p. 919;

No. 11–5814. PURCHASE *v.* FLORIDA, *ante*, p. 952;

No. 11–5877. HAWK *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 924;

No. 11–5927. BADEN *v.* CITY OF WHEATON, ILLINOIS, ET AL., *ante*, p. 980;

No. 11–5928. BAKER *v.* GERDENICH REALTY CO., *ante*, p. 952;

No. 11–5936. DERRINGER *v.* ARIZONA ET AL., *ante*, p. 980;

No. 11–5962. JELANI *v.* PROVINCE, WARDEN, *ante*, p. 981;

No. 11–5963. JONES *v.* FLORIDA, *ante*, p. 981;

No. 11–6011. CLANTON *v.* SCHLEGEL SYSTEMS, INC., ET AL., *ante*, p. 982;

No. 11–6027. MANZELLA *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, *ante*, p. 982;

No. 11–6054. SPRINGS *v.* NEW YORK CITY BOARD OF EDUCATION ET AL., *ante*, p. 983;

No. 11–6063. DAVIS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 983;

No. 11–6107. TOMPSON *v.* MASSACHUSETTS DEPARTMENT OF MENTAL HEALTH, *ante*, p. 984;

No. 11–6119. WASHINGTON *v.* SCHOOL BOARD OF HILLSBOROUGH COUNTY, *ante*, p. 967;

No. 11–6200. F. J. *v.* FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES, *ante*, p. 1016;

No. 11–6238. BARKER *v.* UNITED STATES, *ante*, p. 987;

No. 11–6262. NASH *v.* PTASHNINK ET AL., *ante*, p. 1038;
No. 11–6279. RANDOLPH *v.* BODISON, WARDEN, *ante*, p. 987;
No. 11–6313. IN RE SHOVE ET AL., *ante*, p. 940;
No. 11–6373. HUDSON *v.* LAFLER, WARDEN, *ante*, p. 988;
No. 11–6391. BUCK *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1022;
No. 11–6415. PETROS *v.* BOOS ET AL., *ante*, p. 1041;
No. 11–6838. PINDER *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, *ante*, p. 1069; and
No. 11–6926. MCDONALD *v.* UNITED STATES, *ante*, p. 1045. Petitions for rehearing denied.

No. 11–6338. PERTIL *v.* UNITED STATES, *ante*, p. 960. Petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–5891. MILLER *v.* IN RE APPLICATION OF COUNTY TREASURER FOR JUDGMENT AND ORDER OF SALE AGAINST LANDS AND LOTS RETURNED DELINQUENT FOR NON-PAYMENT OF GENERAL TAXES AND/OR SPECIAL ASSESSMENT, *ante*, p. 966. Motion for leave to file petition for rehearing denied.

JANUARY 11, 2012

Dismissal Under Rule 46

No. 11–678. CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE FUND *v.* BIO-MEDICAL APPLICATIONS OF TENNESSEE, INC. C. A. 6th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 656 F. 3d 277.

JANUARY 12, 2012

Dismissal Under Rule 46

No. 11–341. QWEST SERVICES CORP. ET AL. *v.* BLOOD ET AL. Sup. Ct. Colo. Certiorari dismissed under this Court's Rule 46.1. Reported below: 252 P. 3d 1071.

JANUARY 13, 2012

Certiorari Granted

No. 11–184. KLOECKNER *v.* SOLIS, SECRETARY OF LABOR. C. A. 8th Cir. Certiorari granted. Reported below: 639 F. 3d 834.

No. 11–192. UNITED STATES *v.* BORMES. C. A. Fed. Cir. Certiorari granted. Reported below: 626 F. 3d 574.

No. 11–465. CAVAZOS, ACTING WARDEN *v.* WILLIAMS. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 646 F. 3d 626.

JANUARY 17, 2012

Appointment Order

It is ordered that Linda S. Maslow be appointed Librarian of the Court to succeed Judith Ann Gaskell, effective at the commencement of business January 17, 2012, and that she take the oath of office as required by statute.

Certiorari Granted—Vacated and Remanded

No. 10–9236. JOHNSON *v.* BODISON, WARDEN. 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 *Gonzalez* v. *Thaler*, *ante*, p. 134. Reported below: 398 Fed. Appx. 927.

No. 11–6912. BRELAND *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 the position asserted by the Solicitor General in his brief for the United States filed on December 19, 2011. Reported below: 647 F. 3d 284.

Certiorari Dismissed

No. 11–7234. FOSTER *v.* KEMP, WARDEN. Sup. Ct. Ga. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 11–7343. HAMPEL *v.* UNITED STATES. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 429 Fed. Appx. 995.

No. 11–7344. FAISON *v.* WEAVER 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.

Miscellaneous Orders

No. D–2720. In re Disbarment of Regan. Disbarment entered. [For earlier order herein, see *ante*, p. 1054.]

No. 11M59. El Falesteny *v.* Obama, President of the United States, et al. Motion for leave to file a petition for writ of certiorari under seal denied without prejudice to filing a renewed motion together with either a redacted petition or an explanation as to why the petition may not be redacted within 30 days. Justice Kagan took no part in the consideration or decision of this motion.

No. 11–393. National Federation of Independent Business et al. *v.* Sebelius, Secretary of Health and Human Services, et al.;

No. 11–398. Department of Health and Human Services et al. *v.* Florida et al.; and

No. 11–400. Florida et al. *v.* Department of Health and Human Services et al. C. A. 11th Cir. [Certiorari granted, *ante*, pp. 1033 and 1034.] Motion of the National Federation of Independent Business et al. to add Dana Grimes and David Klemencic as additional petitioners in No. 11–393 and additional respondents in Nos. 11–398 and 11–400 granted.

No. 11–460. Los Angeles County Flood Control District *v.* Natural Resources Defense Council, Inc., et al. C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 11–604. EM Ltd. et al. *v.* Republic of Argentina et al. C. A. 2d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States. Justice Sotomayor took no part in the consideration or decision of this petition.

No. 11–5721. Hill *v.* United States. C. A. 7th Cir. [Certiorari granted, *ante*, p. 1057.] Motion of petitioner for appointment of counsel granted. Stephen E. Eberhardt, Esq., of Tinley Park, Ill., is appointed to serve as counsel for petitioner in this case.

No. 11–5731. Abulkhair *v.* Boehm et al. Sup. Ct. N. J. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1011] denied.

No. 11–6616. BLACKMER *v.* SOCIAL SECURITY ADMINISTRATION. C. A. 1st Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1051] denied.

No. 11–7241. OCHOA CANALES *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir.;

No. 11–7255. IN RE COLEMAN;

No. 11–7445. SCHMIDT ET UX. *v.* NEW CENTURY MORTGAGE CORP. ET AL. C. A. 6th Cir.;

No. 11–7688. BEY *v.* NORTH CAROLINA ET AL. C. A. 4th Cir.;

No. 11–7787. VEVEA *v.* UNITED STATES. C. A. 9th Cir.; and

No. 11–7999. IN RE DRIVER. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until February 7, 2012, 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. 11–7890. IN RE HELTON; and

No. 11–8003. IN RE AYALA. Petitions for writs of habeas corpus denied.

No. 11–608. IN RE RIVERA;

No. 11–7400. IN RE BUSH; and

No. 11–7419. IN RE BUTLER. Petitions for writs of mandamus denied.

Certiorari Denied

No. 10–760. WEISHUHN *v.* CATHOLIC DIOCESE OF LANSING ET AL. Ct. App. Mich. Certiorari denied. Reported below: 287 Mich. App. 211, 787 N. W. 2d 513.

No. 10–769. SKRZYPCZAK *v.* ROMAN CATHOLIC DIOCESE OF TULSA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 611 F. 3d 1238.

No. 10–1488. DERRY *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 56 So. 3d 774.

No. 10–8952. INNIS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 10–11180. NEAL *v.* FORD MOTOR CO. C. A. 6th Cir. Certiorari denied.

No. 10–11209. MORA-TARULA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 813.

No. 11–84. ALVIS ET AL. *v.* ESPINOSA, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DECEDENT SULLIVAN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 598 F. 3d 528.

No. 11–257. PANTLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 637 F. 3d 1172.

No. 11–290. DELACY *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 192 Cal. App. 4th 1481, 122 Cal. Rptr. 3d 216.

No. 11–296. GUSTIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 642 F. 3d 573.

No. 11–397. YORK *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 342 S. W. 3d 528.

No. 11–425. APPLEBEE'S INTERNATIONAL, INC. *v.* FAST ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 638 F. 3d 872.

No. 11–427. DOWNEY *v.* KNOPICK. C. A. 3d Cir. Certiorari denied. Reported below: 639 F. 3d 600.

No. 11–437. BITZER *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 429 Fed. Appx. 984.

No. 11–441. MALATERRE ET AL. *v.* AMERIND RISK MANAGEMENT CORP. C. A. 8th Cir. Certiorari denied. Reported below: 633 F. 3d 680.

No. 11–451. CONNECTICUT *v.* LENARZ. Sup. Ct. Conn. Certiorari denied. Reported below: 301 Conn. 417, 22 A. 3d 536.

No. 11–459. PRIME HEALTHCARE SERVICES LOS ANGELES, LLC *v.* BROTMAN MEDICAL CENTER, INC. C. A. 9th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 317.

No. 11–502. BLUE MOUNTAIN SCHOOL DISTRICT ET AL. *v.* J. S., A MINOR, BY AND THROUGH HER PARENTS, SNYDER ET VIR,

ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 650 F. 3d 915.

No. 11–546. FORSYTH COUNTY, NORTH CAROLINA *v.* JOYNER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 653 F. 3d 341.

No. 11–557. RENZI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 651 F. 3d 1012.

No. 11–558. LEE ET AL. *v.* METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 435.

No. 11–569. INDIAN RIVER SCHOOL DISTRICT ET AL. *v.* DOE ET AL., INDIVIDUALLY AND AS PARENTS AND NEXT FRIENDS OF DOE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 653 F. 3d 256.

No. 11–573. K2 AMERICA CORP. *v.* ROLAND OIL & GAS, LLC. C. A. 9th Cir. Certiorari denied. Reported below: 653 F. 3d 1024.

No. 11–576. TARTAK DEL PALACIO *v.* MICHAEL ET AL. Sup. Ct. P. R. Certiorari denied.

No. 11–579. RIGAUD *v.* BROWARD GENERAL MEDICAL CENTER ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 65 So. 3d 516.

No. 11–585. BRAND TECHNOLOGIES, INC., ET AL. *v.* MAVRIX PHOTO, INC. C. A. 9th Cir. Certiorari denied. Reported below: 647 F. 3d 1218.

No. 11–587. GLENN *v.* VALERO ENERGY CORP. ET AL. Sup. Ct. Tex. Certiorari denied.

No. 11–588. GLOBAL SANTA FE DRILLING CO. ET AL. *v.* APACHE CORP. C. A. 5th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 322.

No. 11–590. ENGERS ET AL. *v.* AT&T, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 466 Fed. Appx. 75.

No. 11–592. PETERSEN LAW FIRM ET AL. *v.* CITY OF LOS ANGELES, CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–593. TI Pneumotive, Inc., aka Thomas Industries *v.* Yasunaga Corp. Ct. App. La., 2d Cir. Certiorari denied.

No. 11–595. Life Partners, Inc., et al. *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 650 F. 3d 1026.

No. 11–618. City of Newkirk, Oklahoma, et al. *v.* Kay Electric Cooperative et al. C. A. 10th Cir. Certiorari denied. Reported below: 647 F. 3d 1039.

No. 11–620. Forsyth Memorial Hospital, Inc., et al. *v.* Sebelius, Secretary of Health and Human Services. C. A. D. C. Cir. Certiorari denied. Reported below: 639 F. 3d 534.

No. 11–624. Hegyi *v.* Washington State Department of Transportation. Sup. Ct. Wash. Certiorari denied.

No. 11–631. Wessman et al. *v.* City of Mankato, Minnesota. Ct. App. Minn. Certiorari denied.

No. 11–633. Anderson *v.* JPMorgan Chase & Co. et al. C. A. 11th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 881.

No. 11–635. Ujka et al. *v.* Holder, Attorney General. C. A. 11th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 960.

No. 11–665. Hirschfield *v.* California et al. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 11–669. Breeden *v.* Novartis Pharmaceuticals Corp. C. A. D. C. Cir. Certiorari denied. Reported below: 646 F. 3d 43.

No. 11–707. Ruhaak *v.* Commissioner of Internal Revenue. C. A. 7th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 530.

No. 11–710. Barczyk *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 488.

No. 11–712. EchoStar Satellite L. L. C., nka DISH Network, L. L. C., et al. *v.* NDS Group PLS, nka NDS Group

LTD., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 764.

No. 11–727. DIETZ *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 70 M. J. 347.

No. 11–764. KING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 364 Fed. Appx. 568.

No. 11–5024. ALCORN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 393.

No. 11–5192. PENDLETON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 636 F. 3d 78.

No. 11–5241. LOWERY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 3 A. 3d 1169.

No. 11–5357. BOWENS *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 407 Ill. App. 3d 1094, 943 N. E. 2d 1249.

No. 11–5382. TURNER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 604.

No. 11–5525. TASKEY *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 78 Mass. App. 787, 941 N. E. 2d 713.

No. 11–5738. MCCLAIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 538.

No. 11–5858. BRUNS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 641 F. 3d 555.

No. 11–5980. STARBALA ET UX. *v.* HOMECOMINGS FINANCIAL NETWORK, INC. App. Ct. Conn. Certiorari denied. Reported below: 125 Conn. App. 901, 10 A. 3d 1109.

No. 11–6018. BOEHM ET UX. *v.* EVANS, CHAIRPERSON, NEW YORK STATE DIVISION OF PAROLE. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 79 App. Div. 3d 1445, 914 N. Y. S. 2d 318.

No. 11–6095. GONZALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 642 F. 3d 504.

No. 11–6314. LEWIS *v.* WILSON ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 423 Fed. Appx. 153.

No. 11–6351. KANE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 175.

No. 11–6463. MANN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 254.

No. 11–6626. GARCIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 248.

No. 11–6647. PARKS *v.* UNITED STATES; and
No. 11–7068. BLACKWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 192.

No. 11–6711. PAPADIMITRIOU *v.* PAPADIMITRIOU. Ct. Sp. App. Md. Certiorari denied. Reported below: 194 Md. App. 733.

No. 11–6779. BERNARDEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 209.

No. 11–6809. JUSTUS *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 392 S. C. 416, 709 S. E. 2d 668.

No. 11–6820. THREADGILL *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 298.

No. 11–6898. LEVENTHAL *v.* SCHAFFER ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 588.

No. 11–6914. BROWN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 438 Fed. Appx. 75.

No. 11–6936. NUNLEY *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 341 S. W. 3d 611.

No. 11–6942. SANCHEZ-BRENEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 388.

No. 11–7129. JONES *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 292 Kan. 910, 257 P. 3d 268.

No. 11–7139. TAYLOR *v.* STEELE, WARDEN. Sup. Ct. Mo. Certiorari denied. Reported below: 341 S. W. 3d 634.

No. 11–7212. EMERSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–7213. COTTO *v.* KELLY, ATTORNEY GENERAL OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–7222. HAYES *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–7227. HENSE *v.* MARTIN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 417 Fed. Appx. 83.

No. 11–7230. FREEMAN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 340 S. W. 3d 717.

No. 11–7235. NOLEN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 24 A. 3d 464.

No. 11–7242. MOTON *v.* OHIO. Ct. App. Ohio, Summit County. Certiorari denied. Reported below: 2011-Ohio-58.

No. 11–7244. VERDUN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 11–7246. GUZMAN *v.* MCQUIGGIN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7247. GRIFFIN *v.* KIRKPATRICK, SUPERINTENDENT, WENDE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 11–7248. GIBBONS *v.* WOLFENBARGER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7251. KELLEY *v.* BRUZZESE ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–7252. KUNITZ *v.* CLARK, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–7263. WOOD *v.* MAIN. C. A. 3d Cir. Certiorari denied.

No. 11–7264. PAPE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 645 F. 3d 281.

No. 11–7273. MORRIS *v.* NEW MEXICO. Ct. App. N. M. Certiorari denied.

No. 11–7276. PERKINS *v.* QUINN ET AL. C. A. 2d Cir. Certiorari denied.

No. 11–7277. PERKINS *v.* ROCK, SUPERINTENDENT, UPSTATE CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 11–7282. PARKER *v.* TIM LALLY CHEVROLET. C. A. 6th Cir. Certiorari denied.

No. 11–7287. SHABAZZ *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 11–7293. SHACKLEFORD *v.* HAVNER; and
No. 11–7317. DIAZ-BEY *v.* HAVNER. C. A. 4th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 229.

No. 11–7295. BONHAM *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA. C. A. 9th Cir. Certiorari denied.

No. 11–7297. STRICKLAND *v.* GANSHEIMER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7298. REED *v.* REDNOUR, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 11–7301. LACY *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 472.

No. 11–7303. SCOTT *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 52 Cal. 4th 452, 257 P. 3d 703.

No. 11–7309. ZOELLICK *v.* ZOELLICK. Sup. Ct. Ga. Certiorari denied.

No. 11–7310. TETERS *v.* FLORES. Ct. App. Ariz. Certiorari denied.

No. 11–7311. CHAN *v.* TRIMBLE, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 614.

No. 11–7316. CASEY *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 11–7319. MADAYAG *v.* EVANS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 354.

No. 11–7326. GOLDWATER *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 11–7333. NAILS *v.* ULTIMATE BUSINESS SOLUTIONS. C. A. 11th Cir. Certiorari denied.

No. 11–7347. HALL *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 354.

No. 11–7348. HANNON *v.* BEARD. C. A. 1st Cir. Certiorari denied. Reported below: 645 F. 3d 45.

No. 11–7350. GEORGE *v.* ALMAGER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 683.

No. 11–7351. HILLMAN *v.* KNAB, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7353. KARAFILI *v.* TILTON, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 633.

No. 11–7357. KURTZEMANN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–7358. GREENE *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 289.

No. 11–7363. HUDSON *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–7370. CHOWDHURY *v.* CITY OF MISSOULA, MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 2011 MT 140N, 361 Mont. 537, 264 P. 3d 518.

No. 11–7373. Reason *v.* Coursey, Superintendent, Eastern Oregon Correctional Institution. C. A. 9th Cir. Certiorari denied.

No. 11–7378. Cantrell *v.* McEwen, Acting Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 698.

No. 11–7384. Zavala *v.* Holder, Attorney General, et al. C. A. 4th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 276.

No. 11–7388. Flores *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 11–7390. Gonzalez *v.* Grounds, Warden. C. A. 9th Cir. Certiorari denied.

No. 11–7391. Harvey *v.* Christie, Governor of New Jersey, et al. C. A. 3d Cir. Certiorari denied. Reported below: 433 Fed. Appx. 73.

No. 11–7392. Haynes *v.* Texas. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 11–7393. Greer *v.* Nelson, Warden. C. A. 11th Cir. Certiorari denied.

No. 11–7394. Hoyer *v.* Horne, Attorney General of Arizona, et al. C. A. 9th Cir. Certiorari denied.

No. 11–7395. Hollingshead *v.* Kansas. Ct. App. Kan. Certiorari denied. Reported below: 45 Kan. App. 2d xxxvii, 243 P. 3d 1113.

No. 11–7397. Graham *v.* Padula, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 477.

No. 11–7398. Biton *v.* United Airlines et al. C. A. 2d Cir. Certiorari denied.

No. 11–7402. Hussein *v.* Ryan, Director, Arizona Department of Corrections, et al. C. A. 9th Cir. Certiorari denied.

No. 11–7403. Haney *v.* Yaggy, Judge, Superior Court of California, San Francisco County, et al. C. A. 9th Cir. Certiorari denied.

No. 11–7404. HUDSON *v.* DEPARTMENT OF THE TREASURY FINANCIAL MANAGEMENT SERVICE. C. A. 11th Cir. Certiorari denied.

No. 11–7406. HENDRICKS *v.* SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES. Sup. Ct. S. C. Certiorari denied.

No. 11–7407. HARRIS *v.* SMALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–7408. GRANDE *v.* KELLY, ATTORNEY GENERAL OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–7409. FOX *v.* INSERRA, SUPERINTENDENT, MID-ORANGE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 11–7410. SMITH *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 966.

No. 11–7417. WEAVER *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–7421. BREWSTER *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–7429. LINDNER *v.* ARIZONA. Ct. App. Ariz. Certiorari denied. Reported below: 227 Ariz. 69, 252 P. 3d 1033.

No. 11–7431. JAMES *v.* TOWNSLEY. C. A. 9th Cir. Certiorari denied.

No. 11–7434. KILLIAN *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 11–7435. TATUM *v.* MCQUIGGIN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7436. THORNTON *v.* PRICE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–7438. MITCHELL *v.* REES, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 651 F. 3d 593.

No. 11–7439. PADIEU *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 11–7440. KATAI *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 11–7442. ERVIN *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 84 So. 3d 1016.

No. 11–7444. PAGE *v.* RADER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 11–7446. MORLEY *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–7447. MARSHALL *v.* TRAMMELL, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 11–7448. CORNELIUS *v.* SHEA. App. Ct. Mass. Certiorari denied. Reported below: 79 Mass. App. 1113, 945 N. E. 2d 437.

No. 11–7449. MEGRAVE *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 11–7450. CLARKE *v.* LEWIS ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–7451. BALL *v.* CITY OF PEORIA, ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 481.

No. 11–7452. BEAR *v.* FAYRAM, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 650 F. 3d 1120.

No. 11–7453. EVANS *v.* BAKER, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 108.

No. 11–7455. JONES *v.* TENNIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–7456. SHATTUCK *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–7460. RENFRO *v.* KNIPP, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–7464. POTTER *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7467. CLARKE *v.* EVANS ET AL. Super. Ct. Fulton County, Ga. Certiorari denied.

No. 11–7468. DAVIS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 11–7470. ELCOCK *v.* WHITECOTTON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 541.

No. 11–7475. MURILLO *v.* PENALOZA. Sup. Ct. Cal. Certiorari denied.

No. 11–7484. JONES-EL *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 11–7521. TYLER *v.* ARELLANO, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 681.

No. 11–7541. MEDICINE BLANKET *v.* BRILL, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 751.

No. 11–7549. VALOT *v.* LATTIMORE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–7564. OLIVER *v.* HARDY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 11–7566. SKY *v.* MARSHALL, SUPERINTENDENT, HILAND MOUNTAIN CORRECTIONAL CENTER. C. A. 9th Cir. Certiorari denied.

No. 11–7584. BATTLE *v.* PORT ALLIANCE FEDERAL CREDIT UNION. Sup. Ct. Va. Certiorari denied.

No. 11–7591. KNIGHT *v.* JOHNSON. C. A. 7th Cir. Certiorari denied.

No. 11–7599. TREVINO *v.* GUTIERREZ, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 327.

No. 11–7629. SINGLETON *v.* EAGLETON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 228.

No. 11–7630. SENTY-HAUGEN *v.* JESSON, COMMISSIONER, MINNESOTA DEPARTMENT OF HUMAN SERVICES. C. A. 8th Cir. Certiorari denied.

No. 11–7641. RIVERS *v.* BICKELL, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–7648. STEVENSON *v.* NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 2d Cir. Certiorari denied.

No. 11–7660. MCGLOHON *v.* CAMPBELL UNIVERSITY, INC. C. A. 4th Cir. Certiorari denied.

No. 11–7672. WILKERSON *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 65 So. 3d 585.

No. 11–7683. POSTELL *v.* BODISON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 833.

No. 11–7703. ASKIN *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 11–7729. JIMENEZ-TORRES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–7732. RICHARDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 37.

No. 11–7736. THOMAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–7739. ROYAL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 794.

No. 11–7740. ASSI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 570.

No. 11–7742. ARNAUT *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 78 Mass. App. 906, 940 N. E. 2d 1232.

No. 11–7746. GLORIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 362.

No. 11–7747. HALL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 617.

No. 11–7748. HICKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 334.

No. 11–7749. HOUFF *v.* COURSEY, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 590.

No. 11–7751. FLORES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–7752. HOCKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 398.

No. 11–7753. GASAWAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 428.

No. 11–7757. CAPSHAW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 738.

No. 11–7759. WASHINGTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 624.

No. 11–7761. JENNINGS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 670.

No. 11–7762. LANGFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 647 F. 3d 1309.

No. 11–7764. HERNANDEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 655 F. 3d 608.

No. 11–7769. KING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 115.

No. 11–7772. SERRANO DOMENECH *v.* UNITED STATES; and
No. 11–7773. SERRANO DOMENECH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 392.

No. 11–7779. SCOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 772.

No. 11–7780. STEWARD *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 16 A. 3d 974.

No. 11–7785. CRUZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 591.

No. 11–7786. WALKER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 657 F. 3d 160.

No. 11–7788. VALENZUELA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 657 F. 3d 811.

No. 11–7791. LANDA-ORDAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 430.

No. 11–7793. VAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 423.

No. 11–7796. BUIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 173.

No. 11–7798. REYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–7802. SALAZAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 400.

No. 11–7803. SIMMONS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 653.

No. 11–7808. HAMPTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 444 Fed. Appx. 583.

No. 11–7809. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 655 F. 3d 426.

No. 11–7810. GRIFFIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 652 F. 3d 793.

No. 11–7813. HEDRICH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–7814. GALVAN-MAGANA, AKA SANDOVAL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 689.

No. 11–7818. GIBBS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 656 F. 3d 180.

No. 11–7819. GARCIA-FIERRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 305.

No. 11–7820. GUERRA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 888.

No. 11–7823. FORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 652.

No. 11–7825. MACK *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 24 A. 3d 664.

No. 11–7828. FRAZIER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 730.

No. 11–7835. PIZZOLATO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 655 F. 3d 403.

No. 11–7836. NEGRETE-ENRIQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 11–7837. NUNNERY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 240.

No. 11–7839. GARCIA-ORTIZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 657 F. 3d 25.

No. 11–7840. HINDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 832.

No. 11–7842. CHI CUONG HOANG *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 451 Fed. Appx. 220.

No. 11–7843. GREEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 446 Fed. Appx. 199.

No. 11–7844. DOMINGUEZ GUTIERREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 446 Fed. Appx. 151.

No. 11–7846. SABATER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 441 Fed. Appx. 68.

No. 11–7850. MORAN-MARTINEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–7856. BRADSHAW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 176.

No. 11–7860. HERSOM *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 657 F. 3d 77.

No. 11–7861. CAVAZOS CARREON, AKA CARREON CAVAZOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 269.

No. 11–7862. SHEVGERT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 373 Fed. Appx. 915.

No. 11–7864. ROULHAC *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 325.

No. 11–7866. TAYLOR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 444 Fed. Appx. 613.

No. 11–7871. GOODYKE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 639 F. 3d 869.

No. 11–7873. GIRARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 894.

No. 11–7894. GAYTAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 649 F. 3d 573.

No. 11–7896. LEONARDO-DOROTEO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 237.

No. 11–7897. MUNIR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 451 Fed. Appx. 672.

No. 11–7898. PEREZ-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–7899. VARGAS-MENDOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 588.

No. 11–7905. GUZMAN PINALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 243.

No. 11–7906. MARTINEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 453 Fed. Appx. 342.

No. 11–7907. MAKWANA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 671.

No. 11–7909. ABARCA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 657 F. 3d 811.

No. 11–7912. MOSS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 632.

No. 11–7913. WADE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–7915. TROUGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 379 Fed. Appx. 838.

No. 11–7919. WEBB *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 655 F. 3d 1238.

No. 11–7924. JORDAN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 18 A. 3d 703.

No. 11–7934. MCCALL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 432.

No. 11–7935. MUSSO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 643 F. 3d 566.

No. 11–7937. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 857.

No. 11–7941. JAMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 863.

No. 11–7954. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 370 Fed. Appx. 8.

No. 11–48. WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* KINDLER. C. A. 3d 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: 642 F. 3d 398.

No. 11–381. STANDARD INVESTMENT CHARTERED, INC., ON BEHALF OF ITSELF AND ALL OTHERS SIMILARLY SITUATED *v.* NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC., ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 637 F. 3d 112.

No. 11–461. KOWALSKI *v.* BERKELEY COUNTY SCHOOLS ET AL. C. A. 4th Cir. Motions of Marion B. Bechner First Amendment Project, the Alliance Defense Fund et al., and The Rutherford Institute for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 652 F. 3d 565.

No. 11–484. MARTIN *v.* HOWARD UNIVERSITY ET AL. C. A. D. C. Cir. Motion of the National Organization for Women Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied.

No. 11–560. LEGER, WARDEN, LOUISIANA CORRECTIONAL INSTITUTE FOR WOMEN *v.* LACAZE. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 645 F. 3d 728.

No. 11–6240. MCNEALY *v.* MIDDLEBROOKS, WARDEN. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–6479. NICHOLS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 429 Fed. Appx. 355.

No. 11–7715. BULLARD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 440 Fed. Appx. 81.

No. 11–7737. PARK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 649 F. 3d 1175.

No. 11–7845. HILL *v.* CROSS, WARDEN. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

Rehearing Denied

No. 10–8527. ADDISON *v.* NEW HAMPSHIRE, 563 U. S. 991;

No. 10–11262. FOWLER *v.* GEITHNER, SECRETARY OF THE TREASURY, *ante*, p. 1058;

No. 11–315. YOONESSI *v.* RATAJCZAK ET AL., *ante*, p. 1035;

No. 11–362. LEWICKI ET AL. *v.* WASHINGTON COUNTY, PENNSYLVANIA, ET AL., *ante*, p. 1060;

No. 11–5025. ARNOLD *v.* MALLON ET AL., *ante*, p. 886;

No. 11–5915. RABB *v.* GEORGIA PACIFIC, LLC, ET AL., *ante*, p. 966;

No. 11–5943. NORINGTON *v.* BUTTS, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY, *ante*, p. 981;

No. 11–5979. SANCHEZ *v.* SUFFOLK COUNTY PROBATION DEPARTMENT, *ante*, p. 967;

No. 11–6104. KALFOUNTZOS *v.* CITY OF SACRAMENTO, CALIFORNIA, ET AL., *ante*, p. 984;

No. 11–6185. MANIGAULTE *v.* C. W. POST OF LONG ISLAND UNIVERSITY, *ante*, p. 986;

No. 11–6218. LAWSON *v.* SWORD ET AL., *ante*, p. 1016;

No. 11–6231. WILLIAMS *v.* CITY OF NATCHITOCHES, LOUISIANA, ET AL., *ante*, p. 1037;

No. 11–6259. CHRISTMAS *v.* ILLINOIS, *ante*, p. 987;

No. 11–6289. MUGAN *v.* UNITED STATES, *ante*, p. 958;

No. 11–6441. CLEMONS *v.* MONROE, ASSISTANT WARDEN, ET AL., *ante*, p. 1064;

No. 11–6465. AMR *v.* MOORE ET AL., *ante*, p. 989;

No. 11–6489. GORE *v.* FLORIDA, *ante*, p. 1065;

No. 11–6554. DERRINGER *v.* BAXTER ET AL., *ante*, p. 1041;

No. 11–6613. RIVERA *v.* UNITED STATES, *ante*, p. 1018; and

No. 11–6714. ESCARENO *v.* EVANS, WARDEN, *ante*, p. 1068. Petitions for rehearing denied.

No. 10–10875. WILLIAMS *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 932. Motion for leave to file petition for rehearing denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion.

No. 11–6532. IN RE RUIZ RIVERA, *ante*, p. 1033; and

No. 11–6692. BEVERLY *v.* UNITED STATES, *ante*, p. 1030. Petitions for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of these petitions.

No. 11–6576. LIGONS *v.* KING, WARDEN, *ante*, p. 992. Motion for leave to file petition for rehearing denied.

JANUARY 20, 2012

Miscellaneous Order

No. 11A674. TENNANT, SECRETARY OF STATE OF WEST VIRGINIA, ET AL. *v.* JEFFERSON COUNTY COMMISSION ET AL. Application for stay, presented to THE CHIEF JUSTICE, and by him referred to the Court, granted, and it is ordered that the judgment of the United States District Court for the Southern District of West Virginia, case No. 2:11–cv–0989, entered January 3, 2012, and amended January 4, 2012, is stayed pending the timely filing and disposition of an appeal to this Court.

JANUARY 23, 2012

Certiorari Granted—Reversed and Remanded. (See No. 11–208, *ante*, p. 469.)

Miscellaneous Orders

No. 11M60. TESSERA, INC. *v.* ITC ET AL.; and
No. 11M61. SMITH ET VIR *v.* ABN AMRO MORTGAGE GROUP, INC., ET AL. Motions for leave to file petitions for writs of certiorari under seal with redacted copies for the public record granted.

No. 11M62. DAY *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 10–1042. FREEMAN ET AL. *v.* QUICKEN LOANS, INC. C. A. 5th Cir. [Certiorari granted, *ante*, p. 941.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 11–199. VASQUEZ *v.* UNITED STATES. C. A. 7th Cir. [Certiorari granted, *ante*, p. 1057.] Motion of petitioner for leave to proceed further herein *in forma pauperis* granted.

No. 11–393. NATIONAL FEDERATION OF INDEPENDENT BUSINESS ET AL. *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.; and
No. 11–400. FLORIDA ET AL. *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 11th Cir. [Certiorari granted, *ante*, pp. 1033 and 1034.] Motion of Freedom Watch 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 this motion.

No. 11–6521. ABULKHAIR *v.* TOSKOS ET AL. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1051] denied.

No. 11–6645. JOELSON *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1052] denied.

No. 11–7750. GENA *v.* UNITED STATES. C. A. 4th Cir.; and
No. 11–7910. BERRETTINI *v.* UNITED STATES. C. A. 3d Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until February 13, 2012, 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. 11–8047. In re Royster; and

No. 11–8103. In re Balzarotti. Petitions for writs of habeas corpus denied.

No. 11–7532. In re Bourn. Petition for writ of mandamus denied.

Certiorari Denied

No. 10–1144. Republica Bolivariana de Venezuela et al. *v.* DRFP L. L. C., dba Skye Ventures. C. A. 6th Cir. Certiorari denied. Reported below: 622 F. 3d 513.

No. 10–1417. Fein, Such, Kahn & Shepard, P. C. *v.* Allen. C. A. 3d Cir. Certiorari denied. Reported below: 629 F. 3d 364.

No. 10–9599. Chavez-Jimenez *v.* Premo, Superintendent, Oregon State Penitentiary. C. A. 9th Cir. Certiorari denied.

No. 10–9792. Ramadan *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 390 Fed. Appx. 261.

No. 10–11038. Burns *v.* Commissioner of Revenue of Minnesota. Sup. Ct. Minn. Certiorari denied. Reported below: 787 N. W. 2d 164.

No. 11–179. O'Rourke, Individually and on Behalf of All Others Similarly Situated *v.* Palisades Acquisition, XVI, LLC, et al. C. A. 7th Cir. Certiorari denied. Reported below: 635 F. 3d 938.

No. 11–342. Karantsalis *v.* Department of Justice et al. C. A. 11th Cir. Certiorari denied. Reported below: 635 F. 3d 497.

No. 11–360. Christo *v.* United States; and

No. 11–6506. Christo *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 413 Fed. Appx. 375.

No. 11–445. Farmers Insurance Company of Oregon et al. *v.* Strawn. Sup. Ct. Ore. Certiorari denied. Reported below: 350 Ore. 336, 258 P. 3d 1199.

No. 11–481. DISH Network Corp. et al. *v.* Federal Communications Commission et al. C. A. 9th Cir. Certiorari denied. Reported below: 653 F. 3d 771.

No. 11–482. Valdez-Bernal *v.* Holder, Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 704.

No. 11–483. Pullos *v.* Alliance Laundry Systems, LLC. C. A. 9th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 663.

No. 11–511. Catholic Answers, Inc., et al. *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 640.

No. 11–532. General Motors Corp. *v.* Michigan Department of Treasury. Ct. App. Mich. Certiorari denied. Reported below: 290 Mich. App. 355, 803 N. W. 2d 698.

No. 11–605. Kimberly-Clark Worldwide, Inc., et al. *v.* First Quality Baby Products, LLC, et al. C. A. Fed. Cir. Certiorari denied. Reported below: 431 Fed. Appx. 884.

No. 11–607. Chadda et al. *v.* Mullins. C. A. 3d Cir. Certiorari denied. Reported below: 430 Fed. Appx. 192.

No. 11–609. Amini *v.* City of Minneapolis, Minnesota. C. A. 8th Cir. Certiorari denied. Reported below: 643 F. 3d 1068.

No. 11–615. California Grocers Assn. *v.* City of Los Angeles, California, et al. Sup. Ct. Cal. Certiorari denied. Reported below: 52 Cal. 4th 177, 254 P. 3d 1019.

No. 11–619. Flint *v.* New York Stock Exchange et al. C. A. 6th Cir. Certiorari denied.

No. 11–621. Howard et al. *v.* Criminal Information Services, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 654 F. 3d 887.

No. 11–625. Hogenson R&R Investors *v.* A. F. T. E. R., Inc., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 434 Fed. Appx. 907.

No. 11–628. SUSKO, DBA ROSEMONT MANOR *v.* CITY OF WEIRTON, WEST VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 805.

No. 11–636. WILTZ ET AL. *v.* BAYER CROPSCIENCE, LP, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 645 F. 3d 690.

No. 11–637. SCHELLENBERG ET AL. *v.* TOWNSHIP OF BINGHAM, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 587.

No. 11–638. RUES *v.* DENNEY, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 643 F. 3d 618.

No. 11–639. SMITH *v.* T. D. AMERITRADE, INC., ET AL. Ct. App. N. C. Certiorari denied. Reported below: 212 N. C. App. 235, 713 S. E. 2d 250.

No. 11–650. BAGLEY *v.* BAGLEY, NKA BAGLEY-BARNETT. Ct. App. Ohio, Greene County. Certiorari denied. Reported below: 2011-Ohio-1272.

No. 11–655. TEXAS ENTERTAINMENT ASSN. ET AL. *v.* COMBS, COMPTROLLER OF PUBLIC ACCOUNTS, ET AL. Sup. Ct. Tex. Certiorari denied. Reported below: 347 S. W. 3d 277.

No. 11–656. BARBER ET AL. *v.* PAYCHEX, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 841.

No. 11–658. HCR MANORCARE, INC., ET AL. *v.* ZOUHARY, JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO. C. A. 6th Cir. Certiorari denied.

No. 11–668. WYTHE II CORP. *v.* STONE, DBA STONE & STONE. Ct. App. Tex., 9th Dist. Certiorari denied. Reported below: 342 S. W. 3d 96.

No. 11–676. SITANGGANG *v.* COUNTRYWIDE HOME LOANS, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 419 Fed. Appx. 756.

No. 11–726. SUTHERLAND ET UX. *v.* MASSA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 653.

No. 11–787. HICKS ET AL. *v.* DAIRYLAND INSURANCE CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 463.

No. 11–6477. COLLINS *v.* LEDEZMA, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 400 Fed. Appx. 375.

No. 11–6533. SCHLEIGER *v.* OHIO. Ct. App. Ohio, Preble County. Certiorari denied.

No. 11–7480. DEBLOIS *v.* HERSHBERGER, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 186.

No. 11–7481. KEMPF *v.* HANSEN. C. A. 10th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 660.

No. 11–7486. DAVIS *v.* GEORGIA. C. A. D. C. Cir. Certiorari denied. Reported below: 427 Fed. Appx. 14.

No. 11–7488. MIMMS *v.* FOUR UNKNOWN OFFICERS ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–7489. PALMER *v.* JEFFREYS, WARDEN. Ct. App. Ohio, Ross County. Certiorari denied.

No. 11–7490. MCDONALD *v.* JAVOIS, CHIEF EXECUTIVE OFFICER, MISSOURI DEPARTMENT OF MENTAL HEALTH, ET AL. C. A. 8th Cir. Certiorari denied.

No. 11–7497. WARREN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 11–7499. PALMER *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 11–7503. BEAUCHAMP *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–7504. DURBIN *v.* PROVINCE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 785.

No. 11–7506. FAMALARO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 52 Cal. 4th 1, 253 P. 3d 1185.

No. 11–7509. FRANKLIN *v.* KNOWLES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 428 Fed. Appx. 777.

No. 11–7513. STANLEY *v.* MASON ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–7514. SANDERS *v.* MIDLAND FUNDING LLC. C. A. 4th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 865.

No. 11–7525. LEWIS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–7529. MEEKS *v.* ARTUS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 11–7531. BROWN *v.* CIVIGENICS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 370.

No. 11–7540. BARKER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 998 A. 2d 1028.

No. 11–7542. KNIGHT *v.* MITCHEM, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–7543. POLK *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA, ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 11–7555. WILSON *v.* OLLISON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–7565. ROBERSON *v.* OHIO. Ct. App. Ohio, Lorain County. Certiorari denied. Reported below: 2011-Ohio-988.

No. 11–7597. MCKINNON *v.* LAVALLEY, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 422 Fed. Appx. 69.

No. 11–7602. SMITH *v.* METRISH, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 554.

No. 11–7607. ANDERSON *v.* PRELESNIK, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7616. ROQUE *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–7620. THORNTON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 11–7622. MELKONIAN *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 610.

No. 11–7638. ANDERSON *v.* TROMBLEY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 451 Fed. Appx. 469.

No. 11–7679. LAWSON *v.* MCKEE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7685. WILLIS *v.* HARDY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 11–7694. CASBAR *v.* BIRKETT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7704. WATERS *v.* JACKSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 415 Fed. Appx. 509.

No. 11–7710. KERSHAW *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 996.

No. 11–7734. TRIMBLE *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 11–7745. GATES *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–7755. COLLINS *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–7760. PARRA *v.* MCDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–7778. ROYAL *v.* DURISON. C. A. 3d Cir. Certiorari denied.

No. 11–7790. SALVA MERCADO *v.* COX, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–7859. MANN *v.* STANSBERRY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 1000.

No. 11–7870. HEAD *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 22 A. 3d 823.

No. 11–7872. GRIFFIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–7874. HATCHER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–7877. GHERMAN *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–7918. MONROE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 644.

No. 11–7929. ALWALI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 886.

No. 11–7930. TUAN BUI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–7940. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–7943. LINDSEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–7945. CHAPEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 446 Fed. Appx. 555.

No. 11–7951. QUINTANILLA-GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 612.

No. 11–7953. TUCKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 355.

No. 11–7956. WEBB *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 447 Fed. Appx. 506.

No. 11–7963. TORRES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–7967. LOWE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 447 Fed. Appx. 504.

No. 11–7968. JORDAN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 11–7969. CHAVEZ-BETANCOURT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 447 Fed. Appx. 553.

No. 11–7971. MCGINLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 642.

No. 11–7973. SARR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 178.

No. 11–7974. STEPHEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 824.

No. 11–7977. RODEBAUGH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–7983. OXENHAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 11–7987. HALL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–7989. HERNANDEZ-ORTIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 592.

No. 11–7990. GUZMAN-NAJERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 391.

No. 11–7991. GRIGG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 530.

No. 11–7992. GAYTAN-ESTRADA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 241.

No. 11–7993. GONZALEZ-GALLEGOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 657 F. 3d 811.

No. 11–7998. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–8000. KENDRICK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 647 F. 3d 732.

No. 11–8013. CLARK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 657 F. 3d 578.

No. 11–8018. JOOS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 638 F. 3d 581.

No. 11–8024. VALDEZ-ACOSTA, AKA MANCILLA, AKA LIRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 155.

No. 11–8025. BROOKS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 11–492. LAW OFFICES OF MITCHELL N. KAY, PC *v.* LESHER. C. A. 3d Cir. Motions of Commercial Law League of America, ACA International, and National Association of Retail Collection Attorneys for leave to file briefs as *amici curiae* granted. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 650 F. 3d 993.

No. 11–627. ALABAMA *v.* LANE. Sup. Ct. Ala. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 80 So. 3d 303.

No. 11–630. T. A. *v.* FOREST GROVE SCHOOL DISTRICT. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 638 F. 3d 1234.

No. 11–640. ALFORD *v.* CONSOLIDATED GOVERNMENT OF COLUMBUS, GEORGIA, ET AL. C. A. 11th Cir. Motion of respondents for sanctions denied. Certiorari denied. Reported below: 438 Fed. Appx. 837.

No. 11–672. BOBBY, WARDEN *v.* D'AMBROSIO. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 656 F. 3d 379.

No. 11–7574. DUFOUR *v.* FLORIDA. Sup. Ct. Fla. Motion of American Association on Intellectual and Developmental Disabilities for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 69 So. 3d 235.

No. 11–7949. BROWN *v.* FISHER, WARDEN. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

Rehearing Denied

No. 10–10536. WALKER *v.* HONYAOUMA, *ante*, p. 1057;
No. 10–10755. FORNEY *v.* FLORIDA, *ante*, p. 848;

No. 10–11292. PARRISH *v.* NEVADA, *ante*, p. 877;

No. 11–373. SMITH ET UX. *v.* REGIONS BANK ET AL., *ante*, p. 1060;

No. 11–374. SMITH ET UX. *v.* ATLANTIC SOUTHERN BANK ET AL. (three judgments), *ante*, p. 1060;

No. 11–519. CONWILL *v.* MISSISSIPPI, *ante*, p. 1080;

No. 11–5058. MITCHELL *v.* DALLAS HOUSING AUTHORITY, *ante*, p. 1062;

No. 11–6062. CAREY *v.* ROY, COMMISSIONER, MINNESOTA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 983;

No. 11–6170. HALLFORD *v.* MENDEZ ET AL., *ante*, p. 986;

No. 11–6478. CEDRINS *v.* EXECUTIVE COMMITTEE OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, *ante*, p. 1041;

No. 11–6531. CEDRINS *v.* UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, *ante*, p. 1041;

No. 11–6678. CONCEPCION *v.* FEDERAL BUREAU OF INVESTIGATION ET AL., *ante*, p. 1067;

No. 11–6788. IN RE DECKER-WEGENER, *ante*, p. 1092; and

No. 11–6813. ABULKHAIR *v.* NEW CENTURY FINANCIAL SERVICES, INC., *ante*, p. 1068. Petitions for rehearing denied.

No. 11–5474. MAGASSOUBA *v.* UNITED STATES, *ante*, p. 935. Motion for leave to file petition for rehearing denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion.

No. 11–5587. DREWRY *v.* MAINE, *ante*, p. 915; and

No. 11–5824. POWELL *v.* UNITED STATES, *ante*, p. 922. Motions for leave to file petitions for rehearing denied.

JANUARY 26, 2012

Certiorari Denied

No. 11–8471 (11A698). HERNANDEZ *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 8, 2012

Miscellaneous Order

No. 11A691. KASICH, GOVERNOR OF OHIO, ET AL. *v.* LORRAINE. Application to vacate the stay of execution of sentence of death

entered by the United States District Court for the Southern District of Ohio on January 11, 2012, presented to JUSTICE KAGAN, and by her referred to the Court, denied.

Certiorari Denied

No. 11–8610 (11A734). TURNER *v.* MISSISSIPPI. Sup. Ct. Miss. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied.

No. 11–8705 (11A758). TURNER *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. Reported below: 460 Fed. Appx. 322.

FEBRUARY 14, 2012

Dismissal Under Rule 46

No. 10–1032. MAGNER ET AL. *v.* GALLAGHER ET AL. C. A. 8th Cir. [Certiorari granted, *ante*, p. 1013.] Writ of certiorari dismissed under this Court's Rule 46.1

FEBRUARY 15, 2012

Certiorari Denied

No. 11–8714 (11A761). WATERHOUSE *v.* FLORIDA. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. Reported below: 82 So. 3d 84.

No. 11–8860 (11A785). WATERHOUSE *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, 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.

FEBRUARY 17, 2012

Miscellaneous Orders

No. 11A762. AMERICAN TRADITION PARTNERSHIP, INC., FKA WESTERN TRADITION PARTNERSHIP, INC., ET AL. *v.* BULLOCK,

ATTORNEY GENERAL OF MONTANA, ET AL. Application for stay, presented to JUSTICE KENNEDY, and by him referred to the Court, granted, and the Montana Supreme Court's December 30, 2011, decision in case No. DA 11–0081 is stayed pending the timely filing and disposition of a petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the issuance of the mandate of this Court.

Statement of JUSTICE GINSBURG, with whom JUSTICE BREYER joins, respecting the grant of the application for stay.

Montana's experience, and experience elsewhere since this Court's decision in *Citizens United* v. *Federal Election Comm'n*, 558 U. S. 310 (2010), make it exceedingly difficult to maintain that independent expenditures by corporations "do not give rise to corruption or the appearance of corruption." *Id.*, at 357. A petition for certiorari will give the Court an opportunity to consider whether, in light of the huge sums currently deployed to buy candidates' allegiance, *Citizens United* should continue to hold sway. Because lower courts are bound to follow this Court's decisions until they are withdrawn or modified, however, *Rodriguez de Quijas* v. *Shearson/American Express, Inc.*, 490 U. S. 477, 484 (1989), I vote to grant the stay.

No. 10–1320. BLUEFORD *v.* ARKANSAS. Sup. Ct. Ark. [Certiorari granted, *ante*, p. 941.] Motion of Michigan et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 10–1491. KIOBEL, INDIVIDUALLY AND ON BEHALF OF HER LATE HUSBAND KIOBEL, ET AL. *v.* ROYAL DUTCH PETROLEUM CO. ET AL. C. A. 2d Cir. [Certiorari granted, *ante*, p. 962.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 10–9995. WOOD *v.* MILYARD, WARDEN, ET AL. C. A. 10th Cir. [Certiorari granted, 564 U. S. 1066.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 11–88. MOHAMAD, INDIVIDUALLY AND FOR THE ESTATE OF RAHIM, DECEASED, ET AL. *v.* PALESTINIAN AUTHORITY ET AL.

C. A. D. C. Cir. [Certiorari granted, *ante*, p. 962.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

February 21, 2012

Certiorari Granted—Vacated and Remanded. (See also No. 11–38, *ante*, p. 520; and Nos. 11–391 and 11–394, *ante*, p. 530.)

No. 10–7515. Pineda-Moreno *v.* United States. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States* v. *Jones*, *ante*, p. 400. Reported below: 591 F. 3d 1212.

No. 10–8097. Gagnon *v.* United States. C. A. 1st Cir. Reported below: 621 F. 3d 30;

No. 10–8532. DiTomasso *v.* United States. C. A. 1st Cir. Reported below: 621 F. 3d 17;

No. 10–9385. Curry *v.* United States. C. A. 8th Cir. Reported below: 627 F. 3d 312;

No. 10–10721. Fuller *v.* United States. C. A. 2d Cir. Reported below: 627 F. 3d 499;

No. 11–6241. Mefford *v.* United States. C. A. 8th Cir. Reported below: 417 Fed. Appx. 586; and

No. 11–6500. Lucas *v.* United States. C. A. 8th Cir. Reported below: 419 Fed. Appx. 690. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Reynolds* v. *United States*, *ante*, p. 432.

No. 11–93. Cuevas-Perez *v.* United States. C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States* v. *Jones*, *ante*, p. 400. Reported below: 640 F. 3d 272.

Certiorari Dismissed

No. 11–7605. Oparaji *v.* NE Auto-Marine Terminal 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. Reported below: 437 Fed. Appx. 190.

No. 11–7632. Tate *v.* Tucker, Secretary, Florida Department of Corrections, et al.; and Tate *v.* Davis 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. 11–7633. PERRY *v.* UNIVERSITY OF ALABAMA AT BIRMINGHAM. 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: 442 Fed. Appx. 488.

No. 11–7665. FLORES *v.* HOLDER, ATTORNEY GENERAL. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari before judgment dismissed. See this Court's Rule 39.8.

No. 11–7690. BLACKWELL *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 11–7702. ABULKHAIR *v.* PRUDENTIAL ET AL. Super. Ct. N. J., App. Div. 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. 11–7770. ROBERTSON *v.* CAIN, WARDEN. 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. 11–7801. MAXWELL *v.* TALLEY 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: 419 Fed. Appx. 697.

No. 11–7883. JARVIS *v.* CHASANOW, CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, 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: 448 Fed. Appx. 406.

No. 11–7887. HUNG HA *v.* NEW YORK CITY HOUSING AUTHORITY ET AL. C. A. 9th Cir.; and

No. 11–7888. HUNG HA *v.* TSENG ET AL. C. A. 9th Cir. Motions 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. 11–7957. RICHARDSON *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. 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: 2010–2805 (La. 9/23/11), 70 So. 3d 805.

No. 11–8014. CAMPBELL *v.* GERSTEN, JUDGE, DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT, 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: 394 Fed. Appx. 654.

No. 11–8237. BLACKMER *v.* DEPARTMENT OF JUSTICE. 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. 11–8294. ELLIOTT *v.* APKER, 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)*. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition.

No. 11–8426. DENNIS *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.

Miscellaneous Orders

No. 11M63. PLITT *v.* YATES, WARDEN;

No. 11M64. WILLIAMS *v.* DELIA;

No. 11M69. LEVY *v.* COHEN, CHAIRMAN, BOARD OF REGENTS OF STATE OF NEW YORK, ET AL.;

No. 11M73. COUNCIL ET UX. *v.* NEW YORK CITY SOCIAL SERVICE ET AL.;

No. 11M74. HAZIZ *v.* HOLDER, ATTORNEY GENERAL; and

No. 11M75. TRACY *v.* FRESHWATER ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 11M65. LAHRICHI *v.* LUMERA CORP. ET AL. Motion for leave to file petition for writ of certiorari with the supplemental appendix under seal denied without prejudice to filing a renewed motion together with either a redacted supplemental appendix or an explanation as to why the supplemental appendix may not be redacted within 30 days.

No. 11M66. M. H. *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari with the supplemental appendix under seal granted.

No. 11M67. LATIF *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. Motion for leave to file petition for writ of certiorari under seal granted.

No. 11M68. NORWOOD *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. Motion for leave to proceed as a veteran denied.

No. 11M70. WORTH *v.* MALANCA. Motion for leave to proceed *in forma pauperis* with declaration of indigency under seal denied.

No. 11M71. WAGGONER *v.* KLINE ET AL.; and

No. 11M72. WAGGONER *v.* GOWDY ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time under this Court's Rule 14.5 denied.

No. 126, Orig. KANSAS *v.* NEBRASKA ET AL. Motion of the Special Master for allowance of fees and disbursements granted,

and the Special Master is awarded a total of $70,884.97 for the period April 4 through December 31, 2011, to be allocated among the States as follows: Kansas $28,353.99; Nebraska $28,353.99; and Colorado $14,176.99. [For earlier order herein, see, *e. g.*, 563 U. S. 915.]

No. 11–393. National Federation of Independent Business et al. *v.* Sebelius, Secretary of Health and Human Services, et al.;

No. 11–398. Department of Health and Human Services et al. *v.* Florida et al.; and

No. 11–400. Florida et al. *v.* Department of Health and Human Services et al. C. A. 11th Cir. [Certiorari granted, *ante*, pp. 1033 and 1034.] Upon consideration of motions pertaining to allocation of oral argument time, the following allocation of oral argument time is adopted. On the Anti-Injunction Act issue (No. 11–398), the Court-appointed *amicus curiae* is allotted 40 minutes, the Solicitor General is allotted 30 minutes, and respondents are allotted 20 minutes. On the minimum coverage provision issue (No. 11–398), the Solicitor General is allotted 60 minutes, respondents Florida et al. are allotted 30 minutes, and respondents National Federation of Independent Business et al. are allotted 30 minutes. On the severability issue (Nos. 11–393 and 11–400), petitioners are allotted 30 minutes, the Solicitor General is allotted 30 minutes, and the Court-appointed *amicus curiae* is allotted 30 minutes. On the Medicaid issue (No. 11–400), petitioners are allotted 30 minutes, and the Solicitor General is allotted 30 minutes.

No. 11–394. Clarksburg Nursing Home & Rehabilitation Center, LLC, dba Clarksburg Continuous Care Center, et al. *v.* Marchio, Executrix of the Estate of Willett, *ante*, p. 530. Motions of American Health Care Association, Beverly Enterprises-West Virginia, Inc., et al., and Seventeenth Street Associates LLC for leave to file briefs as *amici curiae* granted.

No. 11–431. Rubin *v.* Islamic Republic of Iran et al. C. A. 7th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States. Justice Scalia and Justice Kagan took no part in the consideration or decision of this petition.

No. 11–556. VANCE *v.* BALL STATE UNIVERSITY ET AL. C. A. 7th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 11–6460. WASHINGTON ET VIR *v.* LOUISIANA ET AL. C. A. 5th Cir. Motion of petitioners for reconsideration of order denying leave to proceed *in forma pauperis* granted, and the order entered November 28, 2011, [*ante*, p. 1056] is vacated.

No. 11–6617. BUTLER *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1051] denied.

No. 11–6648. ZABRISKIE *v.* 7–11, INC., ET AL. C. A. 11th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1077] denied.

No. 11–6706. DOWNS *v.* URIBE, WARDEN. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1077] denied.

No. 11–6814. ABULKHAIR *v.* BANKS. Super. Ct. N. J., App. Div. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1090] denied.

No. 11–7091. IN RE MIERZWA. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1109] denied.

No. 11–7185. FAIREY *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir.;

No. 11–7878. THOMAS *v.* TEXAS. Ct. App. Tex., 14th Dist.;

No. 11–7921. PAUL *v.* SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION ET AL.; and PAUL *v.* BUCKLES ET AL. Ct. App. S. C.;

No. 11–7975. SAVARIRAYAN *v.* WHITE COUNTY COMMUNITY HOSPITAL ET AL. C. A. 6th Cir.;

No. 11–8161. RAY *v.* NASH ET AL. C. A. 5th Cir.;

No. 11–8242. ROBINSON *v.* DONAHOE, POSTMASTER GENERAL. C. A. 4th Cir.; and

No. 11–8430. WRIGHT *v.* UNITED STATES. C. A. 7th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied.

Petitioners are allowed until March 13, 2012, 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. 11–7857. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner to expedite consideration of petition for writ of certiorari denied.

No. 11–8160. IN RE BROWN;
No. 11–8187. IN RE ATHERTON;
No. 11–8225. IN RE TABATABAEE;
No. 11–8230. IN RE SINGLETON;
No. 11–8517. IN RE OSTRANDER; and
No. 11–8553. IN RE BOURGEOIS. Petitions for writs of habeas corpus denied.

No. 11–695. IN RE PEARL;
No. 11–896. IN RE MARCUM LLP;
No. 11–7994. IN RE SHRADER; and
No. 11–8071. IN RE BAUGUS. Petitions for writs of mandamus denied.

No. 11–781. IN RE GOVER. Petition for writ of mandamus denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 11–7713. IN RE BROWN. Petition for writ of mandamus and/or prohibition denied.

No. 11–733. IN RE HAAGENSEN. Petition for writ of prohibition denied.

Certiorari Granted

No. 11–345. FISHER *v.* UNIVERSITY OF TEXAS AT AUSTIN ET AL. C. A. 5th Cir. Certiorari granted. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 631 F. 3d 213.

No. 11–626. LOZMAN *v.* CITY OF RIVIERA BEACH, FLORIDA. C. A. 11th Cir. Motion of Maritime Law Association of the United States for leave to file a brief as *amicus curiae* granted. Certiorari granted. Reported below: 649 F. 3d 1259.

Certiorari Denied

No. 11–278. CANNELLA *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 61 So. 3d 1115.

No. 11–297. BAUMANN *v.* FINISH LINE, INC. C. A. 7th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 632.

No. 11–311. E. R. G. ET AL. *v.* E. H. G. ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 73 So. 3d 634.

No. 11–430. BOGAN *v.* CITY OF CHICAGO, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 644 F. 3d 563.

No. 11–491. FLORIDA *v.* ISAAC. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 911 So. 2d 813.

No. 11–529. DONAHEE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 11–539. PENINSULA SCHOOL DISTRICT ET AL. *v.* PAYNE, INDIVIDUALLY AND AS GUARDIAN ON BEHALF OF D. P., A MINOR CHILD. C. A. 9th Cir. Certiorari denied. Reported below: 653 F. 3d 863.

No. 11–543. PHILLIS *v.* HARRISBURG SCHOOL DISTRICT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 430 Fed. Appx. 118.

No. 11–548. SUN TOURS, INC., DBA HOBBIT TRAVEL, ET AL. *v.* ITALIA FOODS, INC. Sup. Ct. Ill. Certiorari denied. Reported below: 2011 IL 110350, 986 N. E. 2d 55.

No. 11–549. HYNIX SEMICONDUCTOR INC. ET AL. *v.* RAMBUS INC. C. A. Fed. Cir. Certiorari denied. Reported below: 645 F. 3d 1336.

No. 11–562. STERN *v.* STERN. C. A. 8th Cir. Certiorari denied. Reported below: 639 F. 3d 449.

No. 11–566. MARTINEZ *v.* CALDWELL, ATTORNEY GENERAL OF LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 644 F. 3d 238.

No. 11–570. BLUE GORDON, C. V. *v.* QUICKSILVER JET SALES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 1.

No. 11–577. COVELL ET UX., PLENARY GUARDIANS OF COVELL *v.* BELL SPORTS, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 651 F. 3d 357.

No. 11–584. Eastman Chemical Co. *v.* Wellman, Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 642 F. 3d 1355.

No. 11–596. Janssen Biotech, Inc., fka Centocor Ortho Biotech, Inc., et al. *v.* Abbott Laboratories et al. C. A. Fed. Cir. Certiorari denied. Reported below: 636 F. 3d 1341.

No. 11–598. Dellinger *v.* Science Applications International Corp. C. A. 4th Cir. Certiorari denied. Reported below: 649 F. 3d 226.

No. 11–600. Moncier *v.* Board of Professional Responsibility of the Supreme Court of Tennessee (three judgments). Sup. Ct. Tenn. Certiorari denied.

No. 11–610. Williams *v.* Sandel et al.; and
No. 11–736. Sandel et al. *v.* Williams. C. A. 6th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 353.

No. 11–616. City of St. Louis, Missouri, et al. *v.* Neighborhood Enterprises, Inc., et al. C. A. 8th Cir. Certiorari denied. Reported below: 644 F. 3d 728.

No. 11–642. Nelson *v.* Village of Lisle, Illinois, et al. C. A. 7th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 490.

No. 11–643. Doe *v.* Megless et al. C. A. 3d Cir. Certiorari denied. Reported below: 654 F. 3d 404.

No. 11–646. Leeper *v.* Cooper. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–647. Wells Fargo Bank, Minnesota, N. A., et al. *v.* Kentucky Department of Revenue, Finance and Administration Cabinet, fka Revenue Cabinet. Sup. Ct. Ky. Certiorari denied. Reported below: 345 S. W. 3d 800.

No. 11–651. Reniff, Sheriff, Butte County, California *v.* Hrdlicka et al.; and
No. 11–653. McGinness, Sheriff, Sacramento County, California *v.* Crime, Justice & America, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 631 F. 3d 1044.

No. 11–654. NANTES ET AL. *v.* NEW LONDON COUNTY MUTUAL INSURANCE CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 517.

No. 11–661. MAI-TRANG THI NGUYEN *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 11–664. FULTON *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–666. POLICASTRO *v.* TENAFLY BOARD OF EDUCATION ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 438 Fed. Appx. 153.

No. 11–671. SHIMSHI *v.* SELPH. Ct. App. Ga. Certiorari denied.

No. 11–675. J. C. *v.* A. C. ET AL. Super. Ct. Pa. Certiorari denied.

No. 11–682. GOECKS *v.* PEDLEY. C. A. 7th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 505.

No. 11–687. CALLAHAN *v.* 515 DC, LLC, ET AL. Ct. App. D. C. Certiorari denied. Reported below: 24 A. 3d 665.

No. 11–688. CROWLEY *v.* UNITED STATES ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 647 F. 3d 1370.

No. 11–689. LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES ET AL. *v.* FULMER. Sup. Ct. La. Certiorari denied. Reported below: 2010–2779 (La. 7/1/11), 68 So. 3d 499.

No. 11–699. LOWRY ET AL. *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 211 N. C. App. 198, 711 S. E. 2d 876.

No. 11–701. GUSTAFSON *v.* ESTATE OF POITRA ET AL. Sup. Ct. N. D. Certiorari denied. Reported below: 2011 ND 150, 800 N. W. 2d 842.

No. 11–703. CROWLEY *v.* PINEBROOK, INC. C. A. 4th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 232.

No. 11–706. Curry, dba Interstate News & Tobacco *v.* City of Richmond, Kentucky. Ct. App. Ky. Certiorari denied.

No. 11–709. Kline *v.* Kline. C. A. 9th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 676.

No. 11–720. Diana *v.* Oliphant et al. C. A. 3d Cir. Certiorari denied. Reported below: 441 Fed. Appx. 76.

No. 11–722. Britton, Administrator of the Estate of Brennan *v.* Church of Scientology Flag Service Organization, Inc. C. A. 11th Cir. Certiorari denied. Reported below: 645 F. 3d 1267.

No. 11–723. Arnold *v.* City of Columbus, Georgia, et al. C. A. 11th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 892.

No. 11–724. Bates *v.* Warren, Warden. C. A. 6th Cir. Certiorari denied.

No. 11–728. Aerolease of America, Inc. *v.* Vreeland, Administrator ad Litem for the Estate of Martinez et al. Sup. Ct. Fla. Certiorari denied. Reported below: 71 So. 3d 70.

No. 11–729. Ute Mountain Ute Tribe *v.* Padilla, Secretary, New Mexico Taxation and Revenue Department. C. A. 10th Cir. Certiorari denied. Reported below: 660 F. 3d 1177.

No. 11–731. Coscia, Administratrix of the Estate of Coscia *v.* Town of Pembroke, Massachusetts, et al. C. A. 1st Cir. Certiorari denied. Reported below: 659 F. 3d 37.

No. 11–732. N & D Investment Corp. et al. *v.* Galdames et al. C. A. 11th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 801.

No. 11–735. Thompson *v.* Georgia. Ct. App. Ga. Certiorari denied. Reported below: 310 Ga. App. XXIII.

No. 11–737. Riverside County, California *v.* California Public Employment Relations Board et al. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 11–739. DAMANEH *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–742. TROYANOS, PERSONAL REPRESENTATIVE OF THE ESTATE OF TROYANOS *v.* COATS, SHERIFF, PINELLAS COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 372 Fed. Appx. 932.

No. 11–743. FISCHER *v.* GLOBAL CONNECTOR RESEARCH, INC. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 11–745. IGARASHI *v.* SKULL AND BONES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 438 Fed. Appx. 58.

No. 11–746. CITY OF ARLINGTON, TEXAS *v.* FRAME ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 657 F. 3d 215.

No. 11–751. BIN-JIANG TAO *v.* CITIBANK, N. A., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 951.

No. 11–759. C. F. *v.* CORBETT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 654 F. 3d 975.

No. 11–760. CITY OF REDONDO BEACH, CALIFORNIA *v.* COMITE DE JORNALEROS DE REDONDO BEACH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 657 F. 3d 936.

No. 11–761. SPECTOR *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 194 Cal. App. 4th 1335, 128 Cal. Rptr. 3d 31.

No. 11–765. JOVANOVIC *v.* NORTHROP GRUMMAN CORP. C. A. 3d Cir. Certiorari denied. Reported below: 437 Fed. Appx. 151.

No. 11–766. KOSTRZEWSKI *v.* TOLEDO CLINIC ET AL. Ct. App. Ohio, Lucas County. Certiorari denied.

No. 11–767. MORGAN *v.* WEBSTER UNIVERSITY, INC., DBA WEBSTER UNIVERSITY. C. A. 5th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 365.

No. 11–768. MEHDI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 426 Fed. Appx. 35.

No. 11–769. BATES *v.* METRISH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–771. Dorsey *v.* Government of the District of Columbia et al. C. A. D. C. Cir. Certiorari denied.

No. 11–772. Greenberg Traurig, L. L. P., et al. *v.* Conwill. C. A. 5th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 434.

No. 11–774. Gyamfi *v.* Wells Fargo-Wachovia Bank et al. C. A. 4th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 658.

No. 11–776. Kastner *v.* Chet's Shoes, Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 449 Fed. Appx. 37.

No. 11–778. Gillis *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–779. Firishchak *v.* Holder, Attorney General. C. A. 7th Cir. Certiorari denied. Reported below: 636 F. 3d 305.

No. 11–785. Allen *v.* Warren, Administrator, New Jersey State Prison, et al. C. A. 3d Cir. Certiorari denied.

No. 11–790. Kirby *v.* King, Attorney General of New Mexico, et al. C. A. 10th Cir. Certiorari denied.

No. 11–792. Lothian Cassidy, L. L. C., et al. *v.* Lothian Oil Inc. et al. C. A. 5th Cir. Certiorari denied. Reported below: 650 F. 3d 539.

No. 11–794. Hawthorne-Burdine *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 24 A. 3d 464.

No. 11–795. Tomlinson, Individually and on Behalf of All Others Similarly Situated, et al. *v.* El Paso Corp. et al. C. A. 10th Cir. Certiorari denied. Reported below: 653 F. 3d 1281.

No. 11–802. Sizemore *v.* Ohio Veterinary Medical Licensing Board et al. Ct. App. Ohio, Franklin County. Certiorari denied. Reported below: 2011-Ohio-2273.

No. 11–803. VanCook *v.* Securities and Exchange Commission. C. A. 2d Cir. Certiorari denied. Reported below: 653 F. 3d 130.

No. 11–808. SHINER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 636 F. 3d 1315.

No. 11–809. AHAMED *v.* HOLDER, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 873.

No. 11–816. GETZ ET AL. *v.* BOEING CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 654 F. 3d 852.

No. 11–818. HO *v.* MOTOROLA, INC. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 406 Ill. App. 3d 1204, 998 N. E. 2d 713.

No. 11–819. CICHON *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 408 Ill. App. 3d 1020, 945 N. E. 2d 140.

No. 11–822. CLARK *v.* IOWA STATE UNIVERSITY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 643 F. 3d 643.

No. 11–826. HUGGANS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 650 F. 3d 1210.

No. 11–827. EDWARDS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 625.

No. 11–828. CENTER FOR BIO-ETHICAL REFORM, INC., ET AL. *v.* NAPOLITANO, SECRETARY OF HOMELAND SECURITY, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 648 F. 3d 365.

No. 11–830. ARNOLD *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2011 Ark. 395, 384 S. W. 3d 488.

No. 11–835. DEVONIAN PROGRAM ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied. Reported below: 453 Fed. Appx. 183.

No. 11–849. FLENORY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–850. FALLICA ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 413 Fed. Appx. 402.

No. 11–859. EPPS *v.* FEDEX SERVICES. C. A. 6th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 455.

No. 11–866. DOUTRE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–873. STUCKY *v.* HAWAII DEPARTMENT OF EDUCATION ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–874. SPENCER AD HOC EQUITY COMMITTEE *v.* IDEARC, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 662 F. 3d 315.

No. 11–878. JACKSON *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 651 F. 3d 923.

No. 11–899. CRAWFORD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 11–902. CLIFFORD *v.* VILSACK, SECRETARY OF AGRICULTURE, ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–907. PORCHAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 651 F. 3d 930.

No. 11–911. HULS *v.* LLABONA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 830.

No. 11–5395. NICKERSON *v.* MOONEYHAM ET AL. C. A. 5th Cir. Certiorari denied.

No. 11–5987. FLOYD *v.* CAIN, WARDEN. Crim. Dist. Ct. La., Orleans Parish. Certiorari denied.

No. 11–6306. BRANT-EPIGMELIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 429 Fed. Appx. 860.

No. 11–6422. TAM FUK YUK ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 794.

No. 11–6501. MITCHELL *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 641 F. 3d 134.

No. 11–6550. PUCKETT *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 641 F. 3d 657.

No. 11–6566. Bernadeu *v.* Tucker, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 823.

No. 11–6587. Day *v.* Minnesota et al. Ct. App. Minn. Certiorari denied.

No. 11–6639. Durham *v.* United States; and
No. 11–6641. Collins *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 645 F. 3d 883.

No. 11–6696. In re Grand Jury Proceedings. C. A. 1st Cir. Certiorari denied. Reported below: 640 F. 3d 385.

No. 11–6765. Booker et al. *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 644 F. 3d 12.

No. 11–6811. Satchell *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 11–6863. Reid *v.* Wyatt et al. Sup. Ct. Va. Certiorari denied.

No. 11–6932. Crabbe *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 424 Fed. Appx. 782.

No. 11–6958. Moore *v.* Ohio. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 2010-Ohio-1569.

No. 11–6979. Haxhia *v.* New York. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 81 App. Div. 3d 414, 915 N. Y. S. 2d 557.

No. 11–7013. Vines *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 51 Cal. 4th 830, 251 P. 3d 943.

No. 11–7081. Cook *v.* Hubin et al. Ct. App. D. C. Certiorari denied. Reported below: 16 A. 3d 973.

No. 11–7214. Enriquez *v.* Livingston, Executive Director, Texas Department of Criminal Justice, et al. C. A. 5th Cir. Certiorari denied. Reported below: 427 Fed. Appx. 305.

No. 11–7274. Phillips *v.* North Carolina. Sup. Ct. N. C. Certiorari denied. Reported below: 365 N. C. 103, 711 S. E. 2d 122.

No. 11–7305. RICHARDSON *v.* GRAY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 176.

No. 11–7512. RIPKOWSKI *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 296.

No. 11–7517. BYRD *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 78 So. 3d 445.

No. 11–7536. NEWTON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 78 So. 3d 458.

No. 11–7547. WORTHINGTON *v.* WASHINGTON STATE ATTORNEY GENERAL'S OFFICE ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–7556. YBARRA *v.* CLARK, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–7560. SAUNDERS-EL *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 11–7562. SMITH *v.* BYARS, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 944.

No. 11–7567. SPEAKER *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 11–7568. RIVERA *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–7578. EDWARDS *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 11–7579. DEBOSE *v.* WILLIAMS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 423 Fed. Appx. 472.

No. 11–7580. CATCHINGS *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 39 So. 3d 943.

No. 11–7583. BELL *v.* DAVIS, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 11–7585. BURNETT *v.* JONES, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 736.

No. 11–7586. COATES *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 198 Md. App. 742.

No. 11–7587. KERSEY *v.* BECTON DICKENSON & CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 433 Fed. Appx. 105.

No. 11–7609. TRIMUAR *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 11–7610. BROWN *v.* COLLINS ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–7612. BARKLEY *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 11–7618. STREBE *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 235.

No. 11–7619. RUSSELL *v.* BYARS, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 222.

No. 11–7621. TOLDEN *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 579.

No. 11–7626. PAULINO *v.* BURLINGTON COUNTY JAIL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 438 Fed. Appx. 106.

No. 11–7627. TERRY *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 394 S. C. 62, 714 S. E. 2d 326.

No. 11–7636. BRANCH *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 335 S. W. 3d 893 and 361 S. W. 3d 699.

No. 11–7637. BRYSON *v.* OCWEN FEDERAL BANK, FSB. C. A. 4th Cir. Certiorari denied. Reported below: 413 Fed. Appx. 624.

No. 11–7645. Smith *v.* United States District Court for the Central District of Illinois. C. A. 7th Cir. Certiorari denied.

No. 11–7646. Maynor *v.* Turner, Warden. C. A. 6th Cir. Certiorari denied.

No. 11–7647. Larios Sanchez *v.* Herndon, Warden. C. A. 9th Cir. Certiorari denied.

No. 11–7651. Renteria *v.* Subia, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 615.

No. 11–7654. Quarterman *v.* Cullum. Ct. App. Ga. Certiorari denied.

No. 11–7657. Druery *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 647 F. 3d 535.

No. 11–7659. Banks *v.* Louisiana Department of Corrections et al. C. A. 5th Cir. Certiorari denied.

No. 11–7661. Brothers *v.* Tucker, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 11–7662. Burkley *v.* California. C. A. 9th Cir. Certiorari denied.

No. 11–7664. Pietri *v.* Tucker, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 641 F. 3d 1276.

No. 11–7666. Carter *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 11–7667. K. K. *v.* Ohio. Ct. App. Ohio, Fairfield County. Certiorari denied. Reported below: 192 Ohio. App. 3d 650, 2011-Ohio-192, 950 N. E. 2d 198.

No. 11–7674. Gomes Mendes *v.* Brady, Superintendent, Old Colony Correctional Center. C. A. 1st Cir. Certiorari denied. Reported below: 656 F. 3d 126.

No. 11–7675. Goodwin *v.* Roper, Superintendent, Potosi Correctional Center. C. A. 8th Cir. Certiorari denied.

No. 11–7677. MULLINGS *v.* LEE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 11–7678. JOHNSON *v.* WOODS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7687. WELLS *v.* JONES, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 193.

No. 11–7691. AKUMA *v.* CEDAR HILL INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 336.

No. 11–7692. AKINE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 71 So. 3d 116.

No. 11–7695. THOMPSON *v.* LEMPKE, SUPERINTENDENT, FIVE POINTS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 11–7696. KILBURN *v.* SPENCER, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION, ET AL. C. A. 1st Cir. Certiorari denied.

No. 11–7698. BAYLOR *v.* RENICO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7701. MCCLUSKEY *v.* NEW YORK STATE UNIFIED COURT SYSTEM ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 442 Fed. Appx. 586.

No. 11–7706. CARTER *v.* BANK OF AMERICA ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 11–7717. JONES *v.* MAZDA NORTH AMERICAN OPERATIONS. C. A. 5th Cir. Certiorari denied.

No. 11–7718. PLEASANT-BEY *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied.

No. 11–7719. PINKEY *v.* ZAVISLAN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 610.

No. 11–7722. RIVERS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–7723. JACKSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 12 A. 3d 1171.

No. 11–7724. SKINNER *v.* OKLAHOMA ET AL. Ct. Crim. App. Okla. Certiorari denied.

No. 11–7725. ROJAS *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 126 Conn. App. 352, 15 A. 3d 632.

No. 11–7726. WHITFIELD *v.* NEW YORK. Sup. Ct. N. Y., Kings County. Certiorari denied.

No. 11–7730. MACHETTE *v.* PHELPS, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–7733. ROBERTS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 407 Ill. App. 3d 1188, 998 N. E. 2d 983.

No. 11–7735. WILBON *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied.

No. 11–7741. BLACKSHER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 52 Cal. 4th 769, 259 P. 3d 370.

No. 11–7743. BYNOE *v.* PALMER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–7744. SELSOR *v.* WORKMAN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 644 F. 3d 984.

No. 11–7754. SOUTHWARD *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7758. CORONA *v.* ALMAGER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 672.

No. 11–7765. MCKINNEY *v.* LUDWICK, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 649 F. 3d 484.

No. 11–7766. LANCASTER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–7767. THOMAS ET AL. *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 308 Ga. App. 309, 707 S. E. 2d 870.

No. 11–7768. MATTHEWS *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 11–7771. RICHARDSON *v.* BARONE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FOREST, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–7774. CHACON *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–7775. CAUSEY *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–7776. CERVANTES *v.* MCEWAN, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 446 Fed. Appx. 927.

No. 11–7777. RIDDICK *v.* MILIOTIS ET AL. C. A. 1st Cir. Certiorari denied.

No. 11–7781. BISHOP *v.* FRANKLIN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 234.

No. 11–7782. BLAIR *v.* CRAWFORD. C. A. 9th Cir. Certiorari denied.

No. 11–7783. ALLEN *v.* HOWES, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 432.

No. 11–7789. JAMES *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 79 Mass. App. 1124, 948 N. E. 2d 917.

No. 11–7797. DURR *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 360 Fed. Appx. 37.

No. 11–7800. MANIGAULTE *v.* BOARD OF REGENTS OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied.

No. 11–7805. MILLER *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 11–7806. ORRANTE *v.* HENRY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–7807. MARLIN *v.* ROBERTS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 11–7815. HERNANDEZ *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 408 Fed. Appx. 316.

No. 11–7816. JONES *v.* DAVIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7817. METTLE *v.* METTLE. Ct. App. Wash. Certiorari denied.

No. 11–7821. GARNER *v.* MAYLE. C. A. 9th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 645.

No. 11–7822. GRIM *v.* NEVADA ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–7824. METTLE *v.* METTLE. Ct. App. Wash. Certiorari denied. Reported below: 160 Wash. App. 1041.

No. 11–7826. GONZALES SAMAYOA *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 649 F. 3d 919.

No. 11–7829. GUPTA *v.* HOLDER, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 858.

No. 11–7830. FERRIS *v.* BAUMAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7831. WRIGHT *v.* MARSHALL. C. A. 1st Cir. Certiorari denied. Reported below: 656 F. 3d 102.

No. 11–7832. BOLMER *v.* DEKEYSER ET AL. C. A. 2d Cir. Certiorari denied.

No. 11–7833. BUTCHER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 26 A. 3d 1195.

No. 11–7847. TORRES *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 11–7848. TULLY *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 713.

No. 11–7851. McKinley *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 11–7852. Watson *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 11–7853. Watson *v.* Kelley Fleet Services, LLC. C. A. 11th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 790.

No. 11–7855. Blythe *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 11–7858. Marcelus *v.* Kilmer, Superintendent, Oregon State Correctional Institution. C. A. 9th Cir. Certiorari denied.

No. 11–7863. Rodriguez *v.* California. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 11–7865. Dawes-Lloyd *v.* Publish America. C. A. 3d Cir. Certiorari denied. Reported below: 441 Fed. Appx. 956.

No. 11–7867. Thomas *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 52 Cal. 4th 336, 256 P. 3d 603.

No. 11–7868. Hill *v.* Hill. Ct. App. Ind. Certiorari denied. Reported below: 937 N. E. 2d 436.

No. 11–7869. Fowler *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 405 Ill. App. 3d 1197, 997 N. E. 2d 1008.

No. 11–7875. Flores *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 11–7876. Glaser *v.* Colorado. Ct. App. Colo. Certiorari denied. Reported below: 250 P. 3d 632.

No. 11–7880. White *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 127 Nev. 1185, 373 P. 3d 973.

No. 11–7881. Vig *v.* Seeliger, Judge, Superior Court of Georgia, Stone Mountain Judicial Circuit. Sup. Ct. Ga. Certiorari denied.

No. 11–7884. ATKINS, ADMINISTRATOR OF THE ESTATE OF ATKINS, DECEASED *v.* CITY OF CHICAGO, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 631 F. 3d 823.

No. 11–7885. GREENMAN *v.* POLK ET AL. C. A. 7th Cir. Certiorari denied.

No. 11–7886. GREENE *v.* STANCIL. C. A. 4th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 220.

No. 11–7889. HELTON *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 11–7891. GIDDINGS *v.* BROWN, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 11–7892. GARBER *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–7893. GARNER *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7895. JACKSON *v.* LOS ANGELES UNIFIED SCHOOL DISTRICT ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–7901. GONZALEZ *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7902. GZIKOWSKI *v.* DEXTER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 675.

No. 11–7903. HAYNES *v.* SISTO, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–7904. GUZMAN *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 11–7908. BROWN *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7911. BURKE *v.* VERMONT. Sup. Ct. Vt. Certiorari denied. Reported below: 190 Vt. 660, 37 A. 3d 131.

No. 11–7914. TURNER *v.* NIXON ET AL. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 344 S. W. 3d 743.

No. 11–7916. TEAR *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 111.

No. 11–7917. BELTRAN *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 402 Ill. App. 3d 1200, 1 N. E. 3d 125.

No. 11–7920. CARD *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 11–7922. LACROIX *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA; and LACROIX *v.* GREEN MOUNTAIN FINANCIAL FUND LLC. C. A. 7th Cir. Certiorari denied.

No. 11–7923. SHAVERS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 409 Ill. App. 3d 1158, 2 N. E. 3d 665.

No. 11–7926. BRUGGEMAN *v.* MOHR, DIRECTOR, OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–7927. BARR-CARR *v.* LASALLE TALMAN HOME MORTGAGE CORP. ET AL. C. A. 7th Cir. Certiorari denied.

No. 11–7931. BARKLEY *v.* ORTIZ ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–7933. ORDWAY *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 352 S. W. 3d 584.

No. 11–7936. MUNIZ *v.* MCKEE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 647 F. 3d 619.

No. 11–7938. JOHNSON *v.* INDIANA. Ct. App. Ind. Certiorari denied.

No. 11–7939. CEJA *v.* MCEWEN, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 563.

No. 11–7942. MAKBOUL *v.* KNOWLES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–7944. CHAPMAN *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 480.

No. 11–7946. BLACKMON *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 67 So. 3d 207.

No. 11–7947. BYNUM *v.* CITY OF CHARLOTTE SANITATION DEPARTMENT; BYNUM *v.* BARTON SECURITY; BYNUM *v.* MECKLENBURG COUNTY SCHOOL; and BYNUM *v.* CHARLOTTE HOUSING AUTHORITY. C. A. 11th Cir. Certiorari denied.

No. 11–7948. BATISTE *v.* SMALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–7950. VELASCO HERNANDEZ *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 11–7952. PRICE *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 45 Kan. App. 2d xxix, 252 P. 3d 647.

No. 11–7955. WISHNEFSKY *v.* SALAMEH. C. A. 3d Cir. Certiorari denied. Reported below: 445 Fed. Appx. 545.

No. 11–7958. SEABROOKS *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7959. LOPEZ RAMIREZ *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 77 So. 3d 192.

No. 11–7960. SING *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 282 Neb. xxi.

No. 11–7961. STUKES *v.* BICKELL, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–7962. TOLENTINO *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 409 Ill. App. 3d 598, 949 N. E. 2d 1167.

No. 11–7964. WIGGINS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 11–7965. WATSON *v.* MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 11–7966. JOHNSON *v.* YKK AP AMERICA INC. C. A. 11th Cir. Certiorari denied.

No. 11–7976. MORCELI *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–7980. TOLIVER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 407 Ill. App. 3d 1189, 998 N. E. 2d 983.

No. 11–7981. HERRERA-AGUIRRE *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 11–7984. PORTILLO *v.* COMMISSION ON PROFESSIONAL COMPETENCE ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–7985. WILES *v.* BYARS, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 827.

No. 11–7986. PRICE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 427 Fed. Appx. 16.

No. 11–7995. MOORE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–7996. MORRIS *v.* SHELDON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–7997. PLANES *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–8001. WATKINS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 11–8002. JACOBS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 23 A. 3d 570.

No. 11–8004. MERRITT *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–8006. MEANS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 852.

No. 11–8007. SHREVE *v.* FETTER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 150.

No. 11–8008. SINGH *v.* CITY OF NEW YORK HOUSING PRESERVATION AND DEVELOPMENT DEPARTMENT. C. A. 2d Cir. Certiorari denied.

No. 11–8009. THOMPSON *v.* STURGIS. Ct. App. Tenn. Certiorari denied. Reported below: 415 S. W. 3d 843.

No. 11–8010. STINE *v.* DAVIS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 405.

No. 11–8011. SERRANO REYES *v.* SUBIA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–8012. CRUZ *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 713.

No. 11–8015. BROWN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 11–8017. KIM *v.* STAHMAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 453 Fed. Appx. 757.

No. 11–8019. MCGINNIS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 11–8020. COLON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 434 Fed. Appx. 88.

No. 11–8021. DENNIS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 11–8022. WALKER *v.* KANE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–8027. SHAW *v.* KIRKLAND, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 460 Fed. Appx. 699.

No. 11–8029. MORGAN *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2011 Ark. 377.

No. 11–8032. ANDERSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–8038. DIAZ-DEVIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 764.

No. 11–8039. CARTER *v.* GONZALEZ, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–8041. SIEGLER *v.* OHIO STATE UNIVERSITY. Ct. App. Ohio, Franklin County. Certiorari denied. Reported below: 2011-Ohio-2485.

No. 11–8043. RICHARDSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 441 Fed. Appx. 31.

No. 11–8044. SHIELDS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 649 F. 3d 78.

No. 11–8045. SANTACRUZ-DE LA O, AKA OLAGUEZ, AKA SANTA CRUZ-DELAO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 913.

No. 11–8046. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 656 F. 3d 821.

No. 11–8048. ROBLES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 736.

No. 11–8050. WARD *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied.

No. 11–8054. BLYDEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 431 Fed. Appx. 133.

No. 11–8056. MYERS ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 812.

No. 11–8058. BARRAZA-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 659 F. 3d 1216 and 450 Fed. Appx. 676.

No. 11–8059. BLANKS *v.* BOOKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–8060. BROWNING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 369.

No. 11–8061. ARMSTRONG *v.* SMALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–8070. HERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 870.

No. 11–8072. BAILEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–8073. BLAIZE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 21 A. 3d 78.

No. 11–8075. LITTLE *v.* DONAHOE, POSTMASTER GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 250.

No. 11–8077. ORTIZ LAZARO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 319.

No. 11–8078. OSORIO-REYES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 690.

No. 11–8079. MOREJON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 795.

No. 11–8082. TAGGART *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–8083. KNAPPER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 445 Fed. Appx. 522.

No. 11–8087. MCKINNEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 445 Fed. Appx. 605.

No. 11–8088. LABOY-VEGA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–8092. PUGH *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 17 A. 3d 1197.

No. 11–8098. STEWART *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 406 Ill. App. 3d 1210, 998 N. E. 2d 716.

No. 11–8099. SHAW *v.* WEBER, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 11–8104. BARRAZA, AKA SAAVEDRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 655 F. 3d 375.

No. 11–8107. SHAYKIN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 11–8114. TUCKER *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 408 Ill. App. 3d 1135, 1 N. E. 3d 669.

No. 11–8116. ALSTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 447 Fed. Appx. 498.

No. 11–8118. BARRY *v.* STATE BAR OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 11–8120. LONEBEAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 451 Fed. Appx. 710.

No. 11–8124. KERR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 446 Fed. Appx. 558.

No. 11–8125. RODRIGUEZ-RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 663 F. 3d 53.

No. 11–8127. MELCER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 712.

No. 11–8130. COLLAZO-CASTRO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 660 F. 3d 516.

No. 11–8132. THOMPSON *v.* MILYARD, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 249.

No. 11–8136. ROSS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 536.

No. 11–8140. HUERTA-ORTEGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 953.

No. 11–8141. MORRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–8144. LINNGREN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 652 F. 3d 868.

No. 11–8147. WARD *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 292 Kan. 541, 256 P. 3d 801.

No. 11–8155. NASH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 282.

No. 11–8156. GEER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 838.

No. 11–8159. BINGHAM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 653 F. 3d 983.

No. 11–8166. DELGADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 421 Fed. Appx. 393.

No. 11–8167. VELLEFF *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 11–8169. ROBINSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 605 F. 3d 985.

No. 11–8171. RAMIREZ-GUERRA, AKA GUERRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 893.

No. 11–8179. PALMA *v.* HARRIS COUNTY APPRAISAL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 498.

No. 11–8181. DEGRANGE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–8182. MENDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 739.

No. 11–8185. VALLEJO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 481.

No. 11–8186. ACEVEDO *v.* SHARTLE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–8188. MURPHY *v.* KING, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 652 F. 3d 845.

No. 11–8189. RED STAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 451 Fed. Appx. 708.

No. 11–8190. Rodriguez-Barrera *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 11–8193. Klynsma *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 11–8198. Smith *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 437 Fed. Appx. 110.

No. 11–8199. Stallworth *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 656 F. 3d 721.

No. 11–8202. Chanley *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 936.

No. 11–8208. Kasprowicz *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 447 Fed. Appx. 817.

No. 11–8210. James *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 48.

No. 11–8211. Jeep *v.* Obama, President of the United States, et al. C. A. 8th Cir. Certiorari denied.

No. 11–8212. Baker *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 416 Fed. Appx. 299.

No. 11–8215. Bowling *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 72.

No. 11–8217. Taylor *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 11–8218. Ortiz-Ortiz *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 732.

No. 11–8222. Jackson *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 434.

No. 11–8223. Thomas *v.* Illinois. App. Ct. Ill., 5th Dist. Certiorari denied.

No. 11–8224. Tukes *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 373.

No. 11–8233. Stout *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 738.

No. 11–8239. BLACK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 636 F. 3d 893.

No. 11–8240. ARGUETA-LOPEZ, AKA ARGUETA-RODAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 773.

No. 11–8247. SPENTZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 653 F. 3d 815.

No. 11–8248. JORDAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 634.

No. 11–8249. NELSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 786.

No. 11–8250. ROBLES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–8259. ZUCK *v.* SABATKA-RINE, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 11–8262. HARVEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 659 F. 3d 1272.

No. 11–8264. GONZALEZ-BARRERAS, AKA GONZALEZ-GOMEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 766.

No. 11–8266. HEATH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 456 Fed. Appx. 102.

No. 11–8267. HEVLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 653 F. 3d 983.

No. 11–8270. HAMPTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–8272. FRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 11–8276. CAMPBELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 518.

No. 11–8280. BENNETT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 501.

No. 11–8282. MARTIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 447 Fed. Appx. 546.

No. 11–8284. LONG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 411 Fed. Appx. 623.

No. 11–8286. SOLIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 800.

No. 11–8289. MILTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 243.

No. 11–8291. MILTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 770.

No. 11–8298. TUBBS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 446 Fed. Appx. 705.

No. 11–8299. WHITFIELD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 451 Fed. Appx. 415.

No. 11–8300. YEARWOOD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 108.

No. 11–8301. WILLIAMSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–8306. MCNAIR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 769.

No. 11–8309. WILLIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–8310. ZIERKE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–8312. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–8313. PAIGE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 25 A. 3d 74.

No. 11–8316. ESPINOZA-BAZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 647 F. 3d 1182.

No. 11–8317. CLOSE *v.* THOMAS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 643 F. 3d 970.

No. 11–8320. PEREZ-MENDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 604.

No. 11–8322. CASTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 784.

No. 11–8327. EDWARDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 447 Fed. Appx. 43.

No. 11–8330. JASSO-ESTRADA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 453 Fed. Appx. 736.

No. 11–8332. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 825.

No. 11–8336. MITCHELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 11–8338. ROBINSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 448.

No. 11–8339. ST. MARKS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 460 Fed. Appx. 682.

No. 11–8344. BRYANT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 664 F. 3d 831.

No. 11–8345. AGUILAR-MONTOYA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 455 Fed. Appx. 728.

No. 11–8346. BEAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 454 Fed. Appx. 549.

No. 11–8354. TREJO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 326.

No. 11–8357. URENA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 659 F. 3d 903.

No. 11–8358. WASHINGTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 653 F. 3d 1057.

No. 11–8364. COLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 447 Fed. Appx. 501.

No. 11–8368. RAMIRO PENA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 11–8375. LAMAR *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2011 Ark. 310.

No. 11–8385. JIMINEZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 792.

No. 11–8386. MINTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 821.

No. 11–8389. MITCHELL *v.* LINDAMOOD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–8395. TURNER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 599.

No. 11–8400. ZUNIGA-MENDOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 786.

No. 11–8402. DICKERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–8403. DE LA ROSA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–8409. CARDENAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 810.

No. 11–8412. EARL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–8421. DERUISE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–8427. NETO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 659 F. 3d 194.

No. 11–8431. WOFFORD *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 30 A. 3d 810.

No. 11–8433. TOVAR-RIVAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 788.

No. 11–8435. CARDENAS BORBON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 454 Fed. Appx. 42.

No. 11–8437. BENABE ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 654 F. 3d 753 and 436 Fed. Appx. 639.

No. 11–8440. KUTZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 751.

No. 11–8441. LOWDERMILK *v.* UNITED STATES (two judgments). C. A. 6th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 500 (first judgment).

No. 11–8442. MCQUEEN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 22 A. 3d 823.

No. 11–8452. BONESHIRT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 662 F. 3d 509.

No. 11–8454. TAFOYA-MONTELONGO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 659 F. 3d 738.

No. 11–8461. OSAZUWA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 446 Fed. Appx. 919.

No. 11–8462. MOORE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 644 F. 3d 553.

No. 11–8463. MCGUIRE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 586.

No. 11–8464. PETERSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 566.

No. 11–8465. JACOB *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 215.

No. 11–8466. RUIZ-APOLONIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 657 F. 3d 907.

No. 11–8469. MCINTYRE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 646 F. 3d 1107.

No. 11–8473. BRISBANE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 11–8483. TINDALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 377.

No. 11–8490. SALVA-MORALES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 660 F. 3d 72.

No. 11–8491. SNOW *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 663 F. 3d 1156.

No. 10–1544. UNITED STATES *v.* NAM VAN HOANG. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 636 F. 3d 677.

No. 11–40. UNITED STATES *v.* VALVERDE. C. A. 9th 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: 628 F. 3d 1159.

No. 11–190. PUERTO RICO BAR ASSN. *v.* COMMONWEALTH OF PUERTO RICO ET AL. Sup. Ct. P. R. Certiorari denied. JUSTICE SOTOMAYOR would grant the petition for writ of certiorari. Reported below: 181 D. P. R. 135.

No. 11–385. UNITED STATES *v.* VALDEZ. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 435 Fed. Appx. 640.

No. 11–611. UNITED STATES *v.* TRENT. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 654 F. 3d 574.

No. 11–684. ROBERT *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 439 Fed. Appx. 32.

No. 11–685. HIGHWAY J CITIZENS GROUP, U. A. *v.* VILLAGE OF RICHFIELD, WISCONSIN. Ct. App. Wis. Motion of National Tax Limitation Committee et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 201 WI App 44, 332 Wis. 2d 317, 797 N. W. 2d 935.

No. 11–705. STAR NORTHWEST, INC., DBA KENMORE LANES ET AL. *v.* CITY OF KENMORE, WASHINGTON, ET AL. Ct. App. Wash. Motion of Recreational Gaming Association of Washington for leave to file a brief as *amicus curiae* denied. Certiorari denied. Reported below: 160 Wash. App. 1045.

No. 11–738. EQUITABLE TRANSITIONS, INC. *v.* DELL, INC. C. A. 9th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 11–6205. ORTIZ-ALVEAR *v.* WELLS, WARDEN. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 429 Fed. Appx. 955.

No. 11–7379. CAVANAUGH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 643 F. 3d 592.

No. 11–7416. SORRELL *v.* BLEDSOE, WARDEN. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 437 Fed. Appx. 94.

No. 11–7925. SOW *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 438 Fed. Appx. 235.

No. 11–8005. MUSZYNSKI *v.* GROUNDS, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 11–8052. 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: 451 Fed. Appx. 685.

No. 11–8105. KANE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 639 F. 3d 1121.

No. 11–8109. RIVERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 11–8110. SCOTT *v.* HORNBEAK, WARDEN. C. A. 9th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 447 Fed. Appx. 784.

No. 11–8113. GADSDEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 439 Fed. Appx. 54.

No. 11–8154. HOWELL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 441 Fed. Appx. 783.

No. 11–8238. BARNETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–8283. MADUKA *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.

No. 11–8297. MCDANIELS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 437 Fed. Appx. 264.

No. 11–8365. PLUGH *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: 648 F. 3d 118.

No. 11–8378. ANYANWU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 449 Fed. Appx. 639.

No. 11–8428. MCKINNON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 443 Fed. Appx. 596.

Rehearing Denied

No. 10–1529. KELLY *v.* WEST VIRGINIA BOARD OF LAW EXAMINERS ET AL., *ante*, p. 826;

No. 10–10833. ESSETT *v.* UNITED STATES, *ante*, p. 1058;

No. 11–74. HARDY, WARDEN *v.* CROSS, *ante*, p. 65;

No. 11–283. FOX *v.* WARDY ET AL., *ante*, p. 945;

No. 11–358. SAWYER *v.* WORCESTER ET AL., *ante*, p. 1060;

No. 11–490. DIXON *v.* HENNEPIN COUNTY HUMAN SERVICES DEPARTMENT ET AL., *ante*, p. 1094;

No. 11–575. CARSON *v.* UNITED STATES OFFICE OF SPECIAL COUNSEL, *ante*, p. 1101;

No. 11–5315. HINES *v.* TENNESSEE, *ante*, p. 1080;

No. 11–5384. JACOBSON ET AL. *v.* SCHWARZENEGGER ET AL., *ante*, p. 1080;

No. 11–5606. KALFOUNTZOS *v.* UNITED STATES RAILROAD RETIREMENT BOARD, *ante*, p. 980;

No. 11–5718. HIRSCH *v.* ENOCH PRATT FREE LIBRARY ET AL., *ante*, p. 1063;

No. 11–5937. SCHIED *v.* WARD ET AL., *ante*, p. 981;

No. 11–5945. IN RE SCHIED, *ante*, p. 975;

No. 11–6015. SCHIED *v.* SNYDER ET AL., *ante*, p. 982;

No. 11–6187. AGUIRREZ MATOS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 1016;

No. 11–6336. BRADLEY *v.* CONNECTICUT, *ante*, p. 1039;

No. 11–6386. MCDOWELL *v.* MISSISSIPPI ET AL., *ante*, p. 1040;

No. 11–6395. HOLLINS *v.* FULTON COUNTY, GEORGIA, ET AL., *ante*, p. 1040;

No. 11–6402. FORNESS *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 1017;

No. 11–6577. LANCASTER *v.* BIGELOW, WARDEN, ET AL., *ante*, p. 1041;

No. 11–6591. ROLON *v.* BEACON COS. ET AL., *ante*, p. 1066;

No. 11–6592. KING *v.* TEXAS, *ante*, p. 1066;

No. 11–6620. DOSSETT *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1067;

No. 11–6679. CASH *v.* LOUISIANA, *ante*, p. 1082;

No. 11–6681. CLARK *v.* UNITED STATES, *ante*, p. 994;

No. 11–6703. CASTON-GOODJOHN *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS, *ante*, p. 1042;

No. 11–6708. NAJAFIAN *v.* CAPITAL ONE N. A. ET AL., *ante*, p. 1082;

No. 11–6724. ROSEN *v.* NORTH SHORE TOWERS APARTMENTS, INC., *ante*, p. 1083;

No. 11–6771. MOYA-FELICIANO *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 1068;

No. 11–6775. DYDZAK *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, *ante*, p. 1095;

No. 11–6801. MASON *v.* GODINEZ, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 1068;

No. 11–6848. BRADDOCK *v.* RAPELJE, WARDEN, *ante*, p. 1096;

No. 11–6869. CARLSON *v.* DOOLEY, WARDEN, *ante*, p. 1069;

No. 11–6889. IN RE SINGH, *ante*, p. 1013;

No. 11–6911. BUCK *v.* UNITED STATES, *ante*, p. 1044;

No. 11–6989. ISRAEL *v.* UNITED STATES, *ante*, p. 1070;

No. 11–7026. JOHNSON *v.* UNITED STATES, *ante*, p. 1071;

No. 11–7094. MARTIN *v.* WISCONSIN, *ante*, p. 1084;

No. 11–7163. HARRIS *v.* UNITED STATES, *ante*, p. 1086;

No. 11–7275. PURPURA ET AL. *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., *ante*, p. 1127;

No. 11–7291. CEGLEDI *v.* UNITED STATES, *ante*, p. 1099; and

No. 11–7873. GIRARD *v.* UNITED STATES, *ante*, p. 1172. Petitions for rehearing denied.

No. 10–11243. CLARK *v.* RICHMOND DEPARTMENT OF SOCIAL SERVICES, *ante*, p. 874. Motion for leave to file petition for rehearing denied.

No. 11–6165. HANEY *v.* ADAMS, WARDEN, *ante*, p. 1022. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 11–7034. NIBLOCK *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA ET AL., *ante*, p. 1073; and

No. 11–7162. FORD *v.* UNITED STATES, *ante*, p. 1087. Petitions for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of these petitions.

FEBRUARY 27, 2012

Certiorari Granted—Vacated and Remanded

No. 10–458. SHEETS, WARDEN *v.* SIMPSON. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Howes* v. *Fields*, *ante*, p. 499. Reported below: 615 F. 3d 421.

Certiorari Dismissed

No. 11–8080. MCCARTNEY *v.* LEBLANC, SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, ET AL.

Ct. App. La., 1st Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 2009–2093 (La. App. 1 Cir. 5/7/10), 39 So. 3d 851.

No. 11–8086. PITCHFORD *v.* MARSHALL 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: 417 Fed. Appx. 581.

No. 11–8343. ABULKHAIR *v.* PAGE-HAWKINS 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. Reported below: 448 Fed. Appx. 291.

Miscellaneous Orders

No. 11M76. OHIO *v.* FOUST. Motion of Cuyahoga County prosecuting attorney for leave to intervene as a party on behalf of Ohio in order to file a petition for writ of certiorari denied.

No. 11M77. BROWN *v.* CLEVELAND MUNICIPAL SCHOOL DISTRICT, AKA CLEVELAND METROPOLITAN SCHOOL DISTRICT, ET AL.; and

No. 11M78. SPRINGER *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 11–393. NATIONAL FEDERATION OF INDEPENDENT BUSINESS ET AL. *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.; and

No. 11–400. FLORIDA ET AL. *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 11th Cir. [Certiorari granted, *ante*, pp. 1033 and 1034.] Motion of Freedom Watch for reconsideration of order denying leave to participate in oral argument as *amicus curiae* and for divided argument [*ante*, p. 1176] denied. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 11–5683. DORSEY *v.* UNITED STATES; and

No. 11–5721. HILL *v.* UNITED STATES. C. A. 7th Cir. [Certiorari granted, *ante*, p. 1057.] Motion of petitioners for divided argument denied. Motion of the Solicitor General for divided argument granted.

No. 11–7192. COX *v.* DAVIS, WARDEN. C. A. 7th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1106] denied.

No. 11–7405. HENDRICKS *v.* GALLOWAY ET AL. C. A. 4th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1106] denied.

No. 11–8288. HAGANS *v.* GEORGIA. Ct. App. Ga.; and
No. 11–8486. ADLER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 19, 2012, 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. 11–8659. IN RE HESS. Petition for writ of habeas corpus denied.

No. 11–8535. IN RE DELESTON. 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 Denied

No. 10–999. ALLEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 3d 830.

No. 11–318. CALDWELL *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 11–462. BRONCO'S SALOON, INC., ET AL. *v.* APB ASSOCIATES, INC.; and
No. 11–503. T&R ENTERPRISES, INC. *v.* APB ASSOCIATES, INC. C. A. 6th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 499.

No. 11–469. TAYLOR *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 11–517. BYRNE ET AL. *v.* JACKLER. C. A. 2d Cir. Certiorari denied. Reported below: 658 F. 3d 225.

No. 11–525. YOUNG ET AL. *v.* ORTIZ. C. A. 5th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 306.

No. 11–599. NATIONAL ORGANIZATION FOR MARRIAGE *v.* MCKEE ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 649 F. 3d 34.

No. 11–617. PROBERT ET AL. *v.* FAMILY CENTERED SERVICES OF ALASKA, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 651 F. 3d 1007.

No. 11–634. CELAJ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 649 F. 3d 162.

No. 11–670. BOWIE *v.* MADDOX, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS INSPECTOR GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 642 F. 3d 1122.

No. 11–791. KING *v.* CLAYTON COUNTY SCHOOL SYSTEM ETHICS COMMISSION ET AL. Ct. App. Ga. Certiorari denied. Reported below: 306 Ga. App. XXV.

No. 11–797. MOYER ET AL. *v.* TELEDYNE CONTINENTAL MOTORS, INC. Sup. Ct. Pa. Certiorari denied. Reported below: 611 Pa. 480, 28 A. 3d 867.

No. 11–801. SIZEMORE *v.* PLAIN DEALER ET AL. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 194 Ohio App. 3d 30, 2011-Ohio-2935, 954 N. E. 2d 213.

No. 11–805. TETON MILLWORK SALES *v.* SCHLOSSBERG. C. A. 10th Cir. Certiorari denied.

No. 11–806. 84 VIDEO/NEWSSTAND, INC., ET AL. *v.* SARTINI, ASHTABULA COUNTY PROSECUTOR, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 455 Fed. Appx. 541.

No. 11–810. BURKE *v.* KLEVAN. App. Ct. Conn. Certiorari denied. Reported below: 130 Conn. App. 376, 23 A. 3d 95.

No. 11–848. DOE *v.* KEATHLEY. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 344 S. W. 3d 759.

No. 11–851. GILBERT *v.* BOARD OF EQUALIZATION OF TULSA COUNTY, OKLAHOMA. Ct. Civ. App. Okla. Certiorari denied.

No. 11–854. GOREE *v.* LINCOLN PARISH DETENTION CENTER. C. A. 5th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 329.

No. 11–868. GREENE ET AL. *v.* BARTLETT, DIRECTOR, NORTH CAROLINA BOARD OF ELECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 312.

No. 11–921. SWANSON *v.* HORSESHOE HAMMOND, LLC, DBA HORSESHOE CASINO HAMMOND. C. A. 7th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 868.

No. 11–931. ASHLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 664 F. 3d 602.

No. 11–5141. ROSA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 626 F. 3d 56.

No. 11–6460. WASHINGTON ET VIR *v.* LOUISIANA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 425 Fed. Appx. 330.

No. 11–6606. GORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 636 F. 3d 728.

No. 11–6769. BAKER *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 786.

No. 11–6888. COLE *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 11–6897. ZORTMAN *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 611 Pa. 22, 23 A. 3d 519.

No. 11–6971. TRACEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–7052. NAVEJAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 433 Fed. Appx. 319.

No. 11–7084. VILLARREAL-PENA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 362.

No. 11–7148. OTTO ET UX. *v.* HILLSBOROUGH COUNTY, FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 67 So. 3d 213.

No. 11–7510. HANKERSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 65 So. 3d 502.

No. 11–7589. VIRGIL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 51 Cal. 4th 1210, 253 P. 3d 553.

No. 11–8016. NOROUZIAN *v.* UNIVERSITY OF KANSAS HOSPITAL AUTHORITY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 677.

No. 11–8028. PRADO *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–8030. MCDONALD *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 11–8031. WRIGHT *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–8033. SHEPPARD *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–8034. SHANKLIN *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 11–8035. ROBINSON-REEDER *v.* AMERICAN COUNCIL ON EDUCATION. C. A. D. C. Cir. Certiorari denied. Reported below: 417 Fed. Appx. 4.

No. 11–8036. CHAMBERS *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 442 Fed. Appx. 650.

No. 11–8037. CARRILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 660 F. 3d 914.

No. 11–8049. ALLEN *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 11–8051. VADEN *v.* ADAMS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 677.

No. 11–8053. BAKER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 71 So. 3d 802.

No. 11–8057. GONZALES *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 51 Cal. 4th 894, 253 P. 3d 185.

No. 11–8062. WOODS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2011 IL App (1st) 091959, 952 N. E. 2d 105.

No. 11–8069. ROBERTS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 660 F. 3d 149.

No. 11–8076. COHEN *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 11–8081. WAGNER *v.* STOUFFER, COMMISSIONER, MARYLAND DIVISION OF CORRECTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 685.

No. 11–8084. CONROY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 11–8090. JACKSON *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 67 So. 3d 219.

No. 11–8091. MORRIS *v.* STEVENSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 290.

No. 11–8100. SUMLIN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 407 Ill. App. 3d 1188, 998 N. E. 2d 983.

No. 11–8145. MALONE *v.* KRAMER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 453 Fed. Appx. 754.

No. 11–8168. POWERS *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 408 Ill. App. 3d 1129, 1 N. E. 3d 666.

No. 11–8220. MITCHELL *v.* MARTEL, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 737.

No. 11–8232. WHITE *v.* SCHROEDER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–8234. XULI ZHANG *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 11–8235. WILLIAMS *v.* SIBBETT ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 385.

No. 11–8236. COMADURAN *v.* GONZALEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 728.

No. 11–8258. WATTS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 68 So. 3d 249.

No. 11–8265. SWIFT *v.* ALLEN. C. A. 5th Cir. Certiorari denied.

No. 11–8269. FLORES *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–8302. ZACK *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 11–8319. RITTER *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2011 Ark. 427, 385 S. W. 3d 740.

No. 11–8325. DEANE *v.* MARSHALLS, INC., ET AL. Sup. Ct. Va. Certiorari denied.

No. 11–8333. JOHNSON *v.* HORTON, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 11–8366. HUGHES *v.* PFISTER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 11–8398. WILCHER *v.* DONAHOE, POSTMASTER GENERAL, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 441 Fed. Appx. 879.

No. 11–8414. QUEEN *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 11–8488. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 297.

No. 11–8494. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 844.

No. 11–8503. OGLESBEE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 674.

No. 11–8508. FERGUSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 223.

No. 11–8509. FULTON *v.* CHESTER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 857.

No. 11–8510. DOE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 661 F. 3d 550.

No. 11–8520. ROBINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 268.

No. 11–8524. Sosa Montero *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 833.

No. 11–8525. Odman *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 451 Fed. Appx. 277.

No. 11–8526. Porras-Burciaga *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 339.

No. 11–8527. Love *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 338.

No. 11–8528. Cabaccang *v.* United States (two judgments). C. A. 9th Cir. Certiorari denied.

No. 11–8529. Whitehead *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 11–8530. Young *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 657 F. 3d 408.

No. 11–8531. Rublee *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 655 F. 3d 835.

No. 11–8534. Castro-Moreno *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 470.

No. 11–8539. Bernard *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 11–8541. Pica *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 445 Fed. Appx. 419.

No. 11–8545. Dodd *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 805.

No. 11–8546. Cutcliff *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 455 Fed. Appx. 787.

No. 11–8547. Rangel *v.* United States. C. A. 4th Cir. Certiorari denied.

No. 11–8548. Kasenge *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 660 F. 3d 537.

No. 11–8549. Johnson *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 432 Fed. Appx. 86.

No. 11–8550. DUNBAR *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 660 F. 3d 54.

No. 11–8552. BROWN, AKA JOHNS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 653 F. 3d 656.

No. 11–8554. AVILA-VILLEGAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 456 Fed. Appx. 658.

No. 11–8560. SIERRA-ARRAZOLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 403.

No. 11–8564. BERK *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 652 F. 3d 132.

No. 11–8571. OLD HORN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 456 Fed. Appx. 664.

No. 11–8573. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 453 Fed. Appx. 401.

No. 11–8574. GONZALEZ CRUZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 455 Fed. Appx. 753.

No. 11–8624. HANSBROUGH *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 2011 WI App 79, 334 Wis. 2d 237, 799 N. W. 2d 887.

No. 11–233. SWEARINGEN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 421 Fed. Appx. 413.

No. 11–497. MOUNTAIRE FARMS, INC., ET AL. *v.* PEREZ ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 650 F. 3d 350.

No. 11–541. MICHIGAN ET AL. *v.* UNITED STATES ARMY CORPS OF ENGINEERS ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 667 F. 3d 765.

No. 11–659. ANZA ET AL. *v.* IDEAL STEEL SUPPLY CORP. C. A. 2d Cir. Motion of Chamber of Commerce of the United

States of America for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 652 F. 3d 310.

No. 11–811. PERSICO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 645 F. 3d 85.

No. 11–8480. LIPSCOMB *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–8558. MENDEZ-SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

Rehearing Denied

No. 11–357. EQUITY IN ATHLETICS, INC. *v.* DEPARTMENT OF EDUCATION ET AL., *ante*, p. 1111;

No. 11–473. DUPREE *v.* GENERAL MILLS OPERATIONS, INC., ET AL., *ante*, p. 1112;

No. 11–516. MBAKPUO *v.* HOLDER, ATTORNEY GENERAL, *ante*, p. 1113;

No. 11–6183. IN RE RIVERA, *ante*, p. 1013;

No. 11–6829. ALLEN *v.* BIGELOW, WARDEN, ET AL., *ante*, p. 1117;

No. 11–6852. BASSETT *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 1096;

No. 11–7042. KERCHEE *v.* JONES, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS, *ante*, p. 1121;

No. 11–7074. TRAVALINE *v.* SUPREME COURT OF THE UNITED STATES ET AL., *ante*, p. 1123;

No. 11–7096. SUTTON *v.* MERIT SYSTEMS PROTECTION BOARD, *ante*, p. 1084;

No. 11–7182. POPP *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1125;

No. 11–7250. IN RE LEWIS, *ante*, p. 1078;

No. 11–7263. WOOD *v.* MAIN, *ante*, p. 1161;

No. 11–7410. SMITH *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, ET AL., *ante*, p. 1165;

No. 11–7427. MOORE *v.* FLORIDA, *ante*, p. 1131; and

No. 11–7559. MORROW *v.* DONAHOE, POSTMASTER GENERAL, *ante*, p. 1135. Petitions for rehearing denied.

No. 11–7186. HICKS *v.* UNITED STATES, *ante*, p. 1088. Petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

FEBRUARY 29, 2012

Certiorari Denied

No. 11–8979 (11A813). MOORMANN *v.* ARIZONA. Super. Ct. Ariz., County of Pinal. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied.

No. 11–8999 (11A819). MOORMANN *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. Reported below: 672 F. 3d 644.

No. 11–9009 (11A820). MOORMANN ET AL. *v.* BREWER, GOVERNOR OF ARIZONA, ET AL. C. A. 9th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. Reported below: 672 F. 3d 650.

MARCH 5, 2012

Certiorari Granted—Vacated and Remanded

No. 10–272. JOHN CRANE INC. *v.* ATWELL, EXECUTOR OF THE ESTATE OF ATWELL, DECEASED. Super. Ct. Pa. Reported below: 986 A. 2d 888; and

No. 10–520. GRIFFIN WHEEL CO. *v.* HARRIS ET UX. Super. Ct. Pa. Reported below: 996 A. 2d 562. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Kurns* v. *Railroad Friction Products Corp.*, *ante*, p. 625.

Miscellaneous Orders

No. 11M79. ALEXANDER *v.* FOEGEN ET AL.;

No. 11M81. MINTZ *v.* STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. ET AL.; and

No. 11M82. TOMASELLI ET AL. *v.* KOPELMAN & PAIGE, P. C., ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 11M80. PIGNARD *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari out of time denied. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 10–1491. KIOBEL, INDIVIDUALLY AND ON BEHALF OF HER LATE HUSBAND KIOBEL, ET AL. *v.* ROYAL DUTCH PETROLEUM CO. ET AL. C. A. 2d Cir. [Certiorari granted, *ante*, p. 961.] Case restored to the calendar for reargument. The parties are directed to file supplemental briefs addressing the following question: "Whether and under what circumstances the Alien Tort Statute, 28 U. S. C. § 1350, allows courts to recognize a cause of action for violations of the law of nations occurring within the territory of a sovereign other than the United States." Supplemental brief for petitioners is due on or before Thursday, May 3, 2012. Supplemental brief for respondents is due on or before Monday, June 4, 2012. Reply brief is due on or before Friday, June 29, 2012. Time to file *amicus curiae* briefs is as provided for by this Court's Rule 37.3(a). Word limits and cover colors for the briefs should correspond to the provisions of this Court's Rule 33.1(g) pertaining to briefs on the merits rather than to the provision pertaining to supplemental briefs.

No. 10–9646. MILLER *v.* ALABAMA. Ct. Crim. App. Ala. [Certiorari granted, *ante*, p. 1013]; and

No. 10–9647. JACKSON *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. Sup. Ct. Ark. [Certiorari granted, *ante*, p. 1013.] Motion of Michigan et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 10–10476. MUHAMMAD *v.* UNITED STATES. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 803] denied.

No. 11–262. REICHLE ET AL. *v.* HOWARDS. C. A. 10th Cir. [Certiorari granted, *ante*, p. 1078.] 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. 11–6623. In re Cox. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 975] denied.

No. 11–6927. Perry *v.* Jordan et al. C. A. 11th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1105] denied.

No. 11–7127. Maisano *v.* Canteen Correctional Food Services, Inc., et al. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1105] denied.

No. 11–7374. Strong *v.* Suter, Clerk, Supreme Court of the United States. C. A. 7th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1106] denied.

No. 11–7999. In re Driver. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1155] denied.

No. 11–8112. Barani *v.* Havana Inc. et al. Sup. Ct. Pa. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until March 26, 2012, 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. 11–8732. In re Crompton;
No. 11–8750. In re Cain; and
No. 11–8839. In re Walker. Petitions for writs of habeas corpus denied.

Certiorari Denied

No. 11–555. City of Oakland, California *v.* Desert Outdoor Advertising, Inc. Sup. Ct. Nev. Certiorari denied. Reported below: 127 Nev. 533, 267 P. 3d 48.

No. 11–648. Thomas *v.* Tennessee. Ct. Crim. App. Tenn. Certiorari denied.

No. 11–704. Perfect 10, Inc. *v.* Google, Inc. C. A. 9th Cir. Certiorari denied. Reported below: 653 F. 3d 976.

No. 11–748. SIGNATURE PHARMACY, INC., ET AL. *v.* WRIGHT. C. A. 11th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 741.

No. 11–749. MOORE *v.* CURLEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–815. FEDORA INC. ET AL. *v.* THOMAS. Ct. App. D. C. Certiorari denied. Reported below: 28 A. 3d 1138.

No. 11–829. KING, CHAIR, KANSAS COMMISSION ON JUDICIAL QUALIFICATIONS, ET AL. *v.* KANSAS JUDICIAL WATCH ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 653 F. 3d 1230.

No. 11–841. NIPMUC PROPERTIES, LLC, ET AL. *v.* CITY OF MERIDEN, CONNECTICUT, ET AL. App. Ct. Conn. Certiorari denied. Reported below: 130 Conn. App. 806, 25 A. 3d 714.

No. 11–869. PERENGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 781.

No. 11–908. FELIX *v.* CITY AND COUNTY OF DENVER, COLORADO. C. A. 10th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 702.

No. 11–947. SIMELS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 654 F. 3d 161.

No. 11–6223. STURDIVANT *v.* KONE INC. C. A. 4th Cir. Certiorari denied. Reported below: 422 Fed. Appx. 198.

No. 11–6701. RENDELMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 641 F. 3d 36.

No. 11–7217. FIORITO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 640 F. 3d 338.

No. 11–7241. OCHOA CANALES *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–7628. HIGGINS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 405.

No. 11–7658. YOUNG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 755.

No. 11–7738. GUDINAS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 895.

No. 11–7750. GENA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 399 Fed. Appx. 798.

No. 11–7787. VEVEA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 446 Fed. Appx. 63.

No. 11–7792. HOUSER *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 610 Pa. 264, 18 A. 3d 1128.

No. 11–7910. BERRETTINI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 431 Fed. Appx. 114.

No. 11–8074. LIPSEY *v.* UNITED PARCEL SERVICE, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 418 Fed. Appx. 544.

No. 11–8089. JOHNSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–8093. LILLARD *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 11–8094. KRANTZ *v.* HARTLEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–8095. MACK *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–8096. STEWART *v.* WELTY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 684.

No. 11–8102. CIMINO *v.* BRADT, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 11–8106. ROBINSON-REEDER *v.* AMERICAN COUNCIL ON EDUCATION ET AL. Ct. App. D. C. Certiorari denied. Reported below: 17 A. 3d 1197.

No. 11–8108. SHULER *v.* NEELY, SUPERINTENDENT, LANESBORO CORRECTIONAL INSTITUTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 682.

No. 11–8111. MACKAY *v.* KEENAN MERCEDES BENZ ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 453 Fed. Appx. 155.

No. 11–8115. MCNAUGHTON *v.* AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 11–8117. BRANCH *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 638 F. 3d 1353.

No. 11–8119. STORK *v.* MCKINLEY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 920.

No. 11–8121. JOHNSON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied.

No. 11–8122. KEELING *v.* STURM. Sup. Ct. Pa. Certiorari denied.

No. 11–8123. JAMESON *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Certiorari denied.

No. 11–8126. HOLMES *v.* VAZQUEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–8128. FLORES *v.* HOREL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–8129. CASEY *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 11–8131. JACKSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–8137. DIXON *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 11–8139. GORDON *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–8142. PERKINS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 11–8148. THOMPSON *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 11–8152. GIBSON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 11–8153. WESTON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 408 Ill. App. 3d 1126, 1 N. E. 3d 665.

No. 11–8157. YOUNG *v.* TROMBLEY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 499.

No. 11–8158. RANDOLPH *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 396 Fed. Appx. 432.

No. 11–8162. RASCON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–8163. REID *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 208 N. J. 368, 29 A. 3d 740.

No. 11–8164. COLE *v.* MONTES ET AL. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 402 Ill. App. 3d 1210, 1 N. E. 3d 129.

No. 11–8165. EARL *v.* ROY, COMMISSIONER, MINNESOTA DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied.

No. 11–8175. SALAAM, AKA BELL *v.* TAYLOR ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 406.

No. 11–8229. SMITH *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 85 App. Div. 3d 639, 926 N. Y. S. 2d 466.

No. 11–8231. WITHERSPOON *v.* HOWES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–8241. BROWN *v.* WARREN, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–8243. LYONS *v.* BRANDLY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 430 Fed. Appx. 377.

No. 11–8252. CHASE *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND. C. A. 4th Cir. Certiorari denied. Reported below: 446 Fed. Appx. 584.

No. 11–8326. PURCELL *v.* UNION PACIFIC RAILROAD. C. A. 8th Cir. Certiorari denied. Reported below: 420 Fed. Appx. 650.

No. 11–8328. FARWELL *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 11–8353. WITASICK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 838.

No. 11–8373. LYONS *v.* MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 11–8382. MCGHEE *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–8391. STARKEY *v.* CAMERON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CRESSON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–8405. BIRDETTE *v.* DAL GLOBAL SERVICES, LLC. C. A. 11th Cir. Certiorari denied.

No. 11–8408. ARNETT *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 75 So. 3d 747.

No. 11–8419. CRAMER *v.* UTAH. C. A. 10th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 767.

No. 11–8420. CLARK *v.* WARREN, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–8422. CARVER *v.* MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 11–8444. PABST *v.* MCKUNE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 674.

No. 11–8455. SEKA *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 697.

No. 11–8479. LAWLER *v.* HORNE, ATTORNEY GENERAL OF ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–8559. LINLEY *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied.

No. 11–8569. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 424.

No. 11–8570. PEREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 435 Fed. Appx. 820.

No. 11–8578. THOMPKINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–8583. BAEZA-ROSALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 456 Fed. Appx. 639.

No. 11–8590. FIGUEROA RIVERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 447 Fed. Appx. 593.

No. 11–8595. MIRZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 454 Fed. Appx. 249.

No. 11–8598. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 705.

No. 11–8600. YOUNG *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 428 Fed. Appx. 9.

No. 11–8601. WELDON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 467.

No. 11–8604. PUGH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 876.

No. 11–8608. DIAZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–8615. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 725.

No. 11–8616. AKARD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 11–8617. BERRY, AKA PUNCH *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 618 F. 3d 13.

No. 11–8620. PRICE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 550.

No. 11–8622. TATE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–8623. ISAGUIRES-VARELA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 455 Fed. Appx. 784.

No. 11–8625. HAMILTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 841.

No. 11–8626. HINTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 451 Fed. Appx. 253.

No. 11–8627. HOUSTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 648 F. 3d 806.

No. 11–8628. MARTINEZ-CALDERON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–8637. JONES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 639.

No. 11–8639. BLOOMGARDEN *v.* FEDERAL BUREAU OF PRISONS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 426 Fed. Appx. 487.

No. 11–8647. SMITH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 459 Fed. Appx. 99.

No. 11–8649. GUEVARA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 453.

No. 11–8651. GARRIES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 304.

No. 11–8652. HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 454 Fed. Appx. 571.

No. 11–8653. GONZALEZ-VISOSO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 246.

No. 11–8656. GUYTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 447 Fed. Appx. 136.

No. 11–8658. HALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 446 Fed. Appx. 685.

No. 11–8660. GILMORE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 654.

No. 11–8665. MEDFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 661 F. 3d 746.

No. 11–8670. Dobie, aka Parker, aka Waller *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 239.

No. 11–8671. Talbott *v.* Fisher, Warden. C. A. 8th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 564.

No. 11–8682. Nwaehiri *v.* United States. C. A. 4th Cir. Certiorari denied.

No. 11–8684. Munoz-Camarena *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 458 Fed. Appx. 588.

No. 11–8685. Sanchez-Montano *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 459 Fed. Appx. 590.

No. 11–8688. Turner *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 453 Fed. Appx. 404.

No. 11–8691. Whiting *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 239.

No. 11–8692. Rios Bueno *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 391.

No. 11–8698. Dean *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 11–8700. Lewis *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 447 Fed. Appx. 310.

No. 11–8701. Lee *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 627.

No. 11–8702. Kort *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 678.

No. 11–8706. Vogelsang *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 11–527. Maikhio *v.* California. Sup. Ct. Cal. Motion of National Rifle Association of America, Inc., et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 51 Cal. 4th 1074, 253 P. 3d 247.

No. 11–8150. Whigum, aka Beck, aka Davis, aka Hamilton *v.* Florida et al. C. A. 11th Cir. Certiorari denied. Justice

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

No. 11–8203. DIABY *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 442 Fed. Appx. 26.

No. 11–8629. VELASQUEZ-BOSQUE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 453 Fed. Appx. 687.

No. 11–8666. SINCLAIR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 442 Fed. Appx. 74.

No. 11–8690. WRIGHT *v.* MITCHELL, WARDEN. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 454 Fed. Appx. 227.

Rehearing Denied

No. 11–559. KAUFFMAN *v.* UPMC PRESBYTERIAN SHADYSIDE HOSPITAL ET AL., *ante*, p. 1114;

No. 11–586. ANDERSON *v.* VANGUARD CAR RENTAL USA INC., *ante*, p. 1114;

No. 11–6711. PAPADIMITRIOU *v.* PAPADIMITRIOU, *ante*, p. 1160;

No. 11–6854. VANN *v.* WIENEKE ET AL., *ante*, p. 1118;

No. 11–6882. IN RE BROWN, *ante*, p. 1109;

No. 11–6923. BARTEE *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 1119;

No. 11–6982. GOTTSCHALK *v.* STATE BAR OF CALIFORNIA, *ante*, p. 1120;

No. 11–7066. CUNNINGHAM *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 1122;

No. 11–7085. BUSH *v.* DIVISION OF HUMAN RIGHTS ET AL., *ante*, p. 1123;

No. 11–7151. BEALE *v.* UNITED STATES, *ante*, p. 1124;

No. 11–7212. EMERSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1161;

No. 11–7247. GRIFFIN *v.* KIRKPATRICK, SUPERINTENDENT, WENDE CORRECTIONAL FACILITY, *ante*, p. 1161;

No. 11–7413. MITCHELL *v.* UNIVERSITY MEDICAL CENTER, INC., *ante*, p. 1130;

No. 11–7414. FRANCIS *v.* UNITED STATES, *ante*, p. 1130; and

No. 11–7446. MORLEY *v.* FLORIDA ET AL., *ante*, p. 1166. Petitions for rehearing denied.

MARCH 7, 2012

Certiorari Denied

No. 11–9083 (11A839). THURMOND *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied.

No. 11–9089 (11A840). TOWERY *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. Reported below: 673 F. 3d 933.

MARCH 19, 2012

Certiorari Granted—Vacated and Remanded

No. 11–5981. STEVENS *v.* UNITED STATES. C. A. 1st 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 *Reynolds* v. *United States*, *ante*, p. 432. Reported below: 640 F. 3d 48.

Certiorari Dismissed

No. 11–8178. JARVIS *v.* ANALYTICAL LABORATORY SERVICES, INC. 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: 459 Fed. Appx. 292.

No. 11–8263. FRANKLIN *v.* LAUGHLIN 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. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal mat-

ters 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: 442 Fed. Appx. 177.

No. 11–8290. McCright *v.* McGrath, 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. 11–8367. Flores *v.* Department of Health and Human Services et al. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari before judgment dismissed. See this Court's Rule 39.8.

No. 11–8482. Thornton *v.* Cavalin 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.

Miscellaneous Orders

No. D–2604. In re Disbarment of Charles. Disbarment entered. [For earlier order herein, see *ante*, p. 1052.]

No. D–2605. In re Disbarment of Mabry. Disbarment entered. [For earlier order herein, see *ante*, p. 1052.]

No. D–2606. In re Disbarment of Lucas. Disbarment entered. [For earlier order herein, see *ante*, p. 1052.]

No. D–2607. In re Disbarment of Thompson. Disbarment entered. [For earlier order herein, see *ante*, p. 1052.]

No. D–2608. In re Disbarment of Morgan. Disbarment entered. [For earlier order herein, see *ante*, p. 1053.]

No. D–2609. In re Disbarment of Pearson. Disbarment entered. [For earlier order herein, see *ante*, p. 1053.]

No. D–2610. In re Disbarment of Woolverton. Disbarment entered. [For earlier order herein, see *ante*, p. 1053.]

No. D–2611. IN RE DISBARMENT OF SHEA. Disbarment entered. [For earlier order herein, see *ante*, p. 1053.]

No. D–2612. IN RE DISBARMENT OF ROSEN. Disbarment entered. [For earlier order herein, see *ante*, p. 1053.]

No. D–2613. IN RE DISBARMENT OF HARMAN. Disbarment entered. [For earlier order herein, see *ante*, p. 1053.]

No. D–2615. IN RE DISBARMENT OF COTTER. Disbarment entered. [For earlier order herein, see *ante*, p. 1054.]

No. D–2616. IN RE DISBARMENT OF BLAU. Disbarment entered. [For earlier order herein, see *ante*, p. 1054.]

No. D–2617. IN RE DISBARMENT OF HANNA. Disbarment entered. [For earlier order herein, see *ante*, p. 1107.]

No. D–2618. IN RE DISBARMENT OF ZODROW. Disbarment entered. [For earlier order herein, see *ante*, p. 1107.]

No. D–2619. IN RE DISBARMENT OF FOX. Disbarment entered. [For earlier order herein, see *ante*, p. 1107.]

No. D–2621. IN RE DISBARMENT OF CULPEPPER. Disbarment entered. [For earlier order herein, see *ante*, p. 1107.]

No. D–2622. IN RE DISBARMENT OF MOYNIHAN. Disbarment entered. [For earlier order herein, see *ante*, p. 1107.]

No. D–2623. IN RE DISBARMENT OF MELTON. Disbarment entered. [For earlier order herein, see *ante*, p. 1107.]

No. D–2624. IN RE DISCIPLINE OF SQUIRE. Percy Squire, of Columbus, Ohio, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2717. IN RE DISBARMENT OF ADORNO. Disbarment entered. [For earlier order herein, see *ante*, p. 1054.]

No. D–2718. IN RE DISBARMENT OF CRUSE. Disbarment entered. [For earlier order herein, see *ante*, p. 1054.]

No. D–2719. IN RE DISBARMENT OF BARTKO. Disbarment entered. [For earlier order herein, see *ante*, p. 1054.]

No. D–2721. In re Disbarment of Ford. Disbarment entered. [For earlier order herein, see *ante*, p. 1054.]

No. 11M59. El Falesteny *v.* Obama, President of the United States, et al. Motion for leave to file renewed motion under seal granted. Renewed motion for leave to file petition for writ of certiorari under seal granted. Justice Kagan took no part in the consideration or decision of these motions.

No. 11M83. Carr *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division, et al.;

No. 11M84. Muhammad *v.* Bethel et al.;

No. 11M85. Hynoski *v.* Harmston et al.; and

No. 11M86. Castleberry *v.* Tucker, Secretary, Florida Department of Corrections, et al. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 140, Orig. Louisiana et al. *v.* Bryson, Secretary of Commerce, et al. Motion for leave to file bill of complaint denied.

No. 11–7344. Faison *v.* Weaver et al. C. A. 11th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1153] denied.

No. 11–8253. Furda *v.* Maryland. Ct. App. Md.;

No. 11–8254. Glaser *v.* ENZO Biochem, Inc., et al. C. A. 4th Cir.;

No. 11–8318. Clemente *v.* New York. App. Div., Sup. Ct. N. Y., 2d Jud. Dept.;

No. 11–8347. Bakarr *v.* Holder, Attorney General. C. A. 4th Cir.;

No. 11–8636. Loyola *v.* Donahoe, Postmaster General. C. A. 9th Cir.; and

No. 11–8863. Graham *v.* United States. C. A. 9th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until April 9, 2012, 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. 11–8759. In re Jones. Petition for writ of mandamus denied.

No. 11–8740. IN RE CRAWFORD. Petition for writ of mandamus denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

Certiorari Granted

No. 10–930. RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* VALENCIA GONZALES. C. A. 9th Cir. Certiorari granted. Reported below: 623 F. 3d 1242.

No. 11–218. TIBBALS, WARDEN *v.* CARTER. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 644 F. 3d 329.

Certiorari Denied

No. 11–415. RAMIREZ-VILLALPANDO, AKA RAMIREZ *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 645 F. 3d 1035.

No. 11–540. NORTH LAS VEGAS POLICE DEPARTMENT ET AL. *v.* CONATSER, INDIVIDUALLY AND AS SPECIAL ADMINISTRATOR OF THE ESTATE OF CONATSER, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 932.

No. 11–603. ROBERTS *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 647 F. 3d 1334.

No. 11–606. LEIFERMAN ENTERPRISES, LLC, DBA HARMON AUTOGLASS ET AL. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 8th Cir. Certiorari denied. Reported below: 649 F. 3d 873.

No. 11–613. ERIE COUNTY, NEW YORK *v.* CASH. C. A. 2d Cir. Certiorari denied. Reported below: 654 F. 3d 324.

No. 11–692. RIVERA *v.* PNS STORES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 647 F. 3d 188.

No. 11–693. STERLING JEWELERS INC. *v.* JOCK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 646 F. 3d 113.

No. 11–700. NORRIS ET AL. *v.* CALIFORNIA COASTAL COMMISSION ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–716. ZACHARY *v.* FINNAN. C. A. 7th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 682.

No. 11–717. UTILITIES OPTIMIZATION GROUP, L. L. C. *v.* TIN, INC., DBA TEMPLE-INLAND. C. A. 5th Cir. Certiorari denied. Reported below: 440 Fed. Appx. 249.

No. 11–744. ALPHA DELTA CHI-DELTA CHAPTER, SAN DIEGO STATE UNIVERSITY, ET AL. *v.* REED, CHANCELLOR, CALIFORNIA STATE UNIVERSITY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 648 F. 3d 790.

No. 11–758. J. M. W. *v.* T. I. Z. ET AL. Sup. Ct. Utah. Certiorari denied. Reported below: 2011 UT 38, 266 P. 3d 702.

No. 11–839. ROJAS *v.* ROMAN CATHOLIC DIOCESE OF ROCHESTER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 660 F. 3d 98.

No. 11–840. DOE *v.* ROMAN CATHOLIC ARCHDIOCESE OF ST. LOUIS ET AL. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 347 S. W. 3d 588.

No. 11–846. CHINA MINMETALS CORP. ET AL. *v.* ANIMAL SCIENCE PRODUCTS, INC.; and

No. 11–847. SINOSTEEL CORP. ET AL. *v.* ANIMAL SCIENCE PRODUCTS, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 654 F. 3d 462.

No. 11–856. KIRKLAND ET UX. *v.* WAYNE COUNTY, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–858. RABB *v.* CUYAHOGA METROPOLITAN HOUSING AUTHORITY. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 2011-Ohio-2287.

No. 11–861. SUMMITWOOD DEVELOPMENT, LLC, ET AL. *v.* ROBERTS ET AL. App. Ct. Conn. Certiorari denied. Reported below: 130 Conn. App. 792, 25 A. 3d 721.

No. 11–863. SMITH *v.* FRIEDMAN ET AL. Ct. App. Md. Certiorari denied.

No. 11–865. EDDINGTON *v.* TEXAS ET AL. Sup. Ct. Tex. Certiorari denied.

No. 11–867. HOLKESVIG *v.* MOORE. Sup. Ct. N. D. Certiorari denied. Reported below: 2011 ND 199, 806 N. W. 2d 438.

No. 11–871. AEROTEL, LTD. *v.* TELCO GROUP, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 433 Fed. Appx. 903.

No. 11–872. NEW YORK *v.* WINGATE. Ct. App. N. Y. Certiorari denied. Reported below: 17 N. Y. 3d 469, 957 N. E. 2d 255.

No. 11–875. RILEY *v.* AMERICA'S WHOLESALE LENDER ET AL. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 11–877. WEITZ CO., LLC *v.* TREMCO INCORPORATED OF OHIO. C. A. 11th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 426.

No. 11–879. APOTEX, INC., ET AL. *v.* UNIGENE LABORATORIES, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 655 F. 3d 1352.

No. 11–888. BRADLEY ET AL. *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 11th Cir. Certiorari denied. Reported below: 447 Fed. Appx. 38.

No. 11–897. DURAN *v.* J. C. REFINISHING CONTRACTING CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 421 Fed. Appx. 20.

No. 11–901. PIPEFITTERS LOCAL 636 INSURANCE FUND ET AL. *v.* BLUE CROSS BLUE SHIELD OF MICHIGAN. C. A. 6th Cir. Certiorari denied. Reported below: 654 F. 3d 618.

No. 11–913. INTERCITY AUTO SALES, INC. *v.* EVANS ET AL. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 2011-Ohio-1378.

No. 11–916. MITCHELL ET AL. *v.* CONAGRA FOODS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 911.

No. 11–919. MADERO BLASQUEZ ET AL. *v.* SALAZAR, SECRETARY OF THE INTERIOR, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 646 F. 3d 1240.

No. 11–929. PURCELL, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF PURCELL, DECEASED *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 656 F. 3d 463.

No. 11–937. McLain *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 646 F. 3d 599.

No. 11–944. Garcia Adames *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 353 S. W. 3d 854.

No. 11–957. PNH, Inc., et al. *v.* Alfa Laval Flow, Inc. Sup. Ct. Ohio. Certiorari denied. Reported below: 130 Ohio St. 3d 278, 2011-Ohio-4398, 958 N. E. 2d 120.

No. 11–966. Morgan *v.* Hardy, Warden. C. A. 7th Cir. Certiorari denied. Reported below: 662 F. 3d 790.

No. 11–973. Moore *v.* State of Georgia Sexual Offender Registration Review Board. Ct. App. Ga. Certiorari denied.

No. 11–985. Puttick *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 833.

No. 11–991. Hill *v.* Lawson Realty Co., dba Portsmouth Estates Associates. Sup. Ct. Va. Certiorari denied.

No. 11–1001. Sterling Chemicals, Inc., et al. *v.* Evans et al. C. A. 5th Cir. Certiorari denied. Reported below: 660 F. 3d 862.

No. 11–1005. Poulsen *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 655 F. 3d 492.

No. 11–1012. Etherly *v.* Gaetz, Warden. C. A. 7th Cir. Certiorari denied.

No. 11–1029. Yielding *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 657 F. 3d 688.

No. 11–6228. Thompson *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 431 Fed. Appx. 2.

No. 11–6580. Powell *v.* Massachusetts. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 459 Mass. 572, 946 N. E. 2d 114.

No. 11–6893. Pacheco *v.* California. Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 194 Cal. App. 4th 343, 124 Cal. Rptr. 3d 308.

No. 11–7103. CASTELLANOS-BARBA, AKA BARBA CASTELLANOS, AKA FRANCO, AKA CASTELLANOS, AKA OROZCO RAMIREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 648 F. 3d 1130.

No. 11–7257. BARNETTE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 644 F. 3d 192.

No. 11–7284. RIOS-CORTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 649 F. 3d 332.

No. 11–7365. MCCLAIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 862.

No. 11–7377. MONTGOMERY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 635 F. 3d 1074.

No. 11–7731. SHAVANAUX *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 647 F. 3d 993.

No. 11–7763. APANOVITCH *v.* BOBBY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 648 F. 3d 434.

No. 11–7795. SANTIAGO RENTERIA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–7932. MILES *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 421 Md. 596, 28 A. 3d 667.

No. 11–7970. OTTE *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 654 F. 3d 594.

No. 11–7982. MCCRAY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 71 So. 3d 848.

No. 11–8170. SINKFIELD *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–8172. SMITH *v.* LONESTAR CONSTRUCTION, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 475.

No. 11–8173. RHOADES *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 8 A. 3d 912.

No. 11–8174. SEALED PETITIONER *v.* SEALED RESPONDENT ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–8176. DICKINSON *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. Sup. Ct. Ark. Certiorari denied. Reported below: 2011 Ark. 413.

No. 11–8177. DAVIS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 11–8180. SMITH *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 237 Ill. 2d 285, 930 N. E. 2d 974.

No. 11–8183. OFOR *v.* U. S. BANK, N. A., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 649 F. 3d 808.

No. 11–8191. LOPEZ *v.* KERNAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 962.

No. 11–8192. JOHNSON *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 801 N. W. 2d 173.

No. 11–8194. KIRKLAND *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 11–8195. JOHNSON *v.* DOE ET AL. C. A. 10th Cir. Certiorari denied.

No. 11–8196. RUTLEDGE *v.* LASSEN COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–8197. STARKS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 409 Ill. App. 3d 1159, 2 N. E. 3d 666.

No. 11–8200. SCOTT *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–8201. MILLHOUSE *v.* NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 439 Fed. Appx. 41.

No. 11–8204. CAMP *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 11–8205. WILLIAMS *v.* GEORGIA ET AL. Ct. App. Ga. Certiorari denied. Reported below: 308 Ga. App. XXI.

No. 11–8206. UZAMERE *v.* CUOMO, GOVERNOR OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 11–8207. WALTON *v.* ALSTON ET AL. C. A. 2d Cir. Certiorari denied.

No. 11–8213. ASKINS *v.* HARTLEY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 768.

No. 11–8214. BLANKENSHIP *v.* ALLEN, JUDGE, COUNTY COURT OF FLORIDA, ESCAMBIA COUNTY. C. A. 11th Cir. Certiorari denied.

No. 11–8216. PULIDO *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 11–8219. MERILIEN *v.* TUTIN. Super. Ct. Fulton County, Ga. Certiorari denied.

No. 11–8221. PAYNE *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied.

No. 11–8226. DUTKEVITCH *v.* PA CYBER CHARTER SCHOOL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 439 Fed. Appx. 177.

No. 11–8227. DOWNING *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 284.

No. 11–8228. QUINTANILLA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 919.

No. 11–8245. MARSH *v.* BOOKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–8246. JOHNSON *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 397.

No. 11–8251. SCOTT *v.* BYARS, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. S. C. Certiorari denied.

No. 11–8260. WOODS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 77 So. 3d 1262.

No. 11–8261. ZANDERS *v.* FERKO ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 439 Fed. Appx. 158.

No. 11–8271. FLORES *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–8273. GREER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 11–8274. EL BEY, AKA SAVALL, AKA SAKIM *v.* DAVIS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 276.

No. 11–8275. CUFFY *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 11–8277. BERNARD *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 11–8281. PHAM *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 70 So. 3d 485.

No. 11–8285. KENDRICK *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 947 N. E. 2d 509.

No. 11–8287. SWISHER *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 951 N. E. 2d 8.

No. 11–8293. ERNANDEZ *v.* MERRILL LYNCH. C. A. 3d Cir. Certiorari denied. Reported below: 447 Fed. Appx. 293.

No. 11–8295. BLANCO *v.* MCDONALD, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–8296. BAILEY *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 11–8304. ALSTON *v.* WINTHROP UNIVERSITY POLICE DEPARTMENT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 431 Fed. Appx. 226.

No. 11–8305. MCKINNON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 52 Cal. 4th 610, 259 P. 3d 1186.

No. 11–8307. OBI *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 11–8308. Ford *v.* Thomas, Warden, et al. C. A. 11th Cir. Certiorari denied.

No. 11–8311. Murphy *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 408 Ill. App. 3d 1125, 1 N. E. 3d 664.

No. 11–8314. Middleton *v.* Motley Rice LLC. C. A. 4th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 651.

No. 11–8315. Nikolova *v.* Ivanov. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 11–8321. Schuh *v.* Pollard et al. C. A. 6th Cir. Certiorari denied.

No. 11–8323. Conley *v.* Keys et al. C. A. 7th Cir. Certiorari denied.

No. 11–8324. Dempsey *v.* Cain, Warden. C. A. 5th Cir. Certiorari denied. Reported below: 451 Fed. Appx. 333.

No. 11–8329. Kamana'o *v.* Frank et al. C. A. 9th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 631.

No. 11–8331. Juarez *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–8337. McCarthy *v.* Pollard, Warden. C. A. 7th Cir. Certiorari denied. Reported below: 656 F. 3d 478.

No. 11–8340. Matthews *v.* Kubinski et al. C. A. 9th Cir. Certiorari denied.

No. 11–8341. Johnson *v.* Clarke, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 453 Fed. Appx. 387.

No. 11–8342. Johnson *v.* United States et al. C. A. 8th Cir. Certiorari denied.

No. 11–8348. Ringgold-Lockhart et al. *v.* Sankary et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–8350. Clark *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 52 Cal. 4th 856, 261 P. 3d 243.

No. 11–8351. CASTLEBERRY *v.* ACE AMERICAN INSURANCE/ESIS. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 11–8361. SIMS *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied.

No. 11–8370. MORALES *v.* LEWIS, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–8381. PINKARD *v.* JOHN DALY BOULEVARD ASSOCIATES. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 11–8392. GUZMAN SALCEDO *v.* OLLISON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–8397. WALLACE *v.* HILL, ACTING WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–8404. KOUROUMA *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 638.

No. 11–8411. CARTER *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 70 So. 3d 598.

No. 11–8434. MCGUIRE *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 11–8438. SHORTT *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 11–8439. BAYAS *v.* TEXAS. Ct. App. Tex., 8th Dist. Certiorari denied.

No. 11–8451. BECKER *v.* CLERMONT COUNTY PROSECUTOR. C. A. 6th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 438.

No. 11–8456. OKE *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 129 Ohio St. 3d 1447, 2011-Ohio-4217, 951 N. E. 2d 1044.

No. 11–8458. LOTTER *v.* HOUSTON, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 11–8467. Storey *v.* Vasbinder, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 657 F. 3d 372.

No. 11–8485. Pandey *v.* Russell et al. C. A. 10th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 56.

No. 11–8496. Ford *v.* Washington. Sup. Ct. Wash. Certiorari denied. Reported below: 171 Wash. 2d 185, 250 P. 3d 97.

No. 11–8499. Isaac *v.* Holder, Attorney General, et al. C. A. D. C. Cir. Certiorari denied. Reported below: 427 Fed. Appx. 7.

No. 11–8500. Gallegos *v.* Bravo, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 624.

No. 11–8502. Hanes *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 11–8506. Hatfield *v.* Jeffreys, Warden. C. A. 6th Cir. Certiorari denied.

No. 11–8518. Reese *v.* Kelly, Warden. C. A. 6th Cir. Certiorari denied.

No. 11–8532. Carter *v.* Yates, Warden. C. A. 9th Cir. Certiorari denied.

No. 11–8533. Caron *v.* Tucker, Secretary, Florida Department of Corrections. Sup. Ct. Fla. Certiorari denied. Reported below: 74 So. 3d 1082.

No. 11–8542. Ponton *v.* Vericrest Financial, Inc., et al. C. A. 3d Cir. Certiorari denied. Reported below: 446 Fed. Appx. 427.

No. 11–8544. Vaval *v.* Holder, Attorney General. C. A. 2d Cir. Certiorari denied. Reported below: 426 Fed. Appx. 15.

No. 11–8566. Sedillo *v.* Hatch, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 95.

No. 11–8576. Moore *v.* Stevenson, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 454 Fed. Appx. 148.

No. 11–8577. Nnaji *v.* United States; and

No. 11–8764. NNAJI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 447 Fed. Appx. 558.

No. 11–8591. MCPHERSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–8593. BUBRICK *v.* JOHNSON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–8594. EVANS *v.* COLLINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–8607. EDWARDS *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. Sup. Ct. Ark. Certiorari denied. Reported below: 2011 Ark. 336.

No. 11–8638. SMITH *v.* MURPHY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 11–8640. BISSETT *v.* BEAU RIVAGE RESORTS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 148.

No. 11–8654. HOXTER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 23 A. 3d 586.

No. 11–8661. BUCHANAN *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 11–8676. CARTER *v.* LAPPIN, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. C. A. 8th Cir. Certiorari denied.

No. 11–8680. WATSON *v.* LEWIS ET AL. C. A. 1st Cir. Certiorari denied.

No. 11–8687. TENINTY *v.* MCHUGH, SECRETARY OF THE ARMY. C. A. 7th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 92.

No. 11–8696. TIERNEY *v.* ESPINADA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–8704. NORWOOD *v.* MCGOWAN. C. A. 8th Cir. Certiorari denied.

No. 11–8709. LEWIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 451 Fed. Appx. 643.

No. 11–8711. TORRES-ROSARIO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 658 F. 3d 110.

No. 11–8715. CARR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 251.

No. 11–8717. MYERS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 11–8719. HOWARD *v.* UNC HEALTHCARE SYSTEM ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 666.

No. 11–8724. CRUZ-ARELLANES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 408.

No. 11–8726. INMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 429.

No. 11–8727. FORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–8730. KEARNS *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 852.

No. 11–8734. HUARD *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–8738. GREENE *v.* HUMPHREY, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 644 F. 3d 1145.

No. 11–8741. MIRACLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 461 Fed. Appx. 362.

No. 11–8742. ORTIZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 314.

No. 11–8743. LEYVA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 376.

No. 11–8746. SANTILLAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 458 Fed. Appx. 601.

No. 11–8747. STINSON *v.* UNITED STATES; and

No. 11–8811. GRIFFIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 647 F. 3d 1196.

No. 11–8756. POMALES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–8765. AKANDE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 448 Fed. Appx. 112.

No. 11–8768. WRIGHT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 651 F. 3d 764.

No. 11–8770. HENDERSON *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 409 Ill. App. 3d 1169, 2 N. E. 3d 670.

No. 11–8771. FREEMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 661 F. 3d 200.

No. 11–8777. HARTZOG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 63.

No. 11–8779. LAWRENCE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 662 F. 3d 551.

No. 11–8782. GARCIA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–8786. DORSEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 455 Fed. Appx. 680.

No. 11–8795. MOSLEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 462 Fed. Appx. 619.

No. 11–8796. PROPST *v.* OWENS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 274.

No. 11–8807. SUFI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 455 Fed. Appx. 672.

No. 11–8808. MONTAGUE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 833.

No. 11–8810. HARDEMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 408.

No. 11–8812. MCCLAIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–8814. GEORGE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–8816. HAYES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 772.

No. 11–8822. GUEVARA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 11–8833. GILYARD *v.* CHANDLER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 11–8840. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–8842. LIGGINS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 31 A. 3d 1233.

No. 11–8843. MARTIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 11–8845. MOYA-BRETON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 711.

No. 11–8847. AGUILAR-REYES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 653 F. 3d 1053.

No. 11–8852. YARBROUGH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 452 Fed. Appx. 186.

No. 11–8855. BARNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–8862. SHERRILLS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 432 Fed. Appx. 476.

No. 11–8865. DIAZ-RODRIGUEZ, AKA CUCO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–8870. NEWSOME *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 11–8880. PEREZ-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 527.

No. 11–8881. NEWSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 385.

No. 11–8882. McNeil *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 11–8883. Betts *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 458 Fed. Appx. 630.

No. 11–8887. Gloss *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 661 F. 3d 317.

No. 11–8890. Leon *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 663 F. 3d 552.

No. 11–8893. Miell *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 661 F. 3d 995.

No. 11–8895. Rogers *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 457 Fed. Appx. 268.

No. 11–8898. Vaughn *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 453 Fed. Appx. 424.

No. 11–8901. Vasquez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 654 F. 3d 880.

No. 11–8904. Clark *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 468 Fed. Appx. 102.

No. 11–8905. Darby *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 455 Fed. Appx. 329.

No. 11–8906. Johnson *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 11–8910. Dickey *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 851.

No. 11–8911. Brooks *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 27.

No. 11–8913. Morganfield *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 400.

No. 11–8917. Taylor *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 11–8918. Chvelidze *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 655 F. 3d 114.

No. 11–8919. CASTEEL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 663 F. 3d 1013.

No. 11–8922. CISNEROS-RESENDIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 656 F. 3d 1015.

No. 11–8926. WHEELER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 403.

No. 11–343. SEGAL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 644 F. 3d 364.

No. 11–842. CITY OF NEW YORK, NEW YORK *v.* MULLINS ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 653 F. 3d 104.

No. 11–852. CITY OF HUGO, OKLAHOMA, ET AL. *v.* BUCHANAN ET AL. C. A. 10th Cir. Motion of Tarrant Regional Water District for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 656 F. 3d 1251.

No. 11–857. MASLOW ET AL. *v.* BOARD OF ELECTIONS IN THE CITY OF NEW YORK. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 658 F. 3d 291.

No. 11–974. HOLIDAY INN FRANCHISING, INC., NKA HOLIDAY HOSPITALITY FRANCHISING, INC. *v.* HOTEL ASSOCIATES, INC. Ct. App. Ark. Motion of International Franchise Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 2011 Ark. App. 147, 382 S. W. 3d 6.

No. 11–976. MAKAS *v.* MIRAGLIA ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 435 Fed. Appx. 51.

No. 11–1003. REYES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER and JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 660 F. 3d 454.

No. 11–7603. MITCHELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 652 F. 3d 387.

No. 11–8349. FAIRBANK *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 650 F. 3d 1243.

No. 11–8784. HOLLIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 445 Fed. Appx. 888.

No. 11–8815. GONZALEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–8818. FORBES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 11–8828. DANIEL *v.* HAYNES, WARDEN. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–8830. DIAZ-GUTIERREZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 429 Fed. Appx. 352.

No. 11–8856. BROWN *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

Rehearing Denied

No. 10–9792. RAMADAN *v.* UNITED STATES, *ante*, p. 1177;

No. 10–11078. REYES *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 1110;

No. 10–11180. NEAL *v.* FORD MOTOR CO., *ante*, p. 1156;

No. 11–442. KHAZAELI *v.* CITY OF CONCORD, CALIFORNIA, ET AL., *ante*, p. 1111;

No. 11–449. KHAZAELI *v.* JOHNSON ET AL., *ante*, p. 1111;

No. 11–483. PULLOS *v.* ALLIANCE LAUNDRY SYSTEMS, LLC, *ante*, p. 1178;

No. 11–484. MARTIN *v.* HOWARD UNIVERSITY ET AL., *ante*, p. 1174;

No. 11–6477. COLLINS *v.* LEDEZMA, WARDEN, *ante*, p. 1180;

No. 11–6862. SELDEN *v.* FLORIDA ET AL., *ante*, p. 1118;

No. 11–6887. CHARLEY *v.* ORANGEBURG COUNTY SHERIFF'S DEPARTMENT ET AL., *ante*, p. 1118;

No. 11–6986. HENDRICKS *v.* VIRGINIA, *ante*, p. 1120;

No. 11–7021. CROMER *v.* BODISON, WARDEN, ET AL., *ante*, p. 1121;

No. 11–7027. MARTINEZ *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO (two judgments), *ante*, p. 1121;

No. 11–7129. JONES *v.* KANSAS, *ante*, p. 1160;

No. 11–7139. TAYLOR *v.* STEELE, WARDEN, *ante*, p. 1161;

No. 11–7251. KELLEY *v.* BRUZZESE ET AL., *ante*, p. 1161;

No. 11–7282. PARKER *v.* TIM LALLY CHEVROLET, *ante*, p. 1162;

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No. 11–7452. BEAR *v.* FAYRAM, WARDEN, *ante*, p. 1166;

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